



2024:DHG:2475-DB



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

% **Judgment reserved on: March 18, 2024**
Judgment pronounced on: April 01, 2024

+ **W.P.(C) 12542/2022**

ANINDITA SENGUPTA

..... Petitioner

Through: Mr. Ajay Vohra, Sr. Adv. with
Mr. Sachit Jolly, Mr. Rishabh
Malhotra, Mr. Devansh Jain,
Adv.

Versus

**ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE
61(1) NEW DELHI & ORS.**

..... Respondents

Through: Mr. Shubhendu Bhattacharya,
Adv.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

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

J U D G M E N T

YASHWANT VARMA, J.

1. The writ petitioner impugns the **Show Cause Notice**¹ dated 30 May 2022 purported to have been issued under Section 148A(b) of the **Income Tax Act, 1961**² as well as the order dated 19 July 2022 in terms of which objections have come to be disposed of in terms of the provisions made in Section 148A(d) of the Act. An additional challenge is laid to the consequential notice dated 20 July 2022 issued under

¹ SCN

² Act



Section 148 and seeking to commence reassessment proceedings for **Assessment Year³ 2013-14.**

2. The respondents appear to have proceeded along the aforementioned lines on a perceived understanding of the decision rendered by the Supreme Court in **Union of India & Ors. vs. Ashish Agarwal⁴** and its purport being the recommencement of all proceedings for reassessment which stood initiated in terms of notices issued under Section 148 of the Act post 01 April 2021 and the judgement mandating them to rewind pending proceedings to the stage of Section 148A(b). Section 148A of the Act which came to be placed in the enactment by virtue of Finance Act, 2021 places the Assessing Officer under an obligation to invite objections in terms of which the assessee may explain why reassessment is not liable to be initiated or would otherwise be unsustainable in law. *Ashish Agarwal* held that all reassessment notices issued after 01 April 2021 would be treated as notices referable to clause (b) of Section 148A of the Act and the procedure prescribed therein being followed thereafter. The respondents thus read *Ashish Agarwal* as mandating the aforesaid procedure being liable to be followed irrespective of the stage of the reassessment proceedings and thus extending even to situations where final orders may have come to be passed on culmination of reassessment.

3. According to the petitioner, the judgment in *Ashish Agarwal* only sought to cure the procedural defects which beset notices issued after 01 April 2021 and where the Department proceeded on the assumption that it would be the unamended reassessment provisions which would

³ AY

⁴ (2023) 1 SCC 617



apply. The writ petitioner would contend that in order to save those flawed reassessment actions, the Supreme Court only mandated the procedure contemplated under Section 148A of the Act being followed and the existing notices thus being viewed as referable to Section 148A(b). The petitioner argues that the directions in *Ashish Agarwal* were merely intended to validate such notices. It is contended that the aforesaid decision cannot possibly be read or construed as warranting the reopening of reassessment proceedings which had attained finality even though the same may have been commenced on the basis of notices issued post 01 April 2021.

4. For the purposes of evaluating the challenge which stands raised, we deem it apposite to notice the following essential facts. The petitioner filed her Return of Income for AY 2013-14 on 27 March 2014 declaring an income of INR 4,83,099/-. The aforesaid return was duly assessed under Section 143(3) of the Act and a final assessment order was framed on 12 January 2016. The aforesaid order accepted the return as submitted. On 31 March 2021, however, the respondents issued a notice purporting to be under Section 148 of the Act alleging that income pertaining to AY 2013-14 had escaped assessment. The notice even though dated 31 March 2021, is stated to have been issued on 01 April 2021. The aforesaid notice was premised on the following reasoning and which constituted the foundation for the formation of opinion by the AO that income liable to tax had escaped assessment: -

“An information was received through "Insight Portal". In this regard, it has been informed that a survey action was conducted on BDR Group on 13.12.2018. This group was engaged in purchase/sale/ construction of various properties. Several companies of BDR group have received huge funds in the form of share premium from dummy dubious persons/entities over the



year. The dummy directors Sh. K. C. Gupta and Sh. Rajesh Verma have accepted in their statement that they were made directors in various companies by Sh. Rajesh Gupta and Sh. Dinesh Gupta.

Share of Mis Nimit builders allotted to various parties. The assessee, Ms. Anindita Sengupta has been identified as one of the parties who were allotted share of Nimit Builders Pvt. Ltd. The total shares 42,5000 were allotted to Ms. Anindita Sengupta. These shares were allotted at premium of Rs.190/share on face value of Rs. 10 each share. The total value of the shares was Rs.8,50,00,000/-. For these shares the assessee has made part payment to the tune of Rs.4,50,00,000/-. The assessee has also purchased shares having value of Rs.4,50,00,000/ from BDR Builders and Developers Pvt. Ltd.

The ITR for A.Y. 2013-14 has also been perused. The assessee has declared her income of Rs.4,83,099/-. However, the assessee has invested on share to the tune of Rs.8,50,00,000/- and Rs.4,50,00,000/-. In view of the same, it is clear that the credit worthiness of the assessee does not allow such huge investment in share. Hence, the above investment of Rs.13,00,00,000/- (Rs.8,50,00,000 + Rs.4,50,00,000) is her unexplained increase earned during the F.Y. 2012-13 relevant to A.Y. 2013-14.

Considering the above facts, I have analysed the information and gone through the details and found that the transactions stated above remains unexplained/undisclosed and calls for appropriate remedial action under Income Tax Act, 1961 for the F.Y. 2012-13 relevant to A.Y. 2013-14. Hence, I have reason to believe that the income of Rs.13,00,00,000/- has escaped assessment for the F.Y. 2012-13 relevant to A.Y. 2013-14. Approval for issuing notice U/s 148 is solicited in accordance with provisions of Sec. 151 (2) of the IT Act, 1961.”

