2023:DHC:8187-DB

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgement reserved on: 25.08.2023

% *Judgement pronounced on: 10.11.2023*

\+ **W.P.(C) 11527/2022 & CM APPL. 34097/2022**
GANESH DASS KHANNA ..... Petitioner

versus

INCOME TAX OFFICER AND ANR ..... Respondent

\+ **W.P.(C) 12481/2022 & CM APPL. 37682/2022**
PYTEX IMPEX PRIVATE LIMITED ..... Petitioner

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 19(1), DELHI & ANR. ..... Respondent

\+ **W.P.(C) 12281/2022 & CM APPL. 36873/2022**
M R AUXILIARY SERVICES PRIVATE LIMITED ..... Petitioner

versus

INCOME TAX OFFICER & ANR. ..... Respondent

\+ **W.P.(C) 12532/2022 & CM APPL. 37947/2022**
ARCHNA GAKHAR ..... Petitioner

versus

PRINCIPAL COMMISSIONER OF INCOME TAX DELHI 10 & ANR. ..... Respondent

\+ **W.P.(C) 13003/2022 & CM APPL. 39410/2022**
AMIT JAIN ..... Petitioner

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 58(1) DELHI ..... Respondent

\+ **W.P.(C) 13389/2022**
SUNIL NOSARIA ..... Petitioner

versus

INCOME TAX OFFICER, WARD 21(1), DELHI ..... Respondent

\+ **W.P.(C) 13397/2022**
RITA SOMANI ..... Petitioner

versus

ASSISTANT COMMISSIONER OF INCOME TAX AND ANR ..... Respondent

\+ **W.P.(C) 13464/2022**
SAMTA EDUCATIONAL MINORITY TRUST ..... Petitioner

versus

INCOME TAX OFFICER WARD EXEMPTION 2(1) DELHI & ORS. ..... Respondent

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versus

ITO, WARD 14(1) NEW DELHI & ORS. ..... Respondents

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ANITA KATHURIA ..... Petitioner

versus

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..... Respondents

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..... Petitioner

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HEMA ..... Petitioner

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INCOME TAX OFFICER WARD 35(1) DELHI & ANR. ..... Respondents

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Amol Sinha and M. Kshitiz Garg, Advs in W.P.(C) 12481/2022; Ms Kavita Jha, Mr Vaibhavv Kulkarni and Mr Himanshu Agarwal, Advs. in W.P.(C) 12281/2022; Mr A.K.Babbar and Mr B.K. Tripathi, Advocate in W.P.(C) 12532/2022; Mr Nitin Gulati and Ms Reena Gandhi, Advs. in W.P.(C) 13003/2022; Mr Salil Kapoor, Ms Ananya Kapoor, Mr Sumit Lalchandani, Mr Vibhu Jain and Mr Tarunn Chanana, Advs. In W.P.(C) 13389/2022, W.P.(C) 13903/2022, W.P.(C) 478/2023, W.P.(C) 1623/2023, W.P.(C) 1751/2023, W.P.(C) 4878/2023, W.P.(C) 6281/2023, W.P.(C) 6661/2023

Mr Manu K. Giri, Adv. in W.P.(C) 13397/2022 and W.P.(C) 17196/2022; Mr Yogesh Jagia, Mr Amit Sood and Mr Hriday Minocha, Advs in W.P.(C) 17065/2022, W.P.(C) 1724/2023, W.P.(C) 1749/2023, W.P.(C) 1812/2023.

Dr Rakesh Gupta, Mr Somil Agarwal and Mr Ansul Mittal, Advs. In W.P.(C) 17391/2022, W.P.(C) 17438/2022, W.P.(C) 237/2023, W.P.(C) 1885/2023, W.P.(C) 1886/2023, W.P.(C) 1910/2023;

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Mr Sanjay Kumar, Adv. in W.P.(C) 478/2023, W.P.(C) 838/2023.

Mr Zoheb Hussain, Sr. Standing Counsel and Mr Sanjeev Menon, Jr. Standing Counsel, Advs in W.P.(C) 134/2023, W.P.(C) 147/2023, W.P.(C) 2776/2023, W.P.(C) 6281/2023, W.P.(C) 7180/2023.

Mr Sunil Agarwal, Sr. Standing counsel with Mr Shivansh B.Pandya and Mr Utkarsh Tiwari, Advocates in W.P.(C) 2722/2023.

Mr Vipul Agrawal, Sr. Standing Counsel, Mr Gibran Naushad and Ms. Sakshi Sabharwal in WP(C) 829/2023.

Mr Santosh Kumar Pandey, Adv. for UOI in W.P.(C) 13843/2022.

Mr Kavindra Gill, Senior Panel Counsel for R1/UOI in WP(C) 1886/2023.

Mr Chiranjiv Kumar with Mr Mukesh Sachdeva, Advocates for UOI in WP(C) 17438/2022.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MR JUSTICE GIRISH KATHPALIA

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RAJIV SHAKDHER, J.:

Prefatory Facts:

1. These are writ petitions concerning Assessment Years (AYs) 2016-17 and 2017-18.

2. A singular but common issue has been raised in these writ petitions, which is whether the notices issued to the petitioners under Section 148 of the Income Tax Act, 1961 [hereafter referred to as the "1961 Act"] are sustainable in law having regard to Clauses (a) and (b) of Section 149(1) of the 1961 Act?

2.1. In short, the contention of the petitioners [hereafter referred to collectively as "assessee(s)", unless the context requires otherwise] is that in cases where the alleged escaped income is below the prescribed monetary threshold of Rs.50 lakhs, the period of limitation as stipulated under Clause (a) of Sub-section (1) of Section 149 of the 1961 Act would be applicable. The period prescribed under the said Clause is three (03) years from the end of the relevant AY.

2.2. Thus, if the extended period of limitation provided under Clause (b) of Sub-section (1) of Section 149 of the Act is to be applied, which is a period beyond three years (03) but not more than ten (10) years, to sustain the notice issued under Section 148 of the Act, jurisdictional conditions stipulated therein would have to be fulfilled.

2.3. One of the conditions prescribed for invoking the extended period of limitation is that the income chargeable to tax, which has escaped assessment, amounts to or is likely to amount to Rs.50 lakhs or more. Concededly, in the above-captioned matters, the income chargeable to tax, which is alleged to have escaped assessment, is below Rs.50 lakhs.

2.4. Therefore, as noticed above, the issue which requires adjudication is: what was the period of limitation available to the respondents [hereafter referred to as "revenue"] for issuance of notice under Section 148 of the Act?

3. Although the plain language of provisions of Section 149(1)(a) and (b) of the Act provide for limitation for notices to be issued under Section 148 qua the relevant AY, and hence, if applied, would, according to assessees, result in they being declared inefficacious-the revenue contends to the contrary. As per the revenue, the notices are within limitation based on a conjoint reading of the provisions mentioned above with the judgment rendered by the Supreme Court dated 04.05.2022 in ***Union of India and Ors. vs. Ashish Agarwal***[1], Instruction No.01 of 2022 dated 11.05.2022 issued by the Central Board of Direct Taxes [hereafter referred to as "CBDT"] in exercise of powers under Section 119 of the Act and the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 [hereafter referred to as "TOLA"].

3.1. At this juncture, it is relevant to note that TOLA was preceded by an Ordinance issued under Article 123 of the Constitution titled Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Ordinance,

[1] (2023) 1 SCC 617

2020 [hereafter referred to as "2020 Ordinance"].

4. Therefore, to appreciate the submissions advanced before us by the assessees, the backdrop in which the 2020 Ordinance was issued, followed by TOLA [which provided for relaxation and amendments in specified statutes and other legislations such as Central Excise Act, 1944, Finance Act (No.2) of 2019 and Goods and Services Act, 2017] would have to be, briefly, set forth.

5. The COVID-19 pandemic, which spread across the world, including in India, made it difficult for the citizenry to comply with, among other things, the timelines prescribed in various statutes applicable to them.

5.1. The 2020 Ordinance, thus, granted an extension of timelines, which were specified, prescribed, or notified in the statutes referred to therein, which fell within the period spanning between 20.03.2020 and 29.06.2020 or such other dates which fell after 29.06.2020 provided these dates were specified by the Central Government by way of a Notification.

5.2. The actions qua which time limits were extended for completion of compliance were referred to in Chapter II Section 3(1)(a) to (c) of the 2020 Ordinance, insofar as the Specified Acts were concerned. The Specified Acts were defined in Section 2(1)(a) of the 2020 Ordinance.

5.3. As far as the above-captioned writ petitions are concerned, we are required to accord attention to only one Specified Act, i.e., the 1961 Act. Reference to the 1961 Act was made in Section 2(1)(a)(ii) of the 2020 Ordinance. Besides this, the 2020 Ordinance made amendments to the 1961 Act and other statutes, which resulted, *inter alia*, in the extension of time limits in those statutes as well.

5.4. By virtue of the provisions of the 2020 Ordinance, the due date/time

limit/limitation for completion of proceedings and compliance referred to in Section 3(1), which fell during the period spanning between 20.03.2020 and 29.06.2020 stood extended to 30.06.2020.

