



IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 02.05.2025

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W.P.(C) 221/2023

**RATNAGIRI GAS AND POWER
PRIVATE LIMITED**

..... Petitioner

Versus

**ASSISTANT COMMISSIONER OF INCOME TAX
CIRCLE 19(1), DELHI & ORS.**

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Nischay Kantoor, Ms Soniya Dudeja &
Mr Sarthak Abrol, Advocates.

For the Respondents : Mr Sunil Agarwal, Mr Viplav Acharya, Ms
Priya Sarkar & Mr Utkarsh Tiwari,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

JUDGMENT

VIBHU BAKHRU, J.

1. The petitioner has filed the present petition under Article 226 of the Constitution of India, *inter alia*, impugning a notice dated 02.12.2022 [**impugned notice**] issued under Section 148 of the Income Tax Act, 1961 [**the Act**] in respect of the assessment year [**AY**] 2013-14. Essentially, the petitioner is aggrieved by the initiation of reassessment proceedings for AY 2013-14, which were commenced by issuance of a notice dated 24.05.2021 under Section 148 of the Act. The



said notice was subsequently deemed to be a notice under Section 148A(b) of the Act, in terms of the decision of the Supreme Court in *Union of India & Ors. v. Ashish Aggarwal*¹.

2. The petitioner also impugns the said notice as well as an order dated 02.12.2022 passed under Section 148A(d) of the Act, which was issued pursuant to the aforementioned notice dated 24.05.2021.

PREFATORY FACTS

3. The petitioner filed its return of income for AY 2013-14 on 29.11.2013, declaring a loss of ₹6,41,68,53,076/-. The petitioner's return of income was selected for scrutiny and the Assessing Officer [AO] issued a notice under Section 143(2) of the Act. The AO also issued further notices during the course of the assessment proceedings, which were duly responded to by the petitioner.

4. The assessment proceedings culminated in an assessment order dated 21.03.2016 passed under Section 143(3) of the Act.

5. Thereafter, on 03.02.2017, the AO issued a notice under Section 154 read with Section 155 of the Act, *inter alia*, stating that there was a mistake apparent from the record, which was proposed to be rectified, and the petitioner was afforded an opportunity to be heard in that regard. According to the AO, an amount of ₹6,29,00,000/-, which was debited from the profit and loss account under the head 'wages and salary' was inadmissible expenditure as it did not pertain to the current period and

¹ 2022 SCC OnLine SC 543



was a prior period expense. The petitioner responded to the said notice on 16.02.2017 and 23.02.2017, *inter alia*, claiming that the liability had crystalized during the financial year [FY] 2012-13 relevant to AY 2013-14 as the remuneration package of the employees of NTPC Limited, who were seconded to the petitioner, had been revised retrospectively with effect from 01.01.2007. The same had resulted in an extra cost, which although pertained to prior years was crystalized during the previous year relevant to AY 2013-14.

6. No adverse order was passed pursuant to the aforementioned notice dated 03.02.2017 issued under Section 154/155 of the Act. It is contended on behalf of the petitioner that it had received no further intimation with regard to the said proceedings.

7. On 24.05.2021, the AO issued a notice under Section 148 of the Act, under the regime as was in force prior to 31.03.2021 for re-assessment of income that had escaped assessment (Sections 147-151 of the Act).

8. The petitioner assailed the notice dated 24.05.2021 by filing a writ petition under Article 226 of the Constitution of India [being W.P.(C) 9553/2021], *inter alia*, contending that the said notice was invalid as the procedure as prescribed under Section 148A of the Act was not followed. The petitioner canvassed that it was impermissible to issue a notice after 31.03.2021 under the statutory regime that was in force prior to the said date. The Revenue sought to sustain the said notice on the basis of the provisions of the Taxation and Other Laws



(Relaxation and Amendment of Certain Provisions) Act, 2020 [TOLA] and the circulars issued by the Central Board of Direct Taxes [CBDT]. Several other such notices were also subject matter of challenge in various petitions filed before this court as well as various other High Courts.

