

Mam Raj Chunni Lal Exim (Pan Aax Fm 0533B) vs Central Board Of Direct Taxes And Ors on 21 December, 2021

Author: Manmohan

Bench: Manmohan, Navin Chawla

\$~91 to 93, 97 to 101, 103 to 105, 107, 108 & 111 to 114
* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 14652/2021 & CM No.46367/2021
MAM RAJ CHUNNI LAL EXIM (PAN AAX FM 0533B)

Through Mr.Pankaj Jain, Sr.
Mr.Gaurav Mittal, Ms
Mr.Sachin Bhardwaj,

versus

CENTRAL BOARD OF DIRECT TAXES AND ORS

..... Resp
Through Ms.Vibhooti Malhotra, Sr. SC w
Mr.Shaliender Singh, Jr. SC, M
Sharma, Adv.

\$~92
+ W.P.(C) 14707/2021 & CM Nos.46317-18/2021
PAL SINGH KAPOOR

Through Mr.Kanishk Aggarwal, Adv.

versus

INCOME TAX OFFICER WARD 30(1) DELHI & ANR.

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

\$~93
+ W.P.(C) 14708/2021 & CM No.46319/2021
JAYA PATODIA

Through Mr. Piyush Kaushik, Advocat

versus

UNION OF INDIA & ORS.

Through Mr.Asheesh Jain, CGSC with
Mr.Adarsh Kumar G
Mr.Keshav Mann, Adv. for UO
Mr.Sanjay Kumar, Sr. SC, Ms
Kadiyan, Adv. for Revenue.

\$~97
+ W.P.(C) 14715/2021 & CM Nos.46332-333/2021
HINDUSTHAN CONSULTANCY AND SERVICES

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COMMERICAL PVT. LTD. MERGED WITH
PETITIONER)

Through Mr.Rohit Bansal, Advocate.
versus

INCOME TAX OFFICER WARD 13(1), DELHI & ANR.

Through: Ms.Vibhooti Malhotra,

\$~98

+ W.P.(C) 14716/2021 & CM No.46334/2021

ECOTECH INFRATECH PRIVATE LIMITED

Through Mr. KV Balakrishnan, Adv
versus

PR.COMMISSIONER OF INCOME TAX DELHI 1 & ANR.

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

\$~99

+ W.P.(C) 14723/2021 & CM Nos.46345-46/2021

KNIGHT CONSTRUCTION PRIVATE LIMITED Petitioner

Through Dr.Rakesh Gupta, Mr.Somil
Mr.RK Bhardwaj, Mr.Anshul
Advs.

versus

INCOME TAX OFFICER WARD14(3) & ORS.

Through Mr.Ajit Sharma, Sr.SC with Mr
Ram Mishra, Adv.

\$~100

+ W.P.(C) 14724/2021 & CM Nos.46347-48/2021

GOOD MORNING INDIA MEDIA PVT LTD

Through Mr.Bhanu Gupta, Adv.

versus

INCOME TAX OFFICER CIRCLE 10(1), DELHI, & ANR.

Through Ms.Vibhooti Malhotra,
Mr.Shaliender Singh,
Sharma, Adv.

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\$~101

+ W.P.(C) 14726/2021 & CM Nos.46350-51/2021

NITIN KHETAN

Through Mr.Gaurav Jain, Adv
versus

INCOME TAX OFFICER WARD 58(1) DELHI AND ANR

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

\$~103

+ W.P.(C) 14729/2021 & CM Nos.46357-58/2021
SEEMA GUPTA

Through Mr.Ruchesh Sinha, Ms.Divy

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 70 1 DELHI
AND ORS

Through Mr.Ruchir Bhatia, Sr. SC for R
Mr.Tanveer Ahmed Ansari, SPC f
UOI.

\$~104

+ W.P.(C) 14730/2021 & CM Nos.46359-60/2021
ANKIT GUPTA

Through Mr.Ashok Kr. Babbar, M
Advs.

versus

UNION OF INDIA THROUGH SECRETARY & ANR.

Through Mr.Prakash Kumar, CGSC

\$~105

+ W.P.(C) 14740/2021 & CM Nos.46382-83/2021
OMKAM GLOBAL CAPITAL PRIVATE LIMITED

Through Mr. Nitin Gulati, Adv
versus

INCOME TAX OFFICER, WARD-19(1), DELHI & ANR.

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Through Mr.Sunil Agarwal, Sr. S
Gupta, Jr. SC and Mr.Sa
Chaudhari, Adv.

\$~107

+ W.P.(C) 14746/2021 & CM Nos.46393-94/2021
KNIGHT CONSTRUCTIONS PRIVATE LIMITED

Through Dr.Rakesh Gupta, Mr.Somil
Mr.RK Bhardwaj, Mr.Anshul
Advs.

versus

INCOME TAX OFFICER WARD 14(3) DELHI & ANR.

..... Respond

Through Mr.Ajit Sharma, Sr.SC
Mr.Anand Ram Mishra, Adv

\$~108

+ W.P.(C) 14747/2021 & CM Nos.46395-96/2021
OMKAM GLOBAL CAPITAL PRIVATE LIMITED Petitioners

Through Mr. Nitin Gulati, Adv

versus

INCOME TAX OFFICER,WARD-19(1), DELHI & ANR.

..... Responder

Through Mr.Sunil Agarwal, Sr. SC, Mr.Tu
Gupta, Jr. SC and Mr.Samarth
Chaudhari, Adv.

\$~111

+ W.P.(C) 14750/2021 & CM Nos.46426-27/2021
AMOLIK INFRASTRURE PRIVATE LIMITED ...

Through Dr.Rakesh Gupta, Mr.Somil
Mr.RK Bhardwaj, Mr.Anshul
Advs.

versus

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

..... R

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

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\$~112

+ W.P.(C) 14751/2021 & CM Nos.46431-32/2021
AMOLIK INFRASTRUCTURE PRIVATE LIMITED (FORMERLY
KNOWN AS TARANG ENTERTAINMENT PRIVATE LIMITED

Through Dr.Rakesh Gupta, Mr.Somil
Mr.RK Bhardwaj, Mr.Anshul
Advs.

versus

INCOME TAX OFFICER WARD 2(1) DELHI & ORS

..... Responder

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

\$~113

+ W.P.(C) 14752/2021 & CM Nos.46434-35/2021
EDEN BIOTECHNOLOGY PVT LTD Petitioner

Through Mr.Ruchesh Sinha, Ms.Divya, Adv

versus

INCOME TAX OFFICER WARD 8(1) DELHI AND ORS

..... Respo
Through Mr.Sanjay Kumar, Sr. SC, Ms.Eas
Kadiyan, Adv. for Revenue.
Mr.Aman Malik, SPC for UOI.

\$~114

+ W.P.(C) 14757/2021 & CM Nos.46448-49/2021

ASHISH GIRDHAR

Through Mr.Sumit Lalchandani, M
Singh, Mr.Gowrang, Adv.

versus

INCOME TAX OFFICER, WARD 22(2),DELHI AND ANR.

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

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CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE NAVIN CHAWLA
ORDER

% 21.12.2021

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 DECEMBER 21, 2021/Arya