



WEB COPY



*W.P.No.15019 of 2021 etc., batch*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2022

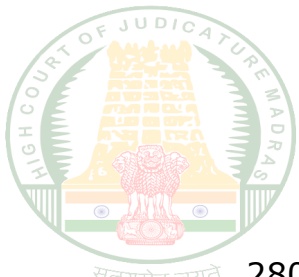
CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,  
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKEVALU

W.P.Nos.15019, 15024, 15559, 15564, 15567, 15954, 15960, 15964,  
15969, 15971, 15975, 15976, 16258, 16262, 16274, 16277, 16311,  
16317, 16517, 16523, 16566, 16567, 16577, 16580, 16635, 16637,  
16674, 16674, 16873, 16877, 17068, 17069, 17073, 17258, 17321,  
17329, 17341, 17345, 17333, 17336, 17595, 17603, 17608, 17612,  
17626, 18227, 18228, 18231, 18233, 18236, 18372, 18460, 18466,  
18613, 18622, 18615, 18619, 18623, 18658, 18666, 18669, 18781,  
18785, 19035, 19040, 19045, 19162, 19170, 19368, 16444, 16795,  
19501, 19505, 19525, 19530, 19736, 19740, 19744, 19746, 20085,  
20089, 20257, 20262, 20350, 20352, 20420, 20424, 20912, 20916,  
21847, 21851, 22492, 22496, 22500, 22503, 22650, 22654, 22701,  
22702, 22812, 22816, 24148, 24150, 24152, 24154, 24191, 24196,  
24508, 24513, 25232, 25236, 25239, 25242, 25238, 25240, 25249,  
25258, 25268, 25269, 25273, 25277, 25286, 25290, 25293, 25296,  
25299, 25917, 25926, 26205, 26208, 26220, 26223, 26227, 26231,  
26229, 26283, 26286, 26830, 26838, 26840, 26985, 27030, 27033,  
27079, 27082, 27244, 27249, 27253, 27245, 27250, 27246, 27247,  
27344, 27348, 27373, 27374, 27409, 27772, 27776, 27781, 27787,  
27794, 27863, 27867, 27932, 27937, 28025, 28030, 28034, 28028,  
28033, 28040, 28031, 28037, 28038, 28043, 28045, 28079, 28083,



W.P.No.15019 of 2021 etc., batch

सत्यमेव जयते 28088, 28360, 28366, 28369, 28379, 28373, 23343 and 23345 of  
2021,

W.P.Nos.160, 163, 400, 603, 670, 672, 728, 729, 1058  
and 1062 of 2022,

W.P.(MD)Nos. 12919, 12927, 12928, 13813 to 13817, 13731, 13980  
to 13985, 14258, 17371, 17372, 17669 to 17672, 17928 to 17931,  
20909, 20910, 22454 and 22455 of 2021

and

W.M.P.Nos. 15902, 15904, 15908, 15909, 22047, 16478, 16606,  
16485, 16609, 16611, 16490, 16614, 22043, 16854, 16858, 16862,  
16863, 16868, 16870, 16873, 16875, 16876, 16877, 16879, 16880,  
16883, 16885, 23781, 23789, 23787, 23784, 23786, 17197, 17202,  
17203, 17219, 17221, 17227, 17228, 17282, 17283, 17286, 17287,  
17479, 17481, 17489, 17492, 23821, 17539, 17542, 17543, 22046,  
17555, 17559, 17561, 17630, 17631, 17632, 22980, 17659, 17660,  
17854, 17855, 17856, 22981, 18103, 18104, 18105, 18108, 18110,  
18112, 18271, 18272, 18341, 18342, 18347, 18350, 18366, 18369,  
18373, 18374, 18354, 18355, 18360, 18363, 18723, 18730, 18731,  
18735, 18738, 18741, 18745, 18767, 18769, 19458, 19460, 19462,  
19464, 19465, 19466, 19467, 19468, 19471, 19472, 23768, 23771,  
23772, 23773, 19580, 19582, 19695, 19701, 19693, 19699, 22982,  
19851, 19855, 19859, 19850, 19854, 19858, 19860, 19861, 23806,  
19900, 19901, 19906, 19907, 19911, 19912, 25561, 20071, 20078,  
20079, 20299, 20301, 20303, 20308, 20311, 20466, 20467, 20471,  
20473, 21985, 17411, 17413, 17767, 17771, 20660, 20662, 20795,  
20797, 23820, 20811, 20812, 20814, 21008, 21011, 21012, 21014,  
21020, 21021, 21024, 21028, 25299, 25616, 21349, 21353, 21358,  
21360, 21512, 21519, 21521, 27311, 21594, 21596, 21598, 27227,  
21686, 21690, 21692, 22187, 22189, 22190, 23024, 23025, 23028,  
23029, 23714, 23717, 23718, 23720, 23722, 23725, 26255, 25962,  
23892, 23895, 23929, 23930, 23931, 24038, 24041, 25469, 25471,



W.P.No.15019 of 2021 etc., batch

WEB COPY

सत्यमेव जयते 25472, 25474, 25476, 25477, 25523, 25525, 25527, 25820, 25821,  
25822, 26607, 26609, 26613, 26616, 26618, 26619, 26624, 26625,  
26615, 26617, 26620, 26621, 26634, 26638, 26639, 26643, 26645,  
26646, 26650, 26655, 26656, 26661, 26662, 26678, 26679, 26684,  
26685, 26688, 26689, 26695, 26696, 26698, 26699, 27388, 27391,  
27397, 27400, 27660, 27662, 27664, 27665, 27666, 27676, 27678,  
27679, 27681, 27685, 27682, 27683, 27686, 27730, 27731, 27734,  
27735, 27736, 28276, 28287, 28289, 28292, 28293, 28420, 28423,  
28482, 28484, 28485, 28544, 28552, 28554, 28760, 28766, 28768,  
28772, 28773, 28759, 28761, 28767, 28769, 28758, 28762, 28763,  
28856, 28859, 28860, 28889, 28891, 28930, 28931, 29340, 29345,  
29346, 29348, 29350, 29355, 29360, 29363, 29497, 29501, 29504,  
29597, 29598, 29602, 29603, 29606, 29608, 29599, 29600, 29605,  
29607, 29615, 29617, 29604, 29610, 29611, 29613, 29614, 29618,  
29619, 29621, 29623, 29644, 29649, 29654, 29656, 29658, 29659,  
29937, 29942, 29944, 29949, 29950, 29956, 29959, 29960, 24623,  
24625, 24626 and 23819 of 2021,  
W.M.P.Nos.1045, 1058, 1178, 1728, 1735, 187, 192, 193, 458, 655,  
656, 718, 719, 720, 798, 799, 800, 1120, 1124 and 1129 of 2022,  
W.M.P.(MD)Nos.9993, 9994, 9995, 10020, 10025, 10016, 10024,  
10784, 10936, 10785, 10937, 10781, 10790, 10791, 10782, 10783,  
10657, 10780, 10788, 10787, 10656, 10934, 10935, 10938, 10940,  
10941, 10942, 10943, 10945, 10946, 11193, 11194, 14252, 14256,  
14253, 18987, 18988 and 18989 of 2021

W.P.No.15019 of 2021:-

Vellore Institute of Technology,  
Represented by its Chairman and Managing Trustee,  
Mr. G.Viswanathan,  
No. 54, Thennanaran Street,  
Vellore – 632 001.

... Petitioner



W.P.No.15019 of 2021 etc., batch

-VS-

WEB COPY

1. Central Board of Direct Taxes,  
Ministry of Finance,  
Department of Revenue,  
North Block,  
New Delhi – 110 001.

2. The Assistant Commissioner of Income Tax (Exemptions)  
Income Tax Department,  
Annexe Building, III Floor,  
No. 121, Mahatma Gandhi Road,  
Nungambakkam,  
Chennai – 600 024.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for a Writ of Declaration declaring the Explanation to Clause A(a) of the Notification No. 20/2021/F. No. 370142.35.2020-TPL dated 31.03.2021 issued by the First Respondent as unconstitutional, illegal and ultra vires the Constitution of India, the Taxation and Other Laws (Relaxation and Amendment of Certain Provisoins) Act, 2020 and the Income Tax Act, 1961.

For the Petitioner : Mr. S.Ganesh, Senior Counsel  
assisted by  
Mr. Suhrith Parthasarathy

For the Respondent 1 : Mr. R.Sankaranarayanan,  
Assistant Solicitor General of India  
assisted by  
Mrs. Hemamuralikrishnan,  
Senior Standing Counsel

For the Respondent 2 : Mr. A.P.Srinivas,  
Senior Standing Counsel



WEB COPY

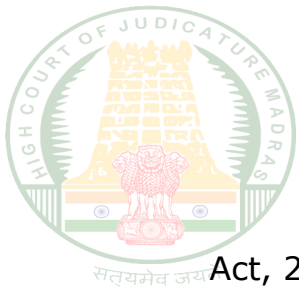


*W.P.No.15019 of 2021 etc., batch*

**COMMON ORDER**  
(Order of the court was made by  
the Hon'ble Acting Chief Justice)

By this batch of writ petitions a challenge is made to the Explanations A(a)(ii)/A(b) to the Notification No.20, dated 31.3.2021 and Notification No.38, dated 27.4.2021, inasmuch as they extend the applicability of the provisions of Sections 148, 149 and 151 of the Income Tax Act, 1961 (for brevity, "the Act of 1961") as it stood as on 31.3.2021, to the period beyond 31.3.2021. A challenge to the reassessment notices issued under Section 148 of the Act of 1961 has also been made referring to the amendment made in Sections 147 to 151 of the Act of 1961 with effect from 1.4.2021 by the Finance Act, 2021.

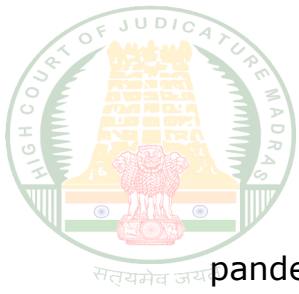
2. A challenge to Explanations A(a)(ii)/A(b) to the Notification No.20, dated 31.3.2021 and Notification No.38, dated 27.4.2021 has been made by referring to the unamended provisions of Sections 147 to 151 of the Act of 1961, as existed till 31.3.2021; the amended provisions of Sections 147 to 151, which came into effect from 1.4.2021; and, the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (for brevity, "the TOLA



Act, 2020").  
WEB COPY

3. The reason for challenge to the Explanations is in reference to the reassessment notices issued to the petitioners under Section 148 of the Act of 1961 on or after 1.4.2021 applying the provision as it stood prior to the amendment brought in Sections 147 to 151 by the Finance Act, 2021, which has come into effect from 1.4.2021. The petitioners have been served with the notices under Section 148 of the Act of 1961 for reassessment by applying the procedure as it stood under Section 147 to 151 of the Act of 1961 prior to 1.4.2021. The challenge to the reassessment notices has been made precisely on the ground that after the amendment under Sections 147 to 151 of the Act of 1961, the notices under Section 148 of the Act of 1961 could not have been given applying the repealed provisions as it could not be saved by the Notifications under challenge and even by the TOLA Act, 2020 and, therefore, the reassessment notices under Section 148 of the Act of 1961 deserve to be set aside.

4. It is submitted that, by the TOLA Act, 2020, the period of limitation was extended obtaining the situation arising out of Covid-19



WEB COPY

pandemic during the intervening period, but the amended provisions have come into effect from 1.4.2021 and, therefore, the procedure contemplated under the amended provision for issuance of reassessment notices ought to have been followed by the respondents, as the TOLA Act, 2020 cannot save the provisions so amended by the Finance Act, 2021.

