

**HIGH COURT OF DELHI****Bench: Hon'ble Mr. Justice Yashwant Varma, Hon'ble Mr. Justice Purushaindra Kumar Kaurav****Date of Decision: 1<sup>st</sup> May 2024**

W.P.(C) 14354/2022

**AKSHITA JINDAL ...PETITIONER****VERSUS****INCOME TAX OFFICER WARD 54(1) DELHI & ORS ...RESPONDENT(S)****Legislation:**

Income Tax Act, 1961 – Sections 148, 148A(b), 148A(d), 147, 144A(b), 144B, 142(1), 271(1)(c), 234A, 234B, 234C

**Subject:** Challenging the validity of proceedings initiated under Section 148 of the Income Tax Act, 1961 for reassessment for the Assessment Year 2015-16, post a previously concluded assessment based on the Supreme Court's decision in Union of India v. Ashish Agarwal.**Headnotes:**

Income Tax – Reassessment under Section 148 – Examination of legality of notices issued under Sections 148A(b) and 148A(d), and Section 148 post-final assessment order – Initially, reassessment notice issued on 31 March 2021, followed by an assessment order on 31 March 2022 imposing additional income based on alleged penny stock transactions – Subsequent notices on 1 June 2022 and 16 July 2022 challenging under reassessment terms based on SC decision in Ashish Agarwal – Held, notices and subsequent order under Section 148A(d) quashed as invalid due to lack of new information or grounds and reassessment proceedings were already concluded – No authority under Ashish Agarwal to reopen concluded assessments – Relied on Anindita Sengupta v. ACIT for confined application of Ashish Agarwal decision to ongoing proceedings without finality. Petit Allowed. [Paras 1-21]

**Referred Cases:**

- Union of India v. Ashish Agarwal 2022 SCC Online SC 543
- Cadence Builders and Construction Private Limited v. Income Tax Officer & Anr. [W.P.(C) 979/2023]
- Anindita Sengupta v. Assistant Commissioner of Income Tax, Circle 61(1) New Delhi & Ors.

**Representing Advocates:**

For petitioner: Dr. Rakesh Gupta, Mr. Somil Agarwal, Mr. Dushyant Agrawal &amp; Mr. Prateek Bhati, Advs.

For respondent: Mr. Shubhendu Bhattacharyya, JSC for Mr. Kunal Sharma, SSC.

**J U D G M E N T**

**PURUSHAINDRA KUMAR KAURAV, J.**

1. In the present writ petition, we are called upon to examine the validity of proceedings initiated under Section 148 of the Income Tax Act, 1961 [**“Act”**] on the strength of the decision of the Supreme Court in the case of **Union of India v. Ashish Agarwal**<sup>1</sup> for reassessment in the case of an already concluded assessment.
2. The petitioner, by way of the captioned petition, impugns the notice dated 1 June 2022 issued under Section 148A(b), the consequential order dated 16 July 2022 passed under Section 148A(d) and the notice dated 16 July 2022 issued under Section 148 of the Act for the Assessment Year [**“AY”**] 2015-16.
3. The factual background, prior to the impugned proceedings, would exhibit that a notice under Section 148 of the Act was issued to the petitioner on 31 March 2021 for the same AY. In response to the said notice, the petitioner filed her Income Tax Return [**“ITR”**] on 14 January 2022 declaring a total income of ₹31,370/-. Subsequently, various notices were issued under Section 142(1) of the Act and the same were duly replied by the petitioner.
4. On 31 March 2022, an assessment order under Section 147 read with Section 144A(b) of the Act was passed by the National Faceless Assessment Centre, Delhi [**“NFAC”**], whereby, an addition of ₹6,54,78,799/- was made to the income of the petitioner on account of alleged accommodation entry through penny stock of one Achal Investment Ltd. Being aggrieved by the said assessment order, the petitioner preferred an appeal before the Commissioner of Income Tax (Appeals) [**“CIT(A)”**], NFAC, which is pending for disposal till date.
5. Notwithstanding the aforesaid assessment order having already been passed, a show cause notice under Section 148A(b) of the Act was issued to the petitioner on 1 June 2022. The said notice was duly replied by the petitioner on 3 June 2022 and 11 June 2022, *inter alia* informing that the notice under Section 148 of the Act had already been issued earlier on 31 March 2021 and an assessment order thereto had already been passed by the respondents and thus, no fresh proceedings are justified. However, on 16 July 2022, an order under Section 148A(d) of the Act came to be passed alleging an escapement of income of ₹65,47,78,967/- as against the alleged escaped amount of ₹6,54,78,799/-, which was originally reflected in the show

