IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side

Present :- Hon'ble Mr. Justice Md. Nizamuddin

W.P.O. No. 244 of 2021

Bagaria Properties and Investment Pvt. Ltd. & Anr.
Vs.
U.O.I & Ors.

With

W.P.O. No. 253 of 2021, W.P.O. No. 254 of 2021, W.P.O. No. 255 of 2021, W.P.O. No. 256 of 2021, W.P.O. No. 267 of 2021, W.P.O. No. 268 of 2021, W.P.O. No. 269 of 2021, W.P.O. No. 271 of 2021, W.P.O. No. 272 of 2021, W.P.O. No. 273 of 2021, W.P.O. No. 274 of 2021, W.P.O. No. 275 of 2021, W.P.O. No. 276 of 2021, W.P.O. No. 277 of 2021, W.P.O. No. 278 of 2021, W.P.O. No. 279 of 2021, W.P.O. No. 280 of 2021, W.P.O. No. 281 of 2021, W.P.O. No. 282 of 2021, W.P.O. No. 283 of 2021, W.P.O. No. 292 of 2021, W.P.O. No. 295 of 2021, W.P.O. No. 296 of 2021, W.P.O. No. 297 of 2021, W.P.O. No. 298 of 2021, W.P.O. No. 299 of 2021, W.P.O. No. 300 of 2021, W.P.O. No. 301 of 2021, W.P.O. No. 302 of 2021, W.P.O. No. 303 of 2021, W.P.O. No. 304 of 2021, W.P.O. No. 305 of 2021, W.P.O. No. 306 of 2021, W.P.O. No. 307 of 2021, W.P.O. No. 308 of 2021, W.P.O. No. 309 of 2021, W.P.O. No. 311 of 2021, W.P.O. No. 312 of 2021, W.P.O. No. 314 of 2021, W.P.O. No. 315 of 2021, W.P.O. No. 316 of 2021, W.P.O. No. 317 of 2021, W.P.O. No. 318 of 2021, W.P.O. No. 319 of 2021, W.P.O. No. 320 of 2021, W.P.O. No. 321 of 2021, W.P.O. No. 322 of 2021, W.P.O. No. 323 of 2021,

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W.P.O. No. 1702 of 2021, W.P.O. No. 1703 of 2021, W.P.O. No. 1705 of 2021, W.P.O. No. 1706 of 2021, W.P.O. No. 1708 of 2021, W.P.O. No. 1709 of 2021, W.P.O. No. 1710 of 2021, W.P.O. No. 1742 of 2021, W.P.O. No. 1745 of 2021, W.P.O. No. 1747 of 2021, W.P.O. No. 1749 of 2021, W.P.O. No. 1751 of 2021, W.P.O. No. 1752 of 2021, W.P.O. No. 1754 of 2021, W.P.O. No. 1757 of 2021, W.P.O. No. 1760 of 2021, W.P.O. No. 1761 of 2021, W.P.O. No. 1762 of 2021, W.P.O. No. 1763 of 2021, W.P.O. No. 1764 of 2021, W.P.O. No. 1766 of 2021, W.P.O. No. 1785 of 2021, W.P.O. No. 1788 of 2021, W.P.O. No. 1789 of 2021, W.P.O. No. 1790 of 2021, W.P.O. No. 1792 of 2021,