5. Responding to the aforesaid notice, the petitioner disclosed the source of funds for the investments which had been questioned apprising the respondents of the sale of a residential property for a consideration of INR 4.47 crores, the said income having been duly subjected to capital gains and from the proceeds whereof another residential property had been purchased in fulfillment of the criteria as stipulated in terms of Section 54 of the Act. The reassessment proceedings are stated to have been taken forward by the respondents



and a notice under Section 142(1) of the Act issued on 11 March 2022. The petitioner while responding to the aforesaid notice as also others which came to be issued in the interregnum submitted detailed responses on 14, 16 and 19 March 2022.

6. Close on the heels of the submission of the aforesaid letters, the petitioner was again placed on notice under Section 142(1) of the Act by virtue of a communication dated 21 March 2022. In response to the aforesaid, the petitioner submitted another detailed response dated 23 March 2022. In terms of the aforesaid letter, the petitioner furnished the following explanation: -

“I am in receipt of your Notice dated 21.03.2022 under Section 142(1) of the Income Tax Act, 1961.

At the outset, I like to inform your good self that though my email id as well as mobile number have been updated on the Income Tax web portal against my PAN, I am not receiving notifications on my email or message on my phone with regard to issuance of Notices by the Income Tax Department. Even the aforesaid notice dated 21.03.2022 has been received by me from my father Mr. Alope Kumar Sengupta on 21.03.2020 at about 10:00 PM, which my father received on his email id alokesengupta@rediffmail.com at 8:32 pm. Apart from my father, my Chartered Accountant also received the said Notice on his email id. Since I attach utmost importance to the notices issued by your good self, I would request that henceforth the notices/notifications may also be sent to me on my email and/or phone.

Please note that in the Annexure to your Notice dated 21.03.2022, your good self has stated in paragraph no. 2 that ***"In this regard, you are requested to furnish the confirmation from M/s. Nimit Builders Pvt. Ltd. (along with annual report and valuation report) to justify your say"***

In compliance with the aforesaid directions issued by your good self, I am enclosing the following documents:-

1. Confirmation dated 22.03.2022 issued by M/s. Nimit Builders Pvt. Ltd. certifying and confirming that I only paid a sum of Rs. 4,25,00,000/- for purchasing 4,25,000 partly paid-up equity shares having face value of Rs.5/- per equity share and share



premium of Rs.95/- per share (total Rs.100/-) and that I did not pay the balance amount of Rs.5/- per equity share and share premium of Rs.95/- per share (total Rs. 1 00/- per share) on the aforesaid 4,25,000 equity shares.

As already informed to your good self, I once gain respectfully reiterate that apart from the aforesaid sum of Rs.4,25,00,000/- I never paid the balance amount in order to make the aforementioned shares fully paid-up. This fact can also be verified from my Balance sheets as at 31.03.2013, 31.03.2014, 31.03.2015, 31.03.2016, 31.03.2017, 31.03.2018, 31.03.2019, 31.03.2020 and 31.03.2021, copies of which are enclosed for ready reference of your good self.

2. Annual Report of M/s. Nimit Builders Pvt. Ltd. for the year ended 31.03.2013 in which the figures of the previous year for the year ended 31.03.2012 have also been mentioned.

3. Valuation Report dated 23.03.2022 of equity shares of M/s. Nimit Builders Pvt. Ltd. issued by Expert Global Consultants Pvt. Ltd., SEBI Registered Category-I Merchant Banker. As per the said valuation report, the valuation per share works out to Rs.191.74 as on 31.03.2012 and Rs.197.07 as on 31.03.2013.

4. As already informed to your good self, I once again submit respectfully that Mr. Apoorv P. Tripathi and his mother and GP A Holder, Mr. Neelima Tripathi have declined to cooperate with me in furnishing the necessary confirmation. I once again issued another email dated 22.03.2022 to Mrs. Neelima Tripathi and Mr. Apoorv Tripathi and the said email has been sent on the email id of Mrs. Neelima Tripathi. Since I do not have the email id of Mr. Apoorv P. Tripathi, I have sent the said communication to him on his WhatsApp No. 9910523322. A copy of the said email dated 22.03.2022 is enclosed for ready reference of your good self.

Since Mr. Apoorv Tripathi and his mother being his GPA Holder, Mrs. Neelima Tripathi have refused to cooperate and furnish the required confirmation, I respectfully request your good self to please send the required notice/communication directly to Mr. Apoorv P. Tripathi and his mother and GPA Holder Mrs. Neelima Tripathi and direct them to submit the required confirmation with regard to purchase of property situated at 18 Babar Lane, New Delhi and the manner of payment of sale-consideration for the same to me as well as to Mr. Rajiv Singh and Mis. Kishore Industries. I have already submitted to your good self the contact details of Mr. Apoorv P. Tripathi and Mrs. Neelima Tripathi which are once again given hereunder:-



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**MR. APOORV P. TRIPATHI**

PAN : AACPT8785B (As mentioned under the photograph of Mrs. Neelima Tripathi, mother and GPA Holder of Mr. Apoorv P. Tripathi, on the Sale-Deed dated 14.12.2012)

Resi. Address: 19, Central Lane, Bengali Market, New Delhi-110001.

Mobile No. 9910523322.

