

Life Medicare And Biotech Private ... vs Union Of India & Ors on 31 July, 2024

Author: Yashwant Varma

Bench: Yashwant Varma

\$~30 & 31

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 16509/2022

LIFE MEDICARE AND BIOTECH PRIVATE
LIMITED

.....Petiti
Through: Mr. Pushkin Chaudhary, Adv.
versus

UNION OF INDIA & ORS.

Through:

31

+

W.P.(C) 16589/2022

LIFE MEDICARE AND BIOTECH PRIVATE
LIMITED

.....P
Through: Mr. Pushkin Chaudhary,
versus

UNION OF INDIA & ORS.

Through:

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% 31.07.2024

1. These two writ petitions impugn the notices under Section 148 of the Income Tax Act, 1961 and pertain to Assessment Years 2013-14 and 2014-15. While in the case of the former, an original notice under Section 148 had been issued on 23 April 2021, the reopening action pertaining to AY 2014-15 was commenced in terms of a notice dated 03 June 2021. Since the challenge proceeds on identical lines, we propose to briefly notice the facts as they obtain in Act AYs. This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 23/08/2024 at 21:11:18 W.P.(C) 16509/2022.

2. The petitioner on 30 September 2013 had filed its Return of Income declaring its total income to be "nil". On 23 April 2021, the petitioner was served with a notice purporting to be under Section 148 of the Act. It however, becomes pertinent to note that by virtue of Finance Act, 2021, significant amendments with respect to the procedure for reassessment had come to be introduced in the Act and which came into effect from 01 April 2021. A serious dispute thereafter arose before various High Courts as to whether the erstwhile procedure for reassessment and which existed prior to 01 April 2021 would continue to govern reassessment.

3. Before our Court, the challenge came to be raised in various writ petitions led by Mon Mohan Kohli vs. Assistant Commissioner of Income-tax and Another³. The batch of writ petitions ultimately came to be allowed by the Court on 15 December 2021 with it being essentially held that it would be the amended procedure of reassessment which would apply. We deem it apposite to extract the following conclusions from Mon Mohan Kohli hereunder:-

"97. This court is of the view that as the Legislature has introduced the new provisions, sections 147 to 151 of the Income-tax Act, 1961 by way of the Finance Act, 2021 with effect from April 1, 2021 and as the said section 147 is not even mentioned in the impugned Explanations, the reassessment notices relating to any assessment year issued under section 148 after March 31, 2021 had to comply with the substituted sections.

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

2021 SCC OnLine Del 5250 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 23/08/2024 at 21:11:18

99. This court is of the opinion that section 3(1) of the Relaxation Act empowers the Government/Executive to extend only the time limits and it does not delegate the power to legislate on provisions to be followed for initiation of reassessment proceedings. In fact, the Relaxation Act does not give power to Government to extend the erstwhile sections 147 to 151 beyond March 31, 2021 and/or defer the operation of substituted provisions enacted by the Finance Act, 2021. Consequently, the impugned Explanations in the Notifications dated March 31, 2021 and April 27, 2021 are not conditional legislation and are beyond the power delegated to the Government as well as ultra vires the parent statute, i. e., the Relaxation Act. Accordingly, this court is respectfully not in agreement with the view of the Chhattisgarh High Court in Palak Khatuja (supra), but with the views of the Allahabad High Court and Rajasthan High Court in Ashok Kumar Agarwal (supra) and Bpip Infra Private Limited (supra)

respectively.

100. The submission of the Revenue that section 6 of the General Clauses Act saves notices issued under section 148 post March 31, 2021 is untenable in law, as in the present case, the repeal is followed by a fresh legislation on the same subject and the new Act manifests an intention to destroy the old procedure. Consequently, if the Legislature has permitted reassessment to be made in a particular manner, it can only be in this manner, or not at all.

101. The argument of the respondents that the substitution made by the Finance Act, 2021 is not applicable to past assessment years, as it is substantial in nature is contradicted by the respondents' own Circular No. 549 of 1989 and its own submission that from July 1, 2021, the substitution made by the Finance Act, 2021 will be applicable.

102. The Revenue cannot rely on Covid-19 for contending that the new provisions, sections 147 to 151 of the Income-tax Act, 1961 should not operate during the period April 1, 2021 to June 30, 2021 as Parliament was fully aware of Covid-19 pandemic when passed the Finance Act, 2021. Also, the arguments of the respondents qua non obstante clause in section 3(1) of the Relaxation Act, "legal fiction" and "stop the clock provision" are contrary to facts and untenable in law.

103. Consequently, this court is of the view that the executive/respondents/ Revenue cannot use the administrative power to issue notifications under section 3(1) of the Relaxation Act, 2020 to undermine the expression of Parliamentary supremacy in the form of an Act of Parliament, namely, the Finance Act, 2021. This court is also of the opinion that the executive/ respondents/Revenue cannot frustrate the purpose of substituted statutory provisions, like sections 147 to 151 of Income-tax Act, This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 23/08/2024 at 21:11:18 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 March 31, 2021 and April 27, 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."