5.5. Likewise, Notification No.35 of 2020 dated 24.06.2020 issued under the 2020 Ordinance extended the end date to 31.03.2021 where the due date/time-limit/limitation under the Specified Acts qua proceedings and compliances referred to in Section 3(1) of the 2020 Ordinance fell within the period spanning between 20.03.2020 to 31.12.2020.

5.6. Besides the Notification dated 24.06.2020, two (02) other notifications were issued under the 2020 Ordinance, which were dated 29.06.2020 and 29.07.2020.

5.7. The first one was Notification No.39 of 2020, dated 29.06.2020, whereby an error which had crept in the Notification dated 24.06.2020 was corrected. The second Notification, i.e., Notification No.56 of 2020 dated 29.07.2020, was issued to amend the first proviso appended to Clause (i), sub-clause (a) and for insertion of a fresh proviso immediately after the second proviso incorporated in the Notification dated 24.06.2020.

6. Continuing with the narrative, the enactment of TOLA, which received the assent of the President of India on 29.09.2020, did not alter the end date for completion of proceedings and/or compliances, the due dates/time limit/limitation for which fell between 20.03.2020 and 31.12.2020. In other words, under TOLA, 31.03.2021 remained the end date for proceedings and compliances referred to in Section 3(1) of the said Act, which, as noticed hereafter, was extended via Notifications.

7. The enactment of Finance Act 2021 [hereafter referred to as "FA 2021"], which received the assent of the President of India on 28.03.2021

and came into force on 01.04.2021, brought about, among other things, significant changes concerning the provisions relating to reassessment proceedings contained in 1961 Act. Consequently, Sections 147 to 149 and 151 were substituted with new provisions, which were similarly numbered and in addition, two (02) provisions were introduced, i.e., Sections 148A and 151A.

7.1. Notably, Section 148A provided for the procedure that the Assessing Officer [hereafter referred to as "AO"] had to adhere to before he concluded that the case in issue was fit for issuance of notice under Section 148 of the 1961 Act, i.e., for triggering recommencement proceedings against an assessee.

7.2. The substituted Section 149, as alluded to hereinabove, prescribed the time limits for issuance of notice under Section 148 of the Act.

8. We may also note that under TOLA, two (02) Notifications were issued for an extension of time for filing returns concerning AY 2020-21 and for furnishing audit reports under the relevant provisions of the 1961 Act. These Notifications are 88 of 2020, dated 29.10.2020 and 93 of 2020, dated 31.12.2020.

9. In the interregnum, a press release dated 30.12.2020 was also issued broadly for the same purpose, which, apart from the 1961 Act, referred to other statutes as well. Insofar as the Notification dated 31.12.2020 was concerned, it provided that the end date for limitation would be 31.03.2021 concerning those proceedings, in which the due date for compliance fell between 20.03.2020 and 30.03.2021.

10. The point of inflection, however, came about with the CBDT issuing two (02) Notifications, i.e., Notification No.20 of 2021 dated 31.03.2021

and Notification No.38 of 2021 dated 27.04.2021.

10.1. Insofar as the Notification dated 31.03.2021 was concerned, it shifted the end date prescribed for the expiration of limitation as per the provisions of Section 149 of the 1961 Act, to 30.04.2021, concerning the notices issued under Section 148, the due date for which fell within the period spanning between 20.03.2020 and 31.03.2021.

10.2. Likewise, the Notification dated 27.04.2021 extended the limitation period to 30.06.2021 for notices issued under Section 148 of the 1961 Act, the due date for which fell between 20.03.2020 and 30.04.2021.

10.3. The problematic part of these Notifications was the explanations appended to Part A(a)(ii) [Notification dated 31.03.2021] and Part A(b) [Notification dated 27.04.2021]. These explanations were identical. They, *inter alia*, provided that the provisions of Sections 148, 149 and 151 of the 1961 Act, as obtaining on 31.03.2021, would apply. In other words, these Notifications sought to bypass the substituted provisions contained in Sections 148, 149 and 151, which were incorporated in the 1961 Act pursuant to FA 2021.

11. Pivoted on the Notifications dated 31.03.2021 and 27.04.2021, the revenue issued notices under the unamended Section 148 of the 1961 Act to the assessees for AYs 2003-04 to 2017-18.

12. This led to challenges being laid via writ actions preferred in several High Courts of the country, including in this Court, wherein a bunch of cases were filed, the lead matter being W.P.(C) No.6176/2021, titled ***Mon Mohan Kohli vs ACIT & Anr***.[2].

[2] (2021) SCC OnLine Del 5250.

13. The writ petitioners (in those cases) assailed notices issued between 01.04.2021 and 30.06.2021 on two broad grounds. First, with the coming into force of FA 2021, the old regime could not have been taken recourse to by the revenue. Second, the notices were barred by limitation, as prescribed under the new regime, which was captured in the substituted Section 149 of the 1961 Act.

14. As indicated above, such writ actions were also instituted in other High Courts, including the Allahabad High Court. Several High Courts, including this Court in the ***Mon Mohan Kohli*** case, quashed the 148 notices which were pivoted on the explanations referred to hereinabove, contained in the Notifications dated 31.03.2021 and 27.04.2021.

15. The Union of India carried the judgment rendered by the Allahabad High Court in Writ Tax No. 524/2021, titled ***Ashok Kumar Agarwal vs Union of India, through its Revenue Secretary North Block & Ors.*** to the Supreme Court. The Supreme Court, via judgment in the ***Ashish Agrawal*** case**,** sustained the notices issued under the unamended Section 148 of the 1961 Act, i.e., the old regime, by directing that the same would be treated as having been issued under Section 148A(b) (i.e., the new regime) for commencement of reassessment proceedings under the 1961 Act.

15.1. A slew of directions were issued by the Supreme Court in the exercise of its powers under Article 142 of the Constitution, not only qua matters *vis-à-vis* which appeals were preferred by the UOI but also those judgments which had ruled on the same issue but were not, at that point in time, carried in appeal to the Supreme Court.

16. The CBDT, as noticed above, issued the impugned Instruction dated 11.05.2022, purportedly in compliance with the directions in the judgment

rendered by the Supreme Court in ***Ashish Agarwal's*** case.

17. As a follow-up, the revenue via the AOs issued communications/notices, which indicated reassessment proceedings were being triggered under the new regime, which had been brought into effect on 01.04.2021 with the enactment of FA 2021.

17.1. The assessees filed their objections in terms of Section 148A(c) to the communications/notices, which were aligned with the provisions of Section 148A(b) of the 1961 Act.

17.2. Among several objections taken by the assessees, one objection flagged was that the time limit prescribed under Section 149(1)(a) had expired and given the fact that the income chargeable to tax which had allegedly escaped assessment amounted to less than Rs.50 lakhs, the revenue could not take recourse to the extended limitation period provided in clause (b) of sub-section (1) of Section 149 of the 1961 Act.

17.3. Suffice it to say this objection preferred by the assessees was rejected by the AOs while passing the orders under Section 148A(d) of the 1961 Act. Resultantly, consequential notices under Section 148 of the 1961 Act were issued to the assessees. It is this development which has brought the assesses to the Court by way of the above-captioned writ actions.

18. Before we proceed further, we may note that based on the agreement arrived at between the counsel representing both the assesses and revenue, we had indicated that we would allude to the dates and events concerning W.P.(C) 12281/2022, titled, ***M.R. Auxiliary Services Private Limited vs. ITO & Anr.*** and W.P.(C) 15121/2022, titled ***South East UP Power Transmission Company Limited vs. Deputy Commissioner of Income Tax, Central Circle-19, Delhi & Ors.*** steering clear of the prefatory facts which

have already been referred to hereinabove, since the issue which has arisen for consideration is a pure question of law and the judgment rendered by us would operate *in rem* and cover all assessees.

18.1. We also note that apart from the challenge laid to the notice issued under Section 148 to the concerned assessees, in some writ actions, the challenge is also laid to Instruction dated 11.05.2022.

W.P.(C) 12281/2022 [M.R. Auxiliary case]

19. M.R Auxiliary Services Pvt. Ltd. [hereafter referred to as 'MRA'] had filed its return of income (ROI) concerning AY 2017-18 on 24.10.2017. Via its ROI, MRA had declared a loss amounting to Rs.1,25,303/-.

19.1 On 28.06.2021, MRA was issued a notice under the unamended Section 148 of the 1961 Act.

19.2 Pursuant to the judgment of the Supreme Court in the ***Ashish Agrawal*** case, MRA was served with two (02) notices dated 20.05.2022 and 25.06.2022. The allegation levelled against MRA was that Rs.29,86,000/- was deposited in the bank account maintained by it during the period 09.11.2016 and 31.12.2016. It was alleged that the said amounts had been funneled through an entity going by the name Suntech Solar Power Pvt. Ltd., which had received cash deposits amounting to Rs.30,80,508/-, out of which Rs.29,86,000/- was channeled to the bank account of MRA.

19.3. MRA filed a response dated 04.06.2022 to the notice issued under Section 148A(b) of the Act, which was dated 20.05.2022. Amongst other objections, one of the objections that MRA flagged was that the reassessment proceedings triggered against it were time-barred as the limitation qua the AY 2017-18 expired on 31.03.2021. In this context, the attention of the AO was drawn to Clause (a) of Sub-section (1) of Section

149 of the 1961 Act. MRA also highlighted the fact that the AO could not take recourse to the extended period of limitation provided in Clause (b) of Sub-section (1) of Section 149, as the preconditions provided therein, which included that the escaped income should amount to Rs.50 lakhs or more, remained unfulfilled.