In the Sale-Deed dated 14.12.2012, Mr. Apoorv P. Tripathi was represented by his mother, Mrs. Neelima Tripathi, wife of Mr. Parag P. Tripathi as his General Power of Attorney. The Mobile Number of Mrs. Neelima Tripathi is 9810099919. Her email id is neelimatripathi@gmail.com

Off. Address: 18, Bahar Lane, New Delhi-I 10001.

Sir, it is a matter of great regret that the buyers of the property, who are also reputed lawyers, have no courtesy even to write a few lines in confirming the true facts that they have purchased the property situated at 18 Babar Lane, New Delhi at a price of Rs.17,88,00,000/- and paid the same to me, my mother and two sisters in equal share, the receipt of which we have also acknowledged. In any event, I have submitted the certified copy of the sale-deed to your good self in support of my statement.

I hope you will find the aforementioned information/documents in order.”

7. Based upon the aforesaid, a final assessment order came to be framed on 28 March 2022 and which is extracted hereinbelow: -

“ASSESSMENT ORDER

The assessee filed her original return of income on 27.03.2014 declaring total income of Rs.4,83,099/-. As per the information available with the department it was noticed that the assessee has made substantial investment in shares of Nimit Builders Pvt. Ltd and BDR Builders and Developers Pvt. Ltd. Therefore, the case of the assessee was reopened u/s 147 of the Income-tax Act, 1961. Accordingly, notice u/s 148 was issued to the assessee on 31.03.2021. In response to the said notice, the assessee filed her return of income on 31.05.2021 thereby declaring total income of Rs.4,83,099/-. Accordingly, a notice u/s 143(2) was issued to the assessee on 23.11.2021.



2. Further, the assessee was requested to make submission/furnish documents/evidences through various notices and letters as follows:

Sr No.	Notice/letter	Issued date of notice	Service date of notice	Compliance made or not by the assessee
1.	u/s 142(1)	10.02.2022	10.02.2022	No compliance was made.
2.	u/s 142(1)	17.02.2022	17.02.2022	Compliance was made.
3.	u/s 142(1)	11.03.2022	11.03.2022	Compliance was made.

3. The assessee was asked to explain the source of investment made in the shares of Nimit Builders Pvt Ltd. In response, the assessee vide her reply dated 14.03.2022 has stated that she has purchased 4,25,000 partly paid-up shares of Rs.10/-each of M/s Nimit Builders Pvt. Ltd at a share premium of Rs.190/- per share (total Rs.200/- per share).

4. Further, the stated that she has received her 1/4th share of Rs.4,47,00,000/- towards sale proceeds of the property at 18, Babar Lane, Bengali Market, New Delhi. The assessee submitted that after deductions of cost of acquisition and other expenditure the capital gain stands at Rs.3,29,05,500/-. The assessee has purchased another property at B-4 (Ground Floor), Defence Colony, New Delhi - 110024 for consideration of Rs.3,32,80,000/- and claimed deduction of Rs.3,29,05,500/- u/s 54 in A.Y. 2013- 14 with regard to the LTCG of Rs.3,29,05,500/-.

5. On verification of the submission of the assessee as also material available on record, the total income of the assessee is computed as under:

Computation of Total Income

Particulars	Amount (in rupees)
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Income as per ITR filed on 31.05.2021	4,83,099/-
Addition:	NIL
Assessed income	4,83,099/-

6. Assessed u/s 143(3) r.w.s.147 and 144B of the I.T. Act, 1961.
Issue Demand notice and computation of income.”

8. As would be evident from the above, the petitioner's explanation with respect to the source of investment made in the shares of Nimit Builders as well as in relation to the sale of the immovable property came to be accepted with no additions being made. It was only thereafter that the impugned notices came to be issued.

9. The notice dated 30 May 2022 purporting to be under Section 148A(b) proceeds on the premise that the judgment of the Supreme Court in *Ashish Agarwal* requires all notices issued under Section 148 of the Act between the period commencing from 01 April 2021 and ending on 30 June 2021 to be treated as SCN's referable to Section 148A(b) of the Act. The respondents further assert that the judgment in *Ashish Agarwal* would apply to all cases where notices may have been issued during the period noticed above irrespective of whether the assessee had assailed such notices or not. Significantly, the impugned notice under Section 148A(b) of the Act neither alludes to nor takes into consideration the final order that had come to be passed upon culmination of the reassessment proceedings in the case of the writ petitioner. Aggrieved by the initiation of that action, the petitioner filed detailed objections. Those objections, however, came to be rejected in terms of an order dated 19 July 2022. The aforesaid order was followed by the issuance of a formal notice under Section 148 and which is dated



20 July 2022. It is the aforesaid action which is assailed in the present writ petition.

10. Appearing in support of the petition, Mr. Vohra, learned senior counsel submitted that the respondents have committed a manifest illegality in proceeding on the assumption that the judgment in *Ashish Agarwal* requires them to reverse the clock and commence proceedings afresh from the stage of Section 148A(b) of the Act in all cases including those where final orders pursuant to reassessment may have been passed. According to Mr. Vohra, the said assumption is based on a wholly erroneous understanding of *Ashish Agarwal*. Learned senior counsel contended that the ultimate directions which were framed by the Supreme Court in *Ashish Agarwal* were intended to only save those proceedings which though commenced post 01 April 2021 had proceeded as per the unamended provisions of the Act and which led to those notices being quashed and set aside by various High Courts. According to Mr. Vohra, as would be manifest from a reading of the decision in *Ashish Agarwal*, the Supreme Court while taking note of the challenge which stood raised to such notices before different High Courts, had essentially framed remedial measures in order to strike a balance between the right of the Revenue to undertake a reassessment and those of the assesseees on the other. Those directions, according to Mr. Vohra, were predicated on the Supreme Court seeking to obviate the specter of being deluged with more than 9000 appeals that would have come to be instituted before it assailing judgments and orders rendered by various High Courts. It was in order to avoid the aforesaid that the Supreme Court invoked its plenary powers conferred by Article 142 of the Constitution and framed directions for the Section 148



notices issued between the period 01 April 2021 to 30 June 2021 being treated as notices referable to Section 148A(b) of the Act and consequential proceedings being taken in accordance with the amended statutory scheme.