5. To analyze the issue in reference to the argument, it would be appropriate to refer to the unamended and amended provisions of Sections 147 to 151 of the Act of 1961 hereunder:

**UNAMENDED PROVISIONS AS THEY STOOD TILL 31.3.2021:**

*"147. **Income escaping assessment.** If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recomputed the loss or the depreciation allowance or any other allowance,*



WEB COPY



W.P.No.15019 of 2021 etc., batch

as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year):

**Provided** that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:

**Provided further** that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year:

**Provided also** that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any





WEB COPY



W.P.No.15019 of 2021 etc., batch

*appeal, reference or revision, which is chargeable to tax and has escaped assessment.*

*Explanation 1.- Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.*

*Explanation 2.- For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:—*

*(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax;*

*(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed*



WEB COPY



W.P.No.15019 of 2021 etc., batch

*excessive loss, deduction, allowance or relief in the return;*

*(ba) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E;*

*(c) where an assessment has been made, but-*

*(i) income chargeable to tax has been under assessed; or*

*(ii) such income has been assessed at too low a rate; or*

*(iii) such income has been made the subject of excessive relief under this Act; or*

*(iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed;*

*(ca) where a return of income has not been furnished by the assessee or a return of income has been furnished by him and on the basis of information or document received from the prescribed income-tax authority, under subsection (2) of section 133C, it is noticed by the Assessing Officer that the income of the assessee exceeds the maximum amount not chargeable to tax, or as the case*



WEB COPY



W.P.No.15019 of 2021 etc., batch

may be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;  
(d) where a person is found to have any asset (including financial interest in any entity) located outside India.

*Explanation 3.-For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.*

*Explanation 4.-For the removal of doubts, it is hereby clarified that the provisions of this section, as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.*

**148. Issue of notice where income has escaped assessment**

(1) Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to



WEB COPY



W.P.No.15019 of 2021 etc., batch

*furnish within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:*

**Provided** that in a case-

- (a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005 in response to a notice served under this section, and*
- (b) subsequently a notice has been served under sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to sub-section (2) of section 143, as it stood immediately before the amendment of said sub-section by the Finance Act, 2002 (20 of 2002) but before the expiry of the time limit for making the assessment, re-assessment or recomputation as specified in sub-section (2)*



WEB COPY



W.P.No.15019 of 2021 etc., batch

*of section 153, every such notice referred to in this clause shall be deemed to be a valid notice:*

***Provided further that in a case-***

*(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005, in response to a notice served under this section, and*

*(b) subsequently a notice has been served under clause (ii) of subsection (2) of section 143 after the expiry of twelve months specified in the proviso to clause (ii) of sub-section (2) of section 143, but before the expiry of the time limit for making the assessment, reassessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice.*

*Explanation.- For the removal of doubts, it is hereby declared that nothing contained in the first proviso or the second proviso shall apply to any return which has been furnished on or after the 1st day of October, 2005 in response to a notice served under this section.*



WEB COPY



W.P.No.15019 of 2021 etc., batch

(2) *The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so.*

**149. Time limit for notice.** (1) *No notice under section 148 shall be issued for the relevant assessment year,-*

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

*(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year;*

*(c) if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.*

*Explanation.-In determining income chargeable to tax which has escaped assessment for the purposes of this sub-section, the provisions of Explanation 2 of section*



WEB COPY



W.P.No.15019 of 2021 etc., batch

*147 shall apply as they apply for the purposes of that section.*

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

*(3) If the person on whom a notice under section 148 is to be served is a person treated as the agent of a nonresident under section 163 and the assessment, reassessment or recomputation to be made in pursuance of the notice is to be made on him as the agent of such non-resident, the notice shall not be issued after the expiry of a period of six years from the end of the relevant assessment year.*

*Explanation.- For the removal of doubts, it is hereby clarified that the provisions of sub-sections (1) and (3), as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.*

**150. Provision for cases where assessment is in pursuance of an order on appeal, etc.**

(1) Notwithstanding anything contained in section 149, the notice under section 148 may be issued at any time for the purpose of making an assessment or



WEB COPY



W.P.No.15019 of 2021 etc., batch

reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision or by a Court in any proceeding under any other law.

(2) The provisions of sub-section (1) shall not apply in any case where any such assessment, reassessment or recomputation as is referred to in that sub-section relates to an assessment year in respect of which an assessment, reassessment or recomputation could not have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or recomputation may be taken.

**151. Sanction for issue of notice.** (1) *No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the 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 is a fit case for the issue of such notice.*





WEB COPY



*W.P.No.15019 of 2021 etc., batch*

*(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.*

*(3) For the purposes of sub-section (1) and sub-section (2), the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or the Joint Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue such notice himself."*

**AMENDED PROVISIONS APPLICABLE ON AND FROM 1.4.2021:**

**147. Income escaping assessment.** *If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment*



WEB COPY



W.P.No.15019 of 2021 etc., batch

year (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).

Explanation.—For the purpose of assessment or reassessment or recomputation under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of section 148A have not been complied with.

**148. Issue of notice where income has escaped assessment.** 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 the order passed, if required, under clause (d) of section 148A, requiring him to furnish within such period, as may be specified in such notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other



WEB COPY



W.P.No.15019 of 2021 etc., batch

*particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:*

***Provided*** that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice.

*Explanation 1.—For the purposes of this section and section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,—*

- (i) any information flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;*
- (ii) any final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has*



WEB COPY



W.P.No.15019 of 2021 etc., batch

*not been made in accordance with the provisions of this Act.*

*Explanation 2.—For the purposes of this section, where,—*

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

*(ii) a survey is conducted under section 133A, other than under sub-section (2A) or sub-section (5) of that section, on or after the 1st day of April, 2021, in the case of the assessee; or*

*(iii) 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 or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or*

*(iv) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under*



WEB COPY



W.P.No.15019 of 2021 etc., batch

*section 132 or 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,*

*the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.*

*Explanation 3.—For the purposes of this section, specified authority means the specified authority referred to in section 151.*

***148A. Conducting inquiry, providing opportunity before issue of notice under section 148.***

*The Assessing Officer shall, before issuing any notice under section 148,—*



WEB COPY



W.P.No.15019 of 2021 etc., batch

- (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*



WEB COPY



W.P.No.15019 of 2021 etc., batch

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.



