

M/S.Sri Sai Dhurga Balaji Health And vs The Income Tax Officer

ID: F2J-C-2224 Court: Telangana High Court

Case: WRIT PETITION No.16014 of 2024 Date: 2025-09-26

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Telangana High Court M/S.Sri Sai Dhurga Balaji Health And ... vs The Income Tax Officer on 26 September, 2025 Author: P.Sam Koshy Bench: P.Sam Koshy THE HONOURABLE SRI JUSTICE P.SAM KOSHY

AND

THE HONOURABLE SRI JUSTICE NARSING RAO NANDIKONDA

WRIT PETITION No.16014 of 2024

ORDER: (per the Hon'ble Sri Justice P.SAM KOSHY) Heard Mr. Karan Talwar, learned counsel for the petitioner, and Mr. J.V. Prasad, learned Senior Standing Counsel for Income Tax Department appearing on behalf of respondent Nos.1 and 2.

2. The instant writ petition has been filed by the petitioner under Article 226 of the Constitution of India challenging the show-cause notice dated 16.04.2024 issued under Section 148 of the Income Tax Act, 1961 (briefly 'the Act' hereinafter), the order dated 16.04.2024 issued under Section 148A(d) of the Act, and also the show-cause notice dated 31.03.2024 issued under Section 148A(b) of the Act.

3. The primary contention on behalf of the petitioner while assailing the impugned order and the show-cause notices was:

i. That the impugned proceedings initiated is without jurisdiction;

ii. That the impugned proceedings and the order under challenge is otherwise barred by limitation; and Page 2 of 18 iii. That the impugned order and the show-cause notices issued are in blatant violation of the principles of natural justice and also in violation of Article 14 and 19(1)(g) of the Constitution of India.

4. The facts of the case in nutshell, are that, the petitioner M/s. Sri Sai Dhurga Balaji Health and Educational Welfare Society, which is a society registered under the Societies Registration Act received a show-cause notice dated 31.03.2024 under Section 148A(b) of the Act from respondent No.1 through e-mail regarding reopening of assessment for the assessment year 2017-18 stating that based on information received, M/s. Andhra Pradesh State Financial Corporation had written-off a bad debt of Rs.2,34,37,765/- pertaining to the petitioner for assessment year 2017-18, which is, as per Section 41(1) of the Act deemed to be an income from business or profession that escaped assessment. However, during this period, the Secretary of the petitioner's Society was suffering from viral pyrexia with upper respiratory tract infection and was advised rest for a period of 10 days. After getting discharged from the hospital on 15.04.2024, the Secretary verified emails on 16.04.2024 and discovered the notice dated 31.03.2024 had given time only till 12.04.2024 for reply. Despite submitting an adjournment request both physically and via email on 16.04.2024, respondent No.1 proceeded to issue an order under Section 148A(d) of the Act and a notice under Section 148 of the Act on Page 3 of 18 the same day without providing adequate opportunity for the petitioner to present his case.

5. According to the learned counsel for the petitioner, in accordance with Section 149 of the Act, issuance of reassessment notices is subject to prescribed time limitations. The first proviso to Section 149(1) clearly states that for the assessment years beginning on or before 01.04.2021, the notices under Section 148 of the Act shall be issued in accordance with Section 149(1)(b) of the Act as it stood immediately before the commencement of the Finance Act, 2021. Further, prior to the Finance Act, 2021, Section 149(1)(b) of the Act stipulated that a notice under Section 148 of the Act shall be issued for the relevant assessment year within four years, but not more than six years from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year and this six year limitation period is absolute and cannot be extended except in specific circumstances enumerated in the Act, none of which apply to the present case.

6. According to the learned counsel for the petitioner, the Department in the instant case initiated reassessment proceedings for the assessment year 2017-18. However, following the provisions of Section 149(1)(b) of the Act, as applicable before the Finance Act, 2021, the Department could Page 4 of 18 have issued the notice under Section 148 of the Act only before 31.03.2024, which marks the end of the six year period from the close of the assessment year 2017-18. This timeline is mandated by law and leaves no room for discretionary extensions. However, the Department issued the impugned notice on 16.04.2024, which is clearly beyond the statutory limitation period of six years prescribed under Section 149(1)(b) of the Act. This delay of even a few days renders the notice void ab initio as the Department had no jurisdiction to issue notices beyond the limitation period.