4. The Revenue assailing the aforesaid decision as well as those rendered by different High Courts thereafter approached the Supreme Court. Those batch of appeals ultimately came to be disposed of by the Supreme Court by its judgment rendered in Union of India vs. Ashish Agarwal⁴ delivered on 04 May 2022. The Supreme Court, upon taking into consideration the peculiar situation which had come to hold the field on account of conflicting decisions rendered on the subject by different High Courts, modified the directions so issued in the following terms:-

"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 assesseees 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).

(2023) 1 SCC 617 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 23/08/2024 at 21:11:18. The assessing officer shall, within thirty days from today provide to the respective assesseees information and material relied upon by the Revenue, so that the assesseees 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 assesseees 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 assesseees including those available under Section 149 of the IT Act and all rights and contentions which may be available to the assesseees concerned

and Revenue under the Finance Act, 2021 and in law shall continue to be available.

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

30. The impugned common judgments and orders [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 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 23/08/2024 at 21:11:18 modified/substituted to the aforesaid extent only.

31. All these appeals are accordingly partly allowed to the aforesaid extent. In the facts of the case, there shall be no order as to costs."

5. As is manifest from the above, the decision in Ashish Agarwal essentially provided for all notices under Section 148 being treated and viewed as those referable to Section 148A(b) and for proceedings to be taken thereafter in accordance with law.

6. From the disclosures made in the writ petition, we find that by way of a communication dated 19 May 2022 the respondents apprised the petitioner of the original notice being liable to be viewed as one issued in accordance with the statutory requirements of Section 148A(b). It accordingly proceeded to accord the petitioner two weeks time to file a response. This becomes evident from the following recitals which appear in that notice:-

"In reference to the above subject, please be informed that notice issued u/s148 of the I.T. Act, 1961 in your case for the A.Y. 2013- 14 in between the period 01.04.2021 and 30.06.2021 has been held to be a show cause notice u/s 148A(b) of the I.T. Act (as substituted by the Finance Act, 2021) , by the Hon'ble Supreme Court in the case of Union of India & Ors Vs Ashish Agarwal.

2. In this regard, in compliance with the subject order of the Apex Court, you are hereby provided with the information/material relied upon by this office for issue of the show cause notice as above. The material received is attached herewith.

3. In accordance with the aforesaid judgment, you are required to furnish the desired reply, regarding why reassessment u/s 147 of the I.T. Act shall not be made in your case, within 2 weeks (i.e. by 06.06.2022) through your e-filing module of the Income Tax Department."

7. Despite the opportunity so granted, the petitioner does not appear to have replied to the aforesaid communication. In view of the aforesaid, the respondents proceeded to frame a final order referable to Section 148A(d) on 18 July 2022 and which led to issuance of a This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 23/08/2024 at 21:11:18 formal notice under Section 148 on the same date.

8. Insofar as the writ petition pertaining to AY 2014-15 is concerned, the first notice under Section 148 came to be issued on 03 June 2021. Following an identical procedure and in purported compliance of the judgment rendered by the Court in Ashish Agarwal, the respondents addressed a communication dated 19 May 2022 apprising the petitioner of the original notice being treated as a show cause notice envisaged under Section 148A(b). As for the previous year, the petitioner did not furnish any response. Consequently, a final order under Section 148A(d) came to be framed on 24 July 2022 and a consequential notice under Section 148 issued on the same date.

9. Before us, learned counsel appearing for the petitioner has principally assailed the action for reassessment on the basis of the Proviso to Section 149(1) of the Act and contended that on the date when the original notices under Section 148 had been issued, the period of limitation within which an assessment for AY 2013-14 and 2014-15 could have been reopened had come to a close. In view of the aforesaid, it was their contention that the impugned notices as well as the continuance of reassessment proceedings are rendered invalid.

10. For the purposes of examining the aforesaid contention, it would be apposite to notice the provisions of Section 149 as they came to exist in the statute book post the promulgation of Finance Act, 2021 and which 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 accounts or other documents or evidence which reveal that the income chargeable to tax, This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 23/08/2024 at 21:11:19 represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year:

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

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

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

Provided also that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of section 148A is less than seven days, such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly.

Explanation.--For the purposes of clause (b) of this subsection, "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."

11. As is manifest from a reading of the First Proviso to Section 149(1), the respondents stand debarred from issuing any notice pertaining to an AY beginning on or before the first day of April 2021 if a notice under Section 148 could not have been issued on account of being beyond the time limit as specified under Section 149(1)(b) as that provision stood immediately before the commencement of Finance Act, 2021.

This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 23/08/2024 at 21:11:19

12. Prior to Section 149 being amended, a notice under Section 148 could have been issued if four years but not more than six years had elapsed from the end of the relevant AY. Tested on the aforesaid time frames, it was submitted before us that the period within which notices for AYs 2013-14 and 2014-15 could have been issued would have come to an end on 31 March 2020 and 31 March 2021 respectively.