For the Petitioners :-

Mr. Pranit Bag, Mr. Anuj Kr. Mishra, Mr. Balaram Patra, Mr. Sumit Mishra, Mr. Anurag Bagaria, Mr. V. N. Dwivedi, Ms. Jayanti Char, Mr. Saumya Kejriwal, Mr. Somnath Saha, Mr. Bhaskar Sengupta, Mr. S. K. Mukhi, Ms. Aishwarya Rajyashree, Mr. Arun Kumar Upadhyay, Ms. Shobha Upadhyay, Ms. Anupa Banerjee, Mr. Aasish Choudhury, Mrs. Aindrila Basu, Mr. Deepak Chopra, Mr. Rohan Khare, Mr. Indranil Banerjee, Mr. Subrata Mukherjee, Mr. D. B. Thakur, Mr. Himangshu Kr. Ray, Mr. A. Sengupta, Ms. Amani Kayan, Mr. Zubeen Pandey, Mr. Ankit Agarwal, Mr. Sumit Biswas, Mr. Rajashree Bhowmick, Mr. Sarangam Chakraborty, Ms. Swapna Das, Adv. Mr. Siddharth Das, Mr. J. P. Khaitan, Mr. Sanjay Bhowmik, Adv. Mr. A. K. Dey, Mr. P. Jhunjhunwala, Mr. Abhratosh Majumdar, Mr. Avra Mazumder, Mr. Vineet Tibrewal, Mr. Divyanshu Agrawal, Mr. Kapil Goel, Mr. Sandeep Goel, Mr. Abhijeet Agarwal, Md. Bilwal Hossain, Mrs. Sudeshna Mazumder, Mr. Rajeev Kumar Agarwal, Mr. Asim Choudhury, Mr. Soham Sen, Mr. Salil Kapoor, Mr. Soumya Singh, Ms. Ananya Kapoor, Ms. Falguni Rambhasha, Mr. Abhra Jena, Mr. Amal Kr. Sen, Mr. Chandrachur Chatterjee, Mr. Jibantaraj Dan Ray, Mr. Suryaneel Das, Mr. Aditya Mondal, Ms. Debjani Chatterjee, Mr. Akash Agarwal, Mr. Sailendra Kr.Tiwari, Mr. Hemant Tiwari, Mr. Pradeep Jewrajka, Ms. Pooja Jewrajka, Mr. Rahul Poddar, Mr. Ananda Sen, Mr. Rano Jain, Mr. Venketesh Chaurasia, Ms. Swapna Das, Mr. Siddharth Das, Mr. Subash Agarwal, Mr. Ankit Agarwal, Mr. Sumit Biswas, Mr. Brijesh Kumar Singh, Ms. Aparajita Rao, Mr. Sanwal Tibrewal, Mr. Saurabh Bagaria, Mr. Aditya Kanodia, Ms. Sutapa Roy Choudhury, Mr. Samrat Goswami, Mr. Tanoy Chakraborty, Mr. Chhandak Dutta, Mr. Navin Mittal, Ms. Aratrika Roy, Mr. R. N. Dutta, Mr. Abhijat Das, Ms. Sushmita Ghosh, Mr. Ganesh Prasad Shaw, Mr. Taraknath Jaiswal, Ms. Ashok Kumar Singh, Ms. Niharika Singh, Ms. Shubhangini Singh, Mr. Prashant Agarwal, Mr. Om Narayan Rai, Mr. Rites Goel, Mr. Anirudhya Dutta, Mr. Saurav Jain, Mr. Somak Basu, Mr. Jishnu Chowdhury, Ms. Ranjana Roy Gawai, Ms. Vasudha Sen, Mr. Arnab Sardar, Mr. Ujjal Jain, Mr. Indradeep Basu, Ms. Monika Kalra, Mr. T. S. Nerwal, Mr. Pratyush Jhunjhunwala, Mr. Samit Rudra, Mr. A. Bansal, Ms. Sushmita Ghosh, Mr. Parashar Baidya, Mr. Anil Kumar Dugar, Mr. Rajarshi Chatterjee, Mr. Rohit Jain, Mr. Aniket D. Agarwal, Mr. Saksham Singhal, Mr. Ramesh Kumar Chowdhury, Mr. Protyush Chatterjee, Mr. Tapan Kumar Mitra, Mr. Bimalendu Das, Ms. Namita Agarwal, Mr. Arvind Agarwal, Mr. Farhan Ghaffar, **Advocates**

For the Respondents :-

Mr. Y. J. Dastoor, Ld. Additional Solicitor General, Mr. Asok Bhowmik, Mr. P. K. Bhaumick, Mr. S. Roychoudhury, Mr. S. N. Dutta, Mr. D. Choudhury, Mr. Tilak Mitra, Mr. S. Biswas, Mr. M. N. Bandyopadhyay, Mr. Soumen Bhattacharjee, Mr. A. Ganguly, Mr. Madhu Jana, Ms. Sucharita Biswas, Mr. Debasish Chaudhuri, Mr. Smarajit Roychowdhury, **Advocates**

Dated : 17th January, 2022

MD. NIZAMUDDIN, J.