7. According to the learned counsel for the petitioner, the principles of limitation are founded on public policy promoting diligence and preventing injustice. According to him, the Hon'ble Supreme Court also in numerous judgments has emphasized that limitation periods are not mere technicalities but substantive provisions that affect the jurisdiction of authorities. Therefore, the notice under Section 148 of the Act dated 16.04.2024 being barred by limitation is legally invalid and all subsequent proceedings and orders stemming from this time-barred notice are liable to be set aside.

8. Learned counsel for the petitioner contended that the Department has not provided any justification for the delay in issuing the notice beyond the limitation period. The law also does not provide for any Page 5 of 18 condonation of delay in such matters, and therefore, the Department's action in issuing the notice on 16.04.2024 is without authority of law and cannot be sustained.

9. Learned counsel for the petitioner further contended that the impugned order dated 16.04.2024 issued under Section 148A(d) of the Act and the subsequent notice dated 16.04.2024 issued under Section 148 of the Act are barred by limitation as per the statutory framework. He also relied upon Section 148A of the Act, particularly the fifth and sixth proviso.

10. Learned counsel for the petitioner further contended that the time period specified under the relevant provisions has lapsed before the issuance of the impugned order and the show-cause notices rendering them void ab initio and without jurisdiction and the proper interpretation of the statute requires a strict adherence to the prescribed timelines and any deviation there from vitiates the entire proceedings. He asserts that the Department

cannot circumvent these statutory timelines under any pretext, and doing so would amount to an abuse of the process of law.

11. According to the learned counsel for the petitioner, there is a complete absence of evidence demonstrating that respondent No.2 had granted approval under Section 151 of the Act for the reassessment Page 6 of 18 proceedings. According to the learned counsel, despite specific averments in the writ petition, the Department has merely made a bald assertion in Paragraph 11C of their Counter that approval was obtained without producing the actual approval document before the Court. The learned counsel relied upon on an authoritative judgment of the Bombay High Court in the case of Tia Enterprises Pvt. Ltd. vs. Income Tax Officer which categorically holds that approval granted by statutory authorities must be furnished to the assessee along with the reasons to believe.

12. Learned counsel for the petitioner emphasized that without evidence of application of mind by the approving authority; the entire reassessment proceedings are legally untenable and cannot withstand judicial scrutiny. According to the learned counsel for the petitioner, this procedural defect is fundamental and goes to the root of the matter, rendering the proceedings null and void.

13. Learned counsel for the petitioner submitted that there has been a flagrant violation of the principles of natural justice in the present case. He details that upon receiving the show-cause notice dated 31.03.2024, under Section 148A(b) of the Act, the Secretary of the petitioner society was unwell, and the notice only came to the Secretary's attention on 16.04.2024. Acting promptly, he sent an email at 02:33 P.M. and submitted a letter on 16.04.2024 to respondent No.1, seeking an Page 7 of 18 adjournment for filing a reply. However, without considering or even acknowledging these communications, respondent No.1 proceeded to pass the impugned order at 08:55 P.M. and issued the notice at 09:10 P.M. on the same day. Learned counsel for the petitioner contends that this conduct of respondent No.1 is arbitrary, unreasonable, and in complete disregard of the fundamental principles of fair play and natural justice and emphasized that the right to be heard is a sacrosanct principle of natural justice that cannot be by passed or ignored by any authority, including the Income Tax Department.

14. Learned counsel for the petitioner further contended that Department's failure to respond to the adjournment request before proceeding with the assessment constitutes a serious procedural impropriety. Relying on the judgment of the Gujarat High Court in Shree Siddhi Foods vs. Assistant Commissioner of Income Tax, he highlighted that the Court has explicitly held that an Assessing Officer must respond to the adjournment requests with clear communication either granting specific time or rejecting the request with proper reasons. In the present case, there was a complete absence of such communication, leaving the petitioner in the dark about the status of its adjournment request. The impugned order and notice were passed without affording the petitioner an opportunity to present its case, which Page 8 of 18 is in direct contravention of established legal principles and judicial precedents and such procedural lapses cannot be treated as mere technicalities but are substantive defects that vitiate the entire proceedings.