19.4. The AO, via order dated 27.07.2022, rejected the said objection raised by MRA, broadly, on the ground that this court, while rendering the judgment in ***Mon Mohan Kohli's*** case had only found fault with the non-adherence by the revenue to the procedure prescribed for reopening assessment which came into effect on 01.04.2021, pursuant to FA 2021.

19.5. Furthermore, the AO took the position that the decision of the Supreme Case in ***Ashish Agrawal's*** case, read with TOLA, will allow the reassessment notices to "travel back in time to their original date when such notices were to be issued". The assertion was that the substituted Section 149 would apply from that point onwards. Thus, according to the AO, the time limit would have to be reckoned from when the original notice under Section 148 was issued, i.e., from 28.06.2021. The AO, thus, claimed if the time limit provided under Section 149(1)(a) of the 1961 Act, which is three (03) years, is applied from that date, the reassessment proceedings would sustain and, therefore, the pre-conditions provided in Clause (b) of Sub-section (1) of Section 149 were not applicable.

19.6. Being dissatisfied with the conclusion reached by the AO, MRA lodged its writ action on 23.08.2022. The writ petition came up before the coordinate bench on 25.08.2022, when notice was issued to the revenue. While issuing notice, the coordinate bench directed that although the AO would have the liberty to pass the assessment order, the same would not be

given effect to and would be subject to further orders of the court.

W.P.(C) 15121/2022 [South East UP Power Transmission case]

20. On 17.10.2016, South East UP Power Transmission Company Limited [hereafter referred to as 'South East'] filed its ROI for AY 2016-17. Via the ROI, South East declared a loss amounting to Rs.54,87,433/-.

20.1. South East's ROI was processed, and an intimation was issued to it on 04.12.2016 under Section 143(1) of the 1961 Act.

20.2. On 16.04.2019, Power Finance Corporation Limited lodged a petition against South East under Section 7 of the Insolvency and Bankruptcy Code, 2016 [hereafter referred to as '2016 Code'].

20.3 On 30.06.2021, South East was issued a notice under the unamended Section 148 of the 1961 Act. Parallelly, an entity going by the name Resurgent Power Venture P. Ltd. [hereafter referred to as "RPV"] presented a resolution plan to the concerned bench of the National Company Law Tribunal [hereafter referred to as "NCLT"] on 19.07.2021.

20.4. On 18.11.2021, South East was issued a notice Section 142(1) of the 1961 Act. The said notice was followed by another notice dated 16.02.2022 under the same provision.

20.5. The record discloses that on 18.02.2022, the Resolution Professional [hereafter referred to as "RP"] appointed by the NCLT responded to the Section 142(1) notices issued by the AO. Via this communication, the RP conveyed to the AO that the Corporate Insolvency Resolution Process [hereafter referred to as "CIRP"] had been initiated *vis-à-vis* South East and that moratorium against the recovery of debts as per Section 14 of the 2016 Code was in operation.

20.6. The AO, however, via communication dated 24.02.2022, took the

position that notwithstanding the provisions of Section 14 of the 2016 Code, he could continue with the reassessment proceedings. Accordingly, the AO granted a final opportunity to South East to file its response by 02.03.2022.

20.7. The RP, via his response dated 03.03.2022, restated his objection regarding the continuance of reassessment proceedings. However, the RP went on to defend the position of South East on merits, as well.

20.8. Via communication dated 07.03.2022, the AO disposed of the objections preferred by RP on behalf of South East and requested cooperation in the assessment proceedings.

20.9. Not being satisfied, the RP, via communication dated 14.03.2022, reemphasized his objection to the continuation of reassessment proceedings, having regard to the fact that the moratorium was in place.

21. The record discloses that on 15.06.2022, NCLT approved the resolution plan presented by RPV, and consequently, the moratorium came to be lifted.

21.1 On 28.07.2022, the AO passed the order under Section 148A(d) of the 1961 Act, whereby he held that income chargeable to tax amounting to Rs.8,01,500/- had escaped assessment. As a result, the AO also issued a consequential notice dated 29.07.2022 under Section 148 of the 1961 Act.

21.2. We may note that South East also conveyed to the AO via communication dated 22.08.2022 that the aforementioned notice issued under Section 148 should be dropped, considering that NCLT had approved the resolution plan presented by RPV. The said objection was also disposed of by the revenue via an order dated 19.09.2022.

21.3. It is in this background that South East filed its writ action, i.e. W.P.(C) 15121/2022, on 27.10.2022. Via this writ petition, South East has assailed the following notices and order:

(i) Notice dated 30.06.2021 which was treated as a notice used under Section 148A(b) of the 1961 Act.

(ii) Order dated 28.07.2022 passed under Section 148A(d) of the 1961 Act.

(iii) Consequential notice dated 29.07.2022 issued under Section 148 of the 1961 Act.

21.4. Besides this, a challenge was laid to the Instruction dated 11.05.2022.

Submissions made by counsel:

22. Although to adjudicate the legal issue in the above-captioned petitions, we have delved into facts concerning the two (02) writ petitions referred to hereinabove, the assessees, like revenue, were represented by several counsels. To avoid prolixity, we would paraphrase the submissions advanced on behalf of assessees and revenue without specifically adverting to the counsels by name.

Submissions on behalf of the assessees:

23. On behalf of the assessees, the following broad contentions were raised:

(i) Both the orders passed under Section 148A(d) and the consequent notices issued under Section 148 of the 1961 Act have transcended the prescribed limitation, which is three (03) years commencing from the end of the relevant AYs. Since the AYs in issue are 2016-17 and 2017-18, the end date for expiration of limitation for the said AYs would be 31.03.2020 and 31.03.2021. In all cases, the order under Section 148A(d) and the notice under Section 148 has been issued on or after 01.04.2021, i.e., after the expiry of the three (03) year limitation period prescribed under Section 149(1)(a).

(ii) The extended period of limitation provided in Section 149(1)(b) of the 1961 Act can be taken recourse to only if the conditions precedent provided therein are fulfilled. One such condition provided in Clause (b) of Sub-Section (1) of Section 149 is that income chargeable to tax, which allegedly has escaped assessment, amounts to or is likely to amount to Rs 50 lakhs or more. In the above-captioned writ petitions, even according to the revenue, the alleged escaped income is below Rs.50 lakhs. That being the case, the period of limitation for issuing notice under Section 148, which extends to ten (10) years, is not available to the revenue.

(iii) The revenue's stand (which is primarily based on the CBDT Instruction dated 11.05.2022) that the directions issued by the Supreme Court in ***Ashish Agrawal's*** case, when read along with TOLA, will allow the "*…extended reassessment notices to travel back in time to their original date when such notices were to be issued....*" is unsustainable in law for the following reasons:

(a) The law does not support the travel back in time theory propounded by the revenue. Such theory is neither borne out from the decision rendered by the Supreme Court in ***Ashish Agarwal's*** case nor does it have any roots in the provisions of the 1961 Act as amended by FA 2021. As a matter of fact, TOLA also does not support this theory.

(b) Contrary to the revenue's submission, TOLA has created no such legal fiction which would allow the notices issued under Section 148, which were issued in and about May-June 2022, to be treated as having been issued on or before 31.03.2021, to calculate the period of limitation prescribed in Section 149(1)(a) of the 1961 Act. [See ***Keenara Industries Pvt. Ltd. vs. ITO, Surat*** 2023 (3) TMI 104 (Gujarat High Court); ***Rajiv Bansal v. Union***

of India and Ors 2023 (2) TMI 1081 (Bombay High Court) and ***Mon Mohan Kohli*** (Delhi High Court) paras 86 to 89]

(c) The Instruction dated 11.05.2022 issued by the CBDT, which states in paragraph 6.1 that the extended reassessment notices would travel back in time to their original date when such notices were issued, provides no clarity as to what that "original date" would be.

(d) The fallacy in the revenue's stand is that while it wishes to travel back in time by applying the period of limitation available prior to FA 2021 coming into force, it simultaneously seeks to apply the amended provisions. Therefore, if the unamended provisions are applied, the end date for expiration of limitation for AYs 2016-17 and 2017-18 would be 31.03.2023 and 31.03.2024, respectively. In such a situation, TOLA would have no application, contrary to what is contended by revenue, as it applied to compliances and proceedings whose limitation expired between 20.03.2020 and 31.03.2021.

(e) The decision of the Supreme Court rendered in ***Ashish Agarwal's*** case clearly mandated that post 31.03.2021, the new regime, as encapsulated in FA 2021, would apply. There was no reference in the said judgment to the travel back theory propounded on behalf of the revenue. All that the Supreme Court indicated in the said judgment that Section 148 notices issued between 01.04.2021 and 30.06.2021 would be treated as notices under Section 148A(b), i.e., the new regime. No suggestion was made in the Supreme Court's decision that the impugned notices issued under Section 148 would be deemed as having been issued before 31.03.2021, as per the unamended provisions. As is evident upon perusal of the judgment of the Supreme Court, its direction to treat Section 148 notices as notices issued

under the new regime was to quell the possibility of reassessment proceedings failing, even where they were viable under FA 2021. [See paragraph 8 of the judgment]

(iv). The directions contained in the judgment of the Supreme Court in ***Ashish Agarwal's*** case, while exercising its powers under Article 142 of the Constitution, were issued keeping the aforesaid object in mind while specifically holding that all defences would be available to the assessees. Thus, notices issued on or before 31.03.2021 will be governed by the old regime, while those issued on or after 01.04.2021 must be aligned with the new regime. Accordingly, all those notices issued between 01.04.2021 and 30.06.2021 stood converted to notices issued under Section 148A(b) of the new regime and were, thus, subject to the amended Section 149 of the 1961 Act.

