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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Judgment delivered on: 23.07.2024***+ **W.P.(C) 7364/2024 & CM APPL. 30733/2024 (Stay)****MANJU SOMANI**

.....Petitioner

Through: **Mr. Ajay Vohra, Sr. Adv. with
Mr. Aniket D. Agrawal and Mr.
Saksham Singhal, Advs.**

versus

INCOME TAX OFFICER**WARD-70(1) & ORS.**

.....Respondents

Through: **Mr. Aseem Chawla, SSC with
Ms. Pratishtha Chaudhary, Adv.****CORAM:****HON'BLE MR. JUSTICE YASHWANT VARMA****HON'BLE MR. JUSTICE RAVINDER DUDEJA****J U D G M E N T****YASHWANT VARMA, J. (Oral)**

1. This writ petition has been preferred seeking the following reliefs:-

“(I) issue a writ in the nature of certiorari/ mandamus or any other appropriate writ, order or direction for quashing:

(a) the **notice dated 31.03.2024** issued under section 148A(b);

(b) the **order dated 29.04.2024** passed under section 148A(d), and the consequent initiation of reassessment proceedings vide **notice dated 29.04.2024** issued under section 148 of the Income Tax Act, 1961;

in the case of the Petitioner for assessment year 2016-17, and all proceedings/ actions consequent thereto;

(II) grant **ad-interim ex-parte stay** on the reassessment proceedings initiated under sections 147/148 of the Act vide the impugned notice dated 29.04.2024 issued under section 148 of the Act, and/or any other proceedings initiated thereunder for the assessment year 2016-17, during pendency of the present petition;



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(III) Pass such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

2. The principal challenge is to the initiation of reassessment pursuant a notice dated 29 April 2024 issued under Section 148 of the **Income Tax Act, 1961**¹ and pertaining to **Assessment Year**² 2016-17. The reassessment action represents the third foray of the writ petitioner consequent to an earlier action coming to be annulled in terms of the judgment rendered by the Court in **Twylight Infrastructure (P) Ltd. v. CIT**³. The petitioners contend that bearing in mind the Proviso to Section 149(1), the reassessment action would not sustain.

3. For the purposes of consideration of the issues which arise, we deem it apposite to take note of the following facts. For A.Y. 2016-17, the petitioner filed its Return of Income on 17 October 2016. The Return of Income was accepted in terms of an intimation which was issued on 20 May 2017 and was referable to Section 143(1)(a) of the Act.

4. On 29 June 2021 the respondents issued notice seeking to initiate action under Section 148 of the Act. This notice came to be assailed by the writ petitioners by way of W.P.(C) 4428/2022. One of the principal grounds of challenge in that action appears to have been the adherence to the erstwhile regime for undertaking reassessment even though a paradigm procedural shift had come to take shape post 01 April 2021.

5. It would be pertinent to recall that although prior to the

¹ Act

² A.Y.

³ 2024 SCC OnLine Del 330



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statutory amendments which came to be introduced by virtue of Finance Act, 2021, the process of reassessment stood regulated by virtue of the decision of the Supreme Court in **GKN Driveshafts (India) Ltd. v. Income Tax Officer and Others**⁴, the requirement of an assessee being afforded an opportunity to represent against a proposed reassessment came to be statutorily engrafted in terms of clause (b), (c) and (d) of Section 148A.

6. Suffice it to note that the said writ petition along with others ultimately came to be allowed on 16 March 2022 in terms of the judgment rendered in **Mon Mohan Kohli v. Assistant Commissioner of Income-tax and Another**⁵. The Division Bench of our Court upon noticing the legislative amendments which had come into effect from 01 April 2021 held:-

“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 April 1, 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 March 31, 2021 had to comply with the substituted sections.

98. It is clarified that the power of reassessment that existed prior to March 31, 2021 continued to exist till the extended period, i.e., till June 30, 2021; however, the Finance Act, 2021 has merely changed the procedure to be followed prior to issuance of notice with effect from April 1, 2021.