15. For all the reasons, the learned counsel for the petitioner prayed to allow the instant writ petition by setting aside and quashing the impugned order dated 16.04.2024 passed under Section 148A(d) of the Act and the impugned notice dated 16.04.2024 issued under Section 148 of the Act and to remand back to the stage of Section 148A(b) notice and to provide the petitioner a fair and reasonable opportunity to present his case before the Assessing Officer.

16. On the contrary, learned Senior Standing Counsel for the Income Tax Department submitted that the show-cause notice under Section 148A(b) of the Act was validly issued on 31.03.2024 with the date of hearing fixed on 12.04.2024 providing sufficient time (12 days) for the petitioner to respond. This time period was within the statutory requirement of "not less than seven days and not exceeding thirty days". According to him, the petitioner's Secretary failed to communicate his medical condition before the deadline and only submitted medical documentation on 16.04.2024 after the expiry of the allowed time. Page 9 of 18

17. Learned Senior Standing Counsel for the Income Tax Department further submits that since the petitioner is an Association of Persons governed by Societies Act bye-laws, the medical treatment of one individual (the Secretary) should not halt the entire organization's functioning. Other members of the society also could have responded to the proceedings, especially since an Association of Persons by definition consists of multiple persons who come together for a common objective. The learned Senior Standing Counsel emphasized that if the society is run by just one individual, it would not qualify as an Association of Persons under the Act.

18. Learned Senior Standing Counsel for the Income Tax Department further cited Section 149 of the Act which stipulates that "for computing the period for limitation for issuance of a notice under Section 148 of the Act, the time or extended time allowed to the assessee shall be excluded." As the petitioner was given 12 days (from 01.04.2024 to 12.04.2024) to respond to the show-cause notice, this period should be excluded when calculating the limitation period. Furthermore, where the remaining period available to the Assessing Officer does not exceed seven days, such period shall be extended to seven days.

19. Learned Senior Standing Counsel for the Income Tax Department contended that since the notice was issued beyond the 6 year limitation Page 10 of 18 period, the Department maintains that all notices were issued within the time stipulated under Section 149 of the Act. The Department obtained approval from the competent authority on 16.04.2024 and subsequently passed the order under Section 148A(d) of the Act and issued notice under Section 148 of the Act which was properly served on the petitioner. Therefore, he prays that the present writ petition be dismissed.

20. Having heard the contentions put forth on either side and on perusal of records, there seem to be two substantial questions of law raised by the petitioner. Those are:-

i. Whether the Assessing Officer did have the jurisdiction to undertake the assessment for the assessment year 2017-18 beyond the period of limitation as is prescribed under Section 149(1) of the Act?

ii. Whether the entire proceedings itself would not get vitiated since the notice under Section 148A(b) has been issued subsequent to coming into force of the Finance Act, 2021 w.e.f. 01.04.2021 onwards, rather the proceedings ought to had been by the faceless authority?"

21. Admittedly, the assessment year in the instant case is 2017-18 under Section 149(1) of the Act. The period of limitation prescribed is three years from the end of the relevant assessment year unless the case Page 11 of 18 falls under any of the reasons reflected in clause (b). For ready reference, the provisions of Section 149(1) that which was in force during the assessment year 2017-18 is being reproduced hereunder, viz., "149. Time limit for notice - (1) No notice under section 148 shall be issued for the relevant assessment year,-

(a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b) or clause

(c);

(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year;

(c) if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment years unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment Explanation.- In determining income chargeable to tax which has escaped assessment for the purposes of this sub-section, the provisions of Explanation 2 of section 147 shall apply as they apply for the purposes of that section.

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.

(3) If the person on whom a notice under section 148 is to be served is a person treated as the agent of a non-resident under section 163 and the assessment, reassessment or recomputation to be made in pursuance of the notice is to be made on him as the agent of such non-resident, the notice shall not be issued after the expiry of a period of six years from the end of the relevant assessment year." Page 12 of 18

22. Taking into consideration the statutory position as it stood then, i.e. prior to 01.04.2021, the period of limitation prescribed under Section 149(1) was four years from the end of the relevant assessment year. Now the only exception that stands carved out is that which is reflected in clause (b) and (c) above, and it is not the case of the Revenue that the case of the petitioner / assessee falls under any of the two clauses.