(v) The revenue's stand is flawed as that would result in deferring the application of the amended provisions of Section 149. The revenue, which represents the executive, is not invested with the power to postpone the implementation of Sections 2 to 88 of FA 2021, which included the substituted Sections 147 to 151 of the 1961 Act. TOLA does not delegate any power to the Central Government to postpone the applicability of the new regime enacted by the Legislature.

(vi) The revenue's stand is erroneous as it fails to consider that with the enactment of FA 2021, it not only repealed but also substituted the provisions of Section 147 to Section 151. Substitution involves a two-step procedure. In the first instance, the subject provision ceases to exist. The next step brings into existence a new provision. In that sense, the legislative tool of substitution is different from "suppression" or a mere repeal of the

existing provision. [***PTC India Ltd. v Central Electricity Regulatory Commission*** (2010) 4 SCC 603; ***Government of India v Indian Tobacco Association*** (2005) 7 SCC 396; ***Zile Singh v State of Haryana,*** (2004) 8 SCC 1; ***Income Tax Officer v Vikram Sujitkumar Bhatia*** (2023) SCC OnLine SC 370].

(vi)(a) The relevant extract of the Finance Minister's speech and the Memorandum explaining the provisions of Finance Bill 2021 [hereafter referred to as the "Memorandum"] shed light on the object of bringing about amendments to Sections 147 to 151. The amendments intended to reduce litigation and compliance burden, remove discretion, impart certainty, and promote ease of doing business. It is in this light that for cases where the escapement of income was below Rs.50 lakhs, the limitation period was reduced to three (03) years, whereas for those cases where the escaped amount was Rs. 50 lakhs or more, the revenue was given leeway to enquire into those cases up to ten (10) years.

(vi)(b) The new regime would thus apply to even past AYs, provided notices under Section 148 were issued on or after 01.04.2021. The viability of these notices would have to be tested against the backdrop of the amended Section 149 of the 1961 Act. TOLA, which received the assent of the President on 29.09.2020 and the Notifications issued under it, could not have amended, modified or even excluded the applicability of FA 2021, which was not born on that date; FA 2021 received the assent of the President of India on 31.03.2021.

(vii). The travel back in time theory propounded by the revenue is manifestly arbitrary for the following reason: As per Section 153(2) of the 1961 Act, reassessment proceedings are required to be completed within

twelve (12) months from the end of the Financial Year (FY) in which notice under Section 148 is served on the assessee. Thus, if the notice issued under Section 148 is construed to travel back in time, i.e., to 31.03.2020/31.03.2021, the reassessment proceedings ought to have concluded by 31.03.2021/31.03.2022. The portal set up by the revenue, however, discloses that the end date provided for the completion of reassessment proceedings is 31.03.2024. This date has been provided having regard to the fact that the notices were served in FY 2022-23.

(viii). The circulars issued by the CBDT cannot run contrary to the decision of the Supreme Court. Likewise, the delegate cannot act in contravention of the Parent Act. Thus, the circulars/instructions/notifications issued by the Central Government cannot override the Parent Act.

(ix). The rule of strict interpretation applies to taxing statutes. It is not permissible in the context of taxing statutes to cure deficiencies. The Court should look at the plain words of the statute. Thus, if the assessee does not come within the ambit of the charging provision and the words are ambiguous and open to more than one interpretation, the benefit should enure to the assessee. Furthermore, if the law requires something to be done in a particular manner, it ought to be done in that manner or not at all.

(x). At the time of the enactment of FA 2021, it can be safely assumed that the legislature was aware of the state of law, as it existed then, which included the provisions of Section 149, TOLA and the Notifications issued under TOLA. However, despite such a situation obtaining, no provision was made for the extension of time limits under the amended Section 149, as exemplified by Notifications dated 31.03.2021 and 27.04.2021. Upon the enactment of FA 2021, TOLA and the Notifications issued under it were

impliedly effaced. The Notifications dated 31.03.2021 and 27.04.2021 do not prescribe any time limit; instead, they merely extend the end dates specified under the repealed provisions of Section 149. Pursuant to the substitution of the old provisions of Section 149 with the enactment of FA 2021, the said Notifications cannot survive. [See ***Municipal Council Palai v. T. J. Joseph,*** 1963 SCC OnLine SC 55; ***Fibre Boards Pvt. Ltd. vs CIT,*** (2015) 376 ITR 596 (SC) and ***CIT v. Venkateswara Hatcheries (P.) Ltd,*** 237 ITR 174 (SC)]

(xi) With the enactment of FA 2021, the erstwhile provisions of Section 149(1) were repealed and were substituted by a new provision. The immediate impact of the substitution was, while the limitation prescribed under Clause (a) of the erstwhile Section 149(1) was reduced from four (04) years to three (03) years, no grandfathering clause was provided. As a result, Clause (a) of the Section 149(1) stood wholly obliterated. In contrast, the limitation prescribed in Clause (b) of the erstwhile Section 149(1) stood enhanced from six (06) years to ten (10) years under the new provision. Significantly, a grandfathering clause has been provided, and accordingly, the limitation is governed by Clause (b) of the erstwhile Section 149(1)(b) till AY 2021-22, subject to fulfilment of the prescribed conditions provided therein.

(xii). Assuming without admitting that the Notifications issued under TOLA can be relied upon, the consequent notices issued under Section 148, pursuant to orders passed under Section 148A(b), would have to be tested against the provisions of Section 149, as amended via FA 2021.

(xiii). Instruction dated 11.05.2022 is bad in law as it seeks to deprive the assessees of defences available to the assessees under the amended Section

149 of the 1961 Act, an aspect which the Supreme Court has recognized in its judgment rendered in ***Ashish Agrawal's*** case.

Submissions on behalf of the revenue:

24. On behalf of the revenue, the following broad submissions were made:

(i) The contentions raised on behalf of the assessees that the notices issued under Section 148 of the 1961 Act *vis-à-vis* AYs 2016-17 and 2017-18 are covered by the limitation period prescribed under Clause (a) and not Clause (b) of Sub-Section (1) of Section 149 of the amended 1961 Act is completely misconceived. The coordinate bench of this Court in ***Touchstone Holdings Pvt. Ltd. v. ITO and Ors.*** [2023] 451 ITR 196 (Del) and ***Salil Gulati v. ACIT*** 2022:DHC:3709-DB has ruled that since the Supreme Court held that notices issued under Section 148 between 01.04.2021 and 30.06.2021 were to be treated as notices issued under Section 148A(b) of the 1961 Act, the said notices stood revived and were, thus, within the limitation period prescribed under the amended Section 149(1)(a) of the 1961 Act.

(ii) The power exercised by the Supreme Court under Article 142 of the Constitution while issuing directions which were the subject matter of the decision rendered in ***Ashish Agrawal's*** case is non-justiciable. Therefore, the instant writ petitions are not maintainable as this Court has no power to examine the tenability of the directions contained in the aforementioned judgment passed by the Supreme Court. In other words, only the Supreme Court would be competent to clarify, if necessary, the decision rendered under Article 142 of the Constitution.

(iii) *De hors* the aforesaid contention, it is submitted that a perusal of the judgment rendered in ***Ashish Agrawal's*** case would show that it approved, among others, the judgment of the coordinate bench in ***Mon Mohan Kohli's***

case and while doing so recognized the fact that if corrective measures are not taken, it would result in the failure of reassessment proceedings qua cases in which notices under Section 148 were issued between 01.04.2021 and 30.06.2024. Against this backdrop, the Supreme Court directed that the notices issued under Section 148 should be treated as those issued under Section 148A(b) of the amended 1961 Act.

(iv) Under the amended 1961 Act, the time limit for AY 2016-17 as per Section 149(1)(a) would come to an end on 31.03.2020. The limitation for notices issued between 01.04.2021 to 30.06.2021 stood extended till 30.06.2021, and the said notices were to be treated as notices issued under Section 148(A)(b) of the amended 1961 Act. Therefore, the erstwhile notices issued under Section 148, which had morphed into notices issued under Section 148A(b) of the 1961 Act, would be within the time limit of three (03) years prescribed under Section 149(1)(a) of the amended 1961 Act.

(v) As per the operative directions contained in the Supreme Court's judgment rendered in the ***Ashish Agarwal's*** case, the Assessing Officer was required to furnish to the assessee information and material relied upon by him within thirty (30) days of pronouncement of the said judgment, to enable the assessee to file a reply within two (02) weeks thereafter. Having regard to this direction, the time spanning between the date when erstwhile notices under Section 148 were issued [which were treated as under Section 148A(b) of the Act by virtue of the fact they were issued between 01.04.2021 and 30.06.2021] and the date when the assessee filed reply would have to be excluded, having regard to the third proviso appended to Section 149 of the amended 1961 Act.

