

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./I TA No.: 882/CHNY/2024

निर्धारण वर्ष/Assessment Year:2016-17

**M/s. Bakers Spices & Ingredients
Private Limited,**
8/26, Lakshmi Nagar, Phase II
Edayarpalayam, Coimbatore-641 025.
PAN: AAECB-6010-E

(अपीलार्थी/Appellant)

**The Deputy Commissioner
of Income Tax,**
Vs. Corporate Ward-1
Coimbatore.

(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/Assessee by

: Shri S.Sridhar, Advocate

प्रत्यर्थीकीओरसे/Revenue by

: Ms. R.Anita, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 10.09.2024

घोषणा की तारीख/Date of Pronouncement

: 12.09.2024

आदेश /O R D E R

Per Mahavir Singh, VP:

This appeal by the assessee is arising out of order No. ITBA/NFAC/S/250/2023-24/1060875538(1) dated 13.02.2024 passed by the Commissioner of Income Tax (Appeals), National Faceless Assessment Centre, Delhi. The assessment was framed by the Deputy Commissioner of Income Tax, National Faceless Assessment Centre (NFAC), Delhi, for the assessment year 2016-17 u/s. 147 r.w.s. 144B of

the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 26.03.2022.

2. The first issue in this appeal of the assessee is as regards to CIT(A), National Faceless Assessment Centre (NFAC) confirming action of the Assessing Officer in assuming jurisdiction u/s.147 r.w.s. 148 of the Act, as notice issued u/s.148 was time barred.

3. Brief facts are that the assessee company filed its return of income for relevant assessment year 2016-17 on 29.09.2016. Originally, the return was processed u/s.143(1) by CPC., Bengaluru dated 08.11.2016. Subsequently, notice u/s.148 of the Act was issued on 31.03.2021. In response to notice u/s.148 of the Act, the assessee did not file any return of income, but stated that original return filed u/s.139(1) of the Act may be treated as return filed u/s.148 of the Act and contended on merits that there was no transaction for an amount of Rs.57,71,871/- between the assessee company and Mr.Deepak Kumar Nanjyani, as addition made by the Assessing Officer and confirmed by the CIT(A). The learned counsel for the assessee first of all, challenged validity of reassessment notice issued u/s.148 of the Act by stating that notice u/s.148 was digitally signed on 31.03.2021, but dispatched on 01.04.2021. The learned counsel for the assessee drew our attention to the assessee's paper book at page 24 & 25, wherein he has enclosed

copy of notice issued u/s.148 of the Act, which is downloaded from ITBA Portal. Even, the Revenue has filed a detailed response and admitted that date and time of delivery of notice u/s.148 is 01.04.2021 at 01.30.13 AM. It means that notice was digitally signed on 31.03.2021, but on portal it was dispatched on 01.04.2021. At this point, the learned counsel for the assessee drew our attention to the decision of the Hon'ble Supreme Court in the case of Union of India Vs. Ashish Agarwal (2022) 444 ITR 1(SC), wherein the Hon'ble Supreme Court has laid down procedure and relevant principles in para 8 are as under:-

“8. However, at the same time, the judgments of the several High Courts would result in no reassessment proceedings at all, even if the same are permissible under the Finance Act, 2021 and as per substituted sections 147 to 151 of the IT Act. The Revenue cannot be made remediless and the object and purpose of reassessment proceedings cannot be frustrated. It is true that due to a bonafide mistake and in view of subsequent extension of time vide various notifications, the Revenue issued the impugned notices under section 148 after the amendment was enforced w.e.f. 1-4-2021, under the unamended section 148. In our view the same ought not to have been issued under the unamended Act and ought to have been issued under the substituted provisions of sections 147 to 151 of the IT Act as per the Finance Act, 2021. There appears to be genuine non-application of the amendments as the officers of the Revenue may have been under a bonafide belief that the amendments may not yet have been enforced. Therefore, we are of the opinion that some leeway must be shown in that regard which the High Courts could have done so. Therefore, instead of quashing and setting aside the reassessment notices issued under the unamended provision of IT Act, the High Courts ought to have passed an order construing the notices issued under unamended Act/unamended provision of the IT Act as those deemed to have been issued under section 148A of the IT Act as per the new provision section 148A and the Revenue ought to have been permitted to proceed further with the reassessment proceedings as per the substituted provisions of sections 147 to 151 of the IT Act as per the Finance Act, 2021, subject to compliance of all the procedural requirements and the defences, which may be available to the assessee under the substituted provisions of sections 147 to 151 of the IT Act and which may be available under the Finance Act, 2021 and in law. Therefore, we propose to modify the judgments and orders passed by the respective High Courts as under :-

