

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE RAVI MALIMATH,

CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE VISHAL MISHRA

ON THE 27th OF OCTOBER, 2022

WRIT PETITION No. 22734 of 2022

BETWEEN:-

HARINDER SINGH BEDI S/O SHRI TEJA SINGH BEDI, AGED ABOUT 48 YEARS, OCCUPATION: BUSINESS, R/O HN 6 YASHODA VIHAR, CHUNA BHATTI KOLAR ROAD BHOPAL (MADHYA PRADESH)

.....PETITIONER

(BY SHRI NAMAN NAGRATH – SENIOR ADVOCATE WITH SHRI MILIND SHARMA – ADVOCATE)

AND

1. UNION OF INDIA THROUGH REVENUE SECRETARY DEPARTMENT OF REVENUE MINISTRY OF FINANCE NORTH BLOCK NEW DELHI (DELHI)
2. CENTRAL BOARD OF DIRECT TAXES THROUGH ITS CHAIRMAN ADDRESS - NORTH BLOCK, NEW DELHI (DELHI)
3. PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX, MADHYA PRADESH AND CHHATTISGARH REGION R/O AAYAKAR BHAWAN, 48, ARERA HILLS, HOSHANGABAD ROAD, BHOPAL (MADHYA PRADESH)

4. **PRINCIPAL COMMISSIONER OF INCOME TAX 1 BHOPAL R/O AAYAKAR BHAWAN, 48, ARERA HILLS, HOSHANGABAD ROAD, BHOPAL (MADHYA PRADESH)**
5. **ASSISTANT COMMISSIONER OF INCOME TAX 1(1) BHOPAL R/O AAYAKAR BHAWAN, 48, ARERA HILLS, HOSHANGABAD ROAD, BHOPAL (MADHYA PRADESH)**

.....RESPONDENTS

(SHRI SANDEEP SHUKLA – ADVOCATE FOR RESPONDENT NO.1)

This petition coming on for admission this day, Hon'ble Shri Justice Vishal Mishra, passed the following:

ORDER

Present petition under Article 226 of the Constitution of India has been filed assailing notice dated 22.04.2021(Annexure P/3), CBDT Instructions dated 11.05.2022(Annexure P/7), order dated 19.07.2022 (Annexure P/11) passed Section 148(A)(d) of Income Tax Act, 1961 and notice dated 19.07.2022 (Annexure P/12) issued under Section 148 of the Income Tax Act, 1961 passed by the respondents/authorities on the ground that the same are in violation of the judgment dated 04.05.2022 passed by Hon'ble Supreme Court in the case of *Union of India and others vs. Ashish Agarwal* (Civil Appeal No.3005 of 2022).

2. It is submitted that the authorities have misinterpreted the judgment of Hon'ble Supreme Court and by way of colorable exercise of power issued the *ultra-vires* Instructions No.01 of 2022, thereby illegally extending the limitation for continuing reassessment proceedings under Sections 147 read with Section 148A, 148, 149 and 151 of the Income Tax Act, 1961. The petitioner seeks to challenge legality, validity and propriety of the notice dated 22.04.2021 issued under un-amended and

omitted section 148 of the Income Tax Act, 1961, order dated 19.07.2022 passed under Section 148 A (d) of the Income Tax Act, 1961 and consequential notice dated 19.07.2022 passed under Section 148 of the Income Tax Act, 1961.

3. A preliminary objection has been raised by the respondent No.1 with respect to maintainability of the writ petition against a show cause notice as a writ petition under Article 226 of the Constitution of India is not maintainable against a show cause notice.

4. It is argued by learned counsel appearing for the respondent No.1 that earlier assessment notice issued under Section 148 of the Income Tax Act, 1961 was subjected to challenge before the Hon'ble Supreme Court on the ground that the same is bad in law in view of the amendment made in the Finance Act, 2021, which has amended the Income Tax Act by introducing new provisions i.e. Sections 147 to 151 of the Income Tax Act, 1961 with effect from 01st of April, 2021. It is argued that the Hon'ble Supreme Court has allowed the appeals in part modifying the impugned orders to the extent that the notice issued under Section 148 of the Income Tax Act, 1961 may be deemed to have been issued under Section 148A of the Income Tax Act, 1961 as substituted by the Finance Act, 2021 and construed or treated to be a show cause notice in terms of Section 148 A(b) of the Income Tax Act, 1961 and granted 30 days' time to the Assessing Officer to provide the respective assessees information and material relied upon by the revenue so that the assessees can reply to the show cause notices within two weeks thereafter. It is contended that in view of the modified directions issued by Hon'ble Supreme Court in the aforesaid case, the authorities have again issued the impugned notices of assessment asking a response within 30 days from the petitioner. As far as contention of the petitioner that impugned orders/notices are

