

Amar Nath Goenka Huf vs Income Tax Officer Ward 30(5) Delhi And ... on 29 July, 2021

Author: Manmohan

Bench: Manmohan, Navin Chawla

\$~25 to 27, 29 to 36, 38 to 42, 44 to 58, 60 to 63 and 65
* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 7158/2021
AMAR NATH GOENKA HUF

Through Mr.Kapil Goel Sand
Mr.Dhananjay Garg

versus

INCOME TAX OFFICER WARD 30(5) DELHI AND ORS.

..... Resp
Through Mr.Jivesh Kr. Tiwari, SPC for

+ W.P.(C) 7163/2021
NIPUN GUPTA

Through Mr.Amol Sinha, Mr.Ash
Advs.

versus

INCOME TAX OFFICER, WARD -9(1), DELHI & ANR.

..... Re
Through Mr.Abhishek Maratha, Sr. SC
+ W.P.(C) 7165/2021
JAYSHREE INFRASTRUCTURE PVT LTD.

..... P
Through Mr.Amol Sinha, Mr.Ashvini K
Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE-13(1),
DELHI & ANR.

..... Respon
Through Ms.Vibhooti Malhotra, Sr. SC

+ W.P.(C) 7168/2021
DLF HOMES PANCHKULA PVT LTD

.....
Through Ms. Kavita Jha, Mr. Udit Na
Ms. Shwetha Prabhakar Advoc

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versus

ASSISTANT COMMISSIONER OF INCOME TAX & ANR.

..... Respon

Through Mr.Ruchir Bhatia, Sr.SC

+ W.P.(C) 7169/2021
DEEPAK BHARDWAJ

Through

.....
Mr. Kishore Kunal, Mr.Man
Rastogi, Mr. Parth Jaipra
Mr.Sumit Khadaria, Adv.

versus

UNION OF INDIA & ORS.

Through

..... R
Mr.Rajkumar Yadav and Mr.
Singh Advs for respondent

+ W.P.(C) 7170/2021
TAXILA REALTY PRIVATE LIMITED

Through Mr.Rohit Tiwari, Adv.

..... P

versus

INCOME TAX OFFICER WARD 25(1), DELHI & ANR.

..... Respo

Through Mr.Ruchir Bhatia,Sr. SC

+ W.P.(C) 7171/2021
SUNAYANA MALHOTRA

Through

.....
Mr.Rahul Malhotra, Adv.

versus

UNION OF INDIA

Through

.....
Mr.Ruchir Bhatia,Sr. SC

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+ W.P.(C) 7172/2021
IRCON INTERNATIONAL LIMITED

..... Petit
Through Mr. Neeraj Jain, Mr. Aniket D
Agrawal, Advocate

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ORS.

..... Responde

Through Mr.Ravi Prakash CGSC for UOI

+ W.P.(C) 7173/2021
SITA MITTAL

Through Mr.Sagar Rohtgi, Adv.

versus

INCOME TAX OFFICER & ANR.

..... Respond

Through Mr.Ajit Sharma, Sr.SC

+ W.P.(C) 7174/2021
INDIA KNOWLEDGE CITY FOUNDATION

..... P

Through Mr.Saurabh D.Karan Singh,
Ms.Kanika Jain, Adv.

versus

INCOME TAX OFFICER, WARD (12) 1, NEW DELHI

..... Respo

Through Mr.Ajit Sharma, Sr.SC

+ W.P.(C) 7175/2021
DEEPANSHU GARG

..... P

Through Mr.Ved Jain and Ms.Richa
Adv

versus

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INCOME TAX OFFICER, WARD 71(1) & ORS. Responde

Through Mr.Puneet Rai, Sr. SC with
Ms.Adeeba Mujahid, Jr. SC For
Income Tax Department.
Mr.Neeraj, Mr.Sahaj Gar
Mr.Vedansh Anand and Mr.Rudra
Paliwal, Adv. for R-4

+ W.P.(C) 7177/2021
KABIR FOODS PRIVATE LIMITED

..... Peti

Through Mr.Ved Jain and Ms.Richa Mish
Adv

versus

INCOME TAX OFFICER, WARD 14(1) & ORS. Respondent
Through Mr.Abhishek Maratha, Sr.SC for R-
Ms.Aakanksha Kaul, Mr.Manek
Singh, Advs. for UOI.

