Sl No. 38
03.03.2022.
Ct No. 2

Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction
(Via Video Conference)

WPA 274 of 2022
Prabhakar Singh Ojha

-versus

Union of India & Anr.

Mr. Navin Barik
Mr. Sujit Basu
Ms. Esha Acharya
… for the petitioner.

Mr. Sudipto Kumar Mazumder, ld. Asstt. S.G.
Mr. Ajoy Kumar Singhania
… for the Union of India.

The petitioner challenges the notices issued by the Income Tax Officer after 1st April 2021 under Section 148 Income Tax Act, 1961 being contrary to the mandatory procedure postulated under Section 148A of the said Act substituted by the Finance Act, 2021.

The petitioner also prays for a declaration that the explanation A(a)(ii) to the notification of Government of India in the Ministry of Finance (Department of Revenue) No.20 of 2021 published in the Gazette of India, Extraordinary, on 31st March, 2021 and the explanation A(b) to the notification of the Government of India published in the Gazette of India, Extraordinary on 27th April, 2021 are *ultra vires* the Taxation and

Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020.

It appears from a judgment delivered by a co-ordinate Bench of this Court on 17th January, 2022 in W.P.O. No. 244 of 2021 (Bagaria Properties and Investment Pvt. Ltd. & Anr. vs. U.O.I. & Ors.) that the Court was pleased to declare explanation A(a)(ii) / A(b) to the notifications dated 31st March, 2021 and 27th April 2021 as *ultra vires* the Relaxation Act, 2020 and has been pleased to set aside the same.

The Court was further pleased to quash the impugned re-assessment notices issued under Section 148 of the Income Tax Act, 1961.

The Court was pleased to grant liberty to the concerned Assessing Officer to initiate fresh re-assessment proceeding in accordance with the relevant provisions of the Act as amended by the Finance Act, 2021 after compliance of all formalities required under the law.

As it appears that the provisions which have been challenged by the present petitioner is covered by the aforesaid judgment delivered by the Court, the directions passed therein will cover the present case.

"*Explanations A(a)(ii)/A(b) to the Notifications dated 31st March, 2021 and 27th April, 2021 are declared to be ultra vires the Relaxation Act, 2020 and are therefore bad in law and null and void. All the impugned notices under*

Section 148 of the Income Tax Act 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 Finance Act, 2021 and after making compliance of the formalities as required by the law."

The writ petition is disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, after completion of all legal formalities.

Sh **(Amrita Sinha, J.)**