

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "F", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
AND  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.2416/M/2023  
Assessment Year: 2013-14**

<b>M/s. Vardha Enterprises Private Limited,</b> 103, Shantivan 2A, Raheja Township, Malad (E), Mumbai-400097. <b>PAN: AACCV6065D</b>	Vs.	<b>Assistant Commissioner of Income Tax,</b> Central Circle-4(3), 1921, 19 <sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai-400021.
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Rakesh Joshi, C.A.  
Shri Tapan Doshi, A.R.

Revenue by : Shri Ankush Kapoor, CIT DR

Date of Hearing : 11.06.2024

Date of Pronouncement : 26.08.2024

**O R D E R**

**Per : Narender Kumar Choudhry, Judicial Member:**

This appeal has been preferred by the Assessee against the order dated 02.06.2023, impugned herein, passed by the Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2013-14.

**2.** In this case, the case of the Assessee was reopened by recording the reasons for reopening on the basis of search and survey action

carried out on 13.07.2020 u/s 132 of the Act by the investigation unit 4(3), Mumbai on the Triton group including the Assessee, wherein it was alleged that unaccounted transactions/payments have been made by the Assessee company to the two entities/persons namely Shri Ravindra Adsure and Shri Sandeep Puntambekar during the year under consideration.

**3.** Consequently the notice u/s 148 of the Act dated 29.06 2021 was issued. In response the Assessee filed its return of income on 03.09.2021 declaring total income of "Rs. Nil". Thereafter, statutory notices were issued, in response to which the Assessee filed its submissions and details.

**4.** On perusing the details/submissions, the Assessing Officer (AO) ultimately made the additions of Rs.13,25,000/- and Rs.2,00,000/- respectively on account of payments made to Shri Ravindra Adsure and Shri Sandeep Puntambekar, as unexplained expenditures u/s 69C of the Act and taxed the same u/s 115BBE of the Act.

**5.** The assessee, being aggrieved, challenged the aforesaid additions before the Ld. Commissioner, however could not get succeeded, as the Ld. Commissioner by dismissing the appeal of the Assessee affirmed the aforesaid additions. The Assessee, being aggrieved, is an appeal before us.

**6.** We have heard the parties and perused the material available on record. Admittedly, in the instant case, the case of the Assessee was reopened on the reason/ground that income amounting to Rs.15,25,000/- has escaped assessment for the A.Y. 2013-14 in the case of the Assessee, whereas CBDT by following the dictum of the Honorable Apex Court's judgment in the case of Union of India vs Ashish Agarwal (2022) 138 taxmann.com 64 (SC) has issued

instruction No.1/2022 dated 11.05.2022 wherein in para 7.1 has clarified/directed that **in case amount involved escaping the assessment is likely to be less than Rs.50 lakhs, then notices cannot be issued in a case for A.Y. 2013-14, 2014-15 & 2015-16 but a different procedure is required to be followed by the AO to comply with the Honorable supreme Court judgment, as prescribed in column No. 8.1 of the CBDT circular.** For the sake of brevity and ready reference, the procedure prescribed is reproduced herein below:

*“8.1 The procedure required to be followed by the Jurisdictional Assessing Offfeer/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 de 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 of the Act shall also be served with the notice u/s 148.*
- *If 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.”*

**7.** Admittedly, in this case, no such procedure referred to above has been followed by the AO. Even otherwise the Hon'ble Bombay High Court in the case of New India Assurance Company Limited Vs. ACIT 158 taxmann.com 367 and Godrej India Limited vs. ACIT 160 taxmann.com 13 after considering the Honorable Supreme Court decision in the case of Ashish Agarwal (supra), has been pleased to quash the notice issued u/s 148 of the Act for the A.Y. 2013-14 being beyond the period of limitation. As the instant case pertains to AY 2013-14 and therefore judgments (supra) are equally applicable to instant case.

**8.** Hence, on the aforesaid analyzations and respectfully following the dictum laid down by the Honorable Bombay High Court and the CBDT Circular (supra), we are inclined to quash the assessment order itself, hence the same is quashed.

**9.** As we have quashed the assessment order itself, hence we are inclined not to delve into the merits of the case, as the adjudication of the same would prove futile exercise

**10.** In the result, the appeal filed by the Assessee stands allowed.

**Order pronounced in the open court on 26.08.2024.**

**Sd/-  
(AMARJIT SINGH)  
ACCOUNTANT MEMBER**

**Sd/-  
(NARENDER KUMAR CHOUDHRY)  
JUDICIAL MEMBER**

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.