+ W.P.(C) 7178/2021
KANIKA SHARMA Pe
Through Ms.Ananya Kapoor, Ms. Soum
Singh, Advs.

versus

INCOME TAX OFFICER, WARD 28-1, DELHI & ANR.
..... Respon
Through Mr.Ajit Sharma, Sr.SC

+ W.P.(C) 7180/2021
SAMIR DEV SHARMA Pet
Through Mr.Ved Jain and Ms.Richa M
Advs.

versus

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INCOME TAX OFFICER, WARD 28(1) & ORS. Responden
Through Mr.Bhagvan Swarup Shukla, CGSC
with Mr.Sarvan Kumar
Mr.Sawan Kumar Shukla, Advs for
UOI.

+ W.P.(C) 7181/2021
MOHIT AGGARWAL Pe
Through Mr.Inder Paul Bansal and M
Bansal, Advocates

versus

ASSISTANT COMMISSIONER INCOME TAX CIRCLE 43 (1)
NEW DELHI & ORS. Responden
Through Mr.Puneet Rai, Sr. SC with
Ms.Adeeba Mujahid, Jr. SC For
Income Tax Department

+ W.P.(C) 7184/2021

MR. SUSHILKUMAR TILOKCHAND NAHAR Pe
Through Ms.Archana Sahadeva, Adv

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ORS. Respond
Through Mr.Kunal Sharma, Sr. SC

+ W.P.(C) 7190/2021 Pet
RAJ KUMAR SHARMA
Through Mr.Ved Jain and Ms.Richa M
Adv

versus

ASSISSTANT COMMISSIONER OF INCOME TAX CIRCLE 25-1
& ORS. Respondents
Through Mr.Puneet Rai, Sr. SC with
Ms.Adeeba Mujahid, Jr. SC For

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Income Tax Department.
Mr.Jaswant Rai Aggarwal,
UOI.

+ W.P.(C) 7191/2021
ALFONSO BUILDERS AND DEVELOPERS PRIVATE LIMITED
Through Ms. Kavita Jha, Mr. Udit Nare
Ms. Shwetha Prabhakar Advocat

versus

INCOME TAX OFFICER & ORS. Responde
Through Mr.Sanjay Kumar and Ms.Easha
Kadian, Standing Counsel for Inc
Tax Department

+ W.P.(C) 7193/2021 Pe
NEERU GOEL
Through Mr.Kapil Goel Sandeep Goe
Mr.Dhananjay Garg Adv

versus

ASSISTANT COMISSIONER OF INCOME TAX CIRCLE 70(1)
DELHI AND ANR. Responde

Through Mr.Sunil Agarwal, Sr. SC and
Mr.Tushar Gupta, Jr. SC

+ W.P.(C) 7196/2021
KANCHAN SHARMA

Through Ms.Ananya Kapoor, Ms. Sou
Singh, Advs. P

versus

INCOME TAX OFFICER, WARD 28-1, DELHI & ANR.