Heard Learned Counsels appearing for the parties.

In view of involvement of common questions 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 148 A 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 in the matter of 'Ashok Kumar Agarwal –vs- Union of India through its Revenue Secretary

North Block & Ors.' (Writ Tax No. 524/2021) decided in favour of assessees/petitioners on 30.09.2021 by holding inter alia in relevant Paragraph Nos. 63 to 80 as hereunder:

> ***"63. Having heard learned counsel for the parties and having perused the record, we find that the thrust of the submissions advanced by learned counsel for the petitioners, are:***
>
> ***(i) By substituting the provisions of the Act by means of the Finance Act, 2021 with effect from 01.04.2021, the old provisions were omitted from the statute book and replaced by fresh provisions with effect from 01.04.2021. Relying on the principle – substitution omits and thus obliterates the pre-existing provision, it has been further submitted, in absence of any saving clause shown to exist either under the Ordinance or the Enabling Act or the Finance Act 2021, there exists no presumption in favour of the old provision continuing to operate for any purpose, beyond 31.03.2021.***
>
> ***(ii) The Act is a dynamic enactment that sustains through enactment of the Finance Act every year. Therefore, on 1st April every year, it is the Act as amended by the Finance Act, for that year which is applied. In the present case, it is the Act as amended by the Finance Act 2021, that confronted the Enabling Act as was pre-existing. In absence of any legislative intent expressed either under the Finance Act, 2021 or under the Enabling Act, to preserve any part of the pre-existing Act, plainly, reference to provisions of Sections 147 and 148 of the Act and the words 'assessment' and 'reassessment' appearing in the Notifications issued under the Enabling Act may be read to be indicating only at proceedings already commenced prior to 01.04.2021, under the Act (before amendment by the Finance Act, 2021). The delegated action performed under the Enabling Act cannot, itself create an overriding effect in favour of the Enabling Act.***

iii) The Enabling Act read with its Notifications does not validate the initiation of any proceeding that may otherwise be incompetent under the law. That law only affects the time limitation to conduct or conclude any proceeding that may have been or may be validly instituted under the Act, whether prior to or after its amendment by Finance Act, 2021. Insofar as, Section 1(2)(a) unequivocally enforced Sections 2 to 88 of the Finance Act, 2021, w.e.f. 01.04.2021, there can be no dispute if any valid proceeding could be initiated under the pre-existing Section 148 read with Section 147, after 01.04.2021. In support thereof other submission also appear to exist – based upon the enactment of Section 148A (w.e.f. 01.04.2021).

(iv) The delegation made could be exercised within the four corners of the principal legislation and not to overreach it. Insofar as the Enabling Act does not delegate any power to legislate – with respect to enforceability of any provision of the Finance Act, 2021 and those provisions (Sections 2 to 88) had come into force, on their own, on 01.04.2021, any exercise of the delegate under the Enabling Act, to defeat the plain enforcement of that law would be wholly unconstitutional.

(v) It also appears to be the submission of learned counsel for the petitioners that the Parliament being aware of all realities, both as to the fact situation and the laws that were existing, it had consciously enacted the Enabling Act, to extend certain time limitations and to enforce only a partial change to the reassessment procedure, by enacting section 151-A to the Act. It then enacted the Finance Act, 2021 to change the substantive and procedural law governing the reassessment proceedings. That having been done, together with introduction of section 148-A to the Act, legislative field stood occupied, leaving the delegate with no room to manipulate the law except as to the time lines with respect to proceedings that may have been initiated under the Act (both

prior to and after enforcement of the Finance Act, 2021). To bolster their submission, learned counsel for the petitioners also rely on the principle – the delegated legislation can never defeat the principal legislation.

