

**THE HONOURABLE SRI JUSTICE SUJOY PAUL
AND
THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

WRIT PETITION No.16568 OF 2024

ORDER: *(per Hon'ble Justice Sujoy Paul)*

Heard Sri K. Venkataramanaiah, learned counsel for the petitioner. Sri Dominic Fernandes, learned Senior

Ms. Srija, learned counsel representing Sri Thanneru Chaitanya Kumar, learned counsel for the petitioner, Ms. B. Sapna Reddy, learned Junior Standing Counsel representing Sri J.V.Prasad, learned Senior Standing Counsel for Income Tax Department for the respondent Nos.1 to 4-Income Tax Department and Sri B. Mukherjee, learned counsel representing Sri Gadi Praveen Kumar, learned Deputy Solicitor General of India, for respondent No.5.

2. The ground taken by the learned counsel for the petitioner is that in furtherance of Finance Act, 2021, re-assessment process stood modified but the respondents have not taken care of it and therefore notice issued under Section 148 of the Income Tax Act, 1961 cannot sustain judicial scrutiny. Since notice is bad in law, the consequential orders are also bad in law.

3. During the course of hearing, learned counsel for the parties agreed that curtains on this issue are finally drawn by this Court in a batch of Writ Petitions, W.P.No.25903 of 2022 and other connected matters, decided by common order dated 14.09.2023. The parties agreed that this matter may be disposed of in terms of the Common Order dated 14.09.2023.

4. This Court in the said order dated 14.09.2023 in W.P.No.25903 of 2022, held as under:

“35. In view of the aforesaid discussions, it is by now very clear that the procedure to be followed by the respondent-Department upon treating the notices issued for reassessment being under Section 148A, the subsequent proceedings was mandatorily required to be undertaken under the substituted provisions as laid down under the Finance Act, 2021. In the absence of which, we are constrained to hold that the procedure adopted by the respondent-Department is in contravention to the statute i.e. the Finance Act, 2021, at the first instance. Secondly, it is also in direct contravention to the directives issued by the Hon’ble Supreme Court in the case of Ashish Agarwal, supra.

36. For all the aforesaid reasons, the impugned notices issued and the proceedings drawn by the respondent-Department is neither tenable, nor sustainable. The notices so issued and the procedure adopted being per se illegal, deserves to be and are accordingly set aside/quashed. As a consequence, all the impugned orders getting quashed, the consequential orders passed by the respondent Department pursuant to the notices issued under Section 147 and 148 would also get quashed and it is ordered accordingly. The reason we are quashing the consequential order is on the principles that when the initiation of the proceedings itself was procedurally wrong, the subsequent orders also gets nullified automatically.

37. The preliminary objection raised by the petitioner is sustained and all these writ petitions stands allowed on this very jurisdictional issue. Since the impugned notices and orders are getting quashed on the point of jurisdiction, we are not inclined to proceed further and decide the other issues raised by the petitioner which stands reserved to be raised and contended in an appropriate proceedings.

38. Since the Hon'ble Supreme Court had, in the case of Ashish Agarwal, supra, as a one-time measure exercising the powers under Article 142 of the Constitution of India, permitted the Revenue to proceed under the substituted provisions, and this Court allowing the petitions only on the procedural flaw, the right conferred on the Revenue would remain reserved to proceed further if they so want from the stage of the order of the Supreme Court in the case of Ashish Agarwal, supra.

39. No order as to costs."

5. In view of the consensus arrived, the impugned Show Cause notice and consequential orders passed in this writ petition are set aside. Liberty is reserved to both the parties to take respective stand and to proceed in accordance with law as per paragraph No.38 of the order dated 14.09.2023 in W.P.No.25903 of 2022.

6. The Writ Petition is allowed. No costs. Interlocutory applications, if any pending, shall also stand closed.

JUSTICE SUJOY PAUL

JUSTICE NAMAVARAPU RAJESHWAR RAO

Date: 12.06.2024

GVR