9. In *Mon Mohan Kohli v. ACIT and Anr.*² and other connected matters, this court sustained the challenge to notices impugned in the said petitions, which were issued under Section 148 of the Act without complying with the provisions of Section 148A of the Act. Some of the other High Courts also took a similar view and struck down notices that were issued under Section 148 of the Act after 31.03.2021 but under the unamended provisions relating to the re-assessment of income that had escaped assessment.

10. The Revenue appealed the decisions rendered by various High Courts to the Supreme Court of India. In *Union of India & Ors. v. Ashish Agarwal*¹ – which was one of such appeals arising from the decision of the Allahabad High Court – the Supreme Court delivered its decision on 04.05.2022, whereby it concurred with the view that the amended provisions which came into force after 31.03.2021 would be applicable to notices issued thereafter. However, the Supreme Court also issued certain directions in exercise of its powers under Article 142 of the Constitution of India. The Court directed that all notices that were issued under Section 148 of the Act after 01.04.2021 till the date of the

² Neutral Citation No.: 2021:DHC:4181-DB



said decision (04.05.2022), including those that had been set aside by the High Courts, would be construed as show cause notices under Section 148A(b) of the Act. The Assessing Officers were directed to provide the information and material relied upon by the Revenue for issuance of such notices, to the respective assesseees within a period of thirty days from the date of the decision so as to enable the respective assesseees to respond to the same. The relevant extract of the said decision setting out the directions issued by the Court, is reproduced below:

“28. In view of the above and for the reasons stated above, the present Appeals are allowed in part. The impugned common judgments and orders passed by the High Court of Judicature at Allahabad in W.T. No. 524/2021 and other allied tax appeals/petitions, is/are hereby modified and substituted as under:

28.1. The impugned section 148 notices issued to the respective assesseees which were issued under unamended section 148 of the IT Act, which were the subject matter of writ petitions before the various respective High Courts shall be deemed to have been issued under section 148A of the IT Act as substituted by the Finance Act, 2021 and construed or treated to be show cause notices in terms of section 148A(b). The assessing officer shall, within thirty days from today provide to the respective assesseees information and material relied upon by the Revenue, so that the assesseees can reply to the show cause notices within two weeks thereafter.

28.2. The requirement of conducting any enquiry, if required, with the prior approval of specified authority under section 148A(a) is hereby 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 date, including those which have been quashed by the High Courts.

28.3. Even otherwise as observed hereinabove holding any enquiry with the prior approval of specified authority is not mandatory but it is for the concerned Assessing Officers to hold any enquiry, if required.

28.4. The assessing officers shall thereafter pass orders in terms of section 148A(d) in respect of each of the assessee concerned; Thereafter after following the procedure as required under section 148A may issue notice under section 148 (as substituted).

28.5. All defences which may be available to the assessee including those available under section 149 of the IT 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 to be available.”

11. In compliance with the aforesaid directions, on 30.05.2022, the AO provided the material on the basis of which the re-assessment proceedings were initiated.

12. The petitioner responded to the said notice by filing a reply on 13.06.2022, *inter alia*, contending that initiation of the said proceedings was barred by limitation by virtue of the first proviso to Section 149(1)(b) of the Act. The petitioner, thereafter, filed a further response on merits on 30.06.2022.

13. The AO disregarded the objections raised by the petitioner and on 25.07.2022 passed an order under Section 148A(d) of the Act, holding that it was a fit case for issuance of notice under Section 148 of



the Act. The said order was communicated to the petitioner along with the notice dated 25.07.2022 issued under Section 148 of the Act.

14. Aggrieved by the aforesaid order and notice dated 25.07.2022, the petitioner challenged the same by filing a writ petition [being W.P.(C) 13581/2022], *inter alia*, on the ground that the said order was passed without considering the petitioner's responses, which were furnished on 13.06.2022 and 30.06.2022.