11. According to Mr. Vohra, it would be wholly incorrect to read those directions as warranting a reopening of concluded cases. An interpretation of the direction of the Supreme Court as suggested by the respondent, according to learned senior counsel, would also not sustain bearing in mind the scope of the Article 142 power as conferred upon the Supreme Court. Learned senior counsel drew our attention to the recent decision rendered by a Constitution Bench in **High Court Bar Association, Allahabad vs. State of U.P & Ors**⁵, and where the extent and scope of the Article 142 power was explained in the following terms: -

“23. The directions issued in *Asian Resurfacing*¹ are obviously issued in the exercise of jurisdiction of this Court under Article 142 of the Constitution, which confers jurisdiction on this Court to pass such a decree or make such order necessary for doing complete justice in any case or matter pending before it. In *Asian Resurfacing*¹, the first issue was, whether an order framing of charge in a case under the PC Act was in the nature of an interlocutory order. The second question was of the scope of powers of the High Court to stay proceedings of the trial under the PC Act while entertaining a challenge to an order of framing charge. The question regarding the duration of the interim orders passed by the High Courts in various other proceedings did not specifically arise for consideration in the case of *Asian Resurfacing*. The provisions of Article 142 of the Constitution of India are meant to further the cause of justice and to secure complete justice. The directions in the exercise of power under Article 142 cannot be issued to defeat justice. The jurisdiction under Article 142 cannot be invoked to pass blanket orders setting at naught a very large number of interim orders lawfully passed by all the High Courts, and that too, without hearing the

⁵ 2024 SCC OnLine SC 207



contesting parties. The jurisdiction under Article 142 can be invoked only to deal with extraordinary situations for doing complete justice between the parties before the Court.

24. While dealing with the scope of power under Article 142, a Constitution Bench of this Court in the case of *Prem Chand Garg v. The Excise Commissioner, U.P.*, in paragraphs 12 and 13 held thus:

“12. Basing himself on this decision, the Solicitor-General argues that the power conferred on this Court under Article 142(1) is comparable to the privileges claimed by the members of the State Legislatures under the latter part of Article 194(3), and so, there can be no question of striking down an order passed by this Court under Article 142(1) on the ground that it is inconsistent with Article 32. It would be noticed that this argument proceeds on the basis that the order for security infringes the fundamental right guaranteed by Article 32 and it suggests that under Article 142(1) this Court has jurisdiction to pass such an order. In our opinion, the argument thus presented is misconceived. In this connection, it is necessary to appreciate the actual decision in the case of *Sharma* [(1959) 1 SCR 806 at 859-860] and its effect. The actual decision was that the rights claimable under the latter part of Article 194(3) were not subject to Article 19(1)(a), because the said rights had been expressly provided for by a constitutional provision viz. Article 194(3), and it would be impossible to hold that one part of the Constitution is inconsistent with another part. The position would, however, be entirely different if the State Legislature was to pass a law in regard to the privileges of its members. Such a law would obviously have to be consistent with Article 19(1)(a). If any of the provisions of such a law were to contravene any of the fundamental rights guaranteed by Part III, they would be struck down as being unconstitutional. Similarly, there can be no doubt that if in respect of petitions under Article 32 a law is made by Parliament as contemplated by Article 145(1), and such a law, in substance, corresponds to the provisions of Order 25 Rule 1 or Order 41 Rule 10, it would be struck down on the ground that it purports to restrict the fundamental right guaranteed by Article 32. The position of an order made either under the rules framed by this Court or under the jurisdiction of this Court under Article 142(1) can be no different. If this aspect of the matter is borne in mind, there would be no difficulty in rejecting the Solicitor-General's argument based on Article 142(1). **The powers of this Court are no doubt very wide and they are intended**



to be and will always be exercised in the interest of justice. But that is not to say that an order can be made by this Court which is inconsistent with the fundamental rights guaranteed by Part III of the Constitution. An order which this Court can make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory laws. Therefore, we do not think it would be possible to hold that Article 142(1) confers upon this Court powers which can contravene the provisions of Article 32.

13. In this connection, it may be pertinent to point out that the wide powers which are given to this Court for doing complete justice between the parties, can be used by this Court, for instance, in adding parties to the proceedings pending before it, or in admitting additional evidence, or in remanding the case, or in allowing a new point to be taken for the first time. **It is plain that in exercising these and similar other powers, this Court would not be bound by the relevant provisions of procedure if it is satisfied that a departure from the said procedure is necessary to do complete justice between the parties.”**

(Emphasis added)

25. Another Constitution Bench in the case of *Supreme Court Bar Association v. Union of India*, in paragraphs 47 and 48, held thus:

