

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P (T) No. 1589 of 2022

With

W.P (T) No. 1596 of 2022

Tanuja Singh --- --- Petitioner [both cases]

Versus

1. Union of India through the Secretary, Ministry of Finance,
Department of Revenue, New Delhi
2. Central Board of Direct Taxes through its Chairman, New Delhi
3. The Assistant Commissioner of Income Tax, Circle-1, Dhanbad
--- --- Respondents [both cases]

CORAM: **Hon'ble Mr. Justice Aparesh Kumar Singh**

Hon'ble Mr. Justice Deepak Roshan

For the Petitioner: Mr. Sumeet Gadodia, Advocate

For the Resp.-Union of India: Mr. Gautam Kumar, C.G.S.C

For the Resp.-I.T Department: Mr. Rahul Lamba, Advocate

04 / 07.06.2022 In both the writ petitions, the impugned notices issued under unamended section 148 of Income Tax Act, 1961 are dated 31.03.2021. The assessment order passed under section 147 read with section 144 and section 144B of Income Tax Act consequent thereto on 29.03.2022 has been sought to be challenged through I.A. No. 4121/2022 and I.A. No. 4127/2022 in the respective writ petitions. In both the cases, as per the petitioner, notices were communicated on 06.04.2021 and 10.04.2021 respectively i.e. after 31.03.2021. Based on this fact, learned counsel for the petitioner has urged that the impugned notice under unamended section 148 of the Act is bad in law in view of amendment carried out by the Finance Act, 2021 bringing into force Section 148A which requires a preliminary enquiry before initiating reassessment proceedings. Since the impugned notice is bad in law, any assessment undertaken thereunder would necessarily be without jurisdiction and void.

2. Learned counsel for the petitioner has referred to the judgment rendered by the Apex Court dated May 04, 2022 in the case of **Union of India and others versus Ashish Agarwal** in Civil Appeal No. 3005/2022 and analogous Civil Appeals reported in [2022 SCC OnLine SC 543]. Learned counsel for the petitioner has relied upon the judgment rendered by the Madhya Pradesh High Court in Writ Petition No. 28293/2021 dated 03.03.2022 (Annexure-9 to both the writ petitions). It is submitted that the Division Bench of Madhya Pradesh High Court took note of the correspondence dated 24.02.2022 bearing letter no. 1002 issued by the Income Tax Officer-3 (1) of Bhopal which showed that the impugned notice dated 31.03.2021 was in fact sent to the said petitioner on 16.04.2021 through e-mail. Therefore, the Hon'ble Court held that the

impugned notice under unamended Section 148 issued after 01.04.2021, could not have been acted upon in view of amended section 148-A of Income Tax Act, 1961 brought into force with effect from 01.04.2021 to undertake reassessment proceedings without following the mandatory requirement of amended section 148-A of Income Tax Act.

3. Learned counsel for the Respondent Income Tax Department submits that reliance upon the judgment of the Apex Court to support the plea of invalidity of the proceedings initiated pursuant to the notice dated 31.03.2021, would not come to the rescue of the petitioner since the Apex Court in the case of **Ashish Agarwal (Supra)**, while exercising power under Article 142 of Constitution of India, held that all such notices under unamended section 148 of Income Tax Act issued by the Revenue after 01.04.2021 which were the subject matter of more than nine thousand writ petitions before the various High Courts would be deemed to be notices issued under amended section 148-A of Income Tax Act. The Apex Court while dispensing with the inquiry contemplated under section 148-A(a) of the Act with prior approval of the specified authority as a onetime measure, allowed the Assesseees to take all defences including those available under section 149 of the Act and all rights and contentions which may be available to the concerned Assesseees and Revenue under the Finance Act, 2021. Since the impugned notices in the present writ petitions are dated 31.03.2021 and there is nothing on record to show that they were issued after 31.03.2021 and on the contrary, the assessment order as also the impugned notices themselves shows that they were signed and issued on 31.03.2021, such a plea could not come to the aid of the petitioner. Since the assessment order has already been passed, petitioner should avail the remedy of appeal under the Income Tax Act, 1961.

4. Having heard learned counsel for the parties on the plea raised herein and in view of the assessment proceedings having been concluded pursuant to the notice dated 31.03.2021 issued upon the petitioner, we are of the considered view that the petitioner should avail the alternative remedy of appeal. Petitioner is at liberty to raise the instant plea as well before the Appellate Authority. Needless to say, the Appellate Authority shall examine the instant plea in accordance with law and after due inquiry on facts. Writ petitions are accordingly disposed of. I.A. No. 4121/2022 and I.A. No. 4127/2022 are closed.

(Aparesh Kumar Singh, J)