(2022) 09 TEL CK 0075

In the Telangana High Court

Case No : Writ Petition No. 18584 Of 2022

Indira Ajay APPELLANT

Vs

Assistant Commissioner Of Income Tax RESPONDENT

Date of Decision : 28-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 142
Income Tax Act, 1961 — Section 147, 148, 148A, 148A(a), 148A(b), 148A(d), 149, 151

Citation : (2022) 09 TEL CK 0075

Hon'ble Judges : Ujjal Bhuyan, CJ;C.V.Bhaskar Reddy, J

Bench : Division Bench

Advocate : J V Prasad

Final Decision : Disposed Of

Judgement

1. Heard Mr. Naga Deepak, learned counsel for the petitioner and Ms. Sapna Reddy, learned counsel for the respondents.

2. Challenge made in this writ petition is to the legality and validity of the notice dated 07.04.2021 issued by respondent No.1 under Section 148 of the Income Tax Act, 1961 (briefly, 'the Act' hereinafter).

3. By the aforesaid notice, assessing officer proposed to assess/re-assess income of the petitioner for the assessment year 2013-14 on the ground that he has reasons to believe that income chargeable to tax had escaped assessment.

4. Contention of the petitioner is that Section 148A of the Act has been inserted in the Act by way of recent amendment and which has come into effect from 01.04.2021. As per Section 148A of the Act, the assessing officer is required to conduct an enquiry with the approval of the specified authority with respect to the information suggesting that income chargeable to tax has escaped assessment prior to issuing any notice under Section 148 of the Act. He is also required to provide an opportunity of hearing to the assessee and to consider a

reply of the assessee. Thereafter, under Section 148A(d) of the Act, he has to take a decision on the basis of the available materials including reply of the assessee as to whether it is a fit case for reopening and only thereafter and if he is satisfied that it is a fit case for reopening, then notice under Section 148 of the Act is required to be issued.

5. The impugned notice has been challenged in the present writ petition on the ground that the procedure laid down under Section 148A of the Act has not been followed, which has rendered the impugned notice null and void.

6. By order dated 13.04.2022, status quo was directed to be maintained.

7. It may be mentioned that several High Courts had passed judgments setting aside such notices including the High Court of Judicature at Allahabad in Writ Tax No.524/2021, against which Union of India filed Special Leave Petitions. On leave being granted, Civil Appeal No.3005/2022 (Union of India vs. Ashish Agarwal) along with other connected Civil Appeals were heard by the Supreme Court and decided vide the judgment and order dated 04.05.2022, which has since been reported in 2022 SCC Online SC 543. After analysing the provisions of the Act from Sections 147 to 151 of the Act, more particularly the provisions contained in Section 148A of the Act, Supreme Court observed as follows:

"7. Thus, the new provisions substituted by the Finance Act, 2021 being remedial and benevolent in nature and substituted with a specific aim and object to protect the rights and interest of the assessee as well as and the same being in public interest, the respective High Courts have rightly held that the benefit of new provisions shall be made available even in respect of the proceedings relating to past assessment years, provided section 148 notice has been issued on or after 1st April, 2021. We are in complete agreement with the view taken by the various High Courts in holding so."

8. However, taking the view that judgments of the High Courts would result in no re-assessment proceedings at all, Supreme Court proposed to modify the judgments and orders passed by various High Courts in the following manner:

"8. However, at the same time, the judgments of the several High Courts would result in no reassessment proceedings at all, even if the same are permissible under the Finance Act, 2021 and as per substituted sections 147 to 151 of the IT Act. The Revenue cannot be made remediless and the object and purpose of reassessment proceedings cannot be frustrated. It is true that due to a bonafide mistake and in view of subsequent extension of time vide various notifications, the Revenue issued the impugned notices under section 148 after the amendment was enforced w.e.f. 01.04.2021, under the unamended section 148. In our view the same ought not to have been issued under the unamended Act and ought to have been issued under the substituted provisions of sections 147 to 151 of the IT Act as per the Finance Act, 2021. There appears to be genuine non-application of the amendments as the officers of the Revenue may have been under a bonafide belief that the amendments may not yet have been enforced.

Therefore, we are of the opinion that some leeway must be shown in that regard which the High Courts could have done so. Therefore, instead of quashing and setting aside the reassessment notices issued under the unamended provision of IT Act, the High Courts ought to have passed an order construing the notices issued under unamended Act/ unamended provision of the IT Act as those deemed to have been issued under section 148A of the IT Act as per the new provision section 148A and the Revenue ought to have been permitted to proceed further with the reassessment proceedings as per the substituted provisions of sections 147 to 151 of the IT Act as per the Finance Act, 2021, subject to compliance of all the procedural requirements and the defences, which may be available to the assessee under the substituted provisions of sections 147 to 151 of the IT Act and which may be available under the Finance Act, 2021 and in law. Therefore, we propose to modify the judgments and orders passed by the respective High Courts as under:-

(i) The respective impugned section 148 notices issued to the respective assessees shall be deemed to have been issued under section 148A of the IT Act as substituted by the Finance Act, 2021 and treated to be show-cause notices in terms of section 148A(b). The respective assessing officers shall within thirty days from today provide to the assessees the information and material relied upon by the Revenue so that the assessees can reply to the notices within two weeks thereafter;

(ii) The requirement of conducting any enquiry with the prior approval of the specified authority under section 148A(a) be dispensed with as a one-time measure vis?à?vis those notices which have been issued under Section 148 of the unamended Act from 01.04.2021 till date, including those which have been quashed by the High Courts;

(iii) The assessing officers shall thereafter pass an order in terms of section 148A(d) after following the due procedure as required under section 148A(b) in respect of each of the concerned assessees;

(iv) 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 and;

(v) 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.”

9. Finally, the Civil Appeals were allowed in part and judgments of the various High Courts have been modified and substituted as under:

“10. 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:-

(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 show-cause 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 show-cause 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 vis-à-vis those notices which have been issued under section 148 of 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 of section 148A(d) in respect of each of the concerned assessees; Thereafter after following the procedure as required under section 148A may issue notice under section 148 (as substituted);

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

10. Supreme Court also clarified that its decision in Ashish Agarwal (supra) rendered on 04.05.2022 was an order passed under Article 142 of the Constitution of India and would be binding in all cases where similar notices have either been set aside by the High Courts or are pending adjudication before the High Courts. It has been held as follows:

"11. The present order shall be applicable PAN INDIA and all judgments and orders passed by different High Courts on the issue and under which similar notices which were issued after 01.04.2021 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 present order shall also govern the pending writ petitions, pending before various High Courts in which similar notices under Section 148 of the Act issued after 01.04.2021 are under challenge."

11. Ms. Sapna Reddy, learned Standing Counsel has placed before us Instruction No.01/2022 dated 11.05.2022 issued by the Central Board of Direct Taxes (CBDT) issuing instructions to the assessing officers regarding implementation of the judgment of the Supreme Court in Ashish Agarwal (supra) which we have duly taken note of.

12. That being the position, the writ petition stands disposed of in terms of the judgment of the Supreme Court in Ashish Agarwal (supra). We clarify that all contentions are kept open.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.