(vi) Last, it has also been asserted, the non-obstante clause created under section 3(1) of the Enabling Act must be read in the context and for the purpose or intent for which it is created. It cannot be given a wider meaning or application as may defeat the other laws.

64. As to the first line of reasoning applied by the learned counsel for the petitioner, as noted above, there can be no exception to the principle – an Act of legislative substitution is a composite act. Thereby, the legislature chooses to put in place another or, replace an existing provision of law. It involves simultaneous omission and re-enactment. By its very nature, once a new provision has been put in place of a pre-existing provision, the earlier provision cannot survive, except for things done or already undertaken to be done or things expressly saved to be done. In absence of any express saving clause and, since no reassessment proceeding had been initiated prior to the Act of legislative substitution, the second aspect of the matter does not require any further examination.

65. Therefore, other things apart, undeniably, on 01.04.2021, by virtue of plain/unexpected effect of Section 1(2)(a) of the Finance Act, 2021, the provisions of Sections 147, 148, 149, 151 (as those provisions existed up to 31.03.2021), stood substituted, along with a new provision enacted by way of Section 148A of that Act. In absence of any saving clause, to save the pre-existing (and now substituted) provisions, the revenue authorities could only initiate reassessment proceeding on or after 01.04.2021, in accordance with the substituted law and not the pre-existing laws.

66. It is equally true that the Enabling Act that was pre-existing, had been enforced prior to enforcement of the Finance Act, 2021. It confronted the Act as amended by

Finance Act, 2021, as it came into existence on 01.04.2021. In the Enabling Act and the Finance Act, 2021, there is absence, both of any express provision in itself or to delegate the function – to save applicability of the provisions of sections 147, 148, 149 or 151 of the Act, as they existed up to 31.03.2021. Plainly, the Enabling Act is an enactment to extend timelines only. Consequently, it flows from the above – 01.04.2021 onwards, all references to issuance of notice contained in the Enabling Act must be read as reference to the substituted provisions only. Equally there is no difficulty in applying the pre-existing provisions to pending proceedings. Looked in that manner, the laws are harmonized.

67. It may also be not forgotten, a reassessment proceeding is not just another proceeding emanating from a simple show cause notice. Both, under the pre-existing law as also under the law enforced from 01.04.2021, that proceeding must arise only upon jurisdiction being validly assumed by the assessing authority. Till such time jurisdiction is validly assumed by assessing authority – evidenced by issuance of the jurisdictional notice under Section 148, no reassessment proceeding may ever be said to be pending before the assessing authority. The admission of the revenue authorities that all re-assessment notices involved in this batch of writ petitions had been issued after the enforcement date 01.04.2021, is tell-tale and critical. As a fact, no jurisdiction had been assumed by the assessing authority against any of the petitioners, under the unamended law. Hence, no time extension could ever be made under section 3(1) of the Enabling Act, read with the Notifications issued thereunder.

68. The submission of the learned Additional Solicitor General of India that the provision of Section 3(1) of the Enabling Act gave an overriding effect to that Act and therefore saved the provisions as existed under the unamended law, also cannot be accepted. That saving could arise only if jurisdiction had been validly assumed before the

date 01.04.2021. In the first place Section 3(1) of the Enabling Act does not speak of saving any provision of law. It only speaks of saving or protecting certain proceedings from being hit by the rule of limitation. That provision also does not speak of saving any proceeding from any law that may be enacted by the Parliament, in future. For both reasons, the submission advanced by learned Additional Solicitor General of India is unacceptable.

69. Even otherwise the word 'notwithstanding' creating the non obstante clause, does not govern the entire scope of Section 3(1) of the Enabling Act. It is confined to and may be employed only with reference to the second part of Section 3(1) of the Enabling Act i.e. to protect proceedings already under way. There is nothing in the language of that provision to admit a wider or sweeping application to be given to that clause – to serve a purpose not contemplated under that provision and the enactment, wherein it appears.