“47. The plenary powers of this Court under Article 142 of the Constitution are inherent in the Court and are complementary to those powers which are specifically conferred on the Court by various statutes though are not limited by those statutes. These powers also exist independent of the statutes with a view to do complete justice between the parties. These powers are of very wide amplitude and are in the nature of supplementary powers. This power exists as a separate and independent basis of jurisdiction apart from the statutes. It stands upon the foundation and the basis for its exercise may be put on a different and perhaps even wider footing, to prevent injustice in the process of litigation and to do complete justice between the parties. This plenary jurisdiction is, thus, the residual source of power which this Court may draw upon as necessary whenever it is just and equitable to do so and in particular to ensure the observance of the due process of law, to do complete justice between the parties, while administering justice according to law. There is no



doubt that it is an indispensable adjunct to all other powers and is free from the restraint of jurisdiction and operates as a valuable weapon in the hands of the Court to prevent “clogging or obstruction of the stream of justice”. **It, however, needs to be remembered that the powers conferred on the Court by Article 142 being curative in nature cannot be construed as powers which authorise the Court to ignore the substantive rights of a litigant while dealing with a cause pending before it.** This power cannot be used to “supplant” substantive law applicable to the case or cause under consideration of the Court. **Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly.** Punishing a contemner advocate, while dealing with a contempt of court case by suspending his licence to practice, a power otherwise statutorily available only to the Bar Council of India, on the ground that the contemner is also an advocate, is, therefore, not permissible in exercise of the jurisdiction under Article 142. The construction of Article 142 must be functionally informed by the salutary purposes of the article, viz., to do complete justice between the parties. It cannot be otherwise. As already noticed in a case of contempt of court, the contemner and the court cannot be said to be litigating parties.

48. The Supreme Court in exercise of its jurisdiction under Article 142 has the power to make such order as is necessary for doing complete justice “between the parties in any cause or matter pending before it”. The very nature of the power must lead the Court to set limits for itself within which to exercise those powers and ordinarily it cannot disregard a statutory provision governing a subject, except perhaps to balance the equities between the conflicting claims of the litigating parties by “ironing out the creases” in a cause or matter before it. Indeed this Court is not a court of restricted jurisdiction of only dispute-settling. It is well recognised and established that this Court has always been a law-maker and its role travels beyond merely dispute-settling. It is a “problem-solver in the nebulous areas” (see *K. Veeraswami v. Union of India* [(1991) 3 SCC 655 : 1991 SCC (Cri) 734] but the substantive statutory provisions dealing with the subject-matter of a given case cannot be altogether ignored by this Court, while making an order under Article 142. Indeed, these constitutional powers cannot, in any way, be



controlled by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise may come directly in conflict with what has been expressly provided for in a statute dealing expressly with the subject.”

(Emphasis added)

26. It is very difficult to exhaustively lay down the parameters for the exercise of powers under Article 142 of the Constitution of India due to the very nature of such powers. However, a few important parameters which are relevant to the issues involved in the reference are as follows:—

(i) The jurisdiction can be exercised to do complete justice between the parties before the Court. It cannot be exercised to nullify the benefits derived by a large number of litigants based on judicial orders validly passed in their favour who are not parties to the proceedings before this Court;

(ii) Article 142 does not empower this Court to ignore the substantive rights of the litigants; and

(iii) While exercising the jurisdiction under Article 142 of the Constitution of India, this Court can always issue procedural directions to the Courts for streamlining procedural aspects and ironing out the creases in the procedural laws to ensure expeditious and timely disposal of cases. This is because, while exercising the jurisdiction under Article 142, this Court may not be bound by procedural requirements of law. However, while doing so, this Court cannot affect the substantive rights of those litigants who are not parties to the case before it. The right to be heard before an adverse order is passed is not a matter of procedure but a substantive right.

(iv) The power of this Court under Article 142 cannot be exercised to defeat the principles of natural justice, which are an integral part of our jurisprudence.”

12. Mr. Vohra submitted that the Constitution Bench had categorically found that the Article 142 jurisdiction cannot possibly be countenanced as envisaging blanket orders being passed and which may result in innumerable interim orders lawfully passed by High Courts coming to be annulled by one slight of the pen. The Constitution Bench



further took into consideration the deleterious impact of such an order when made without hearing parties who would be affected. Mr. Vohra sought to draw sustenance from the observations rendered by the Constitution Bench in *High Court Bar Association* where it was held that the powers conferred by Article 142 being curative cannot be exercised in ignorance of the substantive rights of litigants.

13. Our attention was also invited to the observations of the Constitution Bench when it observed that the jurisdiction under Article 142 is primarily intended to be invoked and exercised to do necessary and complete justice between the parties to a cause and in respect of a matter pending before the Supreme Court. It was pointed out that the petitioner here had neither questioned the invocation of Section 148 of the Act nor had she at any point of time joined the challenge which was laid in respect of notices issued between 01 April 2021 and 30 June 2021 before various High Courts including a batch of writ petitions which were entertained by this Court. Mr. Vohra pointed out that the petitioner had not joined the challenge which came to be laid before this Court in the matter of **Man Mohan Kohli vs. CIT**⁶ and which came to be finally allowed on 15 December 2021. It was in the aforesaid backdrop that learned senior counsel contended that since the petitioner was not a party to those proceedings, the respondents had clearly erred in seeking to apply the judgment in *Ashish Agarwal* and reopen a concluded assessment. It was the submission of Mr. Vohra that once the reassessment proceedings culminated in the passing of a final assessment order on 28 March 2022, the respondents were rendered *functus officio* and could not have possibly reinvented the

⁶ 2021 SCC ONLine Del 5250



wheel and commenced proceedings afresh by issuance of fresh notices under Section 148A(b) of the Act.

