

Macquarie Aerospace Finance 5092 ... vs Assistant Commissioner Of Income Tax ... on 16 March, 2022

Author: Manmohan

Bench: Manmohan, Dinesh Kumar Sharma

\$~23-26, 29, 31, 36-46, 48, 50, 51, 53, 54, 56, 58-65, 68-73

* IN THE HIGH COURT OF DELHI AT NEW DELHI

23

+ W.P.(C) 4389/2022 & CM APPL.13081/20
APPL.13082/2022

MACQUARIE AEROSPACE FINANCE 5092 LIMITED
(FORMERLY KNOWN AS AWAS 5092 IRELAND LIMITED)

..... Petitioner
Through Ms. Anuradha Dutt with
Jolly, Mr. Rohit Garg,
Jham, Ms. Mehak Sachdev
Mr. Sohum Dua, Advocate

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 2 (2)
(1) INTERNATIONAL TAXATION & ORS. Responde
Through Mr. Sanjay Kumar, Advocate.

24

+ W.P.(C) 4390/2022 & CM APPL.13083/20
APPL.13084/2022

MACQUARIE AEROSPACE FINANCE 5090 LIMITED
(FORMERLY KNOWN AS AWAS IRELAND LEASING SEVEN
LIMITED) Petitioner

Through Ms. Anuradha Dutt with Mr. Sachit
Jolly, Mr. Rohit Garg, Ms. Disha
Jham, Ms. Mehak Sachdeva and
Mr. Sohum Dua, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 2
(2)(1) (INTERNATIONAL TAXATION), NEW DELHI AND ORS.

..... Respondent
Through Mr. Sanjay Kumar, Advoc

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+ W.P.(C) 4391/2022 & CM APPL.13085/2022,
APPL.13086/2022

HKAC LEASING IGO NO 7 LIMITED Petitioner
Through Ms. Anuradha Dutt with Mr. S
Jolly, Mr. Rohit Garg, Ms. D
Jham, Ms. Mehak Sachdeva and
Mr. Sohum Dua, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX & ORS.
..... Respondents
Through Mr. Zoheb Hossain, Sr. Stand
Counsel with Mr. Vipul Agraw
Mr. Parth Senwal, Advocates.

26

+ W.P.(C) 4392/2022 & CM APPL.13087/2022,
APPL.13088/2022

MACQUARIE AEROSPACE FINANCE 5027 LIMITED
FORMERLY KNOWN AS AWAS IRELAND LEASING SIX
LIMITED Petitioner
Through Ms. Anuradha Dutt with Mr. Sachit
Jolly, Mr. Rohit Garg, Ms. Disha
Jham, Ms. Mehak Sachdeva and
Mr. Sohum Dua, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 2 2 1
INTERNATIONAL TAXATION & ORS. Respondents
Through Mr. Sanjay Kumar, Advocate.

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+ W.P.(C) 4395/2022 & CM APPL.13094/2022, CM APPL.13095/2022
NARESH RAWAT (HUF) Petitioner
Through Mr. Sarthak Jain with Mr. Linoy
Varghese and Mr. Vishal Malik,
Advocates.

versus

INCOME TAX OFFICER, WARD 36(1) DELHI & ANR.
..... Respondents

31 Through Mr. Sanjay Kumar, Advocate.

+ W.P.(C) 4398/2022 & CM APPL.13111/2022, CM APPL.13112/2022
AVA MERCHANDISING SOLUTIONS PRIVATE LIMITED

..... P

Through Mr. Rishabh Jain, Advocate.

versus

DY. COMMISSIONER OF INCOME TAX, CIRCLE -1(1) NEW
DELHI

..... Respondent

Through Mr. Zoheb Hossain, Sr. Standing
Counsel with Mr. Vipul Agrawal and
Mr. Parth Senwal, Advocates.

36

+ W.P.(C) 4409/2022 & CM APPL.13144/2022, CM APPL.13145/2022
ORIX AVIATION SYSTEMS LIMITED

..... Petition

Through Ms. Anuradha Dutt with Mr. Sachin
Jolly, Mr. Rohit Garg, Ms. Dishant
Jham, Ms. Mehak Sachdeva and
Mr. Sohum Dua, Advocates.

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versus

DEPUTY COMMISSIONER OF INCOME TAX & ORS.

