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

\+ W.P.(C) 15697/2022

SHIKHAR CHAND JAIN .....Petitioner

Through: Ms. Rano Jain, Mr. Venketesh Chaurasia, Mr. Saksh Rustagi & Ms. Sakshi Srivastava, Advs.

versus

ITO, WARD 63(1), DELHI .....Respondent

Through: Mr. Debesh Panda, SSC with Ms. Zehra Khan, Mr. Vikramaditya Singh, JSCs, Mr. Ojaswa Pathak, Mr. V. Garg & Ms. Anauntta Shankar, Advs.

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\+ W.P.(C) 17413/2022

SHIKHAR CHAND JAIN .....Petitioner

Through: Ms. Rano Jain, Mr. Venketesh Chaurasia, Mr. Saksh Rustagi & Ms. Sakshi Srivastava, Advs.

versus

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

O R D E R

% **04.09.2024**

1. These two writ petitions which pertain to **Assessment Years**[1]

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[1] A.Y.

2015-16 and 2016-17 impugn the reassessment action which was initiated against a partnership firm styled as M/s Innovative Services (India).

2. The proceedings under Section 148 of the **Income Tax Act, 1961**[2] were commenced basis a notice dated 28 March 2021. It is also stated to have culminated in a final order of assessment made in the name of that firm on 31 March 2022 and in terms whereof the income of the assessee-firm was assessed at INR 69,20,983/-.

3. It is post the passing of the final order of assessment and perhaps taking a cue from the decision rendered by the Supreme Court in **Union of India and Others v. Ashish Agarwal**[3], that the respondents proceeded to issue a fresh notice referable to Section 148A(b) albeit based on identical allegations. This ultimately culminated in the passing of a final order under Section 148A(d) on 18 July 2022.

4. Dealing with an identical situation we had in **Anindita Sengupta v. Assistant Commissioner of Income Tax, Circle 61(1) New Delhi and Others**[4] held as follows:

> "**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). <u>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</u>

[2] Act
[3] (2023) 1 SCC 617
[4] 2024 SCC OnLine Del 2296

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 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 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.**"**

5. In view of the aforesaid and since the proceedings initiated prior to the judgment rendered by the Supreme Court in *Ashish Agarwal* had culminated in the passing of a final order of assessment, we find ourselves unable to sustain the order under Section 148A(d) as well as the notice under Section 148 of the same date. W.P.(C) 15697/2022 would consequently be liable to be allowed on the aforesaid score.

6. That takes us to the second writ petition and which relates to A.Y. 2016-17. Here to the challenge is not only to the reassessment action which was initiated for that year against the firm, but also to a final order of assessment which has come to be framed by the respondents.

7. It becomes pertinent to note at this stage that as per the writ petitioner, the partnership firm was dissolved on 31 March 2011 and thereafter the petitioner continued the business of that firm as a sole proprietorship with the same name. It was also its case that the **Importer Exporter Code**[5] which was alluded to by the respondents in the notices under Section 148 was one which was held in the name of Mr. Shikhar Chand Jain, the sole proprietor. The reassessment action, however, proceeded on the premise that the import transactions were relatable to the dissolved partnership firm.

8. Additionally, we note that for A.Y. 2016-17, Mr. Shikhar Chand Jain, the sole proprietor, was proceeded against in his

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[5] IEC

individual capacity and the very same transaction was made the subject matter of a Section 148A(b) notice dated 23 March 2023. Pursuant to the reassessment exercise which was undertaken, an assessment order dated 16 February 2024 came to be framed and in terms of which the Return as submitted by the sole proprietor came to be accepted.

9. This becomes apparent from a reading of the following extracts of the order dated 16 February 2024:

> "I have considered the written submission alongwith supporting documents submitted by the assessee. On perusal of copy of ITR for the AY 2016-17 alongwith computation, certificate of Importer Exporter Code (IEC) issued by office of Zonal Director General of Foreign Trade, Central Licensing Area, A Wing, New Delhi, bank statements, copy of VAT Returns, Custom duty paid ledger, import ledger with local purchase ledger, bill of entry alongwith invoice etc., following inference is drawn:-
>
> The assessee is the in the business of trading of toys, stationery, gift & novelty items. He imports above items from China and sells it locally. The assessee has shown total purchase of Rs. 5,56,65,524/- (opening stock Rs. 1.20 crore), custom duty paid Rs. 97.68 lacs and total sales of Rs. 7,17,81,434/-.
>
> After examining the facts of the case, the contention of the assessee has been found genuine. All the transactions have been made by the assessee through banking channels. Since nothing adverse has been found and therefore, returned income of the assessee Rs. 8,51,170/- is accepted."

10. In view of the aforesaid, and since undisputedly the same transaction cannot possibly be taxed or scrutinized in the hands of two entities, we find ourselves unable to sustain the reassessment as well as the final order of assessment as framed in the name of the dissolved firm. This would lead to W.P. (C) 17413/2022 also being liable to be allowed.

11. According and for all the aforesaid reasons, we allow the instant writ petitions and quash the impugned notices under Section

148 dated 18 July 2022 [A.Y. 2015-16], the impugned order under Section 148A(d) dated 18 July 2022 [A.Y. 2015-16] and the final order of assessment dated 28 March 2022 [A.Y. 2016-17].

12. We leave it open to the respondent to take such further steps as may be otherwise permissible in law.

YASHWANT VARMA, J

RAVINDER DUDEJA, J

SEPTEMBER 4, 2024/kk