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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 6176/2021**

MON MOHAN KOHLI ..... Petitioner

Versus

ASSISTANT COMMISSIONER OF INCOME TAX & ANR.. ..... Respondents

WITH

W.P.(C) Nos. 6442/2021, 6443/2021, 6451/2021, 6465/2021, 6563/2021, 6531/2021, 6596/2021, 6607/2021, 6645/2021, 6665/2021, 6667/2021, 6668/2021, 6705/2021, 6717/2021, 6718/2021, 6777/2021, 6799/2021, 6800/2021, 6801/2021, 6805/2021, 6822/2021, 6830/2021, 6832/2021, 6857/2021, 6877/2021, 6880/2021, 6888/2021, 6889/2021, 6890/2021, 6894/2021, 6896/2021, 6897/2021, 6898/2021, 6904/2021, 6905/2021, 6906/2021, 6910/2021, 6917/2021, 6918/2021, 6920/2021, 6922/2021, 6924/2021, 6931/2021, 6950/2021 6954/2021, 6955/2021, 6962/2021, 6963/2021, 6965/2021, 6966/2021, 6968/2021, 6972/2021, 6976/2021, 7015/2021, 7016/2021, 7018/2021, 7027/2021, 7028/2021, 7030/2021, 7031/2021, 7037/2021, 7038/2021, 7039/2021, 7041/2021, 7047/2021, 7049/2021, 7054/2021, 7055/2021, 7058/2021, 7062/2021, 7066/2021, 7071/2021, 7072/2021, 7075/2021, 7076/2021, 7078/2021, 7079/2021, 7080/2021, 7083/2021, 7097/2021, 7098/2021, 7102/2021, 7104/2021, 7107/2021, 7109/2021, 7111/2021, 7130/2021, 7131/2021, 7132/2021, 7134/2021, 7138/2021, 7139/2021, 7140/2021, 7141/2021, 7143/2021, 7144/2021, 7145/2021, 7147/2021, 7158/2021, 7163/2021, 7165/2021, 7168/2021, 7169/2021, 7170/2021, 7171/2021, 7172/2021, 7173/2021, 7174/2021, 7175/2021, 7177/2021, 7178/2021, 7180/2021, 7181/2021, 7190/2021, 7191/2021, 7193/2021, 7196/2021, 7200/2021, 7201/2021, 7203/2021, 7205/2021, 7206/2021, 7208/2021, 7210/2021, 7211/2021, 7212/2021, 7213/2021, 7215/2021, 7217/2021, 7219/2021, 7220/2021, 7225/2021, 7229/2021, 7231/2021, 7257/2021, 7259/2021, 7262/2021, 7263/2021, 7267/2021, 7269/2021, 7273/2021, 7274/2021, 7275/2021, 7277/2021, 7278/2021, 7287/2021, 7292/2021, 7300/2021, 7301/2021, 7302/2021, 7303/2021, 7304/2021, 7305/2021, 7306/2021, 7307/2021,

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Mr.Virender Pratap Singh Charak with Ms.Shubhra Parashar,
Mr. Pushpender Singh Charak, Mr. Kapil Gaur, Mr. Vaishnav Kirti Singh,
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Mr. Shyam Sundar Rai, Adv.

Reserved on:- 30th October, 2021
% Date of decision:- 15th December, 2021

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

J U D G M E N T

MANMOHAN, J:

1. Various issues arise for consideration in the present batch of one thousand three hundred and forty six (1346) writ petitions, yet in essence, the questions of law that arise for consideration are whether the Government/Executive can make or change law of the land by way of Explanations to Notifications without specific Authority from the

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Legislature to do so and whether the Government/Executive can impede the implementation of law made by the Legislature.

2. It is pertinent to mention that in the present batch of matters, the petitioners-assessees have sought quashing of the re-assessment Notices issued post 31st March, 2021 by the Respondents-Revenue under Section 148 of the Income Tax Act, 1961. The petitioners-assessees also seek a declaration declaring Explanations A(a)(ii)/A(b) to the Notification No.20 [S.O.1432(E)] dated 31st March, 2021 and Notification No.38 [S.O.1703(E)] dated 27th April, 2021 to the extent that the same extend the applicability of the "*provisions of Section 148, Section 149 and Section 151 of the Act, as the case may be, as they stood as on the 31st day of March, 2021, before the commencement of the Finance Act, 2021*" to the period beyond 31st March, 2021 as *ultra vires* the parent legislation, viz., The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (hereinafter referred to as 'Relaxation Act, 2020').

ADMITTED FACTS

3. The procedure governing initiation of reassessment proceedings prior to coming into force of the Finance Act, 2021 was governed by the following provisions:-

> ***"Income escaping assessment.***
>
> ***147.*** *If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this*

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section, or recomputed the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year):

Provided *that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:*

Provided further *that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year:*

Provided also *that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.*

Explanation 1.—Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

Explanation 2.—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely :—

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(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax;

(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

(ba) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E;

(c) where an assessment has been made, but—

> *(i) income chargeable to tax has been underassessed ; or*
> *(ii) such income has been assessed at too low a rate ; or*
> *(iii) such income has been made the subject of excessive relief under this Act; or*
> *(iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed;*

(ca) where a return of income has not been furnished by the assessee or a return of income has been furnished by him and on the basis of information or document received from the prescribed income-tax authority, under sub-section (2) of section 133C, it is noticed by the Assessing Officer that the income of the assessee exceeds the maximum amount not chargeable to tax, or as the case may be, the assessee has understated the

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income or has claimed excessive loss, deduction, allowance or relief in the return;

(d) where a person is found to have any asset (including financial interest in any entity) located outside India.

Explanation 3.—For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.

Explanation 4.—For the removal of doubts, it is hereby clarified that the provisions of this section, as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.

Issue of notice where income has escaped assessment.

***148**.(1) Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:*

***Provided** that in a case—*

(a) where a return has been furnished during the period commencing on the 1st day of October,

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1991 and ending on the 30th day of September, 2005 in response to a notice served under this section, and

(b) subsequently a notice has been served under sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to sub-section (2) of section 143, as it stood immediately before the amendment of said sub-section by the Finance Act, 2002 (20 of 2002) but before the expiry of the time limit for making the assessment, re-assessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice:

***Provided further** that in a case—*

(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005, in response to a notice served under this section, and

(b) subsequently a notice has been served under clause (ii) of sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to clause (ii) of sub-section (2) of section 143, but before the expiry of the time limit for making the assessment, reassessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice.

Explanation.—For the removal of doubts, it is hereby declared that nothing contained in the first proviso or the second proviso shall apply to any return which has been furnished on or after the 1st day of October, 2005 in response to a notice served under this section.

(2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so.

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Time limit for notice.

149. *(1) No notice under section 148 shall be issued for the relevant assessment year,—*

(a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b) or clause (c);

(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year;

(c) if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.

Explanation.—In determining income chargeable to tax which has escaped assessment for the purposes of this sub-section, the provisions of Explanation 2 of section 147 shall apply as they apply for the purposes of that section.

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.

(3) If the person on whom a notice under section 148 is to be served is a person treated as the agent of a non-resident under section 163 and the assessment, reassessment or recomputation to be made in pursuance of the notice is to be made on him as the agent of such non-resident, the notice shall not be issued after the expiry of a period of six years from the end of the relevant assessment year.

Explanation.—For the removal of doubts, it is hereby clarified that the provisions of sub-sections (1) and (3), as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.

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Sanction for issue of notice.

> ***151***. *(1) No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice.*
>
> *(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.*
>
> *(3) For the purposes of sub-section (1) and sub-section (2), the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or the Joint Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue such notice himself."*

4. Due to the onset of Covid-19 pandemic followed by nationwide lockdown in March, 2020, the citizens and authorities *inter alia* faced difficulties in complying with the statutory time limits. To provide relaxation as well as to avoid any adverse consequence to either party, the Government of India announced various relaxations by way of The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (hereinafter referred to as the 'Relaxation Ordinance, 2020'). The objects and reasons as well as the relevant portion of the Relaxation Ordinance, 2020 are reproduced herein below:-

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"THE TAXATION AND OTHER LAWS (RELAXATION OF CERTAIN PROVISIONS) ORDINANCE, 2020 NO. 2 of 2020, DATED 31-3-2020

Promulgated by the President in the Seventy-first Year of the Republic of India.

An Ordinance to provide relaxation in the provisions of certain Acts and for matters connected therewith or incidental thereto.

WHEREAS, in view of the spread of pandemic COVID-19 across many countries of the world including India, causing immense loss to the lives of people, it has become imperative to relax certain provisions, including extension of time limit, in the taxation and other laws;

AND WHEREAS, Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance: —

CHAPTER I PRELIMINARY

Short title and commencement

1. *(1) This Ordinance may be called the Taxation and Other Laws commencement. (Relaxation of Certain Provisions) Ordinance, 2020.*
(2) Save as otherwise provided, it shall come into force at once.

Definitions

2. *(1) In this Ordinance, unless the context otherwise requires,—*
(a) "specified Act" means—

(i) the Wealth-tax Act, 1957 (27 of 1957);
(ii) the Income-tax Act, 1961 (43 of 1961);
(iii) the Prohibition of Benami Property Transactions Act, 1988 (45 of 1988);
(iv) Chapter VII of the Finance (No. 2) Act, 2004 (22 of 2004);

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(v) Chapter VII of the Finance Act, 2013 (17 of 2013);
(vi) the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (22 of 2015);
(vii) Chapter VIII of the Finance Act, 2016; (28 of 2016) or
(viii) the Direct Tax Vivad se Vishwas Act, 2020 (3 of 2020);

(b) "notification" means the notification published in the Official Gazette.

(2) The words and expressions used herein and not defined, but defined in the specified Act, the Central Excise Act, 1944 (1 of 1944), the Customs Act, 1962 (52 of 1962), the Customs Tariff Act, 1975 (51 of 1975) or the Finance Act, 1994 (32 of 1994), as the case may be, shall have the meaning respectively assigned to them in that Act.

CHAPTER II
RELAXATION OF CERTAIN PROVISIONS OF SPECIFIED ACT

Relaxation of certain provision of specified Act

3. (1) Where, anytime limit has been specified in, or prescribed or notified under, the specified Act which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020 or such other date after the 29th day of June, 2020 as the Central Government may, by notification, specify in this behalf, for the completion or compliance of such action as—

(a) completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called, under the provisions of the specified Act; or
(b) filing of any appeal, reply or application or furnishing of any report, document, return, statement or such other record, by whatever name called, under the provisions of the specified Act; or
(c) in case where the specified Act is the Income-tax Act, 1961 (43 of 1961), —
(i) making of investment, deposit, payment, acquisition, purchase, construction or such other action, by whatever

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name called, for the purposes of claiming any deduction, exemption or allowance under the provisions contained in—

(I) sections 54 to 54GB or under any provisions of Chapter VI-A under the heading "B.—Deductions in respect of certain payments" thereof; or

(II) such other provisions of that Act, subject to fulfillment of such conditions, as the Central Government may, by notification, specify; or

(ii) beginning of manufacture or production of articles or things or providing any services referred to in section 10AA of that Act, in a case where the letter of approval, required to be issued in accordance with the provisions of the Special Economic Zones Act, 2005 (28 of 2005), has been issued on or before the 31st day of March, 2020 (28 of 2005),

and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action shall, notwithstanding anything contained in the specified Act, stand extended to the 30th day of June, 2020, or such other date after the 30th day of June, 2020, as the Central Government may, by notification, specify in this behalf:

Provided that the Central Government may specify different dates for completion or compliance of different actions.

