

Court No. - 39

Case :- WRIT TAX No. - 1238 of 2022

Petitioner :- M/S Arvind Kumar Shivhare

Respondent :- Union Of India And Another

Counsel for Petitioner :- Puneet Arun

Counsel for Respondent :- A.S.G.I.,Anant Kumar Tiwari,Gaurav Mahajan,Manu Ghildyal

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Donadi Ramesh,J.

1. Heard Sri Puneet Arun, learned counsel for the petitioner; Sri Manu Ghildyal, learned counsel for the revenue and Sri Anant Kumar Tiwari, learned counsel for the Union of India.

2. Present writ petition has been filed to assail the re-assessment proceedings initiated in the case of the petitioner for A.Y. 2017-18 under Section 147 read with Section 148 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'), vide re-assessment notice dated 30.07.2022.

3. Upon hearing learned counsel for the parties and perusal of record, it is undisputed, the petitioner was originally assessed to tax under Section 143(3) of the Act for A.Y. 2017-18, vide assessment order dated 29.05.2019. Thereafter, the petitioner received a re-assessment notice dated 31.03.2021 issued under Section 148 of the Act for A.Y. 2017-18. The petitioner participated in the re-assessment proceedings. Consequently, re-assessment order dated 28.03.2022 was passed by the Assessing Authority. The petitioner did not assail the same. Therefore, it attained finality.

4. Without any challenge raised by the petitioner to the re-assessment order and that order not set aside by any authority or Court, the petitioner has been visited with second re-assessment notice for A.Y. 2017-18 dated 30.07.2022. On this occasion, the Assessing Authority has invoked Section 148-A of the Act. Hence the challenge.

5. The objection raised by learned counsel for the revenue is, since the re-assessment notice 31.03.2021 was digitally signed on 01.04.2021, by virtue of the law declared by the Supreme Court in **Civil Appeal No. 3005 of 2022 (Union of India & Ors. Vs. Ashish Agarwal)**, decided on 04.05.2022, the Revenue Authorities have taken a view that the notice dated 31.03.2021 wrongly acted upon. That notice having been digitally signed on 01.04.2021 the day when the amended law that introduced Section 148-A of the Act after making amendment to Section 147 and 148 of the Act came into force, the entire proceedings culminating in the re-assessment order dated 28.03.2022 were vitiated.

6. However, it could not be disputed that neither the petitioner challenged that reassessment order nor that order was revised by the Commissioner nor there was any declaration made by the Supreme Court *in rem* to annul or in all assessment orders other than those that may have been specifically under challenge in the proceedings before the Supreme Court.

7. Since in the present case, re-assessment order had already been passed on 28.03.2022, there was no proceeding pending as may have been influenced or affected or governed by the subsequent order of Supreme Court dated 04.05.2022.

8. It is fundamental, there may exist one assessment order for an assessee for one assessment year. In absence of any declaration of law to annul or set aside the pre-existing re-assessment order dated 28.03.2022, we find no jurisdiction existing with the Assessing Authority to again re-issue the impugned notice. The proceedings are wholly without jurisdiction and a nullity.

9. Accordingly, the re-assessment proceedings initiated in the case of the petitioner for A.Y. 2017-18 under Section 147 read

with Section 148 of the Act, vide re-assessment notice dated 30.07.2022 is quashed. The present writ petition is **allowed**. No order as to cost.

Order Date :- 4.4.2024

Abhilash

(Donadi Ramesh, J.) (S. D. Singh, J.)