

GAHC010127032022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/7118/2022

BISWADIP GHOSH
S/O MRINAL KANTI GHOSH HAVING ITS RESIDENCE AT NEON ROAD
COLLEGE RAOD SILCHAR CACHAR-788004

VERSUS

UNION OF INDIA AND 3 ORS.
THROUGH THE SECRETARY MINISTRY OF FINANCE DEPTT. OF REVENUE,
HAVING ITS OFFICE AT THE CENTRAL SECRETARIAT NORTH BLOCK NEW
DELHI-110001

2:INCOME TAX OFFICER
W-1 SILCHAR
HAVING HIS OFFICE AT AAYKAR BHAWAN PWD ROAD
SILCHAR
ASSAM-788001

3:PRINCIPAL COMMISSIONER OF INCOME TAX
SHILLONG
HAVING HIS OFFICE AT AAYKAR BHAWAN MAHATMA GANDHI ROAD
SHILLONG MEGHALAYA-793001

4:NATIONAL FACELESS ASSESSMENT CENTRE. DELHI
HAVING ITS OFFICE AT 2ND FLOOR
JAWAHARLAL NEHRU STADIUM DELHI-11000

Advocate for the Petitioner : MR. A DAS

Advocate for the Respondent : ASSTT.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

21.11.2022

Heard Mr. D. Borah and Mr. A. Das, learned counsels for the petitioner. Also heard Mr. S.C. Keyal, learned counsel for all the respondents.

2. The petitioner has made a challenge to the Notice date 31.03.2021 issued under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as the "Act"), on the ground that the impugned notice had been issued beyond the statutory time limit, in terms of Section 148 and Section 149 read with Section 282(1)(c) and 282A of the Act along with 127A of the Income Tax Rules, 1962 (hereinafter referred to as the "Rules") with Section 3 and Section 13 of the Information Technology Act, 2000.

3. The petitioner's counsels submit that in view of Paragraph 10 of the judgement of the Apex Court in the case of ***Union of India & Others vs. Ashish Agarwal***, reported in ***AIR 2022 SC 2781*** and Paragraph 8.1 of the Instruction No.01/2022 dated 11.05.2022 issued by the Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, ITJ Section, the matter has to be sent back to the Assessing Officer to re-consider the matter.

4. Mr. S.C. Keyal, learned counsel for the respondents submits that he does not have any quarrel with the submission made by the counsels for the petitioner.

5. Paragraph 10 of the ***Ashish Agarwal (supra)*** and paragraph 8.1 of the Instruction No.01.2022 dated 11.05.2022 are reproduced below :

“**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 appeals/petitions, is/are hereby modified and substituted as under:

(i) 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;

(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-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.

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 Assesseees; 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 assesses including those available Under Section 149 of the IT Act and all rights and contentions which may be available to the concerned Assesseees and Revenue under the Finance Act, 2021 and in law shall continue to be available.”

“**8.1** The procedure required to be allowed by the Jurisdictional Assessing Officer/Assessing Officer, in compliance with the order of the Hon’ble Supreme Court, is as under :

- The extended reassessment notices are deemed to be show cause notices under clause (b) of section 148A of the Act in accordance with the judgment of Hon'ble Supreme Court. Therefore, all requirement of new law prior to that show cause notice shall be deemed to

have been complied with.

- The Assessing Officer shall exclude cases as per clarification in paragraph 7.1 above.
- Within 30 days i.e. by 2nd June 2022, the Assessing Officer shall provide to the assessee, in remaining cases, the information and material relied upon for issuance of extended reassessment notices.
- The assessee has two weeks to reply as to why a notice under section 148 of the Act should not be issued, on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year. The time period of two weeks shall be counted from the date of last communication of information and material by the Assessing Officer to the assessee.
- In view of the observation of Hon'ble Supreme Court that all the defences of the new law are available to the assessee, if assessee makes a request by making an application that more time be given to him to file reply to the show cause notice, then such a request shall be considered by the Assessing Officer on merit and time may be extended by the Assessing Officer as provided in clause (b) of new section 148A of the Act.
- After receiving the reply, the Assessing Officer shall decide on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148 of the Act. The Assessing Officer is required to pass an order under clause (d) of section 148A of the Act to that effect, with the prior approval of the specified authority of the new law. This order is required to be passed within one month from the end of the month in which the reply is received by him from the assessee. In case no such reply is furnished by the assessee, then the order is required to be passed within one month from the end of the month in which time or extended time allowed to furnish a reply expires.
- If it is a fit case to issue a notice under section 148 of the Act, the Assessing Officer shall serve on the assessee a notice under section 148 after obtaining the approval of the specified authority under Section 151 of the new law. The copy of the order passed under Clause (d) of section 148A shall also be served with the notice u/s 148.
- It is not a fit case to issue a notice under section 148 of the Act, the order passed under clause (d) of section 148A to that effect shall be served on the assessee."

6. For the reasons stated above, the impugned Notice 31.03.2022 issued by the respondent no.2 is hereby set aside. The matter is remanded back to the respondent no.2, to take a fresh decision, after following the judgment of the Apex Court in **Ashish Agarwal (supra)** and the Instruction No.01/2022 dated

11.05.2022, as indicated above.

7 The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant