

Court No. - 03

Case :- WRIT TAX No. - 347 of 2022

Petitioner :- Ajay Bhandari

Respondent :- Union Of India And 3 Others

Counsel for Petitioner :- Ankur Agarwal

Counsel for Respondent :- A.S.G.I., Anant Kumar Tiwari, Gaurav Mahajan

Hon'ble Surya Prakash Kesarwani, J.

Hon'ble Jayant Banerji, J.

1. Heard Shri Ankur Agarwal, learned counsel for the petitioner, Shri S.P. Singh, learned Additional Solicitor General of India assisted by Shri Krishna Agarwal, learned Senior Standing Counsel for the respondent/Income Tax Department and Shri Anant Kumar Tiwari, learned Central Government Standing Counsel.

2. With the consent of the learned counsel for the parties, this writ petition is being finally heard without calling for a counter affidavit inasmuch as no disputed question of fact is involved in the writ petition. The reliefs sought in the writ petition are reproduced below:

“(i) Issue a Writ, Order or Direction in the nature of Certiorari quashing the impugned notice u/s 148 of the Act, dated 31.03.2021, received by the Petitioner on 01.04.2021, issued by Respondent-No.3, for A.Y. 2014-15. (Annexure No. 2)

“(ii) Issue a Writ, Order or Direction in the nature of Certiorari quashing the notice u/s 144 of the Act, dated 13.01.2022, issued by Respondent No.4, for A.Y. 2014-15 to the Petitioner. (Annexure No. 4)

“(iii) Issues a Writ, Order or Direction in the nature of prohibition restraining the respondents from completing the reassessment proceeding under 148 of the Act against the Petitioner.

“(iv) Issue any other writ order or direction which this Hon'ble Court may deem fit and proper in the Circumstances of the case.

“(v) Award the costs of the petition to the petitioner.

“(vi) Issue a writ order or direction in the nature of certiorari quashing the impugned order u/s 147 read with Section 144B of the Act against the petitioner dated 31.03.2022 passed by National Faceless Assessment Centre, Delhi Respondent No. 4 (Annexure No. 13)”

3. It has been admitted by the learned counsel for the parties before us that the impugned notice under Section 148 of the Income Tax Act, 1961 (hereinafter

referred to as the 'Act, 1961') for the assessment year 2014-15 was issued by the respondent no. 3 to the petitioner on 1.4.2021. The "reasons to believe" recorded by the respondent no. 3 for issuing the impugned notice, is as under:

"I have reason to believe that an income to the tune of Rs. 2,63,324/- has escaped assessment for the aforesaid year".

4. The re-assessment order dated 31.3.2022 has been passed by the respondent no. 4 i.e. National Faceless Assessment Centre, Delhi under Section 147 read with 144B of the Act, 1961.

5. **Shri S.P. Singh, learned Additional Solicitor General of India** has placed before us a copy of the two Judges Bench judgement of Hon'ble Supreme Court under Article 142 of the Constitution of India in **Civil Appeal No. 3005 of 2022 (Union of India and others Vs. Ashish Agarwal)** decided on 4.5.2022 and reported in **2022 SCC OnLine SC 543** and submits that the **notices issued after 1.4.2021** under Section 148 of the Act, 1961 are liable to be treated as notices under Section 148A of the Act, 1961 as substituted by the Finance Act, 2021. He draws our attention to paragraph 27 of the aforesaid judgement. He placed before us **copy of Instruction being F.No 279/Misc./M-51/2022-ITJ, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, ITJ Section dated 11.5.2022, invited our attention to paragraph 7.1 of the aforesaid Instruction and stated that the notices under Section 148 relating to assessment years 2013-14, 2014-15 and 2015-16 shall not attract the judgement of Hon'ble Supreme Court in the case of Ashish Agarwal (supra).** Lastly, Shri S.P. Singh submits that since the notice has been issued on 1.4.2021 for the assessment year 2014-15, therefore, it shall be covered by a Division Bench's judgement of this Court in the case of **Daujee Abhushan Bhandar Pvt. Ltd. Vs. Union of India and 2 others (Writ Tax No. 78 of 2022)** decided on 10.3.2022.

