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W.P.Nos.8570, 8577, 20384 & 20388 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2024

CORAM :

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.8570, 8577, 20384 & 20388 of 2023

and

W.M.P.Nos.8752, 8754, 8756, 8757, 19744, 19745, 19747, 19749 of
2023; 3904 & 3907 of 2024

Ramachandran Shivan

... Petitioner
(in all W.P's)

Versus

Income Tax Officer,
International Tax Ward Coimbatore,
May Flower Mid City Building,
1510, Trichy Road, Coimbatore,
Tamil Nadu – 641 018.

... Respondent
(in all W.P's)

Prayer in W.P.No.8570 of 2023 : Writ Petition filed under Article 226 of the Constitution of India, pleased to issue a Writ of Certiorari, to call for the records on the file of the respondent and quash the impugned order in ITBA/COM/F/17/2022-23/1044207945(1) dated 28.07.2022 passed under Section 148(A)(d) of the Income Tax Act, 1961 and consequential notice under Section 148 of the Income Tax Act, 1961 in ITBA/AST/M/148_1/2022-23/1044234851(1) dated 28.07.2022 for the Assessment Year 2016-17 passed by the respondent as illegal and not in accordance with law.



W.P.Nos.8570, 8577, 20384 & 20388 of 2023

Prayer in W.P.No.8577 of 2023 : Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorari, to call for for the records on the file of the respondent and quash the impugned order in ITBA/COM/F/17/2022-23/1044208968(1) dated 28.07.2022 passed under Section 148(A)(d) of the Income Tax Act, 1961 and consequential notice under Section 148 of the Income Tax Act, 1961 dated 28.07.2022 for the Assessment Year 2017-18 passed by the respondent as illegal and not in accordance with law.

Prayer in W.P.No.20384 of 2023 : Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorari, to call for the records on the file of the respondent and quash the impugned order in ITBA/ AST/F/ 144C/ 2023-24/ 1053283750(1) dated 29.05.2023 passed under Section 144C(1) of the Income Tax Act, 1961 as illegal and not in accordance with law.

Prayer in W.P.No.20388 of 2023 : Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorari, to call for the records on the file of the respondent and quash the impugned order in ITBA/AST/F/144C/2023-24/1053298317(1) dated 30.05.2023 passed under Section 144C(1) of the Income Tax Act, 1961 as illegal and not in accordance with law.

In all W.P's:

For Petitioner : Mr. R. Sivaraman

For Respondent : Mr. D. Prabhu Mukunth Arun Kumar,
Junior Standing Counsel.



W.P.Nos.8570, 8577, 20384 & 20388 of 2023

COMMON ORDER

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Four writ petitions were filed by the petitioner/assessee in respect of assessment years 2016-2017 and 2017-2018. In W.P.Nos.8570 & 8577 of 2023, orders issued under Section 148A(d) of the Income Tax Act, 1961 (the I-T Act) and notices issued under Section 148 thereof, in respect of assessment years 2016-2017 and 2017-2018, respectively, are under challenge. In W.P.Nos.20384 & 20388 of 2023, draft assessment orders issued under Section 144B of the I-T Act, in respect of assessment years 2016-2017 & 2017-2018, respectively, are under challenge.

2. The petitioner is an individual engaged in the business of manufacturing pumps and motors. Both in respect of assessment years 2016-2017 and 2017-2018, the petitioner had filed returns of income. With a view to reopen the relevant assessment, notices under Section 148 of the I-T Act (pre-amended) were issued to the petitioner on 29.06.2021. Such notices were challenged. Thereafter, based on the judgment of the Hon'ble Supreme Court in *Union of India v. Ashish Agarwal (Ashish Agarwal)*, (2022) 138 taxmann.com 64 (SC) 2022 such notices were



W.P.Nos.8570, 8577, 20384 & 20388 of 2023

directed to be deemed as notices under Section 148A(d) of the amended I-T Act. In response, the petitioner submitted a reply to such notice in respect of each assessment year. Thereafter, orders under Section 148A(d) of the I-T Act were issued in July 2022. On the same day, notices under Section 148 of the amended I-T Act were issued. Draft assessment orders under Section 144B were issued thereafter and these four writ petitions were filed in the said facts and circumstances.

