

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No. 15349/2024

Samir Andrea Kasliwal, Son Of, And Legal Heir Of Late Shri
Sanjay Kasliwal

-----Petitioner

Versus

Principal Chief Commissioner Of Income Tax

-----Respondent

Connected with

D.B. Civil Writ Petition No. 15354/2024

Samir Andrea Kasliwal, Son Of, And Legal Heir Of Late Shri
Sanjay Kasliwal

-----Petitioner

Versus

Principal Chief Commissioner Of Income Tax

-----Respondent

D.B. Civil Writ Petition No. 15355/2024

Samir Andrea Kasliwal, Son Of, And Legal Heir Of Late Shri
Sanjay Kasliwal

-----Petitioner

Versus

Principal Chief Commissioner Of Income Tax

-----Respondent

D.B. Civil Writ Petition No. 15356/2024

Samir Andrea Kasliwal, Son Of, And Legal Heir Of Late Shri
Sanjay Kasliwal

-----Petitioner

Versus

Principal Chief Commissioner Of Income Tax

-----Respondent

D.B. Civil Writ Petition No. 15824/2024

Samir Andrea Kasliwal, Son Of, And Legal Heir Of Late Shri
Sanjay Kasliwal

-----Petitioner

Versus

----Respondent

Samir Andrea Kasliwal, Son Of, And Legal Heir Of Late Shri
Sanjay Kasliwal

-----Petitioner

Versus

----Respondent

Samir Andrea Kasliwal, S/o And Legal Heir Of Late Shri Sanjay Kasliwal

-----Petitioner

Versus

----Respondent

Samir Andrea Kasliwal, Son Of, And Legal Heir Of Late Shri Sanjay Kasliwal

-----Petitioner

Versus

----Respondent

For Petitioner(s) : Mr. Sudhir Gupta, Senior Advocate
assisted by Mr. Jaideep Singh

For Respondent(s) : Mr. Anuroop Singhi with
Mr. N.S. Bhati

HON'BLE THE CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

PRONOUNCED ON

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25/10/2024

(PER HON'BLE THE CHIEF JUSTICE):

1. In these petitions, prayer for stay of effect and operation of the impugned assessment orders and demand notices has been made on common grounds and submissions.
2. The impugned assessment orders and demand notices have been issued after reassessment carried out under Section 148 of the Income Tax Act, 1961 (for short 'the Act of 1961') in relation to Assessment Years 2012-13, 2013-14, 2014-15, 2015-16, 2016-17, 2017-18, 2018-19 and 2019-20.
3. Learned counsel for the petitioner argued that reopening of assessment in all the cases is barred by limitation as under the new regime of law, after 01.04.2021, reopening under Section 148 of the Act of 1961 would not be permitted in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if a notice under Section 148, or Section 153A, or Section 153C of the Act of 1961, could not have been issued at that time on account of being beyond the time limit specified under the provisions of sub-section (1) of Section 149 (as substituted), or Section 153A, or Section 153C of the Act of 1961, as the case may be, as they stood immediately before commencement of the Finance Act, 2021. It is submitted that if the notices would have been issued under the old provisions, as they stood prior to 01.04.2021, reopening was barred under the then existing provisions and hence, reopening is not permissible in law. He would submit that this Court has already entertained similar petitions and interim orders have been passed in **D.B. Civil Writ Petition No.730/2024-Ram Babu Agarwal Vs. Assistant**

Commissioner of Income Tax & Anr. and D.B. Civil Writ Petition No.4070/2024-Radha Mohan Maheswari Vs. Assistant Commissioner of Income Tax. It is also submitted that in view of recent judicial pronouncement of the Hon'ble Supreme Court in the case of **Union of India & Ors. Vs. Rajeev Bansal (Civil Appeal No.8629/2024), decided on 03.10.2024**, the maximum period extendable under TOLA also does not save the assessment from being time barred.

3.1 Next submission of learned counsel for the petitioner is that in all these cases, instead of proceeding under faceless assessment provision, physical assessment has been carried out by the jurisdictional Assessment Officer, therefore, that is also contrary to the provisions of law.

4. It is also submitted that the notices under Section 148 of the Act of 1961, which followed the impugned assessment orders, have been passed in the name of a dead person, therefore, all the proceedings are nullity.

4.1. It is also submitted that earlier when notices under Section 148 of the Act of 1961 were issued, writ petitions were filed challenging the respective notices pertaining to different assessment years, as stated above, wherein initially interim order was passed, but later on, all the writ petitions were disposed of with direction to provide reasons, but the respondents did not comply with the order of the Court in true letter and spirit and acting mechanically, proceeded to pass impugned assessment orders.

