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

\+ W.P.(C) 16144/2024, CM APPL. 67868/2024 & CM APPL. 67869/2024

MANSI AGGARWAL .....Petitioner

Through: Mr Abhishek Garg with Mr Yash Gaiha, Mr Ranesh Singh Mankotia and Mr Naman Mehta, Advocates.

versus

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

Through: Mr Debesh Panda with Ms Zehra Khan, Mr Vikramaditya Singh and Mr Ishan Puri, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

O R D E R

% **21.11.2024**

1. Issue notice.

2. The learned counsel for the respondents accepts notice.

3. With the consent of the learned counsel for the parties, the petition is heard at the threshold stage of admission.

4. The petitioner has filed the present petition, *inter alia,* praying as under:

> "A. Issue a writ in the nature of certiorari/mandamus or any other appropriate writ, order or direction for quashing:
>
> a) The Impugned Notice dated 13.07.2023 issued under Section 148 of the Act;

> b) The Impugned Order dated 13.07.2023 issued under Section 148A(d) of the Act;
>
> c) The Impugned Show Cause Notice dated 09.06.2023 issued under Section 148A(b) of the Act;
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> In the case of the Petitioner for assessment year 2015-16 and all proceedings/actions consequent thereto;
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> B. Grant ad-interim stay on the reassessment proceedings initiated under Sections 147/148 of the Act vide the Impugned Notice dated 13.07.2023 issued under Section 148 of the Act, and/or any other proceedings initiated thereunder for the assessment year 2015-16, during the pendency of the present petition.
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> C. Restrain the Respondents to initiate any further proceedings emanating from the Impugned Order dated 13.07.2023 and the Impugned Notice dated 13.07.2023."

5. It is the petitioner's case that the notice dated 09.06.2023 (hereafter *the impugned notice dated 09.06.2023*) issued under Section 148A(b) of the Income Tax Act, 1961 (hereafter *the Act*) and the notice dated 13.07.2023 (hereafter *the impugned notice dated 13.07.2023*) under Section 148 of the Act are now barred by limitation. It is further contended that in any event the time period for reopening of the assessment under Section 147 of the Act has now expired, and therefore, no proceedings pursuant to the impugned notice dated 13.07.2023 issued under Section 148 of the Act can be continued.

6. The petitioner had filed its return of income for the Assessment Year (AY) 2015-16 on 30.03.2016. The Assessing Officer (AO) sought to reopen the assessment and accordingly, issued a notice dated 31.03.2021 under Section 148 of the Act, which was received by the petitioner on 01.04.2021. In the meanwhile, the provisions of the Finance Act, 2021 which brought about substantial changes in the procedure for reopening of the assessments

– came into force w.e.f. 01.04.2021. The Central Board of Direct Taxes (CBDT) had issued a Notification No.38A/2021 dated 27.04.2021, *inter alia* providing that the provisions of Section 148 of the Act as it existed prior to the Finance Act, 2021 coming into force, would be applicable to the notices issued under Section 148 of the Act. The said notification was the subject matter of challenge by various petitions. On 28.02.2022, the petitioner challenged the notice dated 31.03.2021 issued under Section 148 of the Act by filing a writ petition captioned ***Mansi Aggarwal v. Income Tax Officer : WP(C) 3692 of 2022***.

7. The controversy with regard to the issuance of the notices post 31.03.2021 under the unamended provisions was settled by the Supreme Court in ***Union of India v. Ashish Aggarwal : 2022 SCC OnLine SC 543***. In terms of the said decision, the notices issued during the period 01.04.2021 and 30.06.2021 were required to be treated as the notices under Section 148A(b) of the Act.

8. It is also relevant to mention that in ***Suman Jeet Agarwal v. Income Tax Officer & Ors.: 2022 SCC OnLine Del 3141***, this court had also considered the question of notices that were generated on 31.03.2021 but were delivered on 01.04.2021 or thereafter. The court had held that the provisions of the Finance Act, 2021 would apply in such cases.

9. In the aforesaid backdrop, the AO issued another notice dated 11.10.2022 under Section 148A(b) of the Act in respect of the AY 2015-16. The petitioner responded to the said notice on 17.11.2022 raising various objections, however, the same was not accepted and the AO issued an order dated 24.11.2022 under Section 148A(d) of the Act concluding that this is a fit case for issuing of notice under Section 148 of the Act. The petitioner

assailed the said notice dated 11.10.2022 and the order dated 24.11.2022 passed under Section 148A(d) of the Act as well as the notice dated 24.11.2022 issued under Section 148 of the Act by filing a writ petition before this court being ***Mansi Aggarwal v. Income Tax Officer: WP(C) 3798 of 2023.*** The said petition was allowed in terms of the order dated 27.03.2023 and the order dated 24.11.2022 issued under Section 148A(d) of the Act was set aside. The operative part of the said order is set out below:

> "13. According to us, the AO will have to take into account, the reply and *inter alia*, the defence raised by the petitioner, with regard to the commencement of the reassessment proceedings against her.
>
> 14. Accordingly, the impugned order dated 24.11.2022 is set aside. Liberty is, however, given to the AO to carry out a *de novo* exercise.
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> 15. Needless to add, in case the AO seeks to recommence reassessment proceedings, he will furnish the relevant material, if not already supplied, to the petitioner which links the petitioner to the alleged transaction.
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> 16. The AO will also take into account, the defence raised by the petitioner in her reply. If any fresh material is furnished to the petitioner, liberty will be given by the AO to the petitioner, to file a supplementary reply. The AO will also grant a personal hearing to the petitioner and/or her authorised representative.
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> 17. The writ petition is disposed of in the aforesaid terms."

10. Pursuant to the aforesaid order, the AO issued the impugned notice dated 09.06.2023 under Section 148A(b) of the Act in respect of the AY 2015-16. The petitioner once again responded to the said notice. However, the AO was not persuaded to drop the proceeding, and accordingly, issued an order dated 13.07.2023 under Section 148A(d) of the Act along with a notice under Section 148 of the Act.

11. If the impugned notice dated 09.06.2023 issued under Section 148A(b) of the Act is viewed on a stand-alone basis, the same would clearly be barred by limitation as it was issued beyond the period of six years from the end of the assessment year relevant to the year in which the notice was issued. However, Mr Debesh Panda, the learned counsel appearing for the Revenue, contends that the proceedings initiated in terms of the impugned notice dated 09.06.2023 cannot be viewed without reference to the order dated 27.03.2023 passed by this court in WP(C) 3798 of 2023. He submits that the AO has made an apparent error by treating the said order as a direction to conduct a fresh exercise by issuance of a fresh notice under Section 148A(b) of the Act. He submits that the directions to the AO "to carry out a *de novo* exercise" as issued by this court in terms of the order dated 27.03.2023 in WP(C) 3798 of 2023 was required to be confined in considering the petitioner's response and passing a fresh order under Section 148A(d) of the Act.

12. He also points out that this court had not satisfied the notice dated 11.10.2022 issued under Section 148A(b) of the Act but had set aside the order dated 24.11.2022, which was passed under Section 148A(d) of the Act. He clearly stated that merely because the AO has misconstrued the orders passed by this court should not be the ground for holding that the exercise conducted by the petitioner pursuant to the orders passed by this court are barred by limitation. He submits that it would be necessary to construe the exercise as one that it commenced pursuant to the notice dated 11.10.2022 issued under Section 148A(b) of the Act. However, Mr Panda is unable to point out any ground on which the proceedings under Section 147 of the Act can now be permitted to continue since the time period for

passing an assessment order as specified under Section 153(2) of the Act, has since expired.

13. We have reservation as to Mr Panda's contention that the proceedings for initiation of the reassessment were necessarily be read to mean as commenced by virtue of the notice dated 11.10.2022 issued under Section 148A(b) of the Act. However, it is not necessary for this court to examine the same in any detail. This is for the reason that even if his contention is sustained, and the impugned order dated 13.07.2023 passed under Section 148A(d) of the Act is construed to be an order passed pursuant to the notice dated 10.10.2022 issued under Section 148A(b) of the Act; the time for passing the reassessment order has expired. In terms of Section 153(2) of the Act, an assessment order under Section 147 of the Act is required to be passed within a period of twelve months from the date of issuance of notice under Section 148 of the Act. In this case, the notice was issued on 13.07.2023 and the period as stipulated under Section 153(2), has expired.

14. In view of the above, the AO is now restrained from passing any order pursuant to the notice dated 13.07.2023 passed under Section 148 of the Act. The petition is disposed of in the aforesaid terms.

15. The Pending applications also stand disposed of.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 21, 2024/ *tr*

Click here to check corrigendum, if any