08-03-2022
Item No.22-36
Subrata

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

WPA No.3733 of 2022
Really Dealcomm Private Limited
-vs-
Union of India & Ors.
with
WPA Nos.
3742/2022, 3744/2022, 3745/2022, 3853/2022, 3854/2022, 3857/2022, 3859/2022, 3860/2022, 3863/2022, 3871/2022, 3874/2022, 3878/2022, & 3880/2022

Mr. Avra Mazumdar
Mr. Soumitra Choudhury
Sk. Md. Bilwal Hossain
Mr. Bhaskar Sengupta
Mr. Kausheya Roy
Mr. Brijesh Kumar Singh
Mr. Binayak Gupta ...for the petitioners
(in all the writ petitions)

Mr. Manabendranath Bandyopadhyay
Mr. Madhu Jana ....for the respondents
(in all the writ petitions)

Heard learned counsel appearing for the parties.

In view of involvement of common question of law and similarity of facts in all these writ petitions, with the consent of the parties, they have been heard together and are being decided by the present common judgement and order.

Common facts and issues are involved in all these writ petitions as appear on perusal of relevant record, and upon considering the submissions of the parties, it appears that the petitioners are aggrieved by the issuance of the impugned notices under section 148 of the Income Tax Act, 1961 on the grounds that the same are barred by limitation, and that the respondents-income-tax authorities concerned, before issuing the impugned notices under section 148 of the 1961 Act, have not observed the statutory formalities under section 148A of the 1961 Act as prescribed by the Finance Act, 2021 which are applicable with effect from 1st April 2021 before issuance of notices under section 148 of the 1961 Act on or after 1st April 2021.

Issues arising in all the present writ petitions are purely legal, and in all these writ petitions the assessees/petitioners have sought relief of quashing of the impugned re-assessment notices issued post-31st March 2021 by the respondents-income tax authorities concerned under section 148 of the Income Tax Act, 1961. Assessees/petitioners have also sought relief by way of a declaration declaring Explanations A(a)(ii)/A(b) to Notification No. 20 [S.O. 1432 (E) dated 31st March 2021] and Notification No.38 [S.O.1703(E) dated 27th April 2021] to the extent that the same extend the applicability of the "provisions of section 148, section 149 and section 151 of the Act, as the case may be, as they stood as on 31st March 2021, before commencement of the Finance Act, 2021" to the period beyond 31st March 2021 as ultra vires the parent legislation, viz., The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (hereinafter referred to as "Relaxation Act, 2020").

At the outset, all the counsel appearing for the parties jointly submitted that the issues involved in these writ petitions are covered by the decision of the Division Bench of the Allahabad High Court dated September 30, 2021 in the case of *Ashok Kumar Agarwal-vs-Union of India, through its Revenue Secretary, North Block & Ors.* (Writ Tax No. 524/2021) decided in favour of the assessees/petitioners, and an order of Rajasthan High

Court dated November 25, 2021 in the case of *Bpip Infra Private Limited-vs-Income Tax Officer, Ward 4(1), Jaipur* (S.B. Civil Writ Petition No.13297/2021) and an order of the Delhi High Court dated December 15, 2021 in the case of *Man Mohan Kohli-vs-Assistant Commissioner of Income Tax & Anr.* [W.P. (C) 6176 of 2021] and a judgement and order of this court dated January 17, 2022 in the case of *Manoj Jain-vs-Union of India & Ors.* in WPA No.11950 of 2021 and also in the case of *Bagaria Properties and Investment Private Limited & Anr.* passed in WPO No.244 of 2021.

In view of the judgements and orders of this court dated January 17, 2022 in the case of *Manoj Jain-vs-Union of India & Ors.* in WPA No.11950 of 2021 and in the case of *Bagaria Properties and Investment Private Limited & Anr.* in WPO No.244 of 2021, all these writ petitions herein are disposed of by allowing the same.

Explanations A(a)(ii)/A(b) to the notifications dated March 31, 2021 and April 27, 2021 are declared to be ultra vires the Relaxation Act, 2020 and are, therefore, bad in law and null void. All the impugned notices under section 148 of the Income Tax, 1961 are quashed with liberty to the assessing officers concerned to initiate fresh re-assessment proceedings in accordance with the relevant provisions of the Act as amended by the Finance Act, 2021 and after making compliance of the formalities as required by the law.

[Md. Nizamuddin, J]