IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 23.06.2025
Coram
The Honourable **Mr.Justice Krishnan Ramasamy**
W.P.No. 16136 of 2022
and
W.M.P.Nos.15518 & 15519 of 2022

N.Ganapathy
Old No. 104F New No. 680 20 Feet Road
Peramanoor Narayanasamy Street Salem 636 007
...Petitioner

Vs.

Income Tax officer,
Ward 1(1) Salem No.3, Gandhi Road
Salem 636 007. ...Respondent

Prayer

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari calling for the entire records of the respondent contained in notice dated 01.06.2022 issued under Section 148A(b) of the Income Tax Act 1961 bearing ITBA/ COM/F/ 17/2022-23/1043282210(1) for PAN-BGOPG6699C and all proceedings in furtherance thereof and to quash the same as arbitrary unjust and unlawful.

For Petitioner	:	Mr.Suhrith Parthasarathy
For Respondent	:	Dr.B.Ramaswamy, Senior Standing Counsel

Order

The challenge in this Writ Petition is to the order passed by the respondent dated 01.06.2022 issued under Section 148A(b) of the Income Tax Act 1961 and all proceedings in furtherance thereof and to quash the same.

2. Mr.Suhrith Parthasarathy, learned counsel appearing for the petitioner would submit that the petitioner received a notice under Section 148 of the Act dated 22.04.2021; that since the notice dated 22.04.2021 was issued under the unamended provisions of the Act, the petitioner filed a Writ Petition seeking to quash the said notice, and this Court vide order dated 04.02.2022 quashed the said notice; that even though the Hon'ble Supreme Court in a decision reported in **2022 (SCC) Online SC 543** *in the case of* ***Union of India and others Vs. Ashish Agarwal*** modified the judgments passed by all High Courts, which quashed the notice issued after 31.03.2021, and directed to treat the notice issued under Section 148 as notice under Section 148 A (b) of the Act, in the present case, the notice issued under Section 148 dated 22.04.2021 would be invalid since the time limit for issuance of notice under Section 148 (as it stood prior to the amendment) for AY 2014-15 expired on 31.03.2021, proviso to Section 149 (1) of the Act expressly bars the issuance of any further notice under Section 148 after 31.03.2021; therefore, the petitioner was under the belief that the respondent-Department would not take any further action against the petitioner; that however, the petitioner, to his shock and surprise, received a letter dated 01.06.2022, whereby, the petitioner was asked to file reply/submission within two weeks to show cause as to why, notice under Section 148 of the Act should not be issued.

2.1 It is the main contention of the learned counsel for the petitioner that the entire impugned proceeding initiated by the respondent is barred by limitation, inasmuch as, in terms of Section 149 (1) of the Act, the limitation period for initiation of reopening the assessment proceeding for the AY 2014-2015 expired as early as on 31.03.2021, whereas, in the present case, notice under Section 148 was issued only on 22.04.2021, i.e. much after the expiry of limitation period, therefore, the same is barred by limitation and also lacks jurisdiction.

2.2 The learned counsel appearing for the petitioner furthermore contended that though in view of the extraordinary circumstances that emanated out of the onslaught of Covid 2019 in India, the Parliament enacted the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (in short, 'TOLA') and by virtue of TOLA, the time limits for completion or compliance of various actions under the Income Tax Act shall stand extended after 31.03.2021, only in cases, where, the time-limit for such completion or compliance fell during the period between 20.03.2020 and 31.12.2020, time was extended by further period of three months from 01.04.2021 to 30.06.2021, and in the present case, application of TOLA will not arise, since, the said TOLA took effect only from 01.04.2021, whereas, in the present case, the limitation period for reopening of assessment in terms of Section 149 (1) for the subject assessment year expired as early as on 31.03.2021, i.e. much before TOLA came into force. Therefore, the learned counsel prays for quashing the impugned proceedings.

