IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2818 OF 2024

Kunal Gems through Manish C Shah ...Petitioner

Versus

Union of India through the Secretary & Ors ...Respondents

Ms. Jasmine Dixit, i/b UBR Legal for the Petitioner.

Ms. Mamta Omle, a/w Pritesh Chatterji, for Respondents.

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

DATE : SEPTEMBER 23, 2024

PC :

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

2. We have heard learned Counsel for the parties. This petition is filed under Article 226 of the Constitution of India praying for the following reliefs:-

> *(a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India quashing the impugned notice dated 30.06.2022 issued Respondent No.3 (Exhibit "Al") and impugned order dated 24.05.2023 issued. by Respondent No.5 (Exhibit "A2',);*

(b) that this Hon'ble Court be pleased to issue a Writ of certiorari/ lmandamus or any other appropriate Writ/ order/ direction under Article 226 of the Constitution of India calling for the recordspertaining to the Petitioner case and after going into the validity and legality thereof to quash and and set aside impugned notice and order dated 30.06.2022 and 24.05.2023;

(c) that this Hon'ble Court be pleased to issue a wrjt of mandamus or any other appropriate writ, order or directing the respondents not to implement or act upon, either themselves or through their subordinates, on the impugned notice (Exhib 'A1 and A2') issud by Respondent No.3 and Respondent No.5 and stay their operation thereof;

(d) for interim and ad-interim reliefs in terms of prayer (a) ,(b) & (c) above;

(e.) for costs of this Petition;

(f.) for such and other reliefs as the nature and circumstances of the case may require.

3. At the outset learned Counsel for the petitioner would submit that the impugned notice dated 30 June, 2022 issued under Section 148 of the Income-tax Act, 1961 (for short "***the Act***") pertains to the assessment year 2013-14 and hence, clearly the proceedings are barred by limitation. He submitted that similar issue had arisen before this Court in the case of *New India Assurance Company Ltd. Vs. Assistant Commissioner of Income-tax*[1] wherein, the Court had held that for the very assessment year the reassessment initiated under Section 148 of the Act after 31 March, 2021 was barred by limitation.

4. Learned Counsel for the respondent would fairly not dispute

1 *[2024] 158 taxmann.com 367 (Bombay)*

this factual position. Thus the impugned notice is admittedly issued beyond the prescribed period of limitation. In support of such contention Ms. Dixit, learned Counsel for the petitioner has also drawn our attention to the decision of a Division Bench of this Court in *Everest Flavours Limited vs. The National Faceless Assessment Centre & Anr*[2] wherein on the very same issue while allowing the petition, the Court had made the following observations:-

> *9. The learned counsel for the petitioner has drawn our attention to a decision of a Division Bench of this Court in New India Assurance Company Ltd. Vs. Assistant Commissioner of Income-tax (**"New India Assurance"**) wherein this Court has held that for the assessment year 2013-14, reassessment proceedings initiated under section 148 of the Act after 31 March, 2021 are barred by limitation. This position is also not in dispute in the facts of this case.*
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> *10. In **New India Assurance,** the Division Bench of this Court has observed as follows :-*
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>> *"35. The Revenue's contention that the reopening notice was to relate back to an earlier date is entirely flawed and unacceptable. Thus, the reassessment notices issued for AY 2013-14 are patently barred by limitation as the six years limitation period under the Act (as extended by Section 3 of TOLA) expired by 31st March 2021. However, even on the Revenue's demurrer and assuming that such reopening notices could travel back in time and that the provisions of TOLA protected such reopening notices (we do not agree), even then, in so far as the notices issued for AY 2013-14 is concerned, would in any case be barred by limitation. As stated*

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> *earlier, under the erstwhile Section 149, a notice under Section 148 could have been issued within a period of six years from the end of the relevant assessment year. The Notifications issued under TOLA, viz., Notification No.20/2021, which is relied upon by the Revenue, only cover those cases where 31st March, 2021 was the end date of the period during which the time limit, specified in, or prescribed or notified under the Income Tax Act falls for completion. The limitation under the Income Tax Act, 1961(erstwhile Section 149) for reopening the assessment for the AY 2013-14 expired on 31st March 2020. Hence, Notification No.20/2021 did not apply to the facts of the present case, viz., reopening notice for the AY 2013-14. Therefore, the Revenue could not issue any notice under Section 148 beyond 31st March 2021 and hence, even the relate back theory of the Revenue could not safeguard the reassessment proceedings initiated after 1st April 2021 for AY 2013-14.*

36. Therefore, in the present case, as the foundation of the entire reassessment proceeding, viz., the notice issued in June 2021 itself was barred by limitation in view of non-applicability of Notification No.20/2021, the superstructure sitting thereon, viz., the reassessment proceedings initiated pursuant to judgment in Ashish Agarwal will also be regarded as beyond time limit. Therefore, on this ground as well, the impugned reopening notice dated 28th July 2022 issued for AY 2013-14 in petitioner's case is barred by limitation and deserves to be quashed and set aside. Alternatively, it is well settled that a notice under Section 148 of the Act cannot be issued in order to reopen the assessment of an assessee in a case where the right to reopen the assessment was already barred under the pre-amended Act on the date when the new legislation came into force. In CIT V/s. Onkarmal Meghraj (HUF)14 the Hon'ble Apex Court held :

> *"That raises the question whether that proviso could be applied without reference to any period of limitation. It is a well-settled principle that no action can be commenced has expired. It is*

> *unnecessary to cite authorities in support of this position. Does the fact that the second proviso says that there is no period of limitation make a difference?*
>
> ******In J.P. Jani, Income-tax Officer v. Induprasad Devshanker Bhatt (1969) 72 I.T.R. 595; (1969) 1 S.C.R. 714 (S.C.) this court held that the Income-tax Officer cannot issue a notice under section 148 of the Income Tax Act, 1961, in order to reopen the assessment of an assessee in a case where the right ti reopen the assessment was barred under the 1922 Act at the date when the new Act came into force. It was held that section 297(2)(d)(ii) of the 1961 Act was applicable only to this cases where the right of the Income-tax Officer to reopen an assessment was not barred under the repealed Act. This decision is broadly in line with the opinion of Das and Kapur JJ. in Prashar's case (1963) 49 I.T.R. (S.C.) 1; (1964) 1 S.C.R. 29(S.C.)*

For AY 2013-14, the time limit to issue a notice under Section 148 of the Act had already expired on 1st April 2021. On the said date, the assessee had a vested right, which de hors the 1st proviso to the amended Section 149 of the Act, could not be taken away and thus, based on the well settled principles of law, the reopening of the AY 2013-14 after 31st March 2021 is invalid, without jurisdiction and barred by limitation."

5. In this view of the matter, the petition deserves to be allowed. We accordingly allow the petition in terms of prayer clause (a). Rule is made absolute in the aforesaid terms. No costs.

[SOMASEKHAR SUNDARESAN, J.] **[G. S. KULKARNI, J.]**

Ashwini Vallakati