

Himanshu Infratech Pvt Ltd vs Income Tax Officer & Ors on 2 December, 2022

Author: Rajiv Shakdher

Bench: Rajiv Shakdher

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 14326/2022 & CM Nos.43744-45/2022

HIMANSHU INFRATECH PVT LTD Petitioner
Through: Mr Rohit Jain and Mr Aniket D.
Agrawal, Advs.

versus

INCOME TAX OFFICER & ORS. Respondents
Through: Mr Abhishek Maratha, Sr. Standin
Counsel for Revenue.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

% 02.12.2022 [Physical Hearing/Hybrid Hearing (as per request)]

1. Allowed, subject to the petitioner filing legible copies of the annexures, at least three days before the next date of hearing. W.P.(C) 14326/2022 & CM No.43744/2022 [Application filed on behalf of the petitioner seeking interim relief]

2. This writ petition is directed against the notice dated 30.06.2021 issued under Section 148 of the Income Tax Act, 1961 [in short, "Act"]. 2.1 Besides this, challenge is also laid to the notice/letter dated 13.05.2022 issued under Section 148A(b) of the Act and the order dated 27.07.2022 issued under Section 148A(d) of the Act.

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2.2 In addition thereto, Instruction No.1 dated 11.05.2022

Central Board of Direct Taxes (CBDT)/respondent no.3 which, evidently, has been issued pursuant to the judgment of the Supreme Court rendered in Union of India v. Ashish Aggarwal (2022) 444 ITR 1 (SC), is also assailed. 2.3 There is an omnibus prayer as well. Via this prayer, vires of sections 147 and 148 of the Act is put under the scanner by invoking Article 14 of the Constitution.

3. Mr Rohit Jain, who appears on behalf of the petitioner, has drawn our attention to the notice dated 30.06.2021. [See Annexure A, page 101 of the case file].

3.1. It is Mr Jain's contention that although the said notice is dated 30.06.2021, it was dispatched on 16.07.2021. For this purpose, our attention is drawn to page 102 of the case file.

4. Therefore, in sum, it is Mr Jain's submission that the notice issued under Section 148 of the Act is time-barred, as it has been issued beyond the window available to the respondents/assessee i.e., between 01.04.2021 and 30.06.2021 as per the provisions of Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 [in short, "TOLA"].

5. We may also note that Mr Jain has submitted before us that since the assessment year (AY) under consideration is 2014-2015 and there was a complete disclosure of the purported escaped income; limitation, in the normal course, expired on 31.03.2018. That the transaction in issue, which concerned sale of shares of Taru Promoters Pvt. Ltd. to Peach Impex Pvt. Ltd., was disclosed in the financial statements of the petitioner. The veracity W.P.(C) 14326/2022 page 2 of 3 of this plea was sought to be established by referring to the notice issued to the petitioner under Section 133(6) of the Act dated 24.03.2021 and the reply, furnished qua the notice, which is dated 25.03.2021.[See Annexure 'G', page 145 and 150 of the case file].

6. In any event, according to Mr Jain, since, as noted above, the notice issued under Section 148 of the Act was served on the petitioner on 16.07.2021, the impugned proceedings are time-barred.

7. The record shows that on two previous occasions, i.e., 10.10.2022 and 21.11.2022, opportunity was given to Mr Maratha to obtain instructions. Obviously, no instructions have been received by Mr Maratha.

8. Issue notice.

8.1. Mr Abhishek Maratha accepts notice on behalf of the respondents (which includes CBDT/respondent no.3).

9. A counter-affidavit will be filed within three weeks from today. 9.1 Rejoinder thereto, if any, will be filed before the next date of hearing.

10. List the matter on 21.07.2023.

11. In the meanwhile, the impugned order dated 27.07.2022 and the reassessment proceedings concerning A.Y. 2014-2015 triggered by respondent no.1 shall remain stayed.

RAJIV SHAKDHER, J TARA VITASTA GANJU, J DECEMBER 2, 2022 aj [Click here to check corrigendum, if any](#) W.P.(C) 14326/2022 page 3 of 3