3. Dr.B.Ramaswamy, learned Senior Standing Counsel for the respondent would submit that though in terms of old provisions of Section 149 (1) (b), there was limitation for initiation of proceedings under Section 148 of the Act, as per which, the limitation period for the subject AY expired as early as on 31.03.2021, however, he relied on Taxation and Other Laws (Relaxation and Amendment of certain Provisions) Act (in short, TOLA) by virtue of which, limitation period for reopening of assessment under the Old regime was repealed and substituted by the new provisions, whereby, new period of limitation for issuance of notice for reopening is extended from 4 to 6 years, if any income escaped above Rs.1,00,000/- and 3 to 10 years if any income escaped above Rs.50,00,000/- and in the present case, since the respondent has reasons to believe that the income chargeable to tax for the AY 2014-15 has escaped assessment, in the form of assets of value Rs.50,00,000/- and above, the notice issued by the respondent under Section 148 is sustainable.

4. I have given due consideration to the submission made on either side and perused the materials available on record.

5. The issue that falls for consideration in the Writ Petition is as to whether the TOLA is applicable to the present case or not.

6. During the AY 2014-15, the petitioner sold a parcel of vacant land situated at Kumarasamipatti Village, Salem. For the said AY, the petitioner did not file return of income in time. However, pursuance to a query letter received from the respondent-Department, the petitioner filed a revised return of income on 30.11.2016. Whileso, the petitioner received a notice, described as Notice under Section 148 of the Act dated 22.04.2021. On 28.03.2021, the Parliament had enacted Finance Act, 2021, whereby, it introduced a procedural regime change for re-assessment proceedings, by which, the erstwhile provisions of re-assessment under Sections 148-153, as it existed at the time were substituted and a completely new procedure for re-assessment was introduced. This new provisions called TOLA came into effect on 01.04.2021. However, since the notice under Section 148 of the Act dated 22.04.2021 was issued under the unamended provisions of the Act, the petitioner filed a Writ Petition and this Court vide order dated

04.02.2022 quashed the said notice. However, in cases, where, the notice issued under Section 148 after 31.03.2021 were quashed by the Hon'ble Allahabad High Court, Appeals were preferred by the Union of India before the Hon'ble Supreme Court, and the Hon'ble Supreme Court, in a decision rendered in ***Ashish Agarwal's*** has held in para No.26, which is extracted hereinbelow:-

> " . 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 W.T. No. 524/2021 and other allied tax appeals/petitions, is/are hereby modified and substituted as under:
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> (i) 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 148A of the IT Act as substituted by the Finance Act, 2021 and construed or treated to be showcause notices in terms of section 148A(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 assesees can reply to the showcause notices within two weeks thereafter;

(ii) The requirement of conducting any enquiry, if required, with the prior approval of specified authority under section 148A(a)is hereby dispensed with as a one time measure visavis those notices which have been issued under section 148of the unamended Act from 01.04.2021 till date, including those which have been quashed by the High Courts. Even otherwise as observed hereinabove holding any enquiry with the prior approval of specified authority is not mandatory but it is for the concerned Assessing Officers to hold any enquiry, if required;

(iii) The assessing officers shall thereafter pass orders in terms ofsection 148A(d)in respect of each of the concerned assessees; Thereafter after following the procedure as required under section 148Amay issue notice undersection 148(as substituted);

(iv) All defences which may be available to the assesses including those available under section 149of the IT Act and all rights and contentions which may be available to the concerned assessees and Revenue under the Finance Act, 2021and in law shall continue to be available.“'

7. Thus, a perusal of the above decision, it is clear that the Hon'ble Supreme Court adjudicated on the validity of the issue of re-assessment notices issued by the Assessing Officer during the period beginning on 01.04.2021 and ending within 30.06.2021 by virtue of TOLA and held that, "wherever notice has been issued under Section 148 of the unamended Act from 01.04.2021, the same has to be construed as notice issued under Section 148 A (b) of the Act, to which, the assessees has to file reply".

