

UNION OF INDIA vs Ashish Agarwal

The analysis of apex court ruling bearing CA No 3005 to 3017/2022

Cause

Revenue has preferred an appeal before the Apex court against the judgment of Allahabad Court and other allied writ tax petitions, by which the High Court has allowed the writ petitions and has quashed several reassessment notices issued by the Revenue, issued under section 148 of the Income-tax Act, 1961, on the ground that the same are bad in law in view of the amendment by the Finance Act, 2021 which has amended Income-tax Act by introducing new provisions *i.e.* sections 147 to 151 w.e.f. 1st April, 2021.

Judgments reversed as the Apex Court in the said judgment has exercised its power conferred under 142 by the Indian Constitution.

- Ashok Kumar Agarwal v UOI [131 taxmann.com 22] [All]
- Bpip Infra (P) Ltd [133 taxmann.com 48] [Raj]
- Mon Mohan Kohli v Asstt. CIT [133 taxmann.com 166] [Del]
- Bagaria Properties & Investment (P) Ltd vs UOI [134 taxmann.com 196] [Kol]
- Manoj Jain vs UOI [134 taxmann.com 173] [Kol]
- Sudesh Taneja vs ITO [135 taxmann.com 5] [Raj]
- Vellore Institute of Technology vs CBDT [135 taxmann.com 285] [Mad]
- Tata Communications Transformation Services v Asstt. CIT [137 taxmann.com 2] [Bom]

Section “148” prior to Finance Act, 2021

148.(1) Before making the assessment, reassessment or re-computation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139

Section “149” & Section “151” prior to Finance Act, 2021

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

- if four years have elapsed from the end of the relevant assessment year
- 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

151. (1) No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice.

Section “148” post Finance Act, 2021

148. Before making the assessment, reassessment or re-computation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A, requiring him to furnish within such period, as may be specified in such notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139.

Section “148A” substituted as per Finance Act, 2021

148A. The Assessing Officer shall, before issuing any notice under section 148,—

- conduct any enquiry, if required, with the prior approval of specified authority.
- provide an opportunity of being heard to the assessee, with the prior approval of specified authority, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued.
- consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause.
- 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, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply is received by him.

Section “149” & Section “151” post Finance Act, 2021

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

- If three years have elapsed from the end of the relevant AY.
- 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

151 Specified authority for the purposes of section 148 and section 148A shall be:

- Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year

- Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year.

Core issue involved

- The Union felt aggrieved due the negative outcome of writs filed by the assessee against 148 Notices issued under old provision of Act.
- Around 9000/- writs were filed against 90,000/- Notices issued and all were quashed.
- The revenue was under bona-fide belief that, the Circulars issued by CBDT on extending limitations owing to COVID would apply to said amendment of Finance Act, 2021.
- The Technically valid initiated re-assessment proceedings will become in-valid, just because the revenue was under a bona-fide belief.
- The object and purpose for which the impugned notices were issued will have no significance.
- The revenue cannot be left remediless due a mistake which happened under a bona-fide belief.
- The Delhi High Court, while quashing the proceedings has provided the liberty to the revenue that they may appeal further.

The Court's Observations

- The Court agreed with the view taken by different High Courts while quashing the proceedings.
- But the Court disagreed on the applicability of the said view as the same could have huge implications.
- Around 9000/- writs were filed against 90,000/- Notices issued, which were quashed will have no significance.
- The revenue cannot be left out remediless just because it was under bona-fide belief that, the Circulars issued by CBDT on extending limitations owing to COVID would apply to said amendment of Finance Act, 2021.
- All the Notice issued are although technically valid.
- The object and purpose for which the impugned notices were issued will have no significance.
- The Delhi High Court, while quashing the proceedings has also observed some un-fair play hence, the liberty was granted to appeal further.

The Court's Ruling

Instead of quashing and setting aside the reassessment notices issued under the unamended provision of IT Act, the court has proposed to modify the orders passed by the respective High Courts as under:-

- 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.

- The said Notice should be treated to be show-cause notices in terms of said section.
- The Assessing officers shall within thirty days from the date of impugned judgment provide to the assessee the information and material relied upon by the Revenue.
- The assessee can reply to the notices within two weeks thereafter.
- The prior approval required for conducting any enquiry will be one time measure.
- The assessing officers shall thereafter pass an order expressing his positive or negative view for issuing the Notice u/s 148.

Conclusion

- In the said judgment the Apex court may have accepted the possible view taken by the different High Courts of the country but at the same time the Court has disregarded the applicability of the said observation and therefore has reversed all the judgments showing a leniency towards revenue owing to the applicability of law. The said ruling of the Apex court has activated the validity of all the notices issued u/s 148 by the revenue after 31st March, 2021.

ABHISHEK ANAND