15. The said writ petition was allowed by an order dated 10.10.2022. This Court set aside both the order and notice dated 25.07.2022, and directed the AO to pass a fresh order within a period of eight weeks from date.

16. Pursuant to the said directions, on 02.12.2022, the AO passed a fresh order under Section 148A(d) of the Act reiterating its view that it was a fit case for issuance of notice under Section 148 of the Act after approval of respondent no.2 [PCCIT].

SUBMISSIONS

17. Mr Kantoor, the learned counsel appearing for the petitioner has assailed the re-assessment proceedings on, *essentially*, three fronts. First, he submitted that the impugned proceedings are barred by limitation. He referred to the first proviso of Section 149(1)(b) of the Act and submitted that no notice under Section 148 of the Act could be issued under the said Section as was in force prior to 31.03.2021 as there was no failure on the part of the petitioner to fully and truly disclose all



material facts. Thus, the period of limitation within which re-assessment proceedings could be initiated was four years from the end of the relevant assessment year, which expired on 31.03.2018. He also referred to the decision of Karnataka High Court in *Azim Premji Trustee Company Pvt. Ltd. v. Deputy Commissioner of Income Tax Circle 4(1)(1) Bangalore and Ors.*³ in support of his contention. He also referred to the decision of this court in the case of *Brahm Datt v. Assistant Commissioner of Income Tax and Ors.*⁴ and on the strength of the said decisions contended that in cases where the period of limitation for reopening the assessment had expired, the subsequent statutory amendments could not be construed as permitting reopening of such concluded assessments unless provided expressly or by necessary intendment.

18. Second, he submitted that the proceedings under Section 148 of the Act could not be initiated during the pendency of the rectification proceedings. He also referred to the decision of the Supreme Court in *S.M. Overseas (P.) Ltd. v. Commissioner of Income Tax*⁵ in support of his contention.

19. Third, he submitted that there was no escapement of income as the expenditure, which was alleged to be prior period expenditure, was rightly booked during the previous year in question (FY 2012-13) as the same was crystalized during the said period.

³ Writ Petition No.15910/2022, decided on 28.10.2022

⁴ W.P.(C) 1109/2016, decided on 06.12.2018

⁵ (2023) 450 ITR 1 (SC)



REASONS AND CONCLUSION

20. The statutory regime for assessment or re-assessment of income that had escaped assessment under the Act was substantially amended with the substitution/amendment of provisions under Sections 147-151 of the Act by virtue of the Finance Act, 2021.

21. Section 149(1) of the Act as in force at the material time is out below:

“Time limit for notice.

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

- (a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);
- (b) 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:

Provided that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section, as they stood



immediately before the commencement of the Finance Act, 2021:

Provided further that the provisions of this sub-section shall not apply in a case, where a notice under section 153A, or section 153C read with section 153A, is required to be issued in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or before the 31st day of March, 2021:

Provided also that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (b) of section 148A or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded:

Provided also that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of section 148A is less than seven days, such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly.

Explanation.—For the purposes of clause (b) of this sub-section, “asset” shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.”

22. It is apparent from the above that the period for which assessments could be reopened was reduced to three years, except in



cases where the conditions as stipulated in Clause (b) of Section 149(1) of the Act were satisfied.

23. The finance minister in the Budget Speech for presenting the Budget for the year 2021-22 on 01.02.2021 had stated as under:

“Reduction in Time for Income Tax Proceedings

153. Honourable Speaker, presently, an assessment can be re-opened up to 6 years and in serious tax fraud cases for up to 10 years. As a result, taxpayers have to remain under uncertainty for a long time.

154. I therefore propose to reduce this time-limit for re-opening of assessment to 3 years from the present 6 years. In serious tax evasion cases too, only where there is evidence of concealment of income of ₹50 lakh or more in a year, can the assessment be re-opened up to 10 years. Even this reopening can be done only after the approval of the Principal Chief Commissioner, the highest level of the Income Tax Department.”

