

Mudra Finance Limited vs Income Tax Officer Ward 17(1), Delhi & ... on 13 July, 2021

Author: Manmohan

Bench: Manmohan, Navin Chawla

\$~S-11 to 13

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 6442/2021 & CM APPL. 20217/2021

MUDRA FINANCE LIMITED

..... Pet

Through: Mr. Shivakumar T M, Advoca

versus

INCOME TAX OFFICER WARD 17(1), DELHI

& ANR.

..... Respondents

Through: Mr. Sanjay Kumar, Advocate.

+ W.P.(C) 6443/2021 & 20220/2021

ANSAL COLOURS ENGINEERING SEZ LIMITED Petitione

Through: Mr. Shivakumar T M, Advoca

versus

ASSISTANT COMMISSIONER OF INCOME TAX-1(1), DELHI &

ANR.

..... Respondents

Through: Mr. Ajit Sharma, Advocate.

+ W.P.(C) 6451/2021 & CM APPL. 20248/2021

ANSAL LANDMARK TOWNSHIPS PRIVATE

LIMITED

..... Petitioner

Through: Mr. Shivakumar T M, Advocate

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 1(1),

DELHI & ANR.

..... Respondents

Signature Not Verified

Digitally Signed By:JASWANT

SINGH RAWAT

Signing Date:14.07.2021

23:39:51

Through: Mr. Kunal Sharma,

Ms. Zehra Khan and

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% 13.07.2021 Petitions have been heard by way of video conferencing. Present writ petitions have been filed challenging the notices dated 09th June, 2021, 30th June, 2020 and 28th June, 2020 issued in W.P. (C) 6442/2021, 6443/2021 and 6451/2021 respectively by respondent No.1 under section 148 of the Income Tax Act, 1961 [for short 'the Act'] and the proceedings initiated subsequent thereto. Petitioners also challenge the 'Explanation' contained in the notification no. 20/2021 dated 31st March, 2021 and no. 38/2021 dated 27th April, 2021 issued by respondent no. 2- Central Board of Direct Taxes.

Learned counsel for the petitioners states that the impugned notices are invalid in the eyes of law and void from inception as they were issued without following the process of issuance of prior notice under section 148A of the Act. He submits that the impugned notices are invalid as they have been issued under the pre-amended provisions of the Act, which were no longer in force on the date of the impugned notices. He emphasises that the amendments are applicable to all the notices issued under Section 148 of the Act post 01st April, 2021.

Learned counsel for the petitioners states that the impugned notifications issued by the Respondent-2 are ultra vires the Act insofar as they contain the 'explanation' clarifying that the pre-amended Sections 148, 149 and 151 of the Act shall govern the issue of notice under Section 148 post 01st April, 2021. According to him, Section 3(1) of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 authorizes the Central Government to only extend the time limits and nothing more.

He further states that the respondents cannot extend the operation of the old provisions of the Act beyond 31st March, 2021 in the guise of a clarification under delegated legislation.

He also relies upon interim stay orders passed by the Bombay High Court as well as by the learned predecessor Division Bench of this Court in *Mon Mohan Kohli vs. Assistant Commissioner of Income Tax & Anr.*, W.P. (C) 6176/2021 dated 07th July, 2021.

Issue Notice. Mr. Sanjay Kumar, Advocate, Mr. Ajit Sharma, Advocate and Mr. Kunal Sharma, Advocate accept notice on behalf of the respondents in W.P.(C) Nos.6442/2021, 6443/2021 and 6451/2021 respectively.

Learned counsel for the respondents state that in the present cases, the time limit for issuing the notices under Section 148 of the Act stood expired and, therefore, any action under Section 148 would have been time barred by virtue of the proviso to Section 149(1) of the Act. They submit that by virtue of introduction of Section 3(1) of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, the time limit for taking action under Section 148 has

been extended till 30 th Ju ne, 2021.

Consequently, according to them, the impugned notifications on ly provide that as the time limit for issuing notice under Section 148A of t h e Act h as been extended by deemed fiction, the procedure to be followed till 30th June, 2021 would be the old procedure mentioned under t he Act . In su pport of their submission, they also rely upon Section 6 of the General Clauses Act , 1897.

Having heard learned counsel for the parties, this Court is of the prima facie view that the impugned notification is contrary to settled principle of statutory interpretation, namely, that any action t aken post t he amendment of a procedural section would have to abide by the new procedures stipulated in the amended Act.

Further, this Court is of the prima facie view that by virtue of a notification, which is a delegated legislation, the date for implementation of statutory provision, as stipulated in the Act, cannot be varied or changed.

Consequently, following the interim orders passed by the learned predecessor Division Bench in Mon Mohan Kohli vs. Assistant Commissioner of Income Tax & Anr., W.P. (C) 6176/2021 dat ed 07 th Ju ly, 2021 as well as similar interim order passed by the Bombay High Court, this Court directs that there shall be a stay of the operation of the impugned notices dated 09th June, 2021, 30th June, 2020 and 28th June, 2020 passed in W.P. (C) 6442/2021, 6443/2021 and 6451/2021 respectively.

Let counter-affidavits be filed within three weeks. Rejoinder Affidavits, if any, be filed before the next date of hearing.

List on 28th September, 2021.

The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

MANMOHAN, J NAVIN CHAWLA, J JULY 13, 2021 TS