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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 1140/2023

ADROIT FINANCIAL SERVICES PRIVATE LIMITED .....Petitioner

Through: Mr. Ved Jain, Ms. Soniya Dodeja and Mr. Nischay Kantoor, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 1(1), DELHI & ORS. .....Respondent

Through: Mr. Sanjay Kumar, SSC with Ms. Esha, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% **02.08.2024**

1. This writ petition has been preferred seeking the following reliefs: -

> "A. Issue a writ of and/or order and or directions in the nature of certiorari, prohibition, mandamus or any other appropriate writ, order or direction quashing impugned order dated 22.11.2022 passed under section 154 of the Act and the prior approval purportedly granted by Respondent No. 2 before passing such order.
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> B. Without prejudice to the above, issue a writ of and/or order and or directions in the nature of certiorari, prohibition, mandamus or any other appropriate writ, order or direction quashing the reassessment proceedings for AY 2013-14 and all notices/orders in relation thereto.
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> **AND**
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> C. Issue a writ of and/or order and/or direction in the nature of prohibition commanding Respondents to forebear from giving effect to and/or taking any step whatsoever pursuant to and/or in furtherance of the impugned order dated 22.11.2022 for AY 2013-14;

AND

D. Without prejudice to the above, issue writ in the nature of certiorari or mandamus or any other appropriate writ, order or direction for quashing the Instruction No.1/2022 [being F. No. 279/MISC./M- 51/2022-ITJ] dated 11.05.2022 issued by Respondent No.4, to the extent it stipulates issuance of notice for A Y 2013-14 for being contrary to the provisions of the Act and the judgment passed by Hon'ble Supreme Court in the case of Union of India vs. Ashish Agarwal: 2022 SCC Online SC 543

AND

E. Without prejudice to the above, issue writ in the nature of certiorari or mandamus or any other appropriate writ, order or direction for reading down the provision of section 149 of the Act as amended vide Finance Act, 2021 to the extent it envisages, it at all it does, issuance of notice for past assessment years which already stands barred by limitation under first proviso to section 147 of the Act, as it stood immediately prior to commencement of Finance Act, 2021.

AND

F. Award cost of litigation;

AND

G. Issue a writ in the nature of Mandamus or any other writ, order or direction, as deemed fit and proper in the facts and circumstances of the present case."

2. The challenge which stands laid to the rectification order is essentially premised on the judgment handed down by the Court in an earlier round of litigation and where the original action under Section 148 of the **Income Tax Act, 1961**[1] had come to be assailed.

3. We note that W.P.(C)13733/2022 came to be ultimately allowed by the Court on 22 September 2022 in the following terms: -

> "3. Issue notice. Mr. Sanjay Kumar, learned counsel for the respondents revenue, accepts notice. He states that he has no instructions in the present case. He, however, does not dispute that the income alleged to have escaped assessment is less than Rs.50,00,000/-.
>
> 4. This Court is of the view that the reopening in the present case is

[1] Act

in violation of CBDT Instruction No.01/2022 dated 11th May, .2022, wherein it has been clearly stated that notices in the cases pertaining to assessment years 2013-14, 2014-15 and 2015-16 cannot be issued, if the condition specified under Section 149(1)(b) is not fulfilled namely that income alleged to have escaped assessment should be Rs.50,00,000/- or more.

5. Consequently, as the impugned order under Section 148A(d) of the Act has been passed contrary to the CBDT Instruction No.1/2022, the same is quashed. (See: (2003) 5 SCC 528: Simplex Castings Ltd. v. Commissioner of Customs [Vishakapatnam], (2004) 3 SCC 488: 267 ITR 272 (SC): Commissioner of Customs v. Indian Oil Corporation Ltd., (2002) 10 SCC 64: Collector of Central Excise, Vadodara vs. Dhiren Chemical Industries and (2012) 3 SCC 784: 343 ITR 270 (SC): Catholic Syrian Bank Ltd. vs. CIT)

6. Accordingly, the present writ petition along with applications stands disposed of."

4. As is manifest from the order passed by the Court, the undisputed position which emerged from the record was of the action for reassessment being proposed even though the escaped income was below the threshold of INR 50 lakhs. As is further evident from a reading of Para 3 of that order, the factum of the escaped income being less than INR 50 lakhs clearly appears to have been conceded to by the respondents before the Court. It was on the aforesaid backdrop, that the writ petition came to be allowed and the impugned reassessment notices were quashed.