24. It is apparent from the above that the rationale for substituting Section 149(1) of the Act was to reduce the time period for reopening assessments from six years to three years, except in cases of serious tax evasion where there is evidence of concealment of income of ₹50 lakh or more. In such cases, it was proposed that the time limit for reopening the assessments would extend to ten years after approval of the PCCIT.

25. Thus, the first and foremost question to be addressed is whether the conditions as specified under Section 149(1)(b) of the Act are satisfied. As is apparent from the plain language of the said clause that, essentially, three conditions are required to be satisfied. First, that the



Assessing Officer has in his possession books of account or other documents or evidence, which reveal that the income chargeable to tax has escaped assessment. Second, that the said evidence is to the effect that the income chargeable to tax that has escaped assessment is represented in the form of an asset. And third, that the amount of income that has escaped assessment is or is likely to amount to ₹50 lakhs or more.

26. Explanation to Section 149(1) of the Act further explains that for the purposes of Clause (b) of Sub-section (1) of Section 149 of the Act, the expression ‘asset’ would include immovable property, being land or building or both, shares and securities, loans and advances and deposits in bank.

27. If we now examine the reasons for re-opening of the assessment as set out in the order passed under Section 148A(d) of the Act, we find that there is no evidence to support that the income, which has allegedly escaped assessment is represented in the form of an asset.

28. The suggestion that the petitioner’s income had escaped assessment is founded on the premise that the petitioner has booked expenses under the head ‘wages and salaries’, which are in excess of the expenses incurred during the relevant previous year (FY 2012-13). Note 21 to the Financial Statement for the said period furnished by the petitioner expressly indicates that an expenditure of ₹9.14 crores, which was debited to the account under the head Salaries and Wages, included ₹2.85 crores relating to the current year and ₹6.29 crores for the earlier



years based on a debit note issued from NTPC. The relevant extract of Note 21 to the final accounts for FY 2012-13 is set out below:

“Note No.21 to the Financial Statements

₹ in crore

For the period ended	31 st March 2013	31 st March 2012
EMPLOYEE BENEFITS EXPENSE		
Salaries and wages	29.75	16.49
Contribution to provident and other funds	1.48	16.49
Staff welfare expenses	1.85	2.57
Total	33.08	20.22

- Disclosures required by AS 15 in respect of provision made towards various employees benefits is made in Note No. 31.
- Expenditure of ₹9.14 crores has been debited to current year salary and wages which include ₹2.85 crores for current year and ₹6.29 crores for earlier years based on debit note from NTPC.”

29. There is no cavil that the petitioner had incurred expenditure of ₹9.14 crores. The only ground on which the AO believes that the petitioner’s income chargeable to tax for the relevant assessment year has escaped assessment is that the said expenditure includes expenditure, which is allocable to financial years prior to FY 2012-13. The account of salaries and wages is a nominal account. It is, thus, apparent that any expenditure incurred for the salaries and wages, irrespective of the years in which the same is incurred, would not be represented by any asset. Since the conditions as specified under Section 149(1)(b) of the Act are not satisfied, no notice under Section 148 of the Act could be issued after expiry of three years from the end of AY 2013-14, that is, after 31.03.2017.



30. In view of the above, it is not necessary to address the question whether reopening of assessment for AY 2013-14 is barred under the proviso to Section 149(1) of the Act. However, we consider it apposite to address the said question as well.

31. In cases where a notice under Section 148 of the Act can be issued under Section 149(1)(a) and (b) for any assessment year, beginning on or before 1st day of April, 2021, it would also be necessary to examine whether such a notice could be issued at ‘that time’. The First Proviso to Section 149(1) of the Act expressly provides that no notice under Section 148 of the Act shall be issued in case of the relevant assessment year beginning on or before 1st day of April, 2021, if such a notice could not be issued at that time on account of being beyond the time limit as specified under provisions of Clause (b) of Section 149(1) of the Act as it stood immediately prior to commencing of the Finance Act, 2021. Similarly, the second proviso provides that in cases where notices under Section 153A or 153C of the Act would not be issued in proceedings initiated in relation to a search under Section 132 of the Act or requisition made under Section 132A of the Act, the same could not be issued.

