(2023) 07 OHC CK 0056

In the Orissa High Court

Case No : Writ Petition (C) No.20355 Of 2023

M/s Sylvesa Infotech Private Limited And Another — APPELLANT

Vs

Assessing Officer, Assessment Unit Of National Faceless Assessment Centre, New Delhi And Others — RESPONDENT

Date of Decision : 10-07-2023

Acts Referred:
Income Tax Act, 1961 — Section 148, 148A, 148A(a), 148A(b), 148A(d)

Citation : (2023) 07 OHC CK 0056

Hon'ble Judges : Arindam Sinha, J;S.K. Mishra, J

Bench : Division Bench

Advocate : Sidhartha Ray, Tushar Kanti Satapathy

Final Decision : Disposed Of

Judgement

Arindam Sinha, J

1. Mr. Ray, learned senior advocate appears on behalf of petitioners, of whom petitioner no.1 is the assessee. He submits, initially two notices dated 31st March, 2021 and 8th April, 2021 were issued to the assessee in relation to assessment year 2015-16. The assessee had separately challenged them by WP(C) nos.38822 and 38823, both of 2021. The writ petitions were dealt with by coordinate Bench of common judgment dated 1st November, 2022. Paragraphs 1 and 2 in the judgment are reproduced below.

"1. Both these writ petitions are by the same Petitioner questioning the notices dated 31st March, 2021 and 8th April, 2021 issued to the Petitioner under Section 148 of the Income Tax Act, 1961 (Act) for two different Assessment Years (AYs).

2. While W.P.(C) No.38823 of 2021 pertains to the AY 2015-16, W.P.(C) No.38822 of 2021 pertains to the AY 2016-17. As far as the AY 2015-16 is concerned, initially a notice dated 31st March, 2021 was issued seeking to reopen the assessment for the AY 2015-16. This was after the expiry of four years from the

end of the relevant AY. The notice recorded that it was being issued "after obtaining the necessary satisfaction of the Additional CIT, Range-1, Bhubaneswar".

(emphasis supplied)

We find that on consideration of the challenges, notice dated 31st March, 2021 was said to be in relation to assessment year 2015-16 and notice dated 8th April, 2021, for assessment year 2016-17.

2. Mr. Ray submits, both the notices were set aside and quashed by said judgment. It is after the quashing that revenue issued notice dated 3rd May, 2023 for assessment year 2015-16. Said notice is not one under section 148-A in Income Tax Act, 1961. Though, it has been termed as a show cause notice but, it clearly alleges variation and says, in case no response is received the assessment shall be finalized. Such is not the consequence of notice under section 148-A in Income Tax Act, 1961. Consequence of a notice under section 148-A is for reply thereto and an order to be passed under clause (d) in section 148-A. The order then can be basis for issuance of notice under section 148. This procedure has not been followed. Hence, impugned show cause notice dated 3rd May, 2023, assessment order and notice of demand, both dated 12th May, 2023 be quashed.

3. Mr. Satapathy, learned advocate, Senior Standing Counsel appears on behalf of revenue and relies on paragraphs 25.1 and 25.2 from judgment of the Supreme Court in Union of India v. Ashish Agarwal, reported in (2023) 1 SCC 617. The paragraphs are reproduced below.

"25.1. The respective impugned Section 148 notices issued to the respective assessees shall be deemed to have been issued under Section 148-A of the IT Act as substituted by the Finance Act, 2021 and treated to be show-cause notices in terms of Section 148-A(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.

25.2. The requirement of conducting any enquiry with the prior approval of the specified authority under Section 148-A(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 1-4-2021 till date, including those which have been quashed by the High Courts."

(emphasis supplied)

He submits, the Supreme Court had dispensed with the requirement of issuing notice under section 148-A, in cases of notices already issued under section 148 without taking into account the amendment. In the circumstances, impugned show cause notice was issued. The cause shown was unsatisfactory.

Therefore, assessment was made of the variation and demand raised. There should not be interference. Furthermore, the assessee has statutory remedy of appeal before the Commissioner.

4. We reproduce below paragraphs 9, 11 and 12 from the judgment of coordinate Bench.

“9. It is, therefore, apparent that as regards the subsequent notices dated 8th April, 2021 under Section 148 of the Act for the two AYs in question, since the mandatory procedure of a prior inquiry under Section 148-A of the Act has not been followed, those notices are unsustainable in law and they are hereby quashed.

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11. Consequently, the notices under Section 148 of the Act issued in respect of both the AYs on 31st March, 2021 are illegal as they are contrary to Section 151 of the Act as it stood prior to 1st April, 2021. Consequently, the impugned notices under Section 148 of the Act issued on 31st March, 2021 in respect of both AYs are also hereby quashed.

12. This Court nevertheless clarifies that it will be open to the Department to proceed in accordance with law afresh in respect of the AYs after complying with all the procedural statutory requirements. The writ petitions are disposed of in the above terms.”

It is clear that coordinate Bench had set aside and quashed both notices respectively dated 31st March, 2021 and 8th April, 2021, issued under section 148. Revenue was left to proceed in accordance with law.

5. Revenue did proceed. However, in issuing impugned show cause notice for effecting the variation, it did not comply with the amended provision of section 148-A inserted by the Finance Act, 2021. Keeping in mind that the earlier notices under section 148 were quashed, in the facts and circumstances revenue had to proceed from the stage of section 148-A (b), on dispensation of inquiry as directed by the Supreme Court in Ashish Agarwal (supra). The assessee had right to reply to the show cause, consideration of which may have led to an order passed under section 148-A(d), for issuance of notice under section 148 subsequent thereto. The assessee would then have had to comply on filing return for the reassessment. This procedure was not followed.

6. Impugned show cause notice dated 3rd May, 2023, assessment order dated 12th May, 2023 and demand also dated 12th May, 2023 are set aside and quashed. The reservation by said judgment dated 18th November, 2022, in paragraph 12 thereof is reiterated for revenue to move in accordance with law. We make it clear that in our view, for purposes of moving forward with the reassessment, revenue has to issue fresh notice under section 148-A (b) on the inquiry having had been dispensed with by Ashish Agarwal (supra). This is because the earlier notices issued stood quashed by coordinate Bench and,

therefore cannot be said to be notices deemed to have been issued under section 148-A. The notices standing quashed, there cannot be compliance of direction made in paragraph 25.1 of Ashish Agarwal (supra) by providing the material to the assessee, on which the notices had been issued.

7. The writ petition is disposed of.

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