

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (T) No. 2815 of 2023

M/s. Sevensea Vincom Private Limited, through its
Director, Mr. Rupak Pasari, District-Singhbhum East ...Petitioner

Versus

1. The Principal Commissioner of Income Tax, Central Circle, District-Ranchi
2. The Joint Commissioner of Income Tax, Central Circle, Ranchi
3. The Deputy Commissioner of Income Tax, Central Circle-I, Ranchi
4. The Assistant Commissioner of Income Tax, Central Circle-I, Ranchi ...Respondents

**CORAM: HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE DEEPAK ROSHAN**

For the Petitioner : M/s. Rahul Lamba, Aditya Mohan, Advocates
For the Respondents : Mr. R.N.Sahay, Sr.S.C
Mr. Anurag Vijay, Jr. S.C

RESERVED ON 06/10/2023 PRONOUNCED ON 11/12/2023

Per Deepak Roshan, J Heard learned counsel for the parties.

2. The instant application has been preferred by the petitioner praying therein for quashing and setting aside the notice dated 21.07.2022 passed by respondent no. 3 under Section 148 of Income Tax Act, 1961 for the Assessment Year 2016-17 and also for quashing and setting aside the order dated 21.07.2022 passed by respondent no. 4 under Section 148A(d) of the Income Tax Act, 1961 for the Assessment Year 2016-17.

Petitioner has also challenged the reassessment order dated 31.05.2023 passed by respondent no. 3 against this petitioner under Section 147 of the Act for the Assessment Year 2016-17 and the consequential Notice of Demand dated 31.05.2023, which has been issued pursuant to the reassessment order for an amount of Rs. 50,27,860/- issued by respondent no. 3.

3. The brief facts of the case as indicated in the writ application is that the petitioner is a Private Limited Company registered under the Companies Act, 2013. One notice dated 30.06.2021 under Section 148 of the Act for the Assessment Year 2016-17 was issued to the petitioner. Pursuant thereto, the petitioner asked the department for reason to believe vide letter dated 22.07.2021. Thereafter, the Revenue issued a letter on 30.05.2022 deemed to be a notice under Section 148A(b) of the Act. However, no information and material relied upon by the respondent department were provided to the

petitioner. In spite of that, vide letter dated 04.06.2022, the petitioner gave a detailed reply raising objection and pointed out major discrepancies.

4. Consequent to the submission of aforesaid reply, the respondent department had issued fresh notice to show-cause dated 22.06.2022, wherein the petitioner was requested to provide certain documents. In compliance to the aforesaid notice dated 22.06.2022, the petitioner on 28.06.2022 had replied and submitted relevant documents and complied the requirement of notice to show-cause. However, the respondent department had passed the impugned order on 21.07.2022 under Section 148A(d) of the Act and on the same date i.e., 21.07.2022 notice under Section 148 of the Act was also issued for reassessment for the Assessment Year 2016-17 and finally reassessment order was passed on 31.05.2023 against this petitioner and consequential Notice of Demand was also issued.

5. Learned counsel for the petitioner has assailed the impugned notices/orders on following grounds:

- (A) Impugned Notice dated 21.07.2022 U/s 148 of the I.T Act, 1961 has been issued beyond limitation period prescribed U/s 149 of the I.T Act, 1961 and thus is time barred and void.
- (B) Impugned Notice dated 21.07.2022 u/s 148 of the I.T Act, 1961 and also the Impugned Order dated 21.07.2022 u/s 148A (d) have been issued without the approval of the prescribed authority under Section 151 of the I.T Act, 1961.
- (C) The Impugned Order dated 21.07.2022 was passed without considering the replies dated 04.06.2022 and 28.06.2022 filed by the Petitioner.
- (D) Impugned Order dated 21.07.2022 and Impugned Notice dated 30.05.2022 has been passed/issued without providing the detailed information and material/documents to the Petitioner.

Relying upon the aforesaid submissions, he prays that the entire reassessment proceeding be quashed and set aside and all consequential orders passed pursuant to issuance of Notice under U/s 148 of the I.T Act, 1961 which has been issued beyond limitation period prescribed U/s 149 of the I.T Act, 1961, be also quashed.

6. In support of his contention, learned counsel has relied upon the following decisions:

- (i) *Sanath Kumar Murali Vs. Income-tax Officer reported in (2023) 152 taxmann.com 231 (Karnataka);*
- (ii) *Siemens Financial Services Pvt. Ltd. Vs. Deputy Commissioner of Income Tax & Ors. [Writ Petition No. 4888 of 2022];*
- (iii) *Kartik Sureshchandra Gandhi Vs. Assistant Commissioner of Income-tax reported in (2023) 154 taxmann.com 193 (Bombay)*
- (iv) *M/s. Chotanagpur Diocesson Trust Asson. Vs. Union of India & Ors. [W.P.(T) No. 2042 of 2023]*

7. Learned Sr. Standing Counsel for the revenue made following submissions:

- (i) In the instant case, notice u/s 148 of the Income Tax Act for the Assessment Year 2016-17 was first issued on 30.06.2021 after getting necessary approval of the competent authority under Section 3(1) of the Income Tax Act and other Laws (Relaxation in Amendment of Certain Provisions) Act, 2020 (hereinafter known as 'TOLA') and the Notifications dated 31.03.2021 and 27.04.2021 issued by the C.B.D.T under the said provisions.
- (ii) Another notice u/s 148 was issued on 21/07/2022 after following the due procedure of law as provided in the newly introduced Section 148A of the Act after amendment in the Finance Act, 2021 w.e.f. 01.04.2021 and also in pursuance of the order of Hon'ble Supreme Court of India in the case of *Union of India vs. Ashish Agrawal*, reported in [2022] 138 taxmann.com 64 (S.C).
- (iii) The Assessee raised some technical objections to the proposed reopening of assessment which was duly disposed of by the Assessing Officer vide its order passed u/s 148A(d) dated 21.07.2022.
- (iv) Being aggrieved by the order of the Assessing Officer, the petitioner had initially preferred this writ petition being W.P(T) No.2815 of 2023 for quashing of notice dated 21.07.2022 issued u/s 148 of the Act for the Assessment Year 2016-17 alleging therein that the Assessing Officer has contravened the provisions of Section 149 of the Income Tax Act as income alleged to have escaped assessment was less than Rs.50 lakhs.
- (v) The petitioner then filed an Interlocutory Application to amend the said writ petition, which was allowed by this Hon'ble Court. Accordingly, the petitioner amended the said writ petition

and challenged, *inter alia*, the quashing and setting aside the Re-assessment Order dated 31.05.2023 passed by the Assessing Officer u/s 147 of the Act along with the Demand Notice issued u/s 156 of the Act.

(vi) In view of the facts stated above, there is no illegality in the action of the Assessing Officer as there is no contravention of any provisions of the Income Tax Act. Secondly, if the petitioner has any grievance against the Assessing Officer, he always has the option of availing alternative remedy to challenge the same, first, before the Learned Commissioner of Income Tax (Appeals) u/s 246A of the Act and then before the learned Income Tax Appellate Tribunal under Section 253 of the Act and if he is still aggrieved, it may approach the Hon'ble High Court u/s 260A of the Income Tax Act. Thus, entertaining the present writ petition, at this stage would be a breach of the principle of judicial discipline as held by Hon'ble Supreme Court in Civil Appeal no. 5393 of 2010 in the case of *M/s Godrej Sara Lee Ltd. vs. the Excise and Taxation Officer-cum-Assessing authority & Ors*, wherein the decision of Hon'ble Supreme court reported in (1998) 8 SCC 1 (*Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Others*) has been quoted to carve out the exceptions on the existence whereof a Writ Court would be justified in entertaining a writ petition despite the party approaching it not having availed the alternative remedy provided by the statute. The same reads as under:

- (i) “where the writ petition seeks enforcement of any of the fundamental rights;
- (ii) where there is violation of principles of natural justice;
- (iii) where the order or the proceedings are wholly without jurisdiction; or
- (iv) where the vires of an Act is challenged.”

However, since none of the exceptions is available in the instant case, therefore, this Court should dismiss the present writ petition forthwith and direct the petitioner to avail alternative remedy available with him.

