

Fateh Overseas Private Limited vs Income Tax Officer, Ward 9-1 & Ors on 26 July, 2021

Author: Manmohan

Bench: Manmohan, Navin Chawla

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 6972/2021

FATEH OVERSEAS PRIVATE LIMITED Petitioner

Through: Mr. Ved Jain, Advocate with Ms. R
Mishra, Advocate.

versus

INCOME TAX OFFICER, WARD 9-1 & ORS. Respondents

Through: Mr. Kunal Sharma, Advocate with
Ms. Zehra Khan, Mr. Shubhendu
Bhattacharyya, Advocates.

AND

+ W.P.(C) 7016/2021

RANK SECURITIES PVT LTD Petitioner

Through: Mr. Ved Jain, Advocate with Ms.
Mishra, Advocate.

versus

INCOME TAX OFFICER, WARD 21(1) & ORS. Respondent

Through: Mr. Puneet Rai, Senior Standing
with Ms. Adeeba Mujahid, Advocate
Income Tax Department
Mr. Satya Ranjan Swain, CGSC with
Mr. Kautiyla Birat, Advocate for
respondent No.4.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

Signature Not Verified
Digitally Signed By:JASWANT
SINGH RAWAT

Signing Date: 29.07.2021
20:59:30

ORDER

% 26.07.2021 The petitions have been heard by way of video conferencing. CM APPL. 22030/2021 in W.P.(C) 6972/2021 CM APPL. 22147/2021 in W.P.(C) 7016/2021 Allowed, subject to just exceptions.

Accordingly, present applications stand disposed of.

W.P.(C) 6972/2021 & CM APPL. 22029/2021 W.P.(C) 7016/2021 & CM APPL. 22146/2021 Present writ petitions have been filed challenging the notices dated 08th June, 2021 and 01st June, 2021 issued in W.P.(C) 6972/2021 and W.P.(C) 7016/2021 respectively by respondent No.1 under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') and the proceedings initiated subsequent thereto. Petitioners also challenge Clause A(a) of notification no. 20/2021 dated 31st March, 2021 and Clause A(b) of Notification No. 38/2021 dated 27th April, 2021 and explanations therein issued by respondent No.3-Central Board of Direct Taxes.

Learned counsel for the petitioners submits that the impugned notices are barred by limitation prescribed under Section 149 of the Act as amended by the Finance Act, 2021. He further submits that the impugned notices have been issued in violation of the mandatory procedure prescribed under Section 148 A of the Act vide Finance Act, 2021 with effect from 01st April, 2021. He also submits that the impugned provisions are ultra vires the powers delegated to the Central Government under Section 3 of the Taxation and other Laws (Relaxation and Amendment of certain provisions) Act, 2020.

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, 6443/2021 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."

Consequently, issue notice. Mr. Kunal Sharma, Advocate, accepts notice on behalf of respondents in W.P.(C) 6972/2021. Mr. Puneet Rai, Advocate accept notice on behalf of the respondents No.1 to 3 and Mr. Satya Ranjan Swain, Advocate accepts notice on behalf of respondent No.4- UOI in W.P.(C) 7016/2021. They pray for and are permitted to file their counter-affidavits within three weeks. Rejoinder affidavits, if any, be filed before the next date of hearing.

Till further orders, the respondents are restrained from continuing with the reassessment proceedings, in any manner, pursuant to the impugned notices.

List along with WP(C) No. 6442/2021 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 26, 2021/js