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<sup>1</sup> (2023) 1 SCC 617

- cause notice. On the even date, a notice under Section 148 of the Act was also purportedly issued to the petitioner with an intimation letter for the concerned AY.
6. Dr. Rakesh Gupta, learned counsel appearing on behalf of the petitioner, submitted that the assessing officer [“**AO**”] has erroneously assumed jurisdiction under Section 147 of the Act, despite becoming *functus officio*, in issuing the impugned notices as the alleged escaped income had already been assessed to tax for the same AY *vide* assessment order dated 31 March 2022. He, therefore, contended that in the absence of compliance with the jurisdictional conditions stipulated under Sections 147 to 151A of the Act, the impugned notices and the order are bad in law and thus, liable to be quashed.
  7. While inviting our attention to the assessment order dated 31 March 2022 in juxtaposition with the impugned order dated 16 July 2022, learned counsel contended that the reassessment proceedings of already concluded reassessment is sought to be carried out based on the observation of the Supreme Court in the case of *Ashish Agarwal (supra)*. According to him, the observations in the case of *Ashish Agarwal (supra)* does not confer any authority on the respondents to reopen the reassessment proceedings which had already attained finality.
  8. Learned counsel placed reliance on the decision dated 3 February 2023 of this Court in the case of **Cadence Builders and Construction Private Limited v. Income Tax Officer & Anr.** [W.P.(C) 979/2023] to substantiate his arguments.
  9. On the contrary, Mr. Shubhendu Bhattacharyya, learned counsel appearing on behalf of the respondents submitted that the notice dated 31 March 2021 under Section 148 of the Act, came to be digitally signed and issued only on 1 April 2021 and therefore, in terms of the judgment rendered in *Ashish Agarwal (supra)*, it was deemed to be a show cause notice under Section 148(A)(b) of the Act. According to him, the said notice has to be construed in the aforementioned terms irrespective of the stage of assessment proceedings following the issuance of notice.
  10. He further contended that since the proceedings were to start afresh, the impugned notice under Section 148A(b) was accordingly issued on 1 June 2022 and the information relied upon by the respondents was provided to the petitioner. He also submitted that the impugned order under Section 148A(d) was passed after duly obtaining approval from the specified authority and thus, it does not suffer from any legal or procedural infirmity. With regard to the discrepancy in the alleged escaped amount mentioned in the impugned

order and show cause notice, it was urged that the same was a typographical error and the income escaping assessment is ₹6,54,78,799/- only.

11. We have heard the learned counsel appearing on behalf of the parties and perused the record.
12. The solitary grievance of the petitioner requires adjudication on the touchstone of the decision of the Supreme Court in the case of *Ashish Agarwal (supra)* i.e., whether the respondents, under the facts of the present case, are legally justified in reinitiating assessment proceedings for the same AY, which had already been subjected to reassessment.
13. A bare perusal of the facts would show that the initial notice for reassessment dated 31 March 2021, was purportedly issued on 1 April 2021 requiring the petitioner to file her ITR. The concerned notice is reproduced as under:-

**“Notice Under Section 148 Of The Income Tax Act, 1961**

Sir/Madam/ M/s,

Whereas I have reasons to believe that your Income chargeable to Tax for the Assessment Year **2015-16** has escaped Assessment within the meaning of section 147 of the Income Tax Act, 1961.

I, therefore, propose to assess/re-assess the income/ loss for the said Assessment Year and I hereby require you to deliver to me within **30** days from the service of this notice, a return in the prescribed form for the said Assessment Year.

