IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

(1377) WRIT PETITION NO.1334 OF 2021

Tata Communications Transformation Services)
Limited, having its office at Plot No.C21 & C36,)
G Block, Bandra Kurla Complex, Bandra (East),)
Mumbai – 400 098) ….Petitioner

V/s.

(1) Assistant Commissioner of Income Tax 14(1))
(2), Aaykar Bhavan, M.K. Road, Mumbai – 400 020)

(2) Principal Commissioner of Income Tax – 6,)
Aaykar Bhavan, M.K. Road, Mumbai – 400 020)

(3) Union of India)
Through the Secretary, Ministry of Finance,)
Government of India, North Block,)
New Delhi – 100 001) ….Respondents

WITH

WP/1300/2021 WITH WP(L.)/19303/2021 WITH WP(L.)/ 19311/2021 WITH WP/2830/2021 WITH WP/3374/2021 WITH WP/3289/2021 WITH WP/2467/2021 WITH WP/2468/2021 WITH WP/2470/2021

WITH

(940) WP/2037/2021, (941) WP/2242/2021, (942) WP/2326/ 2021, (943) WP/2327/2021, (944) WP/2330/2021, (945) WP/ 2333/2021, (946) WP/2531/2021, (947) WP/2578/2021, (948) WP/2650/2021, (949) WP/2664/2021, (950) WP/2703/2021, (951) WP/2742/2021, (952) WP/2749/2021, (953) WP/2930/ 2021, (954) WP/2946/2021, (955) WP/3279/2021, (956) WP/ 3281/2021, (957) WP/3295/2021, (958) WP/3316/2021, (959) WP/3489/2021, (960) WP/3537/2021, (961) WP/3749/ 2021, (962) WP/3762/2021, (963) WP/3934/2021, (964) WP/ 3936/ 2021, (965) WP/3939/2021, (966) WP/3940/2021, (967) WP/ 3943/2021 (968) WP/3965/2021, (969) WP/3172/2021, (970) WP/3678/2021, (971) WP/3566/2021, (972) WP/3584/ 2021, (973) WP/3567/2021, (974) WP/3565/2021, (975) WP/ 3575/2021, (976) WP(L.)/25606/2021, (977) WP(L.)/30142/ 2021, (978) WP(L.)/30201/2021, (979) WP(L.)/31306/2021, (980) WP(L.)/31332/2021, (981) WP(L.)/31339/2021, (982) WP (L.)/31350/2021, (984) WP(L.)/31364/2021, (985) WP(L.)/ 31442/2021, (986) WP (L.)/31645/2021, (987) WP(L.)/31647/

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WITH
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2899 OF 2021

RAJEBAHADUR MADHUSUDAN TRIMBAK ....PETITIONER

V/s.

INCOME TAX OFFICER) WARD & ANR. ....RESPONDENTS

WITH

WP/3750/2021 WITH WP/3751/2021 WITH WP/3479/2021 WITH WP/3480/2021 WITH WP/3481/2021 WITH WP/3482/2021 WP/3483/2021 WITH WP/3859/2021 WITH WP/3745/2021 WITH WP/3633/2021 WITH WP/3706/2021 WITH WP/3601/2021 WITH WP/3857/2021 WITH WP/3747/2021 WITH WP/3748/2021 WITH WP/3746/2021 WITH WP/4025/2021 WITH WP/4020/2021 WITH WP/3853/2021 WITH WP/4211/2021 WITH WP/4230/2021 WITH WP/4208/2021 WITH WP/4210/2021 WITH WP/4209/2021 WITH WP/4641/2021 WITH WP/4640/2021 WITH WP/5362/2021 WITH WP/5363/2021 WITH WP/4931/2021 WITH WP/5087/2021 WITH WP/4928/2021 WITH WP/4924/2021 WITH WP/5432/2021 WITH WP/5429/2021 WITH WP/7944/2021 WITH WP/7072/2021 WITH WP/7826/2021 WITH WP/9/2022 WITH WP/7928/2021 WITH WP/7925/2021 WP(ST.)/22383/2021 WITH WP/12/2022 WITH

WP(ST.)/22706/2021 WITH WP(ST.)/22710/2021 WITH WP/11/2022 WITH (902) WP/3879/2021 WITH IA(ST)/2550/2022 IN WP/3879/2021, (903) WP/9561/2021 WITH WP/9562/2021, (904) WP/9565/2021, (905) WP/9569/2021 WITH WP/9570/2021, (906) WP/9571/2021) WITH WP/9574/2021 WITH WP/9575/2021 WITH WP/9573/2021, (907) WP/9583/2021 WITH WP/9582/2021, (908) WP/9584/2021, (909) WP(ST.)/47/2022, (910) WP(ST.)/255/2022, (911) WP/330/2022, (912) WP/498/2022, (913) WP(ST.)/566/2022, (914) WP/652/2022 WITH WP/450/2022 WITH WP/451/2022) WITH WP/453/2022, WITH WP/626/2022 WITH WP/638/2022, (915) WP/794/2022, (916) WP/824/2022, (917) WP/828/2022 WITH WP/825/2022 WITH WP/826/2022, WITH WP/827/2022, (918) WP/829/2022, WITH WP/830/2022, (919) WP/831/2022, (920) WP/834/2022, (921) WP(ST.)/862/2022, (922) WP(ST.)/863/2022, (923) WP (ST.)/882/2022, (924) WP(ST.)/1186/2022, (925) WP/1376/2022, (926) WP/1380/2022, (927) WP/1381/2022, (928) WP/1382/2022, (929) WP/1383/2022, (930) WP(ST.)/1700/2022, (931) WP(ST.)/2329/2022, (932) WP(ST.)/2330/2022, (933) WP(ST.)/2331/2022, (934) WP(ST.)/2430/2022, (935) WP(ST.)/3529/2022, (936) WP(ST.)/3643/2022, (937) WP(ST.)/3644/2022, (938) WP(ST.)/3663/2022, (939)WP(ST.)/3664/2022

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PRODUCTION BOARD

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Mr. J.D. Mistri, Mr. Percy Pardiwalla, Mr. Firoze B. Andhyarujina, Mr. B.M. Chatterji, Dr. K. Shivaram, Senior Advocates

with Mr. Tushar Hemani a/w. Mr. Madhur Agrawal, Mr. Harsh Kapadia Bhatt, Adv. Gunjan Kakkad, Mr. Raj Darak, Mr. P.C. Tripathi, Mr. Paras Savla, Mr. Harsh Shah, Mr. Pratik Poddar, Mr. Sukhsagar Syal, Mr. Jeet Kamdar, Mr. B.D. Damodar, Mr. Ajay Singh, Mr. K.K. Tiwari, Mr. Nishant Thakkar, Mr. Niraj Sheth, Mr. Harsh Kothari, Ms. Jasmin Amalsadvala, Ms. Aarti Sathe, Ms. Aasavari Kadam, Mr. Nitesh Joshi, Mr. Jitendra Jain, Mr. Niraj Sheth, Mr. Subhash S. Shetty, Mr. Gautam Thacker, Mr. Shreyash J. Shah, Ms. Kavita

Singh, Ms. Benita Kapadia, Mr. Meit Sampat, Mr. Maneck Andhyarujina, Mr. Arshad Shaikh, Mr. Netaji Gawade, Mr. Akshay Udeshi, Mr. Rahul Hakani, Ms. Shashi Bekal, Ms. Neelam Jadhav, Mr. Harsh R. Kothari, Mr. Rana S. Singh, Mr. Nikhil Goel, Mr. Kamal Kant Thakur, Mr. Pradeep S. Jetly, Mr. Sameer Dalal, Mr. Prakash Shah, Mr. Durgaprasad Poojari, Mr. Jas Sanghavi, Mr. Viraaj Bhate, Ms. Neha Ahuja, Mr. Hiten Chande, Mr. Rajendra Singhvi, Mr. Dhrumil Shah, Mr. Roshan Gaud, Mr. Devagni Vastraj, Mr. Mahir Shah, Mr. Bharat Raichandani, Mr. Mahesh Raichandani, Ms. Dipti Palli, Mr. Rishabh Jain, Mr. Parth Jayant Bhatt, Mr. Mohd. Zain Khan, Mr. Faiyaz Khan, Mr. Dharmesh S. Jain, Mr. Shantibhushan Nirmal, Ms. Sneha Ramnathan, Mr. Arun Jain, Mr. Pankaj Toprani, Mr. Krupa Toprani, Mr. Madhur Agrawal, Mr. Suyash Gadre, Ms. Priyanka Bora, Ms. Apoorva Karmarkar, Ms. Rucha Surve, Ms. Fereshtre Sethna, Adv. Mrunal Parekh, Mr. Abhishek Tilak, Mr. Ameya Pant, Mr. Sumit Raghani, Mr. Faran Khan, Mr. Suraj Iyer, Ms. Gauri Joshi, Mr. Sankalp Sharma, Mr. Yahya Goghari, Mr. Mustafa Shabbir Shamim, Mr. Ved Jain, Mr. Sujit Lahoti, Mr. Pradeep Rajagopal, Ms. Drishti Shah, Ms. Rekha Rajagopal, Mr. Chirag Bhavsar, Mr. Suddhasattwa Roy, Mr. Yash Ghelani, Mr. Ayush P. Tiwari, Mr. Madhur Rai, Mr. Rajeev Panday, Mr. Ashish Kanojia, Mr. Rajesh Gupta, Mr. Rohan Deshpande, Ms. Farzeen Khambatta, Mr. Shreyas Shrivastava, Ms. Dishya Pandey, Mr. Vinod Santosh Kumar, Mr. Shanay Shah, Ms. Alefiyah S., Ms. Shreya Mohapatra, Mr. Karan Jain, Mr. Dhrumil Shah, Mr. Gopal Mundhra, Mr. Parth Parikh, Mr. Rahul Hakani, Dr. N. Shastri, Mr. Rajan Pillai, Ms. Priyanka Jain, Mr. Asadali Mazgaonwala, Mr. Kartikeya Desai, Ms. Sayli Shinde, Ms. Shobha H. Jagtiani, Mr. Gautam Thacker, Ms. Sneha Agicha, Ms. Anjali Jhawar, Mr. Zubin Behramkamdin, Mr. Yatin Malvankar, Mr. Dharan V. Gandhi, Mr. Durgaprasad Poojari, Mr. Jeet Gandhi, Mr. Shivam Dubey, Mr. Salil Kapoor, Mr. Jitendra Singh, Mr. Sumit Lalchandani, Ms. Ananya Kapoor, Ms. Soumya Singh, Mr. Sanat Kapoor, Ms. Pratibha Rupnawar, Mr. Kalpesh Turalkar, Ms. Samiksha Kanani, Mr. Mandar Vaidya, Mr. Manan Sanghai, Mr. Paarth Singh, Mr. Ranit Basu, Ms. Maitri Malde, Mr. Devendra Jain, Ms. Radha Halbe, Mr. Sanjeev M. Shah, Mr. Tanmay Phadke, Mr. Satish Mody, Ms. Aasifa Khan, Ms. Kavisha Shah, Mr. Nishit Gandhi, Ms. Akshita Bhandari, Mr. Ruturaj H. Gurjar, Mr. Prateek Jha, Mr. Muraleedharan, Mr. Atul K. Jasani, Mr. Sashi Tulsiyan, Mr. P.C. Tripathi, Mr. S.C. Tiwari, Ms. Rutuja N. Pawar, Ms. Hetal Laghave, Ms. Sneha Jethwa, Mr. Jayprakash Dhanuka, Mr. Mohit Saraogi, Mr. Vipul Shah, Mr. Prakul Khurana, Mr. Rajat Sharma, Mr. Uttam Rane, Mr. R.S. Padvekar, Mr. Tanzil R. Padvekar, Mr. Sumant R. Deshpande, Mr. Abhishek S. More, Mr. Bharat Jain, Mr. Divyanshu Agrawal, Mr. Omprakash Parihar, Mr. Arpan M. Rajput, Mr. B.V. Jhaveri, Mr. Abhishek Khandelwal, Mr. Jay Vora, Mr. Jay Rajesh Thakker, Mr. Rahul Agarwal, Ms. Aashvi Shah, Mr. Naresh Jain, Ms. Neha Anchlia, Mr. Mahaveer Jain, Ms. Niyati Mankad (Hakani), Ms. Pradnya G.

