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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10885 OF 2024

Vikram Devanand Jadhav … Petitioner

Versus

Income Tax Officer, Ward-3(2) Kalyan & Ors. …Respondents

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Mr. Dharan V. Gandhi, for the Petitioner.
Mr. Akhileshwar Sharma, for the Respondents.

CORAM: G. S. KULKARNI & SOMASEKHAR SUNDARESAN, JJ.

Date : 12 August 2024

PC:

1. Rule. Rule made returnable forthwith. Learned Counsel for the Respondents waives service. By consent of the parties, heard finally.

2. This Writ Petition under Article 226 of the Constitution of India has been filed to challenge a notice dated 7 April 2022 ("**impugned notice**") issued to the Petitioner under Section 148 of the Income Tax Act, 1961 ("***the Act***") for reassessment of the returns filed for Assessment Year 2015-2016. The essential ground of challenge is that the proceedings are evidently barred by limitation inasmuch as they have been initiated well beyond the period of limitation stipulated

under Section 149 of the Act. The Assessment Year in question is 2015-2016. The impugned notice under Section 148 has evidently been issued on 7 April 2022 after a period of six years since the end of the Assessment Year 2015-2016, the applicable period of limitation under Section 149.

3. The petitioner-Assessee has filed this Writ Petition asking for intervention of this Court under Article 226 of the Constitution of India on the premise that the proceedings are barred by limitation.

4. The Writ Petition also challenges the proceedings on the premise that the original notice under Section 148 was illegal at the very initiation of the reassessment, since the said notice had been issued by the Jurisdictional Assessing Officer and not by Faceless Assessing Officer as required under Section 151A of the Act. It is apparent that the challenge to the issuance of the Section 148 notice on this ground is driven by ruling that a Division Bench of this Court pronounced in the case of *Hexaware Technologies Limited Vs. Assistant Commissioner of Income Tax & 4 Ors.*[1].

5. We have heard the Learned Counsel for the petitioner-Assessee as well as the respondent-Revenue and have given our thoughtful consideration to the material on record.

[1] (2024) 464 ITR 430

6. We find that the matter at hand is squarely covered by the ruling by a Division Bench of this Court in the case of *Godrej Industries Ltd. v. The Assistant Commissioner of Income Tax, Circle 14 (1)(2), Mumbai & Ors.*[2] ("***Godrej***"). The facts of the case in Godrej are quite similar – the Assessment Year was 2014-15; the show cause notice under Section 148A(b) came to be issued for the first time on 24th May, 2022; and the Section 148 notice came to be issued on 31st July, 2022. In the instant case, the notice under Section 148 was issued on 7th April, 2022. The Division Bench which dealt with the issue of limitation, in ***Godrej***, held as follows:-

> *14. **The Hon'ble Supreme Court in Ashish Agarwal (Supra) only deemed the first notice issued under Section 148 of the Act to be a show cause notice under Section 148A(b) of the Act and left all defences available to the assessee under Section 149 of the Act**. The Hon'ble Supreme Court in Ashish Agarwal (Supra) did not grant any stay and the period from 21st May 2021 till the notice under Section 148A(b) of the Act is issued cannot be excluded under the second limb of the fifth proviso or even under the first limb.*
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> *15. **The validity of a notice must be judged on the basis of the law existing as on the date on which the notice is issued under Section 148 of the Act, which in the present case is 31st July 2022, by which time the Finance Act, 2021 is already on the statute and in terms thereof, no notice under Section 148 of the Act for AY 2014-15 could be issued on or after 1st April 2021** based on the first proviso to Section 149 of the Act. Therefore, the fifth proviso cannot apply in a case where the first proviso applies because, if a notice under Section 148 of the Act could not be issued beyond the time period provided in the first proviso, then the fifth proviso could not save such notices. The fifth proviso can only apply where one has to determine whether the time limit of three years and ten years in Section 149(1) of the Act are breached.*

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16. The sixth proviso to Section 149 of the Act has no impact as it only provides a situation where after exclusion of the time period referred to in the fifth proviso, the time available with the Assessing Officer for passing an order under Section 148A(d) of the Act is less than 7 days, then the remaining time frame shall be extended to 7 days and limitation also stands extended by 7 days.

*17. **The notice under Section 148 of the Act issued on 31st July 2022, therefore, is barred by limitation**. As per the fifth proviso to Section 149 of the Act only the period from 24th May 2022 to 8th June 2022 can be excluded since the notice under Section 148A(b) of the Act has been issued for the first time on 24th May 2022 providing time to petitioner till 8th June 2022 to furnish a reply. The Revenue is seeking to exclude a period from 21st May 2021 to 4th May 2022 relying on Ashish Agarwal (supra) which, as explained earlier, cannot apply. **Hence, the impugned notice dated 31st July 2022 is bad in law.***

*[**Emphasis Supplied**]*

7. A plain reading of the foregoing would make it clear that the ruling in ***Godrej*** explicitly rules that the validity of a notice under Section 148 must be judged on the basis of the law as existing on the date of which the notice is issued. In the instant case, the deadline for issuance of notices for Assessment Year 2015-2016 had expired on 31 March 2022. Consequently, and evidently, the notice issued in the instant case was hopelessly barred by limitation. Therefore, the 148 Notice issued indeed deserves to be quashed as being barred by limitation.

8. Learned Counsel for both petitioner-Assessee as well as the respondent-Revenue confirm the factual position found above. Consequently, in reliance upon the law declared in ***Godrej***, the reassessment proceedings being barred by limitation, cannot be permitted to be continued, calling for interference by this Court.

Therefore, we hereby quash and set aside the impugned notice under Section 148 of the Act dated 7 April 2022 and all consequential actions emanating from the impugned notice. Accordingly, we allow the petition in terms of prayer clause (a) which reads thus:

> ‘(a) that this Hon’ble Court may be pleased to issue a writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, Order or direction, calling for the records of the Petitioner’s case and after going into the legality and propriety thereof, to quash and set aside the said notice under Section 148 of the Act dated 07.04.2022 (“Exhibit F”), Order under Section 148A(d) of the Act dated 07/04/2022 (“Exhibit E”) and the order passed u/s. 147 r.w.s 144B of the Act dated 27.03.2024 (“Exhibit K1”), the notice of demand in Form No.7 dated 27.03.2024 (“Exhibit K2”) as well as the show-cause notices under section 274 read with section 271(1)(c) of the Act dated 27.03.2024 (“Exhibit L”).

9. Since we are disposing of this Petition on the basis of the reassessment being barred by limitation under Section 149 of the Act, we express no opinion on any other issues raised in the Writ Petition. Such questions are not being answered since it is not necessary to do so.

10. Rule is made absolute in the aforesaid terms and the Writ Petition is hereby disposed of. No costs.

(SOMASEKHAR SUNDARESAN, J.) (G. S. KULKARNI , J.)