Through Mr.Ajit Sharma, Sr.SC Respon

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+ W.P.(C) 7200/2021
BCC DEVELOPERS AND PROMOTERS PVT. LTD. Petitione
Through Mr.Rahul Malhotra, Adv.

versus

UNION OF INDIA Re
Through Mr.Kunal Sharma, Sr.SC

+ W.P.(C) 7201/2021
IRCON INTERNATIONAL LIMITED Peti
Through Mr. Neeraj Jain, Mr. Aniket D
Agrawal, Advocates

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ORS.
Through Mr.Ravi Prakash CGSC for UOI Responde

+ W.P.(C) 7203/2021
BIOTRONIK MEDICAL DEVICES INDIA PVT. LTD..... Petitio
Through Mr.Salil Kapoor, Ms. Ananya
Kapoor, Mr Sumit Lalchandani,

versus

DEPUTY COMMISSIONER OF INCOME TAX CIRCLE 4(2) &
ANR. Responde
Through Mr.Kunal Sharma, Sr.SC

+ W.P.(C) 7205/2021
DLF HOME DEVELOPERS LIMITED Pe

Through Ms. Kavita Jha, Mr. Udit Nare
Ms. Shwetha Prabhakar Advocat

versus

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ASSISTANT COMMISSIONER OF INCOME TAX & ORS.

..... Respond

Through Mr.Zoheb Hossain, Sr.SC

+ W.P.(C) 7206/2021
HIMANSHU INFRATECH PVT LTD
..... Peti
Through Mr.Rohit Jain, Mr.Aniket D.
Agrawal, Advocates

versus

INCOME TAX OFFICER & ORS.

..... Responde

Through Mr.Abhishek Maratha, Sr.SC for R
Ms.Arti Bansal, Adv. for R-3

+ W.P.(C) 7208/2021
DLF LIMITED
..... P
Through Ms. Kavita Jha, Mr.Udit N
Ms. Shwetha Prabhakar Adv

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ANR.

..... Respond

Through Mr.Zoheb Hossain, Sr.SC

+ W.P.(C) 7210/2021
SANGEETA KHANDELWAL
.....
Through Mr. Salil Kapoor, Ms.Soumya S
Ms. Ananya Kapoor, Mr.Sumit
Lalchandani, Mr Sanat Kapoor,

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 28-1
& ANR.

..... Responde

Through Mr.Ajit Sharma, Sr.SC

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+ W.P.(C) 7211/2021
AKSHI KHANDELWAL
Through Mr. Salil Kapoor, Ms.Soumya
Ms. Ananya Kapoor, Mr.Sumit
Lalchandani, Mr Sanat Kapoor
versus

INCOME TAX OFFICER, WARD 30(1) & ANR. Respondent
Through Mr.Ajit Sharma, Sr.SC

+ W.P.(C) 7212/2021
SHELLY CHOUDHARY
Through Mr.Ved Jain and Ms.Richa
Adv
versus

INCOME TAX OFFICER, WARD 22(3) & ORS. Respondent
Through Mr.Puneet Rai, Sr. SC with
Ms.Adeeba Mujahid, Jr. SC

+ W.P.(C) 7213/2021
AKINA BUILDERS AND DEVELOPERS PRIVATE LIMITED
Through Ms. Kavita Jha, Mr. Udit Nare
Ms. Shwetha Prabhakar Advocate
versus

INCOME TAX OFFICER & ORS. Respondent
Through Mr.Zoheb Hossain, Sr. SC

+ W.P.(C) 7215/2021
SHIVDURGA MARKETING PRIVATE LIMITED. Petitioner
Through Mr. Salil Kapoor, Ms.Soumya S
Ms. Ananya Kapoor, Mr.Sumit
Lalchandani, Mr Sanat Kapoor,

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versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 22-2
& ANR. Respondent

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

+ W.P.(C) 7217/2021
TAXILA REALTY PRIVATE LIMITED P
Through Mr.Rohit Tiwari, Adv.

versus

INCOME TAX OFFICER WARD 25(1), DELHI & ANR.
..... Respo
Through Mr.Ruchir Bhatia,Sr. SC

+ W.P.(C) 7219/2021
MIRAGE BUILDERS AND DEVELOPERS PVT. LTD. .. Petitioner
Through Mr. Salil Kapoor, Ms.Soumya S
Ms. Ananya Kapoor, Mr.Sumit
Lalchandani, Mr Sanat Kapoor,
versus