(vi) In the instant cases, there is no assertion that timelines, as provided in the ***Ashish Agrawal*** case, have been breached. Thus, the notices issued under Section 148, after passing the order under Section 148(A)(d) of the amended 1961 Act, are within the limitation period prescribed in Section 149(1)(a) of the amended 1961 Act. The criterion that the escaped income should amount to or is likely to amount to Rs. 50 lakhs or more is not applicable in the matters presently before the court.

(vii) Section 3(1) of TOLA, read with the judgment of the coordinate bench of this court rendered in ***Mon Mohan Kohli's*** case leaves no manner of doubt that the limitation for issuance of notice under Section 148 of the Act, which was coming to an end on 31.03.2020, qua AY 2016-17 as per the amended provisions of Section 149(1)(a), stood extended till 30.06.2021. Therefore, if this extended period of limitation is kept in mind and the timeframe between the date when the erstwhile notice under Section 148 was issued and when the reply was filed is excluded, in terms of the third proviso appended to Section 149 of the Act, both the order passed under Section 148(A)(d) and the consequent notice issued under Section 148 would be within the limitation prescribed in Section 149(1)(a) of the amended 1961 Act. Given the aforesaid submission, the Instruction dated 11.05.2022 is *intra vires* the provisions of the 1961 Act and Section 3(1) of TOLA, read with the directions contained in the ***Ashish Agrawal's*** case.

(viii) Both under the unamended 1961 Act and amended 1961 Act, the issue concerning limitation is inextricably intertwined with two aspects:

(a) First, the rank of the authority granting approval/sanction for triggering reassessment proceedings.

(b) Second, the quantum of income which has escaped assessment.

(ix) The issue concerning limitation is covered in favour of revenue by the decision of the coordinate bench rendered in ***Touchstone***. It must be borne in mind that the 2020 Ordinance morphed into TOLA on 29.09.2020, and the Notification issued under TOLA extended the limitation. For issuance of notice under Section 148, the farthest time limit was extended to 30.06.2021. Therefore, notices issued before the said date are within the time limit prescribed under Section 149(1)(a) of the Act.

(x) The constructive res judicata doctrine applies to Income Tax proceedings for the same AY. In other words, if multiple issues arise in assessment proceedings concerning a particular AY, the assessee must raise all such issues in the proceedings conducted for that AY. If the doctrine of constructive res judicata is not applied to the assessment proceedings for the given AY, the assessee will raise issues piecemeal, resulting in a multiplicity of proceedings and abuse of the process of law. The issue concerning limitation was raised in the batch of cases covered by ***Mon Mohan Kohli's*** case. The assessees should have raised the issue relating to the rank of the specified authority and the quantum of the escaped income in those proceedings. [See ***BSNL v. UOI (2006)*** 282 ITR 273 (SC) 3JJ, ***Devilal Modi v. STO*** AIR 1965 SC 1150**;** ***Amalgamated Coalfields Ltd. 2 v. Janapada Sabha*** AIR 1964 SC 1013 and ***Amalgamated Coalfields Ltd. 1 v. Janapada Sabha*** AIR 1961 SC 964].

(xi) The powers to extend the time limit under Section 3(1) of TOLA and the Notifications issued thereunder were not made subject matter of the challenge in the bunch of cases which are covered by the coordinate bench judgment of this Court rendered in ***Mon Mohan Kohli*** or the ***Ashish Agrawal's*** case.

(xii) The amended law is so designed that the show-cause notice issued under Section 148A(b) becomes the reference date for determining limitation under Section 149 of the said Act. [See the third and fourth proviso appended to Section 149, amended by FA 2021].

(xiii) Notices issued under Section 148 of the unamended 1961 Act, having been converted into notices under Section 148A(b), the jurisdictional pre-requisites, as provided under the unamended law, would have no relevance for determining the validity of the notices issued under the amended law.

(xiv) To ascertain whether the instant cases concerning AYs 2016-17 and 2017-18 fall under Clause (a) or Clause (b) of Sub-Section (1) of Section 149 of the amended 1961 Act, one would have to take into account the judgment of Supreme Court in ***Ashish Agrawal's*** case, the provisions of Section 3(1) of TOLA, the observations made in paragraphs 98 and 99 in ***Mon Mohan Kohli's*** case and the provisions of the third and fourth proviso of Section 149(1) of the amended 1961 Act. If all of these factors are considered, it would be evident that the impugned notices are within the limitation prescribed in Section 149(1)(a) of the Act.

(xv) The term "travel back in time" referred to in Instruction dated 11.05.2022 is nothing but an reiteration of the directions issued in ***Ashish Agrawal's*** case, the extension of limitation granted by the revenue in the exercise of powers under Section 3(1) of TOLA and the correct application of Section 149(1)(a) of the amended 1961 Act.

Analysis and Reasons:

25. Having heard the learned counsels for the assessees and the revenue, as was pointed out right at the outset, the only issue which arises for our consideration (and that too concerning AY 2016-17 and 2017-18) is whether

the impugned order passed under Section 148A(d) and the consequent notice issued under Section 148 of the amended 1961 Act [as obtaining with the enactment of FA 2021], falls foul of the limitation prescribed in Clause (a) of Sub-Section (1) of Section 149?

26. Section 149(1) of the amended 1961 Act mandates that no notice under Section 148 would be issued for the relevant AY if three (03) years have elapsed from the end of the said AY. The AO can take recourse to the extended limitation period if the conditions precedent prescribed in Clause (b) of Sub-Section (1) of Section 149 are fulfilled. In other words, in a case where three (03) years from the end of the relevant AY have elapsed, the AO can issue a notice under Section 148 provided the conditions prescribed in Clause (b) of Section 149 (1) of the amended 1961 Act are fulfilled. The relevant part of the said provision reads as follows:

> ***"Time limit for notice.***
>
> ***149.*** *(1) No notice under section 148 shall be issued for the relevant assessment year—*
>
> *(a) if* ***three years*** *have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);*
>
> *(b) if* ***three years, but not more than ten years****, have elapsed from the end of the relevant assessment year* ***unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year****:…"*
>
> [Emphasis is ours]

27. A careful perusal of Clause (b) of Section 149 would show that one of the conditions for triggering the extended period, which goes up to ten (10)

years in cases where three (03) years have elapsed, is that income chargeable to tax which has escaped assessment amounts to, or is likely to amount to Rs. 50 lakhs or more for the AY in issue.

28. Therefore, after the coming into force of FA 2021, in cases where, for the relevant AY, the alleged escaped income was less than Rs.50 lakhs, notice under Section 148 could only be issued for commencement of reassessment proceedings within the limitation period provided in Clause (a) of Section 149(1) of the amended 1961 Act.

29. Thus, in the ordinary course, the limitation for AY 2016-17 would expire on 31.03.2020; likewise, for AY 2017-18, the end date for the culmination of the limitation period would be 31.03.2021.

30. The revenue seeks to take recourse to the provisions of Section 3(1) of TOLA and the Notifications issued thereunder, from time to time, which, in effect, extended the end date for completion of proceedings and compliances up until 30.06.2021.

30.1 In this regard, we may refer to the last two Notifications. Via Notification dated 31.03.2021, the end date was extended till 30.04.2021. The Notification immediately following the said Notification, i.e., Notification dated 27.04.2021, extended the end date to 30.06.2021. Thus, the span concerning the extension of end dates was spread between 20.03.2020 and 30.06.2021.

31. It is, therefore, the revenue's case that the impugned actions, which involved passing of orders under Section 148A(d) and issuance of notices under Section 148 taken between 01.04.2021 (when FA 2021 kicked in) and 30.06.2021 were valid in the eyes of the law, having regard to the following circumstances:

(i) First, the observations made in the judgment of the Supreme Court in ***Ashish Agrawal's*** case.

(ii) Second, the observations made in paragraphs 98 and 99 by the coordinate bench in ***Mon Mohan Kohli's*** case.

(iii) Third, the extension of the time limit, as noticed hereinabove, granted via the subject Notifications by the Central Government in the exercise of powers under Section 3(1) of TOLA.

(iv) Fourth, the third and fourth provisos appended to Section 149 of the 1961 Act, which provide for the exclusion of periods referred to therein, which, if excised, would bring the impugned notices and orders within the limitation prescribed under Section 149(1)(a) of the amended 1961 Act.

(v) Fifth, the issue raised before the Court is no longer *res integra*, given the judgments rendered by the coordinate bench in ***Touchstone*** and ***Salil Gulati***.

32. Therefore, to deal with each of the submissions made on behalf of the revenue, one would, firstly, have to advert to what exactly is the ratio of the judgment rendered by the Supreme Court in ***Ashish Agrawal's*** case.

32.1 Briefly, the Supreme Court was called upon to grapple with a piquant situation, which was the creation of the revenue, concerning the viability of notices issued on or after 01.04.2021, when FA 2021 had already kicked in.

32.2. The Supreme Court noticed that with the enactment and enforcement of FA 2021, Sections 147 to 149 and Section 151, as they stood on 31.03.2021, had been substituted, bringing about radical and reformative changes in the matters concerning reassessment proceedings. Taking cognizance of this state of affairs, the Supreme Court held that, since the new provisions substituted by FA 2021 were both remedial and benevolent,

they would apply to past AYs provided Section 148 notices had been issued on or after 01.04.2021. This was also the view taken by various High Courts; a view which was sustained by the Supreme Court.