23. The aforesaid provision of Section 149(1) subsequently stood amended w.e.f. 01.04.2021 by way of the Finance Act, 2021. The amended provision of Section 149(1) reads as under:

"(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of-

(i) an asset;

(ii) expenditure in respect of an transaction or in relation to an event or occasion; or

(iii) an entry or entries assessment amounts to or is likely to amount in fifty lakh rupees or more;]"

The aforesaid provision would reflect that the period of limitation since has changed, what was earlier four years now stands reduced to three years, and what was earlier extendable to six years, now stands extended up till ten years subject to the assessee's case falling under any of the conditions so put in the statute. Page 13 of 18

24. Now to appreciate whether the proceedings initiated by the Revenue falls within the period of limitation prescribed under Section 149(1) or not, it is relevant to take note of certain material dates involved in the instant case. Notice under Section 148A(b) was issued on 31.03.2024 seeking reply by 12.04.2024. Since the representative of the petitioner was not well and was hospitalized, he could not represent the petitioner effectively before the authority concerned and, in the process, notice under Section 148A(d) stood issued on 16.04.2024. Immediately, thereafter was the notice under Section 148 issued on the same date and roughly around the same time. Since the show-cause notice was issued on 31.03.2024 after coming into force of the Finance Act, 2021 w.e.f. 01.04.2021 it would be the limitation prescribed under the new regime i.e. amended provision to Section 149(1) which would be relevant for adjudication of the dispute.

25. It would be relevant to take note of a recent decision rendered by the three Judge Bench of the Supreme Court in the case of Union of India and Others vs. Rajeev Bansal 1, wherein in paragraph Nos.46, 48, 50 and 51, it has been held as under:

"46. The ingredients of the proviso could be broken down for analysis as follows : (i) no notice under section 148 of the new regime can be issued at any time for an assessment year beginning on or before 1 April 2021 ; (ii) if it is barred at the time when the 1 [2024] 469 ITR 46 SC Page 14 of 18 notice is sought to be issued because of the "time limits specified under the provisions of" section 149(1)(b) of the old regime. Thus, a notice could be issued under section 148 of the new regime for the assessment year 2021-22 and before if the time limit for issuance of such notice continued to exist under section 149(1)(b) of the old regime.

48. Notices have to be judged according to the law existing on the date the notice is issued. Section 149 of the old regime primarily provided two time limits : (i) four years for all situations ; and (ii) beyond four years and within six years if the income chargeable to tax which escaped assessment amounted to rupees one lakh or more. After April 1, 2021, the time limits of four years was reduced to three years. Therefore, in all situations, re-assessment notices could be issued under the new regime if not more than three years have elapsed from the end of the relevant assessment year. For example, for the assessment year 2018-19, the four-year period would have expired on March 31, 2023 under the old regime. However, if the notice is issued after April 1, 2021, the three-year time limit prescribed under the new regime will be applicable. The three-year time limit will expire on March 31, 2022.

50. Another important change under section 149(1)(b) of the new regime is the increase in the monetary threshold from rupees one lakh to rupees fifty lakhs. The old regime prescribed a time limit of six years from the end of the relevant assessment year if the income chargeable to tax which escaped assessment was more than rupees one lakh. In comparison, the new regime increases the time limit to ten years if the escaped assessment amounts to more than rupees fifty lakhs.

51. Given section 149(1)(b) of the new regime, reassessment notices could be issued after three years only if the income chargeable to tax which escaped assessment is more than rupees fifty lakhs. The proviso to section 149(1)(b) limits the retrospectivity of that provision with respect to the time limits specified under section 149(1)(b) of the old regime." Page 15 of 18

26. Similar view has also been taken by the Delhi High Court in the case of Manju Somani vs. Income Tax Officer, Ward-70 (1) & Ors. 2 wherein in paragraph Nos.12 to 14, it has been held as under:

"12. As is manifest from the above, the Proviso to Section 149 clearly bids us to go back in point of time and examine whether a proposed reassessment pertaining to a period prior to 01 April 2021 would sustain based on the time frames as they existed prior to the promulgation of Finance Act, 2021. The Proviso embodies a negative command restraining the respondents from issuing a notice under Section 148 in respect of an AY prior to 01 April 2021, if the period within which such a notice could have been issued in accordance with the provisions as they existed prior thereto had elapsed. This is manifest from the provision using the expression "no notice under Section 148 shall be issued" if the time limit specified in the

relevant provisions ".....as they stood immediately prior to the commencement of the Finance Act, 2021" had expired. A reassessment which is sought to be commenced post 01 April 2021 would thus have to abide by the time limits prescribed by Sections 149 (1)(b), 153A of 153B as may be applicable.