Vairale, Mr. Deepak Tralshawala, Mr. Vishnu Hadade, Mr. Brijesh Pathak, Mr. S.S. Bedekar, Mr. Srihari Iyer, Ms. Latika Rungta, Mr. Balasaheb S. Yewale, Mr. Rahul Nerlekar, Mr. Vivek V. Khemka, Ms. Deepali Kamble, Dr. Avinash Poddar, Mr. Ajeet Manwani, Mr. Avinash Manwani, Adv. Fenil Bhatt, Ms. Deepa Khare, Adv. Ashwini Ankharao, Ms. Sanjana Muttath, Mr. Dinesh Ramesh Gulabani, Mr. Arvind Dhanraj Aswani, Mr. Mihir Naniwadekar, Mr. Suyog Bhave, Ms. Rucha Vaidya, Mr. Mitesh Parmar, Mr. K. Gopal, Ms. Neha Paranjpe, Mr. Om Kandalkar, Adv. Biju Joseph, Mr. Hardik Vashist, Adv. Taranjeet Phull, Ms. Chandni Tanna and Ms. Ritika Agarwal.
With Federal and Company, Kanga & Company, Mr. Sameer Dalal, Mint and Confreres, Mr. Atul K. Jasani, Mr. Shreyash J. Shah, Ragini Singh & Associates, Sanjay Udeshi and Co., Ms. Priyanka Bora, Ms. Deepali Kamble, Mr. Kartik Rajashekhar, Ms. Monika Walve, PDS Legal, Lumiere Law Partners, Mr. Govind Javeri, Lex Services, UBR Legal Advocates, One Legal, Mr. Anil Agrawal, Profess Law Associates, Mr. Kartik Vig, PRH Juris Consults, Alathea Law, DMD Advocates, Agrud Partners, Ganesh & Co., White Knight Chamber, Shamim & Co., Sujit Lahoti & Associates, Ms. Rekha Rajagopal, Vis Legis Law Practice, M D Legal, PRS Legal, Yuktam Legal, Ms. Farzeen Khambatta, Mr. Dinesh Kumar Jain, Keystone Partners, Mr. Mohit Bhansali, D S Legal, Economic Laws Practice, Lex India Juris, Vaish Associates, Kartikeya & Associates, D M Harish & Co., Ms. Kaizeen Mistry, Mr. Kapil Hirani, Lloyd and Johnson, Vaish Associates, Law Experts and India Law Alliance for Petitioners-Assessees in respective matters.

Mr. Anil C. Singh, Additional Solicitor General a/w. Ms. Shehnaz V. Bharucha, Mr. Suresh Kumar, Mr. Sham V. Walve, Mr. Akhileshwar Sharma, Mr. Ashok Kotangle, Mr. Arvind Pinto (Senior Standing Counsel) a/w. Mr. Aditya Thakkar, Mr. Ankit Lohia, Mr. Varun Nathani, Mr. Dinesh Kukreja, Ms. Smita Thakur, Mr. Chaitanya Chavan, Mr. D.P. Singh, Ms. Mohinee Chougule, Ms. Krunali Satra and Mr. Arjun Gupta (Advocates) a/w. Mr. P.A. Narayanan, Ms. Mamta Omle, Ms. Swapna Gokhale, Mr. Pranil Sonawane, Mr. Vikas Khanchandani, Ms. P.S. Cardozo, Mr. Avadhesh Saxena and Mr. Vipul Bajapeyee (Junior Standing Counsel) for Respondents-Revenue in respective matters.

CORAM : K.R. SHRIRAM & N.J. JAMADAR, JJ.
RESERVED ON : 24th FEBRUARY 2022
PRONOUNCED ON : 29th MARCH 2022

JUDGMENT (PER K.R. SHRIRAM, J.) :

WRIT PETITION NO.1334 OF 2021

1 This writ petition, along with other writ petitions listed today, have been filed by various assessees to challenge initiation of assessment proceedings under Section 148 of the Income Tax Act, 1961 (the Act) for different assessment years. All notices in these petitions for initiation of assessment proceedings have been issued after 1st April 2021.

2 Since substantial questions of law were involved, interim protection has been granted. Revenue has also filed reply in many petitions and many petitioners have also filed rejoinder. Since issues were identical, we did not insist on the Revenue filing a reply in each of the petitions.

3 The cause of action of dispute arising in all these writ petitions purely being legal, i.e., on the validity of the assessment proceedings initiated against assessees after 1st April 2021 under the provisions of the Act, as it existed before 1st April 2021, read with the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (the Relaxation Act) and the notifications issued thereunder, the peculiar facts or pleadings of each case, in our view, are not material to the adjudication of the issues involved.

4 We have heard the counsels led by Mr. Mistri, Mr. Pardiwalla, Mr. Andhyarujina and Mr. Chatterji for petitioners and Mr. Anil Singh,

learned Additional Solicitor General of India for the Revenue.

5 Before we took up this matter, various High Courts have considered identical issue and except a Single Judge of the Chhattisgarh High Court in ***Palak Khatuja V/s. Union of India and Ors.***[1], all other Courts have held that the notices, as issued by respondents under Section 148 of the Act post 1st April 2021, are bad in law. The other Courts, which have considered this issue, are the High Court of Allahabad (Division Bench) in ***Ashok Kumar Agarwal V/s. Union of India***[2], High Court of Delhi (Division Bench) in ***Mon Mohan Kohli V/s. Assistant Commissioner of Income Tax & Anr.***[3], High Court of Rajasthan (Single Judge) in ***Bpip Infra (P.) Ltd. V/s. Income Tax Officer, Ward 4(1), Jaipur***[4] and High Court of Calcutta in ***Bagaria Properties and Investment Pvt. Ltd. and Anr. V/s. Union of India and Ors.***[5] and Division Bench of Rajasthan High Court in ***Sudesh Taneja V/s. Income Tax Officer, Ward – 1(3), Jaipur and Anr.***[6] and High Court of Madras (Division Bench) in ***Vellore Institute of Technology V/s. Central Board of Direct Taxes and Anr.***[7]

6 The provisions for reassessment to reopen the assessment under certain circumstances was amended by the Finance Act, 2021 with effect from 1st April 2021. Prior thereto, under Section 147 of the Act, the

1. 2021 (438) ITR 622
2. (2021) 131 taxmann.com 22 (Allahabad)
3. (2021) 133 taxmann.com 166 (Delhi)
4. (2021) 133 taxmann.com 48 (Rajasthan)
5. W.P.O. No.244 of 2021 dated 17.01.2022
6. D.B. Civil Writ Petition No.969 of 2022 pronounced on 27.01.2022
7. Writ Petition No.15019 of 2021 dated 04.02.2022

Assessing Officer, if he had reason to believe that any income chargeable to tax had escaped assessment for any assessment year, he could, subject to the provisions of Sections 148 to 153 of the Act, assess or reassess such income and also any other income chargeable to tax which had escaped assessment. As per Section 148 of the Act, before making such assessment or reassessment under Section 147 of the Act, the Assessing Officer had to serve a notice on the assessee requiring him to furnish the return of his income. Sub-section (2) of Section 148 provided that the Assessing Officer shall, before issuing any notice, record his reasons for doing so.

7 As per sub-section (1) of Section 149 read with Section 147 of the Act, if the assessment has been completed under Section 143(3) of the Act, no notice under Section 148 of the Act could be issued beyond a period of four years from the end of relevant assessment year unless the income chargeable to tax had escaped assessment for the reason of the failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment and in any case, no such notice could be issued beyond a period of six years from the end of relevant assessment year.

8 Section 151 of the Act pertained to sanction for issuance of notice. Sub-section (1) of Section 151 of the Act provides that no such notice could be issued under Section 148 of the Act by the Assessing Officer after expiry of a period of four years from the end of relevant assessment

year unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied on the reasons recorded by the Assessing Officer that it was a fit case for issuance of such notice. As per sub-section (2) of Section 151 of the Act, in a case other than a case falling under sub-section (1), no notice could be issued by the Assessing Officer who is below the rank of Joint Commissioner unless the Joint Commissioner is satisfied on the reasons recorded by the Assessing Officer that it is a case fit for issuance of notice. Section 153 of the Act contained provisions for time limit for completion of assessments and reassessments. In nutshell, this was the scheme for reassessment that existed prior to the amendments made by the Finance Act, 2021.

9 The entire scheme of reassessment underwent major changes under the Finance Act, 2021 and the amendments have been brought into with effect from 1st April 2021. Section 147 of the Act, as it stands now, provides that if any income chargeable to tax has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of Sections 148 to 153 of the Act, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year. The distinction between the cases where income chargeable to tax has escaped assessment for the failure of the assessee to disclose truly or fully all material facts and the rest is a thing of the past.

10 The new Section 148 of the Act provides before making assessment, reassessment or recomputation under Section 147 of the Act and subject to the provisions of Section 148A of the Act, the Assessing Officer has to serve on the assessee a notice along with a copy of the order passed if required under clause - (d) of Section 148A of the Act requiring him to furnish the return within the specified time and in prescribed form. The proviso to Section 148 of the Act provides that no notice shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority for issuing such notice. What "information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment" means has been provided in Explanation (1) to Section 148 of the Act. Situations where the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment is listed in Explanation (2) to Section 148 of the Act.

11 Section 148A is newly inserted and it pertains to conducting enquiry, providing opportunity before issue of notice under Section 148 of the Act and it reads as under:-

> *"148A.—The Assessing Officer shall, before issuing any notice under section 148,—*
>
> *(a) conduct any enquiry, if required, with the prior approval*

of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;

(b) provide an opportunity of being heard to the assessee, with the prior approval of specified authority, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);

(c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);

(d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:

Provided that the provisions of this section shall not apply in a case where,—

(a) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of the assessee on or after the 1st day of April, 2021; or

(b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under section 132 or requisitioned under section 132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

(c) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under section 132 or requisitioned under section 132A, in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee.

Explanation.—For the purposes of this section, specified authority means the specified authority referred to in section 151."

12 As per this newly introduced provision, before issuing notice under Section 148 of the Act, the Assessing Officer may conduct any enquiry if required with the prior approval of the specified authority with respect to the information which suggests that the income chargeable to tax has escaped assessment. The Assessing Officer has to provide an opportunity of being heard to the assessee by serving on him a notice to show cause within the specified time which shall not be less than seven days but not exceeding 30 days from the date of issue of notice but which can be extended by him on an application by the assessee. Such notice would be to call upon the assessee why a notice under Section 148 of the Act should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment. As per clause - (c), the Assessing Officer has to consider the reply of the assessee furnished, if any, in response to such notice. As per clause - (d), the Assessing Officer would decide on the basis of material available on record including the reply of the asssessee whether or not the case is fit for issuance of notice under Section 148 of the Act, for which purpose he would pass an order with the prior approval of the specified authority within one month from the end of the month in which the reply from the assessee is received by him and where no such reply is furnished, within one month from the end of the month in which time or extended

time for furnishing reply expires. Proviso to Section 148A of the Act lists the cases where this procedure would not apply. As per the explanation to Section 148A of the Act, the specified authority means the authority referred to in Section 151 of the Act.

13 Section 149 of the Act also underwent major changes as regards time limit for issuing notice under Section 148 of the Act. Section 149 now reads as under :

> *"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 asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year:*
>
> *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 such notice 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, 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 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 is less than 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 sub-section, "asset" shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.

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

14 As per sub-section (1) of Section 149 of the Act, as it stands now, time limit for issuing notice under Section 148 of the Act is three years from the end of relevant assessment year unless the case falls under clause - (b) where the period available for issuing such notice is ten years. Clause - (b) applies to cases where the Assessing Officer has in his possession books of accounts or other documents or evidence which reveal that the income chargeable to tax represented in the form of asset which has escaped assessment amounts to or is likely to amount to total of Rs.50 lakhs or more. Explanation to Section 149 of the Act provides that for the purpose of clause - (b) the asset shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.

15 Section 151 of the Act pertaining to sanction for issue of notice has also been amended. As per the amended provisions, the specified authority for the purposes of Sections 148 and 148A of the Act would be (i) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of relevant assessment year and (ii) Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of relevant assessment year.

16 Section 153 of the Act containing time limit for completion of assessment, reassessment and recomputation has also been amended. The time limits have been shortened.

17 When we compare the existing and the substituted provisions, the time limit of four years for issuing notice under Section 148 of the Act in normal cases and six years in cases where income chargeable to tax has escaped assessment due to failure on the part of the assessee to disclose truly and fully all material facts under the old Section 148 of the Act is history and fresh time limits have been prescribed. Under the amended Section 147 of the Act, new time limits provided are three years unless income chargeable to tax, which has escaped assessment, amounts to or is likely to amount Rs.50 lakhs or more and in which case, the time limit for

issuing notice under Section 148 of the Act applicable would be ten years from the end of relevant assessment year.

The Assessing Officer has reason to believe, as previously referred to Section 147 of the Act, has been done away with and the proviso to Section 148 of the Act, as it stands now, provides no notice for the reassessment would be issued unless there is information with the Assessing Officer which suggests that income chargeable to tax has escaped assessment.

18 The major change under the new regime of reassessment is introduction of Section 148A of the Act. This section in a way codifies the procedure prescribed in the well known case of the Supreme Court in ***GKN Driveshafts (India) Ltd. V/s. Income Tax Officer***[8]. Clause - (a) of Section 148A of the Act permits the Assessing Officer to conduct enquiry, if required, with the prior approval of the specified authority with respect to the information which suggests that income chargeable to tax has escaped assessment. Clause - (b) of Section 148A of the Act requires the Assessing Officer to provide an opportunity of being heard to the assessee by issuing notice calling upon him why notice under Section 148 of the Act should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment. Clause - (c) requires the Assessing Officer to consider the reply of the assessee, if furnished. As per clause – (d), the

8. (2003) 259 ITR 19 (SC)

Assessing Officer would decide on the basis of material available on record and if reply is furnished, whether it is a fit case for issuing notice under Section 148 of the Act.

Thus, the assessee even has an opportunity to oppose even issuance of notice under Section 148 of the Act and he could legitimately expect the Assessing Officer to provide him the information which according to him suggests that income chargeable to tax has escaped assessment.

19 Much before the Finance Act, 2021 was perhaps even conceived, sometime in March 2020 the country was hit by the COVID-19 pandemic that led to nationwide strict lockdowns putting the lives of citizens and the Government machinery totally out of gear. It became almost impossible for individuals as well as Government authorities to adhere to several statutory time limits which in many cases were not extendable. To overcome these difficulties, particularly in the context of tax collections, the Government of India introduced the Relaxation Act as an ordinance and then later it was replaced by the Act. As an ordinance, it was only relaxation of certain provisions but when it became an Act, it became relaxation and amendment of certain provisions. The Act provided for specified Acts which were defined under Section 2 and it included the Act, i.e., Income Tax Act, 1961. Sub-section (1) of Section 3 of the Relaxation Ordinance, 2020 provided that any time limit in the specified Acts, which fell during the period from 20th March 2020 to 29th June 2020 or such other

date after 29th June 2020 as the Central Government may by notification specify for completion or compliance of the action and where such completion and compliance had not been made within the time, then the time limit for such purpose notwithstanding anything contained in the specified Act would stand extended to 30th June 2020 or such other date after 30th June 2020 as the Central Government may by notification specify in this behalf. The Relaxation Act, which replaced the ordinance with effect from 29th September 2020, under sub-section (1) of Section 3 provided that the time limits specified in the specified Acts, which fell during the period from 20th March 2020 to 31st December 2020 or such other date after 31st December 2020 as the Central Government may notify, were extended to 31st March 2021 or such other date after 31st March 2021 as the Central Government may by notification specify. Notwithstanding anything contained in the Specified Act, such extension would operate.

20 In exercise of powers under sub-section (1) of Section 3 of the Relaxation Act, the Government of India through the Central Board of Direct Taxes issued a Notification No.20 of 2021 dated 31st March 2021 and extended, besides others, time limit for issuance of notice under Section 148 of the Act. The said notification reads as under:

Notification No.20 of 2021 dated 31st March 2021

MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF DIRECT TAXES)
NOTIFICATION

New Delhi, the 31st March, 2021

S.O. 1432(E).—*In exercise of the powers conferred by sub-section (1) of section 3 of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (38 of 2020) (hereinafter referred to as the said Act), and in partial modification of the notification of the Government of India in the Ministry of Finance, (Department of Revenue) No.93/2020 dated the 31st December, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), vide number S.O. 4805(E), dated the 31st December, 2020, the Central Government hereby specifies that,—*

(A) where the specified Act is the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the Income-tax Act) and, —

(a) the completion of any action referred to in clause (a) of sub-section (1) of section 3 of the Act relates to passing of an order under sub-section (13) of section 144C or issuance of notice under section 148 as per time-limit specified in section 149 or sanction under section 151 of the Income-tax Act, —

(i) the 31st day of March, 2021 shall be the end date of the period during which the time-limit, specified in, or prescribed or notified under, the Income-tax Act falls for the completion of such action; and

(ii) the 30th day of April, 2021 shall be the end date to which the time-limit for the completion of such action shall stand extended.

Explanation.— For the removal of doubts, it is hereby clarified that for the purposes of issuance of notice under section 148 as per time-limit specified in section 149 or sanction under section 151 of the Income-tax Act, under this sub-clause, the provisions of section 148, section 149 and section 151 of the Income-tax Act, as the case may be, as they stood as on the 31st day of March 2021, before the commencement of the Finance Act, 2021, shall apply.

(b) the compliance of any action referred to in clause (b) of sub-section (1) of section 3 of the said Act relates to intimation of Aadhaar number to the prescribed authority under sub-section (2) of section 139AA of the Income-tax Act, the time-limit for compliance of such action shall stand extended to the 30th day of June, 2021.

(B) where the specified Act is the Chapter VIII of the Finance Act, 2016 (28 of 2016) (hereinafter referred to as the Finance Act) and the completion of any action referred to in clause (a) of sub-section (1) of section 3 of the said Act relates to sending an intimation under sub-section (1) of section 168 of

the Finance Act, —

(i) the 31st day of March, 2021 shall be the end date of the period during which the time-limit, specified in, or prescribed or notified under, the Finance Act falls for the completion of such action; and

(ii) the 30th day of April, 2021 shall be the end date to which the time-limit for the completion of such action shall stand extended.

[Notification No. 20/2021/F. No. 370142/35/2020-TPL]
SHEFALI SINGH, Under Secy., Tax Policy and Legislation Division

Note : The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) vide S.O. No. 4805 dated 31 st December, 2020.

(emphasis supplied)

21 This was followed by another Notification No.38 of 2021 dated 27th April 2021 and later a Notification No.74 of 2021 dated 25th June 2021. Notification Nos.20 of 2021 and 38 of 2021 are the impugned notifications. Notification No.38 of 2021 and 74 of 2021 read as under :

Notification No.38/2021 dated 27th April 2021

MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF DIRECT TAXES)
NOTIFICATION
New Delhi, the 27th April, 2021

S.O. 1703(E).*— In exercise of the powers conferred by sub-section (1) of section 3 of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (38 of 2020) (hereinafter referred to as the said Act), and in partial modification of the notifications of the Government of India in the Ministry of Finance, (Department of Revenue) No. 93/2020 dated the 31st December, 2020, No. 10/2021 dated the 27th February, 2021 and No. 20/2021 dated the 31st March, 2021, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii), vide number S.O. 4805(E), dated the 31st December, 2020, vide number S.O. 966(E)*

dated the 27th February, 2021 and vide number S.O. 1432(E) dated the 31st March, 2021, respectively (hereinafter referred to as the said notifications), the Central Government hereby specifies for the purpose of sub-section (1) of section 3 of the said Act that, —
(A) where the specified Act is the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the Income-tax Act) and, —

(a) the completion of any action, referred to in clause (a) of sub-section (1) of section 3 of the said Act, relates to passing of any order for assessment or reassessment under the Income-tax Act, and the time limit for completion of such action under section 153 or section 153B thereof, expires on the 30th day of April, 2021 due to its extension by the said notifications, such time limit shall further stand extended to the 30th day of June, 2021;

(b) the completion of any action, referred to in clause (a) of sub-section (1) of section 3 of the said Act, relates to passing of an order under sub-section (13) of section 144C of the Income-tax Act or issuance of notice under section 148 as per time-limit specified in section 149 or sanction under section 151 of the Income-tax Act, and the time limit for completion of such action expires on the 30th day of April, 2021 due to its extension by the said notifications, such time limit shall further stand extended to the 30th day of June, 2021.

**** Explanation**.[9]— For the removal of doubts, it is hereby clarified that for the purposes of issuance of notice under section 148 as per time-limit specified in section 149 or sanction under section 151 of the Income-tax Act, under this sub-clause, the provisions of section 148, section 149 and section 151 of the Income-tax Act, as the case may be, as they stood as on the 31st day of March 2021, before the commencement of the Finance Act, 2021, shall apply.*

(B) where the specified Act is the Chapter VIII of the Finance Act, 2016 (28 of 2016) (hereinafter referred to as the Finance Act) and the completion of any action, referred to in clause (a) of sub-section (1) of section 3 of the said Act, relates to sending an intimation under sub-section (1) of section 168 of the Finance Act, and the time limit for completion of such action expires on the 30th day of April, 2021 due to its extension by the said notifications, such time limit shall further stand extended to the 30th day of June, 2021.

9. ***** This explanation is also under challenge.

[Notification No. 38 /2021/ F. No. 370142/35/2020-TPL]
RAJESH KUMAR BHOOT, Jt. Secy. Tax Policy & Legislation Division

Note : The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) vide S.O. No. 4805 dated 31st December, 2020.

(emphasis supplied)

Notification No.74/2021 dated 25th June 2021

MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF DIRECT TAXES)
NOTIFICATION
New Delhi, the 25th June, 2021

S.O. 2580(E)*.—In exercise of the powers conferred by sub-section (1) of section 3 of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (38 of 2020) (hereinafter referred to as the said Act), and in partial modification of the notifications of the Government of India in the Ministry of Finance, (Department of Revenue) No. 93/2020 dated the 31st December, 2020, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii), vide number S.O. 4805(E), dated the 31st December, 2020 and No. 10/2021 dated the 27th February, 2021, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii),vide number S.O. 966(E) dated the 27th February, 2021 and No. 20/2021 dated the 31st March, 2021, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii), vide number S.O 1432(E) dated the 31st March, 2021 and No. 38/2021 dated 27th April, 2021, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii), vide number S.O. 1703(E) dated the 27th April, 2021, (hereinafter referred to as the said notifications), the Central Government hereby specifies for the purpose of sub-section (1) of section 3 of the said Act, that, —*

(A) where the specified Act is the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the Income-tax Act) and,—

(i) the completion of any action, referred to in clause (a) of sub-section (1) of section 3 of the said Act, relates to passing of any order ,-

(a) for assessment or reassessment under the Income-tax Act, and the time limit for completion of such action under section 153 or section 153B thereof, expires on the 30th day of June, 2021 due to its extension by the said notifications, such time limit shall further stand extended to the 30th day of September, 2021;

(b) for imposition of penalty under Chapter XXI of the Income-tax Act,—

(i) the 29th day of September, 2021 shall be the end date of the period during which the time limit specified in, or prescribed or notified under, the Income-tax Act falls for the completion of such action; and

(ii) the 30th day of September, 2021 shall be the end date to which the time limit for completion of such action shall stand extended;

(ii) the compliance of any action, referred to in clause (b) of sub-section (1) of section 3 of the said Act, relates to intimation of Aadhaar number to the prescribed authority under sub-section (2) of section 139AA of the Income-tax Act, the time-limit for such the compliance of such action shall stand extended to the 30th day of September, 2021;

(B) where the specified Act is the Chapter VIII of the Finance Act, 2016 (28 of 2016) (hereinafter referred to as the Finance Act) and the completion of any action, referred to in clause (a) of sub-section (1) of section 3 of the said Act, relates to sending an intimation under sub-section (1) of section 168 of the Finance Act, and the time limit for completion of such action expires on the 30th June, 2021 due to its extension by the said notifications, such time limit shall further stand extended to the 30th day of September, 2021.

[Notification No. 74/2021/ F. No. 370142/35/2020-TPL]
SHEFALI SINGH, Under Secy., Tax Policy and Legislation Division

Note : The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) vide S.O.No. 4805(E) dated 31st December, 2020 and was last amended vide S.O.1703(E) dated 27th April,2021.

(emphasis supplied)

22 Under Notification No.20 of 2021, the time limit was extended to 30th April 2021. Under Notification No.38 of 2021, the time limit for issuing notice under Section 148 of the Act was extended to 30th June 2021.

23 In background of these facts and statutory provisions, the contentions raised in the petitions are :

(a) upon enactment of the Finance Act, 2021, the provisions contained in the Act pertaining to reassessment of income stood substituted by new set of provisions and upon such substitution the old provisions ceased to exist. There is no indication, either in express terms or implied, in the newly introduced provisions that the legislature desired to retain the old provisions for the past period. In such circumstances, any action of issuance of notice for reassessment, which is taken after 1st April 2021, must be in accordance with the amended provisions;

(b) insertion of new provisions and substitution of the old would have the effect of repealing the old provisions which would cease to have any applicability thereafter;

(c) the Relaxation Act merely authorised the Government to extend the time limits contained in the specified Act and that did not include power to issue any explanation or clarification. The subordinate legislature must submit to the limits of powers vested in it by the parent Act. By way of explanation, the subordinate legislature cannot revive the statutory provisions which had lapsed. The explanations contained in the

notifications dated 31st March 2021 and 27th April 2021 are thus ultra vires the powers of the subordinate legislation and therefore, unconstitutional;

(d) under the taxing statutes there is no scope for intendment. If two views are possible, one favouring the assessee should be taken.

It was pointed out that the Division Bench of Allahabad High Court, Rajasthan High Court, Delhi High Court, Madras High Court and a single Judge of Calcutta High Court have already decided these issues in favour of the assessees. Being pan-India legislation in the field of taxation, the Court should strive to achieve consistency. The view adopted by these Courts, should, therefore, be followed by this Court.

24 On the other hand, the Revenue has opposed the petitions and contended that :

(a) the substitution of old provisions for reopening of assessment would not obliterate the previous set of statutory provisions. They would continue to have effect for the past period, i.e., for assessment years upto 31st March 2021. If the notice for reopening of assessment was issued for any period prior to 1st April 2021, the provisions as they stood at the relevant time would apply. In such a case, there was no requirement of following the procedure laid down under Section 148A of the Act before issuing notice under Section 148 of the Act;

(b) present situation is unprecedented and has arisen on account of pandemic caused by COVID-19. Unprecedented situation

required extraordinary measures. The Relaxation Ordinance, 2020 and Relaxation Act were, therefore, framed giving extension of time limits for taking actions and making compliances. These extensions were for the benefit of both, actions that had to be taken by the Revenue as well as compliances which had to be made by the assessees. The assessees cannot take advantage of the unusual circumstances prevailing on account of COVID-19. The CBDT, therefore, in exercise of powers conferred in sub-section (1) of Section 3 of the Relaxation Act, has issued necessary explanation which merely clarifies which statutory provisions any way provide. This explanation makes explicit what is otherwise implicit under the Act. The same is well within the power of the Government.

25 Two questions, therefore, which come up for our consideration are :

(a) Whether, after introduction of new provisions for reassessment of income by virtue of the Finance Act, 2021 with effect from 1st April 2021, substituting the then existing provisions, would the substituted provisions survive and could be used for issuing notices for reassessment for the past period?;

(b) Whether the explanations contained in the CBDT Circular Nos.20 of 2021 of 31st March 2021 and 38 of 2021 of 27th April 2021 are legal and valid?

26 A Division Bench of the Allahabad High Court in the case of *Ashok Kumar Agarwal* (Supra) has ruled in favour of the assessee and in paragraphs 64 to 73 held as under :

> *"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/unexcepted effect of Section 1(2)(a) of the Finance Act, 2021, the provisions of Sections 147, 148, 149, 151 (as those provisions existed upto 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 re-assessment 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 20.03.2021, upto 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 upto 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."

27 A Division Bench of Delhi High Court in the case of *Mon Mohan Kohli* (Supra), in paragraphs 42 to 48, while deciding the issue in favour of the assessee, observed as under :

> *"42. Having heard learned counsel for the parties, this Court is of the view that by virtue of Section 1 (2)(a) of the Finance Act, 2021, the substituted Sections 147, 148, 149 and 151 of the Income Tax Act, 1961 pertaining to reopening of assessments came into force on 1st April, 2021. The significance of the expression 'shall' in Section 1 (2)(a) of the Finance Act, 2021 cannot be lost sight of. This is in contrast to the language under Section 1(2)(b) which states that Sections 108 to 123 of the Finance Act, 2021 shall come into force on such date, as the Central Government may, by Notification in the Official Gazette, appoint. The Memorandum to the Finance Bill, 2021, too, clarifies that its Sections 2 to 88 which included the substituted Sections 147 to 151 of the Income Tax Act, 1961 will take effect from 1st April, 2021. There is also no power with the Executive/Respondents/Revenue to defer/postpone the implementation of Sections 2 to 88 of the Finance Act, 2021 which includes the substituted Sections 147 to 151 of the Income Tax Act, 1961.*
>
> *43. It is settled law that the law prevailing on the date of issuance of the notice under Section 148 has to be applied. [See: Foramer Vs. CIT (2001) 247 ITR 436 (All.), affirmed by the Supreme Court in (2003) 264 ITR 566 (SC), Varkey Jacob Co. Vs. CIT and Anr. (2002) 257 ITR 231 (Ker), Smt. N. Illamathy vs. ITO (2020) 275 taxman 25/195 CTR 543 (Mad)(HC), RK Upadhyay v Shanabhai, (1987) 166 ITR 163 (SC); CIT v Rameshwar Prasad, (1991) 188 ITR 291 (All HC); Dr. Onkar Dutt Sharma v CIT, (1967) 65ITR 359 (All HC)].*
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> *44. This Court is of the view that had the intention of the Legislature been to keep the erstwhile provisions alive, it would have introduced the new provisions with effect from 1st July, 2021, which has not been done. Accordingly, the notices relating to any assessment year issued under Section 148 on or after 1st April, 2021 have to comply with the provisions of Sections 147, 148, 148A, 149 and 151 of the Income Tax Act, 1961 as specifically substituted by the Finance Act, 2021 with effect from 1st April, 2021.*
>
> *45. Consequently, this Court is of the opinion that as the Legislature has permitted re-assessment to be made in this manner only, it can be done in this manner, or not at all.*

SECTION 3(1) OF RELAXATION ACT EMPOWERS THE GOVERNMENT/EXECUTIVE TO EXTEND ONLY THE TIME LINES. CONSEQUENTLY, THE GOVERNMENT/EXECUTIVE CAN NEITHER MAKE OR CHANGE LAW OF THE LAND NOR CAN IT IMPEDE THE IMPLEMENTATION OF LAW MADE BY THE PARLIAMENT.

46. Upon perusal of Section 3(1) of Relaxation Act, 2020, this Court is of the view that it extends only the time lines. Section 3(1) of the Relaxation Act, 2020 stipulates that where, any time limit has been stipulated in a specified Act which falls between the period 20th day of March, 2020 and 31st day of December, 2020 for the completion or compliance of such action as issuance of any notice under the provisions of the specified Acts and where completion or compliance of such action has not been made within such time, then the time limit for completion or compliance of such action shall, notwithstanding anything contained in the specified Acts, stand extended. It is important to bear in mind that Section 3(1) of the Relaxation Act, 2020 does not empower the Central Government to postpone the applicability of any provision which has been enacted from a particular date. There is a difference between extension of time of an action which is getting time barred and applicability of a provision which has been enacted and notified by the Legislature. Relaxation Act, 2020 nowhere delegates power to the Central Government to postpone the date of applicability of a new law enacted by the Legislature. Relaxation Act, 2020 also does not put any embargo on the power of the Legislature to legislate.

47. Also, the impugned Explanations in the Notifications dated 31st March, 2021 and 27th April, 2021 are beyond the power delegated to the Government, as 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. Accordingly, the provisions of Section 148A had to be complied with before issuing notices under Section 147 of the Income Tax Act, 1961 and the submission of the respondents- Revenue based on the judgment passed by Chhattisgarh High Court in Palak Khatuja Vs. UOI (supra) does not find favour with this Court. After all, it is settled law that Executive cannot make or change law of the land without specific Authority from Parliament to do so.

48. Consequently, the Relaxation Act, 2020 and Notifications issued thereunder can only change the time-lines applicable to the issuance of a Section 148 notice, but they cannot change the statutory provisions applicable thereto which are required to be strictly complied with. Further, just as the

Executive cannot legislate, it cannot impede the implementation of law made by the Legislature."

28 The Rajasthan High Court in the case of *Sudesh Taneja* (Supra) in paragraphs 31 to 37, 39 and 40 has held as under :

31. We may now attempt to answer these questions ourselves with the aid of statutory provisions and law laid down in various decisions cited before us we may summarise certain principles applicable in the field of taxation and which principles would be invoked in the course of the judgment :-

(i) A taxing statute must be interpreted strictly. Equity has no place in taxation nor while interpreting taxing statute intendment would have any place.

In case of State of W.B. Vs. Kesoram Industries Ltd. And Ors., (2004) 10 SCC 201, referring to Article 265 of the Constitution which provides that no tax shall be levied or collected except by authority of law, it was observed that in interpreting a taxing statute, equitable considerations are entirely out of place. Taxing statutes cannot be interpreted by any presumption or assumption. A taxing statute has to be interpreted in light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any deficiency. Before taxing any person it must be shown that he falls within the ambit of charging section by clear words used in the section and if the words are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject. There is nothing unjust in the tax payer escaping if the letter of the law fails to catch him on account of the legislature's failure to express itself clearly.

A Constitution Bench in the case of Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar And Company And Ors., (2018) 9 SCC 1, had reiterated these principles. It was a case where on a reference to the Larger Bench the Supreme Court was considering a question whether an ambiguity in a tax exemption provision or notification, the same must be interpreted so as to favour the assessee. Making a clear distinction between a charging provision of a taxing statute and exemption notification which waives a tax or a levy normally imposed, the Supreme Court observed as under :-

"14. We may, here itself notice that the distinction in interpreting a taxing provision (charging provision) and in the matter of interpretation of exemption (98

of 113) [CW-969/2022] notification is too obvious to require any elaboration. Nonetheless, in a nutshell, we may mention that, as observed in Surendra Cotton Oil Mills Case, in the matter of interpretation of charging Section of a taxation statute, strict Rule of interpretation is mandatory and if there are two views possible in the matter of interpretation of a charging section, the one favourable to the Assessee need to be applied. There is, however, confusion in the matter of interpretation of exemption notification published under taxation statutes and in this area also, the decisions are galore.

24. In construing penal statutes and taxation statutes, the Court has to apply strict Rule of interpretation. The penal statute which tends to deprive a person of right to life and liberty has to be given strict interpretation or else many innocent might become victims of discretionary decision making. Insofar as taxation statutes are concerned, Article 265 of the Constitution prohibits the State from extracting tax from the citizens without authority of law. It is axiomatic that taxation statute has to be interpreted strictly because the State cannot at their whims and fancies burden the citizens without authority of law. In other words, when the competent Legislature mandates taxing certain persons/certain objects in certain circumstances, it cannot be expanded/interpreted to include those, which were not intended by the legislature."

(ii) Being the central legislation of pan-India effect and operating in the field of taxation, the view of another High Court would have considerable persuasive value. In other words, the High Court would have due regard to the view already expressed by another High Court and to the possible extent prefer consistency of views across the country over discord. Unless the view expressed by another High Court is plainly unacceptable to the Court, the High Court would lean in favour of the well considered view already expressed by another Court.

(iii) The speech made the Finance Minister on the floor of the House explaining the budgetary provisions would provide a useful tool in interpreting the taxing provisions particularly in case (99 of 113) [CW-969/2022] the dispute about their interpretation arises. When the Finance Minister who has piloted the budget in her speech explains the provisions contained in the Finance Bill and elaborates on the mischief

which prevails and which is sought to be cured by substituting the existing statutory provisions, the explanation rendered by the Finance Minister has considerable importance in the context of correct interpretation of such provisions.

In case of Sole Trustee, Loka Shikshana Trust Vs. Commissioner of Income Tax, reported in (1975) 101 ITR 234 it was observed as under :-

> *"It is true that it is dangerous and may be misleading to gather the meaning of the words used in an enactment merely from what was said by any speaker in the course of a debate in Parliament on the subject. Such a speech cannot be used to defeat or detract from a meaning which clearly emerges from a consideration of the enacting words actually used. But, in the case before us, the real meaning and purpose of the words used cannot be understood at all satisfactorily without referring to the past history of legislation on the subject and the speech of the mover of the amendment who was, undoubtedly, in the best position to explain what defect in the law the amendment had sought to remove. It was not just the speech of any member in Parliament. It was the considered statement of the Finance Minister who was proposing the amendment for a particular reason which he clearly indicated. If the reason given by him only elucidates what is also deducible from the words used in the amended provision, we do not see why we should refuse to take it into consideration as an aid to a correct interpretation. It harmonises with and clarifies the real intent of the words used. Must we, in such circumstances, ignore it?"*

In case of K.P. Varghese Vs. Income Tax Officer, reported in (1981) 131 ITR 597 it was observed as under :-

> *"Now it is true that the speeches made by the Members of the Legislature on the floor of the House when a Bill for enacting a statutory provision is being debated are inadmissible for the purpose of (100 of 113) [CW-969/2022] interpreting the statutory provision but the speech made by the Mover of the Bill explaining the reason for the introduction of the Bill can certainly be referred to for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation is enacted. This is in accord with the recent trend in juristic thought not only in Western countries but also in India that interpretation of a statute being an exercise in the ascertainment of meaning, everything which is logically*

relevant should be admissible. In fact there are at least three decisions of this Court, one in Sole Trustee Loka Shikshana Trust v. CIT: [1975]101 ITR 234, the other in Indian Chamber of Commerce v. CIT: [1975]101 ITR 796 and the third in Additional CIT v. Surat Art Silk Cloth Manufacturers Association [1980] 121 ITR 1/[1980] 2 Taxman 501, where the speech made by the Finance Minister while introducing the exclusionary clause in Section 2 Clause (15) of the Act was relied upon by the Court for the purpose of ascertaining what was the reason for introducing that clause. The speech made by the Finance Minister while moving the amendment introducing Sub-section (2) clearly states what were the circumstances in which Sub-section (2) came to be passed, what was the mischief for which Section 52 as it then stood did not provide and which was sought to be remedied by the enactment of Sub-section (2) and why the enactment of Sub-section (2) was found necessary. It is apparent from the speech of the Finance Minister that Sub-section(2) was enacted for the purpose of reaching those cases where there was under-statement of consideration in respect of the transfer or to put it differently, the actual consideration received for the transfer was 'considerably more' than that declared or shown by the assessee, but which were not covered by Sub- section (1) because the transferee was not directly or indirectly connected with the assessee. The object and purpose of Sub-section (2), as explicated from the speech of the Finance Minister, was not to strike at honest and bonafide transactions where the consideration for the transfer was correctly disclosed by the assessee but to bring within the net of taxation those transactions where the consideration in respect of the transfer was shown at a lesser figure than that actually received by the assessee, so that they do not escape the charge of tax on capital gains by under-statement of the consideration. This was real object and purpose of the enactment of Sub-section (2) and the interpretation of this sub-section must fall in line with the advancement of that object and purpose. We must therefore accept as the underlying assumption of Sub-section (2) that there is under-statement of consideration in respect of the transfer and Sub-section (2) applies only where the actual consideration received by the assessee is not disclosed and the consideration declared in respect of the transfer is shown at a lesser figure than that actually received."

