

# Karamjit Jaiswal (As Legal Heir Of Ladli ... vs Assistant Commissioner Of Income Tax & ... on 8 March, 2022

**Author: Manmohan**

**Bench: Manmohan, Sudhir Kumar Jain**

\$~12 to 17, 21 to 23, 26, 27 & 29 to 31

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 3860/2022 with CM APPLs.11502-11503/2022

KARAMJIT JAISWAL (AS LEGAL HEIR OF LADLI PERSHAD JAISWAL SINCE DECEASED)

Through: Ms. Kavita Jha, Advocate  
Vaibhav Kulkarni, Mr.  
Ms. Shwetha Prabhakar

versus

ASSISTANT COMMISSIONER OF  
INCOME TAX & ANR.

.... Respondents

Through: Mr. Puneet Rai, Sr. Standing Counsel  
with Ms. Adeeba Mujahid, Jr.  
Standing Counsel

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+ W.P.(C) 3861/2022 with CM APPLs.11504-11505/2022

PRABHAT KUMAR

Through: Mr. Piyush Kumar Kama

versus

ASSISTANT COMMISSIONER OF INCOME  
TAX CIRCLE 19(1), DELHI & ANR.

..... Respondents

Through: Mr. Puneet Rai, Sr. Standing Counsel  
with Ms. Adeeba Mujahid, Jr.  
Standing Counsel

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+ W.P.(C) 3862/2022 with CM APPL.11506/2022

MEENA DEVI JINDAL (THROUGH: HER LEGAL HEIR SHYAM SUNDER JINDAL)

Through: Mr. Gaurav Jain, Advocate  
Akshita Goyal, Mr. Sh  
Advocates

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versus

INCOME TAX OFFICER, WARD 30(5) & ANR. .... Respondents

Through: Mr. Ajit Sharma, Advocate

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+ W.P.(C) 3863/2022 with CM APPLs.11507-11508/2022  
SURBHI ENTERPRISES ..... Petitioner  
Through: Mr. Manu K. Giri & Mr. Deepak Malik, Advocates  
versus  
INCOME TAX OFFICER AND ANOTHER ..... Respondents  
Through: Mr. Vibhooti Malhotra, Sr. Standing Counsel with Mr. Shailendra Singh, Jr. Standing Counsel  
Mr. Udit Sharma, Advocate for Income Tax

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+ W.P.(C) 3865/2022 with CM APPLs.11511-11512/2022  
SHABNAM AVASTHI ..... Petitioner  
Through: Ms. Kavita Jha, Advocate with Vaibhav Kulkarni, Mr. Udit Narayan, Ms. Shwetha Prabhakar, Advocate  
versus  
INCOME TAX OFFICER & ANR. .... Respondents  
Through: Mr. Abhishek Maratha, Advocate

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+ W.P.(C) 3868/2022 with CM APPLs.11517-11518/2022  
MANIK AVASTHI ..... Petitioner  
Through: Ms. Kavita Jha, Advocate with Vaibhav Kulkarni, Mr. Udit Narayan, Ms. Shwetha Prabhakar, Advocate  
versus

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INCOME TAX OFFICER & ANR. .... Respondents  
Through: Mr. Abhishek Maratha, Advocate

21

+ W.P.(C) 3879/2022 with CM APPLs.11541-11542/2022  
KAMAL KUMAR ANAND ..... Petitioner  
Through: Mr. Gaurav Jain, Advocate  
versus  
ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 61(1), DELHI AND ANR. .... Respondent  
Through: Mr. Sanjay Kumar, Advocate

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+ W.P.(C) 3880/2022 with CM APPLs.11543-11544/2022  
KARAMJIT S JAISWAL (AS LEGAL HEIR OF LADLI PERSHAD JAISWAL SINCE DECEASED) ..... Petitioner  
Through: Ms. Kavita Jha, Advocate with Mr.