Provided further that such action shall not include payment of any amount as is referred to in sub-section (2).”

5. As the pandemic and problems arising therefrom did not show any sign of abatement, the Legislature enacted Relaxation Act, 2020 in September, 2020. By way of Relaxation Act, 2020, various due dates/time limits/limitations prescribed in different Central Acts, including the Income Tax Act, 1961, were relaxed. Additionally, Section 3 of Relaxation Act, 2020 enabled the Central Government to issue Notifications for further

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relaxing the time limits/limitations prescribed in the '*Specified Acts*'. The Statement of Objects and Reasons as well as the relevant portion of the Relaxation Act, 2020 are reproduced herein below:-

> "***STATEMENT OF OBJECTS AND REASONS***
>
> *The outbreak of Novel Corona Virus (COVID-19) pandemic across many countries of the world, including India, has caused immense loss to lives of people and given rise to unprecedented humanitarian and economic crisis in the country. Due to vagaries of pandemic, a national lockdown was imposed which had to be further extended. Due to very rapid spread of pandemic, social distancing had to be ensured immediately to prevent society at large from its disastrous consequences. This necessitated ease of compliance under certain tax and other laws.*
>
> *2. As Parliament was not in session and in view of the urgency, the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (Ord. 2 of 2020) was promulgated on the 31st day of March, 2020 which, inter alia, relaxed certain provisions of the specified Acts relating to direct taxes, indirect taxes and prohibition of Benami property transactions. Further, certain notifications were also issued under the said Ordinance.*
>
> *3. In view of stakeholders' representations received after enactment of the Finance Act, 2020, and due to need for further rationalisation of some provisions of certain Acts, further amendments are considered necessary to be incorporated in the proposed Bill replacing the Ordinance.*
>
> *4. The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Bill, 2020 which seeks to replace the said Ordinance, inter alia, provides for extension of various time limits for completion or compliance of actions under the specified Acts and reduction in interest, waiver of penalty and prosecution for delay in payment of certain taxes or levies during the specified period.*

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5. Further, the Bill proposes amendments to the Income-tax Act, 1961 which, inter alia, include providing of tax incentive for Category-III Alternative Investment Funds located in the International Financial Services Centre (IFSC) to encourage relocation of foreign funds to the IFSC, deferment of new procedure of registration and approval of certain entities introduced through the Finance Act, 2020, providing for deduction for donation made to the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES FUND) and exemption to its income, incorporation of Faceless Assessment Scheme, 2019 therein, empowering the Central Government to notify schemes for faceless processes under certain provisions by eliminating physical interface to the extent technologically feasible and to provide deduction or collection at source in respect of certain transactions at threefourth's rate for the period from 14th May, 2020 to 31st March, 2021.

6. The Bill also proposes to amend the Direct Tax Vivad se Viswas Act, 2020 to extend the date for payment without additional amount to 31st December, 2020 and to empower the Central Government to notify certain dates relating to filing of declaration and making of payment.

7. The Finance Act, 2020 is also proposed to be amended to clarify regarding capping of surcharge at 15 per cent on dividend income of the Foreign Portfolio Investor.

8. The Bill also proposes to empower the Central Government to remove any difficulty up to a period of two years and provide for repeal and savings of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020.

9. The Bill seeks to achieve the aforesaid objectives.

NEW DELHI; *NIRMALA SITHARAMAN*
The 11th September, 2020.

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THE TAXATION AND OTHER LAWS (RELAXATION AND AMENDMENT OF CERTAIN PROVISIONS) ACT, 2020

NO. 38 OF 2020

[29th September, 2020.]

AN ACT to provide for relaxation and amendment of provisions of certain Acts and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Seventy-first Year of the Republic of India as follows:—

CHAPTER I
PRELIMINARY

1. *(1) This Act may be called the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020.*

(2) Save as otherwise provided, it shall be deemed to have come into force on the 31st day of March, 2020.

2. *(1) In this Act, unless the context otherwise requires,—*

(a) "notification" means the notification published in the Official Gazette;

(b) "specified Act" means—

(i) the Wealth-tax Act, 1957;

(ii) the Income-tax Act, 1961;

(iii) the Prohibition of Benami Property Transactions Act, 1988;

(iv) Chapter VII of the Finance (No. 2) Act, 2004;

(v) Chapter VII of the Finance Act, 2013;

(vi) the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015;

(vii) Chapter VIII of the Finance Act, 2016; or

(viii) the Direct Tax Vivad se Vishwas Act, 2020.

(2) The words and expressions used herein and not defined, but defined in the specified Act, the Central Excise Act,1944, the Customs

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Act, 1962, the Customs Tariff Act,1975 or the Finance Act,1994, as the case may be, shall have the same meaning respectively assigned to them in that Act.

CHAPTER II

RELAXATION OF CERTAIN PROVISIONS OF SPECIFIED ACT

3. (1) Where, any time-limit has been specified in, or prescribed or notified under, the specified Act which falls during the period from the 20th day of March, 2020 to the 31st day of December, 2020, or such other date after the 31st day of December, 2020, as the Central Government may, by notification, specify in this behalf, for the completion or compliance of such action as—

(a) completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval, or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called, under the provisions of the specified Act; or

(b) filing of any appeal, reply or application or furnishing of any report, document, return or statement or such other record, by whatever name called, under the provisions of the specified Act; or

(c) in case where the specified Act is the Income-tax Act, 1961,—

(i) making of investment, deposit, payment, acquisition, purchase, construction or such other action, by whatever name called, for the purposes of claiming any deduction, exemption or allowance under the provisions contained in—

(I) sections 54 to 54GB, or under any provisions of Chapter VI-A under the heading "B.—Deductions in respect of certain payments" thereof; or

(II) such other provisions of that Act, subject to fulfilment of such conditions, as the Central Government may, by notification, specify; or

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(ii) beginning of manufacture or production of articles or things or providing any services referred to in section 10AA of that Act, in a case where the letter of approval, required to be issued in accordance with the provisions of the Special Economic Zones Act, 2005, has been issued on or before the 31st day of March, 2020,

and where completion or compliance of such action has not been made within such time, then, the time-limit for completion or compliance of such action shall, notwithstanding anything contained in the specified Act, stand extended to the 31st day of March, 2021, or such other date after the 31st day of March, 2021, as the Central Government may, by notification, specify in this behalf:

Provided that the Central Government may specify different dates for completion or compliance of different actions:

xxxx xxxx xxxx xxxx

10. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the end of the month in which this Act has received the assent of the President.

(2) Every order made under this section shall be laid before each House of Parliament.

11. (1) The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 is hereby repealed.

(2) Notwithstanding such repeal, anything done, any notification issued or any action taken under the said Ordinance, shall be deemed to have been done, issued or taken under the corresponding provisions of this Act."

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6. In pursuance to the power vested under Section 3 of Relaxation Act, 2020, the Central Government issued following Notifications inter-alia extending the time lines prescribed under Section 149 for issuance of reassessment notices under Section 148 of the Income Tax Act, 1961:

Date of Notification	**Original limitation for issuance of notice under Section 148 of the Act**	**Extended Limitation**
31.03.2020	20.03.2020 to 29.06.2020	30.06.2020
24.06.2020	20.03.2020 to 31.12.2020	31.03.2021
31.03.2021	31.03.2021	30.04.2021
27.04.2021	30.04.2021	30.06.2021

7. The Explanations to the Notifications dated 31st March, 2021 and 27th April, 2021 issued under Section 3 of Relaxation Act, 2020 also stipulated that the provisions, as existed prior to amendment by Finance Act, 2021, shall apply to the reassessment proceedings initiated thereunder. The Explanations to the Notifications dated 31st March, 2021 and 27th April, 2021 are impugned in the present proceedings. The said Notifications are reproduced hereinbelow:-

> "**A. *NOTIFICATION S.O.1432(E) [NO.20/2021/F.NO.370142/35/2020-TPL]***
>
> ***SECTION 3 OF THE TAXATION AND OTHER LAWS (RELAXATION AND AMENDMENT OF CERTAIN PROVISIONS) ACT, 2020, READ WITH SECTIONS 139AA, 144C, 148, 149 AND 151 OF THE INCOME-TAX ACT, 1961 AND SECTION 168 OF THE FINANCE ACT, 2016 – RELAXATION OF CERTAIN PROVISIONS OF SPECIFIED ACT -***

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EXTENSION OF DUE DATE FOR COMPLETION OF ACTION UNDER SPECIFIED ACTS

NOTIFICATION S.O.1432(E) [NO.20/2021/F.NO.370142 /35/2020-TPL], DATED 31-3-2021

In exercise of the powers conferred by sub-section (1) of section 3 of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (38 of 2020) (hereinafter referred to as the said Act), and in partial modification of the notification of the Government of India in the Ministry of Finance, (Department of Revenue) No. 93/2020 dated the 31st December, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), vide number S.O. 4805(E), dated the 31st December, 2020, the Central Government hereby specifies that,—

(A) where the specified Act is the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the Income-tax Act) and, —

(a) the completion of any action referred to in clause (a) of sub-section (1) of section 3 of the Act relates to passing of an order under sub-section (13) of section 144C or issuance of notice under section 148 as per time-limit specified in section 149 or sanction under section 151 of the Income-tax Act, —

(i) the 31st day of March, 2021 shall be the end date of the period during which the time-limit, specified in, or prescribed or notified under, the Income-tax Act falls for the completion of such action; and

(ii) the 30th day of April, 2021 shall be the end date to which the time-limit for the completion of such action shall stand extended.

Explanation.— For the removal of doubts, it is hereby clarified that for the purposes of issuance of notice under section 148 as per time-limit specified in section 149 or sanction under section 151 of the Income-tax Act, under this sub-clause, the provisions of section 148, section 149 and section 151 of the Income-tax Act, as the case may be, as they stood as on the 31st day of March 2021, before the commencement of the Finance Act, 2021, shall apply.

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(b) the compliance of any action referred to in clause (b) of sub-section (1) of section 3 of the said Act relates to intimation of Aadhaar number to the prescribed authority under sub-section (2) of section 139AA of the Income-tax Act, the time-limit for compliance of such action shall stand extended to the 30th day of June, 2021.

(B) where the specified Act is the Chapter VIII of the Finance Act, 2016 (28 of 2016) (hereinafter referred to as the Finance Act) and the completion of any action referred to in clause (a) of sub-section (1) of section 3 of the said Act relates to sending an intimation under sub-section (1) of section 168 of the Finance Act, —

(i) the 31st day of March, 2021 shall be the end date of the period during which the time-limit, specified in, or prescribed or notified under, the Finance Act falls for the completion of such action; and
(ii) the 30th day of April, 2021 shall be the end date to which the time-limit for the completion of such action shall stand extended.

