

CWP-18032-2022 (O&M)

KULWANT SINGH VS UNION OF INDIA AND OTHERS

Present:- Ms. Radhika Suri, Sr. Advocate with
Mr. Sidhant Suri, Advocate and
Ms. Vralika Bassi, Advocate for the petitioner.

Mr. Vaibhav Gupta, Junior Standing Counsel
for respondents No.2 and 3.

Challenge in the instant petition is to notice dated 13.04.2021 (Annexure P-1) pertaining to assessment year 2013-2014; notice dated 17.05.2022 (Annexure P-8) - treating the earlier notice to be under Clause (b) of Section 148-A of the Act; order dated 28.07.2022 (Annexure P-18) passed under Section 148-A(d) of the Income Tax Act 1961 and all consequential proceedings thereto.

Learned Senior counsel would submit that as per ratio laid down by the Apex Court in the cases of ***Union of India & others Vs. Ashish Agarwal*** decided on 04.05.2022 all defences including the defence under Section 149 of the Act were available to the assessee even if the notice under Section 148 was treated as a notice under Section 148-A of the Act.

It is argued that the proceedings pertaining to assessment year 2013-2014 are time barred by virtue of the proviso to Section 149 of the Income Tax Act.

The proviso to Section 149 specifically provides that no notice under Section 148 shall be issued if such notice could not have been issued at that time on account of being beyond the time limit specified under the provisions of Sub Section (1) (b) of the Section as it stood immediately before

the commencement of Finance Act 2021 as such in terms of proviso to Section 149 as amended w.e.f. 01.04.2021 since more than 06 years had elapsed from the end of assessment year 2013-2014 on 31.03.2020, the re-assessment notice for assessment year 2013-2014 could not be issued.

It is vehemently asserted that the initiation of proceedings by issuance of notice under Section 148 A (d) for assessment year 2013-2014 are wholly without jurisdiction and are time barred.

Further contended that the department is purportedly proceeding on the basis of CBDT instructions dated 11.05.2022 (Annexure P-7) which in turn proceed directly in the teeth of the dictum laid down by Hon'ble Supreme Court in *Ashish Agarwal (supra)* and on a clear misleading thereof. On such ground a challenge to such circular dated 11.05.2022 at Annexure P-7 has also been raised in the instant petition.

Notice of motion returnable for 13.12.2022.

Mr. Vaibhav Gupta, Junior Standing Counsel, accepts notice on behalf of respondents No.2 and 3 and waives service.

A complete copy of the writ paper-book already stands furnished.

Further proceedings in the matter shall be kept in abeyance till further orders.

(TEJINDER SINGH DHINDSA)
JUDGE

(DEEPAK MANCHANDA)
JUDGE

23.08.2022
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