70. The upshot of the above reasoning is, the Enabling Act only protected certain proceedings that may have become time barred on 20.03.2020, up to the date 30.06.2021. Correspondingly, by delegated legislation incorporated by the Central Government, it may extend that time limit. That time limit alone stood extended up to 30 June, 2021. We also note, the learned Additional Solicitor General of India may not be entirely correct in stating that no extension of time was granted beyond 30.06.2021. Vide Notification No. 3814 dated 17.09.2021, issued under section 3(1) of the Enabling Act, further extension of time has been granted till 31.03.2022. In absence of any specific delegation made, to allow the delegate of the Parliament, to indefinitely extend such limitation, would be to allow the validity of an enacted law i.e. the Finance Act, 2021 to be defeated by a purely colourable exercise of power, by the delegate of the Parliament.

71. Here, it may also be clarified, Section 3(1) of the Enabling Act does not itself speak of reassessment proceeding

or of Section 147 or Section 148 of the Act as it existed prior to 01.04.2021. It only provides a general relaxation of limitation granted on account of general hardship existing upon the spread of pandemic COVID -19. After enforcement of the Finance Act, 2021, it applies to the substituted provisions and not the pre-existing provisions.

72. Reference to reassessment proceedings with respect to pre-existing and now substituted provisions of Sections 147 and 148 of the Act has been introduced only by the later Notifications issued under the Act. Therefore, the validity of those provisions is also required to be examined. We have concluded as above, that the provisions of Sections 147, 148, 148A, 149, 150 and 151 substituted the old/pre-existing provisions of the Act w.e.f. 01.04.2021. We have further concluded, in absence of any proceeding of reassessment having been initiated prior to the date 01.04.2021, it is the amended law alone that would apply. We do not see how the delegate i.e. Central Government or the CBDT could have issued the Notifications, plainly to over reach the principal legislation. Unless harmonized as above, those Notifications would remain invalid.

73. Unless specifically enabled under any law and unless that burden had been discharged by the respondents, we are unable to accept the further submission advanced by the learned Additional Solicitor General of India that practicality dictates that the reassessment proceedings be protected. Practicality, if any, may lead to legislation. Once the matter reaches Court, it is the legislation and its language, and the interpretation offered to that language as may primarily be decisive to govern the outcome of the proceeding. To read practicality into enacted law is dangerous. Also, it would involve legislation by the Court, an idea and exercise we carefully tread away from.

74. Similarly, the mischief rule has limited application in the present case. Only in case of any doubt existing as to

which of the two interpretations may apply or to clear a doubt as to the true interpretation of a provision, the Court may look at the mischief rule to find the correct law. However, where plain legislative action exists, as in the present case (whereunder the Parliament has substituted the old provisions regarding reassessment with new provisions w.e.f. 01.04.2021), the mischief rule has no application.

75. As we see there is no conflict in the application and enforcement of the Enabling Act and the Finance Act, 2021. Juxtaposed, if the Finance Act, 2021 had not made the substitution to the reassessment procedure, the revenue authorities would have been within their rights to claim extension of time, under the Enabling Act. However, upon that sweeping amendment made the Parliament, by necessary implication or implied force, it limited the applicability of the Enabling Act and the power to grant time extensions thereunder, to only such reassessment proceedings as had been initiated till 31.03.2021. Consequently, the impugned Notifications have no applicability to the reassessment proceedings initiated from 01.04.2021 onwards.

76. Upon the Finance Act 2021 enforced w.e.f. 1.4.2021 without any saving of the provisions substituted, there is no room to reach a conclusion as to conflict of laws. It was for the assessing authority to act according to the law as existed on and after 1.4.2021. If the rule of limitation permitted, it could initiate, reassessment proceedings in accordance with the new law, after making adequate compliance of the same. That not done, the reassessment proceedings initiated against the petitioners are without jurisdiction.

