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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.16406 of 2021
and
W.M.P.Nos.17376 and 17377 of 2021

Core Logistic Company,
Represented by its Partner Arul Natarajan ... Petitioner

Vs.

1.The Assistant Commissioner of Income Tax,
Circle-1, Erode.
2.The Principal Commissioner of Income Tax,
Coimbatore. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the first respondent in DIN and Notice No.ITBA/AST/S/148/2021-2022/1033871787(1) dated 30.06.2021 for the Assessment Year 2016-2017 and quash the same.

For Petitioner : Mr.T.Vasudevan
For Respondents : Dr.B.Ramaswamy
Senior Standing Counsel

ORDER

In this Writ Petition, the petitioner has challenged the Impugned Notice issued under Section 148 of the Income Tax Act, 1961 for the Assessment Year 2016-2017 on 30.06.2021.

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2. The Impugned Notice dated 30.06.2021 has been challenged by the petitioner primarily on the ground that earlier an Assessment Order was passed on 31.10.2018.

3. It is also informed by the petitioner that pursuant to the Impugned Notice dated 30.06.2021, assessment was also completed on 30.05.2023 which is subject matter of another W.P.No.18168 of 2023. It is noticed that the Parliament substituted Sections 148, 149, 150 and 151 of the Income Tax Act, 1961 dealing with the provisions relates to reassessment by Finance Act, 2021 with effect from 01.04.2021.

4. In this context, the Hon'ble Supreme Court had passed a detailed order in **Union of India and others** Vs **Ashish Agarwal**, (2023) 1 SCC 617/2022 SCC Online SC 543 in Civil Appeal No.3005 of 2022 etc batch dated 04.05.2022. Relevant portion of the order reads as under:-

> ***"28. In view of the above and for the reasons stated above, the present appeals are allowed in part. The impugned common judgments and orders [Ashok Kumar Agarwal v. Union of India, 2021 SCC OnLine All 799] passed by the High Court of Judicature at Allahabad in WT No. 524 of 2021 and other allied tax appeals/petitions, is/are hereby modified and substituted as under:***

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28.1. The impugned Section 148 notices issued to the respective assessees which were issued under unamended Section 148 of the IT Act, which were the subject-matter of writ petitions before the various respective High Courts shall be deemed to have been issued under Section 148-A of the IT Act as substituted by the Finance Act, 2021 and construed or treated to be show-cause notices in terms of Section 148-A(b). The assessing officer shall, within thirty days from today provide to the respective assessees information and material relied upon by the Revenue, so that the assessees can reply to the show-cause notices within two weeks thereafter.

28.2. The requirement of conducting any enquiry, if required, with the prior approval of specified authority under Section 148-A(a) is hereby dispensed with as a one-time measure vis-à-vis those notices which have been issued under Section 148 of the unamended Act from 1-4-2021 till date, including those which have been quashed by the High Courts.

28.3. Even otherwise as observed hereinabove holding any enquiry with the prior approval of specified authority is not mandatory but it is for the assessing officers concerned to hold any enquiry, if required.

28.4. <u>The assessing officers shall thereafter pass orders in terms of Section 148-A(d) in respect of each of the assessees concerned; Thereafter after following the procedure as required under Section 148-A may issue notice under Section 148 (as substituted)</u>.

28.5. <u>All defences which may be available to the assessees including those available under Section 149 of the IT Act and all rights and contentions which may be available to the assessees concerned and Revenue under the Finance Act, 2021 and in law shall continue to be available</u>."

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5. Thus, the Show Cause Notice under Section 148 of the Income Tax Act, 1961 has to be deemed to have been issued under Section 148A(b) of the Income Tax Act, 1961 as in force with effect from 01.04.2021.

6. Therefore, order has to be passed pursuant to Impugned Notice dated 30.06.2021 under Section 148A(d) of the Income Tax Act, 1961. Therefore, no further adjudication is required to be made in this Writ Petition.

7. Accordingly, this Writ Petition is closed. However, liberty is given to the petitioner to canvass their rights in W.P.No.18161 of 2023 in the light of the decision of the Hon'ble Supreme Court in Ashish Agarwal's case (cited supra), in case the Assessment Order has been passed under the provisions of the Income Tax Act, 1961 as it stood prior to 01.04.2021. No costs. Connected Writ Miscellaneous Petitions are closed.

07.11.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

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To

1.The Assistant Commissioner of Income Tax,
Circle-1, Erode.

2.The Principal Commissioner of Income Tax,
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C.SARAVANAN, J.

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