

Arvinder Kaur vs Dcit Circle 43(1) Civic Centre New Delhi ... on 27 January, 2022

Author: Manmohan

Bench: Manmohan, Navin Chawla

\$~35 to 37, 39, 40, 42 to 50, 53 to 59, 62, 63 & 65 to 69
* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 1538/2022 & CM No.4422/2022
ARVINDER KAUR

Through Mr.Yogesh Kr.Jagia
& Mr.Rishabh Naangia

versus

DCIT CIRCLE 43(1) CIVIC CENTRE NEW DELHI & ANR.

..... Res
Through Mr.Sunil Agarwal, Sr. St. c
with Mr.Tushar Gupta, Jr.SC
Mr.Samarth Chaudhari, Adv.

\$~36
+ W.P.(C) 1539/2022 & CM No.4423/2022
ARVINDER KAUR

..... P
Through Mr.Yogesh Kr.Jagia, Mr.Ami
& Mr.Rishabh Naangia, Adv.

versus

DCIT CIRCLE 43(1) CIVIC CENTRE NEW DELHI & ANR.

..... Res
Through Mr.Sunil Agarwal, Sr. St. c
with Mr.Tushar Gupta, Jr.SC
Mr.Samarth Chaudhari, Adv.

\$~37
+ W.P.(C) 1540/2022 & CM Nos.4424-25/2022
RAJ AHUJA (THROUGH LEGAL HEIR MANJU KHURANA)

.....
Through Mr.Nitin Gulati, Adv.

versus

INCOME TAX OFFICER, WARD-68(5), DELHI & ANR.

..... Respon
Through Mr.Sunil Agarwal, Sr. St. coun

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with Mr.Tushar Gupta, J
Mr.Samarth Chaudhari, Ad

\$~39

+ W.P.(C) 1542/2022 & CM Nos.4428-29/2022
ALOK INFRABUILDERS PRIVATE LIMITED Petitioner
Through Mr.Bankim Garg and Mr.Alan
Narula, Advocates
versus

UNION OF INDIA & ORS.
Through Ms.Saroj Bidawat, Adv.fo
Mr.Sanjay Kumar, Sr.SC,
Kadian, Jr.SC for Income
Department

\$~40

+ W.P.(C) 1547/2022 & CM Nos.4437-38/2022
ANJU Pet
Through Mr.Samyak Jain & Mr.Gaurav
Adv
versus

ITO WARD 58(7) NEW DELHI AND ORS. Resp
Through Ms.Vibhooti Malhotra, Sr. SC w
Mr.Shaliender Singh, Jr. SC, M
Sharma, Adv.

\$~42

+ W.P.(C) 1549/2022 & CM Nos.4440-42/2022
RAKSH PAL GOYAL
Through Mr.Hemant Shah,
Tripathi, Mr.Akshay Rana,
Chaudry and Mr.Saurabh Pal
Advocates
versus

UNION OF INDIA THROUGH, SECRETARY MINISTRY OF
FINANCE & ORS. Respondent

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Through Mr.JPN Shahi, Adv for
Mr.Ranvir Singh, CGSC
Mr.Zoheb Hossain, Sr. S
Mr.Vipul Agrawal, Mr.Pa

Jr.SC for Revenue.

\$~43

+ W.P.(C) 1550/2022 & CM Nos.4443-44/2022
JITENDRA KUMAR

Through Mr.Aditya Chhajer, Adv.

versus

INCOME TAX OFFICER, WARD 29-1 DELHI & ORS.

Through Ms.Vibhooti Malhotra, Sr. SC with
Mr.Shaliender Singh, Jr. SC, Mr.
Sharma, Adv. for Revenue.
Ms.Suman Chauhan, Mr.Lakshya
Verma, Advs. for UOI.

\$~44

+ W.P.(C) 1551/2022 & CM Nos.4445-46/2022
SMT. DIVYA CHAND

Through Mr.S.Krishanan, Adv.

versus

THE ASSISTANT COMMISSIONER OF INCOME TAX & ORS.

Through Mr.Kunal Sharma, Sr. SC with
Ms.Zehra Khan, Jr. SC and
Mr.Shubhendu Bhattacharyya, Adv.

\$~45

+ W.P.(C) 1552/2022 & CM No.4447/2022
RAJEEV KUMAR GUPTA

Through Mr. T.M. Shivakumar, Adv.

versus

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ASSISSTANT COMMISSIONER OF INCOME TAX CIRCLE 58(1)
& ANR.

Through Mr.Abhishek Maratha, Sr. SC &
Mr.Pratyaksh Gupta, Jr. SC for
Revenue.