without jurisdiction as the same is hit by limitation, a remedy of challenging the same, even the question of limitation is available to the petitioner in terms of Section 246 of the Income Tax Act, 1961, wherein a provision of appeal is provided. The appellate authority can look into the legality and validity of the impugned notices as well as the orders issued by the authorities in terms of the modified directions issued by Hon'ble Supreme Court and, therefore, the present petition against the show cause notices is not maintainable in view of the judgment in the case of **Union of India Vs. Kunishetty Satyanarayan** reported in (2006) 12 SCC 28 for want of alternative efficacious remedy to the petitioner.

5. Learned counsel for the petitioner has vehemently opposed the aforesaid contentions and submits that the order passed by Hon'ble Supreme Court is misconstrued and misunderstood by the authorities. The Hon'ble Supreme Court has never condoned the delay in taking up assessment proceedings by the authorities. Admittedly, reassessment for the year 2014 – 15 is time barred and is hit by Section 149(1) of the Act wherein limitation for issuance of notice under section 148 of the Act is prescribed. Therefore, the impugned notices are *per se* illegal and are contrary to the provisions of limitation and the authorities were not within their jurisdiction to issue impugned notices. As the authorities are not having any jurisdiction to issue notice under Section 148 of the Act beyond the period of limitation, therefore, the present petition is maintainable.

6. Heard the learned counsel for the parties and perused the record.

7. From a perusal of the record, it is seen that a controversy came up before the Hon'ble Supreme Court in the case *Ashish Agarwal (supra)* wherein the Hon'ble Supreme Court has held as under:

“10. 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: -

- (i) The impugned section 148 notices issued to the respective assessee 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 assessee information and material relied upon by the Revenue, so that the assessee can reply to the show-cause notices within two weeks thereafter;*
- (ii) 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-a-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.*
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;
- (iii) The assessing officers shall thereafter pass orders in terms of section 148A(d) in respect of each of the concerned assessee; Thereafter after following the procedure as required under*

section 148A may issue notice under section 148 (as substituted);

(iv) 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. The present order shall be applicable PAN INDIA and all judgments and orders passed by different High Courts on the issue and under which similar notices which were issued after 01.04.2021 issued under section 148 of the Act are set aside and shall be governed by the present order and shall stand modified to the aforesaid extent. The present order is passed in exercise of powers under Article 142 of the Constitution of India so as to avoid any further appeals by the Revenue on the very issue by challenging similar judgments and orders, with a view not to burden this Court with approximately 9000 appeals. We also observe that present order shall also govern the pending writ petitions, pending before various High Courts in which similar notices under Section 148 of the Act issued after 01.04.2021 are under challenge.

12. The impugned common judgments and orders passed by the High Court of Allahabad and the similar judgments and orders passed by various High Courts, more particularly, the respective judgments and orders passed by the various High Courts particulars of which are mentioned hereinabove, shall stand modified/substituted to the aforesaid extent only.”

In terms of modified direction issued by the Hon'ble Supreme Court, the authorities have again issued the show cause notices to the petitioner.

8. The Section 246 of the Income Tax Act, 1961 provides an appeal. Therefore, the petitioner is having a remedy to challenge the order/notice by way of filing an appeal and the ground raised by him with respect to jurisdiction of the authorities can always be considered by the authorities. Even otherwise, a writ petition against a show cause notice is not maintainable in view of the law laid by Hon'ble Supreme Court in the case of **Kunishetty Satyanarayan** (supra). The Hon'ble Supreme Court while modifying the judgment has granted two weeks time to reply to show cause notice.

9. In view of the aforesaid, this Court refrains to interfere in the impugned orders/notices passed by the authorities as the same is issued in pursuance to judgments passed by the Hon'ble Supreme Court. The present petition is held to be not maintainable in view of the law laid down by the Hon'ble Supreme Court in the case of **Kunishetty Satyanarayan** (supra) and in view of availability of alternative efficacious remedy to the petitioner.

10. Accordingly, the petition is dismissed. However, a liberty is extended to the petitioner to avail such remedy as available under the law.

(RAVI MALIMATH)
CHIEF JUSTICE

(VISHAL MISHRA)
JUDGE

SJ