B. NOTIFICATION S.O.1703(E)[NO.38/2021/F.NO. 370142/ 35 /2020-TPL]

SECTION 3 OF THE TAXATION AND OTHER LAWS (RELAXATION AND AMENDMENT OF CERTAIN PROVISIONS) ACT, 2020 - RELAXATION OF CERTAIN PROVISIONS OF SPECIFIED ACT - EXTENSION OF DUE DATE FOR COMPLETION OF ACTION UNDER SPECIFIED ACTS

NOTIFICATION S.O. 1703 (E) [NO. 38 /2021/ F. NO. 370142/ 35/2020-TPL], DATED 27-4-2021

In exercise of the powers conferred by sub-section (1) of section 3 of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (38 of 2020) (hereinafter referred to as the said Act), and in partial modification of the notifications of the Government of India in the Ministry of Finance, (Department of Revenue) No. 93/2020 dated the 31st December, 2020, No. 10/2021

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dated the 27th February, 2021 and No. 20/2021 dated the 31st March, 2021, published in the Gazette of India, Extraordinary, Part-II, Section 3, Subsection (ii), vide number S.O. 4805(E), dated the 31st December, 2020, vide number S.O. 966(E) dated the 27th February, 2021 and vide number S.O. 1432(E) dated the 31st March, 2021, respectively (hereinafter referred to as the said notifications), the Central Government hereby specifies for the purpose of sub-section (1) of section 3 of the said Act that, —

(A) where the specified Act is the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the Income-tax Act) and, —

(a) the completion of any action, referred to in clause (a) of sub-section (1) of section 3 of the said Act, relates to passing of any order for assessment or reassessment under the Income-tax Act, and the time limit for completion of such action under section 153 or section 153B thereof, expires on the 30th day of April, 2021 due to its extension by the said notifications, such time limit shall further stand extended to the 30th day of June, 2021;

(b) the completion of any action, referred to in clause (a) of sub-section (1) of section 3 of the said Act, relates to passing of an order under sub-section (13) of section 144C of the Income-tax Act or issuance of notice under section 148 as per time-limit specified in section 149 or sanction under section 151 of the Income-tax Act, and the time limit for completion of such action expires on the 30th day of April, 2021 due to its extension by the said notifications, such time limit shall further stand extended to the 30th day of June, 2021.

Explanation.— *For the removal of doubts, it is hereby clarified that for the purposes of issuance of notice under section 148 as per time-limit specified in section 149 or sanction under section 151 of the Income-tax Act, under this sub-clause, the provisions of section 148, section 149 and section 151 of the Income-tax Act, as the case may be, as they stood as on the 31st day of March 2021, before the commencement of the Finance Act, 2021, shall apply.*

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(B) where the specified Act is the Chapter VIII of the Finance Act, 2016 (28 of 2016) (hereinafter referred to as the Finance Act) and the completion of any action, referred to in clause (a) of sub-section (1) of section 3 of the said Act, relates to sending an intimation under sub-section (1) of section 168 of the Finance Act, and the time limit for completion of such action expires on the 30th day of April, 2021 due to its extension by the said notifications, such time limit shall further stand extended to the 30th day of June, 2021."

(emphasis supplied)

8. Parliament introduced reformative changes to Sections 147 to 151 of the Income Tax Act, 1961 governing reassessment proceedings by way of the Finance Act, 2021, which was passed on 28th March, 2021. The relevant portions of the Budget Speech 2021-2022 of the Minister of Finance, Union of India as well as Memorandum explaining the provisions in the Finance Bill, 2021, the Notes on clauses to the Finance Bill, 2021 and the Finance Act, 2021 are reproduced hereinbelow:-

*"**A. BUDGET SPEECH 2021-2022 OF THE MINISTER OF FINANCE***

Direct Tax Proposals

149. Keeping this in mind, our Government introduced a series of reforms in the Direct tax system for the benefit of our taxpayers and economy. Few months prior to the pandemic, in order to attract investments we slashed our Corporate tax rate to make it among the lowest in the world. The Dividend Distribution Tax too was abolished. The burden of taxation on small taxpayers was eased by increasing rebates. In 2020, the return filers saw a dramatic increase to 6.48 crore from 3.31 crore in 2014.

150. In the Direct Tax administration, we had recently introduced the Faceless Assessment and Faceless Appeal. I now seek to take further steps to simplify the tax administration, ease compliance, and reduce litigation.

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"Annex to Part B of Budget Speech

Direct Tax Proposals

Sl.No.	***Proposals***	***Proposed Amendments in brief***
1.	***xxx***	***xxx***
2.	***Reduction in Time Limits***	*In order to reduce compliance burden, the time-limit for re-opening of assessment is being reduced to 3 years from the current 6 years from the end of the relevant assessment year. Re-opening up to 10 years is proposed to be allowed only if there is evidence of undisclosed income of ₹50 lakh or more for a year. Further, it is proposed to completely remove discretion in re-opening and henceforth re-opening shall be made only in cases flagged by system on the basis of data analytics, objection of C&AG and in search/survey cases.* *Further, in order to bring certainty in income tax proceedings at the earliest, it is also proposed to reduce the time limits for general assessment or processing of income tax return by three months and also for filing of returns.*

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B. MEMORANDUM EXPLAINING THE PROVISIONS IN THE FINANCE BILL, 2021

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Income escaping assessment and search assessments

Under the Act, the provisions related to income escaping assessment provide that if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may assess or reassess or recompute the total income for such year under section 147 of the Act by issuing a notice under section 148 of the Act. However, such reopening is subject to the time limits prescribed in section 149 of the Act.

In cases where search is initiated u/s 132 of the Act or books of account, other documents or any assets are requisitioned under section 132A of the Act, assessment is made in the case of the assessee, or any other person, in accordance with the special provisions of sections 153A, 153B, 153C and 153D, of the Act that deal specifically with such cases. These provisions were introduced by the Finance Act, 2003 to replace the block assessment under Chapter XIV-B of the Act. This was done due to failure of block assessment in its objective of early resolution of search assessments. Also, the procedural issues related to block assessment were proving to be highly litigation-prone. However, the experience with this procedure has been no different. Like the provisions for block assessment, these provisions have also resulted in a number of litigations.

Due to advancement of technology, the department is now collecting all relevant information related to transactions of taxpayers from third parties under section 285BA of the Act (statement of financial transaction or reportable account). Similarly, information is also received from other law enforcement agencies. This information is also shared with the taxpayer through Annual Information Statement under section 285BB of the Act. Department uses this information to verify the information declared by a taxpayer in the return and to detect non-filers or or those who have not disclosed the correct amount of total income. Therefore, assessment or reassessment or re-computation of income escaping assessment, to a large extent, is information-driven.

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In view of above, there is a need to completely reform the system of assessment or reassessment or re-computation of income escaping assessment and the assessment of search related cases.

The Bill proposes a completely new procedure of assessment of such cases. It is expected that the new system would result in less litigation and would provide ease of doing business to taxpayers as there is a reduction in time limit by which a notice for assessment or reassessment or re-computation can be issued. The salient features of new procedure are as under:-

(i) The provisions of section 153A and section 153C, of the Act are proposed to be made applicable to only search initiated under section 132 of the Act or books of accounts, other documents or any assets requisitioned under section 132A of the Act, on or before 31st March 2021.

(ii) Assessments or reassessments or in re-computation in cases where search is initiated under section 132 or requisition is made under 132A, after 31st March 2021, shall be under the new procedure.

(iii) Section 147 proposes to allow the Assessing Officer to assess or reassess or re-compute any income escaping assessment for any assessment year (called relevant assessment year).

(iii) Before such assessment or reassessment or re-computation, a notice is required to be issued under section 148 of the Act, which can be issued only when there is information with the Assessing officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year. Prior approval of specified authority is also required to be obtained before issuance of such notice by the Assessing Officer.

(iv) It is proposed to provide that any information which has been flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board shall be considered as information which suggests that the income chargeable to tax has escaped assessment. The flagging would largely be done by the computer based system.

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(v) Further, a final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been in accordance with the provisions of the Act shall also be considered as information which suggests that the income chargeable to tax has escaped assessment.

(vi) Further, in search, survey or requisition cases initiated or made or conducted, on or after 1st April, 2021, it shall be deemed that the Assessing officer has information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated or requisition is made or any material is seized or requisitioned or survey is conducted.

(vii) New Section 148A of the Act proposes that before issuance of notice the Assessing Officer shall conduct enquiries, if required, and provide an opportunity of being heard to the assessee. After considering his reply, the Assessing Office shall decide, by passing an order, whether it is a fit case for issue of notice under section 148 and serve a copy of such order along with such notice on the assessee. The Assessing Officer shall before conducting any such enquiries or providing opportunity to the assessee or passing such order obtain the approval of specified authority. However, this procedure of enquiry, providing opportunity and passing order, before issuing notice under section 148 of the Act, shall not be applicable in search or requisition cases.

(viii) The time limitation for issuance of notice under section 148 of the Act is proposed to be provided in section 149 of the Act and is as below:

- *in normal cases, no notice shall be issued if three years have elapsed from the end of the relevant assessment year. Notice beyond the period of three years from the end of the relevant assessment year can be taken only in a few specific cases.*
- *in specific cases where the Assessing Officer has in his possession evidence which reveal that the income*

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escaping assessment, represented in the form of asset, amounts to or is likely to amount to fifty lakh rupees or more, notice can be issued beyond the period of three year but not beyond the period of ten years from the end of the relevant assessment year;

- *Another restriction has been provided that the notice under section 148 of the Act cannot be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit prescribed under the provisions of clause (b), as they stood immediately before the proposed amendment.*
- *Since the assessment or reassessment or re-computation in search or requisition cases (where such search or requisition is initiated or made on or before 31st March 2021) are to be carried out as per the provision of section 153A, 153B, 153C and 153D of the Act, the aforesaid time limitation shall not apply to such cases.*
- *It is also proposed that for the purposes of computing the period of limitation for issue of section 148 notice, the time or extended time allowed to the assessee in providing opportunity of being heard or period during which such proceedings before issuance of notice under section 148 are stayed by an order or injunction of any court, shall be excluded. If after excluding such period, time available to the Assessing Officer for passing order, about fitness of a case for issue of 148 notice, is less than seven days, the remaining time shall be extended to seven days.*

(ix) The specified authority for approving enquiries, providing opportunity, passing order under section 148A of the Act and for issuance of notice under section 148 of the Act are proposed to be—

(a) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than

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three years have elapsed from the end of the relevant assessment year;

(b) Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year.

(x) Once assessment or reassessment or re-computation has started the Assessing officer is proposed to be empowered (as at present) to assess or reassess the income in respect of any issue which has escaped assessment and which comes to his notice subsequently in the course of the proceeding under this procedure notwithstanding that the procedure prescribed in section 148A was not followed before issuing such notice for such income.

