

IN THE HIGH COURT OF ORISSA AT CUTTACK

**W.P.(C) Nos.9191, 8217, 9940, 9941, 9952, 9964, 10693, 10697,
10699, 10892, 11065, 11075, 11640, 12038, 12328, 12886, 14550,
14552, 14554, 14927, 16836, 17972, 19288, 19474, 20073, 20533,
20611, 20947, 21572, 21573, 22817, 31494, 31541, 23880 and 26752
of 2022**

Kailash Kedia and others

....

Petitioners

Mr. Jagabandhu Sahoo, Senior Advocate assisted by
Ms. Kajal Sahoo (In W.P.(C) No.9191 of 2022),
Mr. Sidhartha Ray, Advocate, (In W.P.(C) Nos.8217, 9940, 9952,
9964, 11640, 17972, 19288, 19474, 20073, 20533, 20611, 20947,
21572, 21573, 31494, 31541, 23880 & 26752 of 2022),
Mr. Rudra Prasad Kar, Advocate
(In W.P.(C) Nos.9941, 10892, 11075, 14550, 14552,
14554, 16836 & 22817 of 2022),
Mr. Basudev Panda, Senior Advocate assisted by
Mr. Bijay Panda, Advocate, (In W.P.(C) Nos.10693,
10697, 10699 & 14927 of 2022),
Mr. Saswat Kumar Acharya, Advocate
(In W.P.(C) Nos.11065 and 12886 of 2022),
Mr. Sunil Mishra, Advocate
(In W.P.(C) No.12038 of 2022) and
Mr. S. S. Padhy, Advocate (In W.P.(C) No.12328 of 2022)

-versus-

***Income Tax Officer, Ward 1, Jharsuguda
and others***

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Opposite Parties

Mr. Tusar Kanti Satapathy, Senior Standing Counsel
assisted by Mr. A. Kedia, Junior Standing Counsel for the
Revenue Department (In W.P.(C) Nos.8217, 9941, 10693, 12038,
16836, 22817, 31494 & 31541 of 2022) and
Mr. Radheshayam Chimanka, Senior Standing Counsel
(In W.P.(C) No.14927 of 2022)
& Mr. S. S. Mohapatra, Senior Standing Counsel for the
Revenue Department (In W.P.(C) Nos. 9191, 9940, 9952, 9964,
10697, 10699, 10892, 11065, 11075, 11640, 12328, 12886,
14550, 14552, 14554, 19288, 19474, 20073, 20533, 20611,
20947, 21572, 21573, 23880 & 26752 of 2022)

**CORAM:
THE CHIEF JUSTICE
JUSTICE M. S. RAMAN**

**ORDER
01.12.2022**

Order No.

09. 1. In all these writ petitions, the challenge is to:
- (i) A notice issued to the Petitioner-Assessees under Section 148-A(1)(b) of the Income Tax Act, 1961 ('Act'); and
 - (ii) The consequential order passed under Section 148-A(1)(d) of the Act.
2. While issuing notice in all these writ petitions, interim orders were passed restraining the Respondent/Income Tax Department ('Department') from taking coercive action against the Petitioners.
3. During the pendency of the present petitions, a coordinate Division Bench (DB) of this Court delivered two judgments. One is the judgment dated 6th September, 2022 delivered by a DB of which one of us (M.S. Raman, J.) was a member in W.P.(C) No.15102 of 2022 (*Auroglobal Comtrade Private Limited v. The Chairman, Central Board of Direct Taxes & others*) and the other by the same DB on 27th September, 2022 in W.P.(C) No.17176 of 2022 (*Stewart Science College v. Income Tax Officer, Ward-1 (I)*), both of which declined to accept similar challenge to the notices under Section 148-A(1)(b) of the Act as well as the consequential order under Section 148-A(1)(d) of the Act by holding that the Petitioners/Assessees in those cases would have a full opportunity of urging all the grounds of challenge at

the stage of challenging the consequential order in the reassessment proceedings consequent upon the notice under Section 148 of Act.