(vii) The main allegation of the petitioner, in the instant Writ Petition, is that the impugned notices issued for reassessment under Section 148 are not valid in law as the said notices

cannot be issued on or after 01.04.2021 i.e., the date of coming into effect the Finance Act, 2021. According to the petitioner, Section 3 of the Tax and other Laws (Relaxation in Amendment of Certain Provisions) Act, 2020 is repugnant to Section 148 and Section 149 of the Income Tax Act, 1961.

It has been submitted that notice was issued under Section 148 of the Income Tax Act on the basis of the object and mandate of Section 3 (1) of the Tax and Other Laws (Relaxation in Amendment of Certain Provisions) Act, 2020 (TOLA) and the notifications dated 31.03.2021 and 27.04.2021 issued by the CBDT under TOLA. Thus, the actions of the Assessing Officer are not arbitrary and there is no illegality involved in this case. Further, Hon'ble Supreme Court has already settled this issue in the case of *UOI vs. Ashish Agarwal and Ors.* in Civil Appeal No. 3005/2022 dated 04.05.2022.

(viii) The order u/s 148A (d) of the Act, disposing of the objections filed by the petitioner, was passed after giving due opportunity of being heard to the Assessee and thereafter, notice u/s 148 of the I.T Act was issued. Since there was no stay of any Court, the Assessment was completed u/s 147 of the IT Act on 31.05.2023.

(ix) The CBDT vide its Instruction no. 01/2022 dated 11.05.2022 has directed that the cases reopened u/s 147 of the Income Tax Act, 1961 shall be completed by 31.05.2023 in pursuance of the judgement of Hon'ble Supreme Court of India in Civil Appeal no. 3005/2022 in the case of *Uol vs. Ashish Agarwal and ors. (2022 SCC Online SC 543)*. It is a settled principles of law that if any notification is passed validly under an Act, then the notification also becomes an integral part of the said act.

The Income Tax Act has provided a strict time-line to complete the assessment or reassessment proceedings under Section 147 of the Income Tax Act, 1961, once initiated under Section 148 of the Income Tax Act, 1961. If the said proceedings are not completed within the stipulated time-line,

it will be barred by limitation. In view of above, there is no illegality in the assessment order passed u/s 147 of the Act.

8. Learned Sr. Standing Counsel for the revenue further submits that the petitioner is having alternative remedy of appeal and as such the instant writ application may be dismissed.

9. Having considered the rival submissions of learned counsel for the parties in the gamut of pleadings on record, it appears that the respondent no.3 has issued the impugned Reassessment Notice, dated 21.07.2022, u/s 148 of the I.T Act, 1961 pursuant to passing of the impugned order dated 21.07.2022, u/s 148A(d) of the I.T Act, 1961, for the alleged income, which has escaped assessment, amounting to Rs.39,21,450/- for the Assessment Year 2016-17.

For better appreciation of this case, it would be profitable to draw a chart showing limitation period for re-assessment proceedings as provided u/s Section 149 of the I.T Act, 1961.

Section	Period	Criteria
149(1)(a)	Within three years from the end of the relevant Assessment Year i.e. in this case AY 2016-17 - by 31.03.2020.	Normal case unless the case falls under 149(1)(b).
149(1)(b)	Beyond three years but within ten years from the end of the relevant Assessment Year i.e. in this case AY 2016-17 - by 31.03.2027	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— (i) an asset; (ii) expenditure in respect of a transaction or in relation to an event or occasion; or (iii) an entry or entries in the books of account which has escaped

		assessment amounts to or is likely to amount to fifty lakh rupees or more.
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10. By going through the aforesaid period of limitation coupled with the facts of this case it is evident that the notice dated 30.05.2022, under Section 148 A (b) of the Income Tax Act, 1961, clearly indicates that the alleged income, which has escaped assessment, is only Rs. 39,21,450/-.

Further, from the Impugned Order dated 21.07.2022, under Section 148 A (d) of the Income Tax Act, 1961, it is also evident that the alleged income, which has escaped assessment, is only Rs. 39,21,450/-.