These amendments will take effect from 1st April, 2021.

xxxx xxxx xxxx xxxx

C. NOTES ON CLAUSES TO THE FINANCE BILL, 2021

……

Clause 35 of the Bill seeks to amend section 147 of the Income-tax Act relating to income escaping assessment.

It is proposed to substitute the said section so as to provide that if any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing officer may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for such assessment year.

This amendment will take effect from 1st April, 2021.

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Clause 36 of the Bill seeks to amend section 148 of the Income-tax Act relating to issue of notice where income has escaped assessment.

It is proposed to substitute the said section so as to provide that before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice along with a copy of order passed under clause (d) of section 148A, requiring him to furnish within such period, as may be specified in such notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139, provided that no notice under the said section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and prior approval of the specified authority to issue such notice has been obtained by the Assessing Officer. The proposed Explanation 1 to the said section provides for the purposes of the said section and section 148A, that information which suggests that the income chargeable to tax has escaped assessment means any information flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time or any final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act. The proposed Explanation 2 provides that where (i) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 1st day of April, 2021, in the case of the assessee; or (ii) survey is conducted under section 133A in the case of the assessee; or (iii) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned in

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case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or (iv) the Assessing officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee, the Assessing officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person. The proposed Explanation 3 provides that the "specified authority" shall mean the specified authority referred to in section 151.

This amendment will take effect from 1st April, 2021.

Clause 37 of the Bill seeks to insert a new section 148A in the Income-tax Act relating to Conducting inquiry, providing opportunity before issue of notice under section 148.

It is proposed to insert a new section 148A, which seeks to provide that the Assessing Officer shall, before issuing any notice under section 148, - (a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that income chargeable to tax has escaped assessment; (b) provide an opportunity of being heard to the assessee, with the prior approval of specified authority, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a); (c) consider the reply of assessee furnished, if any, in response to the show-cause

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notice referred to in clause (b); and (d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires, provided that the provisions of this sub-section shall not apply in a case, where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of the assessee on or after the 1st day of April, 2021 or the Assessing officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under section 132 or requisitioned under section 132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or the Assessing officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under section 132 or requisitioned under section 132A, in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relates to, the assessee. Explanation 3 to the said section provides that "Specified authority" shall mean specified authority referred to in section 151.

This amendment will take effect from 1st April, 2021.

Clause 38 of the Bill seeks to amend section 149 of the Income-tax Act relating to time limit for notice.

It is proposed to substitute the said section so as to provide that no notice under section 148 shall be issued for the relevant assessment year - (a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b); (b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of accounts or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount

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to fifty lakh rupees or more for that year. Provided that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit prescribed under the provisions of clause (b), as they stood immediately before the commencement of the Finance Act, 2021. Further, the provisions of this section shall not apply to cases where a notice under section 153A or section 153C read with section 153A is required to be issued in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A on or before the 31st day of March, 2021 and for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice under clause (b) of section 148A; or the period during which the proceeding under section 148A is stayed by an order or injunction of any court shall be excluded and also where immediately after the exclusion of such period, the period of limitation available to the Assessing Officer for passing an order under clause (d) of section 148A is less than seven days, such remaining period shall be extended to seven days and the period of limitation in sub-section (1) shall be deemed to be extended accordingly.

This amendment will take effect from 1st April, 2021.

Clause 39 of the Bill seeks to substitute of a new section for section 151 relating to sanction for issue of notice.

It is proposed to substitute the said section so as to provide that for the purpose of section 148, specified authority shall be (i) Principal Commissioner of Income-tax or Principal Director of Income-tax or Commissioner of Income-tax or Director of Income-tax, if three years or less than three years have elapsed from the end of the relevant assessment year; (ii) Principal Chief Commissioner of Income-tax or Principal Director General of Income-tax, or where there is no Principal Chief Commissioner of Income-tax or Principal Director General of Income-tax, Chief Commissioner of Income-tax or Director General of Income-tax, if more than three years have elapsed from the end of the relevant assessment year.

This amendment will take effect from 1st April, 2021...

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D. RELEVANT EXTRACT OF THE FINANCE ACT, 2021

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

New Delhi, the 28th March, 2021/Chaitra 7, 1943 (Saka)

The following Act of Parliament received the assent of the President on the 28th March, 2021, and is hereby published for general information:—

THE FINANCE ACT, 2021
NO. 13 OF 2021

An Act to give effect to the financial proposals of the Central Government for the financial year 2021-2022.

BE it enacted by Parliament in the Seventy-second Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Finance Act, 2021.

(2) Save as otherwise provided in this Act,—

(a) sections 2 to 88 shall come into force on the 1st day of April, 2021;

(b) sections 108 to 123 shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

xxxx xxxx xxxx xxxx

40. For section 147 of the Income-tax Act, the following section shall be substituted, namely:—

"147. If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (hereafter in this section

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and in sections 148 to 153 referred to as the relevant assessment year).

Explanation.—For the purposes of assessment or reassessment or recomputation under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of section 148A have not been complied with.".

41. For section 148 of the Income-tax Act, the following section shall be substituted, namely:—

"148. Before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A, requiring him to furnish within such period, as may be specified in such notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:

Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice.

Explanation 1.—For the purposes of this section and section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,—

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(i) any information flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;

(ii) any final objection raised by the Comptroller and Auditor-General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act.

Explanation 2.—For the purposes of this section, where,—

(i) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 1st day of April, 2021, in the case of the assessee; or

(ii) a survey is conducted under section 133A, other than under sub-section (2A) or sub-section (5) of that section, on or after the 1st day of April, 2021, in the case of the assessee; or

(iii) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under section 132 or under section 132A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

(iv) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee,

the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated or books of account, other documents or any assets are requisitioned or

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survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.

Explanation 3.—For the purposes of this section, specified authority means the specified authority referred to in section 151."

42. After section 148 of the Income-tax Act, the following section shall be inserted, namely:—

"148A. The Assessing Officer shall, before issuing any notice under section 148,—

(a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;

(b) provide an opportunity of being heard to the assessee, with the prior approval of specified authority, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);

(c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);

(d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in

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which time or extended time allowed to furnish a reply as per clause (b) expires:

Provided that the provisions of this section shall not apply in a case where,—

(a) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of the assessee on or after the 1st day of April, 2021; or

(b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under section 132 or requisitioned under section 132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

(c) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under section 132 or requisitioned under section 132A, in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee.

Explanation.—For the purposes of this section, specified authority means the specified authority referred to in section 151.”

43. For section 149 of the Income-tax Act, the following section shall be substituted, namely:—

‘149. (1) No notice under section 148 shall be issued for the relevant assessment year,—

(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which

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has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year:

Provided that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section, as they stood immediately before the commencement of the Finance Act, 2021:

Provided further that the provisions of this sub-section shall not apply in a case, where a notice under section 153A, or section 153C read with section 153A, is required to be issued in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or before the 31st day of March, 2021:

Provided also that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (b) of section 148A or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded:

Provided also that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of section 148A is less than seven days, such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly.

Explanation.—For the purposes of clause (b) of this sub-section, "asset" shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.

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(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.'

44. For section 151 of the Income-tax Act, the following section shall be substituted, namely:—

"151. Specified authority for the purposes of section 148 and section 148A shall be,—

(i) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year;

(ii) Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year."

45. In section 151A of the Income-tax Act, in sub-section (1), in the opening portion, after the words and figures "issuance of notice under section 148", the words, figures and letter "or conducting of enquiries or issuance of show-cause notice or passing of order under section 148A" shall be inserted."

9. As, despite the substituted Sections 147 to 151 of the Income Tax Act, 1961 coming into force on 1st April, 2021, the respondents issued reassessment notices to the petitioners-assessees under the erstwhile Sections 148 to 151 of the Income Tax Act, 1961 relying on Explanations in the Notifications dated 31st March, 2021 and 27th April, 2021, the petitioners filed the present writ petitions challenging the legality and validity of the said Explanations as well as the reassessment notices issued pursuant thereto.

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10. In the present batch of writ petitions, this Court passed interim stay orders. The relevant portion of one such interim order passed in W.P.(C) 6442/2021 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.*

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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..."

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ARGUMENTS ON BEHALF OF THE PETITIONERS

11. Mr. S. Ganesh and Mr. Percy Pardiwalla, learned Senior counsel as well as Ms. Kavita Jha, Mr. Ved Jain, Mr. Rohit Jain, Mr. Neeraj Jain, Mr. Aseem Chawla, Mr. Piyush Kaushik, Mr. Sachit Jolly, Mr. Salil Kapur, Mr. Kapil Gupta, Mr. Puneet Agrawal, Mr. Gaurav Gupta, Mr. T.M. Shivakumar, Mr. Manibhadra Jain, Dr. Rakesh Gupta, Mr. Mayank Nagi, Mr. Arvind Kumar, Mr. Mukhi, Mr. P.C. Yadav, Mr. Raghvendra Singh and Mr. Rahul Chaudhary, learned counsel addressed arguments on behalf of the petitioners.

12. Learned counsel for the petitioners submitted that as the Finance Act, 2021 had substituted / replaced the earlier provisions, being Sections 147, 148, 149 & 151 of the Income Tax Act, 1961, with the new provisions, the same would result in repeal of the earlier provisions and, therefore, the earlier provisions could not be relied upon or referred to. In support of their submission, they relied upon the judgment passed by the Supreme Court in ***PTC India Limited Vs. Central Electricity Regulatory Commission, Through Secretary, (2010) 4 SCC 603***. The relevant portion of the said judgment is reproduced hereinbelow:-

> *"91. In this connection, it may be seen that Section 121 of the original Act stood substituted by Amendment Act 57 of 2003. Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision. Substitution is a combination of repeal and fresh enactment. (See Principles of Statutory Interpretation by G.P. Singh, 11th Edn., p. 638.) Section 121 of the original Electricity Act, 2003 was never brought into force. It was substituted by new Section 121 by Amendment Act 57 of 2003 which was brought into force by a Notification dated 27-1-2004. Substitution, as stated above, results in repeal of the old provision and replacement by a new*

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provision. Applying these tests to the facts of the present case, we find that the Electricity (Amendment) Act, 2003 (57 of 2003) was brought into force by Notification dated 27-1-2004. That, notification was issued under Section 1(2) of the Electricity (Amendment) Act, 2003 (57 of 2003). If one reads Section 1(2) of the Electricity (Amendment) Act, 2003 (57 of 2003) with Notification dated 27-1-2004 issued under Section 1(2) of the amended Act, 2003, it becomes clear that on coming into force of the Electricity (Amendment) Act, 2003 (57 of 2003) all provisions amended by it also came into force. Hence, there was no requirement for a further notification under Section 1(3), consequently, Section 121 in its amended form came into force with effect from 27-1-2004."