99. This court is of the opinion that section 3(1) of the 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 March 31, 2021 and/or defer the operation of substituted provisions enacted by the Finance

⁴ (2003) 1 SCC 72

⁵ 2021 SCC OnLine Del 5250



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Act, 2021. Consequently, the impugned Explanations in the Notifications dated March 31, 2021 and April 27, 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 March 31, 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 the respondents' own Circular No. 549 of 1989 and its own submission that from July 1, 2021, the substitution made by the Finance Act, 2021 will be applicable.

102. The 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 April 1, 2021 to June 30, 2021 as Parliament was fully aware of Covid-19 pandemic when 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."

7. It is pertinent to note that the aforesaid decision had accorded



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liberty to the respondents to draw proceedings afresh if so permitted by law. This becomes evident from a reading of paragraph 105 of the report which is extracted hereinbelow:-

“**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.”

8. The divergent views taken by different High Courts across the country on the procedure liable to be adhered to post 01 April 2021 ultimately ended up before the Supreme Court and where the controversy was ultimately laid to rest in terms of the judgment in **Union of India vs. Ashish Agarwal⁶**. The Supreme Court ultimately modified the conflicting directions issued by various High Courts and framed the following directions:-

“**25.** Therefore, we propose to modify the judgments and orders passed by the respective High Courts as under:

25.1. The respective impugned Section 148 notices issued to the respective assesseees shall be deemed to have been issued under Section 148-A of the IT Act as substituted by the Finance Act, 2021 and treated to be show-cause notices in terms of Section 148-A(b). The respective assessing officers shall within thirty days from today provide to the assesseees the information and material relied upon by the Revenue so that the assesseees can reply to the notices within two weeks thereafter.

25.2. The requirement of conducting any enquiry with the prior approval of the specified authority under Section 148-A(a) be dispensed with as a one-time measure vis-a-vis those notices which have been issued under Section 148 of the unamended Act from 1-4-2021 till date, including those which have been quashed by the High Courts.

⁶ (2023) 1 SCC 617



25.3. The assessing officers shall thereafter pass an order in terms of Section 148-A(d) after following the due procedure as required under Section 148-A(b) in respect of each of the assessee concerned.

25.4. All the defences which may be available to the assessee under Section 149 and/or which may be available under the Finance Act, 2021 and in law and whatever rights are available to the Assessing Officer under the Finance Act, 2021 are kept open and/or shall continue to be available.

25.5. The present order shall substitute/modify respective judgments and orders passed by the respective High Courts quashing the similar notices issued under unamended Section 148 of the IT Act irrespective of whether they have been assailed before this Court or not.

26. There is a broad consensus on the aforesaid aspects amongst the learned ASG appearing on behalf of the Revenue and the learned Senior Advocates/learned counsel appearing on behalf of the respective assessee. We are also of the opinion that if the aforesaid order is passed, it will strike a balance between the rights of the Revenue as well as the respective assessee as because of a bona fide belief of the officers of the Revenue in issuing approximately 90,000 such notices, the Revenue may not suffer as ultimately it is the public exchequer which would suffer.

27. Therefore, we have proposed to pass the present order with a view to avoiding filing of further appeals before this Court and burden this Court with approximately 9000 appeals against the similar judgments and orders passed by the various High Courts, the particulars of some of which are referred to hereinabove. We have also proposed to pass the aforesaid order in exercise of our powers under Article 142 of the Constitution of India by holding that the present order shall govern, not only the impugned judgments and orders passed by the High Court of Judicature at Allahabad, but shall also be made applicable in respect of the similar judgments and orders passed by various High Courts across the country and therefore the present order shall be applicable to **PAN INDIA**.

28. In view of the above and for the reasons stated above, the present appeals are allowed in part. The impugned common judgments and orders passed by the High Court of Judicature at Allahabad in WT No. 524 of 2021 and other allied tax appeals/petitions, is/are hereby modified and substituted as under:

28.1. The impugned Section 148 notices issued to the respective assessee which were issued under unamended Section 148 of the



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IT Act, which were the subject-matter of writ petitions before the various respective High Courts shall be deemed to have been issued under Section 148-A of the IT Act as substituted by the Finance Act, 2021 and construed or treated to be show cause notices in terms of Section 148-A(b). The assessing officer shall, within thirty days from today provide to the respective assessee information and material relied upon by the Revenue, so that the assessee can reply to the show-cause notices within two weeks thereafter.

