

22.2.2022
Item No.—3-6
ks

**THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

WPA No.2272 of 2021

Birendra Choubey

-vs-

**Income Tax Officer, Ward 1(2), Siliguri & Ors.
With**

WPA Nos. 2276/2021, 181/2022, 207/2022,

Mr. Dhiraj Lakhotia,
Ms. Radhika Agarwal

...for the petitioner/petitioners.

Mr. Y.J. Dastoor, Ld. ASG.,
Mr. Madhu Jana

... For the Respondent/Income Tax.

Mr. Sudipto Kumar Mazumdar,
Mr. Sanjay Mazoomdar

.....for the UOI.

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 all these Writ Petitions have been heard together and are being decided by the present common judgment and order.

Common facts and issues involved in all these Writ Petitions as appear on perusal of relevant record and upon considering the submissions of the parties are that the petitioners are aggrieved by the issuance of impugned notices under Section 148 of the Income Tax Act, 1961 on the ground that the same are barred by limitation and the respondent Income Tax Authority concerned, before issuing

the impugned notices under Section 148 of the Income Tax Act, have not observed the statutory formalities under Section 148A of the Income Tax 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 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 respondent Income Tax Authority concerned under Section 148 of the Income Tax Act, assessees/petitioners have also sought relief by way of a declaration declaring Explanations A(a)(ii)/A(b) to the 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 the 31st March, 2021, before the 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 counsels 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 30th September, 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 assessee/petitioners on 30.09.2021 and order of Rajasthan High Court dated 25th November, 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 the order of Delhi High Court 15th December, 2021 in the case of Man Mohan Kohli -vs- Assistant Commissioner of Income Tax & Anr. in (W.P. (C) 6176 of 2021) and judgment and order of this Court dated 17th January, 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 244 of 2021.

In view of judgments and orders of this Court dated 17th January, 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 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 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.

Urgent certified photo copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[Md. Nizamuddin, J]