

HIGH COURT OF CHHATTISGARH AT BILASPUR

WP(T) No. 114 of 2021

Ashok Kumar Agrawal, S/o. Shri Ramniwas Agrawal, Aged About 64 Years, Proprietor Of M/s. Gopiram Ramniwas, R/o. Deviganj Road, Sangam Chowk, Ambikapur, District Surguja Chhattisgarh 497001.

---- Petitioner

Versus

1. Union Of India, Through Principal Commissioner, Income Tax Department, Central Revenue Building, Civil Lines Raipur Chhattisgarh 492001
2. Income Tax Officer Ward No. 1 Ambikapur, Income Tax Department, Agrasen Marg Ambikapur, District Surguja Chhattisgarh 497001

---- Respondents

WP(T) No. 115 of 2021

Poonam Chand Agrawal, S/o. Shri Ramniwas Agrawal, Aged About 71 Years, Proprietor Of M/s. Bondia Traders, R/o. Deviganj Road, Sangam Chowk Ambikapur, District Surguja, Chhattisgarh 497001

---- Petitioner

Versus

1. Union Of India, Through Principal Commissioner, Income Tax Department, Central Revenue Building, Civil Lines Raipur Chhattisgarh 492001
2. Income Tax Officer Ward No. 1 Ambikapur, Income Tax Department, Agrasen Marg Ambikapur, District Surguja, Chhattisgarh 497001

---- Respondents

WP(T) No. 123 of 2021

Subhash Agrawal, S/o. Shri Ramniwas Agrawal (Profession Chartered Accountant) Aged About 54 Years, Proprietor Of M/s. Subhash Agrawal & Associates, R/o. M.G. Road Banaras Chowk Ambikapur, District Surguja Chhattisgarh 497001.

---- Petitioner

Versus

1. Union Of India, Through Principal Commissioner, Income Tax Department, Central Revenue Building, Civil Lines Raipur Chhattisgarh 492001
2. Income Tax Officer Ward 1 Ambikapur, Income Tax Department, Agrasen Marg Ambikapur District Surguja Chhattisgarh 497001.

---- Respondents

WPT No. 124 of 2021

Naresh Kumar Agrawal, S/o. Shri Ramniwas Agrawal, Aged About 65 Years, Proprietor Of M/s. Bondia Enterprises, R/o. M.G. Road Banaras Chowk Ambikapur, District Surguja Chhattisgarh 497001.

---- Petitioner

Versus

1. Union Of India, Through Principal Commissioner, Income Tax Department, Central Revenue Building, Civil Lines Raipur Chhattisgarh. 492001.
2. Income Tax Officer Ward 1 Ambikapur, Income Tax Department, Agrasen Marg Ambikapur, District Surguja, Chhattisgarh. 497001.

---- Respondents

For Petitioners : Mr. P.K.Tulsyan, Advocate

For Respondents : Mr. Amit Choudhary with Mrs. Naushina Ali,
Advocates

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

31.08.2021

Heard

1. Since the cause of action and facts involved in these petitions are similar in nature, therefore, they are being heard together and decided by this common order.
2. Challenge in these petitions are to the notice dated 28.06.2021 (Annexure P-1) issued under Section 148 of the Income Tax Act, 1961.
3. Learned counsel for the petitioners would submit that the petitioners have filed the income tax return for the Assessment Year 2017-18 and Financial Year 2016-17. Subsequent thereto on the basis of some information available initially a scrutiny was done however no concealment was found but again a notice under

Section 148 of the Income Tax Act, 1961 has been issued. It is submitted that on the date i.e. on 28.06.2021 when the notice under Section 148 of the Income Tax Act (*hereinafter referred to as "Act of 1961"*) is issued, the power to issue the notice was preceded with a new provision of law and thereby Section 148 is to read with Section 148-A of the Income Tax Act, 1961. He would submit that as per the amended Finance Act, 2021, which was published in the Gazette on 28th March, 2021, section 2 to 88 was notified to come into force on 1st day of April 2021 and accordingly the new Section 148A was inserted which prescribed that before issuing the notice under Section 148 of the Income Tax Act, the Assessing Officer was bound to conduct an enquiry giving an opportunity of hearing to the assessee with the prior approval of specified authority and show cause notice in detail was necessary specifying particular date for hearing. He would submit that since the operation of Section 148A came into being on 01st April, 2021, as such, the notice issued to the petitioners on 28.06.2021 under Section 148 of the Income Tax Act, without following the procedure under Section 148A without giving an opportunity of hearing would be illegal and contrary to the provisions of Section 148A and it cannot be sustained. It is further submitted that the respondents though have placed reliance on certain notification of Ministry of Finance but when the law has been enacted by the Parliament then in such case the notification issued by the Ministry of Finance would not over ride even to extend the period of operation of section of the old Act of Section 148 of the Income Tax Act. It is stated Section 148A came in between which requires certain