13. Undisputedly, Section 149(1)(b) as it stood prior to the introduction of the amendments by way of Finance Act, 2021 prescribed that no notice under Section 148 shall be issued if four years "but not more than six years" have elapsed from the end of the relevant assessment year. Thus the period of six years stood erected as the terminal point which when crossed would have rendered the initiation of reassessment impermissible in law.

14. Viewed in light of the above, the impugned notice when tested on the anvil of the pre-amendment Section 149 (1) (b) in order to be sustained would have to meet the prescription of six years. Undisputedly that period in respect of AY 2016-17 came to an end on 31 March 2023. We thus find ourselves unable to sustain the impugned action of reassessment and which was commenced pursuant to the notice dated 29 April 2024." 2 2024 (8) TMI 129 - DELHI HIGH COURT Page 16 of 18

27. From the plain reading of the aforesaid judicial precedents and when we look into the relevant dates in the present case, the assessment year being 2017-18 and the show-cause notice being issued only on 31.03.2024, it clearly indicates that under both the pre-amendment and post-amendment to Section 149(1) the limitation would be either three years or four years which in the instant case admittedly has not been adhered to. Further, the notice has been issued much after the prescribed period of limitation. Further, it also gives a clear indication that though the assessment year being 2017-18 and end of the relevant assessment year is 31.03.2024, the period of limitation would be three years from 31.03.2018 till 31.03.2021. Even if it is four years, the period of limitation would come to an end on 31.03.2022 and the show-cause notice being one that has been issued on 31.03.2024; the same apparently is barred by limitation.

28. Whatever be the justification that has been given by the learned Senior Standing Counsel for Income Tax Department, it is not appealing for the simple reason that no substantial material has been made available to show that the Revenue has made out a case which would fall under the exceptions those have been carved out under Section 149(1). In view of the same, the entire proceedings drawn by the Revenue stands Page 17 of 18 vitiated. The first question of law accordingly stands answered in favour of the petitioner and against the Revenue.

29. Now comes the second question of law so far as the notice being issued by the Jurisdictional Assessing Officer and not in a faceless manner. This question of law is no longer a res integra since there were identical matters which came up for hearing before this Court in the case of Kankanala Ravindra Reddy vs. The Income Tax Officer 3 on this very issue alone and the entire proceedings drawn by the Income Tax Department were quashed. Right from the judgment in Kankanala Ravindra Reddy (supra), and in terms of the amendment brought in would make it mandatory and compulsory for the proceedings drawn beyond 01.04.2021 to be in a faceless manner and could not be initiated by the Jurisdictional Assessing Officer. Thus, we need not further delve into this issue as it has already been considered in a batch of writ petitions in the case of Kankanala Ravindra Reddy (supra) holding that any proceeding drawn under Section 148 of the Act had to be in a faceless manner and not by the Jurisdictional Assessing Officer. In the light of judgment in Kankanala Ravindra Reddy (supra), the entire proceedings drawn by the Revenue stands vitiated unless the same is reversed by the Supreme Court at any point of time. Applying the same analogy that has been applied in Kankanala Ravindra Reddy (supra), 3 Writ Petition No.25903 of 2022 & Batch, decided on 14.09.2023 Page 18 of 18 the second question of law also stands answered in favour of the petitioner / assessee and against the Revenue.

30. The instant writ petition accordingly stands allowed. As a consequence, the show-cause notice dated 16.04.2024 issued under Section 148 of the Act, the order dated 16.04.2024 issued under Section 148A(d) of the Act, and also the show-cause notice dated 31.03.2024 issued under Section 148A(b) of the Act are set aside / quashed.

31. As a sequel, miscellaneous petitions pending if any, shall stand closed. However, there shall be no order as to costs. _____ P.SAM KOSHY, J _____ NARSING RAO NANDIKONDA, J Date: 26.09.2025 GSD