8. Therefore, in terms of the said judgment rendered by the Hon'ble Supreme Court, in the case of **Ashish Agarwal (supra)** the respondent issued a letter dated 01.06.2022, requiring the petitioner to file objection/reply to show cause as to why, notice under Section 148 should not be issued. Therefore, I do not find any illegality in the notice issued by the respondent dated 01.06.2022 and the same is also not barred by limitation, inasmuch as, in the light of the decision rendered by the Hon'ble Supreme Court, referred to supra, the notice dated 22.04.2021 has to be treated as notice issued under Section 148 A (b) of the Act and the petitioner has to file reply/objection. Hence, the contention raised by the learned counsel for the petitioner that in the present case, application of TOLA will not arise, since, the limitation period for the subject assessment year expired on 31.03.2021, much before TOLA came into effect, i.e. from 01.04.2021 is untenable, in the light of the law laid down by the Hon'ble Supreme Court, in the decision referred to supra.

9. Therefore, this Court, at the risk of repetition, inclined to state that the the respondent is entitled to initiate proceeding under Section 148, inasmuch as, TOLA has relaxed the time periods for compliance of various actions under the Act, it provided that if the due date for compliance of any action is falling within 20.03.2020 to 31.03.2021, then, such an action can be done by 30.06.2021 by virtue of notification dated 31.03.2021. In this connection, it would be beneficial to refer to the notification issued by Central Board of Direct Tax, which is extracted hereinbelow:-

Notification No. 20/2021 (31 March 2021): Extended the time limit for compliance under the Income Tax Act till 30 April 2021.

•Notification No. 38/2021 (27 April 2021): Further extended the deadline till 30 June 2021 and specified that provisions of the Income Tax Act as of 31 March 2021 would continue to apply to notices issued between 1 April 2021 and 30 June 2021.

•Explanation to Notifications not only extended the time limit for compliance but also specified that the provisions of the Income Tax Act, as they stood on 31 March 2021, would continue to apply to notices issued between 1 April 2021 and 30 June 2021.

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10. In the present case, admittedly, the notice under Section 148 dated 22.04.2021 has been issued well within the period of limitation extended by virtue of TOLA inasmuch as, the time-limit for reopening of assessment under the Old regime was repealed and substituted by the new provisions, whereby, new period of limitation for issuance of notice for reopening under Section 148 is extended upto 10 years and by virtue of CBDT' notification, particularly, explanation 2, which means to state that TOLA not only time limit for compliance got extended but also it is specified that the provisions of the Income Tax Act as they stood on 31.03.2021, would continue to apply to notices issued between 1 April, 2021 and 30th June, 2021, and in the present case, notice under Section 148 has been issued on 22.04.2021, which falls within the said period, therefore, there was no embargo on the respondent to reopen the assessment, even if as on date of issuance of reopening notice, the limitation period under Section 149 (1) (b) of the old Act has already expired, by virtue of TOLA, the period of limitation got revived and extended upto 31.06.2021. De hors the same, in the light of the law laid down by the Hon'ble Supreme Court in the case of **Ashish Agarwal,** referred to supra, the respondent issued a letter dated 01.06.2022, requiring the petitioner to treat the notice issued under Section 148 dated 22.04.2021 as show cause notice under Section 148 A (b) of the Act, seeking for reply, which cannot be found fault with.

11. In the result, the Writ Petition deserves no merit, as such, the same stands dismissed. The petitioner is directed to treat the notice issued under Section 148 of the Act dated 22.04.2021 as notice issued under Section 148 A(b) of the Act and shall file reply/objection as to why notice under Section 148 should not be issued within a period of four weeks from the date of receipt of a copy of this order. It is open to the petitioner to raise all the objections, including any legal issue, if he so desires in such reply. No costs. Consequently, connected miscellaneous petitions are closed.

23.06.2025

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Index : yes/no
Neutral Citation : yes/no

To
Income Tax officer
Ward 1(1) Salem No.3, Gandhi Road
Salem 636 007.

Krishnan Ramasamy,J.,

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W.P.No. 16136 of 2022

23.06.2025