INCOME TAX OFFICER, CIRCLE 17-1-DELHI & ANR.
..... Respon
Through Ms.Vibhooti Malhotra, Sr. SC

+ W.P.(C) 7220/2021
MIRAGE BUILDERS AND DEVELOPERS PVT. LTD..... Petitione
Through Mr. Salil Kapoor, Ms.Soumya S
Ms. Ananya Kapoor, Mr.Sumit
Lalchandani, Mr Sanat Kapoor,
versus

INCOME TAX OFFICER, CIRCLE 17-1 DELHI & ANR.
..... Respon
Through Ms.Vibhooti Malhotra, Sr.SC

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+ W.P.(C) 7225/2021
AFAAF BUILDERS AND DEVELOPERS PRIVATE LIMITED
.....
Through Ms. Kavita Jha, Mr. Udit Nar
Ms. Shwetha Prabhakar Advoca

versus

INCOME TAX OFFICER & ORS. Responde

Through Mr.Kunal Sharma, Sr.SC

+ W.P.(C) 7231/2021
NAVEEN KHADELWAL

Through

Mr. Salil Kapoor, Ms. So
Ms. Ananya Kapoor, Mr. S
Lalchandani, Mr Sanat K

versus

INCOME TAX OFFICER, WARD 30-1 & ANR. Respondent
Through Mr.Ajit Sharma, Sr.SC

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% 29.07.2021 The hearing has been conducted through video conferencing. CM No.22625/2021 (Exemption) in WP(C) 7163/2021 CM No.22630/2021(Exemption) in WP(C) 7165/2021 CM No.22640/2021(Exemption) in WP(C) 7168/2021 CM Nos.22643-44/2021(Exemption) in WP(C) 7170/2021 CM No.22646/2021(Exemption) in WP(C) 7171/2021 CM No. 22648/2021(Exemption) in WP(C) 7172/2021 CM Nos.22651-62/2021(Exemption) in WP(C) 7174/2021 CM No.22654/2021(Exemption) in WP(C) 7175/2021 CM No.22658/2021(Exemption) in WP(C) 7177/2021 CM No.22663/2021(Exemption) in WP(C) 7178/2021 CM No. 22667/2021(Exemption) in WP(C) 7180/2021 CM No.22673/2021(Exemption) in WP(C) 7184/2021 CM No. 22684/2021(Exemption) in WP(C) 7190/2021 CM No. 22684/2021(Exemption) in WP(C) 7191/2021 CM No.22693/2021(Exemption) in WP(C) 7196/2021 CM No. 22702/2021(Exemption) in WP(C) 7200/2021 CM No.22704/2021(Exemption) in WP(C) 7201/2021 CM No. 22707/2021(Exemption) in WP(C) 7203/2021 CM No. 22709/2021(Exemption) in WP(C) 7205/2021 CM No. 22711/2021(Exemption) in WP(C) 7206/2021 CM No.22713 /2021(Exemption) in WP(C) 7208/2021 CM No. 22717/2021(Exemption) in WP(C) 7210/2021 CM No. 22719/2021(Exemption) in WP(C) 7211/2021 CM No. 22721/2021(Exemption) in WP(C) 7212/2021 CM No. 22723/2021(Exemption) in WP(C) 7213/2021 CM No. 22727/2021(Exemption) in WP(C) 7215/2021 CM Nos.22732-33/2021(Exemption) in WP(C) 7217/2021 CM No.22742/2021(Exemption) in WP(C) 7219/2021 CM No. 22744/2021(Exemption) in WP(C) 7220/2021 CM No. 22760/2021(Exemption) in WP(C) 7225/2021 CM No. 22780/2021(Exemption) in WP(C) 7231/2021 Allowed, subject to all just exceptions. W.P.(C) 7158/2021 & CM No.22618/2021 W.P.(C) 7163/2021 & CM No.22626/2021 W.P.(C) 7165/2021 & CM No.22631/2021 W.P.(C) 7168/2021 & CM No.22639/2021 W.P.(C) 7169/2021 & CM No.22641/2021 W.P.(C) 7170/2021 & CM No.22642/2021 W.P.(C) 7171/2021 & CM No.22645/2021 W.P.(C) 7172/2021 & CM No.22647/2021 W.P.(C) 7173/2021 & CM No.22649/2021 W.P.(C) 7174/2021 & CM No.22650/2021 W.P.(C) 7175/2021 & CM No.22653/2021 W.P.(C) 7177/2021 & CM No.22657/2021 W.P.(C) 7178/2021 & CM No.22662/2021 W.P.(C) 7180/2021 & CM No.22666/2021 W.P.(C) 7181/2021 & CM No.22668/2021 W.P.(C) 7184/2021 & CM No.22672/2021 W.P.(C) 7190/2021 & CM No.22681/2021 W.P.(C) 7191/2021 & CM No.22683/2021 W.P.(C) 7193/2021 & CM No.22686/2021 W.P.(C) 7196/2021 & CM No.22692/2021 W.P.(C) 7200/2021 & CM

No.22701/2021 W.P.(C) 7201/2021 & CM No.22703/2021 W.P.(C) 7203/2021 & CM No.22706/2021 W.P.(C) 7205/2021 & CM No.22708/2021 W.P.(C) 7206/2021 & CM No.22710/2021 W.P.(C) 7208/2021 & CM No.22712/2021 W.P.(C) 7210/2021 & CM No.22716/2021 W.P.(C) 7211/2021 & CM No.22718/2021 W.P.(C) 7212/2021 & CM No.22720/2021 W.P.(C) 7213/2021 & CM No.22722/2021 W.P.(C) 7215/2021 & CM No.22726/2021 W.P.(C) 7217/2021 & CM No.22731/2021 W.P.(C) 7219/2021 & CM No.22741/2021 W.P.(C) 7220/2021 & CM No.22743/2021 W.P.(C) 7225/2021 & CM No.22759/2021 W.P.(C) 7231/2021 & CM No.22779/2021

1. On 13th July, 2021, this Court in similar writ petitions being W.P.(C) Nos.6442/2021, 6443/2021 and 6451/2021 had issued notices and granted stay of the impugned notices. The relevant portion of the order passed in W.P.(C) Nos.6442/2021, 6443/021 and 6451/2021 is reproduced hereinbelow:-

".....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 indirectly 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 30th June, 2021. Consequently, according to them, the impugned notifications only provide that as the time limit for issuing notice under Section 148A of the Act has been extended by deemed fiction, the procedure to be followed till 30th June, 2021 would be the old procedure mentioned under the Act. In support 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 taken post the 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.

This Court is also of the prima facie opinion that Section 6 of the General Clauses Act, 1897 offers no assistance to the respondents as the new Section 148A demonstrates an intent 'to destroy' the old procedure.

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 dated 07th July, 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."

2. Consequently, issue notice. Notice is accepted by the counsel for the respondents mentioned hereinabove. They pray for and are permitted to file their counter-affidavits within three weeks. Rejoinder affidavit(s), if any, be filed before the next date of hearing.
3. Till further orders, the respondents are restrained from continuing with the reassessment proceedings, in any manner, pursuant to the impugned notices.
4. List along with WP(C) No. 6442/2021 on 28th September, 2021.

5. Ms.Kavita Jha and Mr.Sunil Aggarwal are directed to file their short written submission on behalf of the petitioner(s) and respondent(s) respectively not exceeding five pages each within four weeks alongwith the judgments which they wishes to rely upon.

6. It is made clear that no adjournment shall be granted on the next date of hearing.

7. 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 29, 2021/Arya