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W.P.No.26782 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.26782 of 2022

and

W.M.P.Nos.25834, 25835 and 25836 of 2022

M/s.Merton,
12/328, Thambu Chetty Street,
Ground Floor, Chennai – 600 001.
PAN : AARFM7825L

... Petitioner

Vs.

1.The Deputy Commissioner of Income Tax,
Central Circle – 3(3),
Old No.108, New No.46,
Mahatma Gandhi Road,
Chennai – 600 034.

2.The Principal Commissioner of Income Tax,
Central – 1,
Old No.108, New No.46,
Mahatma Gandhi Road,
Chennai – 600 034.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the writ petitioner on the file of the 1st respondent to quash the impugned order under Section 148A(d) of the Income Tax Act, 1961 dated 31.07.2022 in DIN & Order



W.P.No.26782 of 2022

No.ITBA/COM/F/17/2022-2023/1044375726(1) and consequential notice

issued under Section 148 of the Income Tax Act, 1961 dated 31.07.2022 for the

Assessment Year 2017-2018.

For Petitioner : Mr.A.S.Sriraman

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel and
Mr.A.N.R.Jayaprathap
Junior Standing Counsel

ORDER

In this Writ Petition, the petitioner has challenged the Impugned Speaking Order dated 31.07.2022 and the Impugned Notice dated 31.07.2022 issued under Section 148A(d) and Section 148 of the Income Tax Act, 1961 as amended with effect from 01.04.2021.

2. The specific case of the petitioner is that earlier a notice under Section 148 of the Income Tax Act, 1961 was issued to the petitioner on 28.06.2021 and in response to the same, the petitioner submitting to the jurisdiction replied to the said notice which has culminated in an Assessment Order dated 30.03.2022.

3. It is submitted that the aforesaid Assessment Order dated 30.03.2022 has been accepted both by the Department and by the petitioner and no further proceedings were initiated thereafter.



W.P.No.26782 of 2022

WEB COPY

4. However, the Department has issued a notice under Section 148A(b) of the Income Tax Act, 1961 on 01.06.2022 in the light of the decision of the Hon'ble Supreme Court in **Union of India Vs. Ashish Agarwal**, [2022] 444 ITR 1 (SC) / [2022] 138 taxmann.com 64 (SC) rendered on 04.05.2022.

5. Learned counsel for the petitioner would submit that the question of issuance of fresh notice under Section 148A(b) of the Income Tax Act, 1961 cannot be countenanced in the light of the earlier Assessment Order being passed on 30.03.2022 merely because the Hon'ble Supreme Court has passed Order on 04.05.2022 in **Ashish Agarwal's case** (*cited supra*) under Article 142 of the Constitution of India, 1950.

6. The learned counsel for the petitioner would draw attention to a decision of Division Bench of the Delhi High Court in **Anindita Sengupta Vs. Assistant Commissioner of Income-tax**, [2024] 161 taxmann.com 39 (Delhi). Specifically, in Paragraph Nos.22 and 23, the Division Bench of the Delhi High Court held as under:-

“22. As is manifest from a reading of the aforesaid passages forming part of the decision in Union of India v. Ashish Agarwal [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617], the



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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 April 1, 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 Union of India v. Ashish Agarwal [(2022) 444 ITR 1(SC); (2023) 1 SCC 617] 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 Union of India v. Ashish Agarwal [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617] 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 Assessing Officers 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 April 1, 2021. It also becomes pertinent to note that the decision rendered by our court in Mon Mohan Kohli v. Asst. CIT [(2022) 441 ITR 207 (Delhi); 2021 SCC OnLine Del 5250] perhaps constituted the solitary



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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.”

7. Learned counsel for the petitioner has also drawn attention to few other decisions of the Division Bench of the Delhi High Court as detailed below:-

- i. **Akshita Jindal Vs. Income-tax Officer**, [2024] 162 taxmann.com 313 (Delhi).
- ii. **Satish Chand Jain Vs. Assistant Commissioner of Income-tax**, [2024] 166 taxmann.com 447 (Delhi).

8. Learned Senior Standing Counsel for the respondents on the other hand would submit that the interpretation placed by the Division Bench of the Delhi High Court in the above-mentioned cases are inapplicable to the facts of the case.

9. It is submitted that the decision of the Hon'ble Supreme Court in



W.P.No.26782 of 2022

Ashish Agarwal's case (*cited supra*) has been precluded the Department from issuing fresh notice under the new regime and that the earlier proceedings ought to have been construed as nullity in the light of the decision of the Hon'ble Supreme Court in **Ashish Agarwal's case** (*cited supra*).

10. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

11. The reasons for issuance of notice on 28.06.2021 under Section 148 of the Income Tax Act, 1961 as communicated to the petitioner vide notice dated 23.02.2022 issued under Section 143(2) of the Income Tax Act, 1961 and the reasons stated in the notice issued under Section 148A(b) of the Income Tax Act, 1961 on 1.06.2022 read almost identically.

12. The issue was examined by the Assessing Officer which has culminated in an Assessment Order dated 30.03.2022. The decision of the Hon'ble Supreme Court in **Ashish Agarwal's case** (*cited supra*), has summarized the position as under:-

“**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*,



W.P.No.26782 of 2022

WEB COPY

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



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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.

30. The impugned common judgments and orders [*Ashok Kumar Agarwal v. Union of India*, 2021 SCC OnLine All 799] 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.

31. All these appeals are accordingly partly allowed to the aforesaid extent. In the facts of the case, there shall be no order as to costs.”



W.P.No.26782 of 2022

13. In my view, the aforesaid decision of the Hon'ble Supreme Court in **Ashish Agarwal's case** (*cited supra*) has been passed under Article 142 of the Constitution of India in view of the peculiar circumstances arising out of the amendment to the Income Tax Act, 1961 vide Finance Act, 2021. In order to put the issue at rest, the Hon'ble Supreme Court had given the above direction.

14. The Hon'ble Supreme Court has not given a direction to the Assessing Officer to reopen the assessment even when the assessment was completed earlier by treating the notice issued under Section 148 of the Income Tax Act, 1961 as the notice issued under Section 148A(b) of the Income Tax Act, 1961 as amended with effect from 01.04.2021.

15. This is also the view of the Division Bench of the Delhi High Court in Paragraphs 22 and 23 in **Anindita Sengupta's case** (*cited supra*). Therefore, I am inclined to allow this Writ Petition.

16. Therefore, the impugned order passed by the 1st respondent under Section 148A(d) of the Income Tax Act, 1961 dated 31.07.2022 in DIN & Order No.ITBA/COM/F/17/2022-2023/1044375726(1) and the consequential



W.P.No.26782 of 2022

notice issued under Section 148 of the Income Tax Act, 1961 dated 31.07.2022

for the Assessment Year 2017-2018 are quashed.

17. This Writ Petition thus stands allowed. No costs. Connected Writ Miscellaneous Petitions are closed.

22.01.2025

Neutral Citation : Yes/No

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To

- 1.The Deputy Commissioner of Income Tax,
Central Circle – 3(3),
Old No.108, New No.46,
Mahatma Gandhi Road,
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- 2.The Principal Commissioner of Income Tax,
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W.P.No.26782 of 2022

C.SARAVANAN, J.

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WEB COPY



W.P.No.26782 of 2022

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