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

\+ W.P.(C) 17045/2022

KARAMJIT JAISWAL AS LEGAL HEIR OF LATE SH LADLI PERSHAD JAISWAL .....Petitioner

Through: Ms. Kavita Jha & Mr. Udit Naresh, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ANR. .....Respondent

Through: Mr. Aseem Chawla, SSC with Ms. Pratishtha Chaudhary, Adv.

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

ORDER

% **23.09.2024**

1. The present writ petition has been preferred impugning the initiation of reassessment action pursuant to the issuance of an order under Section 148A(d) of the **Income Tax Act, 1961**[1] dated 30 July 2022, followed by a consequential notice issued under Section 148 of the Act bearing the same date.

2. The challenge is raised principally on the basis of the Proviso to Section 149(1) with it being contended that the reassessment action for **Assessment Year**[2] 2004-05 could have been commenced only on or before 31 March 2011.

3. In view of the aforesaid, Ms. Jha, learned senior counsel for the writ petitioner, contends that the impugned action of reassessment is liable to be quashed on this short ground alone. For the purpose of the disposal of the present writ petition, we take note of the

[1] Act
[2] A.Y.

following facts.

4. The original assessee, Mr. Ladli Pershad Jaiswal, who was a non-resident, had furnished a return for A.Y. 1993-94 to 2004-05 with the last return being submitted on 22 July 2004. The original assessee is stated to have passed away on 11 August 2005.

5. On 30 June 2021, the respondents issued a notice under Section 148 of the Act pertaining to A.Y. 2004-05 in the name of the deceased assessee. The said notice was challenged by the legal representatives of Mr. Ladli Pershad Jaiswal by way of a writ petition which formed part of a batch of similar matters instituted before this Court and assailing the initiation of reassessment on the basis of the reassessment regime as it prevailed prior to 1 April 2021.

6. The aforesaid writ petition along with connected matters came to be allowed by this Court by its judgment in **Mon Mohan Kohli v. Assistant Commissioner of Income-tax and Another**[3]. The judgment in *Mon Mohan Kohli* as well as those rendered by different High Courts ultimately formed subject matter of appeal before the Supreme Court in **Union of India v. Ashish Aggarwal**[4].

7. Those appeals were ultimately disposed of by the Supreme Court with the directions of the various High Courts being modified in the following terms:

> "**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 assessees 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 assessees the information and material

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[3] (2003) 1 SCC 72
[4] (2023) 1 SCC 617

relied upon by the Revenue so that the assessees 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-a-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 assessees 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.

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 asses sees. 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 assessees 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**.

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 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 assessees 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 assessees information and material relied upon by the Revenue, so that the assessees 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-a-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 assessees 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 assessees including those available under Section 149 of the IT Act and all rights and contentions which may be available to the assessees 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 lndia 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.

30. The impugned common judgments and orders passed by the High Court of Allahabad and the similar judgments and orders passed by various High Courts, more particularly, the respective judgments and orders passed by the various High Courts particulars of which are mentioned hereinabove, shall stand modified/substituted to the aforesaid extent only."

8. It was pursuant to the aforesaid decision that the respondents thereafter proceeded to issue a fresh notice on 30 May 2022 purporting to be under Section 148 A(b). We note that quite apart from the indisputable fact that the original notice had come to be issued in the name of a dead person and would have thus not sustained in any case in light of the judgment of this Court in **Savita Kapila v. Assistant Commissioner of Income-tax**[5], the reassessment action which was initiated pursuant to the notice of 30 May 2022 also cannot possibly be upheld when tested on the anvil of the First Proviso to Section 149 (1).

9. Admittedly, the last date by which reassessment could have been commenced for A.Y. 2004-05 would have been 31 March 2011. We in this regard take note of the decision rendered by us in **Manju Somani v. Income-tax Officer and others**[6] and where we had held as follows:

"**12.** As is manifest from the above, the proviso to section 149 clearly bids us to go back in point of time and examine whether a proposed reassessment pertaining to a period prior to April 1, 2021 would sustain based on the time frames as they existed prior to the promulgation of the Finance Act, 2021. The proviso embodies a negative command restraining the respondents from issuing a notice under section 148 in respect of an assessment year prior to April 1, 2021, if the period within which such a notice could have been issued in accordance with the provisions as they existed prior

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[5] 2020 SCC OnLine Del 2540

[6] 2024 SCC OnLine Del 5292

thereto had elapsed. This is manifest from the provision using the expression “no notice under section 148 shall be issued” if the time limit specified in the relevant provisions “….as they stood immediately prior to the commencement of the Finance Act, 2021” had expired. A reassessment which is sought to be commenced post April 1, 2021 would thus have to abide by the time limits prescribed by section 149(1)(b), 153A or 153B as may be applicable.

13. Undisputedly, section 149(1)(b) as it stood prior to the introduction of the amendments by way of the Finance Act, 2021 ([2021] 432 ITR (St.) 52) prescribed that no notice under section 148 shall be issued if four years “but not more than six years” have elapsed from the end of the relevant assessment year. Thus the period of six years stood erected as the terminal point which when crossed would have rendered the initiation of reassessment impermissible in law.

14. Viewed in the light of the above, the impugned notice when tested on the anvil of the preamendment section 149(1)(b) in order to be sustained would have to meet the prescription of six years. Undisputedly that period in respect of the assessment year 2016-2017 came to an end on March 31, 2023. We thus find ourselves unable to sustain the impugned action of reassessment and which was commenced pursuant to the notice dated April 29, 2024.

15. It would be important to note that the respondents also do not attempt to sustain the initiation of action on any other statutory provision and which could be read as extending the time limit that applied. We also find ourselves unable to read Twylight Infrastructure as empowering them to reopen assessments contrary to the negative covenant which forms part of section 149 of the Act.

16. We accordingly allow the present writ petition and quash the impugned order under section 148A(d) dated April 29, 2024 as well as the consequential notice under section 148 of even date.”

10. Accordingly, and for all the aforesaid reasons, we allow the instant writ petition and quash the impugned notice under Section 148 dated 30 July 2022 for A.Y. 2004-05 and all consequential proceedings emanating therefrom.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 23, 2024/ib