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

\+ **W.P.(C) 12190/2022**

UNITED ASSOCIATES ..... Petitioner

Through: Mr. Nitin Gulati, Ms. Reena Gandhi and Mr. Narinder Sharma, Advocates

versus

INCOME TAX OFFICER WARD 62(1) DELHI & ANR.

..... Respondents

Through: Mr. Indruj Singh Rai, Sr. SC alongwith Mr. Sanjeev Menon and Mr. Rahul Singh, Jr. SCs.

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\+ **W.P.(C) 12976/2022**

VARUN GUPTA ..... Petitioner

Through: Mr. Rano Jain, Mr. Venketesh Chaurasia and Ms. Renu Arora Kamra, Advocates

versus

ITO, WARD 4(1), DELHI ..... Respondent

Through: Mr. Indruj Singh Rai, Sr. SC alongwith Mr. Sanjeev Menon and Mr. Rahul Singh, Jr. SCs.

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

O R D E R

% **14.05.2024**

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 wherein 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 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 judgements 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 judgement 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 assessees 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 assessees 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 re-assessment action.

4. The writ petitions are accordingly allowed and the impugned notices dated 28 June 2022 and 25 July 2022 issued under Section 148 of the Income Tax Act, 1961 [“Act”] and orders dated 28 June 2022 and 25 July 2022 issued under Section 148A(d) of the Act are hereby quashed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 14, 2024

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