28.2. The requirement of conducting any enquiry, if required, with the prior approval of specified authority under Section 148-A(a) is hereby dispensed with as a one-time measure vis-a-vis those notices which have been issued under Section 148 of the unamended Act from 1-4-2021 till date, including those which have been quashed by the High Courts.

28.3. Even otherwise as observed hereinabove holding any enquiry with the prior approval of specified authority is not mandatory but it is for the assessing officers concerned to hold any enquiry, if required.

28.4. The assessing officers shall thereafter pass orders in terms of Section 148-A(d) in respect of each of the assessee concerned; Thereafter after following the procedure as required under Section 148-A may issue notice under Section 148 (as substituted).

28.5. All defences which may be available to the assessee including those available under Section 149 of the IT Act and all rights and contentions which may be available to the assessee concerned and Revenue under the Finance Act, 2021 and in law shall continue to be available.

29. The present order shall be applicable **PAN INDIA** and all judgments and orders passed by the different High Courts on the issue and under which similar notices which were issued after 1-4-2021 issued under Section 148 of the Act are set aside and shall be governed by the present order and shall stand modified to the aforesaid extent. The present order is passed in exercise of powers under Article 142 of the Constitution of India so as to avoid any further appeals by the Revenue on the very issue by challenging similar judgments and orders, with a view not to burden this Court with approximately 9000 appeals. We also observe that the present order shall also govern the pending writ petitions, pending before various the High Courts in which similar notices under Section 148 of the Act issued after 1-4-2021 are under challenge.

30. The impugned common judgments and orders passed by the High Court of Allahabad and the similar judgments and orders



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passed by various High Courts, more particularly, the respective judgments and orders passed by the various High Courts particulars of which are mentioned hereinabove, shall stand modified/substituted to the aforesaid extent only.”

9. Apparently and taking cue from the observations appearing in the aforenoted decision of the Supreme Court, fresh notices came to be issued to the writ petitioners on 23 May 2022. This, yet again, led to litigation being instituted before this Court and this time by way of W.P.(C) 16515/2022. The said writ petition ultimately came to be allowed by the Court while considering a batch of writ petitions by way of its decision titled *Twilight Infrastructure* which embodied the following operative directions:-

“28. Before us, the counsel for the revenue continue to hold this position. The only liberty that they seek is that if, based on the judgment in *Ganesh Dass Khanna*, the impugned orders and notices are set aside, liberty be given to the revenue to commence reassessment proceedings afresh.

29. Therefore, having regard to the aforesaid, the impugned notices and orders in each of the above-captioned writ petitions are quashed on the ground that there is no approval of the specified authority, as indicated in Section 151(ii) of the Act. The direction is issued with the caveat that the revenue will have liberty to take steps, if deemed necessary, *albeit* as per law.

30. Needless to add, the rights and contentions of both the sides will remain open, in the event the revenue triggers reassessment proceedings.”

10. It is thereafter and undeterred by the rendition of judgment by this Court that the impugned notices have come to be issued. It becomes pertinent to note that the liberty which the Court had spoken of in *Twilight Infrastructure* was subject to the caveat that if the respondents chose to initiate any further action, the same would have to necessarily be sanctioned by statute. This is evident from the Court



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in *Twilight Infrastructure* observing that the Revenue would be at liberty to trigger reassessment “as per law”. It is in the aforesaid backdrop that the petitioners question the validity of the present reassessment on the statutory prescription of limitation as engrafted in the Act.

11. It would in this context be apposite to take note of the following significant provisions which stand introduced as per the Proviso to Section 149(1) and which reads thus:-

“Time limit for notice.

