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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 11527/2022, C.M.No.34097/2022 & C.M.No.34098/2022

GANESH DASS KHANNA Petitioner

Through: Mr. Manu K Giri, Advocate.

versus

INCOME TAX OFFICER AND ANR Respondents

Through: Mr. Ruchir Bhatia, Sr. Standing
Counsel for the Revenue with Ms.
Mansie Jain, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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03.08.2022

C.M.No.34098/2022

Exemption allowed, subject to all just exceptions.

Accordingly, the application stands disposed of.

W.P.(C) No.11527/2022 & C.M.No.34097/2022

Present writ petition has been filed challenging the order passed under Section 148A(d) of the Income Tax Act, 1961 ('the Act') and the consequential notice issued under Section 148 of the Act dated 30th June, 2022 for the Assessment Year 2017-18.

Learned counsel for the Petitioner states that in the present case the finding of Respondent No.2, is that the amount of income escaping assessment in respect of Assessment Year 2017-18 is Rs.5,70,000/- which is

lesser than Rs.50,00,000/- and as the said Assessment Year is admittedly beyond the period of three years from the date of issue of notice dated 26th April, 2021 issued under Section 148 of the Act, the impugned subsequent notice dated 30th July, 2022 under Section 148 of the Act is time barred as per the provisions of Section 149 as amended by Finance Act, 2021.

Issue notice. Mr. Ruchir Bhatia, learned Senior Standing Counsel, accepts notice on behalf of the Respondent. He submits that the condition prescribed under Section 149(1)(b) of the Act need not be complied with in view of extension of timeline in pursuance to Notifications issued under Section 3(1) of TOLA.

However, learned counsel for the Petitioner states that the Supreme Court in ***Union of India & Ors. vs. Ashish Aggarwal (2022) 444 ITR 1 (SC)*** has held as under:-

“6.6. Substituted section 149 is the provision governing the time limit for issuance of notice under section 148 of the IT Act. The substituted section 149 of the IT Act has reduced the permissible time limit for issuance of such a notice to three years and only in exceptional cases ten years. It also provides further additional safeguards which were absent under the earlier regime pre-Finance Act, 2021.

7. Thus, the new provisions substituted by the Finance Act, 2021 being remedial and benevolent in nature and substituted with a specific aim and object to protect the rights and interest of the assessee as well as and the same being in public interest, the respective High Courts have rightly held that the benefit of new provisions shall be made available even in respect of the proceedings relating to past assessment years, provided section 148 notice has been issued on or after 1st April, 2021. We are in complete agreement with the view taken by the various High Courts in holding so.

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

(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.”

The Respondent is directed to file its counter affidavit within six weeks. Rejoinder affidavit, if any, be filed before the next date of hearing.

Though the Assessing Officer is permitted to pass the assessment order, yet it is directed that the same shall not be given effect to and shall be subject to further orders to be passed by this Court.

List on 28th November, 2022.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

AUGUST 03, 2022

Msh/KA