\$~46

+ W.P.(C) 1553/2022 & CM Nos.4448-49/2022
MUDIT IMPEX PVT LTD

Through Mr.Shubham Kansal & Mr.Rak
Kansal, Advs

versus

DEPUTY COMMISSIONER OF INCOME TAX CIRCLE 16 (1)
& ORS. Respondent

Through Mr.Abhishek Maratha, Sr. SC &
Mr.Pratyaksh Gupta, Jr. SC for
Revenue.

\$~47

+ W.P.(C) 1554/2022 & CM Nos.4450-51/2022
AVON MARKTRADE PVT LTD. P

Through Mr.Rohit Jain, Mr.Anik
Agrawal, Ms.Manisha
Advocates

versus

INCOME TAX OFFICER & ORS. Respon

Through Mr.Sanjay Kumar, Sr.SC, Ms.Eash
Kadian, Jr.SC for Income Tax
Department.

Mr.Ranvir Singh, CGSC for UOI

\$~48

+ W.P.(C) 1555/2022 & CM No.4452/2022
GURCHARAN KAUR P

Through Mr.Yogesh Kr.Jagia, Mr.Ami
& Mr.Rishabh Naangia, Adv

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versus

INCOME TAX OFFICER WARD 69(1) NEW DELHI & ANR.

.... Respo

Through Mr.Ruchir Bhatia, Sr. SC with
Ms.Mansie Jain, Adv for Revenue

\$~49

+ W.P.(C) 1556/2022 & CM Nos.4453-54/2022
UMA SHEKHAWAT

Through Mr. Surjan Singh Shekhawat

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 29
(1), DELHI & ANR. Responde

Through Mr.Abhishek Maratha, Sr. SC &
Mr.Pratyaksh Gupta, Jr. SC for
Revenue.

\$~50

+ W.P.(C) 1558/2022 & CM Nos.4457-58/2022
KING IMPEX

.....
Through Mr.Salil Kapoor, Ms.Ananya
Mr.C S Anand,
Lalchandani & Mr.Tarun Cha
Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE
28-1, DELHI & ANR. Responde

Through Mr.Abhishek Maratha, Sr. SC &
Mr.Pratyaksh Gupta, Jr. SC fo
Revenue.

\$~53

+ W.P.(C) 1561/2022 & CM Nos.4462-63/2022
SHARDA GOYAL

..... P
Through Mr.Salil Kapoor, Ms.Ananya

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Mr.C S Anand,
Lalchandani & Mr.Tarun C
Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 28-1,
DELHI & ANR. Respond

Through Ms.Vibhooti Malhotra, Sr. SC wit
Mr.Shaliender Singh, Jr. SC, Mr.
Sharma, Adv.

\$~54

+ W.P.(C) 1563/2022 & CM Nos.4465-66/2022
ATUL GOEL

.....
Through Mr.Salil Kapoor, Ms.Ananya
Mr.C S Anand,
Lalchandani & Mr.Tarun Cha
Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 19-1,
DELHI & ANR. Responde

Through Mr.Puneet Rai, Sr. SC with
Ms.Adeeba Mujahid, Jr. SC For
Income Tax Department

\$~55

+ W.P.(C) 1566/2022 & CM Nos.4470-71/2022
FIJI FIBREMATICS PRIVATE LIMITED
Through Mr.Akarsh Garg, Mr.Parth D
Mr.Sushant Singhal, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 7(1)
DELHI AND ANR Respondent
Through Mr.Sanjay Kumar, Sr.SC, Ms.Easha
Kadian, Jr.SC for Income Tax
Department

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\$~56

+ W.P.(C) 1567/2022 & CM No.4472/2022
SUMANGAL EXIM PRIVATE LIMITED ...
Through Mr.Roshan Santhalia, Ms.Su
Jaiswal, Ms.Puja Jakhar, A

versus

INCOME TAX OFFICER, WARD 24(1), DELHI Responden
Through Mr.Sunil Agarwal, Sr. St. couns
with Mr.Tushar Gupta, Jr.SC,
Mr.Samarth Chaudhari, Advs.

\$~57

+ W.P.(C) 1569/2022 & CM Nos.4476-78/2022
ANJALI BANSAL Pe
Through Mr.Hemant Shah,
Tripathi, Mr.Akshay Rana,
Chaudry and Mr.Saurabh Pal
Advocates

versus

UNION OF INDIA THROUGH, SECRETARY, MINISTRY OF
FINANCE GOVERNMENT OF INDIA & ORS. Respondents
Through Mr.Gaurav Varma & Mr.Ajjitesh
Sharma, Advs for UOI.
Mr.Abhishek Maratha, Sr. SC &
Mr.Pratyaksh Gupta, Jr. SC for
Revenue.

\$~58

+ W.P.(C) 1570/2022 & CM Nos.4479-80/2022
SARTAJ HOTELS APARTMENTS AND VILLAS (P) LTD Peti
Through Mr.Nitin Gulati, Adv.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE-22(2),

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DELHI & ANR.