6. Learned counsel for the petitioner draws our attention to paragraphs 23 and 25 of the judgement of the Hon'ble Supreme Court in the case of **Ashish**

Agarwal (supra) and submits that the impugned notice under Section 148 of the Act, 1961 issued by the respondent no. 3 is wholly without jurisdiction inasmuch as jurisdiction cannot be assumed after expiry of the period of limitation. He further submits that conferment of jurisdiction is essentially an act of legislature and the jurisdiction cannot be conferred by any circular or even by orders of Court. He submits that even under the amended provisions, which has no application on facts of the present case, impugned notice under Section 148 of the Act, 1961 would be without jurisdiction and barred by limitation inasmuch as for the assessment year 2014-15, the limitation under the amended provisions of Section 148A and 149 of the Act, 1961 had expired on 31.3.2018 inasmuch as the allegation of evaded income is Rs. 2,63,324/- which has been provided to be read as Rs. 26,33,324/- by notice dated 17.3.2022 under Section 142(1) of the Act, 1961, which is much below Rs. 50 Lacs.

7. We have carefully considered the submissions of the learned counsels for the parties and perused the record of the writ petition, the judgment of Hon'ble Supreme Court in the case of **Ashish Agarwal (supra)** and Circular F.No 279/Misc./M-51/2022-ITJ, dated 11.05.2022 issued by the Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, ITJ Section, New Delhi. Section 147 of the Act, 1961 as it existed till 31.03.2021, empowers the Assessing Officer to assess or reassess or recompute the loss or depreciation allowance or any other allowance, as the case may be, for the concerned assessment year in the case of an assessee if he has reason to believe that income chargeable to tax has escaped assessment, subject to the provisions of Sections 148 to 153. A pre-condition to initiate proceedings under Section 147 is the issuance of notice under Section 148. Thus, notice under Section 148 is jurisdictional notice. Section 149 provides time limit for issuance of notice under Section 148. The time limit is provided under the unamended provisions (existed till 31.03.2021) and the amended provisions (effective from 01.04.2021) as amended by the Finance Act, 2021.

Unamended Section 149 and Amended Section 149 are reproduced below:

Time Limit for Notice	
Unamended Section 149 of the Act, 1961	Amended Section 149 of the Act, 1961
<p>149. (1) No notice under section 148 shall be issued for the relevant assessment year,-</p> <p>(a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b) or clause (c);</p> <p>(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year;</p> <p>(c) if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.</p> <p><i>Explanation.-In determining income chargeable to tax which has escaped assessment for the purposes of this sub-section, the provisions of Explanation 2 of section 147 shall apply as they apply for the purposes of that section.</i></p> <p>(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.</p> <p>(3) If the person on whom a notice under section 148 is to be served is a person treated as the agent of a non-resident under section 163 and</p>	<p>149. (1) No notice under section 148 shall be issued for the relevant assessment year,-</p> <p>(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);</p> <p>(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of accounts or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year:</p> <p>Provided that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section, as they stood immediately before the commencement of the Finance Act, 2021:</p> <p>Provided further that the provisions of this sub-section shall not apply in a case, where a notice under section 153A, or section 153C read with section 153A, is required to be issued in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or before the 31st day of March, 2021:</p> <p>Provided also that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (b) of section 148A or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded:</p>