WEB COPY

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

**149. Time limit for notice.**

*(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-*





WEB COPY



W.P.No.15019 of 2021 etc., batch

section (1) of this section, as they stood immediately before the commencement of the Finance Act, 2021:

**Provided further** that the provisions of this subsection 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



WEB COPY



W.P.No.15019 of 2021 etc., batch

*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.*

***150. Provision for cases where assessment is in pursuance of an order on appeal, etc.***

*(1) Notwithstanding anything contained in section 149, the notice under section 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision or by a Court in any proceeding under any other law.*

*(2) The provisions of sub-section (1) shall not apply in any case where any such assessment, reassessment or recomputation as is referred to in that sub-section relates to an assessment year in respect of which an assessment, reassessment or recomputation could not*



WEB COPY



W.P.No.15019 of 2021 etc., batch

*have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or recomputation may be taken.*

**151. Sanction for issue of notice.**

*Specified authority for the purposes of section 148 and section 148A shall 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 the relevant assessment year;*

*(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 the relevant assessment year."*

6. By the amended provisions with effect from 1.4.2021, not only the procedure in reference to Section 147 of the Act of 1961 was simplified, but there is addition of Section 148-A of the Act for



W.P.No.15019 of 2021 etc., batch

WEB COPY

compliance before issuance of reassessment notice under Section 148 of the Act of 1961.

7. The main issue for our consideration is as to whether the relaxations granted by TOLA Act, 2020 extending the period of limitation can result in application of the repealed provisions after 1.4.2021 and as to whether the Explanations A(a)(ii)/A(b) to the Notification No.20, dated 31.3.2021 and Notification No.38, dated 27.4.2021 save the unamended provisions.

8. For considering the aforesaid issue, we also quote the relevant provisions of the TOLA Act of 2020, apart from the Notification No.20, dated 31.3.2021; and, the Notification No.38, dated 27.4.2021, under challenge:

*"THE TAXATION AND OTHER LAWS (RELAXATION AND AMENDMENT OF CERTAIN PROVISIONS) ACT, 2020*

*NO. 38 OF 2020*

*29th September, 2020.*

*AN ACT to provide for relaxation and amendment of provisions of certain Acts and for matters connected therewith or incidental thereto.*

*BE it enacted by Parliament in the Seventy-first Year of the Republic of India as follows:—*



WEB COPY



W.P.No.15019 of 2021 etc., batch

## **CHAPTER I PRELIMINARY**

**1.** (1) *This Act may be called the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020.*

(2) *Save as otherwise provided, it shall be deemed to have come into force on the 31st day of March, 2020.*

**2.** (1) *In this Act, unless the context otherwise requires,-*

(a) *"notification" means the notification published in the Official Gazette;*

(b) *"specified Act" means-*

(i) *the Wealth-tax Act, 1957;*

(ii) *the Income-tax Act, 1961;*

(iii) *the Prohibition of Benami Property Transactions Act, 1988;*

(iv) *Chapter VII of the Finance (No. 2) Act, 2004;*

(v) *Chapter VII of the Finance Act, 2013;*

(vi) *the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015;*

(vii) *Chapter VIII of the Finance Act, 2016; or*

(viii) *the Direct Tax Vivadse Vishwas Act, 2020.*

(2) *The words and expressions used herein and not defined, but defined in the specified Act, the Central Excise Act, 1944, the Customs Act, 1962, the Customs*



WEB COPY



*W.P.No.15019 of 2021 etc., batch*

*Tariff Act, 1975 or the Finance Act, 1994, as the case may be, shall have the same meaning respectively assigned to them in that Act.*

## **CHAPTER II**

### **RELAXATION OF CERTAIN PROVISIONS OF SPECIFIED ACT**

*3. (1) Where, any time-limit has been specified in, or prescribed or notified under, the specified Act which falls during the period from the 20th day of March, 2020 to the 31st day of December, 2020, or such other date after the 31st day of December, 2020, as the Central Government may, by notification, specify in this behalf, for the completion or compliance of such action as-*

*(a) completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval, or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called, under the provisions of the specified Act; or*

*(b) filing of any appeal, reply or application or furnishing of any report, document, return or statement or such other record, by whatever name called, under the provisions of the specified Act; or*

*(c) in case where the specified Act is the Income-tax Act, 1961,-*

*(i) making of investment, deposit, payment, acquisition, purchase, construction or such other action, by whatever name called, for the purposes of claiming any deduction, exemption or allowance under the provisions contained in-*

*(I) sections 54 to 54GB, or under any provisions of Chapter VI-A under the heading*



WEB COPY



W.P.No.15019 of 2021 etc., batch

*"B.-Deductions in respect of certain payments" thereof; or*

*(II) such other provisions of that Act, subject to fulfilment of such conditions, as the Central Government may, by notification, specify; or*

*(ii) beginning of manufacture or production of articles or things or providing any services referred to in section 10AA of that Act, in a case where the letter of approval, required to be issued in accordance with the provisions of the Special Economic Zones Act, 2005, has been issued on or before the 31st day of March, 2020,*

*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 Act, stand extended to the 31st day of March, 2021, or such other date after the 31st day of March, 2021, as the Central Government may, by notification, specify in this behalf:*

*Provided that the Central Government may specify different dates for completion or compliance of different actions:*

.....