13. Learned counsel for petitioners pointed out that as per clause (a) of the new Section 149, reassessment proceedings could be initiated within three years from the end of relevant Assessment Year and as per clause (b), the reassessment proceedings, in exceptional circumstances, could be initiated within ten years from the end of relevant year; however, the extended time limit of ten years was fettered with preconditions, as under:

a. The Assessing Officer has in his possession books of accounts or other documents or evidence;

b. Such documents/evidence in possession of the Assessing Officer reveal escapement of income chargeable to tax in the form of an 'asset';

c. Such 'asset', as defined, amounts to Rs. 50 lakhs or more.

14. Learned counsel for petitioners pointed out that this Court in ***C.B. Richards Ellis Mauritius Ltd. vs. Assistant Director of Income-Tax: 208 Taxman 322 (Delhi)***, while interpreting the applicability of an earlier amendment to Section 149 of the Income Tax Act, 1961 vide Finance Act,

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2001, (whereby the earlier existing time limit of ten years was reduced to six years), has held that the reduced time limit applied with effect from the Finance Act coming into force.

15. Thus, according to them, under Section 149 clause (a) prescribing three years' time limit, reassessment from Assessment Year 2018-19 onwards could only be reopened on or after 1st April, 2021 and prior years were barred. Further, for initiation of reassessment proceedings for any Assessment Year prior to Assessment Year 2018-19, exceptional conditions of Section 149 clause (b) were required to be satisfied by the Revenue. Importantly, satisfaction of the aforesaid preconditions prescribed by clause (b) could be ascertained only when the procedure prescribed under Section 148A had been followed prior to issuance of notice under Section 148 of the Income Tax Act, 1961.

16. Learned counsel for petitioners submitted that once the Parliament had exercised its powers of legislation (enactment of Finance Act, 2021), then any action, such as issuance of Notifications dated 31st March, 2021 and 27th April, 2021 contrary to said legislation, taken by any other agency/wing of the Government was bad in law as the same fell foul of the doctrine of 'Occupied Field'. They submitted that the entire law stood substituted and was specifically made applicable from a particular date. Accordingly pursuant to the Legislature occupying the field governing initiation of reassessment proceedings, no authority was vested in Government to issue the Notifications dated 31st March, 2021 and 27th April, 2021, so as to disturb/intrude into the field occupied by the Legislature.

17. Learned counsel for petitioners also submitted that the impugned Notifications were subservient to the substituted Sections 147 to 151 by the

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Finance Act, 2021 and the Notifications to the extent they contradicted Section 149 were deemed to have been impliedly repealed by operation of the Finance Act, 2021. In support of their submission, they relied upon the Judgment passed by this Court in ***Fibre Boards (P.) Ltd., Bangalore vs. Commissioner of Income-tax, Bangalore: (2015) 376 ITR 596 (SC)***, wherein it has been held as under:

> *"13. Repeal by implication has been dealt with by at least two judgments of this Court. In State of Orissa v. M.A. Tulloch & Co. [1964] 4 SCR 461, this Court considered the question as to whether the expression "repeal" in Section 6 of the General Clauses Act would be of sufficient amplitude to cover cases of implied repeal. This Court stated:*
>
> > *"The next question is whether the application of that principle could or ought to be limited to cases where a particular form of words is used to indicate that the earlier law has been repealed. The entire theory underlying implied repeals is that there is no need for the later enactment to state in express terms that an earlier enactment has been repealed by using any particular set of words or form of drafting but that if the legislative intent to supersede the earlier law is manifested by the enactment of provisions as to effect such supersession, then there is in law a repeal notwithstanding the absence of the word 'repeal' in the later statute." (at page 483)*
>
> *Similarly in Ratan Lal Adukia v. Union of India, [1989] 3 SCC 537, this Court held that the substituted Section 80 of the Code of Civil Procedure repealed by implication, insofar as the railways are concerned, Section 20 of the self-same code. In so holding, this Court stated:—*
>
> > *"The doctrine of implied repeal is based on the postulate that the legislature which is presumed to know the existing state of the law did not intend to create any confusion by retaining conflicting provisions. Courts, in applying this doctrine, are supposed merely to give effect to the legislative intent by*

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examining the object and scope of the two enactments. But in a conceivable case, the very existence of two provisions may by itself, and without more, lead to an inference of mutual irreconcilability if the later set of provisions is by itself a complete code with respect to the same matter. In such a case the actual detailed comparison of the two sets of provisions may not be necessary. It is a matter of legislative intent that the two sets of provisions were not expected to be applied simultaneously. Section 80 is a special provision. It deals with certain class of suits distinguishable on the basis of their particular subject matters." (at para 18)"

18. Learned counsel for petitioners further submitted that Notifications dated 31st March, 2021 and 27th April, 2021 were *ultra vires* the Income Tax Act, 1961 as amended by Finance Act, 2021 and in excess of the enabling powers prescribed under Section 3 of Relaxation Act, 2020. They stated that Legislature by virtue of Section 3 of Relaxation Act, 2020 had bestowed upon the Central Government very specific and limited power to issue Notifications extending time limits which fell during the period specified therein. They further stated that Explanation (A)(a)(ii) of Notification dated 31st March, 2021 and Explanation to clause (A)(b) of Notification dated 27th April, 2021 had illegally prescribed that the repealed Sections 148, 149 & 151 of the Income Tax Act, 1961 would be applicable. According to them, the following points were apparent on face of the said Notifications:-

a. The Notifications were in excess of the enabling powers prescribed under Section 3 of Relaxation Act 2020, as Relaxation Act 2020 did not delegate the power to legislate on provisions to be followed for initiation of reassessment proceedings; and

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b. The Notifications were *ultra vires* the provisions of Sections 147, 148, 148A, 149 & 151 of the Income Tax Act, 1961, as amended by the Finance Act, 2021, as the said provisions had been substituted /inserted with effect from 1st April, 2021, effectively repealing old provisions that existed prior thereto.

19. Learned counsel for petitioners submitted that the impugned Explanations had attempted to revive and keep in existence two different schemes governing the initiation of reassessment proceedings, which were substantially different from each other and thus could not co-exist at the same time.

20. Learned counsel for the petitioners submitted that the impugned reassessment notices issued between 1st April, 2021 and 30th June, 2021 had been issued in violation of the mandatory procedure prescribed under Section 148A of the Income Tax Act, 1961, as substituted by the Finance Act, 2021. They submitted that though the new Section 148A gave a legislative recognition to the procedure laid down in various judicial precedents such as ***GKN Driveshafts (India) Ltd. v. Income Tax Officer & Ors., 259 ITR 19 (SC)*** and created a vested right in favour of the assessee of being heard prior to issuance of notice under Section 148 as well as receipt of formal order considering the objections with inbuilt check in the form of mandatory sanction by the prescribed authority under Section 151 of the Income Tax Act, 1961, yet the impugned notices had been issued in violation of the same.

21. They emphasised that in the present batch of cases, the Revenue had not followed the procedure prescribed under Section 148A and no books of accounts/ evidence/ documents had been revealed to be in possession of the

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Assessing Officer. Additionally, the other preconditions prescribed for invoking clause (b) had not been stated to be satisfied and thus, it was clear that the Assessing Officer had no ground to invoke clause (b) of the newly incorporated Section 149 of the Income Tax Act, 1961.

22. In the alternative, learned counsel for the petitioners submitted that Sections 147 to 151 were procedural provisions, inasmuch as, they primarily amended limitation period and therefore applied retrospectively i.e. to reassessment notices deemed to have been issued within the limitation period.

ARGUMENTS ON BEHALF OF THE RESPONDENTS

23. *Per contra,* Mr. Sunil Agarwal, Mr. Zoheb Hossain, Mr. Puneet Rai, Mr. Sanjay Kumar, Mr. Shailender Singh, Mr. Ruchir Bhatia, learned counsel for the respondents, contended that the present batch of writ petitions challenged the legality and validity of only the Explanations to the two Notifications, being Notification No.20/2021 dated 31st March, 2021 and Notification No.38/2021 dated 27th April, 2021, issued by Central Government in exercise of powers vested under Section 3(1) of Relaxation Act, 2020. They emphasized that petitioners had not challenged either the main Clause of the said Notifications to which 'Explanations' were appended or the Relaxation Ordinance, 2020 or Relaxation Act, 2020, which enabled the Central Government to extend dates as a measure of relief contingent upon on-ground analysis of Covid-19 situation.

24. They stated that the arguments advanced by the petitioners were in complete ignorance of the background of once-in-hundred years emergency called Global Covid-19 pandemic and the fact that all the three organs of the State and also the world at large were unanimous in their perception of the

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threat to human life which was continuing with severe intensity [second wave] at the time when the impugned Notifications were issued. They pointed out that the Supreme Court by way of a series of orders in 'Cognizance of Limitation' extended limitation and Legislature by promulgating Relaxation ordinance in March, 2020 and conversion of Relaxation Ordinance into Relaxation Act, 2020 had extended dates for compliance and issuance of notices. They submitted that management of Covid-19 was akin to a war-time emergency measure and therefore had to be construed more liberally in favour of the State than peace time legislations. They stated that in ***State of Bombay vs. Virkumar Gulabchand Shah, AIR 1952 SC 335***, the Supreme Court had held as under:-

> *"16. It is also perhaps relevant to note that the term which was under consideration in those cases occurred in a war-time measure, namely, a Proclamation promulgated on the 4th of August, 1914, the day on which the first world war started. There is authority for the view that war-time measures, which often have to be enacted hastily to meet a grave pressing national emergency in which the very existence of the State is at stake, should be construed more liberally in favour of the Crown or the State than peace time legislation....."*

25. Learned counsel for respondents submitted that Section 3(1) of Relaxation Act, 2020 was an example of conditional legislation and not delegated legislation. They emphasised that jurisprudentially, conditional legislation is treated at par with plenary legislation and therefore is immune from attack on grounds on which delegated legislation can be attacked. According to them, the petitioners had failed to keep the said distinction in mind in the instant petitions. In support of their submission, they relied upon the judgments passed by the Supreme Court in ***Re Delhi Laws Act,***

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1912, Ajmer-Merwara (Extension of Laws) Act, 1947 Vs. The Part 'C' States (Laws) Act, 1950, 1951 SCR 747 and ***I.T.C. Bhadrachalam Paperboards & Anr. vs. Mandal Revenue Officer, Andhra Pradesh & Ors., (1996) 6 SCC 634***. The relevant portions of the said judgments are reproduced hereinbelow:-

A. ***Re Delhi Laws Act, 1912, Ajmer-Merwara (Extension of Laws) Act, 1947*** (supra)

"301. Broadly speaking, the question of delegated legislation has come up for consideration before courts of law in two distinct classes of cases. One of these classes comprises what is known as cases of "conditional legislation", where according to the generally accepted view, the element of delegation that is present relates not to any legislative function at all, but to the determination of a contingency or event, upon the happening of which the legislative provisions are made to operate. The other class comprises cases of delegation proper, where admittedly some portion of the legislative power has been conferred by the legislative body upon what is described as a subordinate agent or authority.

