

IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

ON THE 2nd OF SEPTEMBER, 2022

WRIT PETITION No. 18940 of 2022

Between:-

SYLPH TECHNOLOGIES LIMITED THROUGH ITS
AUTHORISED REPRESENTATIVE MS. VARSHA
INCHURKAR D/O LATE SHRI SHYAM KUMAR
INCHURKAR, AGE – 27 YEARS, OCCUPATION –
COMPANY SECRETARY, ADDRESS 22, PRESS
COMPLEX, A.B.ROAD, INDORE (MADHYA
PRADESH)

.....PETITIONER

*(BY SHRI P.M. CHOUDHARY, SENIOR ADVOCATE
ASSISTED BY SHRI ANAND PRABHAWALKAR,
ADVOCATE)*

AND

1. THE PRINCIPAL CHIEF COMMISSIONER OF INCOME
TAX (MP AND CG) GROUND FLOOR, AAYAKAR
BHAWAN 48, ARERA HILL, BHOPAL 462011
(MADHYA PRADESH)

2. INCOME TAX OFFICER 5(1) AAYAKAR BHAWAN,
OPPOSITE WHITE CHURCH, RESIDENCY AREA,
INDORE 452001 (MADHYA PRADESH)

.....RESPONDENTS

(BY MS. VEENA MANDLIK, ADVOCATE)

This petition coming on for admission this day, JUSTICE VIVEK RUSIA passed the following:

O R D E R

The petitioner has filed the present petition under Article 226 of the Constitution of India being aggrieved by the order dated 26.07.2022 passed by the Income Tax Officer 5(1), Indore under Section 148A (d) of the Income Tax Act, 1961 (in short the Act) in consequence to the order dated 04.05.2022 passed by the Hon'ble Apex Court, whereby the case of the petitioner is found to be fit for issuance of notice under Section 148 of the Act for the Assessment Year, 2013 – 2014.

02. The facts of the case in short are as under:-

2.1. The petitioner is a company registered under the provisions of the Companies Act, 1956 (now the Companies Act, 2013). The petitioner is a listed company on the Bombay Stock Exchange and is engaged in the business of IT, ITes and newspaper distribution. The petitioner had filed its return of income tax for the Financial Year, 2012 – 13 relevant to the Assessment Year, 2013 – 14 under Section 139 of the IT Act on 12.09.2013 i.e. within the time limits.

2.2. Respondent No.2 issued a notice dated 28.06.2021 to the petitioner under the unamended provisions of Section 148 of the Income Tax Act, which is now amended w.e.f. 01.04.2022, informing the petitioner that income for Financial Year, 2012 – 13 relevant to Assessment Year, 2013 – 14 has escaped assessment

within the meaning of Section 147 of the Act. The petitioner objected to the issuance of notice under Section 148 of the Act and being dissatisfied with the reply, Assessing Officer proceeded with the reassessment under Section 148(1) of the Act.

2.3. The Income Tax Department issued several notices to a large number of assesses under the unamended provisions of Section 148 of the Act after 01.04.2021 which led to the filing of a number of writ petitions before every High Court of this country, and finally, all the cases reached to the Apex Court. The Hon'ble Apex Court in the case of *Union of India v/s Ashish Agrawal* (Civil Appeal No.3005 of 2022) vide order dated 04.05.2022 disposed of all the writ petitions by holding that the impugned notice issued under Section 148 of the Act shall be deemed to have been issued under Section 148A of the Act as substituted by the Finance Act, 2021 and construed or treated to be a show-cause notice in terms of Section 148A (b) of the Act. The Central Board of Direct Tax (CBDT) issued Instruction No.1/2022 dated 11.05.2022 for implementation of the aforesaid judgment passed by the Apex Court.

2.4. In pursuant to the aforesaid judgment and the direction issued by the CBDT, respondent No.2 has issued a fresh notice dated 20.05.2022 under newly inserted Section 148 of the Act to the petitioner. The petitioner has submitted a reply to the aforesaid notice *inter alia* on the ground that assessment had become time-barred, hence, cannot be reopened. Vide impugned order dated

26.07.2022, respondent No.2 has rejected the objection and concluded that it is a fit case for issuance of notice under Section 148 of the Act for Assessment Year, 2013 – 14. Hence, the present writ petition before this Court.

03. Shri P.M. Choudhary, learned Senior Counsel appearing for the petitioner submits that the case of the petitioner is not liable to be reopened under Section 148 of the Act by virtue of proviso to Section 149(1)(b) of the Act. The learned authority has wrongly come to the conclusion that the petitioner / Company allotted ten lakh shares amounting to Rs.1,00,00,000/- to Shri Rajendra Verma on 22.03.2012 and shares were issued to him on 17.06.2022 for the Financial Year, 2012 – 13 relevant to Assessment Year, 2013 – 14. In order to bring the case within limitation, it has wrongly been treated the said transaction in the Assessment Year, 2013 – 14, whereas the transaction took place in the Financial Year, 2011 – 12 and admittedly, the said had become time-barred. Learned Senior Counsel further submits that the same issue came up for consideration before the various High Courts and the writ petitions have been entertained by giving interim protection.