14. Appearing for the respondents, Mr. Bhattacharya submitted that it has been the consistent understanding of the respondents that the judgment in *Ashish Agarwal* mandated them to reopen all cases in which notices may have been issued during the period 01 April 2021 to 30 June 2021. According to Mr. Bhattacharya, the judgment of the Supreme Court would apply to all cases irrespective of whether the assessee had chosen to assail a Section 148 notice or not. Learned counsel contended that notwithstanding the initial reassessment proceedings having come to an end on 28 March 2022, the judgment of the Supreme Court in *Ashish Agarwal*, though rendered on 04 May 2022, would clearly apply and the initiation of reassessment cannot be faulted. It is the aforementioned rival submissions which fall for our consideration.

15. We at the outset note that the fact that the reassessment proceedings initiated pursuant to the notice dated 31 March 2021 (stated to have been issued on 01 April 2021) had attained a closure consequent to a final order of assessment being drawn on 28 March 2022 is not disputed before us. The fact that this order came to be rendered undisputedly prior to the decision in *Ashish Agarwal* being pronounced also cannot possibly be questioned. The principal question which therefore arises is whether *Ashish Agarwal* is liable to be viewed as commanding the respondents to reopen even concluded proceedings. The aforesaid question would arise in the context of those cases where although notices may have been issued between 01 April 2021 to 30



June 2021, reassessment proceedings may themselves have come to an end with final orders being framed. Undoubtedly, in the facts of the present case, a final order of assessment came to be passed prior to judgment being rendered by the Constitution Bench in *Ashish Agarwal*. We are thus called upon to answer whether the judgment in *Ashish Agarwal* mandated or even envisaged the reopening of this particular class of cases.

16. It becomes pertinent to note that the family of provisions dealing with reassessment underwent significant statutory amendments consequent to the promulgation of Finance Act, 2021. The provisions so recast saw the introduction and placement of Section 148A in the statute book and which for the first time placed an express provision providing an opportunity to the assessee to question the initiation of reassessment and assumption of jurisdiction. Section 148A of the Act made provisions for such an opportunity being availed of by an assessee by virtue of clause (b) thereof. In terms of Section 148A(d), the AO was placed under a statutory obligation to decide whether circumstances warranted assessment being undertaken in terms of Section 148 after taking into consideration the material available on the record as well as the objections or replies that may have been tendered by an assessee. The objections of the assessee referable to clause (b) of Section 148A, enabled it to commend for the consideration of the AO that the information viewed as being suggestive of income having escaped assessment would not sustain the invocation of Section 148 of the Act.



17. It appears from a reading of the judgment in *Ashish Agarwal* that despite the substituted Sections 147 to 151 having been brought into force with effect from 01 April 2021, the respondents had issued as many as 90,000 reassessment notices under the unamended set of provisions. The aforesaid action was based upon the explanations contained in the notifications dated 31 March 2021 and 27 April 2021. It was these reassessment notices which came to be assailed before various High Courts. The High Courts in unison held that the reassessment notices issued under the unamended Sections 148 to 151 would not sustain once the substituted provisions had come to be placed in the statute by virtue of Finance Act, 2021. On the basis of the aforesaid, the respective High Courts proceeded to set aside those reassessment notices. While the High Court of Allahabad quashed the reassessment notices, our Court in its judgment rendered in *Man Mohan Kohli*, while quashing the individual reassessment had pertinently observed that notwithstanding the challenge to the reassessment notices having been accepted, the same would not detract from the right of the respondents to draw proceedings afresh, if so permissible in law.

18. It was the impasse so created with innumerable reassessment actions coming to be annulled that compelled the Supreme Court to intervene and invoke its powers flowing from Article 142 of the Constitution. In the *Ashish Agarwal* batch, the Supreme Court while dealing with the aforesaid question firstly took note of the practice adopted by the respondents in terms of the procedure judicially crafted in **GKN Driveshafts (India) Ltd vs. ITO**⁷. It is pertinent to note that it was by virtue of *GKN Driveshafts* that for the first time a pre-

⁷ (2003) 1 SCC 72



commencement opportunity of hearing avenue came to be created by way of a judicial declaration. Sections 147 to 151, as ultimately introduced in terms of Finance Act 2021, sought to confer a statutory basis and framework for the procedure formulated in *GKN Driveshafts* and laid in place salutary safeguards with respect to the rights of an assessee. This is evident from the following observations as rendered by the Supreme Court in *Ashish Agarwal*: -

“19. However, by way of Section 148-A, the procedure has now been streamlined and simplified. It provides that before issuing any notice under Section 148, the assessing officer shall:

(i) conduct any enquiry, if required, with the approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;

(ii) provide an opportunity of being heard to the assessee, with the prior approval of specified authority;

(iii) consider the reply of the assessee furnished, if any, in response to the show-cause notice referred to in clause (b); and

(iv) decide, on the basis of material available on record including reply of the assessee, as to whether or not it is a fit case to issue a notice under Section 148 of the IT Act; and

(v) the AO is required to pass a specific order within the time stipulated.

20. Therefore, all safeguards are provided before notice under Section 148 of the IT Act is issued. At every stage, the prior approval of the specified authority is required, even for conducting the enquiry as per Section 148-A(a). Only in a case where, the assessing officer is of the opinion that before any notice is issued under Section 148-A(b) and an opportunity is to be given to the assessee, there is a requirement of conducting any enquiry, the assessing officer may do so and conduct any enquiry. Thus if the assessing officer is of the opinion that any enquiry is required, the assessing officer can do so, however, with the prior approval of the specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment.