5. The respondents, thereafter applied for review of that decision, which too was dismissed on 09 November 2022. In the review petition, it had been sought to be contended that since the correct order could not be uploaded, complete facts could not be brought to the notice of the Court including that the income which had escaped assessment was in fact more than INR 50 lakhs. That review petition, however, came to be dismissed with the Court observing that the so

called "corrected order" had neither been issued nor served upon the assessee. In view of the above, the Court proceeded to reject the review petition subject to liberty being reserved to the respondents to take appropriate steps in accordance with law.

6. It was on a perceived interpretation of the aforesaid liberty that the **Assessing Officer**[2] sought to invoke the powers conferred by Section 154 of the Act and issued the notices impugned herein.

7. In our considered opinion, the AO had clearly lost sight of the fact that once the orders under Section 148 had been quashed, there existed no determination which could have been possibly revived, rectified or corrected. We take note of the settled position in law that when a prerogative writ issues or an order comes to be quashed, it would be deemed to have never existed in the eyes of law. In the case of **Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras**[3], the Supreme Court had held as follows:

> "**10.** In the instant case, the proceedings before the Board under Sections 15 and 16 of the Act had been terminated by order of the Board dated April 26, 1990 whereby the Board, upon consideration of the facts and material before it, found that the appellant-company had become economically and commercially non-viable due to its huge accumulated losses and liabilities and should be wound up. The appeal filed by the appellant-company under Section 25 of the Act against said order of the Board was dismissed by the Appellate Authority by order dated January 7, 1991. <u>As a result of these orders, no proceedings under the Act were pending either before the Board or before the Appellate Authority on February 21, 1991 when the Delhi High Court passed the interim order staying the operation of the order of the Appellate Authority dated January 7, 1991. The said stay order of the High Court cannot have the effect of reviving the proceedings which had been disposed of by the Appellate Authority by its order dated January 7, 1991</u>. <u>While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the</u>

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[2] AO

[3] (1992) 3 SCC 1

order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending. We are, therefore, of the opinion that the passing of the interim order dated February 21, 1991 by the Delhi High Court staying the operation of the order of the Appellate Authority dated January 7, 1991 does not have the effect of reviving the appeal which had been dismissed by the Appellate Authority by its order dated January 7, 1991 and it cannot be said that after February 21, 1991, the said appeal stood revived and was pending before the Appellate Authority. In that view of the matter, it cannot be said that any proceedings under the Act were pending before the Board or the Appellate Authority on the date of the passing of the order dated August 14, 1991 by the learned Single Judge of the Karnataka High Court for winding up of the company or on November 6, 1991 when the Division Bench passed the order dismissing O.S.A. No. 16 of 1991 filed by the appellant-company against the order of the learned Single Judge dated August 14, 1991. Section 22(1) of the Act could not, therefore, be invoked and there was no impediment in the High Court dealing with the winding up petition filed by the respondents. This is the only question that has been canvassed in Civil Appeal No. 126 of 1992, directed against the order for winding up of the appellant-company. The said appeal, therefore, fails and is liable to be dismissed."

8. We note that the power under Section 154 could have been invoked provided an order capable of rectification existed in the eyes of law. However, once the original reassessment orders came to be quashed, they would be deemed to have never existed. All that the review Court did was to accord liberty to the respondents to issue a fresh or rectified order. That would have necessarily entailed an order being framed anew and proceedings for reassessment commenced. In view of the aforesaid and the indisputable position in law which emerges we have no hesitation in coming to the conclusion that Section 154 could not have been possibly invoked.

9. Consequently, and for all the aforesaid reasons, we find ourselves unable to sustain the order impugned. The writ petition is allowed and the impugned order dated 22 November 2022 for AY 2013-2014 is hereby quashed.

10. This order, however, shall not preclude the respondents from initiating such other proceedings as may be otherwise permissible in law.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

AUGUST 2, 2024/*neha*