



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Writ Petition No. 14794/2022

Geeta Agarwal Wife Of Shri Navratan Agarwal

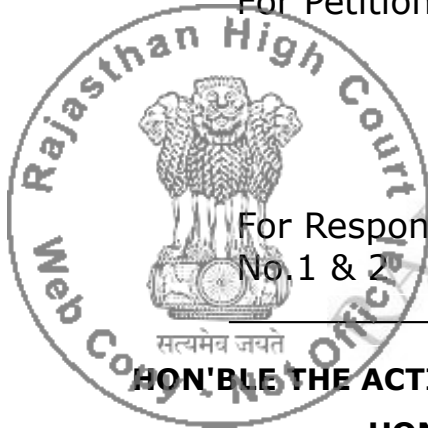
----Petitioner

Versus

Income Tax Officer & Ors.

----Respondents

For Petitioner(s) : Mr. Siddharth Ranka, Advocate with
Mr. Muzaffar Iqbal, Advocate,
Mr. Rohan Chatter, Advocate,
Mr. Saurav Harsh, Advocate &
Ms. Apeksha Bapna, Advocate
For Respondents : Mr. Anuroop Singhi, Advocate with
No.1 & 2 : Mr. N.S. Bhati, Advocate



**HON'BLE THE ACTING CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE VINOD KUMAR BHARWANI**

Order

11/10/2022

Heard on application for stay.

Advance copy of petition has already been supplied to Mr. Anuroop Singhi, Advocate who appears and takes notice for Respondents No.1 & 2. One extra set of petition with annexures shall also be supplied to him by tomorrow.

Issue notice to Respondent No.3 on payment of P.F. within three days, returnable within two weeks.

Learned counsel for the petitioner pressed his application for interim relief by submitting that in similar cases of the relevant assessment year 2016-2017 where the income, which is alleged to have escaped assessment, is less than Rs.50 lacs, this Court has protected those petitioners by interim order, therefore, she may also be protected.

Learned counsel appearing for Respondent No.1 & 2, however, opposes the prayer and submits that on the aspect of stay, he may be heard. Therefore, though in number of cases



interim orders have been passed by us, we have allowed both the parties to make their detailed submissions on the application for stay.

Learned counsel for the petitioner would argue that in the present case, notice under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') was initially issued on 19.04.2021 without drawing any proceedings under Section 148A of the Act. Subsequently, in view of the order dated 04.05.2022 passed by the Hon'ble Supreme Court in the case of **Union of India & Others Vs. Ashish Agarwal (Civil Appeal No. 3005/2022 and batch of appeals)**, the notice was treated as one under Section 148-A of the Act and the proceedings culminated in passing of an order under Section 148A(d) of the Act on 26.07.2022 and simultaneously notice under Section 148 of the Act has been issued against the petitioner. According to the learned counsel for the petitioner, this notice under Section 148 of the Act issued under the new regime of law, post amendment with effect from 01.04.2021 is barred by law. Referring to the provisions contained in Section 149, sub-section 1(a) of the Act, he would submit that after 01.04.2021, proceedings under Section 148 of the Act are barred, if three years have elapsed from the end of the relevant assessment year, unless the case falls under Clause (b) of sub-section (1) of Section 149 of the Act.

It is contended that as in the present case, the income, which is alleged to have escaped assessment, is far below Rs.50 lacs i.e., Rs.8 lacs, the bar under clause (a), sub-section (1) of Section 149 of the Act would come into play and the notice under Section 148 of the Act which has been issued on



26.07.2022 pertaining to relevant assessment year 2016-2017, is apparently barred by law.

Per contra, learned counsel appearing for the revenue would argue that the provision contained in Section 149, sub-section 1(a) of the Act would not be attracted in the present case to create a bar against initiation of proceedings under Section 148 of the Act because under the pre-existing provisions, as it stood prior to 01.04.2021, notice under Section 148 of the Act could be issued as six years had not elapsed. He would contend that in the present case, the notice under Section 148 of the Act was initially issued on 19.04.2021, which was deemed as notice under Section 148A of the Act under the directions of the Hon'ble Supreme Court in the case of **Union of India & Others Vs. Ashish Agarwal (supra)**. Proceedings under Section 148A of the Act, having been brought to its logical conclusion by passing an order under Section 148A(d) of the Act on 26.07.2022, only thereafter, notice under Section 148 of the Act has been issued, therefore, the same would relate back to the notice under Section 148 of the Act, which was earlier issued on 19.04.2021. His next submission is that the extension of the period of limitation prescribed under Section 149 of the Act for initiation of reassessment proceedings by way of notices under Section 148 of the Act from time to time, by issuance of notifications on 31.03.2021 and 27.04.2021, under The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, brings the initiation of proceedings under Section 148 of the Act within the period of limitation even under the newly amended Section 149 of the Act. Therefore, in any case, the issuance of notice under



Section 148 of the Act is within the period of limitation prescribed under the old Act and if the proceedings could be initiated under the old Act, the bar under Section 149, sub-section 1(b) of the Act would not come in the way and even if three years have elapsed since the relevant assessment year, as provided under the amended Section 149 of the Act, the proceedings would continue. In support of his submissions, he would rely upon the order passed by the hon'ble Supreme Court in the case of **Union of India & Others Vs. Ashish Agarwal (supra)** and orders passed by the various High Courts.

