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

\+ W.P.(C) 3575/2023 & 13839/2023

SAMAJWADI PARTY .....Petitioner

Through: Dr. Kapil Goel & Mr. Sandeep Goel, Advs.

Versus

DEPUTY COMMISSIONER OF INCOME TAX EXEMPTION CIRCLE 1(1) .....Respondent

Through: Mr. Indruj Singh Rai, Mr. Sanjeev Menon, Mr. Rahul Singh & Mr. Gaurav Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

O R D E R

% 28.04.2025

1. The petitioner [**Assessee**] has filed the present petition, *inter alia*, impugning a notice dated 31.08.2022 [**the impugned notice**] issued under Section 148 of the Income Tax Act, 1961 [**the Act**] in respect of the Assessment Year [**AY**] 2014-15. It is the Assessee's case that the impugned notice has been issued beyond the prescribed period of limitation.

2. The initial notice under Section 148 of the Act for AY 2014-15 was issued on 28.06.2021. The said notice was unsustainable as it was issued in accordance with the statutory regime as existed prior to 31.03.2021. This court in the case of ***Mon Mohan Kohli v. Assistant Commissioner of Income Tax & Anr.: Neutral Citation No.: 2021:DHC:4181-DB*** had set aside such notices that were issued after 31.03.2021 without following the procedure as prescribed under Section 148A of the Act. Some of the other High Courts also took a similar view and struck down notices that were issued under Section 148 of the Act after 31.03.2021 but under the

unamended provisions relating to the re-assessment of income that had escaped assessment.

3. The Revenue appealed the decisions rendered by various High Courts to the Supreme Court of India. In ***Union of India v. Ashish Agarwal: 2022 SCC OnLine SC 543*** – which was one of such appeals arising from the decision of the Allahabad High Court – the Supreme Court delivered its decision on 04.05.2022, whereby it concurred with the view that the amended provisions which came into force after 31.03.2021 would be applicable to notices issued thereafter. However, the Supreme Court also issued certain directions in exercise of powers under Article 142 of the Constitution of India. The Court directed that all notices that were issued under Section 148 of the Act after 01.04.2021 till the date of the said decision (04.05.2022), including those that had been set aside by the High Courts, would be construed as show cause notices under Section 148A(b) of the Act. The Assessing Officers were directed to provide the information and material relied upon by the Revenue for issuance of such notices, to the respective assessees within a period of thirty days from the date of the decision so as to enable the respective assessees to respond to the same.

4. In compliance with the directions issued by the Supreme Court in the case of ***Union of India & Ors. v. Ashish Agarwal*** *(supra)*, the Assessing Officer [**AO**] provided information and material to the Assessee on 30.05.2022. The Assessee was granted two weeks' time to respond to the said notice. The Assessee responded to the notice dated 30.05.2022 on 11.06.2022.

5. The AO passed an order under Section 148A(d) of the Act on 31.08.2022. According to the Assessee, the same was beyond the period as

stipulated.

6. In the present case, the period of six years from the end of the assessment year for issuing a notice under Section 148 of the Act expired on 31.03.2021. Thus, in terms of Section 149 of the Act, a notice under Section 148 of the Act could not be issued. However, the said period was extended by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 [**TOLA**]. Consequently, the time limit for issuing such a notice was extended to 30.06.2021. The original notice under Section 148 of the Act was issued on 28.06.2021, which was two (2) days before the expiry of the period of limitation.

7. As noted above, the said notice was deemed to be a notice under Section 148A(b) of the Act by virtue of the decision of the Supreme Court in ***Union of India & Ors. v. Ashish Agarwal*** *(supra)*. The Supreme Court also granted further time to provide the material, which was required to accompany such notice. As explained by the Supreme Court in the case of ***Union of India v. Rajeev Bansal: 2024 SCC OnLine SC 2693***, the period from the date of the issuance of the notice till 04.05.2022, the date on which the Supreme Court had rendered the decision in ***Union of India & Ors. v. Ashish Agarwal*** *(supra)* is required to be excluded. Additionally, the time provided till the date of providing the material, which should have accompanied a notice under Section 148A(b) of the Act, as well as the time available to the assessee to respond to the said notice was also required to be excluded by virtue of the Third Proviso to Section 149(1) of the Act, as applicable at the material time.

8. In the present case, the AO had two (2) days to issue the notice under Section 148 of the Act after receipt of the reply of the Assessee. The said

time expired on 16.06.2022. However, the impugned notice was issued on 31.08.2022, which is beyond the said period. Thus, the notice was beyond the period of limitation.

9. Concededly, the said controversy is covered in favour of the Assessee by the decision of this court in ***Ram Balram Buildhome Pvt. Ltd. v. Income Tax Officer and Anr.: Neutral Citation No.: 2025:DHC:547-DB***.

10. The present petition is, accordingly, allowed and all proceedings initiated pursuant thereto are set aside. The pending application is also disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

APRIL 28, 2025
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Click here to check corrigendum, if any