As per Section 149 of the Income Tax Act, 1961, the limitation period for issuance of notice under Section 148 of the I.T Act, 1961 is normally three years from the end of the relevant assessment year (in this case A.Y 2016-17) and extendable beyond 3 years till 10 years provided the income which has escaped assessment is Rs. 50,00,000/- or more and the permission of the concerned authority is taken.

The three-year time period of A.Y 2016-17 had ended on 31.03.2020. Accordingly, the Impugned Notice, dated 21.07.2022, is beyond 3 years' time period. Further, the said notice is for alleged escaped income of Rs. 39,21,450/- which is less than Rs. 50,00,000/- and thus, the said notice cannot take the benefit of extended period of limitation which is beyond three years till ten years.

Thus, the Impugned Notice dated 21.07.2022, issued under Section 148, is barred by the limitation period prescribed under Section 149 of the Act.

11. Learned counsel for the revenue has relied upon the judgment of **M/s Godrej Sara Lee Ltd.** (*supra*) wherein the decision of Hon'ble Supreme court reported in **Whirlpool Corporation** (*supra*) has been quoted to carve out the exceptions on the existence whereof a Writ Court would be justified in entertaining a writ petition despite the party approaching it not having availed the alternative remedy provided by the statute.

If we peruse to the exception which has been carved out by the Hon'ble Apex Court in **Whirlpool Corporation** (*supra*), the instant writ application is maintainable as the order or the proceedings are wholly without jurisdiction, inasmuch as, notice under Section 148 of the I.T Act, 1961 is normally three years from the end of the relevant assessment year (in this case A.Y 2016-17) and extendable beyond 3 years till 10 years provided the income which has escaped assessment is Rs. 50,00,000/- or more and the permission of the concerned authority is taken and in the instant case it is evident from the notice dated 30.05.2022, under Section 148 A (b) of the Income Tax Act, 1961, which clearly indicates that the alleged income, which has escaped assessment, is only Rs. 39,21, 450/-. Even from the Impugned Order dated 21.07.2022, under Section 148 A (d) of the Income Tax Act, 1961, it is quite evident that the alleged income, which has escaped assessment, is only Rs. 39,21,450/-

12. Thus, we are having no hesitation in holding that the very initiation of reassessment proceeding is wholly without jurisdiction. At the cost of repetition, any notice under Section 148 of the I.T Act, 1961 is normally three years from the end of the relevant assessment year (in this case A.Y 2016-17) and extendable beyond 3 years till 10 years, provided the income which has escaped assessment is Rs. 50,00,000/- or more which is absent in the impugned Notices as indicated herein above.

13. Accordingly, the Impugned Notice dated 21.07.2022, issued under Section 148, is barred by the limitation period prescribed under Section 149 and is illegal, unsustainable and void *ab initio* and is liable to be set-aside and consequently, all subsequent actions/notice/orders are also liable to be quashed. Since the Impugned Reassessment Order, dated 31.05.2023, and the Notice of Demand, dated 31.05.2023, are consequential orders or demand pursuant to the Impugned Notice dated 21.07.2022 issued u/s 148 of the IT Act, 1961 are also liable to be quashed for the sole reason that the very initiation of reassessment proceeding is beyond jurisdiction.

It is a well-established principle of law that if the foundation of any proceeding is illegal and unsustainable in law, then all consequential proceedings or order are also bad in law.

Since the impugned notice dated 21.07.2022, u/s 148 of I.T Act, 1961, is illegal and unsustainable in law, accordingly, the Impugned Re-assessment order dated 31.05.2023 passed under Section 147 and the Notice of Demand dated 31.05.2023 issued under Section 156 of the I.T Act, 1961 are also bad in law and unsustainable and the same, is hereby, quashed and set aside.

14. Though the petitioner has also raised other grounds, we don't feel it necessary to adjudicate those grounds for the sole reason that we have already held that the very initiation of reassessment proceedings is bad in law and the same are quashed and set-aside.

15. As a result, the instant writ petition is allowed. Pending I.A., if any, is also closed.

(Rongon Mukhopadhyay, J.)

(Deepak Roshan, J.)