..... Respondents

Through Mr. Zoheb Hossain, Sr. Standing
Counsel with Mr. Vipul Agrawal and
Mr. Parth Senwal, Advocates.

37

+ W.P.(C) 4412/2022 & CM APPL.13159/2022, CM APPL.13160/2022
HKAC LEASING (IGO NO. 9) LIMITED

..... Petition

Through Ms. Anuradha Dutt with Mr. Sachin
Jolly, Mr. Rohit Garg, Ms. Dishant
Jham, Ms. Mehak Sachdeva and
Mr. Sohum Dua, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX & ORS.

..... Respondent

Through Mr. Zoheb Hossain, Sr. Standing

Counsel with Mr. Vipul Agrawal
Mr. Parth Senwal, Advocates.

38

+ W.P.(C) 4421/2022 & CM APPL.13225/2022,
APPL.13226/2022, CM APPL.13227/2022

INDIA FINSEC LIMITED

..... Petition

Through Mr. Siddharth Ranka with Mr. Mi
Johari and Mr. Mani Bhadra Jain
Advocates.

versus

INCOME TAX OFFICER WARD 10-1 & ANR. Respondents

Through Mr. Ajit Sharma, Advocate.

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+ W.P.(C) 4426/2022 & CM APPL.13240/2022, CM APPL.13241/2022
EMESS REALCON PRIVATE LIMITED

..... Petition

Through Mr. Naveen Kumar with Mr. N.P
Sahni, Advocates.

versus

ACIT, CIRCLE 7(1), DELHI AND ANR.

..... Respond

Through Mr. Kunal Sharma, Sr. Standing
Counsel with Mr. Zoheb Khan, Jr
Standing Counsel and Mr. Shrey,
Advocates.

40

+ W.P.(C) 4427/2022 & CM APPL.13242/2022, CM APPL.13243/2022
MAYANK GOEL

..... Petition

Through None.

versus

INCOME TAX OFFICER, WARD 58(1) DELHI AND ANR.

..... Respondents

Through Mr. Ajit Sharma, Advocate.

41

+ W.P.(C) 4428/2022 & CM APPL.13244/2022, CM APPL.13245/2022
MANJU SOMANI

..... Petit

Through Mr. Naveen Kumar with Mr. N.P
Sahni, Advocates.

versus

ITO, WARD 70(1), DELHI & ANR.

..... Responde

Through Mr. Sunil Kumar Agarwal, Advoca

42

+ W.P.(C) 4429/2022 & CM APPL.13246/2022, CM APPL.13247/2022

TUSHAR RAWAT

..... Petitioners
Through Mr. Sarthak Jain with Mr. Vis
Malik and Mr. Linoy Varghese,
Advocates.

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versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 22(2)
DELHI & ANR. Respondents
Through Mr. Sunil Kumar Agarwal, Advocate.

43

+ W.P.(C) 4430/2022 & CM APPL.13246/2022, CM APPL.13247/2022
VEER HANUMAN BUILDPRO PRIVATE LIMITED Petitioner
Through Mr. Siddharth Ranka with Mr.
Johari and Mr. Mani Bhadra Ja
Advocates.

versus

INCOME-TAX OFFICER, WARD 26(1), DELHI & ANR.
..... Respondents
Through Mr. Puneet Rai, Sr. Standing
with Mr. Karan Pandey, Advoca

44

+ W.P.(C) 4431/2022 & CM APPL.13251/2022, CM APPL.13252/2022
KULDIP SINGH GULATI Petitioners
Through Mr. Neeraj Yadav, Advocate.
versus

DEPUTY COMMISSIONER INCOME TAX & ANR. ...Respondents
Through Mr. Sunil Agarwal, Sr. Standing
Counsel with Mr. Tushar Gupta,
Mr. Samarth Chaudhari, Advocates.

45

+ W.P.(C) 4432/2022 & CM APPL.13253/2022
M AND ME SYSTEMS PVT LTD Petitioners
Through None.

versus

DCIT CIRCLE 16 (1), DELHI Respondents
Through Mr. Abhishek Maratha, Advocate.