This notice is being issued after obtaining the necessary satisfaction of the  
RANGE 52, DELHI”

14. Pursuant to the aforesaid notice, a final assessment order dated 31 March 2022 under Section 147 read with Section 144B of the Act was passed and which is culled out hereinbelow:-

**“ASSESSMENT ORDER**

**Assessment Order u/s 147 r.w.s.144B of the Income Tax Act, 1961**

1. The case of the assessee was transferred from the ITO, WARD 54(1), DELHI/ to NaFAC on 08/12/2021.
2. Reasons recorded u/s 148(2) (placed on record) before issuance of notice u/s 148(1) of I.T. Act, 1961 are,  
**"Assessee has taken accomodation entry of Rs. 65478799/- through the Penny Stock of Achal Investment Ltd.**

1. The Modus Operandi (MO) of the whole operation is as follows-

For converting Black money into white many accommodation entry operators are working in the market. It is to be noted that these entry operators in connivance with brokers enter into transactions in shares of listed companies for providing accommodation entries to

various beneficiaries. Two kinds of accommodation entries are taken through these transactions-

- a. Long Term Capital Gain
- b. Short Term Capital Loss

In case of Long Term Capital Gain the shares of an unlisted company are allotted to the beneficiary through off-market transactions at a very low rate then this/company merges with the identified listed companies. In this way shares of listed companies are transferred to the beneficiary through offmarket transactions. Thereafter, listed company splits its shares. In this way beneficiary gets many shares of the listed company. Listed company may further issue bonus shares to the beneficiary. After this price of shares are jacked up by convoluted transactions by a limited number of persons. When price of shares reach an optimum level, information is passed on to the beneficiaries to sell the shares. These shares sold by the beneficiary are actually purchased by pre-identified persons/companies. These preidentified companies/persons are of two kinds- One, they are persons who are having huge profit during the year on which they do not want to pay tax. These persons purchase shares by cash which has been moved to them through many intermediaries from the first beneficiary. In this way the first beneficiary has converted his untaxed income into white income as LTCG is non-taxable if Securities Transaction Tax is paid on it. After this share prices are again decreased artificially through convoluted transactions by these intermediaries/brokers. Once, the share prices have decreased to an optimum level, information is passed on to Beneficiaries of second type who sell shares to suffer short term capital loss. This beneficiary then sets off the loss with profit earned thereby saving on the

1. Assessee has not filed ITR.
2. Based on the facts noted in previous paras, I am satisfied that Income of the Assessee to the tune of at least Rs. 65478799/- has escaped Assessment on account of failure on part of the Assessee to disclose fully and truly all material facts/particulars there of."
3. Statutory notice u/s 148 of the Act was issued on 31/03/2021 to which the assessee had replied on 17/01/2022 that return has been filed at total income of Rs. 31,370/- on 14/01/2022, however no such return is present on e-filing website of the Department against the PAN of the assessee.
4. Subsequently statutory notices u/s 142(1) of the Income Tax Act, 1961 were issued on 21/11/2021 and 29/12/2022 to which the assessee filed replies on 05/01/2022, 17/01/2022, 01/03/2022 and 17/03/2022 along with computation of income and HDFC Bank Statement and has stated that no business activity was carried during the year under consideration.
5. The replies and supporting documents of the assessee have been perused. The returned income as per the ROI copy filed u/s 148 provided by the assessee is not commensurate with the credible information available with the Department that the assessee has taken accommodation entry of Rs. 65478799/- through the Penny Stock of Achal Investment Ltd. During A Y 2015-16.

6. A Show Cause Notice along with draft assessment order was issued to the assessee on 30/03/2022 for compliance by 31/03/2022 but assessee has failed to reply to this notice.

7. Therefore, this amount of Rs. 65478799/- is added back to the income of the assessee for the A Y 2015-16.

8. In view of the above facts and discussion,  
Returned income for AY 2015-16 as per the ROI copy provided by the assessee = Rs. 31,370/- Addition = Rs. 65478799/- Revised income: Rs. 6,55,10,169/-

9. Penalty u/s 271(1)(c) is initiated for concealment of income for AY 2015-16.

Issue demand notice and challan

Charge interest u/s 234A, 234B and 234C as applicable.”

