ITEM NO.10 COURT NO.4 SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 7466/2023 @ D. No. 2845/2023

(Arising out of impugned final judgment and order dated 31-08-2022 in WP(C) No. 12541/2022 passed by the High Court Of Delhi At New Delhi)

SALIL GULATI Petitioner(s)

VERSUS

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 49 (1) DELHI & ORS. Respondent(s)

(FOR ADMISSION and I.R. and IA No.48352/2023-CONDONATION OF DELAY IN FILING and IA No.48356/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.48354/2023-CONDONATION OF DELAY IN REFILING / CURING THE DEFECTS)

Date : 11-04-2023 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE M.R. SHAH
HON'BLE MR. JUSTICE C.T. RAVIKUMAR

For Petitioner(s) Mr. Percy Pardiwala, Sr. Adv.
Mr. Dharan Gandhi, Adv.
Mr. Rajat Mittal, AOR
For Respondent(s)

UPON hearing the counsel the Court made the following

O R D E R

Delay condoned.

Having heard Shri Percy Pardiwala, learned Senior Advocate, appearing on behalf of the petitioner and having gone through the impugned judgment and order passed by the High Court, no interference of this Court is called for.

The Special Leave Petition stands dismissed.

Pending application stands disposed of.

(R. NATARAJAN) (NISHA TRIPATHI)
ASTT. REGISTRAR-cum-PS ASSISTANT REGISTRAR

2022 (9) TMI 883 - DELHI HIGH COURT

SALIL GULATI VERSUS ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 49 (1) DELHI & ORS.

W.P.(C) 12541/2022 & CM APPLs.37959-37961/2022

Dated: - 31-8-2022

Reopening of assessment u/s 147 - Time limit for notice - mandatory procedure of Section 148A followed or not? - HELD THAT:- The time limit for issuing notice under unamended Section 149 which was falling between 20th March, 2020 and 31st March 2021 was extended by Section 3 of TOLA read with Notification No. 20/2021 dated 31st March, 2021, and Notification No. 38/2021 dated 27th April, 2021, until 30th June, 2021. The initial notice in the present proceedings was issued on 23rd June, 2021 i.e. extended time limit. The said notice was quashed by this Court in petitioner's earlier writ petition as Mon Mohan Kohli [2021 (12) TMI 664 - DELHI HIGH COURT] as the mandatory procedure of Section 148A of the Act was not followed before issuing the said notice. In the said judgment though this Court struck down the Explanations A(a)(ii) and A(b) to the said notifications, yet it clarified that the power of reassessment that existed prior to 31st March, 2021 continued to exist till the extended period i.e. till 30th June, 2021; as the Finance Act, 2021 had merely changed the procedure to be followed prior to issuance of notice with effect from 1st April, 2021.

When the judgment of this Court in Mon Mohan Kohli [2021 (12) TMI 664 - DELHI HIGH COURT] was carried forward in appeal, the Supreme Court held that the Section 148 notices issued between 1st April 2021 to 30th June, 2021, will be deemed to have been issued under Section 148A of the Act and therefore the notice dated 23rd June, 2021, issued to the petitioner stood revived.

Consequently, since the time period for issuance of reassessment notice for assessment year 2013-14 stood extended until 30th June, 2021 and the income alleged to have escaped assessment is beyond Rs.50 lakhs, the first proviso of Section 149 (as amended by the Finance Act, 2021) is not attracted in the facts of this case and even without the benefit of Instruction No.01/2022 the impugned notice is within limitation. Accordingly, the present writ petition along with the pending application is dismissed.

Judgment / Order

HON'BLE MR. JUSTICE MANMOHAN AND HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

Petitioner Through: Mr. Rajat Mittal, Advocate.

Respondents Through: Mr. Abhishek Maratha, Advocate.

J U D G M E N T

MANMOHAN, J: (ORAL)

1. Present writ petition has been filed challenging the order passed under Section 148A(d) of the Income Tax Act, 1961 ('the Act') and the notice issued under Section 148 of the Act dated 30th July, 2022 for the Assessment Year 2013-14. Petitioner primarily challenges the constitutional vires of Instruction No.1/2022 dated 11th May, 2022 issued by the CBDT. The relevant portion of CBDT Instruction No.01/2022 is reproduced hereinbelow:-

"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

.....

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:

xxx xxx xxx

- *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."