77. Insofar as the decision of the Supreme Court in the case of Ramesh Kymal Vs. Siemens Gamesa Renewable Power Private Limited (supra)is concerned, we opine, the same is wholly distinguishable. Therein The Insolvency and Bankruptcy Code 2016 was amended by the Parliament and a new Section 10A, was introduced, apparently again on

account of the difficulties arising from the spread of pandemic COVID-19. That Section reads as under: "10A. Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified 2 in this behalf: Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period. Explanation. – For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.]"

78. Plainly, in that case, the earlier provisions were not substituted rather they continued to exist. The parliamentary intervention by introducing Section 10A of that Act only provided – no proceeding be instituted for any default arising after 21.3.2020, for a period of six months or such period not exceeding one year, as may be notified. Thus, in that case, by virtue of amendment made, delegated power created, could be exercised to relax the otherwise stringent provisions of the Act, in cases, wherein difficulties arose from the spread of the pandemic COVID-19. Thus, that ratio is plainly distinguishable.

79. As to the decision of the Chhattisgarh High Court, with all respect, we are unable to persuade ourselves to that view. According to us, it would be incorrect to look at the delegation legislation i.e. Notification dated 31.03.2021 issued under the Enabling Act, to interpret the principal legislation made by Parliament, being the Finance Act, 2021. A delegated legislation can never overreach any Act of the principal legislature. Second, it would be over simplistic to ignore the provisions of, either the Enabling Act or the Finance Act, 2021 and to read and interpret the provisions of

Finance Act, 2021 as inoperative in view of the fact circumstances arising from the spread of the pandemic COVID-19. Practicality of life de hors statutory provisions, may never be a good guiding principle to interpret any taxation law. In absence of any specific clause in Finance Act, 2021, either to save the provisions of the Enabling Act or the Notifications issued thereunder, by no interpretative process can those Notifications be given an extended run of life, beyond 31 March 2020. They may also not infuse any life into a provision that stood obliterated from the statute with effect from 31.03.2021. Inasmuch as the Finance Act, 2021 does not enable the Central Government to issue any notification to reactivate the pre-existing law (which that principal legislature had substituted), the exercise made by the delegate/Central Government would be de hors any statutory basis. In absence of any express saving of the pre-existing laws, the presumption drawn in favour of that saving, is plainly impermissible. Also, no presumption exists that by Notification issued under the Enabling Act, the operation of the pre-existing provision of the Act had been extended and thereby provisions of Section 148A of the Act (introduced by Finance Act 2021) and other provisions had been deferred. Such Notifications did not insulate or save, the pre-existing provisions pertaining to reassessment under the Act.

80. In view of the above, all the writ petitions must succeed and are allowed. It is declared that the Ordinance, the Enabling Act and Sections 2 to 88 of the Finance Act 2021, as enforced w.e.f. 01.04.2021, are not conflicted. Insofar as the Explanation appended to Clause A(a), A(b), and the impugned Notifications dated 31.03.2021 and 27.04.2021 (respectively) are concerned, we declare that the said Explanations must be read, as applicable to reassessment proceedings as may have been in existence on 31.03.2021 i.e. before the substitution of Sections 147, 148, 148A, 149, 151 & 151A of the Act. Consequently, the reassessment notices in all

the writ petitions are quashed. It is left open to the respective assessing authorities to initiate reassessment proceedings in accordance with the provisions of the Act as amended by Finance Act, 2021, after making all compliances, as required by law."

Following the aforesaid decision of the Division Bench of the Allahabad High Court, the Rajasthan High Court taking the similar view have allowed the Writ Petitions by quashing the impugned assessment notices under Section 148 of the Act by the order 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).