(iv) It is well accepted that reopening a completed assessment causes great hardship to the assessee and also brings uncertainty. In a judgment in case of Gujarat Power

Corporation Ltd. Vs. Assistant Commissioner of Income Tax, reported in [2013] 350 ITR 266(Guj), a Division Bench of Gujarat High Court had observed as under :-

> *"41. The powers under Section 147 of the Act are special powers and peculiar in nature where a quasi-judicial order previously passed after full hearing and which has otherwise become final is subject to reopening on certain grounds. Ordinarily, a judicial or quasi-judicial order is subject to appeal, revision or even review if statute so permits but not liable to be reopened by the same authority. Such powers are vested by the Legislature presumably in view of the highly complex nature of assessment proceedings involving a large number of assessees concerning multiple questions of claims, deductions and exemptions, which assessments have to be completed in a time frame. To protect the interests of the Revenue, therefore, such special provisions are made under section 147 of the Act. However, it must be appreciated that an assessment previously framed after scrutiny when reopened, results into considerable hardship to the assessee. The assessment gets reopened not only qua those grounds which are recorded in the reasons, but also with respect to the entire original assessment, of course at the hands of the Revenue. This obviously would lead to considerable hardship and uncertainty. It is precisely for this reason that even while recognizing such powers, in special requirements of the statute, certain safeguards are provided by the statute which are zealously guarded by the courts. Interpreting such statutory provisions courts upon courts have held that an assessment previously framed cannot be reopened on a mere change of opinion. It is stated that the power to reopening cannot be equated with review."*

32. The fact that under the Finance Act, 2021 the provisions for reassessment were substituted is beyond doubt. The notes on clauses for making relevant amendments clearly at every stage provide that the Bill proposes to substitute the existing provisions. For example it is stated that clause 35 seeks to amend Section 147 of the Act relating to income escaping assessment. Likewise under clause 36 Section 148 is proposed to be substituted so as to provide that before making the assessment, reassessment or recomputation under Section 147 and subject to the provisions of Section 148A the Assessing Officer shall serve on the assessee a notice along with a copy of order passed under clause (d) of Section 148. The Finance Act itself also refers to the substitution of Sections 147, 148 and 149 etc. along side insertion of Section 148A which as noted was being introduced for the first time.

In the budged speech that the Finance Minister gave on the floor of the House it was explained that there was a proposal to reduce the time limit for reopening of the assessments. In the memorandum explaining the provisions in the Finance Bill, 2021, it was provided that the Bill proposes a completely new procedure for assessment of cases of reopening. It was pointed out that new Section 148A proposes issuance of notice and passing of the order by the Assessing Officer. It was further provided as under :-

> *"Another restriction has been provided that the notice under section 148 of the Act cannot be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit prescribed under the provisions of clause (b), as they stood immediately before the proposed amendment.*
>
> *Since the assessment or reassessment or re-computation in search or requisition cases (where such (103 of 113) [CW-969/2022] search or requisition is initiated or made on or before 31st March 2021) are to be carried out as per the provision of section 153A, 153B, 153C and 153D of the Act, the aforesaid time limitation shall not apply to such cases."*

33. In case of Government of India and Others Vs. Indian Tobacco Association, reported in (2005) 7 SCC 396, the Supreme Court considered the effect of substitution of a statutory provision by new one. It was observed as under :-

> *"15. The word "substitute" ordinarily would mean "to put (one) in place of another"; or "to replace". In Black's Law Dictionary, 5th Edition, at page 1281, the word "substitute" has been defined to mean "to put in the place of another person or thing". or "to exchange". In Collins English Dictionary, the word "substitute" has been defined to mean "to serve or cause to serve in place of another person or thing"; "to replace (an atom or group in a molecule) with (another atom or group)"; or "a person or thing that serves in place of another, such as a player in a game who takes the place of an injured colleague".*
>
> *25. In Zile Singh v. State of Haryana and Ors. wherein the effect of an amendment in the Haryana Municipal Act, 1973 by Act No. 15 of 1994 whereby the word "after" was substituted by the word "upto" fell for consideration; wherein Lahoti, C.J. speaking for a three-Judge Bench held the said amendment to have a*

retrospective effect being declaratory in nature as thereby obvious absurdity occurring in the first amendment and bring the same in conformity with what the legislature really intended to provide was removed, stating: (SCC p. 12 paras 23-25)

> *"23. The text of Section 2 of the Second Amendment Act provides for the word ""upto"" being substituted for the word "after". What is the meaning and effect of the expression employed therein - "shall be substituted"?*
>
> *24. The substitution of one text for the other pre-existing text is one of the known and well-recognised practices employed in legislative drafting. 'Substitution' has to be distinguished from 'supersession' or a mere repeal of an existing provision.*
>
> *25. Substitution of a provision results in repeal of the earlier provision and its (104 of 113) [CW-969/2022] replacement by the new provision (See Principles of Statutory Interpretation, ibid, p.565). If any authority is needed in support of the proposition, it is to be found in West U.P. Sugar Mills Assn. v. State of U.P., State of Rajasthan v. Mangilal Pindwal, Koteswar Vittal Kamath v. K. Rangappa Baliga and Co. and A.L.V.R.S.T. Veerappa Chettiar v. S. Michael. In West U.P. Sugar Mills Association case a three-Judges Bench of this Court held that the State Government by substituting the new rule in place of the old one never intended to keep alive the old rule. Having regard to the totality of the circumstances centering around the issue the Court held that the substitution had the effect of just deleting the old rule and making the new rule operative. In Mangilal Pindwal case this Court upheld the legislative practice of an amendment by substitution being incorporated in the text of a statute which had ceased to exist and held that the substitution would have the effect of amending the operation of law during the period in which it was in force. In Koteswar case a three-Judge Bench of this Court emphasized the distinction between 'supersession' of a rule arid 'substitution' of a rule and held that the process of substitution consists of two steps : first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place."*

34. In case of State of M.P. Vs. Kedia Leather & Liquor Ltd. and Others, reported in (2003) 7 SCC 389, the Supreme Court held as under :-

> *"13. There is presumption against a repeal by implication; and the reason of this rule is based on the theory that the Legislature while enacting a law has a complete knowledge of the existing laws on the same subject matter, and therefore, when it does not provide a repealing provisions, the intention is clear not to repeal the existing legislation. (See: Municipal Council, Palai v. T.J. Joseph, Northern India Caterers (Private) Ltd. and Anr. v. State of Punjab and Anr., Municipal Corporation of Delhi v. Shiv Shanker and Ratan Lal Adukia and Anr. v. Union of India.) When the new Act contains a repealing section mentioning the Acts which it expressly repeals, the presumption (105 of 113) [CW-969/2022] against implied repeal of other laws is further strengthened on the principle expressio unius (persone vel rei) est exclusio alterius. (The express intention of one person or thing is the exclusion of another), as illuminatingly stated in Garnett v. Bradley. The continuance of existing legislation, in the absence of an express provision of repeal by implication lies on the party asserting the same. The presumption is, however, rebutted and a repeal is inferred by necessary implication when the provisions of the later Act are so inconsistent with or repugnant to the provisions of the earlier Act and that the two cannot stand together. But, if the two can be read together and some application can be made of the words in the earlier Act, a repeal will not be inferred. (See: A.G. v. Moore, Ratan Lal case and R.S. Raghunath v. State of Karnataka)"*

35. In case of State of Rajasthan Vs. Mangilal Pindwal, reported in (1996) 5 SCC 60, it was observed that substitution of a provision results in repeal of the old provision and replacement by new provision. By repeal the provisions repealed ceased to exist with effect from the date of repeal but operation of the provision as it stood prior to repeal is not affected. It was held as under :-

> *"9. As pointed out by this Court, the process of a substitution of statutory provision consists of two Steps first; the old rule is made to cease to exist and, next, the new rule is brought into existence in its place. [see Koteshwar Vittal Kamath v, K. Rangappa & Co., SCR at p. 48] In other words, the substitution of a provision results in repeal of the earlier provision and its replacement by the new provision. As regards repeal of a statute the law is thus stated in Sutherland on*

Statutory Construction :

"The effect of the repeal of a statute where neither a saving clause nor a general saving statute exists to prescribed the governing rule for the effect of the repeal, is to destroy the effectiveness of the repealed act in futuro and to divest the right to proceed under the statute, which, except as to proceedings past and closed, is considered as if it had never existed." [Vol. I, para 2042, pp.522-523]

10. Similarly in Crawford's Interpretation of Laws it has been said : "Effect of Repeal, Generally. - In the (106 of 113) [CW-969/2022] first place, an outright repeal will destroy the effectiveness of the repealed act in futuro and operate to destroy inchoate rights dependent on it, as a general rule. In many cases, however, where statutes are repealed, they continue to be the law of the period during which they were in force with reference to numerous matters." [pp.640-641]

11. The observations of Lord Tenterden and Tindal, C.J. referred in the abovementioned passages in Craies on Statute Law also indicate that the principle that on repeal a statute is obliterated is subject to the exception that it exists in respect of transactions past and closed. To the same effect is the Jaw laid down by this Court. [See :Qudrat Ullah v. Municipal Board. Bareilly, SCR at p. 539]

12. This means that as a result of repeal of a statute the statute as repealed ceases to exist with effect from the date of such repeal but the repeal does not affect the previous operation of the law which has been repealed during the period it was operative prior to the date of such repeal....."

36. It can thus be seen that original provisions upon their substitution stood repealed for all purposes and had no existence after introduction of the substituting provisions. We may refer to Section 6 of the General Clauses Act, 1897 which provides inter- alia that where the State Act or Central Act or regulation repeals any enactment then unless a different intention appears repeal shall not revive anything not in force or existing at the time at which the repeal takes effect or affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder. Under the circumstances after substitution unless there is any intention discernible in the scheme of statute either pre-existing or newly introduced, the substituted provisions would not survive.

37. In this context we have perused the provisions of reassessment contained in the Finance Act, 2021. We have noticed earlier the major departure that the new scheme of reassessment (107 of 113) [CW-969/2022] has made under these provisions. The time limits for issuing notice for reassessment have been changed. The concept of income chargeable to tax escaping assessment on account of failure on the part of the assessee to disclose truly or fully all material facts is no longer relevant. Elaborate provisions are made under Section 148A of the Act enabling the Assessing Officer to make enquiry with respect to material suggesting that income has escaped assessment, issuance of notice to the assessee calling upon why notice under Section 148 should not be issued and passing an order considering the material available on record including response of the assessee if made while deciding whether the case is fit for issuing notice under Section 148. There is absolutely no indication in all these provisions which would suggest that the legislature intended that the new scheme of reopening of assessments would be applicable only to the period post 01.04.2021. In absence of any such indication all notices which were issued after 01.04.2021 had to be in accordance with such provisions. To reiterate, we find no indication whatsoever in the scheme of statutory provisions suggesting that the past provisions would continue to apply even after the substitution for the assessment periods prior to substitution. In fact there are strong indications to the contrary. We may recall, that time limits for issuing notice under Section 148 of the Act have been modified under substituted Section 149. Clause (a) of sub-section (1) of Section 149 reduces such period to three years instead of originally prevailing four years under normal circumstances. Clause (b) extends the upper limit of six years previously prevailing to ten years in cases where income chargeable to tax which has escaped assessment amounts to or is likely to amount (108 of 113) [CW-969/2022] to 50 lacs or more. Sub-section (1) of Section 149 thus contracts as well as expands the time limit for issuing notice under Section 148 depending on the question whether the case falls under clause (a) or clause (b). In this context the first proviso to Section 149(1) provides that no notice under Section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 01.04.2021 if such notice 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 Section 149 as they stood immediately before the commencement of the Finance Act, 2021. As per this proviso thus no notice under Section 148 would be issued for the past assessment years by resorting to the larger period of limitation prescribed in newly substituted clause (b) of Section 149(1). This would indicate that the notice that would be issued after 01.04.2021 would be in terms of the

substituted Section 149(1) but without breaching the upper time limit provided in the original Section 149(1) which stood substituted. This aspect has also been highlighted in the memorandum explaining the proposed provisions in the Finance Bill. If according to the revenue for past period provisions of section 149 before amendment were applicable, this first proviso to section 149(1) was wholly unnecessary. Looked from both angles, namely, no indication of surviving the past provisions after the substitution and in fact an active indication to the contrary, inescapable conclusion that we must arrive at is that for any action of issuance of notice under Section 148 after 01.04.2021 the newly introduced provisions under the Finance Act, 2021 would apply. Mere extension of time limits for issuing notice under section 148 would not change this position that obtains in law. Under no circumstances the extended period available in clause (b) of sub-section (1) of Section 149 which we may recall now stands at 10 years instead of 6 years previously available with the revenue, can be pressed in service for reopening assessments for the past period. This flows from the plain meaning of the first proviso to sub-section (1) of Section 149. In plain terms a notice which had become time barred prior to 01.04.2021 as per the then prevailing provisions, would not be revived by virtue of the application of Section 149(1)(b) effective from 01.04.2021. All the notices issued in the present cases are after 01.04.2021 and have been issued without following the procedure contained in Section 148A of the Act and are therefore invalid.