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+ W.P.(C) 4434/2022 & CM APPL.13258/2022, CM APPL.13259/2022
HKAC LEASING (IGO NO. 8) LIMITED Petitioners
Through Ms. Anuradha Dutt with Mr. Sachin Jolly, Mr. Rohit Garg, Ms. Divyanshu Jham, Ms. Mehak Sachdeva and Mr. Sohum Dua, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE 2 (1)(1),
(INTL.TAX.), NEW DELHI AND ORS. Respondents
Through Mr. Zoheb Hossain, Sr. Standing Counsel with Mr. Vipul Agrawal and Mr. Parth Senwal, Advocates.

48

+ W.P.(C) 4437/2022 & CM APPL.13263/2022, CM APPL.13264/2022
MAHESH KUMAR VERMA Petitioner
Through Mr. Neeraj Yadav, Advocate.

versus

DEPUTY COMMISSIONER INCOME TAX & ANR. Respondents
Through None.

50

+ W.P.(C) 4439/2022 & CM APPL.13266/2022, CM APPL.13267/2022
ISH REALTORS PRIVATE LIMITED Petitioner
Through Mr. Gaurav Jain with Ms. Akshita Goyal and Mr. Shubham Gupta, Advocates.

versus

INCOME TAX OFFICER, WARD 12(1), DELHI Respondent
Through Ms. Vibhooti Malhotra, Sr. Standing Counsel with Mr. Udit Sharma, Advocate.

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51

+ W.P.(C) 4441/2022 & CM APPL.13269/2022, CM APPL.13270/2022
HARISH BANSAL Petitioner

Through None.

versus

UNION OF INDIA & ORS. Respondents
Through Mr. Manish Kumar, Advocate for UOI.
Mr. Zoheb Hossain, Sr. Standing Counsel with Mr. Vipul Agrawal and Mr. Parth Senwal, Advocates.

53

+ W.P.(C) 4443/2022 & CM APPL.13273/2022
IPHITO REAL ESTATE PRIVATE LIMITED Petiti
Through None.
versus

OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME
TAX & ANR. Respondent
Through Mr. Ajit Sharma, Advocate.

54

+ W.P.(C) 4444/2022 & CM APPL.13274/2022, CM APPL.13275/202
RAKESH RAWAT Petiti
Through Mr. Sarthak Jain with Mr. Lino
Varghese and Mr. Vishal Malik,
Advocates.
versus
INCOME TAX OFFICER, WARD 21(1) DELHI & ANR.
..... Respondent
Through Mr. Puneet Rai, Sr. Standing C
with Mr. Karan Pandey, Advocat

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+ W.P.(C) 4446/2022 & CM APPL.13278/2022, CM APPL.13279/202
TUSHAR RAWAT HUF Petiti
Through Mr. Sarthak Jain with Mr. Lino
Varghese and Mr. Vishal Malik,
Advocates.
versus

INCOME TAX OFFICER, WARD 36(1) DELHI & ANR.
..... Respondents
Through Mr. Sanjay Kumar, Advocate.

58

+ W.P.(C) 4448/2022, CM APPL. 13282/2022
PANKAJ ARORA Petiti
Through Mr. Mani Bhadra, Advocate.
versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 49(1)
& ANR. Respondents
Through Ms. Vibhooti Malhotra, Sr. Standing
Counsel with Mr. Udit Sharma,
Advocate.

59

+ W.P.(C) 4449/2022, CM APPL. 13283/2022
NARESH KUMAR GUPTA Petiti
Through Mr. Mani Bhadra, Advocate.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 34(5)
& ANR. Respondents

Through Mr. Kunal Sharma, Sr. Standing
Counsel with Mr. Zoheb Khan, Jr.
Standing Counsel and Mr. Shrey,
Advocates.

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60

+ W.P.(C) 4451/2022, CM APPL. 13286-87/2022
KANWALJEET KAUR

..... Pet

Through Mr. Saurabh D. Karan Singh,
Advocate.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE (34) 1
DELHI Respondent

Through Mr. Kunal Sharma, Sr. Standing
Counsel with Mr. Zoheb Khan, Jr.
Standing Counsel and Mr. Shrey,
Advocates.

61

+ W.P.(C) 4452/2022, CM APPL. 13289/2022, CM APPL. 13288/20
HARCHARAN SINGH

..... Petit

Through Mr. Saurabh D. Karan Singh,
Advocate.

versus

INCOME TAX OFFICER WARD (35) 1, DELHI Respondent
Through Mr. Sanjay Kumar, Advocate.