(i) The respective impugned section 148 notices issued to the respective assessee shall be deemed to have been issued under section 148A of

the IT Act as substituted by the Finance Act, 2021 and treated to be show-cause notices in terms of section 148A(b). The respective assessing officers shall within thirty days from today provide to the assessee the information and material relied upon by the Revenue so that the assessee can reply to the notices within two weeks thereafter;

(ii) The requirement of conducting any enquiry with the prior approval of the specified authority under section 148A(a) be dispensed with as a one-time measure vis-a-vis those notices which have been issued under section 148 of the unamended Act from 1-4-2021 till date, including those which have been quashed by the High Courts;

(iii) The assessing officers shall thereafter pass an order in terms of section 148A(d) after following the due procedure as required under section 148A(b) in respect of each of the concerned assessee;

(iv) All the defences which may be available to the assessee under section 149 and/or which may be available under the Finance Act, 2021 and in law whatever rights are available to the Assessing Officer under the Finance Act, 2021 are kept open and/or shall continue to be available and;

(v) The present order shall substitute/modify respective judgments and orders passed by the respective High Courts quashing the similar notices issued under unamended section 148 of the IT Act irrespective of whether they have been assailed before this Court or not.”

4. The learned counsel for the assessee stated that the assessee's case falls under clause (iii) of para 8 of the order of the Hon'ble Supreme Court in the case of Union of India Vs. Ashish Agarwal cited supra. Further, he referred to the decision of the Hon'ble Delhi High Court in the case of Suman Jeet Agarwal Vs. ITO (2022) 143 taxmann.com 11 (Del), wherein the Hon'ble Delhi High Court has laid down certain principles, and disposed off the Writ Petition on new regime of reopening of assessment u/s.148 and 148A of the Act and laid down these principles in para 31.3 & 31.4 as under:-

“31. For the reasons and principles that we have laid down, we dispose of these Writ Petitions with the following directions:

31.1 Category 'A':

31.2 Category 'B':

31.3 Category 'C': The petitions challenging Notices falling under category 'C' which were digitally signed on 31st of March 2021, are disposed of with the direction to the JAOs to verify and determine the date and time of despatch as recorded in the ITBA portal in accordance with the law laid down in this judgment as the date of issuance. If the date and time of despatch recorded is on or after 1st of April, 2021, the Notices are to be considered as show-cause-notices under section 148A (b) as per the directions of the apex Court in the *Ashis Agarwal (supra)* judgment.

31.4 category 'D': The petitions challenging Notices falling under category 'D' which were only uploaded in the E-filing portal of the assesseees without any real time alert, are disposed of with the direction to the JAOs to determine the date and time when the assesseees viewed the Notices in the E-filing portal, as recorded in the ITBA portal and conclude such date as the date of issuance in accordance with the law laid down in this judgment. If such date of issuance is determined to be on or after 1st of April 2021, the Notices will be construed as issued under section 148A (b) of the Act of 1961 as per the *Ashish Agarwal (supra)* judgment."

5. The learned counsel for the assessee as well as Ld. DR agreed that the assessee's case falls under category 'C' and in term of decision of the Hon'ble Delhi High Court in the case of Shri Suman Jeet Agarwal Vs. ITO (supra), the matter can be restored back to the file of the Assessing Officer for following the procedure laid down in the decision of the Hon'ble Supreme Court in the case of Shri Ashish Agarwal (supra). We noted that the Hon'ble Supreme Court in the case of UOI Vs. Shri Ashish Agarwal (supra) has categorically held in para 8(iii) and 8(iv) of its order that the Assessing Officer shall consider the notices issued u/s.148 in term of section 148A of the Act as substituted by Finance Act, 2021 and treat the show-cause notices issued in term of section 148A(b) of the Act, and the Assessing Officer shall provide within 30 days the information and material relied upon by the Revenue, so that the assessee can reply to the notices within two weeks from the

date of receipt of the material. The rest of the procedure as mentioned in 8(ii), (iii) & (iv), the Assessing Officer will follow and accordingly decide the issue. However, as the Hon'ble Supreme Court has kept open all the defences, which may be available to the assessee u/s.149 and / or which may be available under Finance Act, 2021 and in law and whatever rights are available to the Assessing Officer under the Finance Act, 2021 are kept open. In term of above, we restore this jurisdictional issue back to the file of the Assessing Officer for de novo consideration.

6. Coming to the issue on merits, since both the parties have agreed that let the jurisdictional issue be first decided by the Assessing Officer, consequently, we restore this issue on merits also back to the file of the Assessing Officer, who will re-adjudicate the issue after hearing the assessee on merits.

7. In term of above, both the issues i.e., jurisdictional as well as on merits are restored back to the file of the Assessing Officer to decide afresh.

8. The appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 12th September, 2024

Sd/-

(मनोज कुमार अग्रवाल)
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)
(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated : 12-09-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त /CIT, Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF.