

Air Liquide India Holding Pvt Ltd vs Acit, Circle 1 (1), Delhi And Anr on 2 February, 2022

Author: Manmohan

Bench: Manmohan, Navin Chawla

\$~98 to 100, 102 to 104, 106, 107, 109, 111, 112, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125 & 128 (148 matters)

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 1909/2022 & CM Nos.5492-93/2022
AIR LIQUIDE INDIA HOLDING PVT LTD. Petitioner
Through Mr.Ruchesh Sinha, Ms.Divya, Advocate

versus

ACIT, CIRCLE 1 (1), DELHI AND ANR Respondent
Through Mr.Kunal Sharma, Sr. SC with
Ms.Zehra Khan, Jr. SC and
Mr.Shubhendu Bhattacharyya, Advocate
for Revenue.
Mr.Ranvir Singh, CGSC for UOI

\$~99
+ W.P.(C) 1942/2022 & CM Nos.5577-78/2022
PRAMOD KUMAR AGARWAL HUF Petitioner
Through Mr.Nagesh Kr. Behl, Mr.Mayank
Pachauri, Advs

versus

ITO WARD 43(6) DELHI & ANR. Respondent
Through Mr.Sunil Agarwal, Sr. St. counsellor
with Mr.Tushar Gupta, Jr.SC,
Mr.Samarth Chaudhari, Advs.

\$~100
+ W.P.(C) 1943/2022 & CM Nos.5579-80/2022
RAJNI OHRI Petitioner
Through Mr.Deepanshu Jain & Mr.Shaant
Jain, Advs.

versus

INCOME TAX OFFICER WARD 29(1) & ANR. Respondents
Through Mr.Abhishek Maratha, Sr. SC &
Mr.Pratyaksh Gupta, Jr. SC for
Revenue.

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\$~102

+ W.P.(C) 1981/2022 & CM Nos.5699-5700/2022
RAJESH GOYAL

..... Pet

Through Mr.Deepanshu Jain & Mr.Shaant
Jain, Advs.

versus

INCOME TAX OFFICER WARD 70(1) & ANR. Respondents

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

\$~103

+ W.P.(C) 1982/2022 & CM Nos.5701-02/2022
NEELAM SINGHAL

..... Pe

Through Mr.Rakesh Kansal, Ms.
Panchal & Mr.Shubham Kansal,

versus

INCOME TAX OFFICER WARD 45(1) & ORS. Respondents

Through Mr.Ruchir Bhatia, Sr. SC with
Ms.Mansie Jain, Adv for Revenue.
Mr.Narendra Kr Srivastava, SPC for
UOI

\$~104

+ W.P.(C) 1984/2022 & CM Nos.5713-14/2022
MADHUR GOEL

..... Peti

Through Mr.Deepanshu Jain & Mr.Shaant
Jain, Advs.

versus

INCOME TAX OFFICER WARD 48(1) & ANR. Respondents

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

\$~106

+ W.P.(C) 1986/2022 & CM Nos.5716-18/2022
S G DEVBUILD PRIVATE LIMITED

..... Pe

Through Mr.Sunny Arora, Advocate

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versus

ASSISTANT COMMISSIONER OF INCOME TAX & ANR.

..... Respondents

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

\$~107

+ W.P.(C) 1989/2022 & CM Nos.5725-26/2022
SIMMI SINGHVI

..... Pet

Through Ms.Mitika, Adv.

versus

INCOME TAX OFFICER WARD 6 (1)& ORS. Respondent

Through Mr.Kunal Sharma, Sr. SC with
Ms.Zehra Khan, Jr. SC and
Mr.Shubhendu Bhattacharyya, Adv.
for Revenue.
Mr.Mahendra Singh, SPC for UOI.

\$~109

+ W.P.(C) 1992/2022 & CM Nos.5730-31/2022
TARUN BHALLA

..... Peti

Through Mr.Rajiv Saxena, Mr.Ravi Prat
Mall, Ms.Sumangla Saxena and
Mr.Shyam Sundar, Adv.

versus

DEPUTY COMMISSIONER OF INCOME TAX AND ANR.

