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

\+ W.P.(C) 7052/2023

MINAKSHI AGGARWAL ..... Petitioner

Through: Mr. Sachit Jolly, Ms. Soumya Singh, Ms. Disha Jham, Mr. Devansh Jain, Mr. Aditya Rathore & Mr. Abhyudaya Shankar Bajpai, Advs.

Versus

INCOME TAX OFFICER WARD 60 1, DELHI & ORS. ..... Respondents

Through: Mr. Abhishek Maratha, SSC with Ms. Nupur Sharma & Mr. Parth Semwal, Adv.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

% 05.04.2024

1. The petitioner, an individual and resident assessee, impugns the notice dated 20 October 2022 purported to have been issued under Section 148A(b) of the Income Tax Act, 1961 [“**Act**”] for Assessment Year [“**AY**”] 2016-17 as also the order dated 25 November 2022 referable to Section 148A(d) and the reassessment proceedings initiated consequent thereto.

2. When the writ petition was initially entertained by us on 23 May 2023, we had upon taking note of the preliminary contentions addressed by Mr. Jolly, learned counsel for the petitioner, stayed continuation of the reassessment proceedings till further directions of the Court. Apart from the various grounds of challenge which were addressed, one of the principal grounds was of the petitioner not

having been served with a consequential Section 148 notice after the issuance of the impugned Section 148A(b) notice dated 20 October 2022 and the impugned Section 148A(d) order dated 25 November 2022.

3. It was asserted that till date, no notice under Section 148 has been issued for the concerned AY 2016-17, pursuant to the impugned Section 148A(d) order and therefore the respondents had no jurisdiction to continue the reassessment proceedings since issuance of a Section 148 notice is a sine qua non for pursuing reassessment under Section 147 of the Act. For the limited purposes of disposal of the present writ petition, we propose to take note of the following essential facts.

4. The petitioner is stated to have filed her Return of Income for AY 2016-17 on 03 August 2016. The same is stated to have been processed under Section 143(1) of the Act. On 01 April 2021, the petitioner received a notice stated to have been digitally signed on 31 March 2021 and seeking to initiate action in terms of Section 148 of the Act.

5. It is pertinent to note that with effect from 01 April 2021, the statutory regime referable to reassessment came to be fundamentally altered and it was these amendments which also saw the introduction of Section 148A. The aforesaid notice came to be challenged by the petitioner by way of W.P.(C) 13901/2021. The said petition came to be disposed of along with a batch of matters vide a judgment of this Court, of which **Suman Jeet Agarwal vs. ITO & Ors** [2022 SCC Online Del 3141] was the lead matter.

6. *Suman Jeet Agarwal* and the connected writ petitions had questioned the initiation of Section 148 proceedings contrary to the amended statutory provisions which had come into effect from 01 April 2021. One of the grounds of challenge was with respect to the manner of service of the Section 148 notices and whether they had come to be issued on or before 01 April 2021. In *Suman Jeet Agarwal*, the writ petitions were classified under five basic heads with Category "C" pertaining to writ petitions where notices although digitally signed on 31 March 2021 had been sent on or after 01 April 2021. While disposing of the writ petitions, the Court while dealing with Category "C" petitions framed the following operative directions:-

> "31.3. Category "C": <u>The petitions challenging notices falling under category "C" which were digitally signed on March 31, 2021, are disposed of with the direction to the jurisdictional Assessing Officers to verify and determine the date and time of despatch as recorded in the Income Tax Business Application portal in accordance with the law laid down in this judgment as the date of issuance. If the date and time of despatch recorded is on or after April 1, 2021, the notices are to be considered as show-cause notices under section 148A(b) as per the directions of the apex court in the Ashish Agarwal (supra) judgment</u>."

7. The Court essentially held that if the date and time of dispatch of those notices albeit dated 31 March 2021 be found to be on or after 01 April 2021, they would be liable to be treated as show cause notices referable to Section 148 A(b) in terms of the directions framed by the Supreme Court in **Union of India & Ors v. Ashish Agarwal** [(2023) 1 SCC 617].

8. Pursuant to the aforesaid judgment, the petitioner is stated to have been placed on notice in terms of a communication dated 20 October 2022. It was the case of the respondents that the said notice was referable to Section 148A(b) of the Act. In response to the

aforesaid, the petitioner furnished a detailed response on 03 November 2022. It is asserted that without considering the aforesaid response and proceeding on the basis that the petitioner had failed to furnish any explanation, a final order under Section 148 A(d) came to be drawn on 25 November 2022 and which was followed by the issuance of a formal intimation letter dated 25 November 2022 stating that a Section 148 notice is being issued with respect to the petitioner. It was at that stage that the present writ petition came to be referred.

9. Pursuant to directions issued, the respondents have filed a counter affidavit in these proceedings and where the following significant disclosures are made:-

> "C. That the contents of Ground C are denied as false and incorrect. Moreover, it is submitted that perusal of case record and ITBA System shows that an intimation letter bearing DIN No. ITBA/AST/M/148_1/2022-23/1047647504(1) dated 25.11.2022 was issued to the assessee vide which petitioner was apprised that notice u/s 148 has been issued in her case dated 25.11.2022 having DIN No. ITBA/AST /M/148_1/2022-23/1047647504(1).
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> <u>Thereafter, a corrigendum dated 28.11.2022 was also issued by the then AO vide which it was intimated to the petitioner that DIN No. of 148 notice is ITBA/COM/F/17 /2022-23/1047643525(1). However, on perusal of records it is seen that both the DIN Nos. i.e. ITBA/AST/M/148_112022-23/1047647504(1) & ITBA/COM/F/17/2022-23/1047643525(1) are related with order u/s 148A(d) of the Act. It is also seen that no manual notice issued u/s 148 is available on case record</u>."

10. As was noticed hereinabove, the principal ground of attack was that till the filing of the writ petition, the petitioner had never been formally served with a notice under Section 148. It was in consequence contended that the reassessment proceedings are liable to be quashed on this ground alone. The petitioner had further alleged that the Section 148A(d) order came to be framed proceeding on the

premise that the petitioner had filed no response to the original notice referable to clause (b) of Section 148A.

11. As is manifest from the counter affidavit which has been filed by the respondents in these proceedings, the non-furnishing and service of the notice under Section 148 appears to be an admitted and undisputed fact. The intimation letter dated 25 November 2022 and the Corrigendum dated 28 November 2022 which were sent under DIN Nos. ITBA/AST/M/148_1/2022-23/1047647504(1) and ITBA/COM/F/17/2022-23/1047643525(1) respectively have been found by the respondents themselves as being relatable to the order under Section 148A(d). It is further averred that no manual notice under Section 148 is available on the case record. Para C of the counter affidavit is thus a tacit admission on the part of the respondents of having failed to serve the petitioner formally with the Section 148 notice. The proceedings consequently are liable to be quashed on this short ground alone.

12. Accordingly, and for all the aforesaid reasons, we allow the instant writ petition and quash the alleged Section 148 notice dated 25 November 2022 as reflected on the Income Tax Business Application portal (Annexure P-6 of the writ petition). We leave it open to the respondents to draw further proceedings, if otherwise permissible in law. All other rights and contentions of respective parties are kept open.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

APRIL 5, 2024/neha