obligation to be performed by the Assessing Officer, therefore without giving any opportunity of hearing the notice under Section 148 of the Act, 1961 would be alleged. He therefore submits that the impugned notice is illegal and is liable to be quashed.

4. Per contra, learned counsel for the respondents would submit that because of pandemic and lock down of all activities including the normal working of office, lot of people could not file their return and submit the necessary papers with the department in respect of their income tax. As such, the Ministry of Finance in exercise of power under the Finance Act issued the notification whereby the application of old provisions of Section 148 of the Income Tax Act was extended initially uptill 30th April, 2021 and thereafter was further extended uptill 30th day of June, 2021. He would submit therefore the notice issued by Annexure P-1 dated 28.06.2021 would be within its ambit of the power of department in the extended time of it's operation till 30.06.2021. Consequently, the notice under Section 148 of the Income Tax Act is completely valid and legal.
5. Perused the documents. The notice under Section 148 of the Income Tax Act was issued for Assessment Year of 2017-2018. The notice was issued on 28.06.2021. The grievance of the petitioners that the notice of like nature could have been issued till the cut off date 30.03.2021 as subsequent thereto the new Section 148A intervened before issuance of notice directly under Section 148 of the Income Tax Act. The Finance Act, 2021 was notified on 28th March, 2021 which purports that Section 2 to 88 shall come into force on the 1st day of April, 2021 and Section 108 to 123 shall

come into force on such date Central Government notifies in official Gazette to appoint. The relevant part wherein Section 148A of the Income Tax Act is enveloped is covered under Section 42 of the Finance Act, 2021. By introduction of Section 148A, it was mandated that the Assessing Officer before issuing any notice under Section 148 shall conduct an enquiry, if required, with the prior approval of specified authority, provide an opportunity of being heard and show cause notice to be served and time was also prescribed. The question here in this case comes for consideration that whether with the promulgation of the Act on 1st day of April, 2021, whether the notice directly issued under Section 148 on 28.06.2021 is valid or not as bar of 148A was created by insertion of Section on 01st April, 2021. In order to get the answer, the reference is made to the notification dated 31.03.2021 (Annexure R-1) and 27.04.2021 (Annexure R-2).

6. For the reasons of lock down during pandemic as all the activities like filing of return, assessment were arrested, the parliament enacted the Taxation & Others Laws (Relaxation & Amendment of Certain Provisions) Act, 2020. In such Act any time limit specified or prescribed or notified under specified Act between 20th March 2020 to 31st December 2021 or other date thereafter, after December 2021 Central Government were given the power to notify. For the sake of brevity, the relevant part of relaxation of certain provisions of specified Act is reproduced herein below :

“3. (1) Where, any time-limit has been specified in, or prescribed or notified under, the specified Act which falls during the period from the 20th day of March,

2020 to the 31st day of December, 2020, or such other date after the 31st day of December, 2020, as the Central Government may, by notification, specify in this behalf, for the completion or compliance of such action as—

(a) completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval, or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called, under the provisions of the specified Act;”

7. The necessity occurred because of the Covid pandemic lock down in the backdrop of the fact that few of the assessee could not file their return. Likewise since the offices were closed, the department also could not perform the statutory duty under the Income Tax Act. Considering the complexity, the Parliament thought it proper to delegate the Ministry of Finance, the date of applicability of the amended section. The delegation is not a self-contained and complete Act and is only been made in the interest of flexibility and smooth working of the Act, and the delegation therefore was a practical necessity. The Ministry of Finance have been delegated with such power therefore this delegation can always be considered to be a sound basis for administrative efficiency and it does not by itself amount to abdication of power. Reading of both the notification dated 31.03.2021 and 27.04.2021 whereby the application of section 148 of the Income Tax Act, which was originally existing before the amendment was deferred meaning thereby the reassessment mechanism as prevalent prior to 31st March, 2021 was saved by the notification. The notification is made

by the Ministry of Finance, Central Government considering the fact of lock down all over India, it can be always be assumed that the deferment of the application of section 148A was done in a control way. It is settled proposition that any modification of the Executives implies certain amount of discretion and to be exercised with the aid of the legislative policy of the Act and cannot travel beyond it and run counter to it or certainly change the essential features, the identity, structure or the policy of the Act. Therefore, this legislative delegation which is exercised by the Central Government by notification to uphold the mechanism as prevailed prior to March, 2021 is not in conflict with any Act and notification by executive i.e. Ministry of Finance would be the part of legislative function.

8. In likewise situation the principle as laid down in case of ***A.K.Roy v. Union of India*** reported in ***AIR 1982 SC 710***, the Supreme Court held that the Constitution (Fourty-Fourth) Amendment Act, 1978, which conferred power on the Executive to bring the provisions of that Act into force did not suffer from excessive delegation of legislative power. The Court observed that the power to issue a notification for bringing into force the provisions of a constitutional amendment is not a constituent power, because it does not carry with it the power to amend the Constitution in any manner. Likewise in this case, the delegation to the executive with conferment of the power to the Central Government to specify the date by way of relaxation of time limit, the main purpose of the Finance Act is not defeated. Therefore, it would be a conditional legislation. As the legislature has declared the Act and has given

the power to executive to extend the implementation by way of notification. The legislature has resorted to conditional legislation to give the power to executive, in what circumstances the law should become operative or when the operation should be extended would be covered by doctrine of the conditional legislation.

9. Under the circumstances by the notifications the operation of Section 148 of the Income Tax Act was extended, thereby deferment of Section 148A was done. It was done by the Ministry of Finance by way of conditional legislation in the peculiar circumstances which arose during the pandemic and lock down and Central Government can not be said to have encroached upon turf of Parliament. For sake of brevity, both the notifications are reproduced herein below :-

(A) *MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF DIRECT TAXES)
NOTIFICATION
New Delhi, the 31st March, 2021*

S.O. 1432(E).—In exercise of the powers conferred by sub-section (1) of section 3 of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (38 of 2020) (hereinafter referred to as the said Act), and in partial modification of the notification of the Government of India in the Ministry of Finance, (Department of Revenue) No.93/2020 dated the 31st December, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), vide number S.O. 4805(E), dated the 31st December, 2020, the Central Government hereby specifies that,—

(A) where the specified Act is the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the Income-tax Act) and, —

(a) the completion of any action referred to in clause (a) of sub-section (1) of section 3 of the Act relates to passing of an order under sub-section (13) of section 144C or issuance of notice under section 148 as per time-limit specified in section 149 or sanction under section 151 of the Income-tax Act, —

(i) the 31st day of March, 2021 shall be the end date of the period during which the time limit, specified in, or

prescribed or notified under, the Income-tax Act falls for the completion of such action; and

(ii) the 30th day of April, 2021 shall be the end date to which the time-limit for the completion of such action shall stand extended.

Explanation.— For the removal of doubts, it is hereby clarified that for the purposes of issuance of notice under section 148 as per time-limit specified in section 149 or sanction under section 151 of the Income-tax Act, under this sub-clause, the provisions of section 148, section 149 and section 151 of the Income-tax Act, as the case may be, as they stood as on the 31st day of March 2021, before the commencement of the Finance Act, 2021, shall apply.

(b) the compliance of any action referred to in clause (b) of sub-section (1) of section 3 of the said Act relates to intimation of Aadhaar number to the prescribed authority under sub-section (2) of section 139AA of the Income-tax Act, the time-limit for compliance of such action shall stand extended to the 30th day of June, 2021.

(B) where the specified Act is the Chapter VIII of the Finance Act, 2016 (28 of 2016) (hereinafter referred to as the Finance Act) and the completion of any action referred to in clause (a) of sub-section (1) of section 3 of the said Act relates to sending an intimation under sub-section (1) of section 168 of the Finance Act,

—

(i) the 31st day of March, 2021 shall be the end date of the period during which the time limit, specified in, or prescribed or notified under, the Finance Act falls for the completion of such action; and

(ii) the 30th day of April, 2021 shall be the end date to which the time-limit for the completion of such action shall stand extended.