32. The First Proviso to Section 149 of the Act was further amended by the Finance Act, 2022. It is relevant to refer to the First Proviso as was substituted by virtue of the Finance Act, 2022. The same is set out below:

“Provided that no notice under section 148 shall be issued at any time in a case for the relevant assessment year



beginning on or before 1st day of April, 2021, if a notice under section 148 or section 153A or section 153C could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section or section 153A or section 153C, as the case may be, as they stood immediately before the commencement of the Finance Act, 2021.”

33. In the facts of the present case, the initiation of reassessment proceedings is not premised on any search conducted under Section 132 of the Act or requisitioned made under Section 132A of the Act. Thus, it would be relevant to examine whether a notice under Section 148 of the Act could have been issued for the reasons as communicated to the petitioner on 30.05.2022, pursuant to the directions issued by the Supreme Court in *Union of India & Ors. v. Ashish Agarwal*¹.

34. As stated earlier, the reason to believe that the petitioner’s income had escaped assessment is premised on the basis that prior period expenses had been booked by the petitioner in its account for the previous year for the financial year 2012-13.

35. For the purposes of the present petition, it would be relevant to refer to the first proviso to Section 147 of the Act as was in force prior to 01.04.2021. The relevant extract of the said Section is set out below:

“147. Income escaping assessment.—If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which



comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year):

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:

***”

36. As is clear from the plain language of the First Proviso to Section 147 of the Act as applicable at the material time that in cases where an assessment has been made under Section 143(3) of the Act, no action could be taken after expiry of four years from the end of the relevant assessment year unless the income chargeable to tax had escaped assessment for the reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment for that assessment year.

37. In the present case, the petitioner had expressly disclosed in its accounts, which were furnished in support of its return that the expenses booked under the head ‘wages and salaries’ included ₹6.29 crores on account of salaries and wages, which pertain to prior financial years.



Thus, no proceedings for initiation of reassessment could have been initiated under the provisions relating to reassessment that were in force prior to 01.04.2021 after expiry of four years from the end of the relevant assessment year.

38. In view of the above, even if reopening of assessment by issuance of notice under Section 148 of the Act is permissible under the main enactment of Section 149(1) of the Act, no such notice could be issued in the present case by virtue of the first proviso to Section 147(1) of the Act.

39. In view of the above, the question whether, in fact, the petitioner's income for the assessment year chargeable to tax for AY 2013-14 had escaped assessment, is not relevant. In either case, the initiation of reassessment proceedings is barred by limitation. However, we also find merit in the contention that in the facts of the present case, the petitioner's income chargeable to tax for AY 2013-14 had not escaped on account of the petitioner booking an amount of ₹6.29 crores pertaining to earlier years under the head 'wages and salaries'.

40. It is important to note the reasons for the petitioner to have booked the said expenditure for the FY 2012-13. The petitioner is a joint venture company formed by two public sector undertakings – GAIL and NTPC Limited. It has been explained that NTPC Ltd. had seconded certain employees to the petitioner and the expenses of their salaries and wages were incurred by the petitioner. It was explained that NTPC Ltd. had issued a circular revising the salaries of its employees



retrospectively. The said circular was communicated to the petitioner during the financial year relevant to assessment year in question [AY 2013-14]. Thus, although liability for payment of enhanced remuneration to the employees of NTPC who were seconded to the petitioner, pertaining to prior years, had crystalized during the previous year relevant to AY 2013-14, we find no infirmity with the petitioner debiting its profit and loss account with the said expenditure.

41. In view of the above, the impugned order dated 02.12.2022 passed under Section 148A(d) of the Act; the impugned notice dated 02.12.2022 issued under Section 148 of the Act; and the reassessment proceedings initiated pursuant to the impugned notice, are set aside.

42. The petition is allowed in the aforesaid terms.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 02, 2025

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