21. Substituted Section 149 is the provision governing the time-limit for issuance of notice under Section 148 of the IT Act. The substituted Section 149 of the IT Act has reduced the permissible time-limit for issuance of such a notice to three years and only in exceptional cases ten years. It also provides further additional safeguards which were absent under the earlier regime pre-Finance Act, 2021.”

19. The Supreme Court, however, also took note of the unprecedented and anomalous situation which had come to prevail by virtue of the diverse judgments rendered by different High Courts. While dealing with this aspect, it observed: -

“22. Thus, the new provisions substituted by the Finance Act, 2021 being remedial and benevolent in nature and substituted with a specific aim and object to protect the rights and interest of the assessee as well as and the same being in public interest, the respective High Courts have rightly held that the benefit of new provisions shall be made available even in respect of the proceedings relating to past assessment years, provided Section 148 notice has been issued on or after 1-4-2021. We are in complete agreement with the view taken by the various High Courts in holding so.

23. However, at the same time, the judgments of the several High Courts would result in no reassessment proceedings at all, even if the same are permissible under the Finance Act, 2021 and as per substituted Sections 147 to 151 of the IT Act. The Revenue cannot be made remediless and the object and purpose of reassessment proceedings cannot be frustrated. It is true that due to a bona fide mistake and in view of subsequent extension of time vide various notifications, the Revenue issued the impugned notices under Section 148 after the amendment was enforced w.e.f. 1-4-2021, under the unamended Section 148. In our view the same ought not to have been issued under the unamended Act and ought to have been issued under the substituted provisions of Sections 147 to 151 of the IT Act as per the Finance Act, 2021.

24. There appears to be genuine non-application of the amendments as the officers of the Revenue may have been under a bona fide belief that the amendments may not yet have been enforced. Therefore, we are of the opinion that some leeway must be shown in that regard which the High Courts could have done so. Therefore, instead of quashing and setting aside the reassessment notices issued under the unamended provision of the IT Act, the High Courts ought to have passed an order construing



the notices issued under the unamended Act/unamended provision of the IT Act as those deemed to have been issued under Section 148-A of the IT Act as per the new provision Section 148-A and the Revenue ought to have been permitted to proceed further with the reassessment proceedings as per the substituted provisions of Sections 147 to 151 of the IT Act as per the Finance Act, 2021, subject to compliance of all the procedural requirements and the defences, which may be available to the assessee under the substituted provisions of Sections 147 to 151 of the IT Act and which may be available under the Finance Act, 2021 and in law.

25. Therefore, we propose to modify the judgments and orders passed by the respective High Courts as under:

25.1. The respective impugned Section 148 notices issued to the respective assessee shall be deemed to have been issued under Section 148-A of the IT Act as substituted by the Finance Act, 2021 and treated to be show-cause notices in terms of Section 148-A(b). The respective assessing officers shall within thirty days from today provide to the assessee the information and material relied upon by the Revenue so that the assessee can reply to the notices within two weeks thereafter.

25.2. The requirement of conducting any enquiry with the prior approval of the specified authority under Section 148-A(a) be dispensed with as a one-time measure vis-à-vis those notices which have been issued under Section 148 of the unamended Act from 1-4-2021 till date, including those which have been quashed by the High Courts.

25.3. The assessing officers shall thereafter pass an order in terms of Section 148-A(d) after following the due procedure as required under Section 148-A(b) in respect of each of the assessee concerned.

25.4. All the defences which may be available to the assessee under Section 149 and/or which may be available under the Finance Act, 2021 and in law and whatever rights are available to the Assessing Officer under the Finance Act, 2021 are kept open and/or shall continue to be available.

25.5. The present order shall substitute/modify respective judgments and orders passed by the respective High Courts quashing the similar notices issued under unamended Section 148 of the IT Act irrespective of whether they have been assailed before this Court or not.”



20. The suggestions so mooted ultimately appear to have found acceptance across the board as would be evident from the following: -

“26. There is a broad consensus on the aforesaid aspects amongst the learned ASG appearing on behalf of the Revenue and the learned Senior Advocates/learned counsel appearing on behalf of the respective assesseees. We are also of the opinion that if the aforesaid order is passed, it will strike a balance between the rights of the Revenue as well as the respective assesseees as because of a bona fide belief of the officers of the Revenue in issuing approximately 90,000 such notices, the Revenue may not suffer as ultimately it is the public exchequer which would suffer.

27. Therefore, we have proposed to pass the present order with a view to avoiding filing of further appeals before this Court and burden this Court with approximately 9000 appeals against the similar judgments and orders passed by the various High Courts, the particulars of some of which are referred to hereinabove. We have also proposed to pass the aforesaid order in exercise of our powers under Article 142 of the Constitution of India by holding that the present order shall govern, not only the impugned judgments and orders passed by the High Court of Judicature at Allahabad, but shall also be made applicable in respect of the similar judgments and orders passed by various High Courts across the country and therefore the present order shall be applicable to PAN INDIA.”

21. It was in the aforesaid backdrop that the Supreme Court proceeded to frame the following operative directions: -

“28. In view of the above and for the reasons stated above, the present appeals are allowed in part. The impugned common judgments and orders [Ashok Kumar Agarwal v. Union of India, 2021 SCC OnLine All 799] passed by the High Court of Judicature at Allahabad in WT No. 524 of 2021 and other allied tax appeals/petitions, is/are hereby modified and substituted as under:

28.1. The impugned Section 148 notices issued to the respective assesseees which were issued under unamended Section 148 of the IT Act, which were the subject-matter of writ petitions before the various respective High Courts shall be deemed to have been issued under Section 148-A of the IT Act as substituted by the Finance Act, 2021 and construed or treated to be show-cause notices in terms of Section 148-A(b). The assessing officer shall, within thirty days from today provide to the respective assesseees



information and material relied upon by the Revenue, so that the assesseees can reply to the show-cause notices within two weeks thereafter.