**10. Power to remove difficulties.-**

*(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:*

*Provided that no such order shall be made after the expiry of a period of two years from the end of the month in which this Act has received the assent of the President.*



WEB COPY



*W.P.No.15019 of 2021 etc., batch*

*(2) Every order made under this section shall be laid before each House of Parliament.*

### **11. Repeal and Savings.-**

*(1) The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 is hereby repealed.*

*(2) Notwithstanding such repeal, anything done, any notification issued or any action taken under the said Ordinance, shall be deemed to have been done, issued or taken under the corresponding provisions of this Act."*

**"NOTIFICATION S.O.1432(E) [NO.20/2021/F. NO. 3 70142/35/2020-TPL], DATED 31-3-2021**

*In exercise of the powers conferred by subsection (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,-*





WEB COPY



W.P.No.15019 of 2021 etc., batch

(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 subsection (1) of section 3 of the Act relates to passing of an order under subsection (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*



WEB COPY



W.P.No.15019 of 2021 etc., batch

*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 subsection (1) of section 3 of the said Act relates to intimation of Aadhaar number to the prescribed authority under subsection (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 subsection (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."*



WEB COPY

**"NOTIFICATION S.O.1703 (E) [NO.38/2021/F. NO. 370142/35/2020-TPL], DATED 27-4-2021**

*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, Subsection (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*



WEB COPY



W.P.No.15019 of 2021 etc., batch

*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.-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*



WEB COPY

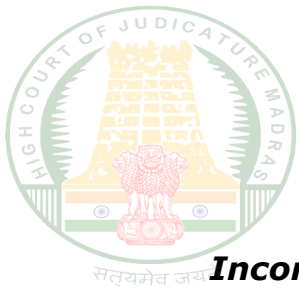


W.P.No.15019 of 2021 etc., batch

*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 subsection (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. Challenge to the reassessment notices under Section 148 and Explanations A(a)(ii)/A(b) to the Notification No.20, dated 31.3.2021 and Notification No.38, dated 27.4.2021 was addressed firstly by the Chhattisgarh High Court in the case of **Palak Khatuja v. Union of India, [2021] 438 ITR 622**. The same issue was thereupon decided by the Allahabad High Court in the case of **Ashok Kumar Agarwal v. Union of India, [2021] 131 taxmann.com (Allahabad)**; the Rajasthan High Court in the case of **BPIP Infra Private Limited v.**



W.P.No.15019 of 2021 etc., batch

WEB COPY

**Income Tax Officer** [CWP No.13297 of 2021, dated 25.11.2021]; the Delhi High Court in the case of **Mon Mohan Kohli v. Assistant Commissioner of Income Tax** [W.P.(C) No.6176 of 2021, dated 15.12.2021]; and, the Calcutta High Court in the case of **Bagaria Properties and Investment Pvt. Ltd v. Union of India** [W.P.O.No.253 of 2021, dated 17.1.2022]. Considering the fact that the judgments of different High Courts have pan-India effect and finding no reason otherwise to take a divergent view, the prayer made is to apply the view expressed by the Allahabad High Court, apart from other High Courts, for acceptance of the challenge to the reassessment notices issued under Section 148 of the Act of 1961 and the Notifications dated 31.3.2021 and 27.4.2021.

10. Learned counsel for the petitioners submit that the detailed judgment on the issue has been given by the Allahabad High Court, followed by the Delhi High Court and other High Courts. Thus, the prayer is to apply the ratio propounded by those High Courts for challenge to the reassessment notices under Section 148 of the Act of 1961 and even the Explanations A(a)(ii)/A(b) to the Notification No.20, dated 31.3.2021 and Notification No.38, dated 27.4.2021 by analyzing



W.P.No.15019 of 2021 etc., batch

WEB COPY

the provisions of TOLA Act, 2020. It is under the circumstance that the Delhi High Court had even taken into consideration the argument of "legal fiction" made before it. The prayer is, accordingly, to either examine the matter afresh or apply the ratio laid down by the various High Courts on the issue.

11. Learned Additional Solicitor General submitted that the issue of "legal fiction" has not been properly decided by the Delhi High Court and, therefore, the argument in reference to it needs to be appreciated afresh. It is, however, admitted that if the argument in reference to legal fiction is not accepted, the ratio propounded by the Allahabad High Court may be applicable to the facts of this case. The prayer was, however, to give liberty to the assessing authorities to initiate reassessment proceedings in accordance with the provisions of the Act of 1961, as amended by the Finance Act, 2021, after making all compliances as required by law. The prayer aforesaid has been made in reference to the assessment years where the limitation still exists for reassessment pursuant to Section 148 of the Act of 1961, as amended, apart from other provisions.



W.P.No.15019 of 2021 etc., batch

WEB COPY

12. The arguments in reference to legal fiction were heard, but after arguing at length, learned Additional Solicitor General could not press the argument aforesaid having been decided by the Delhi High Court after considering the issue threadbare. Accordingly, we find that a serious contest does not exist regarding the applicability of the ratio propounded by the Allahabad High Court, followed by other High Courts in regard to the challenge to the Explanations A(a)(ii)/A(b) to the Notification No.20, dated 31.3.2021 and Notification No.38, dated 27.4.2021; and the reassessment notices under Section 148 of the Act of 1961 issued on or after 1.4.2021.

13. The only issue for our consideration is as to whether the prayer made by learned Additional Solicitor General to allow the respective assessing authorities to initiate the assessment proceedings afresh in accordance with the provisions of the Act of 1961, as amended by the Finance Act, 2021, after making compliances as required by law, is to be given.

14. A serious contest to the prayer aforesaid was made by learned counsel for the petitioners. It is submitted that if law allows





W.P.No.15019 of 2021 etc., batch

WEB COPY

issuance of notice under Section 148 of the Act of 1961 afresh, then no liberty is required to be given, rather the assessing authority would be within its competence to initiate proceedings as per the amended provisions pursuant to the Finance Act, 2021. It is also submitted that the liberty, if granted, may be misused by the assessing authorities to harass the assesseees without any reason. Referring to the last paragraph in the judgment delivered by the Allahabad High Court, learned counsel submit that a liberty of the nature prayed by the respondents was given without a rider or clarification that a fresh notice under Section 148 of the Act of 1961 should be issued only in the cases where limitation still subsists and otherwise the judgment of the Allahabad High Court has been challenged by the Revenue before the Apex Court without exercising the powers pursuant to the liberty given therein. It is further submitted that if liberty, as prayed, for causing fresh reassessment notices under Section 148 of the Act of 1961, pursuant to the amended provision, is given, the petitioners would be subjected to discrimination when compared to those whose matters were taken before the Apex Court in view of the challenge to the judgment of the Allahabad High Court without causing a fresh notice under Section 148 of the Act of 1961, as amended.



*W.P.No.15019 of 2021 etc., batch*

WEB COPY

15. We have considered the submissions made by learned counsel for the petitioners and also the prayer of the learned Additional Solicitor General.