4. Meanwhile, a DB of the Punjab and Haryana High Court in an order dated 2nd June, 2022 in CWP No.10219 of 2022 (*Anshul Jain v. Principal Commissioner of Income Tax*) held likewise. In other words, it was held that there was no warrant for interference by the Court at the stage where an order had been passed under Section 148-A(1)(d) of the Act and that all the grounds of challenge to such order could be urged at the stage of challenging the order passed in the reassessment proceedings consequent upon the notice under Section 148 of Act.

5. The above order of the High Court of Punjab and Haryana in *Anshul Jain v. Principal Commissioner of Income Tax (supra)* was challenged in the Supreme Court of India by the unsuccessful Petitioner in SLP(C) No.14823 of 2022. While dismissing the said SLP on 2nd September 2022, the Supreme Court of India passed the following order:

“What is challenged before the High Court was the re-opening notice under Section 148A(d) of the Income Tax Act, 1961. The notices have been issued, after considering the objections raised by the petitioner. If the petitioner has any grievance on merits thereafter, the same has to be agitated before the Assessing Officer in the re-assessment proceedings.

Under the circumstances, the High Court has rightly dismissed the writ petition.

No interference of this Court is called for.

The present Special Leave Petition stands dismissed.

Pending applications stand disposed of.”

6. It has been brought to the notice of this Court that notwithstanding the above order of the Supreme Court of India, the Calcutta High Court has in an order dated 15th September, 2022 in APO/83/2022 (*Dinesh Kumar Goyal v. Union of India*), interfered with an order under Section 148-A(d) of the Act on the ground that ‘personal hearing’ was not given to the Assessee prior to the passing of the said order. It has also been brought to the notice of this Court that the High Court of Punjab and Haryana itself has subsequently in *Kulwant Singh v. Union of India* issued notice in a writ petition which raised a similar challenge as in the present petitions before this Court.

7. On the side of the Petitioners, it was urged that the aforementioned order dated 2nd September, 2022 of the Supreme Court of India in *Anshul Jain v. Principal Commissioner of Income Tax (supra)* cannot constitute a precedent and is, therefore, not binding on this Court. In support of such submission, reliance was placed on a large number of judgments including *Malook Singh v. State of Punjab MANU/SC/0795/2021*, *Tikaram v. State of Uttar Pradesh (2009) 10 SCC 689*, *Booz Allen and Hamilton Inc. v. SBI Home Finance Ltd (2011) 5 SCC 532* and *Arnit Das v. State of Bihar (2000) 5 SCC 488*.

8. Having carefully examined the said decisions in light of the order passed by the Supreme Court in *Anshul Jain v. Principal Commissioner of Income Tax (supra)*, this Court is of the considered

view that the above order of the Supreme Court in *Anshul Jain v. Principal Commissioner of Income Tax (supra)* cannot be considered to be one which does not decide any issue or which has been passed without considering the issue involved in the case. In other words, this Court is unable to agree with the submission that the aforementioned order of the Supreme Court is not a binding precedent as far as this Court is concerned.

9. Learned counsel for the Petitioners have also assailed both the notice under Section 148-A(1)(b) of the Act as well as the consequential order under Section 148-A(1)(d) on several grounds including the ground of limitation, not considering the objections filed, not providing a personal hearing, non-application of mind to the peculiar facts of each case and several other grounds.

10. In the considered view of this Court, following the decision of the Supreme Court in *Anshul Jain v. Principal Commissioner of Income Tax (supra)*, all these grounds could be urged at a stage when an order is passed under Section 148 of the Act in the reassessment proceedings and if it warrants challenge by these Petitioners/Assessees. This Court would hasten to add that not only will all the grounds urged before this Court in these proceedings be available to the Petitioners to be urged at such a stage of challenge, but all other grounds which may not have been urged before this Court and which may be found necessary to be urged at that stage in accordance with law.

11. Needless to state here that when such challenge is raised, all such grounds will have to be dealt with in accordance with law by the Authority which is expected to pass an appropriate order under Section 147 read with Section 148 of the Act.

12. With the above observations, the Court disposes of all these writ petitions and vacates all the interim orders.

S. Behera



(Dr. S. Muralidhar)
Chief Justice

(M. S. Raman)
Judge