*[Notification No. 20/2021/F. No. 370142/35/2020-TPL]
SHEFALI SINGH, Under Secy., Tax Policy and Legislation Division*

Note : The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) vide S.O. No. 4805 dated 31st December, 2020.

(B) MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF DIRECT TAXES)
NOTIFICATION
New Delhi, the 27th April, 2021

S.O. 1703(E).— In exercise of the powers conferred by sub-section (1) of section 3 of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (38 of 2020) (hereinafter referred to as the said Act), and in partial modification of the notifications of the Government of India in the Ministry of Finance, (Department of Revenue) No. 93/2020 dated the 31st

December, 2020, No. 10/2021 dated the 27th February, 2021 and No. 20/2021 dated the 31st March, 2021, published in the Gazette of India, Extraordinary, Part-II, Section 3, Subsection (ii), vide number S.O. 4805(E), dated the 31st December, 2020, vide number S.O. 966(E) dated the 27th February, 2021 and vide number S.O. 1432(E) dated the 31st March, 2021, respectively (hereinafter referred to as the said notifications), the Central Government hereby specifies for the purpose of sub-section (1) of section 3 of the said Act that, —

(A) where the specified Act is the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the Income-tax Act) and, —

(a) the completion of any action, referred to in clause (a) of sub-section (1) of section 3 of the said Act, relates to passing of any order for assessment or reassessment under the Income-tax Act, and the time limit for completion of such action under section 153 or section 153B thereof, expires on the 30th day of April, 2021 due to its extension by the said notifications, such time limit shall further stand extended to the 30th day of June, 2021;

(b) the completion of any action, referred to in clause (a) of sub-section (1) of section 3 of the said Act, relates to passing of an order under sub-section (13) of section 144C of the Income-tax Act or issuance of notice under section 148 as per time-limit specified in section 149 or sanction under section 151 of the Income-tax Act, and the time limit for completion of such action expires on the 30th day of April, 2021 due to its extension by the said notifications, such time limit shall further stand extended to the 30th day of June, 2021.

Explanation.— For the removal of doubts, it is hereby clarified that for the purposes of issuance of notice under section 148 as per time-limit specified in section 149 or sanction under section 151 of the Income-tax Act, under this sub-clause, the provisions of section 148, section 149 and section 151 of the Income-tax Act, as the case may be, as they stood as on the 31st day of March 2021, before the commencement of the Finance Act, 2021, shall apply.

(B) where the specified Act is the Chapter VIII of the Finance Act, 2016 (28 of 2016) (hereinafter referred to as the Finance Act) and the completion of any action, referred to in clause (a) of sub-section (1) of section 3 of the said Act, relates to sending an intimation under sub-section (1) of section 168 of the Finance Act, and the time limit for completion of such action expires on the 30th day of April, 2021 due to its extension by the said notifications, such time limit shall further stand extended to the 30th day of June, 2021.

[Notification No. 38 /2021/ F. No. 370142/35/2020-TPL]
RAJESH KUMAR BHOOT, Jt. Secy. Tax Policy & Legislation Division

Note: The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) vide S.O. No. 4805 dated 31st December, 2020.

10. Reading of the aforesaid notification would show that it was issued in exercise of power conferred under the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 and time for issuance of notice under Section 148, the end date was initially extended uptill on 30th day of April 2021 and subsequently again by notification dated 27th April, 2021 the time limit of 30th day of April 2021 was further extended up till 30th day of June, 2021. By effect of such notification, the individual identity of Section 148, which was prevailing prior to amendment and insertion of section 148A was insulated and saved uptill 30.06.2021.
11. The pandemic and lock down prevailed all over India. The people could not file their return or comply with the various mandate of Income Tax Act. Considering such situation for the benefit of the assessee and to facilitate the individual to come out of woods the time limit framed under Income Tax Act was extended. Likewise certain right which was reserved in favour of the Income Tax Department was also preserved and was extended at parity. Consequently the provisions of Section 148 which was prevailing prior to the amendment of Finance Act, 2021 was also extended. Here in this case, the power to issue notice under Section 148 which was prior to the amendment was also saved and the time was extended. In a result, the notice issued on 28.06.2021 (Annexure P-1) would also be saved. Therefore, no interference is required to be made in the said issuance of notice and accordingly the petitions are dismissed.

Aks

Sd/-
(Goutam Bhaduri)
Judge