16. We find that the Allahabad High Court while delivering the judgment on the issue had given liberty to the revenue for initiation of reassessment proceedings in accordance with the provisions of the Act, as amended by the Finance Act, 2021, after making all compliances as required by law. Thus, the prayer made by the learned Additional Solicitor General otherwise exists in the judgment of the Allahabad High Court.

17. In view of the above and, even otherwise, when according to the petitioners themselves, if the limitation for issuance of notice under Section 148 of the Act of 1961 for reassessment pursuant to the amended provisions under the Finance Act, 2021 survives, the assessing authority would be competent to initiate the proceedings, we do not find any reason to deny the prayer made by learned Additional Solicitor General, because what exists impliedly can be given



W.P.No.15019 of 2021 etc., batch

WEB COPY

expressly. Therefore, while accepting the challenge to the reassessment notices under Section 148 of the Act of 1961, we hold that the Explanations A(a)(ii)/A(b) to the Notification No.20, dated 31.3.2021 and Notification No.38, dated 27.4.2021 must be read as applicable to the reassessment proceedings as on 31.3.2021 in view of the judgments of the different High Courts and we would grant liberty to the assessing authorities as prayed by learned Additional Solicitor General.

18. To fortify our conclusion, we refer to the relevant paragraphs of the judgments delivered by the Allahabad High Court and the Delhi High Court hereunder:

(A) In ***Ashok Kumar Agarwal v. Union of India***, supra, while considering a challenge to the reassessment proceedings under Section 148 of the Act of 1961 on the ground that the proceedings have been initiated after 1.4.2021, in the light of the notifications dated 30.3.2021 and 27.4.2021, the Allahabad High Court held as under:

*"65. Therefore, other things apart, undeniably, on 1st April, 2021, by virtue of plain/un-excepted effect of*



WEB COPY



W.P.No.15019 of 2021 etc., batch

Section 1(2)(a) of the Finance Act, 2021, the provisions of Sections 147, 148, 149, 151 as those provisions existed up to 31st March, 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 1st April, 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 1st April, 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 upto 31st March, 2021. **Plainly, the Enabling Act is an enactment to extend timelines only. Consequently, it flows from the above 1st April, 2021 onwards, all references to issuance of notice contained in the Enabling Act must be read as reference to the substituted provisions only.**



WEB COPY



W.P.No.15019 of 2021 etc., batch

***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 1st April, 2021, that proceeding must arise only upon jurisdiction being validly assumed by the assessing authority. Till such time jurisdiction is validly assumed by assessing authority-evidenced by issuance of the jurisdictional notice under Section 148, no reassessment proceeding may ever be said to be pending before the assessing authority. The admission of the Revenue authorities that all reassessment notices involved in this batch of writ petitions had been issued after the enforcement date 1st April, 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 un-amended law. Hence, no time extension could ever be made under Section 3(1) of the Enabling Act, read with the notifications issued thereunder.***



WEB COPY

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 un-amended law, also cannot be accepted. That saving could arise only if jurisdiction had been validly assumed before the date 1st April, 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 Addl. 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*



WEB COPY



W.P.No.15019 of 2021 etc., batch

*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 20th March, 2021, upto the date 30th June, 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 30th June, 2021. Vide Notification No. 3814 dated 17th Sept., 2021, issued under Section 3 of the Enabling Act, further extension of time has been granted till 31st March, 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 1st April, 2021. It only provides a*



WEB COPY



W.P.No.15019 of 2021 etc., batch

*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. 1st April, 2021. **We have further concluded, in absence of any proceeding of reassessment having been initiated prior to the date 1st April, 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





WEB COPY



W.P.No.15019 of 2021 etc., batch

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

*74. Similarly, the mischief rule has limited application in the present case. Only in case of any doubt existing as to which of the two interpretations may apply or to clear a doubt as to the true interpretation of a provision, the Court may look at the mischief rule to find the correct law. However, where plain legislative action exists, as in the present case (where-under the Parliament has substituted the old provisions regarding reassessment with new provisions w.e.f. 1st April, 2021), the mischief rule has no application.*

*75. As we see there is no conflict in the application and*



WEB COPY



W.P.No.15019 of 2021 etc., batch

enforcement of the Enabling Act and the Finance Act, 2021. Juxtaposed, if the Finance Act, 2021 had not made the substitution to the reassessment procedure, the Revenue authorities would have been within their rights to claim extension of time, under the Enabling Act. **However, upon that sweeping amendment made the Parliament, by necessary implication or implied force, it limited the applicability of the Enabling Act and the power to grant time extensions thereunder, to only such reassessment proceedings as had been initiated till 31st March, 2021. Consequently, the impugned Notifications have no applicability to the reassessment proceedings initiated from 1st April, 2021 onwards.**

**76. Upon the Finance Act, 2021 enforced w.e.f. 1st April, 2021 without any saving of the provisions substituted, there is no room to reach a conclusion as to conflict of laws. It was for the assessing authority to act according to the law as existed on and after 1st April, 2021. If the rule of limitation permitted, it could initiate, reassessment proceedings in accordance with the new law, after making adequate compliance of the same. That not done, the reassessment**



WEB COPY



W.P.No.15019 of 2021 etc., batch

***proceedings initiated against the petitioners are without jurisdiction.***

*77. Insofar as the decision of the Supreme Court in the case of Ramesh Kymal vs. Siemens Gamesa Renewable Power (P.) Ltd. (supra) is concerned, we opine, the same is wholly distinguishable. Therein The Insolvency and Bankruptcy Code, 2016 was amended by the Parliament and a new Section 10A, was introduced, apparently again on account of the difficulties arising from the spread of pandemic COVID-19. That section reads as under:*

*'10A. Notwithstanding anything contained in ss. 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:*

*Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.*

*Explanation.--For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.'*



WEB COPY

78. Plainly, in that case, the earlier provisions were not substituted rather they continued to exist. The parliamentary intervention by introducing Section 10A of that Act only provided no proceeding be instituted for any default arising after 21st March, 2020, for a period of six months or such period not exceeding one year, as may be notified. **Thus, in that case, by virtue of amendment made, delegated power created, could be exercised to relax the otherwise stringent provisions of the Act, in cases, wherein difficulties arose from the spread of the pandemic COVID-19. Thus, that ratio is plainly distinguishable.**

79. As to the decision of the Chhattisgarh High Court, with all respect, we are unable to persuade ourselves to that view. According to us, it would be incorrect to look at the delegation legislation i.e. Notification dated 31st March, 2021 issued under the Enabling Act, to interpret the principal legislation made by Parliament, being the Finance Act, 2021. A delegated legislation can never overreach any Act of the principal legislature. Second, it would be over simplistic to ignore the provisions of, either the Enabling Act or the Finance Act, 2021 and to read and interpret the



WEB COPY



W.P.No.15019 of 2021 etc., batch

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



WEB COPY



*W.P.No.15019 of 2021 etc., batch*

*existing provisions pertaining to reassessment under the Act.*

***80. In view of the above, all the writ petitions must succeed and are allowed. It is declared that the Ordinance, the Enabling Act and Sections 2 to 88 of the Finance Act, 2021, as enforced w.e.f. 1st April, 2021, are not conflicted. Insofar as the Explanation appended to clause A(a), A(b), and the impugned Notifications dated 31st March, 2021 and 27th April, 2021 (respectively) are concerned, we declare that the said Explanations must be read, as applicable to reassessment proceedings as may have been in existence on 31st March, 2021 i.e. before the substitution of Sections 147, 148, 148A, 149, 151 and 151A of the Act. Consequently, the reassessment notices in all the writ petitions are quashed. It is left open to the respective assessing authorities to initiate reassessment proceedings in accordance with the provisions of the Act as amended by Finance Act, 2021, after making all compliances, as required by law.***

*80. Accordingly, reassessment notice issued to the*



WEB COPY



W.P.No.15019 of 2021 etc., batch

present petitioner dated 9th April, 2021 for assessment year 2017-18 is quashed."

[emphasis supplied]

(B) In **Mon Mohan Kohli v. Assistant Commissioner of Income Tax**, supra, while considering an identical issue, the Delhi High Court concurred with the view taken by the Allahabad High Court and the Rajasthan High Court and held 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,



WEB COPY



W.P.No.15019 of 2021 etc., batch

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, MANU/UP/0247/1966 : (1967) 65 ITR 359 (All HC)].

**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**





WEB COPY



*W.P.No.15019 of 2021 etc., batch*

***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.***

...

*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 as 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*



WEB COPY



W.P.No.15019 of 2021 etc., batch

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



WEB COPY



W.P.No.15019 of 2021 etc., batch

(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.**

49. Further, the impugned Explanation is not only beyond the power delegated to the Government, but also in conflict with the provisions of the Income Tax Act, 1961 which had specifically made the new reassessment scheme applicable from 1st April, 2021. It is settled law that the delegation of authority must be express. There is no scope for any implied delegation of authority. The delegated authority must act strictly within the parameters of the authority delegated to it. The delegated authority cannot override the Act either by exceeding the authority or



WEB COPY



W.P.No.15019 of 2021 etc., batch

*by making provisions inconsistent with the Act. The distinction between conditional legislation or delegated legislation is irrelevant to the controversy at hand, as the person to whom the power is entrusted in either situation can do nothing beyond the limits which circumscribe the power. Subordinate legislation cannot be contrary to the parent statute. Consequently, this Court is respectfully not in agreement with the finding of Chhattisgarh High Court in Palak Khatuja (supra) that the legislative delegation exercised by the Central Government by impugned Notifications to uphold the mechanism as prevailing prior to March, 2021 is not in conflict with any Act. To be fair to Chhattisgarh High Court, there was no challenge in the petitions filed before it to the legality and validity of the impugned Notifications dated 31st March, 2021 and 27th April, 2021. On the contrary, this Court is in agreement with the views of the Allahabad High Court and Rajasthan High Court (Bench at Jaipur) in Ashok Kumar Agarwal (supra) and Bpip Infra Private Limited vs. Income Tax Officer, Ward 4(1), S.B. Civil Writ Petition 13297/2021, respectively.*

**50. Consequently, Explanations A(a)(ii)/A(b) to the Notifications dated 31st March, 2021 and 27th April, 2021 are ultra vires the Relaxation**



WEB COPY



W.P.No.15019 of 2021 etc., batch

**Act, 2020 and are therefore, bad in law and null and void.**

...

66. *This Court is of the opinion that the new provisions are remedial and benevolent provisions which are meant and intended to protect the rights and interests of assesseees as well as promote public interest. In Imperial Tobacco Ltd. v. Attorney General [1979] QB 555 at 581, Omrod LJ said, 'The object of all procedural rules is to enable justice to be done between the parties consistently with the public interest'. If the procedural rules are defective, the legal apparatus works less efficiently and the public interest suffers. If legislation is introduced to remedy the defective rule and no one suffers thereby, it is sensible to apply it to pending proceedings.*

**67. Consequently, this Court is of the view that the Finance Act, 2021 introduces a new regime regarding the procedure to be complied with in respect of the re-opening of an Income-tax assessment and accordingly, the benefit of the new provisions must necessarily be made available even in respect of proceedings relating to past Assessment Years provided, of course,**



WEB COPY



W.P.No.15019 of 2021 etc., batch

**Section 148 notice has been issued on or after  
1st April, 2021.**

...