3. Learned counsel for the petitioner challenges the impugned orders and notices largely on the ground that approval of the specified authority in terms of Section 151 of the I-T Act was not obtained. By referring to Section 151, learned counsel points out that Section 151 provides for different specified authorities depending on the amount of time that has lapsed from the end of the relevant assessment year. As regards assessment years 2016-2017 and 2017-2018, which are relevant for the present purpose, he submits that clause (ii) of Section 151 is applicable and, in terms thereof, the specified authorities are the Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General. By referring to the notice under Section 148, he



W.P.Nos.8570, 8577, 20384 & 20388 of 2023

points out that such notice was issued with the prior approval of the Commissioner of Income Tax (International Taxes), Chennai, which approval was accorded on 28.07.2022. Similarly, with reference to the orders under Section 148A(d), he points out that such orders were issued with the prior approval of the Commissioner of Income Tax (International Taxes) Chennai. Learned counsel, therefore, contends that the specified authority did not grant the approval. Learned counsel also referred to the first proviso to Section 148 with regard to the requirement of prior approval and submitted that the said proviso should be read along with Explanation 3. With reference to Explanation 3 thereof, he pointed out that it categorically prescribes that the specified authority for purposes of Section 148 is the authority referred to in the proviso to Section 148 of the I-T Act.

4. The judgment of the Division Bench of the Bombay High Court in *Siemens Financial Services Pvt. Ltd. v. Deputy Commissioner of Income Tax (Siemens Financial Services)*, (2023) 154 taxmaan.com 159 (Bombay) was relied on to contend that the Division Bench of the Bombay High Court dealt with the same questions of law in a fact situation that



W.P.Nos.8570, 8577, 20384 & 20388 of 2023

WEB COPY

was nearly identical to these cases. He relied on paragraphs 1 & 3 thereof to point out that the said case pertained to assessment year 2016-2017. He also relied on paragraphs 20 to 26, 28, 29 and 31 to 32 of the said judgment. He pointed out that the Bombay High Court held categorically, in paragraph 22, that sanction had not been granted by the authority specified in Section 151 and, therefore, the orders under Section 148A(d) and the notice under Section 148 were not valid. He also relied on the judgment of the Delhi High Court in *Twylight Infrastructure Private Limited v. ITO*, W.P.(c)No.16524 of 2022, judgment dated 05.01.2024 (*Twylight Infrastructure*) and pointed out that it was held that in the said judgment at paragraphs 7 to 12.3 that it was necessary to obtain approval under the amended Section 151 in respect of proceedings initiated after such amendment came into force. Since approval was obtained from the authority specified in clause (i) of Section 151 instead of clause (ii) thereof, the Division Bench of the Delhi High Court held that the order under Section 148 A(d) and notice under Section 148 were not valid.

5. As regards the applicability and impact of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020



W.P.Nos.8570, 8577, 20384 & 20388 of 2023

WEB COPY

(TOLA), he submitted that the limited impact of the said enactment was to extend the time limit for completion of proceedings, issuance of orders, sanctions or approvals up to 31.03.2021. According to learned counsel, even assuming without admitting that TOLA is applicable, its applicability would have no impact on the specified authority for grant of sanction for proceedings initiated under Section 148.

6. Mr. D. Prabhu Mukunth Arun Kumar, learned standing counsel, made submissions in response and to the contrary. He pointed out that Sections 147, 148, 149 and 151 constitute an interconnected package of provisions, which cannot be interpreted in isolation. By referring to unamended Section 147, he pointed out that the proviso thereto fixes four years as the threshold for unconditional reassessment. Upon expiry of the four year period, he pointed out that reassessment proceedings cannot be initiated unless the conditions specified in such proviso are satisfied. After referring to pre-amended Section 148, he turned his attention to pre-amended Section 149. He pointed out that clause (a)(i) thereof also prescribes a four year time limit for issuance of notice under Section 148, unless the case falls within the clauses(b) or (c)



W.P.Nos.8570, 8577, 20384 & 20388 of 2023

thereof. He then turned to the pre-amended Section 151 and pointed out that said provision prescribes sanction by the officers specified therein if more than four years have lapsed.

7. After dealing with the pre-amended provisions, he referred to the amended provisions. In particular, he focused attention on the proviso to sub-section (1) of Section 149. He pointed out that the time limit prescribed in the pre-amended Section 149(1)(b) was made applicable by the said proviso. As a consequence thereof, he contends that the provisions of the pre-amended Section 151 become applicable. In support of this contention, he relies upon sub-section 2 of the pre-amended Section 149, which makes express reference to the provisions of Section 151.

8. He also refers to the TOLA and points out that Section 3 thereof applies to the issuance of sanctions and approvals. As a consequence of TOLA, he submits that the time limit in relation to grant of sanction was extended to 31.03.2021. He also points out that such time limits were thereafter extended up to 30.06.2021.



W.P.Nos.8570, 8577, 20384 & 20388 of 2023

WEB COPY

9. By placing the judgment of the Allahabad High Court in *Rajeev Bansal v. Union of India (Rajeev Bansal)*, (2023)147 taxmann.com (549) (Allahabad), learned standing counsel pointed out that the Allahabad High Court concluded that TOLA would not be applicable in respect of the time frame prescribed under the first proviso to Section 149 as amended by the Finance Act, 2021. By also placing for consideration the judgment of the Supreme Court of India in S.L.P.No.6706 of 2023, learned counsel submitted that the judgment of the Allahabad High Court in *Rajeev Bansal* was stayed by the Supreme Court. By referring to the case details available in the website of the Supreme Court, learned counsel points out that the judgment of the Bombay High Court in *Siemens Financial Services* has been tagged with the S.L.P. arising out of the judgment in *Rajeev Bansal* and that both these matters are pending consideration before the Supreme Court. Therefore, he contends that sanction was accorded by the specified authority and that pre-amended Section 151 applies in such regard.

10. The primary ground of challenge is by relying on Section 151



W.P.Nos.8570, 8577, 20384 & 20388 of 2023

WEB COPY

of the I-T Act. Therefore, I begin by setting out amended Section 151 which is as under:

“Sanction for issue of notice:

151. Specified authority for the purposes of section 148 and section 148A shall be,—

(i) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year;

(ii) Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year:

[Provided that the period of three years for the purposes of clause (i) shall be computed after taking into account the period of limitation as excluded by the third or fourth or fifth provisos or extended by the sixth proviso to sub-section (1) of section 149.]”

The undisputed factual position in this case is that the amendments to relevant provisions, such as Sections 148, 148A, 149 and 151, were



W.P.Nos.8570, 8577, 20384 & 20388 of 2023

WEB COPY

effected by the Finance Act 2021 with effect from 01.04.2021. The order under Section 148A(d) was issued, thereafter, on 28.07.2022 with the prior approval of the Commissioner of Income Tax (International Taxes) Chennai. Likewise, the notice under Section 148 was also issued on 28.07.2022 with the prior approval of the same authority. In this factual context, the question that arises for consideration is whether the amended Section 151 is applicable to these cases.

11. Learned standing counsel relied on the proviso to Section 149 to contend that the pre-amended Section 151 would apply. Section 149 (1), in relevant part, is as under :

“ 149. Time limit for notice.

(1) No notice under section 148 shall be issued for the relevant assessment year,—

(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or



WEB COPY



W.P.Nos.8570, 8577, 20384 & 20388 of 2023

evidence which reveal that the income chargeable to tax, represented in the form of—

- (i) an asset;*
- (ii) expenditure in respect of a transaction or in relation to an event or occasion; or*
- (iii) an entry or entries in the books of account, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more:]*

*Provided that no notice under section 148 shall be issued at any time in a case for the **relevant assessment year beginning on or before 1st day of April, 2021, if [a notice under section 148 or section 153A or section 153C could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section or section 153A or section 153C, as the case may be], as they stood immediately before the commencement of the Finance Act, 2021:***

....

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.” (emphasis added).



W.P.Nos.8570, 8577, 20384 & 20388 of 2023

WEB COPY

12. A proviso has the effect of qualifying the principal clause by carving out exceptions, imposing conditions relating thereto, or whittling down or even expanding the scope thereof. The scope and ambit of a proviso should be construed primarily from text, albeit by placing such text in context. The following may be gleaned from the proviso to sub-section(1) of Section 149: it applies to assessment years commencing prior to 01.04.2021, i.e. assessment years before the amendments came into effect; and the time limits under Section 149(1)(b), Section 153A or 153C, as the case may be, as it stood before the commencement of the Finance Act, 2021, apply to notices under Section 148 in respect of cases pertaining to assessment years beginning on or before 01.04.2021. Since the disputes pertain to assessment years 2016-2017 and 2017-2018, the proviso undoubtedly applies to these cases. What are the implications of the application of the proviso? In my view, as a consequence of the proviso, the time limit specified in the pre-amended Section 149 (1)(b) becomes applicable and the time limit prescribed therein was four years and not more than six years. What is the corollary thereof?

13. The orders and notices are challenged herein not on the



W.P.Nos.8570, 8577, 20384 & 20388 of 2023

WEB COPY

ground that the time limit under pre-amended Section 149 does not apply, but on the ground that sanction was not granted by the specified authority.

Therefore, it remains to be considered as to whether the application of the proviso to Section 149 has the effect of incorporating by reference pre-amended Section 151. In order to substantiate the contention that pre-amended Section 151 gets incorporated by reference, learned standing counsel relied on sub-section 2 to the pre-amended Section 149. It should be noticed that the proviso to sub-section (1) of the amended Section 149 does not even incorporate the whole of pre-amended Section 149. It merely makes the time limit prescribed therein applicable to the issuance of notices for reassessment in respect of any assessment year beginning before 01.04.2021. *A fortiori* the proviso certainly does not incorporate pre-amended Section 151 by reference and make it applicable.

14. The next question to be examined is the impact of the TOLA. Undoubtedly, TOLA extended the time limits under specified enactments, including the I-T Act. As per clause (a)(ii) of sub-section(1) of Section 3 thereof, time limits for grant of sanction or approval were also extended. Since the petitioner does not challenge the sanction with respect to the



W.P.Nos.8570, 8577, 20384 & 20388 of 2023

time limit, clause(a) of sub-section(1) of Section 3 is immaterial. Indeed, TOLA, which extends the time limits for completion of specified tasks up to 31.03.2021, itself becomes irrelevant because of the nature of the challenge in these writ petitions.

15. In *Siemens Financial Services*, the Division Bench of the Bombay High Court concluded, in substantially similar facts and circumstances, that the amended Section 151 and not the pre-amended Section 151 would apply. For reasons set out above, I concur with the conclusion in *Siemens Financial Services and Ganesh Das Khanna v. ITO (2023) 156 taxmann.com 417 (Delhi)*, as subsequently followed in *Twylight Infrastructure*. Consequently, the validity of sanction for issuing the orders under Section 148A(d) and the notices under Section 148 should be tested with reference to amended Section 151. If so tested, it is evident that sanction was not granted by an authority specified under clause (ii) of Section 151. Hence, the orders under Section 148A(d) and the notices under Section 148 are quashed. As a corollary, the draft assessment orders under Section 144B/144C cannot survive and are also quashed.



W.P.Nos.8570, 8577, 20384 & 20388 of 2023

WEB COPY

16. These Writ Petitions are allowed on the above terms. There will be no order as to costs. Consequently, the connected miscellaneous petitions are also closed.

04.03.2024

Index : Yes
Speaking Order : Yes
Neutral Case Citation: Yes

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To

Income Tax Officer,
International Tax Ward Coimbatore,
May Flower Mid City Building,
1510, Trichy Road,
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Tamil Nadu – 641 018.



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W.P.Nos.8570, 8577, 20384 & 20388 of 2023

SENTHILKUMAR RAMAMOORTHY,J

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W.P.Nos.8570, 8577, 20384 & 20388 of 2023
and
W.M.P.Nos.8752, 8754, 8756, 8757,
19744, 19745, 19747 & 19749 of 2023;
3904 & 3907 of 2024

04.03.2024