<p><i>the assessment, reassessment or recomputation to be made in pursuance of the notice is to be made on him as the agent of such non-resident, the notice shall not be issued after the expiry of a period of six years from the end of the relevant assessment year.</i></p> <p><i>Explanation.-For the removal of doubts, it is hereby clarified that the provisions of sub-sections (1) and (3), as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.</i></p>	<p>Provided also that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of section 148A is less than seven days, such remaining period shall be extended to seven days and the period of limitation in sub-section (1) shall be deemed to be extended accordingly.</p> <p><i>Explanation.- For the purposes of clause (b) of this sub-section, “asset” shall include immovable property, being land or building or both, share and securities, loans and advances, deposits in bank account.</i></p> <p><i>(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.</i></p>
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8. In the case of **Ashish Agarwal** (supra), Hon’ble Supreme Court held in Paras 23, 25 and 27, as under:-

“23.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 assesseees 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 assesseees the information and material relied upon by the Revenue so that the assesseees 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-a-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 assesseees;*

(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.*

25. *Therefore, we have proposed to pass the present order with a view avoiding filing of further appeals before this Court and burden this Court with approximately 9000 appeals against the similar judgments and orders passed by the various High Courts, the particulars of some of which are referred to hereinabove. **We have also proposed to pass the aforesaid order in exercise of our powers under Article 142 of the Constitution of India by holding that the present order shall govern, not only the impugned judgments and orders passed by the High Court of Judicature at Allahabad, but shall also be made applicable in respect of the similar judgments and orders passed by various High Courts across the country and therefore the present order shall be applicable to PAN INDIA.***

27. *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.”*

9. The judgment of Hon'ble Supreme Court under Article 142 of the Constitution of India, in the case of **Ashish Agarwal (supra)** has been explained for implementation/ clarified by Instruction No.01/2022 being F.No 279/Misc./M-51/2022-ITJ, dated 11.05.2022 issued by the Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, ITJ Section, New Delhi, in exercise of powers under Section 119 of the Act, 1961, which is reproduced below:-

Instruction No. 01/2022

F. No 279/Misc./M-51/2022-ITJ

Ministry of Finance

Department of Revenue

Central Board of Direct Taxes

ITJ Section

New Delhi, Dated: 11th May, 2022

Subject: Implementation of the judgment of the Hon'ble Supreme Court dated 04.05.2022 (2022 SCC Online SC 543) (Union of India v. Ashish Agarwal) — Instruction regarding

1. Hon'ble Supreme Court, vide its judgment dated 04.05.2022 (2022 SCC Online SC 543), in the case of Union of India v. Ashish Agarwal has adjudicated on the validity of the issue of reassessment notices issued by the Assessing Officers during the period beginning on 1st April, 2021 and ending with 30th June 2021, within the time extended by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 [hereinafter referred to as "TOLA"] and various notifications issued thereunder (these reassessment notices hereinafter referred to as "extended reassessment notices").

2. These extended reassessment notices were issued by the Assessing Officers under the provision of section 148 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") following the procedure prescribed under various sections pertaining to reassessment namely sections 147 to 151, as they existed prior to their amendment by the Finance Act, 2021 (hereinafter referred to as "old law"). With effect from 1 April 2021, the old law has been substituted with new sections 147-151 (hereinafter referred to as the "new law").

3. Hon'ble Supreme Court has held that these extended reassessment notices issued under the old law shall be deemed to be the show cause notices issued under clause (b) of section 148A of the new law and has directed Assessing Officers to follow the procedure with respect to such notices. It has also held that all the defences available to assesseees under section 149 of the new law and whatever rights are available to the Assessing Officer under the new law shall continue to be available. Hon'ble Supreme Court has passed this order in exercise of its power under Article 142 of the Constitution of India.

4. The implementation of the judgment of Hon'ble Supreme Court is required to be done in a uniform manner. Accordingly, **in exercise of its power under section 119 of the Act, the Central Board of Direct Taxes** (hereinafter referred to as "the Board") **directs that the following may be taken into consideration while implementing this judgment.**

5.0 Scope of the judgment:

5.1 Taking into account the decision of the Hon'ble Supreme Court in various paragraphs, it is **clarified** that the judgment applies to all cases where extended reassessment notices have been issued. This is irrespective of the fact whether such notices have been challenged or not.