62

+ W.P.(C) 4455/2022, CM APPL. 13293/2022, CM APPL. 13294/20
KARAN SINGH

..... Petit

Through Mr. Naveen Kumar with Mr. N.P.
Sahni, Advocates.

versus

DCIT, CIRCLE 13(1), DELHI & ANR. Responde
Through Mr. Ajit Sharma, Advocate.

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+ W.P.(C) 4456/2022
M/S A.P. GOYAL CHARITABLE TRUST Petitioner
Through Mr. Bhuwan Raj with Mr. Raghun
Pathak, Mr. Abhinav Verma and
Ms. Manju Savita, Advocates.
versus
INCOME TAX OFFICER Respondent
Through Ms. Vibhooti Malhotra, Sr. Sta
Counsel with Mr. Udit Sharma,
Advocate.
- 64
+ W.P.(C) 4457/2022, CM APPL. 13295/2022, CM APPL. 13294/20
KULDEEP BISHNOI Petitioner
Through Mr. Naveen Kumar with Mr. N.P.
Sahni, Advocates.
versus
ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL
CIRCLE-32 DELHI AND ANR. Respondents
Through Mr. Abhishek Maratha, Sr. Standing
Counsel.
- 65
+ W.P.(C) 4458/2022, CM APPL. 13297/2022, CM APPL. 13298/20
SURJEET JAISWAL HUF Petitioner
Through Mr. Amol Sinha with Mr. Ashvin
Kumar, Advocates.
versus
ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 34(1),
DELHI & ANR. Respondents
Through Mr. Kunal Sharma, Sr. Standing
Counsel with Mr. Zoheb Khan, Jr.
Standing Counsel and Mr. Shrey,
Advocates.

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+ W.P.(C) 4461/2022, CM APPL. 13302/2022, CM APPL. 13303/20
A V BOBBINS PVT LTD Petitioner
Through Mr. Ravi Pratap with Mr. Shyam
Sundar, Advocates.
versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE - 1(1)
NEW DELHI AND ANR. Respondents
Through Mr. Zoheb Hossain, Sr. Standing
Counsel with Mr. Vipul Agrawal and
Mr. Parth Senwal, Advocates.

69

+ W.P.(C) 4462/2022, CM APPL. 13304/2022, CM APPL. 13305/20
MAYANK GOEL Petition
Through None.

versus

INCOME TAX OFFICER, WARD 58-1 & ANR. Respondents
Through Mr. Ajit Sharma, Advocate.

70

+ W.P.(C) 4463/2022, CM APPL. 13306/2022, CM APPL. 13307/20
VRINDA GOLD JEWELLERY HOUSE PRIVATE LIMITED Petition
Through Mr. Gaurav Jain with Ms. Akshita
Goyal and Mr. Shubham Gupta,
Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 25(1)
DELHI AND ANR Respondents
Through Mr. Ruchir Bhatia, Advocate.

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71

+ W.P.(C) 4464/2022, CM APPL. 13308/2022, CM APPL. 13309/20
M/S. UNIPATCH RUBBER LTD Petition
Through Mr. S. Krishnan with Mr. K.
Sampath, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ORS. Respondents
Through Mr. Sunil Agarwal, Sr. Standing
Counsel with Mr. Tushar Gupta,
Mr. Samarth Chaudhari, Advocates.

72

+ W.P.(C) 4465/2022
ANUPAMA HARIBANSH CHOUDHARY Petition
Through Mr. Rishi Jaiswal with Ms. Pra
Rai, Advocates.

versus

INCOME TAX OFFICER, WARD 30(5) DELHI Respondent

Through Mr. Ajit Sharma, Advocate.

73

+ W.P.(C) 4490/2022, CM APPL. 13375/2022, 13376/2022
HKAC LEASING 6860 IRELAND LIMITED Petitioner
Through Ms. Anuradha Dutt with Mr. Sachit
Jolly, Mr. Rohit Garg, Ms. Disha
Jham, Ms. Mehak Sachdeva and
Mr. Sohum Dua, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX & ORS.

..... Respondents
Through Mr. Ruchir Bhatia, Advocate.
Mr. Zoheb Hossain, Sr. Standin
Counsel with Mr. Vipul Agrawal
Mr. Parth Senwal, Advocates.

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CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE DINESH KUMAR SHARMA
ORDER

% 16.03.2022

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 DINESH KUMAR SHARMA, J MARCH 16, 2022 st