32.3. The Supreme Court, however, having regard to the fact that the procedure prescribed under the new regime (which was encapsulated in FA 2021) had not been followed, modified the judgments of the High Courts by issuing specific directions to balance the interests of the assessees and the revenue.

32.4. The Supreme Court was persuaded to modify the judgments, having regard to the fact that if the decisions of various courts, including that of the coordinate bench of this court in ***Mon Mohan Kohli***, were to be sustained as is, it would result in the failure of reassessment proceedings, even if the same were "permissible" under FA 2021 and as per the substituted provisions incorporated in the statutes, i.e., Sections 147 to 149 and Section 151. In this regard, the following observations made in the ***Ashish Agrawal*** judgement, being apposite, are extracted hereafter:

> ***"…21.*** *Substituted Section 149 is the provision governing the time-limit for issuance of notice under Section 148 of the IT Act. The substituted Section 149 of the IT Act has reduced the permissible time-limit for issuance of such a notice to three years and only in exceptional cases ten years. It also provides further additional safeguards which were absent under the earlier regime pre-Finance Act, 2021.*
>
> ***22.*** *Thus, the new provisions substituted by the Finance Act, 2021 being remedial and benevolent in nature and substituted with a specific aim and object to protect the rights and interest of the assessee as well as and the same being in public interest,* ***the respective High Courts have rightly held that the benefit of new provisions shall be made available even in respect of the proceedings relating to past assessment years, provided Section 148 notice has been issued on or after 1-4-2021. We are in complete agreement with the view taken by the various High Courts in holding so***.

> ***23.*** *However, at the same time,* ***the judgments of the several High Courts would result in no reassessment proceedings at all, even if the same are permissible under the Finance Act, 2021 and as per substituted Sections 147 to 151 of the IT Act. The Revenue cannot be made remediless and the object and purpose of reassessment proceedings cannot be frustrated. It is true that due to a bona fide mistake and in view of subsequent extension of time vide various notifications, the Revenue issued the impugned notices under Section 148 after the amendment was enforced w.e.f. 1-4-2021, under the unamended Section 148****. In our view the same ought not to have been issued under the unamended Act and ought to have been issued under the substituted provisions of Sections 147 to 151 of the IT Act as per the Finance Act, 2021…"*
>
> [Emphasis is ours]

32.5 With this preface, the Supreme Court passed the following directions, which resulted in modification of the judgments passed by various High Courts:

> ***"…28.*** *In view of the above and for the reasons stated above, the present appeals are allowed in part. The impugned common judgments and orders [Ashok Kumar Agarwal v. Union of India, 2021 SCC OnLine All 799] passed by the High Court of Judicature at Allahabad in WT No. 524 of 2021 and other allied tax appeals/petitions, is/are hereby modified and substituted as under:*
>
> ***28.1.*** ***The impugned Section 148 notices issued to the respective assessees which were issued under unamended Section 148 of the IT Act, which were the subject-matter of writ petitions before the various respective High Courts shall be deemed to have been issued under Section 148-A of the IT Act as substituted by the Finance Act, 2021 and construed or treated to be show-cause notices in terms of Section 148-A(b). The assessing officer shall, within thirty days from today provide to the respective assessees information and material relied upon by the Revenue, so that the assessees can reply to the show-cause notices within two weeks thereafter.***
>
> ***28.2.*** *The requirement of conducting any enquiry, if required, with the prior approval of specified authority under Section 148-A(a) is hereby dispensed with as a one-time measure vis-à-vis those notices which have been issued under Section 148 of the unamended Act from 1-4-2021 till date, including those which have been quashed by the High Courts.*

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

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

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

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

30. *The impugned common judgments and orders [Ashok Kumar Agarwal v. Union of India, 2021 SCC OnLine All 799] passed by the High Court of Allahabad and the similar judgments and orders passed by various High Courts, more particularly, the respective judgments and orders passed by the various High Courts particulars of which are mentioned hereinabove, shall stand modified/substituted to the aforesaid extent only."*

[Emphasis is ours]

33. These directions were issued by the Supreme Court based on a broad consensus arrived at between the learned ASG representing the revenue and counsels representing the assessees. [See paragraph 26 at page 633].

34. Consequently, the notices issued by the AO under the unamended

Section 148 of the 1961 Act, which were the subject matter of writ actions preferred before various High Courts, were deemed to have been issued under Section 148A(b) of the amended 1961 Act.

35. As would be evident, there was no discussion or deliberation concerning the provisions of TOLA or the Notifications issued thereunder.

36. Amongst others, the Court issued two (02) significant directions which have some bearing on the *lis* before us. First, all defences, including those available under Section 149 of the amended 1961 Act, would remain open to the assessees. Second, all rights and contentions available to the assessees and the revenue under FA 2021 and in law will continue to subsist.

37. Therefore, according to us, it cannot be contended on behalf of the revenue that if the defence of limitation is available under Section 149(1)(a) of the Act, the same cannot be entertained by this Court.

38. Likewise, as indicated by the Supreme Court in no certain terms, it will also be open to the revenue to advance submissions based on the provisions of FA 2021 and those that may otherwise be available in law.

39. Besides this, since the Supreme Court, in no uncertain terms, ruled that the judgments of the various High Courts, which includes the decision of the coordinate bench of this court in ***Mon Mohan Kohli***, stood "modified/substituted" to the extent indicated in the directions issued by the Court**,** it would follow that all rights and contentions will be available to the assessees, notwithstanding any observations made in that judgment which curtails the defences available to the assessees under Section 149 of the 1961 Act.

40. There is no gainsaying that the law declared by the Supreme Court, under Article 141 of the Constitution, is binding on every authority,

including this Court, which would necessarily have to be given effect to. In this context, the Supreme Court's directions issued under Article 142 of the Constitution are no different.

41. However, having regard to the fact that the revenue has laid store by the judgment rendered by the coordinate bench of this Court in ***Mon Mohan Kohli's*** case, the opening part of the said judgment reveals the question of law that came up for consideration before the said bench is extracted below:

> *"...whether the Government/Executive can make or change law of the land by way of Explanations to Notifications without specific Authority from the Legislature to do so and whether the Government/Executive can impede the implementation of law made by the Legislature..."*

42. In this context, the coordinate bench also noted the relief sought in the writ actions, which it was called upon to adjudicate.

(i) A direction to quash reassessment notices issued after 31.03.2021 under Section 148 of the 1961 Act.

(ii) Declare explanations A(a)(ii)/A(b) contained in the Notifications dated 31.03.2021 and 27.04.2021 issued under Section 3(1) of TOLA *ultra vires* the provisions of TOLA, to the extent that the said explanations extended the applicability of the provisions of Section 148, 149 and 151 [as the case may be], as obtaining on 31.03.2021 [i.e., before the commencement of FA 2021] to the period beyond 31.03.2021.

43. The coordinate bench, while considering the issue which arose for consideration before it and the reliefs sought by the assesses, concluded that since the old provisions had been substituted by new provisions pursuant to the coming into force of FA 2021, the impugned explanations set out in the Notification dated 31.03.2021 and 27.04.2021 would not apply. Therefore,

notices issued under Section 148 relating to any AY, albeit after 31.03.2021, had to comply with the substituted provisions. [See paragraph 98].

44. The revenue, however, seeks to latch on to the following observations made by the coordinate bench in paragraph 99:

> *"...99. 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..."*

44.1. A careful perusal of the said observations would show that all that the Court noted (which was a matter of fact) that the power of reassessment which existed before 31.03.2021 continued to exist till 30.06.2021, with alteration in procedure brought about upon the enactment and enforcement of FA 2021.

44.2. This is abundantly clear if one were to read the paragraphs following paragraph 99, i.e., paragraphs 100 to 105 of the judgment. The Court, in no uncertain terms, declared explanation A(a)(ii)/A(b) of Notifications dated 31.03.2021 and 27.04.2021 as being *ultra vires* the parent statute, i.e., TOLA.

44.3. The said explanations sought to impose the unamended provisions of Sections 148, 149 and 151 of the 1961 Act, although the substituted provisions had kicked in. The Court refused to countenance a situation that the amended provisions, i.e., Sections 147 to 149 and 151, would not be applicable, firstly, to past AYs and/or would not operate during 01.04.2021 and 30.06.2021, as the Covid-19 pandemic was prevailing in the country. The coordinate bench specifically observed that the Legislature was aware

of the situation when it enacted FA 2021. The argument that the "stop the clock" provision would operate was decried by the coordinate bench.