74. Further, if the argument of learned counsel for the respondents that the Explanation in Notification No. 20 dated 31st March, 2021 extended the applicability of old procedure of reassessment beyond 31st March, 2021 is accepted the same shall lead to patent arbitrariness since:

a. during the period from 1st April, 2021 to 30th June, 2021, both old as well as new procedure as enacted by Finance Act, 2021 shall simultaneously operate [more so, since there is no statutory provision deferring the implementation of the new/mandatory procedure];

b. for example: For A.Y.'s 2015-16 to 2017-18 [with limitation upto March, 22 to 24], in case of two identically placed taxpayers (say A & B) with "information" of having asset above Rs. 50 lakh, Assessing Officer shall have absolute discretion to choose either the old or the new mechanism;

c. 'doctrine of election' normally confers two



WEB COPY



W.P.No.15019 of 2021 etc., batch

*separate alternative statutory powers/ remedies (like Sections 154, 147, 263) for same/similar cause, but same provision (Section 147) with two opposite procedure for same cause can never be envisaged and shall necessarily lead to manifest arbitrariness and conflict.*

*75. Also, the new scheme of reassessment provides for a uniform manner of reassessment of two categories of cases, namely, regular reassessments and search/survey cases. Insofar as search/survey cases are concerned, the provisions are clear that the new scheme is to apply where the proceedings are initiated after 1st April, 2021 as Explanation 2 to Section 148 states that the Assessing Officer will be deemed to have 'information' for the purposes of Section 148/148A when search/survey is initiated on or after 1st April, 2021 and the first proviso to Section 148A states that the procedure in Section 148A will not apply to cases where search/survey is initiated after 1st April, 2021. Also, the second proviso to Section 149 states that the new limitation will not apply where search/survey is initiated on or before 1st April, 2021. In fact, the department's interpretation would also make the provisions relating to search cases*



WEB COPY



W.P.No.15019 of 2021 etc., batch

*completely unworkable. As per Sections 153A and 153C, the provisions of these two sections will not apply where search/survey is done after 1st April, 2021. Department contends that the erstwhile law continues to apply from 1st April, 2021 to 30th June, 2021. The erstwhile law on reopening did not cover search/survey cases. Consequently, for the search/survey done from 1st April to 30th June, there can neither be an assessment under sections 153A/153C or under 147, which cannot be the case. Further, Sections 148, 148A and 149 specifically cover cases where search/survey is done after 1st April, 2021. If department's interpretation is accepted, this specific date in all three Sections will have to be changed and read as 1st July, 2021, which cannot be done. Moreover, as the new provisions seek to bring uniformity between regular reassessments and search/survey cases, it follows that the cut off date for initiation of reassessment proceedings even for regular reassessment is 1st April, 2021.*

...

**84. Even if it is assumed that the impugned Explanations in the two Notifications are valid, still the impugned notices are bad in law, as the impugned Explanations only seek to effectuate the erstwhile Sections 148, 149 and 151 and they**





WEB COPY



W.P.No.15019 of 2021 etc., batch

**do not cover Section 147. However, the conditions provided for in the substituted Section 147 were not considered while issuing notices by the Assessing Officer. In fact, the said Section 147 is itself subject to Sections 148 to 153, which would include Section 148A.**

**85. The "legal fiction" argument is without any foundation. A statute can be said to enact a legal fiction when it assumes the existence of something which is known not to exist. The extension of time for completing an assessment or issuing a Section 148 notice has no element of legal fiction in it. The only effect and consequence of this extension of the time limit is that if the act in question is performed within the extended time limit, it will be considered to be legally compliant. However, there is no assumption that the act in question is deemed to have been performed within the original time limit, as wrongly contended by the learned counsel for the Respondents. For achieving that result, clear and unequivocal language was required in the Relaxation Act, 2020-which is missing. In fact, there is no provision in Relaxation Act, 2020 laying down that if the**



WEB COPY



W.P.No.15019 of 2021 etc., batch

**"action" is taken within the extended time limit, it would be deemed to have been taken before the expiry of the original (un-extended) time limit.**

...

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

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

99. This Court is of the opinion that Section 3(1) of Relaxation Act empowers the Government/Executive to extend only the time limits and it does not delegate the



WEB COPY



W.P.No.15019 of 2021 etc., batch

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

...

103. Consequently, this Court is of the view that the Executive/Respondents/Revenue cannot use the administrative power to issue Notifications under Section 3(1) of the Relaxation Act, 2020 to undermine the expression of Parliamentary supremacy in the form of an Act of Parliament, namely, the Finance Act, 2021. This Court is also of the opinion that the



WEB COPY



W.P.No.15019 of 2021 etc., batch

*Executive/Respondents/Revenue cannot frustrate the purpose of substituted statutory provisions, like Sections 147 to 151 of Income Tax Act, 1961 in the present instance, by emptying it of content or impeding or postponing their effectual operation.*

***104. Keeping in view the aforesaid conclusions, Explanations A(a)(ii)/A(b) to the Notifications dated 31st March, 2021 and 27th April, 2021 are declared to be ultra vires the Relaxation Act, 2020 and are therefore bad in law and null and void.***

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

[emphasis supplied]



W.P.No.15019 of 2021 etc., batch

WEB COPY

19. In view of the ratio propounded by the Allahabad and Delhi High Courts on the subject, the reassessment notices under Section 148 of the Act of 1961 served on the petitioners on or after 1.4.2021 are set aside having been issued in reference to the unamended provisions and the Explanations are to be read as applicable to reassessment proceedings if initiated on or prior to 31.3.2021, but it would be with liberty to the assessing authorities to initiate reassessment proceedings in accordance with the provisions of the Act of 1961, as amended by the Finance Act, 2021, after making all the compliances as required by law, if limitation for it survives.

With the aforesaid observations, all the writ petitions are disposed of. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

(M.N.B., ACJ.) (P.D.A., J.)  
04.02.2022

Index : Yes  
sasi



W.P.No.15019 of 2021 etc., batch

WEB COPY To:

1. The Director,  
Central Board of Direct Taxes,  
Ministry of Finance,  
Department of Revenue,  
North Block,  
New Delhi – 110 001.
2. The Assistant Commissioner of Income Tax (Exemptions)  
Income Tax Department,  
Annexe Building, III Floor,  
No. 121, Mahatma Gandhi Road,  
Nungambakkam,  
Chennai – 600 024.



WEB COPY



*W.P.No.15019 of 2021 etc., batch*

M.N.BHANDARI, ACJ  
AND  
P.D.AUDIKEVALU, J.

(sasi)

W.P.No.15019 of 2021 etc., batch

04.02.2022