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306. Thus, conditional legislation has all along been treated in judicial pronouncements not to be a species of delegated legislation at all. It comes under a separate category, and, if in a particular case all the elements of a conditional legislation exist, the question does not arise as to whether in leaving the task of determining the condition to an outside authority, the legislature acted beyond the scope of its powers…

B. ***I.T.C. Bhadrachalam Paperboards & Anr.*** (supra)

"24. We may in this connection refer to the decision of the Supreme Court of United States in Field v. Clark [143 US 649 : 36 L Ed 294 (1892)]. The Tariff Act of 1890 empowered the President to suspend the operation of the Act, permitting free import of certain products within United States, on being satisfied that the duties imposed upon such products were

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> *reciprocally unequal and unreasonable. It was submitted that the said power transfers the legislative and treaty-making power to the President and, hence, unlawful. The attack was repelled holding that the President was a mere agent of the Congress to ascertain and declare the contingency upon which the will of the Congress was to take effect....*
>
> *26. What is, however, relevant is that the power to bring an Act into force as well as the power to grant exemption are both treated, without a doubt, as belonging to the category of conditional legislation. Very often the legislature makes a law but leaves it to the executive to prescribe a date with effect from which date the Act shall come into force. As a matter of fact, such a course has been adopted even in the case of a constitutional amendment, to wit, the Constitution (Forty-fourth Amendment) Act, 1978, insofar as it pertains to amendment of Article 22 of the Constitution. The power given to the executive to bring an Act into force as also the power conferred upon the Government to exempt persons or properties from the operation of the enactment are both instances of conditional legislation and cannot be described as delegated legislation."*

26. They further submitted that Section 3(1) of Relaxation Act, 2020 creates a legal fiction by virtue of which the Revenue was entitled to invoke Section 148 of the Income Tax Act, 1961, as it existed prior to 31st March, 2021 during the extended period between 1st April, 2021 and 30th June, 2021. They submitted that the fiction under Section 3(1) of Relaxation Act, 2020 was evident from its object namely, *'In view of the spread of pandemic Covid-19 across many countries of the world including India, causing immense loss to the lives of people, it had become imperative to relax certain provisions, including extension of time-limit'*. They submitted that the limited fiction which came into play by virtue of Section 3(1) of Relaxation Act, 2020 was that '*such action*' which was due for completion

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or compliance between 20th March, 2020 and 31st December, 2020 or such other date after 31st December, 2020 as the Central Government may by Notification specify, which in this case is 31st March, 2021 [later modified to 30th April, 2021] stood 'extended' for the purpose of compliance or completion of 'such action' [which could not be completed] to a date beyond 31st March, 2021, which was finally specified by the Central Government to be 30th June, 2021. They submitted that it was this liminal period of 1st April, 2021 till 30th June, 2021 that the fiction came into play.

27. According to them, the two expressions vital for the purpose of understanding the fiction at play were '*such action*' and '*extended*'. They submitted that one could not be read in isolation of the other without doing violence to the plain language of Section 3(1) of Relaxation Act, 2020. They pointed out that neither the vires of Section 3(1) of Relaxation Act, 2020 nor the power conferred by Section 3(1) of Relaxation Act, 2020 upon the Central Government to fix the terminal dates were under challenge. They emphasized that the Central Government was conferred with the power to fix two terminal dates or outer time limits under Section 3(1) – the expiry date by which compliance was required to be made under the specified Act but could not be made and the extended date by which such compliance could be made.

28. They submitted that a legal fiction must be taken to its logical conclusion with all its natural corollaries and consequences. Therefore, according to them, the expressions '*such action*' under the specified Act and '*extension*' used in Relaxation Act, 2020 meant that the power to issue notice under Section 148 [as it existed prior to the coming into force of the Finance Act, 2021] was available to the Revenue by way of the fiction in

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Relaxation Act, 2020, which extended the time limit for completion or compliance of 'such action' which would have otherwise expired between 20th March, 2020 and 31st March, 2021. In support of their submission, they relied upon the judgment passed by the Supreme Court in ***M. Venugopal vs. Divisional Manager, Life Insurance Corporation of India, Machilipatnam, A.P. & Anr., (1994) 2 SCC 323***, wherein it has been held as under:-

> *"11. The effect of a deeming clause is well-known. Legislature can introduce a statutory fiction and courts have to proceed on the assumption that such state of affairs exists on the relevant date. In this connection, one is often reminded of what was said by Lord Asquith in the case of East End Dwellings Co. Ltd. v. Finsbury Borough Council that when one is bidden to treat an imaginary state of affairs as real, he must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which inevitably have flowed from it — one must not permit his "imagination to boggle" when it comes to the inevitable corollaries of that state of affairs. In view of the amendments aforesaid introduced in Section 48 it has to be held that Regulation 14 referred to above in respect of termination of the service of an employee of the Corporation within the period of probation shall be deemed to be a rule framed under Section 48(2)(cc) having overriding effect over Section 2(oo) and Section 25-F of the Industrial Disputes Act."*

29. They submitted that as a result of the fiction created by Section 3 of Relaxation Act, 2020, the Revenue had available to it the "power" in cases where the limitation for issuance of notice was expiring between 20th March, 2020 and 31st March, 2021 [later modified to 30th April, 2021], to take "such action" i.e. the issuance of Notice under Section 148, on or before 30th June, 2021. The jural co-relative of "power", as per Hohfeld's theory on Jural Relations, is "liability". Therefore, where there is a power, it follows that

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there is a liability imposed on the person against whom the power exists. If the power under the erstwhile Section 148 existed, then consequently, the corresponding liability to be reopened under unamended Section 148 continued.

30. They also submitted that there was no conflict between Relaxation Act, 2020 and Finance Act, 2021 due to their specific text, context, scheme and object. They submitted that the principles of harmonious construction and *ut res magis valeat quam pereat* lead to an inexorable conclusion that if there was some conflict, alleged or real, between two provisions of law, the Courts were enjoined to make all out efforts to save both the provisions, rather than declaring any of them as a useless lumber.

31. In the alternative, they further submitted that if there was a conflict between the two statutes, Relaxation Act, 2020 would override the Finance Act, 2021, not only on ground of being a special Act but also for the reason that Section 3(1) of Relaxation Act contains a non-obstante clause giving the enacting part of Section 3(1) an overriding effect over the Income Tax Act, 1961. In support of their submission, they relied upon the judgment passed by the Supreme Court in ***Union of India & Ors. vs. Exide Industries Limited & Anr., (2020) 5 SCC 274***, wherein it has been held as under:-

> *"21. Section 43-B bears heading "certain deductions to be only on actual payment". It opens with a non obstante clause. As per settled principles of interpretation, a non obstante clause assumes an overriding character against any other provision of general application. It declares that within the sphere allotted to it by Parliament, it shall not be controlled or overridden by any other provision unless specifically provided for. Out of the allowable deductions, the legislature consciously earmarked certain deductions from time to time and included them in the ambit of Section*

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43-B so as to subject such deductions to conditionality of actual payment. Such conditionality may have the inevitable effect of being different from the theme of mercantile system of accounting on accrual of liability basis qua the specific head of deduction covered therein and not to other heads. But that is a matter for the legislature and its wisdom in doing so."

32. Consequently, according to them, in case of conflict between the Relaxation Act, 2020 and the Income Tax Act, 1961, Relaxation Act, 2020 would prevail.

33. They submitted that even the Finance Act, 2021 did not apply to the substituted Sections 147 to 151 of the Income Tax Act, 1961 retrospectively and was applicable only with effect from 1st April, 2021. They further submitted that Section 147, being a right to assess, is a substantive right, while Sections 148 to 151 are the machinery provisions. According to them, Finance Act, 2021 had amended the entire scheme of reassessment from Sections 147 to 151 making both substantive and procedural amendments and, therefore, could not apply retrospectively. They submitted that there is a vested right in favour of the Revenue under the old regime of Sections 147 to 151, which could not be taken away by applying retrospectively a shorter period of limitation in a new provision i.e., the substituted Section 149. In support of their submissions, they relied upon the judgment passed by the Supreme Court in ***M.P Steel Corporation vs. Commissioner of Central Excise (2015) 7 SCC 58***, wherein it has been held, *"….The new law of limitation providing a longer period cannot revive a dead remedy. Nor can it suddenly extinguish a vested right of action by providing for a shorter period of limitation…a new law of limitation providing for a shorter period cannot certainly extinguish a vested right of action."*

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34. Learned counsel for the respondents contended that the Relaxation Act, 2020 maintains equality ensuring that notices under old Section 148 were issued to all similarly placed assessees i.e. the assessees to whom notices were issued prior to March, 2020 and those to whom notices could not be issued due to the pandemic. According to them, if the assessees' arguments were accepted, it would lead to unreasonable classification between those assessees who could not be issued notices only due to pandemic, who would be treated more favourably and unequally than those set of assessees in whose favour notices stood issued prior to March, 2020, for escapement of income for the same set of assessment years.

35. In the alternative, they submitted that Section 3(1) of Relaxation Act, 2020 is a 'stop-the-clock' provision somewhat similar to the U.S. legal doctrine known as 'Tolling' which allows for the pausing or delaying of the running of the period of time set forth by a statute containing limitation. In support of their submission, they relied upon the judgment passed by the Supreme Court of United States in ***Carlos CHARDON etc. et al. vs. Juan Fumero SOTO, et al., 1983 SCC OnLine US Sc 135 : 462 US 650 (1983)***, wherein it has been held as under:-

> *"1. Petitioners, Puerto Rican educational officials, demoted respondents from nontenured supervisory positions to teaching or lower-level administrative posts in the public school system because of respondents' political affiliations. Shortly before Puerto Rico's one-year statute of limitations would have expired, a class action was filed against petitioners on respondents' behalf under 42 U.S.C. § 1983. Subsequently class certification was denied because the class was not sufficiently numerous. The parties agree that the statute of limitations was tolled during the pendency of the § 1983 class action, but they disagree as to the effect of the tolling. [This opinion uses the word "tolling" to mean*

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that, during the relevant period, the statute of limitations ceases to run. "Tolling effect" refers to the method of calculating the amount of time available to file suit after tolling has ended. The statute of limitations might merely be suspended; if so, the plaintiff must file within the amount of time left in the limitations period. If the limitations period is renewed, then the plaintiff has the benefit of a new period as long as the original. It is also possible to establish a fixed period such as six months or one year during which the plaintiff may file suit, without regard to the length of the original limitations period or the amount of time left when tolling began.] Did the one-year period begin to run anew when class certification was denied, or was it merely suspended during the pendency of the class action? We must decide whether the answer is provided by Puerto Rican law or by federal law.

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21. In American Pipe the Court rejected the claim that antitrust claims brought by various Utah public agencies and municipalities was barred by the four-year limitations period of § 4B of the Clayton Act, reasoning that the running of this period had been tolled on three occasions. As to two of these occasions, involving periods during which federal litigation was pending, the Court's reasoning simply applied § 5(b) of the Clayton Act. Section 5(b) explicitly addressed the effect of pending federal litigation, stating unambiguously that "Whenever any civil or criminal proceeding is instituted by the United States to prevent, restrain, or punish violations of any of the antitrust laws, . . . the running of the statute of limitations in respect of every private right of action arising under said laws . . . shall be suspended during the pendency thereof and for one year thereafter." 15 U.S.C. § 16(b). The first two periods in which American Pipe held that § 4B had been tolled followed simply from a straightforward application of § 5(b).