Vaibhav Kulkarni, Mr. Udit Naresh  
Ms. Shwetha Prabhakar, Advocates

versus

ASSISTANT COMMISSIONER OF INCOME TAX CENTRAL  
CIRCLE 4, DELHI AND ANR. .... Respondent

Through: Mr. Puneet Rai, Sr. Standing Counsel  
with Ms. Adeeba Mujahid, Jr.  
Standing Counsel

23

+ W.P.(C) 3884/2022 with CM APPLs.11546-11548/2022  
TRANS WORLD INTERNATIONAL LLC .... Petitioner

Through: Mr. Arijit Prasad, Sr. Advocate  
Mr. Sanjeev Gupta, Ms. Krishna  
Devi, Advocates

versus

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DEPUTY COMMISSIONER OF INCOME TAX CIRCLE  
INTERNATIONAL TAX 3-1-1, DELHI & ANR. .... Respondents

Through: Mr. Puneet Rai, Sr. Standing Counsel  
with Ms. Adeeba Mujahid, Jr.  
Standing Counsel

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+ W.P.(C) 3887/2022 with CM APPLs.11556-11557/2022, CM  
APPL.11565/2022

TRANS WORLD INTERNATIONAL LLC .... Petitioner

Through: Mr. Arijit Prasad, Sr. Advocate  
Mr. Sanjeev Gupta, Ms. Krishna  
Devi, Advocates

versus

DEPUTY COMMISSIONER OF INCOME TAX CIRCLE  
INTERNATIONAL TAX 3-1-1, DELHI & ANR. .... Respondents

Through: Mr. Puneet Rai, Sr. Standing Counsel  
with Ms. Adeeba Mujahid, Jr.  
Standing Counsel

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+ W.P.(C) 3889/2022 with CM APPLs.11568-11569/2022, CM  
APPL.11590/2022

TRANS WORLD INTERNATIONAL LLC .... Petitioner

Through: Mr. Arijit Prasad, Sr. Advocate  
Mr. Sanjeev Gupta, Ms. Krishna  
Devi, Advocates

versus

DEPUTY COMMISSIONER OF INCOME TAX CIRCLE  
INTERNATIONAL TAX 3-1-1, DELHI & ANR. .... Respondents  
Through: Mr. Puneet Rai, Advocate

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+ W.P.(C) 3898/2022 with CM APPLs.11584-11585/2022  
RAMJI LAL BEHARI LAL ..... Peti  
Through: Mr. Nitin Gulati, Advocate

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versus

INCOME TAX OFFICER, WARD-46(1),  
DELHI & ANR. .... Respondents  
Through: Mr. Vibhooti Malhotra, Sr. Standing  
Counsel with Mr. Shailendra Singh,  
Jr. Standing Counsel  
Mr. Udit Sharma, Advocate for Income  
Tax

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+ W.P.(C) 3905/2022 with CM APPLs.11602-11604/2022  
TRANS WORLD INTERNATIONAL LLC ..... Peti  
Through: Mr. Arijit Prasad, Sr. Advocat  
Mr. Sanjeev Gupta, Ms. Krishna  
Devi, Advocates

versus

DEPUTY COMMISSIONER OF INCOME TAX CIRCLE  
INTERNATIONAL TAX 3(1)(1), DELHI & ANR. .... Respondents  
Through: Mr. Puneet Rai, Sr. Standing Counsel  
with Ms. Adeeba Mujahid, Jr.  
Standing Counsel

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+ W.P.(C) 3910/2022 with CM APPLs.11631-11633/2022  
TRANS WORLD INTERNATIONAL LLC ..... Petiti  
Through: Mr. Puneet Rai, Sr. Standing C  
with Ms. Adeeba Mujahid, Jr.  
Standing Counsel

versus

DEPUTY COMMISSIONER OF INCOME TAX CIRCLE  
INTERNATIONAL TAX 3-1-1, DELHI & ANR. .... Respondents  
Through: Mr. Puneet Rai, Sr. Standing Counsel  
with Ms. Adeeba Mujahid, Jr.  
Standing Counsel

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CORAM:  
HON'BLE MR. JUSTICE MANMOHAN  
HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN  
ORDER

% 08.03.2022

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 SUDHIR KUMAR JAIN, J MARCH 8, 2022/j