44.4. In our opinion, the observations of the coordinate bench make it amply clear that Section 149 of the amended 1961 Act continued to operate despite attempts to the contrary made by the introduction of the aforementioned explanations in Notifications dated 31.03.2021 and 27.04.2021. This is evident upon perusal of the following observations made by the coordinate bench in ***Mon Mohan Kohli's*** case:

> *"...100.* ***This Court is of the opinion that Section 3(1) of [the] Relaxation Act empowers the Government/Executive to extend only the time limits and it does not delegate the power to legislate on provisions to be followed for initiation of reassessment proceedings. In fact, the Relaxation Act does not give power to [the] 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.*
>
> *101.* ***The submission of the Revenue that Section 6 of the General Clauses Act saves notices issued under Section 148 post 31st March, 2021 is untenable in law, as in the present case, the repeal is followed by a fresh legislation on the same subject and the new Act manifests an intention to destroy the old procedure.*** *Consequently, if the Legislature has permitted reassessment to be made in a particular manner, it can only be in this manner, or not at all.*
>
> *102. The argument of the respondents that the substitution made by the Finance Act, 2021 is not applicable to past Assessment Years, as it is substantial in nature is contradicted by[the] Respondents' own Circular 549 of 1989 and its own submission that from 1st July, 2021, the substitution made by the Finance Act, 2021 will be applicable.*
>
> *103. Revenue cannot rely on Covid-19 for contending that the new*

provisions Sections 147 to 151 of the Income Tax Act, 1961 should not operate during the period 1st April, 2021 to 30th June, 2021 as ***Parliament was fully aware of [the] Covid-19 Pandemic when it passed the Finance Act, 2021. Also, the arguments of the respondents qua non-obstante clause in Section 3(1) of the Relaxation Act, 'legal fiction' and 'stop the clock provision' are contrary to facts and untenable in law.***

104. ***Consequently, this Court is of the view that the Executive/Respondents/Revenue cannot use the administrative power to issue Notifications under Section 3(1) of the Relaxation Act, 2020 to undermine the expression of Parliamentary supremacy in the form of an Act of Parliament, namely, the Finance Act, 2021. This Court is also of the opinion that the Executive/Respondents/Revenue cannot frustrate the purpose of substituted statutory provisions, like Sections 147 to 151 of [the] Income Tax Act, 1961 in the present instance, by emptying it of content or impeding or postponing their effectual operation****…"*

[Emphasis is ours]

44.5. As discussed hereinabove, any doubt about the availability of the defence which may have crept into the minds of the revenue by virtue of observations made in paragraph 98 of the judgment rendered by the coordinate bench in ***Mon Mohan Kohli's*** case should have been resolved given the specific directions issued by the Supreme Court in ***Ashish Agarwal*** which stated, in no uncertain terms, that defence under Section 149 would be available to the assessees. Thus, this submission advanced by the revenue cannot be accepted.

45. This brings us to the submission advanced on behalf of the revenue that the issue raised before us is no longer *res integra*. In this context, as noticed above, the revenue has relied upon judgments rendered by the coordinate bench in ***Touchstone*** and ***Salil Gulati***.

46. A close appraisal of the facts obtaining in the ***Touchstone*** case would show that the writ petitioner in that case had laid a challenge to a notice

issued under Section 148 *vis-à-vis* AY 2013-14, and the escaped income exceeded Rs. 50 lakhs. In paragraph 16 of the judgment, the court noted this aspect of the matter and, thereafter, applied the provisions of Clause (b) of Sub-Section (1) of Section 149 of the amended 1961 Act.

47. Likewise, a perusal of the judgment rendered by the coordinate bench in ***Salil Gulati's*** case would show that it concerned AY 2013-14, and the escaped income in this case was also more than Rs. 50 lakhs. [See paragraph 9 of the said judgment]. In the said case, the court was not called upon to render a decision regarding Clause (a) of Sub-Section (1) of Section 149.

47.1. We may also indicate that, although the revenue had raised the argument in ***Salil Gulati's*** case that the reassessment notices had travelled back in time to their original date when such notices were first issued and that the period of limitation provided in the new Section 149 of the Act would have to be applied from that point, albeit, based on the Instruction dated 11.05.2022, the coordinate bench rendered no ruling with regard to the same [See paragraphs 5 and 9 of the said judgment].

48. Therefore, the arguments advanced on behalf of the revenue that principles of constructive res judicata would apply are flawed for the following reasons:

(i) Firstly, a perusal of the judgments in ***Touchstone*** and ***Salil Gulati's*** case, as noticed above, did not deal with the facts and circumstances, which obtain in the instant cases. There was no occasion for the writ petitioners in those cases to invoke the provisions of Clause (a) Sub-Section (1) of Section 149, given the fact that the alleged escaped income was not below Rs. 50 lakhs.

(ii) Secondly, the defence that the limitation has expired goes to the root of

the jurisdiction of the AO to trigger reassessment proceedings. It is well-established that the principle of res judicata is dicta, which governs procedure, and therefore, if the proceedings are wrongly initiated, it cannot come in the way of the court entertaining such an action. The estoppel, waiver or res judicata principles cannot apply in such situations. [See ***Chandra bhai K. Bhoir and Ors. v Krishna Arjun Bhoir and Ors***, (2009) 2 SCC 315. ***Union of India and Another v. Association of Unified Telecom Providers of India and Ors.***, (2011) 10 SCC 543, ***Ashok Leyland Ltd. v. State of Tamil Nadu and Another*** (2004) 3 SCC 1 at 2861-63].

(ii)(a) Explanation IV to Section 11 of Code of Civil Procedure, 1908 [hereafter referred to as "CPC"], which adverts to the principle of constructive res judicata codifies, in a sense, what is a principle of public policy to prevent, among other things, multiplicity of proceedings between the same parties. Therefore, the expression in Explanation IV that the party to the proceedings "might have" and "ought to have" raised an issue rests on the well-established norm/rule that the party invoking the doctrine of res judicata to non-suit a litigant should be able to demonstrate that the opposing party was bound to raise the issue to defend its position.

(ii)(b) This is evident from the language of Explanation IV to Section 11 of the CPC from which this principle has been borrowed, where 0the expression used is "might and ought" and not "might or ought". [See ***Alka Gupta v Narender Kumar Gupta*** (2010) 10 SCC 141; ***Shiv Chander More v. Lt. Governor***, (2014) 11 SCC 744; ***Ferro Alloys Corpn. Ltd. and Anr. v. Union of India and Ors.*** 1999 4 SCC 149; ***Shuja-ud-Din v. Siraj Din***, AIR 1941 Lah 139].

(ii)(c). More importantly, in these cases, the interpretation of Section

149(1)(a) was not an issue therefore the principle of constructive res judicata, in our opinion, is not applicable.

(ii)(d) Furthermore, if the judgements rendered in ***Touchstone*** and ***Salil Gulati*** are read in the manner in which the revenue is seeking to profess, they would run counter to the ratio of the judgement of the Supreme Court in the ***Ashish Agrawal*** case.

49. The arguments advanced on behalf of the revenue that since time limits have been extended by the Central Government by virtue of the Notifications issued under Section 3(1) of TOLA and, therefore, the impugned actions which were taken much before the end date, i.e., 30.06.2021 were valid in the eyes of the law, is misconceived for the following reasons:

(i) First, there was no power invested under TOLA, and that too via Notifications, to amend the statute, which had the *imprimatur* of the Legislature. Since, with effect from 01.04.2021, when FA 2021 came into force, the Notifications dated 31.03.2021 and 27.04.2021, which are sought to be portrayed by the revenue as extending the period of limitation, were contrary to the provisions of Section 149(1)(a) of the Act, in our opinion, they lost their legal efficacy.

(ii) Second, the extension of the end date for completion of proceedings and compliances, a power which was conferred on the Central Government under Section 3(1) of TOLA, cannot be construed as one which could extend the period of limitation provided under Section 149(1)(a) of the 1961 Act. As per the ratio enunciated in ***Ashish Agrawal's*** case, Section 149(1)(a) would apply to AY 2016-17 and AY 2017-18.

50. The other argument that the provision of the third and fourth proviso

would help the cause of the revenue by excluding the periods provided therein fails to take into account the following:

50.1. The third proviso appended to Section 149 of the Act, inter alia, provides that the time or extended time allowed to the assessee as per the show-cause notice issued under Section 148A(b) of the 1961 Act shall stand excluded for computation of limitation provided under the said Section.

50.2. The fourth proviso provides that where the timeframe adverted to in the third proviso leads to the situation that the period of limitation available to the AO for passing an order under 148A(d) is less than seven (7) days, then the remaining period shall stand extended to seven (7) days. Consequently, the limitation under Sub-Section (1) shall be deemed to be extended accordingly.

50.3. It is vital to bear in mind that a plain reading of the third proviso would show that it only excludes the timeframe obtaining between the date when the notice under Section 148A(b) was issued and the date by which the assessee filed its response within the time and extended time provided in the said notice.

50.4. Therefore, the date cannot be shifted beyond the date when the original notice under Section 148 of the unamended 1961 Act was issued, which was treated, as per the judgment in ***Ashish Agrawal's*** case, as notice under 148A(b). Concededly, these notices were issued between 01.04.2021 and 30.06.2021, by which time the limitation under Section 149(1)(a) of the Act had already expired.

50.5. The fourth proviso, in our opinion, can have no impact on the outcome of the cases at hand, as it provides for a situation where, after the exclusion of the timeframe referred to in the third proviso, the time available

to the AO for passing an order under Section 148A(d) of the Act is less than seven (7) days. The said proviso states that in such a situation, the remaining timeframe shall stand extended to seven (7) days, and consequently, the limitation under Sub-Section (1) of Section 149 shall also stand extended.