15. It is seen from the aforesaid assessment order that an addition to the tune of ₹6,54,78,799/- was made on the basis of the penny stock of Achal Investment Ltd. which allegedly escaped assessment and consequently, it enhanced the income of the petitioner to an amount of ₹6,55,10,169/-.

16. As is evident from the given facts, the respondents have issued notice under Section 148A(b) of the Act on the premise that the judgment in *Ashish Agarwal (supra)* requires all notices issued under Section 148 of the Act between the period commencing from 01 April 2021 and ending on 30 June 2021 to be treated as show cause notices referable to Section 148A(b) of the Act. However, the said notice fails to consider that the final order had already been passed in the reassessment proceedings *qua* the petitioner on the same alleged escapement of income. For the sake of clarity, the notice issued under Section 148A(b) of the Act is reproduced as under:-

“**Sir/ Madam/ M/s,**

**Subject: Subsequent proceedings with reference to section 148A(b) in consequence to Hon'ble SC Order dated 04.05.2022 - Letter**

In reference to the above, Hon'ble Supreme Court vide its judgment dated 04.05.2022 (2022 SCC Online SC 543), in the case of Union of India Vs Ashish Agarwal has held the notice issued u/s 148 during the period beginning on 1st April 2021 and ending with 30th June 2021, to be a show cause notice u/s 148A(b) of the Income Tax Act 1961.

2. Hon'ble Supreme Court has held that these reassessment notices issued u/s 148 under the old law shall be deemed to be the show cause notice issued under clause (b) of Section 148A of the new law substituted with effect from 1 April 2021, A notice u/s 148 for AY 2015-16 has been issued to you on 31.03.2021 (But Digitally signed on 01.04.2021). The judgment applies to all cases where extended

reassessment notices have been issued irrespective of the fact whether such notices have been challenged or not.

3. In this regard, in compliance with the subject order of the Hon'ble Supreme Court, you are hereby provided with information and material relied upon by this office for issue of the show cause notice as above. The detail of which is provided as under:-

1. "Assessee has taken accommodation entry of Rs. 65478799/- through the Penny Stock of Achal Investment Ltd. The Modus Operandi(MO) of the whole operation is as follows-

2. For converting Black money into white many accommodation entry operators are working in the market. It is to be noted that these entry operators in connivance with brokers enter into transactions in shares of listed companies for providing accommodation entries to various beneficiaries. Two kinds of accommodation entries are taken through these transactions-

- a. Long Term Capital Gain
- b. Short Term Capital Loss

In case of Long Term Capital Gain the shares of an unlisted company are allotted to the beneficiary through off-market transactions at a very low rate then this company merges with the identified listed companies. In this way shares of listed companies are transferred to the beneficiary through offmarket transactions. Thereafter, listed company splits its shares. In this way beneficiary gets many shares of the listed company. Listed company may further issue bonus shares to the beneficiary. After this price of shares are jacked up by convoluted transactions by a limited number of persons. When price of shares reach an optimum level, information is passed on to the beneficiaries to sell the shares. These shares sold by the beneficiary are actually purchased by pre-identified persons/companies. These preidentified companies/persons are of two kinds- One, they are persons who are having huge profit during the year on which they do not want to pay tax. These persons purchase shares by cash which has been moved to them through many intermediaries from the first beneficiary. In this way the first beneficiary has converted his un-taxed income into white income as LTCG is non-taxable if Securities Transaction Tax is paid on it. After this share prices are again decreased artificially through convoluted transactions by these intermediaries/brokers. Once, the share prices have decreased to an optimum level, information is passed on to Beneficiaries of second type who sell shares to suffer short term capital loss. This beneficiary then sets off the loss with profit earned thereby saving on the taxes."

4. In accordance with the aforesaid judgment you are required to furnish the reply regarding why reassessment u/s 147 of the Income Tax Act may not be made in your case. The reply may be furnished by 15.06.2022. You may submit your response in e-proceedings facility through your account in e-filing portal of the Income Tax Department."