2. Learned counsel for the petitioner submits that the impugned notice dated 30th July, 2022 issued under Section 148 of the Act is barred by limitation inasmuch as the Section 149(1)(a) & (b) of the Act as substituted by the Finance Act, 2021 provides that any case can be reopened within three years from the end of relevant assessment year if Assessing Officer has information which suggests that income chargeable to tax has escaped assessment and up to ten years in case income chargeable to tax which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year. He, however, submits that the First Proviso to Section 149 provides that no case can be reopened for any assessment year beginning on or before 1st April, 2021 if such notice could not have been issued at that time on account of being beyond the time limit specified under old Section 149(1)(b).

3. He further states that the time limit for reassessment under old Section 149(1)(b) was six years from the end of the Assessment Year which means that cases for Assessment Year 2013-14 and prior cannot be reopened under clause (b) of Section 149(1) as they have already become time barred on 31st March, 2020.

4. Learned counsel for the petitioner states that three High Courts have stayed the Section 148 notices on the ground of limitation.

5. Per contra, learned counsel for the respondent-revenue who appears on advance notice states that the decision of the Supreme Court in ***Union of India vs. Ashish Agarwal, 2022 SCC OnLine SC 543*** read with the time extension provided by Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (for short 'TOLA') allows 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. He contends that had the notice been beyond limitation, the Apex Court would have set aside the impugned notice. He states that the Apex Court has in fact legalised/validated all the notices issued under unamended provisions by treating them to be deemed show cause notice under Section 148A of the Act (as substituted by Finance Act, 2021) as a one time measure. He also states that if the submission of the learned counsel for the petitioner is accepted, then it would render the judgment of the Supreme Court in Union of India vs. Ashish Agarwal (supra) nugatory.

6. This Court is of the view that the contention of the learned counsel for the petitioner that the present proceedings is time barred is not correct, as reassessment proceeding was initiated during the time limit extended by TOLA. Section 149, as it read prior to its amendment by Finance Act, 2021 reads as under:

> ***"Time limit for notice.***
>
> *149. (1) No notice under Section 148 shall be issued for the relevant assessment year,-*
>
> *(a) if found years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b) and clause (c);*
>
> *(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;*
>
> *…"*

7. The time limit for issuing notice under unamended Section 149 which was falling between 20th March, 2020 and 31st March 2021 was extended by Section 3 of TOLA read with Notification No. 20/2021 dated 31st March, 2021, and Notification No. 38/2021 dated 27th April, 2021, until 30th June, 2021. The initial notice in the present proceedings was issued on 23rd June, 2021 i.e. extended time limit. The said notice was quashed by this Court in petitioner's earlier writ petition being W.P.(C) 7582/2021 vide judgment reported as ***Mon Mohan Kohli vs. Assistant Commissioner of Income Tax and Anr., 2021 SCC OnLine Del 5250*** as the mandatory procedure of Section 148A of the Act was not followed before issuing the said notice. In the said judgment though this Court struck down the Explanations A(a)(ii) and A(b) to the said notifications, yet it clarified that the power of reassessment that existed prior to 31st March, 2021 continued to exist till the extended period i.e. till 30th June, 2021; as the Finance Act, 2021 had merely changed the procedure to be followed prior to issuance of notice with effect from 1st April, 2021.

8. When the judgment of this Court in Mon Mohan Kohli (supra) was carried forward in appeal, the Supreme Court held that the Section 148 notices issued between 1st April 2021 to 30th June, 2021, will be deemed to have been issued under Section 148A of the Act and therefore the notice dated 23rd June, 2021, issued to the petitioner stood revived.

9. Consequently, since the time period for issuance of reassessment notice for assessment year 2013-14 stood extended until 30th June, 2021 and the income alleged to have escaped assessment is beyond Rs.50 lakhs, the first proviso of Section 149 (as amended by the Finance Act, 2021) is not attracted in the facts of this case and even without the benefit of Instruction No.01/2022 the impugned notice is within limitation.

10. Accordingly, the present writ petition along with the pending application is dismissed. However, this Court clarifies that the Assessing Officer shall decide the matter on its own merits without being influenced by any observation made in the present order, except the issue of limitation.

Citations: in 2022 (9) TMI 883 - DELHI HIGH COURT

1. Union of India & Ors. Versus Versus Ashish Agarwal - 2022 (5) TMI 240 - Supreme Court
2. Mon Mohan Kohli Versus Assistant Commissioner of Income Tax & Anr. - 2021 (12) TMI 664 - DELHI HIGH COURT