13. It is also pertinent to note that by virtue of the provisions enshrined in Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, and more particularly Section 3 thereof, if any dates for compliances or issuance of notices were to fall within the period 20 March 2020 to 31 December 2020, the same would stand extended upto 31 March 2021. By way of notifications issued thereafter, the said date for compliance stood extended to 30 April 2021 and lastly up to 30 June 2021.

14. In the facts of the present case, the notice under Section 148 for AY 2013-14 came to be issued on 23 April 2021, while in the case of AY 2014-15 it was issued on 03 June 2021. As is manifest from the above, although ordinarily the last date for commencement of reassessment in respect of AY 2013-14 would have been 31 March 2020 and the corresponding date for AY 2014-15 would be 31 March 2021 both those dates fall within the period 20 March 2020 to 30 June 2021 and in respect of which the provisions of Section 3 of TOLA applied.

15. Section 3(1) of TOLA and more particularly sub-clause (a) thereof enabled completion of action and effecting compliance contemplated under a Specified Act, and which undoubtedly included the income tax legislation also, within the extended period prescribed TOLA This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 23/08/2024 at 21:11:19 by it. Section 3(1) prescribed that where the time limit specified for completion of compliance were falling within the period from 20 March 2020 to 31 December 2020, the authorities administering the specified acts would stand enabled to comply with their respective statutory obligations as well as exercise their powers including the issuance of any notice under its provisions within the extended period provisioned for under the said enactment.

16. TOLA thus extended the period of compliance from 20 March 2020 to 30 June 2021. Viewed in that light, both actions for commencement of reassessment were initiated within the period which stood protected by TOLA. In view of the aforesaid, the extent of application of the First Proviso to Section 149(1) would have to be viewed in conjunction with the provisions contained in TOLA. We note that an identical question stands answered in terms of the judgment rendered by the Court in *Salil Gulati vs. Assistant Commissioner of Income Tax and Others*.⁶ and where the following pertinent observations were made:-

"6. This court is of the view that the contention of the learned counsel for the petitioner that the present proceedings is time barred is not correct, as reassessment proceeding was initiated during the time limit extended by TOLA. Section 149, as it read prior to its amendment by Finance Act, 2021 reads as under :

"Time limit for notice.

149. (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 2022 SCC OnLine Del 3216 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 23/08/2024 at 21:11:19 amount to one lakh rupees or more for that year ;"

7. The time limit for issuing notice under unamended section 149 which was falling between March 20, 2020 and March 31, 2021 was extended by section 3 of the TOLA read with Notification No. 20 of 2021 dated March 31, 2021 ([2021] 432 ITR (St.) 141) and Notification No. 38 of 2021 dated April 27, 2021 ([2021] 434 ITR (St.) 11), until June 30, 2021. The initial notice in the present proceedings was issued on June 23, 2021, i. e., extended time limit. The said notice was quashed by this court in the petitioner's earlier writ petition being W. P. (C) No. 7582 of 2021 vide judgment reported as Mon Mohan Kohli v. Asst. CIT [2022] 441 ITR 207 (Delhi) ; [2021] SCC OnLine Del 5250 as the mandatory procedure of section 148A of the Act was not followed before issuing the said notice. In the said judgment though this court struck down the Explanations A(a)(ii) and A(b) to the said notifications, yet it clarified that the power of reassessment that existed prior to March 31, 2021 continued to exist till the extended period, i. e., till June 30, 2021 ; as the Finance Act, 2021 had merely changed the procedure to be followed prior to issuance of notice with effect from April 1, 2021.

8. When the judgment of this court in Mon Mohan Kohli (supra) was carried forward in appeal, the Supreme Court held that section 148 notices issued between April 1, 2021 to June 30, 2021, will be deemed to have been issued under section 148A of the Act and therefore the notice dated June 23, 2021, issued to the petitioner stood revived.

9. Consequently, since the time period for issuance of reassessment notice for the assessment year 2013-14 stood extended until June 30, 2021 and the income alleged to have escaped assessment is beyond Rs. 50 lakhs, the first proviso to section 149 (as amended by the Finance Act, 2021) is not attracted in the facts of this case and even without the benefit of Instruction No. 1 of 2022 the impugned notice is within limitation.

10. Accordingly, the present writ petition along with the pending application is dismissed. However, this court clarifies that the Assessing Officer shall decide the matter on its own merits without being influenced by any observation made in the present order, except the issue of limitation."

We note that the Special Leave Petition against the aforesaid order titled as Salil Gulati vs. Assistant Commissioner of Income Tax is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 23/08/2024 at 21:11:19 Tax Circle 49 (1) Delhi and Others⁷ came to be dismissed by the Supreme Court by an order dated 11 April 2023.

17. Accordingly, and for all the aforesaid reasons, we find ourselves unable to hold in favour of the writ petitioners. The objection taken based on the First Proviso to Section 149(1) of the Act would clearly not sustain for reasons aforesaid.

18. We, accordingly, dismiss the instant writ petitions. However, and since only an issue of limitation was argued before us, we keep all other rights and contentions of the petitioner assessee on merits open to be addressed in the ongoing assessment proceedings.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 31, 2024/neha 2023 SCC OnLine SC 962 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 23/08/2024 at 21:11:19