
Section 148: Directions in Ashish Agarwal not universally applicable

Preface:

1. The Delhi High Court in **Anindita Sengupta vs. ACIT: 2024: DHC: 2475-DB/ 161 taxmann.com 39** has interpreted the scope of applicability of the directions issued by Apex Court by invoking Article 142 of the Constitution in the case of UOI vs. Ashish Agarwal [2022] 444 ITR 1 (SC).

Facts and background:

2. In this case, the assessee received a notice dated 31.03.2021 u/s 148 of the Income-Tax Act, 1961 (“the Act”) for assessment year (AY) 2013-14. The said notice, although issued on 01.04.2021, was issued under the old re-assessment scheme as prevailing prior to the amendment brought in by the Finance Act, 2021 (in short “2021 Amendment”), instead of the amended scheme. The assessee did not challenge the 148 notice and the assessment proceedings were completed on 28.03.2022.
3. Subsequently, the Apex Court in batch of cases titled *Ashish Agarwal (supra)* invoking Article 142 of the Indian Constitution, inter-alia, directed that reassessment notices issued between 01.04.2021 and 30.06.2021 under the old reassessment regime are to be treated as show-cause notices u/s 148A(b) of the Act.
4. Despite assessment having been concluded on 28.03.2022, the Assessing Officer (AO), in pursuance with apex Court directions in *Ashish Agarwal (supra)*, issued letter dated 30.05.2022 deeming the earlier notice u/s 148 to be a notice u/s 148A (b), which was followed by an order dated 19.07.2022 u/s 148A (d) and a fresh notice dated 20.07.2022 u/s 148 of the Act.
5. Assessee challenged the re-initiation of re-assessment proceedings before the Delhi High Court primarily on the ground that concluded re-assessment proceedings could not have been re-initiated and that the directions issued in *Ashish Agarwal (supra)* are not applicable in its case.

Decision of the High Court:

6. The principal question thus raised before the Court was whether the directions issued in *Ashish Agarwal* should be treated as commanding the AO to reopen concluded re-assessment proceedings.

7. The Delhi High Court, while explaining the principles laid down in *Ashish Agarwal (supra)*, observed that:
- (i) the Apex Court, while confirming the view taken by High Courts, held that post 2021 Amendment, notices could have only been issued in terms of the substituted re-assessment provision under section 148A of the Act;
 - (ii) the assessee derived right to assail the initiation of re-assessment proceeding on jurisdictional grounds by preferring legal objections and taking advantage of the beneficial procedure incorporated by virtue of section 148A; and
 - (iii) the directions issued in *Ashish Agarwal (supra)* have to be confined to matters where notices u/s 148 were issued, but re-assessment order was not passed.
8. The High Court further held that the decision in *Ashish Agarwal (supra)* neither intended nor mandated the concluded re-assessment proceedings to be re-opened for the following reasons:
- (i) The decision of *Ashish Agarwal (supra)* was principally concerned with incorrect issuance of notices under section 148 of the Act;
 - (ii) None of the judgments impugned before the apex Court in the batch of *Ashish Agarwal (supra)* dealt with a situation where re-assessment proceedings were concluded;
 - (iii) The assessee never questioned the validity of old notice u/s 148. The Constitution Bench of Apex Court in the case of **High Court Bar Association, Allahabad vs. State of U.P 2024 SCC OnLine SC 207** held that directions under Article 142 of Constitution cannot be made applicable to parties/ litigants that were not parties before the Apex Court in the matter wherein such directions are issued.

VA Comments:

9. The said decision by Delhi High Court comes as a huge relief to the class of taxpayers who decided not to litigate the old notices and their re-assessment proceedings stood concluded inasmuch as the said class shall be saved from the burden of going through another round of re-assessment proceedings on misplaced application of directions issued in *Ashish Agarwal (supra)*.
10. An interesting issue having wide-spread ramification that, however, remains to be considered regarding the application of directions issued in *Ashish Agarwal (supra)* to another class of assessee, who may have litigated the original 148 notices before the High Court(s) in the first round, but were not party before the Apex Court in the *Ashish Agarwal (supra)* batch of matters – *whether the said class of taxpayers can challenge the second round of re-assessment proceedings on the ground that directions issued in Ashish Agarwal (supra) under Article 142 of Indian Constitution are not applicable to them?*

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