149. (1) No notice under Section 148 shall be issued for the relevant assessment year,—

(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

[(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of—

(i) an asset;

(ii) expenditure in respect of a transaction or in relation to an event or occasion; or

(iii) an entry or entries in the books of account,

which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more:]

Provided that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if [a notice under section 148 or section 153-A or section 153C could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section or section 153A or section 153-C, as the case may be], as they stood immediately before the commencement of the Finance Act, 2021:

Provided further that the provisions of this sub-section shall not apply in a case, where a notice under section 153A, or section 153C read with section 153A, is required to be issued in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or before the 31st day of March, 2021:

Provided also that for cases referred to in clauses (i), (iii) and (iv) of Explanation 2 to Section 148, where,—



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- (a) a search is initiated under section 132; or
- (b) a search under section 132 for which the last of authorisations is executed; or

(c) requisition is made under section 132A,

after the 15th day of March of any financial year and the period for issue of notice under section 148 expires on the 31st day of March of such financial year, a period of fifteen days shall be excluded for the purpose of computing the period of limitation as per this section and the notice issued under section 148 in such case shall be deemed to have been issued on the 31st day of March of such financial year:

Provided also that where the information as referred to in Explanation 1 to section 148 emanates from a statement recorded or documents impounded under section 131 or section 133A, as the case may be, on or before the 31st day of March of a financial year, in consequence of,—

- (a) a search under section 132 which is initiated; or
- (b) a search under section 132 for which the last of authorisations is executed; or

(c) a requisition made under section 132A,

after the 15th day of March of such financial year, a period of fifteen days shall be excluded for the purpose of computing the period of limitation as per this section and the notice issued under clause (b) of section 148A in such case shall be deemed to have been issued on the 31st day of March of such financial year:]

Provided also that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (b) of section 148A or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded:

Provided also that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of section 148A [*does not exceed seven days*], such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly.

Explanation.—For the purposes of clause (b) of this subsection, “asset” shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.

[(1-A) Notwithstanding anything contained in sub-section (1), where the income chargeable to tax represented in the form of an asset or expenditure in relation to an event or occasion of the value referred to in clause (b) of sub-section (1), has



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escaped the assessment and the investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one previous years relevant to the assessment years within the period referred to in clause (b) of sub-section (1), a notice under section 148 shall be issued for every such assessment year for assessment, reassessment or recomputation, as the case may be.]

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.]”

12. As is manifest from the above, the Proviso to Section 149 clearly bids us to go back in point of time and examine whether a proposed reassessment pertaining to a period prior to 01 April 2021 would sustain based on the time frames as they existed prior to the promulgation of Finance Act, 2021. The Proviso embodies a negative command restraining the respondents from issuing a notice under Section 148 in respect of an AY prior to 01 April 2021, if the period within which such a notice could have been issued in accordance with the provisions as they existed prior thereto had elapsed. This is manifest from the provision using the expression “*no notice under Section 148 shall be issued*” if the time limit specified in the relevant provisions “*.....as they stood immediately prior to the commencement of the Finance Act, 2021*” had expired. A reassessment which is sought to be commenced post 01 April 2021 would thus have to abide by the time limits prescribed by Sections 149 (1)(b), 153A or 153B as may be applicable.

13. Undisputedly, Section 149(1)(b) as it stood prior to the introduction of the amendments by way of Finance Act, 2021 prescribed that no notice under Section 148 shall be issued if four years “*but not more than six years*” have elapsed from the end of the relevant assessment year. Thus the period of six years stood erected as



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the terminal point which when crossed would have rendered the initiation of reassessment impermissible in law.

14. Viewed in light of the above, the impugned notice when tested on the anvil of the pre-amendment Section 149(1)(b) in order to be sustained would have to meet the prescription of six years. Undisputedly that period in respect of AY 2016-17 came to an end on 31 March 2023. We thus find ourselves unable to sustain the impugned action of reassessment and which was commenced pursuant to the notice dated 29 April 2024.

15. It would be important to note that the respondents also do not attempt to sustain the initiation of action on any other statutory provision and which could be read as extending the time limit that applied. We also find ourselves unable to read *Twylight Infrastructure* as empowering them to reopen assessments contrary to the negative covenant which forms part of Section 149 of the Act.

16. We accordingly allow the present writ petition and quash the impugned order under Section 148A (d) dated 29 April 2024 as well as the consequential notice under Section 148 of even date.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 23, 2024/neha