….The more orthodox inquiry, however, would seem to be what the Court actually decided then, not what we now think it needed to decide. And, as the discussion above plainly demonstrates, American Pipe concluded that Rule 23 contains a tolling rule that suspends (but does nothing more) the running of

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limitations periods during the pendency of class actions. [The Court correctly recognizes that Board of Regents v. Tomanio, 446 U.S. 478, 100 S.Ct. 1790, 64 L.Ed.2d 440 (1980), is distinguishable. That case did not involve a class action, and, thus the Court had no occasion to consider whether Rule 23 creates a federal tolling rule, or the character of that rule. Thus, there was "a void . . . in federal statutory law," id., at 483, 100 S.Ct., at 1794, and state aw was called upon to fill the void. Owing to American Pipe and its interpretation of Rule 23, there is no comparable void in this case, and federal law is therefore applicable.]"

36. Without prejudice and in the alternative to all of the above, they submitted that even Section 6 of the General Clauses Act, 1897 would allow notices to be issued and proceedings to be instituted, since by operation of Section 3(1) of Relaxation Act, 2020, a right had accrued in favour of the Revenue to re-open the assessment within an extended time period in such cases where limitation to reopen under Section 148/149 expired on 31st March, 2021. They submitted that by virtue of Section 6(c) of the General Clauses Act, 1897, the mere substitution of the erstwhile Section 148 did not take away the aforesaid incurred right. According to them, by virtue of Section 6(c) of the General Clauses Act, 1897, in all such cases wherein the limitation for issuance of notice under Section 148 was expiring on 31st March, 2021, the Revenue could initiate proceedings for the re-opening of assessment under the erstwhile Section 148, as if the same had not been substituted. In support of their submission, learned counsel for the respondents relied upon the judgment passed by the Supreme Court in ***T.S. Baliah vs. T.S. Rangachari, Income Tax Officer, Central Circle VI, Madras, (1969) 3 SCR 65*** wherein it has been held as under:-

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> *"….But when the repeal is followed by fresh legislation on the same subject the Court would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. The question is not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. Section 6 of the General clauses Act therefore will be applicable unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new statute and the mere absence of a saving clause is by itself not material...."*

37. Learned counsel for respondents lastly relied upon the judgment passed by the High Court of Chhattisgarh in ***Palak Khatuja vs. Union of India and Ors., W.P.(T) No. 149 of 2021*** upholding the legality and validity of similarly issued reassessment notices. In the said judgment, the Chhattisgarh High Court has held, "*….legislative delegation which is exercised by the Central Government by notification to uphold the mechanism as prevailed prior to March, 2021 is not in conflict with any Act and notification by executive i.e. Ministry of Finance would be the part of legislative function*."

REJOINDER

38. In rejoinder, learned counsel for the petitioners submitted that the reasoning given by the Chhattisgarh High Court in the case of ***Palak Khatuja*** (supra) that the impugned Notifications issued under Relaxation Act, 2020 deferred the operation of Section 148A of the Income Tax Act, 1961 was a startling conclusion, apart from repeated references in the said judgments to the Covid-19 pandemic.

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39. Learned counsel for the petitioners pointed out that the Division Bench of Allahabad High Court had taken a diametrically opposite view in its judgment dated 30th September, 2021 passed in ***Writ Tax No. 524/2021*** titled ***Ashok Kumar Agarwal Vs. Union of India through its Revenue Secretary North Block***. In the said judgment, the Allahabad High Court has upheld the submission of the petitioner-assessee that Section 148 notices issued after 1st April, 2021, which did not comply with post 31st March, 2021 provisions of the Income Tax Act, 1961, were illegal, bad in law as well as null and void.

40. They re-emphasised that the Relaxation Act, 2020 and the Notifications issued thereunder only extended the time limits for initiating re-assessment, but did not otherwise touch or affect the applicable provisions which mandatorily had to be complied with in respect of such re-assessment.

SUR-REJOINDER

41. In sur-rejoinder, learned counsel for the respondents submitted that Allahabad High Court in ***Ashok Kumar Agarwal Vs. Union of India through its Revenue Secretary North Block*** (supra) had erroneously held that Section 3(1) of Relaxation Act, 2020 was meant to protect proceedings already underway or that may have become time-barred between 20th March, 2021 and 30th June, 2021. They pointed out that it was not the impugned Notifications but Section 3(1) of Relaxation Act, 2020 which permitted extension of time for compliance or completion of action which expired between 20th March, 2020 and 31st March, 2021 to be extended to a date beyond 31st March, 2021. Therefore, according to them, fixation of a date

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beyond 31st March, 2021 was, in fact, permitted by the principle legislation – the Relaxation Act, 2020 itself.

COURT'S REASONING

AS THE LEGISLATURE HAS PERMITTED RE-ASSESSMENT TO BE MADE ONLY IN ACCORDANCE WITH THE SUBSTITUTED PROVISIONS, IT CAN ONLY BE DONE IN THIS MANNER, OR NOT AT ALL.

42. Having heard learned counsel for the parties, this Court is of the view that by virtue of Section 1(2)(a) of the Finance Act, 2021, the substituted Sections 147, 148, 149 and 151 of the Income Tax Act, 1961 pertaining to reopening of assessments came into force on 1st April, 2021. The significance of the expression '*shall*' in Section 1(2)(a) of the Finance Act, 2021 cannot be lost sight of. This is in contrast to the language under Section 1(2)(b) which states that Sections 108 to 123 of the Finance Act, 2021 shall come into force on such date, as the Central Government may, by Notification in the Official Gazette, appoint. The Memorandum to the Finance Bill, 2021, too, clarifies that its Sections 2 to 88 which included the substituted Sections 147 to 151 of the Income Tax Act, 1961 will take effect from 1st April, 2021. There is also no power with the Executive/Respondents/Revenue to defer/postpone the implementation of Sections 2 to 88 of the Finance Act, 2021 which includes the substituted Sections 147 to 151 of the Income Tax Act, 1961.

43. It is settled law that the law prevailing on the date of issuance of the notice under Section 148 has to be applied. [See: ***Foramer Vs. CIT (2001) 247 ITR 436 (All.), affirmed by the Supreme Court in (2003) 264 ITR 566 (SC), Varkey Jacob Co. Vs. CIT and Anr. (2002) 257 ITR 231 (Ker), Smt.***

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N.Illamathy vs. ITO (2020) 275 taxman 25/195 CTR 543 (Mad)(HC), RK Upadhyay v Shanabhai, (1987) 166 ITR 163 (SC); CIT v Rameshwar Prasad, (1991) 188 ITR 291 (All HC); Dr. Onkar Dutt Sharma v CIT, (1967) 65 ITR 359 (All HC)].

44. This Court is of the view that had the intention of the Legislature been to keep the erstwhile provisions alive, it would have introduced the new provisions with effect from 1st July, 2021, which has not been done. Accordingly, the notices relating to any assessment year issued under Section 148 on or after 1st April, 2021 have to comply with the provisions of Sections 147, 148, 148A, 149 and 151 of the Income Tax Act, 1961 as specifically substituted by the Finance Act, 2021 with effect from 1st April, 2021.

45. Consequently, this Court is of the opinion that as the Legislature has permitted re-assessment to be made in this manner only, it can be done in this manner, or not at all[1].

SECTION 3(1) OF RELAXATION ACT EMPOWERS THE GOVERNMENT/EXECUTIVE TO EXTEND ONLY THE TIME LINES. CONSEQUENTLY, THE GOVERNMENT/EXECUTIVE CAN NEITHER MAKE OR CHANGE LAW OF THE LAND NOR CAN IT IMPEDE THE IMPLEMENTATION OF LAW MADE BY THE PARLIAMENT.

46. Upon perusal of Section 3(1) of Relaxation Act, 2020, this Court is of the view that it extends only the time lines. Section 3(1) of the Relaxation Act, 2020 stipulates that where, any time limit has been stipulated in a

[1] ***This Court in Principal Commissioner of Income Tax-4 Vs. Headstrong Services India (P.) Ltd., [2021] 125 taxman.com 262 (Del), has held, "It is further settled law that when a power is given to do certain thing in a certain way, the thing must be done in that way or not at all and other methods of performance are forbidden. [See: Taylor Vs. Taylor,1875) 1 Ch.D.426; Nazir Ahmad Vs. King Emperor, AIR 1936 PC 253, AIR 1975 SC 985; Babu Verghese Vs. Bar Council of Kerala, (1999) 3 SCC 422]."***

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specified Act which falls between the period 20th day of March, 2020 and 31st day of December, 2020 for the completion or compliance of such action as issuance of any notice under the provisions of the specified Acts and where completion or compliance of such action has not been made within such time, then the time limit for completion or compliance of such action shall, notwithstanding anything contained in the specified Acts, stand extended. It is important to bear in mind that Section 3(1) of the Relaxation Act, 2020 does not empower the Central Government to postpone the applicability of any provision which has been enacted from a particular date. There is a difference between extension of time of an action which is getting time barred and applicability of a provision which has been enacted and notified by the Legislature. Relaxation Act, 2020 nowhere delegates power to the Central Government to postpone the date of applicability of a new law enacted by the Legislature. Relaxation Act, 2020 also does not put any embargo on the power of the Legislature to legislate.

47. Also, the impugned Explanations in the Notifications dated 31st March, 2021 and 27th April, 2021 are beyond the power delegated to the Government, as 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. Accordingly, the provisions of Section 148A had to be complied with before issuing notices under Section 147 of the Income Tax Act, 1961 and the submission of the respondents-Revenue based on the judgment passed by Chhattisgarh High Court in ***Palak Khatuja Vs. UOI*** (supra) does not find favour with this Court. After all, it is settled law that Executive cannot make

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or change law of the land without specific Authority from Parliament to do so.[2]

48. Consequently, the Relaxation Act, 2020 and Notifications issued thereunder can only change the time-lines applicable to the issuance of a Section 148 notice, but they cannot change the statutory provisions applicable thereto which are required to be strictly complied with. Further, just as the Executive cannot legislate, it cannot impede the implementation of law made by the Legislature.

THE IMPUGNED EXPLANATIONS IN THE NOTIFICATIONS DATED 31ST MARCH, 2021 AND 27TH APRIL, 2021 ARE ULTRA VIRES THE PARENT STATUTE I.E. THE RELAXATION ACT. THIS COURT IS RESPECTFULLY NOT IN AGREEMENT WITH THE VIEW OF THE CHHATTISGARH HIGH COURT IN PALAK KHATUJA (SUPRA), BUT WITH THE VIEWS EXPRESSED BY THE ALLAHABAD HIGH COURT IN ASHOK KUMAR AGARWAL (SUPRA) AND RAJASTHAN HIGH COURT IN BPIP INFRA PRIVATE LIMITED VS. INCOME TAX OFFICER, WARD 4(1), S.B. CIVIL WRIT PETITION 13297/2021

49. Further, the impugned Explanation is not only beyond the power delegated to the Government, but also in conflict with the provisions of the Income Tax Act, 1961 which had specifically made the new reassessment scheme applicable from 1st April, 2021. It is settled law that the delegation of authority must be express. There is no scope for any implied delegation of authority. The delegated authority must act strictly within the parameters of the authority delegated to it. The delegated authority cannot override the Act either by exceeding the authority or by making provisions inconsistent with the Act. The distinction between conditional legislation or delegated legislation is irrelevant to the controversy at hand, as the person to whom the

[2] ***R (on the application of Miller and Another) V. Secretary of State for Exiting the European Union (2017) UKSC 5*) *popularly known as Miller No.1***.