6.0 Operation of the new section 149 of the Act to identify cases where fresh notice under section 148 of the Act can be issued:

6.1 With respect of operation of new section 149 of the Act, the following may be seen:

- Hon'ble Supreme Court has held that the new law shall operate and all the defences available to assesseees under section 149 of the new law and whatever rights are available to the Assessing Officer under the new law shall continue to be available.
- Sub-section (1) of new section 149 of the Act as amended by the Finance Act, 2021 (before its amendment by the Finance Act, 2022) reads as under:-

149. (1) No notice under section 148 shall be issued for the relevant assessment year,—

(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b):

(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year:

Provided that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section, as they stood immediately before the commencement of the Finance Act, 2021:

- Hon'ble Supreme Court has upheld the views of High Courts that the benefit of new law shall be made available even in respect of proceedings relating to past assessment years. Decision of Hon'ble Supreme Court read with the time extension provided by TOLA will allow extended reassessment notices to travel back in time to their original date when such notices were to be issued and then new section 149 of the Act is to be applied at that point.

6.2 Based on above, the extended reassessment notices are to be dealt with as under:

(i) AY 2013-14, AY 2014-15 and AY 2015-16: Fresh notice under section 148 of the Act can be issued in these cases, with the approval of the specified authority, only if the case falls under clause (b) of sub-section (1) of section 149 as amended by the Finance Act, 2021 and reproduced in paragraph 6.1 above. Specified authority

under section 151 of the new law in this case shall be the authority prescribed under clause (ii) of that section.

(ii) AY 16-17, AY 17-18: Fresh notice under section 148 can be issued in these cases, with the approval of the specified authority, under clause (a) of sub-section (1) of new section 149 of the Act, since **they are within the period of three years from the end of the relevant assessment year**. Specified authority under section 151 of the new law in this case shall be the authority prescribed under clause (i) of that section.

7.0 Cases where the Assessing Officer is required to provide the information and material relied upon within 30 days:

7.1 Hon'ble Supreme Court has directed that information and material is required to be provided in all cases within 30 days. However, it has also been noticed that notices cannot be issued in a case for AY 2013-14, AY 2014-15 and AY 2015-16, if the income escaping assessment, in that case for that year, amounts to or is likely to amount to less than fifty lakh rupees. Hence, in order to reduce the compliance burden of assesseees, it is clarified that information and material may not be provided in a case for AY 2013-14, AY 2014-15 and AY 2015-16, if the income escaping assessment, in that case for that year, amounts to or is likely to amount to less than fifty lakh rupees. Separate instruction shall be issued regarding procedure for disposing these cases.

8.0 Procedure required to be followed by the Assessing Officers to comply with the Supreme Court judgment:

8.1 The procedure required to be followed by the Jurisdictional Assessing Officer/Assessing Officer, in compliance with the order of the Hon'ble Supreme Court, is as under:

- The extended reassessment notices are deemed to be show cause notices under clause (b) of 148A of the Act in accordance with the judgment of Hon'ble Supreme Court. Therefore, all requirement of new law prior to that show cause notice shall be deemed to have been complied with.
- The Assessing Officer shall exclude cases as per clarification in paragraph 7.1 above.
- Within 30 days i.e. by 2nd June 2022, the Assessing Officer shall provide to the assesseees, in remaining cases, the information and material relied upon for issuance of extended reassessment notices.
- The assessee has two weeks to reply as to why a notice under section 148 of the Act should not be issued, on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year. The time period of two weeks shall be counted from the date of last communication of information and material by the Assessing Officer to the assessee.
- In view of the observation of Hon'ble Supreme Court that all the defences of the new law are available to the assessee, if assessee makes a request by making an application that more time be given to him to file reply to the show cause notice, then such a request shall be considered by the Assessing Officer on merit and time may be extended by the Assessing Officer as provided in clause (b) of new section 148A of the Act.
- After receiving the reply, the Assessing Officer shall decide on the basis of material available on record including reply of the assessee, whether or not