..... Re
Through Mr.Sunil Agarwal, Sr. St.
with Mr.Tushar Gupta, Jr.S
Mr.Samarth Chaudhari, Adv

\$~59

+ W.P.(C) 1571/2022 & CM No.4481/2022
HARDEEP SINGH

..... Pet
Through Mr.Yogesh Kr.Jagia, Mr.Ami
& Mr.Rishabh Naangia, Adv

versus

DCIT CIRCLE 43(1) CIVIC CENTRE NEW DELHI & ANR.

..... Resp
Through Mr.Sunil Agarwal, Sr. St. co
with Mr.Tushar Gupta, Jr.SC,
Mr.Samarth Chaudhari, Adv.

\$~62

+ W.P.(C) 1574/2022 & CM No.4488/2022
BENGAL AND ASSAM COMPANY LTD.

.....
Through Mr.V.P. Gupta and Mr.An
Kumar, Adv.

versus

DEPUTY COMMISSIONER OF INCOME TAX Respondent

Through Mr.Kunal Sharma, Sr. SC with
Ms.Zehra Khan, Jr. SC and
Mr.Shubhendu Bhattacharyya, Adv

\$~63

+ W.P.(C) 1575/2022 & CM Nos.4489-90/2022

MKN COMMODITY BROKERS PVT LTD Petition
Through Mr.Deekshant Kaushik and Mr.Kamal
Jindal, Adv.

versus

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INCOME TAX OFFICER

Through

.....
Mr.Abhishek Maratha, Sr.
Mr.Pratyaksh Gupta, Jr.
Revenue.

\$~65

+ W.P.(C) 1577/2022 & CM Nos.4493-94/2022
CPL TRADING COMPANY PVT LTD

Through

..... P
Mr.Samyak Jain & Mr.Gaurav
Adv

versus

INCOME TAX OFFICER WARD 6 (1) NEW DELHI AND ORS.

..... Respon
Through Mr.Kunal Sharma, Sr. SC with
Ms.Zehra Khan, Jr. SC and
Mr.Shubhendu Bhattacharyya, Adv

\$~66

+ W.P.(C) 1589/2022 & CM Nos.4531-32/2022
LAXMI FOILS PVT LTD.

Through

.....
Mr.Salil Kapoor, Ms.Ananya
Mr.C S Anand,
Lalchandani & Mr.Tarun Cha
Adv.

versus

INCOME TAX OFFICER, WARD 15-1, DELHI & ANR.

..... Respo
Through Ms.Vibhooti Malhotra, Sr. SC wi
Mr.Shaliender Singh, Jr. SC, Mr
Sharma, Adv.

\$~67

+ W.P.(C) 1590/2022 & CM Nos.4539/2022
AMIT KUMAR

Through

.....
Mr.Rano Jain & Mr.Ven
Chaurasia, Advocates

versus

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ITO, WARD 45(1), DELHI & ANR.

Through

..... Res
Mr.Puneet Rai, Sr. SC with
Ms.Adeeba Mujahid, Jr. SC F

Income Tax Department

\$~68

+ W.P.(C) 1593/2022 & CM Nos.4547-48/2022
MITA AGARWAL

.....
Through Mr.Ved Jain, Ms.Richa Mishra

versus

INCOME TAX OFFICER, WARD 53-1, DELHI & ORS.

..... Responder
Through Mr.Kunal Sharma, Sr. SC with
Ms.Zehra Khan, Jr. SC and
Mr.Shubhendu Bhattacharyya, Advocate
for Revenue.
Mr. Rishabh Sahu, CGSC for UOI.

\$~69

+ W.P.(C) 1594/2022 & CM Nos.4549-50/2022
ATULYA TRADING LLP

..... P
Through Mr.Khushant Wadhwa, Advocate

versus

INCOME TAX OFFICER WARD 2(2) AND ANR. Respondent

Through Mr.Puneet Rai, Sr. SC with
Ms.Adeeba Mujahid, Jr. SC For
Income Tax Department

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% 27.01.2022 These hearing have been conducted through video conferencing.

1. Learned counsel for the parties admit that as the impugned notices in the present matters have been issued post 31st March, 2021 without following the procedure prescribed in the substituted Sections 147 to 151 w.e.f. 01st April, 2021, the present matters are covered by the judgment dated 15th December, 2021 passed by this Court in the case of Mon Mohan Kohli vs. Assistant Commissioner of Income Tax & Anr., W.P.(C) No.6176/2021.

2. The conclusion reached by this Court in Mon Mohan Kohli (supra) is reproduced hereinbelow:-

"CONCLUSION

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

the substituted Sections.

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

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

100. 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.

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 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.

102. 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 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.

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

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

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

4. 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.

MANMOHAN, J NAVIN CHAWLA, J JANUARY 27, 2022/Arya