IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3167 OF 2024

Mahalaxmi Jewelworld Private Ltd. ...Petitioner
Versus
Income Tax Officer - 4(2)(1), Mumbai & Anr. ...Respondents

Mr. Nishit Gandhi for the Petitioner.
Mr. Subir Kumar with Mr. Abhinav Palsikar for Respondents.

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

Date : 31 July 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 29 July, 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 2014-15. 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 notice under Section 148 has evidently been issued on

29 July 2022 after a period of seven years since the end of the Assessment Year 2014-2015, 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.

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*

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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 24 May, 2022; and the Section 148 notice came to be issued on 31 July, 2022. In the instant case, the notice under Section 148 was issued on 29 July, 2022 – just about two days before the notice in ***Godrej***. 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*

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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 2014-2015 had expired on 31 March 2021. 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 dated 29 July 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 under Article 226 of the Constitution of India an appropriate direction, order or a writ, including a writ in the nature of 'Certiorari', calling for the records of the case and, after satisfying itself as to the legality thereof, quash and set aside the Notice U/s. 148A(b) dated 27.05.2022, Ex. "D" herein, the Order u/s. 148A(d) dated 29.07.2022 and its intimation thereof, Ex. "G" & "G1" herein and all consequential proceedings thereto including the Notice dated 20.01.2023 issued by the Second Respondent and any further proceedings initiated thereafter;"

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.)