it is a fit case to issue a notice under section 148 of the Act. The Assessing Officer is required to pass an order under clause (d) of section 148A of the Act to that effect, with the prior approval of the specified authority of the new law. This order is required to be passed within one month from the end of the month in which the reply is received by him from the assessee. In case no such reply is furnished by the assessee, then the order is required to be passed within one month from the end of the month in which time or extended time allowed to furnish a reply expires. If it is a fit case to issue a notice under section 148 of the Act, the Assessing Officer shall serve on the assessee a notice under section 148 after obtaining the approval of the specified authority under section 151 of the new law. The copy of the order passed under clause (d) of section 148A of the Act shall also be served with the notice u/s 148.

- *If it is not a fit case to issue a notice under section 148 of the Act, the order passed under clause (d) of section 148A to that effect shall be served on the assessee.*

*Tanay Sharma
DCIT(OSD), ITJ-I*

Copy to:

- 1. Chairman, Members and all other officer in CBDT of the rank of Under Secretary and above.**
- 2. All Pr. Chief Commissioner of Income Tax and all Directors General of Income tax with a request to bring to the attention of all officers.**
- 3. ADG(PR. P&P), Mayur Bhawan, New Delhi for printing in the quarterly Tax Bulletin and for circulation as per usual mailing list.**
- 4. The Comptroller and Auditors General of india.**
- 5. ADG (Vigilance), Mayur Bhawan, New Delhi.**
- 6. Joint Secretary & Legal Advisor, Ministry of Law & Justice, New Delhi.**
- 7. All Directorates of Income-tax, New Delhi and Pr. DGIT (NADT), Nagpur.**
- 8. ITCC (3 copies).**
- 9. ADG (System)-4, for uploading on the Department's website.**
- 10. Data Base Cell for uploading on irsofficeronline.gov.in.**
- 11. njrs.Support@nsdl.co.in for uploading on NJRS.**
- 12. Hindi Cell for translation.**
- 13. Guard file.”**

10. Learned Additional Solicitor General of India has made a statement before us, as noted in paragraph-5 above, that as per Clause-7.1 of the Board's circular dated 11.05.2022, the notices under Section 148 relating to the Assessment Years 2013-14, 2014-15 and 2015-16, shall not attract the judgment of Hon'ble Supreme Court in the case of **Ashish Agarwal** (supra)

and the impugned notice under Section 148 issued on 01.04.2021 for the Assessment Year 2014-15 is, therefore, clearly barred by limitation and consequently without jurisdiction. Therefore, in view of the admission made by the learned Additional Solicitor General on behalf of the respondents, we do not propose to deal with the other arguments of learned counsel for the petitioner as noted in paragraph-6 above and thus all other questions including the question of conferment of jurisdiction etc., are left open.

11. As per Clauses 6.2 and 7.1 of the Board's Circular dated 11.05.2022, if a case does not fall under Clause (b) of sub-Section (i) of Section 149 of the Act, 1961 for the Assessment Years 2013-14, 2014-15 and 2015-16 (where the income of an assessee escaping assessment to tax is less than Rs.50,00,000/-) and notice has not been issued within limitation under the unamended provisions of Section 149, then proceedings under the amended provisions cannot be initiated.

12. For all the reasons aforesaid, the impugned notice under Section 148 of the Act, 1961 issued on 01.04.2021 for the Assessment Year 2014-15 and the impugned notice dated 13.01.2022 under Section 144 of the Act, 1961 and the reassessment order dated 13.01.2022 under Section 147 read with Section 144B of the Act, 1961 for the Assessment Year 2014-15 passed by the respondent No.4 are hereby quashed. **The writ petition is allowed.**

Order Date :- 17.05.2022

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