

Tarik Handa vs Income Tax Officer, Circle 50(1), Delhi ... on 3 January, 2022

Author: Manmohan

Bench: Manmohan, Navin Chawla

\$~84 & 86 to 90 (total 6)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 15165/2021 & CM Nos.47783-84/2021

TARIK HANDA

..... Pe

Through Mr. Ruchesh Sinha, Adv.

versus

INCOME TAX OFFICER, CIRCLE 50(1), DELHI & ORS.

..... Responde

Through Ms.Vibhooti Malhotra, Sr. SC with
Mr.Shaliender Singh, Jr. SC, Mr.Ud
Sharma, Adv. for Revenue.
Me.Sanjeev Kr. Baliyan, Adv for R-

\$~86

+ W.P.(C) 15168/2021 & CM Nos.47788-89/2021

DEV BHUMI COLD CHAIN PRIVATE LTD

.....

Through Ms.Kavita Jha, Adv.

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ORS.

..... Respondents

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

\$~87

+ W.P.(C) 15169/2021 & CM Nos.47790-91/2021

DEV BHUMI COLD CHAIN PRIVATE LTD

.....

Through Ms.Kavita Jha, Adv.

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ORS.

..... Respondents

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

Signature Not Verified

Digitally Signed

By:KRISHNA BH0J

Signing Date:06.01.2022

20:13:48

\$~88

+ W.P.(C) 15170/2021 & CM Nos.47792-93/2021 Petit
DEV BHUMI COLD CHAIN PRIVATE LTD
Through Ms.Kavita Jha, Adv.

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ORS. Respondents
Through Mr.Zoheb Hossain, Sr. SC with
Mr.Vipul Agrawal, Mr.Parth Semwal,
Jr.SC

\$~89

+ W.P.(C) 15172/2021 & CM Nos.47795-96/2021
DEV BHUMI COLD CHAIN PRIVATE LTD
Through Ms.Kavita Jha, Adv.

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ORS. Respondents
Through Mr.Zoheb Hossain, Sr. SC with
Mr.Vipul Agrawal, Mr.Parth Semwal,
Jr.SC

\$~90

+ W.P.(C) 15175/2021 & CM Nos.47799-47800/2021 Pe
M/S. BHARAT FOILS (P) LTD
Through Mr. S. krishnan, Advocate

versus

INCOME TAX OFFICER & ORS. Respondents
Through Mr.Kunal Sharma, Sr. SC with
Ms.Zehra Khan, Jr. SC and
Mr.Shubhendu Bhattacharyya, Adv

Signature Not Verified
Digitally Signed
By:KRISHNA BH0J
Signing Date:06.01.2022
20:13:48

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

ORDER

% 03.01.2022

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 NAVIN CHAWLA, J JANUARY 3, 2022/Arya