IN THE HIGH COURT OF JUDICATURE AT BOMBAY NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 96 OF 2022

Ravi Omprakash Agrawal. … Petitioner.

VERSUS

Dy.Commissioner of Income Tax & ors. … Respondents.

WRIT PETITION NOs. 1292 & 1288 OF 2022

Gokul Traders. … Petitioner.

VERSUS

Assistant Commissioner of Income Tax & ors. … Respondents.

WRIT PETITION NO. 407 OF 2022

Charudatta & others. … Petitioners.

VERSUS

Dy/Asstt. Commissioner of Income Tax & ors. … Respondents.

WRIT PETITION NO. 441 OF 2022

Sarika Manish Agrawal. … Petitioner.

VERSUS

Income Tax Officer and others. … Respondents.

WRIT PETITION NO. 1339 OF 2022

D.P. Jain and Co. … Petitioner.

VERSUS

Dy. Commissioner of Income Tax & ors. … Respondents.

WRIT PETITION NO. 1337 OF 2022

Rajnigandha Suppliers Pvt.Ltd. … Petitioner.

VERSUS

Dy. Commissioner of Income Tax & ors. … Respondents.

WRIT PETITION NO. 1338 OF 2022

Cyperus Multritrade Pvt.Ltd. … Petitioner.
VERSUS
Dy. Commissioner of Income Tax & ors. … Respondents.

WRIT PETITION NOs. 1422, 1440 OF 2022

Ishan Education, Nagpur. … Petitioner.
VERSUS
Asstt, Commissioner of Income Tax & ors.… Respondents.

WRIT PETITION NOs. 1502, 1503, 1509, OF 2022

Aravind Babu Deshmuk … Petitioner.
VERSUS
DCIT/ACIT & ors. … Respondents.

WRIT PETITION NO. 1845 OF 2022

Abhay Sharad Chaudhary. … Petitioner.
VERSUS
Dy./Asstt. Commissioner of Income Tax & ors. … Respondents.

WRIT PETITION NO. 3519 OF 2021

Rajlaxmi Multi-State Credit. … Petitioner.
VERSUS
Income Tax Officer & another. … Respondents.

WRIT PETITION NO. 1489 OF 2022

V.S.P.M. Academy. … Petitioner.
VERSUS
DCIT/ACIT & ors. … Respondents.

Mr.K.Hirani, Advocate for Petitioners in Writ Petition Nos.96, 1339. 1337, 1338 of 2022.

Mr.A.N. Agrawal, Advocate for Petitioners in Writ Petition Nos.1292, 1288, 407, 441, 1845 of 2022.

Mr.A.Khandelwal, Advocate for Petitioners in Writ Petition Nos.1422, 1440 of 2022.
Mr.Milind Bhusari, Advocate for Petitioners in Writ Petition Nos.1502, 1503, 1509, 1489 of 2022.
Mr. H.V. Thakur, Advocate for Petitioner in Writ Petition No.3519 of 2021.
Mr.S.N. Bhattad, Advocate for Respondent -Income Tax Department.
Mr.N. Deshpande, A.S.G.I. with Ms.M. Chandurkar, Ms.A.S.Athalaye, Ms.N. Chaubey, Advocates for Respondent Union of India and CBDT.
Mr.N.N. Burange, Advocate for Respondent No.4 in W.P.No.1338/2022.

CORAM : NITIN JAMDAR AND ANIL L. PANSARE, JJ.

DATE : 18 APRIL 2022.

P.C.

This group of Writ Petitions, filed by the assessees raises challenge to the notice issued by the Respondent – Income Tax Department under Section 148 of the Income Tax Act, 1961 and to the proceedings initiated pursuant to the notice after 1 April 2021 under the provisions of the Income Tax Act read with the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020.

2. Since the challenge is based on legal provision it is not necessary to detail the facts of each case and it will suffice if the dates of notice issued to each of the Petitioners under Section 148 of the Income Tax Act are mentioned. The same are as under :

Sr.No.	Writ Petition No.	Date of Notice
1.	Writ Petition No.96/2022	7 May 2021.
2.	Writ Petition No.1292/2022	15 April 2021.
3.	Writ Petition No.407/2022	17 June 2021.
4.	Writ Petition No.441/2022	23 April 2021.
5.	Writ Petition No.1288/2022	23 April 2021.
6.	Writ Petition No.1339/2022	30 June 2021.
7.	Writ Petition No.1337/2022	30 June 2021.
8.	Writ Petition No.1338/2022	30 June 2021.
9.	Writ Petition No.1422/2022	28 June 2021.
10.	Writ Petition No.1440/2022	28 June 2021.
11.	Writ Petition No.1502/2022	24 June 2021.
12.	Writ Petition No.1503/2022	24 June 2021.
13.	Writ Petition No.1509/2022	24 June 2021.
14.	Writ Petition No.1845/2022	30 June 2021.
15	Writ Petition No.3519/2021	24 June 2021.
16.	Writ Petition No.1489/2022	25 June 2021.