Learned counsel relied upon **order dated 09.09.2022 passed by High Court of Delhi at New Delhi in the case of Touchstone Holdings Pvt. Ltd. Versus Income Tax Officer, Delhi and Others (WPC 3102/2022), order dated 27.09.2022 passed by High Court of Orissa : Cuttack in the case of Stewart Science College & Anr. Versus Income Tax Officer & Ors., order dated 02.09.2022 passed by the High Court of Madhya Pradesh At Indore in the case of Sylph Technologies Limited Versus The Principal Chief Commissioner of Income Tax & Anr., order dated 02.06.2022 passed by the High Court of Punjab and Haryana At Chandigarh in the case of Anshul Jain Versus Principal Commissioner of Income Tax and Anr. and order dated 02.06.2022 passed by the High Court of Punjab and Haryana At Chandigarh in the case of Gian Castings Private Limited Versus Central Board of Direct Taxes and Others.**

He would further submit that the order of the Punjab and Haryana High Court in the case of **Anshul Jain Versus**

**Principal Commissioner of Income Tax and Anr. (supra)**

was assailed in S.L.P. and the same was also dismissed by the Hon'ble Supreme Court.

We have heard learned counsel for the parties on the issue of stay.

Though this Court on earlier occasion has passed interim orders in number of cases pertaining to relevant assessment year 2016-2017 where the income alleged to have escaped assessment was less than Rs.50 lacs, as the learned counsel for the revenue has opposed the prayer for stay today on various submissions, noted as above, we have given our anxious considerations to the submissions made by learned counsel for Respondents No.1 & 2 as also by learned counsel for the petitioner.

On prima facie considerations, we find that in the present case initially a notice under Section 148 of the Act was issued on 19.04.2021 by the respondents. However, later on when challenge was laid to such initiation of proceedings under Section 148 of the Act issued after 01.04.2021, without complying with the requirements of the Section 148A of the Act, matter was taken up to Hon'ble Supreme Court and the Hon'ble Supreme Court decided the issue in the case of **Union of India & Others Vs. Ashish Agarwal (supra)**. Their Lordships in the Hon'ble Supreme Court directed that all the notices issued under Section 148 of the Act after 01.04.2021 shall be deemed to have been issued under Section 148A of the Act as substituted by the Finance Act, 2021 and be construed to intend to show cause notices in terms of Section 148A(b) of the Act. Hon'ble Supreme Court further directed that the Assessing Officer shall,



within 30 days from the date of the order, provide to the respective assessee, information and material relied upon by the revenue, so that the assessee can reply to the show cause notice within two weeks thereafter. It was further provided that the conduct of any inquiry, if required, with the prior approval of specific authority under Section 148A(b) is 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 the date of the passing of the order, including those which have been passed by the High Courts. It was further observed that holding any inquiry with the prior approval of specific authority is not mandatory, but it is for the concerned Assessing Officers to hold any inquiry, if required. It was further directed that the Assessing Officer shall thereafter pass orders in terms of Section 148A(d) in respect of each of the concerned assessee and thereafter after following the procedure as required under Section 148A of the Act may issue notices under Section 148 of the Act (as substituted).

Importantly, it was made clear that all the grounds which may be available to the assessee including those available under Section 149 of the Act and all rights and contentions which may be available to the concerned assessee and revenue under the Finance Act, 2021 and in law, shall continue.

The notice under Section 148 of the Act which was initially issued to the petitioner on 19.04.2021 was, therefore, required to be treated and has been treated, as notice under Section 148(A)(b) of the Act, as directed by the Hon'ble Supreme Court in the case of **Union of India & Others Vs. Ashish Agarwal (supra)**. Those proceedings culminated in order under Section



148(A)(d) of the Act passed on 26.07.2022. Simultaneously, a notice under Section 148 of the new Act has now been issued to the petitioner which has been assailed in this writ petition.