..... Respondent

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

\$~111

+ W.P.(C) 1996/2022 & CM Nos.5735-36/2022
PRAMOD KUMAR AGARWAL HUF

..... Petition

Through Mr.Nagesh Kr. Behl, Mr.Mayank
Pachauri, Adv

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versus

ITO, WARD 43(6), DELHI & ANR. Responden

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

\$~112

+ W.P.(C) 1997/2022& CM Nos.5737-38/2022
APMV STOCKS AND COMMODITIES PVT LTD. Petitioner

Through Mr.Deepanshu Jain & Mr.Shaant
Jain, Adv.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CENTRAL
CIRCLE 8 & ANR.

..... Respondents

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

\$~115

+ W.P.(C) 2004/2022 & CM Nos.5754-55/2022
DHUNNA INVESTMENT PVT. LTD.

..... Pe

Through Mr.Ruchesh Sinha, Ms.Divya, A
versus

INCOME TAX OFFICER, WARD 7(1) DELHI AND ANOTHER

..... Respo

Through Mr.Zoheb Hossain, Sr. SC with
Mr.Vipul Agrawal, Mr.Parth Sem
Jr.SC

\$~116

+ W.P.(C) 2005/2022 & CM Nos.5756-57/2022
DHUNNA INVESTMENT PVT. LTD.

..... Pet

Through Mr.Ruchesh Sinha, Ms.Divya, Ad

versus

INCOME TAX OFFICER, WARD 7(1) DELHI & ANR.

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.....
Through Mr.Zoheb Hossain, Sr. SC w
Mr.Vipul Agrawal, Mr.Parth
Jr.SC

\$~119

+ W.P.(C) 2011/2022
ATUL AGARWAL

.....

Through Mr.Sushil K Tekriwal, Dr.M
Tekriwal, Advocates

versus

INCOME TAX OFFICER

.....

Through Mr.Abhishek Maratha, Sr. S
Mr.Pratyaksh Gupta, Jr. SC

\$~121

+ W.P.(C) 2013/2022
RAVINDER KUMAR AGARWAL

..... Petit

Through Mr.Sushil K Tekriwal, Dr.Mamta
Tekriwal, Advocates

versus

INCOME TAX OFFICER

Through

.....
Ms.Vibhooti Malhotra, Sr.
Mr.Shaliender Singh, Jr. S
Sharma, Adv.

\$~122

+ W.P.(C) 2015/2022 & CM Nos.5764/2022, 5784/2022
SATPAL GOEL SONS HUF

..... P
Through Mr.Ravi Pratap Mall, Adv.
versus

INCOME TAX OFFICER, WARD 43(6) NEW DELHI AND ANR

..... Responden
Through Mr.Puneet Rai, Sr. SC with
Ms.Adeeba Mujahid, Jr. SC

\$~124

+ W.P.(C) 2020/2022 & CM No.5772/2022
ABHINAV JINDAL

.....

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Through

Mr.Kapil Goel & Mr.Sandeep
Advocates

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 52(1)
DELHI AND ORS

..... Respondents
Through Mr.Sanjay Kumar, Sr.SC, Ms.Easha
Kadian, Jr.SC

\$~125

+ W.P.(C) 2021/2022 & CM Nos.5773-74/2022
MR SHUBHAM JAIN

.....
Through Mr.Rajesh Bohra, Ms.
Bohra, Advs.

versus

THE ASSISTANT COMMISSIONER OF INCOME TAX

..... Responde
Through Mr.Ajit Sharma, Sr.SC

\$~128

+ W.P.(C) 2024/2022 & CM Nos.5777-78/2022
MAHABIR PRASAD GUPTA

..... Pet
Through Mr.Divyanshu Agrawal, Ms.Riti
Chawla and Mr.Vaibhav Niti, A

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 43(1),

DELHI & ANR.

..... Respondents

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

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% 02.02.2022 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 FEBRUARY 2, 2022/Arya