17. Undisputedly, the respondents have proceeded to pass an order under Section 148(A)(d) of the Act premised on an identical ground of

escapement of income as alleged in the original notice for reassessment issued on 31 March 2021. It is also not the case of the respondents that they had sought to recommence the concluded reassessment proceedings based on certain new information or additional grounds of escapement of income. Rather, they have only relied upon the decision of *Ashish Agarwal (supra)* to wield power to proceed with the reassessment. Thus, the only question which needs to be examined is whether the decision in *Ashish Agarwal (supra)* commands an authority to reopen even concluded assessment proceedings.

18. Recently, we had an occasion to extensively deal with a similar challenge as has been laid in the instant writ petition in the case titled as **Anindita Sengupta v. Assistant Commissioner of Income Tax, Circle 61(1) New Delhi & Ors.**<sup>2</sup>, whereby, it was held that the procedure envisaged in *Ashish Agarwal (supra)* unambiguously stood confined to matters where although notices may have been issued, proceedings were yet to have attained finality. The relevant paragraphs of the said decision read as under:-

**“25. However, we are of the firm opinion that Ashish Agarwal neither intended nor mandated concluded assessments being reopened.**

The respondent clearly appears to have erred in proceedings along lines contrary to the above as would be evident from the reasons which follow. Firstly, Ashish Agarwal was principally concerned with judgments rendered by various High Courts’ striking down Section 148 notices holding that the respondents had erred in proceeding on the basis of the unamended family of provisions relating to reassessment. They had essentially held that it was the procedure constructed in terms of the amendments introduced by Finance Act, 2021 which would apply. None of those judgements were primarily concerned with concluded assessments. It is this indubitable position which constrained the Supreme Court to frame directions requiring those notices to be treated as being under Section 148A(b) and for the AO proceeding thereafter to frame an order as contemplated by Section 148A(d) of the Act. The Supreme Court significantly observed that the High Courts’ instead of quashing the impugned notices should have framed directions for those notices being construed and deemed to have been issued under Section 148A. *Ashish Agarwal* proceeded further to observe that the Revenue should have been “permitted to proceed further with the reassessment proceedings as per the substituted provisions.....”. Our view of the judgement being confined to proceedings at the stage of notice is further fortified from the Supreme Court providing in para 8 of the report that “*The respective impugned Section 148 notices issued to the respective assesseees shall be deemed to have been issued under section 148A of the Income Tax Act as substituted by Finance Act, 2021 and treated to be show cause notices in terms of Section 148A(b).*” As would be manifest from the aforesaid extract, the emphasis clearly was on the notices which formed the subject matter of challenge before various High Courts’ and the aim of the Supreme Court being to salvage the process of reassessment. This is further evident from the Supreme Court observing that the AO

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<sup>2</sup> 2024:DHC:2475-DB



would thereafter proceed to pass orders referable to Section 148A(d). **We consequently find ourselves unable to construe *Ashish Agarwal* as an edict which required completed assessments to be invalidated and reopened. *Ashish Agarwal* cannot possibly be read as mandating the hands of the clock being rewound and reversing final decisions which may have come to be rendered in the interregnum.**

26. .... **At the cost of being repetitive we deem it appropriate to observe that the *Ashish Agarwal* judgment neither spoke of completed assessments nor did it embody any direction that could be legitimately or justifiably construed as mandating completed assessments being reopened and moreso where the assessee had raised no objection to the initiation of proceedings.”**

[Emphasis supplied]

19. The facts that assessment under Section 147 of the Act was already concluded, said proceedings were completely ignored and no new material was unearthed, closely resemble the factual scenario in the case of *Anindita Sengupta (supra)*. Thus, the controversy in hand is squarely covered by our decision in *Anindita Sengupta (supra)*. We, therefore, find it appropriate to allow the instant writ petition.

20. Accordingly, the impugned notices dated 1 June 2022 and 16 July 2022, issued under Section 148(A)(b) and Section 148, respectively and the impugned order dated 16 July 2022 passed under Section 148(A)(d) of the Act are, hereby, quashed.

21. The writ petition is disposed of alongwith the pending application(s), if any.

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