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

WRIT PETITION NO. 2209 OF 2022

Shailesh Totaramji Chowksey. … Petitioner.

VERSUS

Deputy Commissioner of Income
Tax & another. … Respondents.

WRIT PETITION NO. 2210 OF 2022

Jitendra Ramesh Malviya. … Petitioner.

VERSUS

Deputy Commissioner of Income
Tax & another. … Respondents.

Mr.S.V. Purohit, Advocate for Petitioners
Mr.S.N. Bhattad, Advocate for Respondent No.1.
Mr.N.S.Deshpande, A.S.G.I. for Respondent No.2.

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

DATE : 27 APRIL 2022.

P.C.

Heard learned Counsel for the parties.

2. Issue notice to Respondents. Mr.S.N. Bhattad, Advocate for Respondent No.1 and Mr.N.S. Deshpande, learned A.S.G.I. for Respondent No.2 waive notice. Writ Petitions are taken up for disposal.

3. In both these petitions, Petitioners have challenged notices issued by Respondent – Income Tax Department under Section 148 of the Income Tax Act, 1961. In Writ Petition No.2209/2022, notice is dated 29 June 2021 and the assessment order is passed on 26 March 2022. In Writ Petition No.2210/2022, notice is dated 29 June 2021 and the order of assessment is dated 25 March 2022.

4. In both these petitions Petitioners have made a reference to the decision of 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).*

5. The learned Counsel for the parties have placed before us copy of the Judgment and order passed by the Division Bench of this Court in case of *Tata Communications Transformation Services Limited .vrs. Assistant Commissioner of Income Tax and others (supra).* 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.*
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> *42. …*
> *43. …*
> *44. …*
> *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."*

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

7. Accordingly, the impugned notices under Section 148 of the Income Tax Act and the assessment orders 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.

8. The Writ Petitions stand disposed of in above terms.

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

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