5. In support of his submissions, learned counsel for the petitioner placed reliance on the judgment rendered by the

Hon'ble Supreme Court in the case of **(i) Principal Commissioner of Income Tax, New Delhi Vs. Maruti Suzuki (India) Limited, (2020) 18 SCC 331, (ii) Special Leave to Appeal (C) No.12396/2021-The Income Tax Officer Ward 1(2)(1) Vs. Late Bhupendra Bhikhalal Desai (since decd.) through Legal Heir Raju Bhupendra Desai and (iii) Union of India & Ors. Vs. Rajeev Bansal (supra),** Division Bench judgment of the Gujarat High Court in **R/Special Civil Application No.22441/2019-Late Bhupendra Bhikhalal Desai (since decd.) through Legal Heir Raju Bhupendra Desai Vs. The Income Tax Officer Ward 1(2)(1), decided on 08.03.2021,** Division Bench judgment of this Court in **D.B. Civil Writ Petition No.13719/2021-Micro Marbles Private Limited Vs. Office of the Income Tax Officer Ward-1, Chittorgarh, Rajasthan, decided on 04.01.2023** and Division Bench judgment of the Bombay High Court in the case of **Dhirendra Bhupendra Sanghvi Vs. Assistant Commissioner of Income Tax & Others, reported in 2023 SCC On Line Bom 1272.**

6. On the other hand, learned counsel for the respondents would submit that present are the cases where power under Section 148 of the Act of 1961 was invoked to reopen assessment in view of search carried out in the premises of another person, wherein transactions between the deceased father of the petitioner and the persons in whose premises search was carried out evidencing many transactions, were revealed. Learned counsel for the respondents further submits that though earlier notices under Section 148 of the Act of 1961 were issued, the grounds which are now being raised insofar as the allegation that it was

barred by limitation or on the ground that notice was issued in the name of a dead person, was not pressed into service and the petitioner was satisfied with direction for supply of reasons for reopening. After the order of this Court, reasons were duly supplied. The petitioner's response was obtained and then the competent authority proceeded to pass orders of assessment. He would further submit that in all these cases, the basis for reopening is a search carried out on 23.11.2021 and in light of the recent judicial pronouncement of the Hon'ble Supreme Court in the case of **Union of India & Ors. Vs. Rajeev Bansal (supra)**, assessments are reopened within limitation prescribed under the law, therefore, this Court may not entertain the petitions when there exists an alternative statutory remedy. To buttress his submissions, he placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Commissioner of Income-tax Vs. Chhabil Dass Agarwal, reported in (2013) 217 Taxman 143 (SC)** and **Union of India & Ors. Vs. Rajeev Bansal (supra)**.

7. Having considered the submissions of learned counsel for the parties, we find that basis for opening assessment in the case of the petitioner has been a search carried out in the premises of other person, wherein certain material information has been recovered evidencing transactions between the deceased father of the petitioner and the person who was searched. Moreover, we find that the petitioner had earlier filed petitions challenging the notice under Section 148 of the Act of 1961 and the petitions were disposed of with direction to supply reasons, which were supplied and thereafter the respondents have proceeded to pass assessment order.

8. The cases require deeper consideration in view of recent judicial pronouncement of the Hon'ble Supreme Court in the case of **Union of India & Ors. Vs. Rajeev Bansal (supra)**, decided on **03.10.2024**, whereas interim orders were passed earlier in other cases prior to aforesaid judgment of the Hon'ble Supreme Court.

8.1 We further find that the notices are alleged to be defective on the ground that the same were issued against a dead person, but the contents of the notices issued from time to time show that the name of the petitioner was reflected in the notice along with the name of his deceased father.

8.2 Physical assessment carried out by the respondents is subjected to challenge in the second round of petition, whereas the petitioner was satisfied with the direction issued by this Court in earlier round of litigation that he may be supplied with reasons.

9. However, we notice that even if the petitioner would have filed a statutory appeal against the order of assessment, he may claim protection against recovery, subject to depositing 20% of the demand in view of various circulars issued by the CBDT.

10. In that view of the matter, it is ordered that if the petitioner deposits 20% of the demand in each case within a period of one month, recovery of balance amount under assessment orders and demand notices issued in aforesaid cases, shall remain in abeyance.

11. The stay applications stand partly allowed to the extent, as stated above.

12. Though reply has been filed in some of the cases, the respondents have not completed their instructions in all the cases,

therefore, reply may be filed within a period of four weeks in cases where it has not been filed as yet.

13. Rejoinder may also be filed within a further period of two weeks.

14. List all the cases after eight weeks for further orders.

15. A copy of this order be placed in each connected file.

(ASHUTOSH KUMAR),J

(MANINDRA MOHAN SHRIVASTAVA),CJ

Kamlesh Kumar/