28.2. The requirement of conducting any enquiry, if required, with the prior approval of specified authority under Section 148-A(a) is hereby dispensed with as a one-time measure vis-à-vis those notices which have been issued under Section 148 of the unamended Act from 1-4-2021 till date, including those which have been quashed by the High Courts.

28.3. Even otherwise as observed hereinabove holding any enquiry with the prior approval of specified authority is not mandatory but it is for the assessing officers concerned to hold any enquiry, if required.

28.4. The assessing officers shall thereafter pass orders in terms of Section 148-A(d) in respect of each of the assesseees concerned; Thereafter after following the procedure as required under Section 148-A may issue notice under Section 148 (as substituted).

28.5. All defences which may be available to the assesseees including those available under Section 149 of the IT Act and all rights and contentions which may be available to the assesseees concerned and Revenue under the Finance Act, 2021 and in law shall continue to be available.

29. The present order shall be applicable PAN INDIA and all judgments and orders passed by the different High Courts on the issue and under which similar notices which were issued after 1-4-2021 issued under Section 148 of the Act are set aside and shall be governed by the present order and shall stand modified to the aforesaid extent. The present order is passed in exercise of powers under Article 142 of the Constitution of India so as to avoid any further appeals by the Revenue on the very issue by challenging similar judgments and orders, with a view not to burden this Court with approximately 9000 appeals. We also observe that the present order shall also govern the pending writ petitions, pending before various the High Courts in which similar notices under Section 148 of the Act issued after 1-4-2021 are under challenge.”

22. As is manifest from a reading of the aforesaid passages forming part of the decision in *Ashish Agarwal*, the Supreme Court was essentially concerned with the imperatives of striking a just balance between the right of the respondents to undertake and conclude a



reassessment that may have been initiated while at the same time according due protection to the interest of the assesseees. The Supreme Court held that although the High Courts were correct in taking the view that after the amendments in the Act, coming to be enforced with effect from 01 April 2021, notices could have been issued only in terms of the substituted provisions, the Department appeared to have proceeded under the mistaken yet bona fide belief that those amendments were yet to be enforced. It was in the aforesaid background that it found that the ends of justice would warrant the notices issued with reference to the erstwhile provisions being saved and being read as referable to Section 148A(b). It was to subserve the aforesaid primary objective that *Ashish Agarwal* proceeded to hold that the impugned Section 148 notices would be deemed to have been issued under section 148A and treated to be show cause notices referable to clause (b) thereof.

23. As we read the penultimate directions which came to be framed, the procedure laid out in *Ashish Agarwal* clearly stood confined to matters where although notices may have been issued, proceedings were yet to have attained finality. This clearly flows from the impugned notices being ordained to be treated as show cause notices under Section 148A(b) and the concomitant liberty being accorded to AOs' to proceed further in accordance with Section 148A(d). As we read that decision, we find ourselves unable to construe those directions as either warranting or mandating a reopening of proceedings which had come to be rendered a quietus in the meanwhile. The judgment was primarily concerned with the validity of various notices which had been promulgated and proceedings drawn in accordance with the statutory



procedure which stood in place prior to 01 April 2021. It also becomes pertinent to note that the decision rendered by our Court in *Man Mohan Kohli* perhaps constituted the solitary exception in the sense of having left a window open to the respondents to draw proceedings afresh. A majority of the High Courts', however, do not appear to have made such a provision or provide the Revenue with a right of recourse. The Supreme Court was thus faced with a peculiar and an unprecedented situation where the Revenue was rendered remediless to assess escaped income even though material may have merited such an action being pursued solely on account of a misinterpretation of the correct legal position. It was these factors which clearly appear to have weighed upon the Supreme Court to mould and sculpt a procedure which would strike a just balance between competing interests.

24. In order to carve out an equitable solution which would redress the deadlock, the Supreme Court invoked its powers conferred by Article 142 of the Constitution and ordained that all such notices would be treated as being under Section 148A(b) and for proceedings to be taken forward in accordance with law thereafter. The direction so framed thus enabled the assessee to question the assumption of jurisdiction under Section 148 and take advantage of the beneficial measures embodied in Section 148 A. The assessee thus derived a right to assail the initiation of reassessment proceedings on jurisdictional grounds by preferring objections which the AO was statutorily obliged to take into consideration before issuing notices under Section 148 of the Act. The Revenue on the other hand, and notwithstanding its folly of having erroneously proceeded under the erstwhile regime, was enabled to continue proceedings in accordance with the amended



procedure as introduced by virtue of Finance Act, 2021 and thus avoid the specter of a *fait accompli* which it faced on account of some of the High Court decisions. This is apparent from the Supreme Court observing that the judgments rendered by some of the High Courts' had left the Revenue remediless and resulting in "*no reassessment proceedings at all, even if the same are permissible under the Finance Act, 2021 and as per substituted sections 147.*"

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 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 assesseees 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.

29. Accordingly, and for all the aforesaid reasons, we allow the present writ petition and quash the impugned SCN dated 30 May 2022 issued under Section 148A(b), the order dated 19 July 2022 issued



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under Section 148A(d) as well as the notice referable to Section 148 of the Act dated 20 July 2022.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

APRIL 01, 2024

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