51. This brings us to the tenability of the travel back in time theory encapsulated in paragraphs 6.1 and 6.2(ii) of the Instruction dated 11.05.2022. For convenience, the relevant part of the instruction is set forth hereafter:

> *"...6.0 Operation of the new section 149 of the Act to identify cases where fresh notice under section 148 of the Act can be issued:*
>
> *6.1 With respect of [to] operation of new section 149 of the Act, the following may be seen:*
> *Hon'ble Supreme Court has held that the new law shall operate and all the defences available to assessees under section 149 of the new law and whatever rights are available to the Assessing Officer under the new law shall continue to be available.*
> *Sub-section (1) of new section 149 of the Act as amended by the Finance Act, 2021 (before its amendment by the Finance Act, 2022) 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.

Hon'ble Supreme Court has upheld the views of High Courts that the benefit of new law shall be made available even in respect of proceedings relating to past assessment years. ***Decision of [the] Hon'ble Supreme Court read with the time extension provided by TOLA will allow extended reassessment notices to travel back in time to their original date when such notices were to be issued and then new section 149 of the Act is to be applied at that point.***

6.2 Based on [the] above, the extended reassessment notices are to be dealt with as under:
(i) AY 2013-14, AY 2014-15 and AY 2015-16: Fresh notice under section 148 of the Act can be issued in these cases, with the approval of the specified authority, only if the case falls under clause
(b) of sub-section (1) of section 149 as amended by the Finance Act, 2021 and reproduced in paragraph 6.1 above. Specified authority under section 151 of the new law in this case shall be the authority prescribed under clause (ii) of that section.
(ii) AY 16-17, AY 17-18: Fresh notice under section 148 can be issued in these cases, with the approval of the specified authority, under clause (a) of sub-section (1) of new section 149 of the Act, since they are within the period of three years from the end of the relevant assessment year. Specified authority under section 151 of the new law in this case shall be the authority prescribed under clause (i) of that section*..."*

[Emphasis is ours]

52. A careful perusal of the judgment of the Supreme Court rendered in ***Ashish Agrawal's*** case and the provisions of TOLA would show that neither the said judgment nor TOLA allowed for any such modality to be taken recourse to by the revenue, i.e., that extended reassessment notice would "travel back in time" to their original date when such notices were to be issued and thereupon the provisions of amended Section 149 would apply.

52.1 Apart from anything else, the aforesaid provisions contained in the Instruction dated 11.05.2022 are beyond the powers conferred on the CBDT under Section 119 of the 1961 Act. The paragraphs mentioned above are clearly *ultra vires* the provisions of Section 149(1) of the amended 1961 Act.

52.2. Furthermore, a perusal of the judgment of the Supreme Court rendered in ***Ashish Agrawal's*** case would show that it did not rule on the provisions contained in TOLA or the impact they could have on the reassessment proceedings. In any event, TOLA conferred no such power on the CBDT.

52.3. Besides this, as correctly argued on behalf of the assessees, there is no clarity in the aforementioned Instruction regarding the "original date when such notices were to be issued". The impugned provisions of the Instruction dated 11.05.2022 are also unsustainable in law because they are vague. "Certainty" in taxing statutes is one of the *grund norms*, as ordinarily, they are agnostic to equitable principles.

53. Apart from what we have stated above on the language and scheme of the relevant provisions introduced with the enactment of FA 21, one has to bear in mind, in our opinion, the *raison d'etre* for forging the new regime. A clue about the same is provided in the Finance Minister's budget speech delivered on 01.02.2021 and the relevant parts of the Memorandum explaining the provisions of the Finance Bill 2021 [hereafter referred to as "Memorandum"] which morphed into FA 2021. For convenience, the relevant parts are extracted below:

Speech of the Finance Minister

"…Reduction in Time for Income Tax Proceedings

153. ***Honourable Speaker, presently, an assessment can be re-opened up to 6 years and in serious tax fraud cases for up to 10 years.*** *As a result, taxpayers have to remain under uncertainty for a long time.*

154. ***I therefore propose to reduce this time-limit for re-opening of [the]assessment to 3 years from the present 6 years. In serious tax evasion cases too, only where there is evidence of concealment of income of ₹50 lakh or more in a year, can the assessment be re-opened up to 10 years. Even this reopening can be done only after the approval of the Principal Chief Commissioner, the highest level of the Income Tax Department…"***

Memorandum

"…Income escaping assessment and search assessments

Under the Act, the provisions related to income escaping assessment provide that if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may assess or reassess or recompute the total income for such year under section 147 of the Act by issuing a notice under section 148 of the Act. ***However, such reopening is subject to the time limits prescribed in section 149 of the Act.***

xxx ***xxx*** ***xxx***

The Bill proposes a completely new procedure of [for] assessment of such cases. It is expected that the new system would result in less litigation and would provide ease of doing business to taxpayers as there is a reduction in [the] time limit by which a notice for assessment or reassessment or re-computation can be issued. *The salient features of [the] new procedure are as under:-*

xxx ***xxx*** ***xxx***

(iii) Section 147 proposes to allow the Assessing Officer to assess or reassess or re-compute any income escaping assessment for any assessment year (called relevant assessment year).

xxx ***xxx*** ***xxx***

(vii) New Section 148A of the Act proposes that before issuance of notice the Assessing Officer shall conduct enquiries, if required, and provide an opportunity of being heard to the assessee. After considering his reply, the Assessing Office shall decide, by passing an order, whether it is a fit case for issue of notice under section 148 and serve a copy of such order along with such notice on the assessee. The Assessing Officer shall before conducting any such enquiries or providing opportunity to the assessee or passing such order obtain the approval of specified authority. However, this procedure of enquiry, providing opportunity and passing order, before issuing notice under section 148 of the Act, shall not be applicable in search or requisition

cases.

(viii) The time limitation for issuance of notice under section 148 of the Act is proposed to be provided in section 149 of the Act and is as below:

- ***in normal cases, no notice shall be issued if three years have elapsed from the end of the relevant assessment year. Notice beyond the period of three years from the end of the relevant assessment year can be taken only in a few specific cases.***
- ***In specific cases where the Assessing Officer has in his possession evidence which reveal that the income escaping assessment, represented in the form of asset, amounts to or is likely to amount to fifty lakh rupees or more, notice can be issued beyond the period of three year but not beyond the period of ten years from the end of the relevant assessment year;***
- *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 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, 153Cand 153D of the Act, the aforesaid time limitation shall not apply to such cases.*
- *It is also proposed that for the purposes of computing the period of limitation for issue of section 148 notice, the time or extended time allowed to the assessee in providing opportunity of being heard or period during which such proceedings before issuance of notice under section 148 are stayed by an order or injunction of any court, shall be excluded. If after excluding such period, time available to the Assessing Officer for passing order, about fitness of a case for issue of 148 notice, is less than seven days, the remaining time shall be extended to seven days…."*

[Emphasis is ours]

53.1. As would be evident from the extracts set forth above, both from the Finance Minister's speech and the Memorandum, the time limit for reopening under the new regime was reduced from six (06) years to three (03) years and only in respect of "serious tax evasion cases", that too, where evidence of concealment of income of Rs.50 lakhs or more in a given period was found, the period for reopening the assessment was extended to ten (10)

years. In order to ensure that utmost care was taken before invoking the extended period of limitation, the proposal was that approval should be obtained from the Principal Chief Commissioner of Income Tax, at the highest hierarchical level of the department. Likewise, the Memorandum emphasized that the new regime was forged with the hope that it would result in less litigation and would provide ease of doing business to tax payers, as there was a reduction in the time limit by which notice for assessment, reassessment and re-computation could be issued.

53.2. Thus, as per the Memorandum, in "*normal cases*", no notice was intended to be issued if three (03) years had elapsed from the end of the relevant AY. Notice, beyond the prescribed three (03) years from the end of the relevant AY, could be issued only in a few specific cases; one such example which is given in the Bill is where the AO was in possession of evidence that escaped income amounted to Rs.50 lakhs or more.

53.3. In sum, the sense that one gets upon a holistic reading of the backdrop in which the new regime for reopening assessments was enacted is that where escapement of income was below Rs.50 lakhs, the normal period of limitation, i.e., three (03) years was to apply. In comparison, the extended period of ten (10) years would apply in serious tax evasion cases where there was evidence of concealment of income of Rs.50 lakhs or more in the given period.

53.4. The State, perhaps, did not deem it worthwhile to chase assessees beyond three (03) years, where the alleged escaped income was less than Rs.50 lakhs. These aspects concerning legislative policy come through if one were to read the relevant provisions of the statute referred to above in the background of the speech of the Finance Minister and the Memorandum.

Conclusion:

54. Therefore, having regard to the foregoing discussion, we are of the opinion that the impugned actions, which include orders passed under Section 148A(d) and the consequent notices issued under Section 148 of the amended 1961 Act, concerning AY 2016-17 and AY 2017-18 cannot be sustained. It is ordered accordingly.

55. Furthermore, the reference made in paragraphs 6.1 and 6.2(ii) of the Instruction dated 11.05.2022, to the extent it propounds the "travel back in time" theory, is declared bad in law.

56. The writ petitions are disposed of in the aforesaid terms.

(RAJIV SHAKDHER)
JUDGE

(GIRISH KATHPALIA)
JUDGE

NOVEMBER 10, 2023 / tr