Apparently, the notice under Section 148 of the Act which was issued earlier on 19.04.2021, under the directions of the Hon'ble Supreme Court, is deemed to be notice under Section 148A of the Act and therefore, the contention of learned counsel for the revenue that it should be treated as notice under Section 148 of the Act and not under Section 148A of the Act cannot be accepted on the face of it being in the teeth of order in **Union of India & Others Vs. Ashish Agarwal (supra)**. Notice under Section 148 of the Act, admittedly has been issued only on 26.07.2022, after culmination of proceedings under Section 148A of the Act. Therefore, the legality and validity of the notice under Section 148 of the Act needs to be judged on the basis of the law, which was in force on the date when the notice was issued i.e., on 26.07.2022.

After amendment vide Finance Act, 2021 with effect from 01.04.2021, amended Section 149 of the Act provides for the time limit within which the proceedings under Section 148 of the Act could be initiated. Clause (a) of sub-section 149 of the Act provides that no notice under Section 148 of the Act shall be issued for the relevant assessment year if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause-(b).

We need not go in further detail as to the requirements of clause-(b) because in this present case, admittedly, the amount involved is only Rs. 8 lacs which is less than Rs. 50 lacs.



On prima facie consideration, there is nothing in Section 149 of the Act or in any other provisions of the Act after the Finance Act amendment with effect from 01.04.2021 which empowers and authorises the Assessing Authority to reopen assessment under Section 148 of the Act on the ground that such reopening was permissible under the repelled provisions as they stood prior to 01.04.2021. On the face of the provision, it is clear that if three years have elapsed from the end of the relevant assessment year, unless the case falls under the clause-(b) i.e., the alleged income involved exceeds Rs.50 lacs, notice under Section 148 of the Act could not be issued. This essentially is a matter of jurisdiction.

There is no quarrel with the legal position existing and in force prior to 01.04.2021 that under the unamended provisions contained in Section 149, sub-section (1)(b) of the Act, proceedings under Section 148 of the Act could be initiated by issuance of notice even if four years had elapsed but not more than six years elapsed from the end of the relevant assessment year in cases where the income chargeable to tax which has escaped assessment amounts to or is likely to amount to Rupees One lac or more for that year. However the unamended provisions allowed the authority to reopen assessment by issuing notice under Section 148 of the Act under the pre-amended scheme only.

Once the provision itself has been amended and newly amended provision contained in Section 149, sub-section 1(a), of the Act bars reopening under Section 148 of the Act if three years have elapsed from the end of the relevant assessment year unless the case falls under the clause-(b), issuance of



notice under Section 148 of the Act would be against the provisions of law. The argument that since pre amended provision contained in Section 149 of the Act, permitted the authorities to reopen and issue notice under Section 148 of the Act, therefore, even after amendment of provisions of Section 149 of the Act, repealed provisions could be taken recourse to and in that case, provisions of Clause (a) sub-section (1) of Section 149 of the Act would not apply, prima facie appears to be against the legislative intention. In respect of income below Rs.50 lacs which is alleged to have escaped assessment, the new legislative regime is that notice under Section 149 of the Act shall not be issued if there is a bar as engrafted under Clause (a) thereof. It is only when the amount exceeds Rs.50 lacs, the provisions of Clause (b) stand attracted, subject to the limitation prescribed therein.

The contention of learned counsel for the Respondents No.1 & 2 that the Hon'ble Supreme Court has dealt with the issue, also cannot be accepted. The argument that the Hon'ble Supreme Court has allowed that the reassessment proceedings should be continued by treating notices under Section 148 of the Act as notices under Section 148(A) of the Act, does not come to the aid of the respondents because even if the period of limitation has been extended from time to time by issuance of notifications extending time line as provided under Section 149 of the Act, in any case, present is a case where notice under Section 148 of the Act has been issued only on 26.07.2022, therefore, the source of authority would be Section 148 of the Act subject to the bar under Section 149 of the Act as is existed



on the day when the notice was issued. Source of authority could not be traced to pre existing provision which was no longer in force and available when notice under Section 148 of the Act was issued on 26.07.2022.

Reliance placed on judgments of various High Courts, at this stage, we find to be distinguishable because none of those are cases where the income alleged to have escaped assessment was found to be less than Rs.50 lacs. The final order and the interim orders in certain cases have been passed on the facts and circumstances and the applicability of the provisions of Section 148 and 149 of the Act to those peculiar facts and circumstances.

In view of the above considerations, we find no reason to depart from the orders which have been passed in other cases protecting assessee against the further proceedings where it pertains to relevant assessment year of 2016-2017 and the income alleged to have escaped assessment is found to be less than Rs.50 lacs. Accordingly, further proceedings pursuant to impugned notice dated 26.07.2022 under Section 148 of the Act, shall remain stayed till the final disposal of this writ petition.

List this case after service of Respondent No.3 is complete.

Learned counsel for the revenue would be at liberty to apply for final disposal at an early stage once the service and pleadings are complete and reply is filed.

(VINOD KUMAR BHARWANI),J (MANINDRA MOHAN SHRIVASTAVA),ACTING CJ

Mohita /3