Taking a similar view the Delhi High Court by its judgment and order dated 15th December, 2021 in the case of Man Mohan Kohli –vs- Assistant Commissioner of Income Tax & Anr. (W.P. (C) 6176 of 2021) have allowed the Writ Petitions by quashing the impugned notices under Section 148 of the Income Tax Act. Paragraphs Nos. 97 - 105 of the said judgment of Delhi High Court which are relevant are quoted hereinbelow:

"97. This Court is of the view that as the Legislature has introduced the new provisions, Sections 147 to 151 of the Income Tax Act, 1961 by way of the Finance Act, 2021 with effect from 1st April, 2021 and as the said Section 147 is not even mentioned in the impugned Explanations, the reassessment notices relating to any Assessment Year issued under Section 148 after 31st March, 2021 had to comply with the substituted Sections.

98. It is clarified that the power of reassessment that existed prior to 31st March, 2021 continued to exist till the extended period i.e. till 30th June, 2021; however, the Finance Act, 2021 has merely changed the procedure to

be followed prior to issuance of notice with effect from 1st April, 2021.

99. This Court is of the opinion that Section 3(1) of Relaxation Act empowers the Government/Executive to extend only the time limits and it does not delegate the power to legislate on provisions to be followed for initiation of reassessment proceedings. In fact, the Relaxation Act does not give power to Government to extend the erstwhile Sections 147 to 151 beyond 31st March, 2021 and/or defer the operation of substituted provisions enacted by the Finance Act, 2021. Consequently, the impugned Explanations in the Notifications dated 31st March, 2021 and 27th April, 2021 are not conditional legislation and are beyond the power delegated to the Government as well as ultra vires the parent statute i.e. the Relaxation Act. Accordingly, this Court is respectfully not in agreement with the view of the Chhattisgarh High Court in Palak Khatuja (supra), but with the views of the Allahabad High Court and Rajasthan High Court in Ashok Kumar Agarwal (supra) and Bpip Infra Private Limited (supra) respectively.

100. The submission of the Revenue that Section 6 of the General Clauses Act saves notices issued under Section 148 post 31st March, 2021 is untenable in law, as in the present case, the repeal is followed by a fresh legislation on the same subject and the new Act manifests an intention to destroy the old procedure. Consequently, if the Legislature has permitted reassessment to be made in a particular manner, it can only be in this manner, or not at all.

101. The argument of the respondents that the substitution made by the Finance Act, 2021 is not applicable to past Assessment Years, as it is substantial in nature is contradicted by Respondents' own Circular 549 of 1989 and its own submission that from 1st July, 2021, the substitution made by the Finance Act, 2021 will be applicable.

102. Revenue cannot rely on Covid-19 for contending that the new provisions Sections 147 to 151 of the Income Tax Act, 1961 should not operate during the period 1st April, 2021 to 30th June, 2021 as Parliament was fully aware of Covid-19 Pandemic when it passed the Finance Act, 2021. Also, the arguments of the respondents qua non-obstante clause in Section 3(1) of the Relaxation Act, 'legal fiction' and 'stop the clock provision' are contrary to facts and untenable in law.

103. Consequently, this Court is of the view that the Executive/Respondents/Revenue cannot use the administrative power to issue Notifications under Section 3(1) of the Relaxation Act, 2020 to undermine the expression of Parliamentary supremacy in the form of an Act of Parliament, namely, the Finance Act, 2021. This Court is also of the opinion that the Executive/Respondents/Revenue cannot frustrate the purpose of substituted statutory provisions, like Sections 147 to 151 of Income Tax Act, 1961 in the present instance, by emptying it of content or impeding or postponing their effectual operation.

104. Keeping in view the aforesaid conclusions, 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.

105. Consequently, the impugned reassessment notices issued under Section 148 of the Income Tax Act, 1961 are quashed and the present writ petitions are allowed. If the law permits the respondents/revenue to take further steps in the matter, they shall be at liberty to do so. Needless to state that if and when such steps are taken and if the petitioners have a grievance, they shall be at liberty to take their remedies in accordance with law.”

Respectfully agreeing with the reasonings and views taken by the Allahabad High Court, Rajasthan High Court and Delhi High Court in the cases referred hereinabove, 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 order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Md. Nizamuddin, J.)