In all these petitions ad-interim relief staying the operation of the notice is granted.

3. The learned Counsel for the parties have placed before us copy of the Judgment and order passed by the Division Bench of this Court (Principal Seat) in case of *Tata Communications Transformation Services Limited .vrs. Assistant Commissioner of Income Tax and others (Writ Petition No.1334/2021 and other connected matters dated 29 March 2022).* The Division Bench, after noticing the view taken by the Allahabad High Court, Rajasthan High Court, Delhi High Court and Madras High Court, and giving certain additional reasons, has quashed and set aside the notice and also the explanation to the notification after

declaring them as *ultra vires*. The relevant portion of the judgment and order dated 29 March 2022 reads thus -

"41. In our view, the reopening notices issued after 1st April, 2021 are unsustainable and bad in law even if one was to apply the Explanations to the Notification Nos.20 of 2021 and 38 of 2021. The Explanation seeks to extend the applicability of erstwhile Sections 148, 149 and 151. The impugned Explanation does not cover Section 147, which (as amended) empowers the revenue to reopen an assessment subject to Sections 148 to 153, which includes Section 148A. Thus, even if Explanations are valid, the mandatory procedure laid down by Section 148A has not been followed and hence, without anything further, the notices under Section 148 of the Act are invalid and must be struck down for this reason as well. This proposition has also been upheld by the Delhi High Court.

42. …
43. …
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45. …
46. …
47. ….
48. ...
49. Some more reasons why the reopening notices must go are :

(a) Section 297 of the Act provides a saving clause for applicability of various provisions of the 1922 Act, even though the Act itself had been repealed. In the absence of such a saving clause for applicability of erstwhile Sections 147 to 151 of the Act, the amended provision of the Act would apply from 1st April, 2021.

(b) Moreover, the reopening notices issued after

1st April, 2021 are bad in law even if one was to apply the Explanations to the Notification Nos.20 and 38. The Explanations seek to extend the applicability of erstwhile Sections 148, 149 and 151. They do not cover Section 147, which empowers revenue to reopen subject to Section 148 to 153, which includes Section 148A. Thus, even if Explanation are valid, procedure of Section 148A is not followed and hence, notices are invalid.

(c) In any case, Relaxation Act is not applicable for Assessment Years 2015-2016 or any subsequent year and, hence, the question of applicability of the Notification Nos.20 and 38 of 2021 does not arise. The time limit to issue notice under Section 148 of the Act for the Assessment Years 2015-2016 onwards was not expiring within the period for which Section 3(1) of Relaxation Act was applicable and, hence, Relaxation Act could never apply for these assessment years. As a consequence, there can be no question of extending the period of limitation for such assessment years.

50. To sum up, since we are in respectful agreement with the reasons recorded and views taken by the Allahabad High Court, Rajasthan High Court, Delhi High Court and Madras High Court, in the cases referred hereinabove, and for reasons noted above, all these writ petitions listed above are disposed by allowing the same. The explanations to the Notification No.20 of 2021 dated 31st March 2021 and Notification No.38 of 2021 dated 27th April 2021 are declared ultra vires and are, therefore, bad in law and null and void.

51. All the impugned notices issued under Section 148 of the Act are quashed and set aside.

52. It will be open to the Assessing Officers concerned *to initiate fresh reassessment proceedings in accordance with the relevant provisions of the Act as amended by the Finance Act, 2021 after strictly complying with the provisions of the Act."*

4. The learned Counsel for the parties are *ad idem* that this judgment clearly applies to the facts of the present matters.

5. Accordingly, the impugned notices under Section 148 of the Income Tax Act are quashed and set aside. However, it will be open to the Assessing Officers concerned to initiated fresh re-assessment proceedings in accordance with the relevant provisions of the Act as amended by the Finance Act, 2021 after complying with the provisions of the Act.

6. As regards the clarification sought by the learned Counsel for Respondent – Income Tax Department regarding the period under interim order to be excluded while computing the limitation is concerned, according to us, such clarification is not warranted as it is settled that the same shall stand excluded.

7. All the Writ Petitions stand disposed of in above terms.

(ANIL L. PANSARE, J) (NITIN JAMDAR, J)

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