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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 1504/2023**

ADITYA ALUMINIUM

..... Petitioner

Through: Mr. Salil Kapoor, Mr. Sumit
Lalchandani, Ms. Ananya
Kapoor and Mr. Utkarsh
Kumar, Advocates

versus

INCOME TAX OFFICER WARD 63(1), DELHI AND ANR.

..... Respondents

Through: Mr. Debesh Panda, Sr. SC
alongwith Ms. Zehra Khan, Mr.
Vikramaditya Singh, Jr. SCs.
with Mr. Vineet Gupta, Mr.
Ojaswa Pathak and Mr.
Anauntta Shankar, Advocates

27

+ **W.P.(C) 1809/2023**

RAVINDER NATH JAIN

..... Petitioner

Through: Mr. Salil Kapoor, Mr. Sumit
Lalchandani, Ms. Ananya
Kapoor and Mr. Utkarsh
Kumar, Advocates

versus

INCOME TAX OFFICER WARD 63-1 DELHI AND ANR.

..... Respondents

Through: Mr. Debesh Panda, Sr. SC
alongwith Ms. Zehra Khan, Mr.
Vikramaditya Singh, Jr. SCs.
with Mr. Vineet Gupta, Mr.
Ojaswa Pathak and Mr.
Anauntta Shankar, Advocates

28

+ **W.P.(C) 2283/2023**

ASHOK KUMAR CHORDIA

..... Petitioner

Through: Mr. Salil Kapoor, Mr. Sumit
Lalchandani, Ms. Ananya



Kapoor and Mr. Utkarsh
Kumar, Advocates

versus

INCOME TAX OFFICER, WARD 61-1 & ANR.

..... Respondents

Through: Mr. Debesh Panda, Sr. SC
alongwith Ms. Zehra Khan, Mr.
Vikramaditya Singh, Jr. SCs.
with Mr. Vineet Gupta, Mr.
Ojaswa Pathak and Mr.
Anauntta Shankar, Advocates

29

+ **W.P.(C) 2517/2023**

SABH INFRASTRUCTURE LIMITED Petitioner

Through: Mr. Salil Kapoor, Mr. Sumit
Lalchandani, Ms. Ananya
Kapoor and Mr. Utkarsh
Kumar, Advocates

versus

INCOME TAX OFFICER WARD 22-1, DELHI & ANR.

..... Respondents

Through: Mr. Aseem Chawla, Sr. SC
alongwith Ms. Pratishtha
Chaudhary, Advocate

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR
KAURAV**

ORDER

14.05.2024

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1. Learned counsel for parties are *ad idem* that the challenge raised here will have to be answered in favour of the assessee bearing in mind the decision rendered by this Court in **Anindita Sengupta v. Assistant Commissioner of Income Tax, Circle 61(1) New Delhi & Ors.** [2024 SCC OnLine Del 2296].



2. While considering the validity of initiation of action under Section 148 of the Income Tax Act, 1961 [**‘Act’**] where the same had attained finality and based on a perceived understanding of certain observations which appeared in **Union of India & Ors. v. Ashish Agarwal** [(2023) 1 SCC 617], we had in *Anindita Sengupta* held as follows:

“25. However, we are of the firm opinion that Ashish Agarwal neither intended nor mandated concluded assessments being reopened. The respondent clearly appears to have erred in proceedings along lines contrary to the above as would be evident from the reasons which follow. Firstly, Ashish Agarwal was principally concerned with judgments rendered by various High Courts' striking down Section 148 notices holding that the respondents had erred in proceeding on the basis of the unamended family of provisions relating to reassessment. They had essentially held that it was the procedure constructed in terms of the amendments introduced by Finance Act, 2021 which would apply. None of those judgments were primarily concerned with concluded assessments. It is this indubitable position which constrained the Supreme Court to frame directions requiring those notices to be treated as being under Section 148A(b) and for the AO proceeding thereafter to frame an order as contemplated by Section 148A(d) of the Act. The Supreme Court significantly observed that the High Courts' instead of quashing the impugned notices should have framed directions for those notices being construed and deemed to have been issued under Section 148A. Ashish Agarwal proceeded further to observe that the Revenue should have been “permitted to proceed further with the reassessment proceedings as per the substituted provisions.....”. Our view of the judgment being confined to proceedings at the stage of notice is further fortified from the Supreme Court providing in para 8 of the report that “The respective impugned Section 148 notices issued to the respective assesseees shall be deemed to have been issued under section 148A of the Income Tax Act as substituted by Finance Act, 2021 and treated to be show cause notices in terms of Section 148A(b).” As would be manifest from the aforesaid extract, the emphasis clearly was on the notices which formed the subject matter of challenge before various High Courts' and the aim of the Supreme Court being to salvage the process of reassessment. This is further evident from the Supreme Court observing that the AO would thereafter proceed to pass orders referable to Section 148A(d). We consequently find ourselves unable to construe Ashish Agarwal as an edict which required completed assessments to be invalidated and reopened. Ashish Agarwal cannot possibly be read as mandating the hands of



the clock being rewound and reversing final decisions which may have come to be rendered in the interregnum.

26. Regard must also be had to the undisputed fact that the petitioner never questioned the validity of the original notices on grounds which were urged before the various High Courts and where assessee had questioned the invocation of the unamended provisions. The petitioner chose to contest the reassessment proceedings on merits. It is also admitted before us that the petitioner was also not a party to the Man Mohan Kohli batch of matters. There was therefore no justification for the respondent to have issued notices afresh seeking to reopen proceedings which had been rendered a closure prior to the judgment rendered in Ashish Agarwal. At the cost of being repetitive we deem it appropriate to observe that the Ashish Agarwal judgment neither spoke of completed assessments nor did it embody any direction that could be legitimately or justifiably construed as mandating completed assessments being reopened and moreso where the assessee had raised no objection to the initiation of proceedings.

27. We are also of the firm opinion that even para 25.5 of Ashish Agarwal would not sustain the stand taken by the respondent since the same clearly confines itself to decisions or judgments rendered by a High Court invalidating a notice under Section 148 and the manifest intent of the Supreme Court being that its judgment would apply and govern irrespective of whether an appeal had been laid before it.

28. It is in the aforesaid context that we also bear in mind the pertinent observations rendered by the Constitution Bench in High Court Bar Association when it held that a direction under Article 142 of the Constitution should not impact the substantive rights of those litigants who are not even parties to the lis. The Constitution Bench while acknowledging the amplitude of the Article 142 power placed a significant caveat when it observed that benefits derived by a litigant based on a judicial order validly passed cannot be annulled especially when they may not even have been parties to the cause. This too convinces us to hold in favour of the petitioner and come to the inevitable conclusion that the writ petition must succeed.”

3. Bearing in mind the aforesaid and the undisputed position on facts which emerges from the record, we find ourselves unable to sustain the reassessment action.

4. The writ petitions are accordingly allowed and the impugned notices dated 26 July 2022 [W.P.(C) 1504/2023], 25 July 2022



[W.P.(C) 1809/2023], 21 July 2022 [W.P.(C) 2283/2023] and 29 July 2022 [W.P.(C) 2517/2023] referable to Section 148 of the Act are hereby quashed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 14, 2024

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