04. Ms. Veena Mandlik, learned counsel appearing for the Income Tax Department submits that the order passed under Section 148A (d) of the Act is not liable to be challenged as it is only a preliminary order for taking a decision whether a notice under Section 148 of the Act can be issued or not ? At this stage, the issue of limitation is not liable to be examined. The aforesaid

order has been passed in compliance with the order passed by the Apex Court and the instruction issued by the CBDT which are not under challenge in this writ petition. After issuance of notice under Section 148 of the Act, the petitioner will get full opportunity to contest before the Assessing Authority, therefore, the writ petition is liable to be dismissed as premature.

05. We have heard learned counsel for the parties at length and perused the record.

06. Section 148 of the Act provides that before making the assessment, reassessment or re-computation under Section 147 of the Act and subject to the provisions of Section 148 of the Act, the Assessing Authority shall serve a notice on the assesses along with a copy of the order if required under Section 148(d) requiring him to furnish within such period as may be specified in such notice, a return of his income or income of other persons in respect of which he is assessable under the Act during the previous year corresponding to the relevant Assessment Year. As on today, the petitioner has been subjected to the proceeding under Section 148A of the Act only and after examining the income tax returns of the relevant year, the authority *prima facie* found that it is a fit case for taking up under Section 147 of the Act for the Assessment Year, 2013 – 14. Simultaneously, notices under Section 148A (d) of the Act have also been issued to Rajendra Kumar Verma and Smt. Jaya Jain for taking up the matter for issuance of notice under Section 148 of the Act. Income Tax Returns of present petitioner and other

two Rajendra Kumar Verma and Smt. Jaya Jain is liable to be examined for the purpose of reassessment as income has escaped assessment during that relevant year to the tune of Rs.1,00,00,000/-. The cases of all the above three are also liable to be examined together under Section 147 of the Act. So far as the time limit of notice as provided under Section 149 of the Act is concerned, the same is in respect of Section 148 of the Act and not for Section 148A of the Act. The petitioner is free to raise an objection about limitation in a proceeding initiated under Section 148 of the Act. As on today, the authorities have found it a fit case for issuance of notice under Section 148 of the Act in compliance of the direction issued by the Apex Court.

07. In paragraph – 10 of the judgment delivered in the case of *Ashish Agrawal (supra)*, the Apex Court has directed as under:-

“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/petitions is/are hereby modified and substituted as under:-

(i) The impugned section 148 notices issued to the respective assesseees which were issued under unamended section 148 of the IT Act, which was the subject matter of the writ petitions before various respective High Courts shall be deemed to have been issued under section 148A of the IT Act as substituted by the Finance Act, 2021 and construed or treated to be show-cause notices in terms of section 148A(b). The assessing officer shall, within thirty from today provide to the respective assessee' information and material replied upon by the Revenue, so that the assesseees

can reply to the show-cause notices within two weeks thereafter;

(ii) The requirement of conducting any enquiry, if required, with the prior approval of specified authority under section 148A(a) is hereby dispensed with as a one-time measure vis-a-vis those notices which have been issued under section 148 of the unamended Act from 01.04.2021 till date, including those which have been quashed by the High Courts.

Even otherwise as observed hereinabove holding any enquiry with the prior approval of specified authority is not mandatory but is for the concerned Assessing Officers to hold any enquiry if required;

(iii) The assessing officers shall thereafter pass orders in terms of section 148A(d) in respect of each of the concerned assessee; Thereafter 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 assessee including those available under section 149 of the IT Act and all the rights and contentions which may be available to the concerned assessee and Revenue under Finance Act, 2021 and in law shall continue to be available.

[Emphasis Supplied]

08. In sub-paragraph (iii), the Apex Court has held that the Assessing Officer shall thereafter pass an order in terms of Section 148A (d) in respect of all assessee; thereafter, after following the procedure as required under Section 148A of the Act may issue a notice under Section 148 (as substituted). It has also been observed that all the defences which may be available to the assessee including those available under Section 149 of the Act may be available to the concerned assessee and revenue under the Finance Act, 2021 shall continue to be available. Therefore, in compliance

of the aforesaid order, the Assessing Officer has passed an order under Section 148A of the Act which is not final adjudication but a preliminary order. The final proceedings are liable to be drawn under Section 148 of the Act, in which the petitioner will get the full opportunity to contest the matter.

In view of the above, the Writ Petition, being premature, is hereby dismissed.

No order as to costs.

(VIVEK RUSIA)
J U D G E

(AMAR NATH (KESHARWANI))
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