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39. It is well settled that there is presumption of constitutionality of a statute (refer to the Constitution Bench judgment in case of The State of Jammu & Kashmir, Vs. Triloki Nath Khosa and Ors., reported in AIR 1974 SC 1). The said principle of presumption of constitutionality also applies to piece of delegated legislation. In case of St. Johns Teachers Training Institute Vs. Regional Director, National Council For Teachers Education and Another, reported in (2003) 3 SCC 321, it was observed that it is well settled in considering the vires of subordinate legislation one should start with the presumption that it is intra vires and if it is open to two constructions, one of which would make it valid and other invalid, the courts must adopt that construction which makes it valid. However it is equally well (110 of 113) [CW-969/2022] settled that the subordinate legislation does not enjoy same level of immunity as the law framed by the Parliament or the State Legislature. The law framed by the Parliament or the State Legislature can be challenged only on the grounds of being beyond the legislative competence or being contrary to the fundamental rights or any other

constitutional provisions. Third ground of challenge which is now recognized in the judgment in case of Shayara Bano Vs Union of India reported in 2017 9 SCC 1 is of legislation being manifestly arbitrary. A subordinate legislation can be challenged on all these grounds as well as on the grounds that it does not conform to the statute under which it is made or that it is inconsistent with the provisions of the Act or it is contrary to some of the statutes applicable on the subject matter. In case of J.K. Industries Ltd. and Ors. Vs. Union of India and Ors., reported in (2007) 13 SCC 673, it was observed as under :-

> *"63. At the outset, we may state that on account of globalization and socio-economic problems (including income disparities in our economy) the power of Delegation has become a constituent element of legislative power as a whole. However, as held in the case of Indian Express Newspaper v. Union of India reported in (1985) 1 SCC 641 at page 689, subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent Legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition, it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is inconsistent with the provisions of the Act or that it is contrary to some other statute applicable on the same subject matter. Therefore, it has to yield to plenary legislation. It can also be questioned on the ground that it is manifestly arbitrary and unjust. That, any inquiry into its vires must be confined to the grounds on which plenary legislation may be questioned, to the grounds that it is contrary to the statute under which it is made, to the grounds that it is contrary to other statutory provisions or on the ground that it is (111 of 113) [CW-969/2022] so patently arbitrary that it cannot be said to be inconformity with the statute. It can also be challenged on the ground that it violates Article 14 of the Constitution."*

40. With this background we may revert to the Relaxation Act, 2020 and the two notifications issued by the CBDT. We may recall, under sub-section (1) of Section 3 of the Relaxation Act, 2020 while extending the time limits for taking action and making compliances in the specified Acts upto 31.12.2020 the power was given to the Central Government to extend the time further by issuing a notification. This was the only power vested in the Central Government. As a piece of delegated legislation the notifications issued in exercise of such powers, had to be

> *within the confines of such powers. In plain terms under sub-section (1) of Section 3 of the Relaxation Act, 2020 the Government of India was authorized to extend the time limits by issuing notifications in this regard. Issuing any explanation touching the provisions of the Income Tax Act was not part of this delegation at all. The CBDT while issuing the notifications dated 31.03.2021 and 27.04.2021 when introduced an explanation which provided by way of clarification that for the purposes of issuance of notice under Section 148 as per the time limits specified in Section 149 or 151, the provisions as they stood as on 31.03.2021 before commencement of the Finance Act, 2021 shall apply, plainly exceeded its jurisdiction as a subordinate legislation. The subordinate legislation could not have travelled beyond the powers vested in the Government of India by the parent Act. Even otherwise it is extremely doubtful whether the explanation in the guise of clarification can change the very basis of the statutory provisions. If the plain meaning of the statutory provision and its (112 of 113) [CW-969/2022] interpretation is clear, by adopting a position different in an explanation and describing it to be clarificatory, the subordinate legislature cannot be permitted to amend the provisions of the parent Act. Accordingly, these explanations are unconstitutional and declared as invalid.*

29 At the outset, we had made it clear to Mr. Anil Singh, learned ASG that we were inclined to go along with the view expressed by the three Division Benches of Allahabad High Court, Rajasthan High Court and Delhi High Court. During the hearing our attention was invited to the judgment of the Division Bench of Madras High Court in *Vellore Institute of Technology* (Supra). We expressed that we were inclined to take a similar view as expressed by all the Division Benches and independently also we hold the same view. We also indicated to the learned ASG that we were unable to persuade ourselves to accept the analysis of the learned Single Judge of the Chhattisgarh High Court in *Palak Khatuja* (Supra).

30 We asked Mr. Anil Singh, learned ASG if he has anything more to argue apart from the submissions of Revenue already recorded in these judgments of the four Division Benches. Mr. Anil Singh, learned ASG answered in affirmative.

31 Before we proceed further in detail with the submissions of the learned ASG, Mr. Mistri and Mr. Pardiwalla, we would note the compact submissions made by Mr. Chatterji and Mr. Andhyarujina :

(a) Mr. Chatterji, *inter alia*, emphasized that once legislature has exercised its powers of legislation by enacting Finance Act, 2021, then any action like issuance of impugned notifications contrary to said legislation taken by any other agency/wing of the Government is bad in law as the same would fall foul of the doctrine of occupied filed as held by the Apex Court in ***A.B. Kirshna and Ors. V/s. State of Karnataka and Ors***[10]. Mr. Chatterji submitted that no authority was vested in Government to issue the impugned notifications so as to disturb/intrude into the field occupied by the legislature.

(b) Mr. Andhyarujina kept his submissions brief as others were already covering everything and submitted that essential legislative functions and extension of limitation period cannot be delegated and if limitation period is altered by a subordinate authority, then the delegation is excessive and the doctrine of *ultra vires* can be invoked which envisages that

10. AIR 1988 SC 1050

a subordinate authority can exercise only so much power as is conferred to it under the law. Mr. Andhyarujina also submitted that since the Finance Act, 2021 is the latter Act in the instant case, the general rule of law states that when there is a conflict between two statues, the one that is more recent prevails and in this case, since the Finance Act was more recent compared to the Relaxation Act, the provisions of Finance Act would prevail over the provisions made in the Relaxation Act. Therefore, as the relaxation and extension of the period of limitation in respect of issuing reopening notices can only be a function or a power conferred only to the legislation and not a subordinate authority, the two notifications extending the period of limitation are *ultra vires* and bad in law and vitiated in law since the authority to extend the period of limitation did not vest with the authority at all.

Both Mr. Chatterji and Mr. Andhyarujina supported the submissions of Mr. Mistri and Mr. Pardiwalla.

32 Now reverting to the submissions of learned ASG, during the course of hearing, learned ASG tendered a synopsis of submissions spread in 39 paragraphs. Learned ASG stated that paragraphs 1 to 15 contained additional arguments of respondents other than those urged before and negated by the various High Courts and paragraphs 16 to 39 deal with issues already considered and dealt with by various High Courts and he

reiterated and adopted the stand taken by the Revenue before those Courts.

Revenue's additional arguments, as set out in the synopsis, are as under :

A. The Notifications do not result in creating an overlap in statutory schemes and there is no question of the Executive seeking to apply provisions of law after they have been substituted/repealed by Parliament. Relaxation Act applies only to actions to be taken between 20th March 2020 and 31st March 2021, a date before the Finance Act, 2021 came into force. Thus, Relaxation Act and the Notifications would apply only in respect of matters where the time fell due for any act prior to Finance Act, 2021 coming into force, i.e., prior to 31st March 2021. However, Relaxation Act permits the action to be taken in such cases within certain extended timelines owing to the pandemic.

B. The use of the word "such action" in Section 3(1) of the Relaxation Act reveals the legislative intent that it is the very same "action" which is permitted to be complied with within the extended deadline. As a sequitur, all legal conditions precedent, pre-requisites, limitations and procedural norms as applicable on the original date on which "such action" was required to be completed/complied/fell due under the Act, would apply, even though "such action" is being taken/complied within the extended time period provided for under the Relaxation Act and the Notifications thereunder. Accordingly, notices under Section 148 of the Act will "relate

back" and be governed by the previous unamended law. This interpretation is apparent from the object of the Relaxation Act, i.e., "*In view of the spread of pandemic Covid-19 across many countries of the world including India, causing immense loss to the lives of people, it had become imperative to relax certain provisions, including extension of time-limit*" and the plain language of Section 3(1) of the Relaxation Act.

C. It is to be inferred that Section 3(1) of the Relaxation Act requires that extended time limits for issue of, *inter alia,* Section 148 notices would also mean/require that the conditions for issue of Section 148 notices should be in terms of the Act as it stood on the date of the expiry of the said time limits, i.e., a 'stop-the-clock' provision, wherein a fiction is created as if the compliance of the action is made within the time limit specified in the unamended Income-tax Act as it stood when the time for compliance expired between 20th March 2020 and 31st March 2021.

D. All reopening notices challenged have been issued in accordance with/under the unamended provisions of the Income-tax Act, 1961, as the provisions of the Relaxation Act empowered assessing officers to do so. The case of the Revenue is not that the old provisions apply after 1st April 2021, but Section 3(1) empowers the officer to issue notices under the old law.

E. Relaxation Act is a beneficial legislation which relaxes requirements in specified Acts for both assessees and revenue alike which

must be given a purposive interpretation.

F. Referring to para 80 of the decision of the Hon'ble Allahabad High Court - liberty should be granted 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.

33 The submissions made by learned ASG, as additional arguments of respondents, as submitted by Mr. Mistri, with whom we agree, in effect are all restatement, made in different style, of the same argument urged before the Allahabad, Delhi, Rajasthan, Calcutta and Madras High Court. They had already argued/ contended that as the original time limit for issuing a notice under Section 148 of the Act was expiring on or before 31st March 2021 and such time limit has been extended by the Relaxation Act, the old/unamended provisions of Section 148 of the Act will continue to govern such notices. This submission of respondents ignores the legal position that the provisions of Sections 147 to 151 of the Act have been substituted with effect from 1st April 2021 by the Finance Act, 2021. Further a new Section 148A of the Act has been inserted with effect from 1st April 2021. Accordingly, the old/unamended provisions of Sections 148 to 151 cease to have legal effect after 31st March 2021 and the substituted provisions of Sections 148 to 151 have binding force from 1st April 2021. In the absence of a savings clause there is no legal device by which a repealed set of provisions can be applied and a set of provisions on the statute book

(in force) can be ignored. Further if the revenue's contention had the semblance of legality or validity, the impugned Explanations in Notification Nos. 20 and 38 of 2021 are otiose and superfluous. Moreover, Revenue's arguments are unsustainable as various High Courts have considered and rejected the said arguments or facets thereof.

34 It is well settled that the validity of a notice issued under Section 148 of the Act must be judged on the basis of the law existing on the date on which such notice is issued. Even the Revenue accepts this well settled position. Further, the provisions of Sections 147 to 151 are procedural laws and accordingly, the provisions as existing on the date of the notice would be applicable. Even the revenue accepts this legal position and the CBDT Circular No.549 of 1989, that Mr. Mistri relied upon, explaining the provisions of the Finance Act, 1989 specifically sets out that any notices issued by Revenue after the amendment made by the Finance Act, 1989 must comply with the amended provision of the law. Therefore, any notice issued after 1st April, 2021 must comply with the amended provisions of the Act which was amended with effect from 1st April, 2021. This contention has also been considered and upheld by the Delhi High Court and the Allahabad High Court.

35 We have to also note the well settled proposition that when the Act specifies that something is to be done in a particular manner, then, that

thing must be done in that specified manner alone, and any other method/(s) of performance cannot be upheld. Hence, notices issued under Section 148 of the Act after 1st April, 2021 must comply with the amended provisions of law and cannot be sustained on the basis of the erstwhile provision.

36 In order to uphold the arguments of the Revenue in this regard, either a savings clause, or a specific legislative enactment deferring applicability of the amended provisions and the repeal of the old provisions of the Act, would be required. Plainly no such savings clause or enactment is available.

37 Section 3(1) of Relaxation Act does not provide that any notice issued under Section 148 of the Act, after 31st March 2021 will relate back to the original date or that the clock is stopped on 31st March, 2021 such that the provision as existing on such date will be applicable to notices issued relying on the provision of Relaxation Act. A plain reading of Relaxation Act, as Mr. Mistri rightly submitted, makes it clear that Section 3(1) of Relaxation Act merely extends the limitation provided in the specified Acts (including Income-tax Act) for doing certain Acts but such Acts must be performed in accordance with the provisions of the specified Acts. Therefore, if there is an amendment in the specified Act, the amended provision of the specified Act would apply to such actions of the Revenue.

The Delhi High Court has considered and rejected the contention of the Revenue that the notice issued after 1st April 2021 relates back to an earlier period.

38 The Delhi High Court has considered and rejected this argument of the Revenue that Relaxation Act creates a legal fiction such that the notices issued under Section 148 of the Act are deemed to be issued on 31st March, 2021. The so-called legal fiction is directly contrary to the Revenue's own Circular No.549 of 1989, which is binding on them as well as the well settled principle that the validity of a notice is to be judged on the basis of the law that prevails at the time of its issue.

39 Even though Relaxation Act was in existence when the Finance Act, 2021 was passed, the parliament has specifically made the amended provisions of Sections 147 to 151 of the Act as being applicable with effect from 1st April, 2021. Therefore, the intention of the legislature is clear that substituted provisions must apply to notices issued with effect from 1st April, 2021. No savings clause has been provided in the Act for saving the erstwhile provisions of Sections 147 to 151 of the Act, like in Section 297 of the Act where, the Parliament when it intended, has specifically provided the savings clause.

40 On a plain reading of Relaxation Act it is clear that the only powers granted to the Central Government by Relaxation Act is the power to

notify the period during which actions are required to be taken that can fall within the ambit of Relaxation Act, and the power to extend the time limit within which those actions are to be taken. A plain reading of the impugned Explanations in Notification Nos.20 of 2021 and 38 of 2021 shows that it purports to "clarify" that the unamended provisions of Sections 147 to 151 of the Act will apply for the purposes of issue of notices under Section 148 of the Act, which is clearly *ultra vires* Relaxation Act.

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 As regards Revenue's arguments that Relaxation Act being a beneficial legislation must be given purposive interpretation', the purpose of Section 3(1) of Relaxation Act is to extend limitation periods as provided in

a specified Act (including the Income-tax Act). The purpose of Section 3(1) of Relaxation Act is not to postpone the applicability of amended provisions of a Specified Act. Though Relaxation Act was in existence when the Finance Act, 2021 was passed, the Parliament has specifically enacted the new, (amended) provisions of Section 147 to 151 of the Act and made them applicable with effect form 1st April, 2021. Therefore, it is clear that amendment is to be applied from 1st April, 2021. Further, when there is no ambiguity on the applicability of the provision, there is no question of resorting to purpose test.

43 As regards liberty granted by the Allahabad High Court, certainly, if the law permits issuance of notices under Section 148 of the Act (as amended), afresh, then no liberty is required to be granted by the Court, and it would be within the Assessing Officer's powers to initiate proceedings as per the amended law. The Madras High Court has considered this very plea and granted liberty to initiate reassessment proceedings in accordance with the provisions of the amended Act, "if limitation for it survives".

44 As submitted by Mr. Mistri, with whom we agree, Chapter II of Relaxation Act provide for – "Relaxation of Certain Provisions of Specified Act"and Section 3 forms part of this Chapter. Further Chapter III provides for amendment to Income Tax Act, 1961 and various Sections of the Act have been amended in Chapter III. From this the following propositions

emerge :

(a) Wherever the Parliament thought fit, the Parliament has itself amended the provision of the Income Tax Act, 1961 and not left it for the CBDT to make the amendment. Therefore, it is clear that no power is given under Relaxation Act to postpone the applicability of provisions of the Income Tax Act.

(b) Chapter II of Relaxation Act is only for 'Relaxation of Certain Provisions of Specified Act' and, therefore, there is no question of the Revenue relying on this Chapter and Section 3 to justify the postponement of applicability of certain provisions of the Income Tax Act. If the Parliament wanted to give some right to the CBDT, it would have formed part of Chapter III, however, there is no such provision in Chapter III of the Act.

45 As submitted by Mr. Pardiwalla there are other Sections in the Finance Act, 2021 which have amended other provisions of the Income Tax Act from dates other than 1st April, 2021. Like for example Section 12 of the Finance Act inserted a proviso in Section 43CA. Had the intention of the legislature, while amending Sections 147 to 153, been to give it effect from 1st July, 2021, a similar savings clause could have been inserted, which has not been done. We agree with Mr. Pardiwalla because as per Section 1(2)(a) of the Finance Act, 2021, the amendments to Sections 147 to 153 of the Act shall come into force on 1st April, 2021. Similarly, the Memorandum

explaining the provisions of the Finance Bill, 2021 clarifies that these amendments will take effect from 1st April, 2021. Section 12 of the Finance Act inserted a proviso in Section 43CA which *inter alia* provides that the words 'one hundred and ten percent' in the first proviso will be substituted by the words 'one hundred and twenty percent' if the transfer of residential units takes place during the period beginning from 12th day of November, 2020 and ending on the 30th day of June, 2021. Therefore, had the intention of the legislature, while amending Sections 147 to 153, was to give it effect from 1stJuly, 2021, a similar savings clause could have been inserted, which has not been done.

46 Mr. Pardiwalla submitted that only Section 4 of Relaxation Act which amended the Act and no such amendments to the substantive provisions of the Act were envisaged under Section 3 of Relaxation Act, which was only a relaxation provision dealing with time limits under various enactments.

47 As noted earlier, it is Revenue's case that Section 3 of Relaxation Act enabled the Central Government to issue notifications which would permit the Assessing Officers to issue notices under Section 148 of the Act after 1st April, 2021 in terms of the erstwhile provisions of Sections 147 to section 151, even though the said provisions were repealed with effect from 1st April, 2021 by the Finance Act, 2021. It is, however, pertinent to note

that Section 3 of Relaxation Act falls in Chapter II of the said Act, which is titled 'Relaxation of Certain Provisions of Specified Act'. In contradistinction, Section 4 of Relaxation Act which does amend several provisions of the Act falls in Chapter III, which is titled 'Amendments to the Income Tax Act, 1961'. It will be apposite to notice that the amendments provided for in Section 4 were made by the Legislature itself in terms of the said Section and no such power to amend the Act was delegated to the Central Government. Therefore, we would agree with Mr. Pardiwalla that it is only Section 4 of Relaxation Act which amended the Act and no such amendments to the substantive provisions of the Act were envisaged under Section 3 of Relaxation Act, which was only a relaxation provision dealing with time limits under various enactments.

48 Mr. Pardiwalla submitted that even assuming for a moment that the primary contention of petitioners that the Explanations in the notifications are invalid is not accepted, still the impugned notices will be bad in law as the Explanation only seeks to effectuate the provisions of the erstwhile Sections 148, 149 and 151 of the Act. It does not cover the erstwhile Section 147 of the Act. As rightly submitted by Mr. Pardiwalla, the Assessing Officer could have assumed jurisdiction while issuing the impugned notices only after complying with the amended Section 147. The same has not been done by the Assessing Officers as (a) his assumption of

jurisdiction is on the basis of his 'reason to believe' that income chargeable to tax has escaped assessment, a concept, which is no longer recognised in the amended Section 147; and (b) the amended Section 147 is in any event subject to Sections 148 to 153, which would also include the procedure contained in Section 148A, which has not been followed. Therefore, the impugned notices do not even comply with the relevant statutory provisions, even if we do not find fault with the Explanations in the two notifications. Infact the Delhi High Court in paragraph 84 of *Mon Mohan Kohli* (Supra) has also considered and accepted this aspect of the matter.

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.

53 All petitions disposed accordingly. No order as to costs.

(N.J. JAMADAR, J.) **(K.R. SHRIRAM, J.)**

GAURI AMIT GAEKWAD

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