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power is entrusted in either situation can do nothing beyond the limits which circumscribe the power.[3] Subordinate legislation cannot be contrary to the parent statute[4]. Consequently, this Court is respectfully not in agreement with the finding of Chhattisgarh High Court in ***Palak Khatuja*** (supra) that the legislative delegation exercised by the Central Government by impugned Notifications to uphold the mechanism as prevailing prior to March, 2021 is not in conflict with any Act. To be fair to Chhattisgarh High Court, there was no challenge in the petitions filed before it to the legality and validity of the impugned Notifications dated 31st March, 2021 and 27th April, 2021. On the contrary, this Court is in agreement with the views of the Allahabad High Court and Rajasthan High Court (Bench at Jaipur) in ***Ashok Kumar Agarwal*** *(supra)* and ***Bpip Infra Private Limited vs. Income Tax Officer, Ward 4(1), S.B. Civil Writ Petition 13297/2021,*** respectively.

50. Consequently, Explanations A(a)(ii)/A(b) to the Notifications dated 31st March, 2021 and 27th April, 2021 are *ultra vires* the Relaxation Act, 2020 and are therefore, bad in law and null and void.

FINANCE ACT, 2021 HAS MERELY CHANGED THE PROCEDURE OF ISSUING NOTICE. CONSEQUENTLY, THE "POWER" OF REASSESSMENT THAT EXISTED PRIOR TO 31ST MARCH, 2021 CONTINUES TO EXIST EVEN THEREAFTER.

51. Hohfeld's theory on Jural Relations does not come to the aid of the Revenue. It is not disputed that as per Hohfeld's theory, the jural correlative of "power" is "liability". Where there is power, there is corresponding liability imposed upon the person against whom such power exists.

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[3] ***Lachmi Narain vs. UOI AIR 1976 SC 714, St. John's Teachers Training Institute vs. Regional Director (2003) 3 SCC 321.***

[4] ***Indian Express Newspapers vs. UOI AIR 1986 SC 515, State of Tamil Nadu vs. P Krishnamurthy (2006) 4 SCC 517.***

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However, with the coming into force of the Finance Act, 2021 w.e.f. 1st April, 2021, there has been no curtailing or taking away the power of the Revenue. It has merely changed the procedure of issuing notice. Consequently, the "power" as per Hohfeld's theory that existed prior to 31st March, 2021 continues to exist even thereafter.

TO IGNORE THE LEGISLATIVE INTENT OF FINANCE ACT, 2021 WOULD NOT BE IN ACCORDANCE WITH PAST PRACTICE.

52. It is pertinent to mention that the Legislature had even prior to Finance Act, 2021 enhanced/reduced time limit specified in Section 149 of the Income Tax Act, 1961, by way of Finance Acts, 1961, 1989, 2001, 2012 and pertinently such enhancement/reduction to the time limit was made effective from different dates of the relevant financial year. A tabular chart showing previous changes to time limits under Section 149 is reproduced hereinbelow:-

Amendments to Section 149 of the Income Tax Act, 1961

Amending Act	*Permissible Time limit (from the end of assessment year) for issuance of notice under Section 148*	*Effective Date of coming into force*
Income Tax Act, 1961	*-8 years* *-16 years* *-4 years*	*01.04.1962*
Direct Tax Amendment Act, 1987	*-4 years* *-7years* *-10 years* *(All the provisions were substituted)*	*01.04.1989*
Finance Act, 2001	*-4 years* *-6 years* *(All the provisions were substituted)*	*01.06.2001*

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Finance Act, 2012	*-4 years* *-6 years* *-16 years* *(16 years condition has been newly inserted, rest were undisturbed)*	*01.07.2012*
Finance Act, 2021	*-3 years* *-10 years* *(All the provisions are substituted)*	*01.04.2021*

53. This Court in ***C.B. Richards Ellis Mauritius Ltd.*** (supra), while interpreting the applicability of an earlier amendment to Section 149 of the Income Tax Act, 1961 vide Finance Act, 2001, whereby the earlier existing time limit of ten years was reduced to six years, has held that the reduced time limit applied with effect from the Finance Act coming into force. The relevant portion of the said judgment is reproduced hereinbelow:-

> *"7. Having considered the contentions of the parties and the legal issues raised therein, we feel that the petitioner is entitled to succeed. Section 6 of General Clauses Act deals with effect of repeal of an enactment and stipulates that unless a different intention appears, the repeal will not affect the previous operation of any enactment so repealed or any right, privilege, obligation or liability acquired, accrued or affect any penalty, investigation, legal proceeding or remedy. The said Section deals with substantive rights and liabilities. It is also subject to intention to the contrary. Intention can be implied. The procedural law when it is repealed should be applied from the date the new provision or procedure comes into force. The reason is that no person has a vested right or an accrued right in the procedure. No obligation or liability is normally imposed by a procedure. Sometime distinction is drawn between the right acquired or accrued and legal proceedings to acquire a right. In the latter case, there is*

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only hope which is destroyed by the repeal. What is protected is the preserved right and privileges acquired and accrued and corresponding obligation and liability incurred on the other party. The legal process or the procedure for the enjoyment of the said right is not protected. Section 6, normally does not apply to procedural law. The procedural law when amended or substituted is generally retroactive and applies from the day of its enforcement and to this extent it can be retrospective. The question raised is whether the amendment/substitution of the period with effect from 1.6.2001 in Section 149 of the Act, is procedural or substantive....

xxx xxx xxx xxx

11. Law of limitation, therefore, being procedural law has to be applied to the proceedings on the date of institution/filing. No person can have a vested right in the procedure. Therefore, the procedural law on the date when it was enforced is applied. Bennion Statutory interpretation (1st addition page 446 para 191) has elucidated:-

> *"Because a change made by the legislator in procedural provisions is expected to be for the general benefit of litigants and others, it is presumed that it applies to pending as well as future proceedings."*

12. Law of limitation does not create any right in favour of a person or define or create any cause of action, but simply prescribes that the remedy can be exercised or availed of by or within the period stated and not thereafter. Subsequently, the right continues to exist but cannot be enforced. The liability to tax under the Act is created by the charging Section read with the computation provisions. The assessment proceedings crystallize the said liability so that it can be enforced and the tax if short paid or unpaid can be collected. If this difference between liability to tax and the procedure prescribed under the Act for computation of the liability (i.e. the procedure of assessment), is kept in mind, there would be no difficulty in understanding and

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appreciating the fallacy and the error in the primary argument raised by the Revenue. It is a settled position that liability to tax as a levy is normally determined as per statute as it exists on the first day of the assessment year, but this is not the issue or question in the present case. The issue or question in the present case relates to assessment i.e. initiation of re-assessment proceedings and whether the time/limitation for initiation of the re-assessment proceedings specified by the Finance Act, 2001 is applicable. We are not determining/deciding the liability to tax but have to adjudicate and decide whether the re-assessment notice is beyond the time period stipulated. This is a matter/issue of procedure i.e. the time period in which the assessment or re-assessment proceedings can be initiated. Thus the time period/limitation period prescribed on the date of issue of notice will apply. In our opinion, the answer is clear and has to be in affirmative, i.e. in favour of the assessee.

13. This question is not debatable or res integra and was examined and answered with lucid and clear reasoning in the opinion expressed by Hidayatullah, J. on behalf of himself and Raghubar Dayal, J. in S.C. Prashar v.*Vasantsen Dwarkadas Hunger for Investment Trust Ltd. [1963] 49 ITR 1 (SC). The relevant portion reads:-*

> *"93. ....If the 1948 Amendment could be treated as enabling the Income Tax Officer to take action at any point of time in respect of back assessment years within eight years of March 30, 1948 then such cases were within his power to tax. We have such a case here in CA No. 509 of 1958 where the notice was issued in 1949 to the lady whose husband had remitted Rs 9180 to her from Bangkok in the year relative to Assessment Year 1942-43. That lady was assessable in respect of this sum under Section 4(2) of the Income Tax Act. She did not file a return. If the case stood governed by the 1939 Amendment the*

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period applicable would have been four years if she had not concealed the particulars of the income. She had of course not deliberately furnished inaccurate particulars thereof. If the case was governed by the 1948 Amendment she would come within the eight-year rule because she had failed to furnish a return. Now, we do not think that we can treat the different periods indicated under Section 34 as periods of limitation, the expiry of which grant prescriptive title to defaulting tax-payers It may be said that an assessment once made is final and conclusive except for the provisions of Sections 34 and 35 but it is quite a different matter to say that a "vested right" arises in the assessee. On the expiry of the period the assessments, if any, may also become final and conclusive but only so long as the law is not altered retrospectively. Under the scheme of the Income Tax Act a liability to pay tax is incurred when according to the Finance Act in force the amount of income, profits or gains is above the exempted. That liability to the State is independent of any consideration of time and, in the absence of any provision restricting action by a time limit, it can be enforced at any time. What the law does is to prevent harassment of assessees to the end of time by prescribing a limit of time for its own officers to take action. This limit of time is binding upon the officers, but the liability under the charging section can only be said to be unenforceable after the expiry of the period under the law as it stands. In other words, though the liability to pay tax remains it cannot be enforced by the officers administering the tax laws. If the disability is removed or according to a new law a new time limit is created retrospectively, there is no reason why the

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liability should not be treated as still enforceable. The law does not deal with concluded claims or their revival but with the enforcement of a liability to the State which though existing remained to be enforced."

54. Consequently, in the present cases to ignore the legislative intent of Finance Act, 2021 would neither be legal nor reasonable.

IT IS A PRINCIPLE OF LEGAL POLICY THAT CHANGES IN THE SUBSTANTIVE LAW SHOULD NORMALLY NOT TAKE EFFECT RETROSPECTIVELY EXCEPT IN RELATION TO PROCEDURAL MATTERS.

55. It is a cardinal principle of construction that every statute is *prima facie* prospective, unless it is expressly or by necessary implication made to have retrospective operation.[5] There is a presumption of prospectivity articulated in the legal maxim '*nova constitutio futuris formam imponere debet non praeteritis'*, i.e., '*a new law ought to regulate what is to follow, not the past*', and this presumption operates unless shown to be contrary by express provision in the statute or is otherwise discernible by necessary implication[6] .

56. In contrast to statutes dealing with substantive rights, statutes dealing with merely matters of procedure are presumed to be retrospective, unless

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[5] ***Keshavan Madhava Menon v. State of Bombay, 1951 SCR 228; Janardan Reddy and Others v. State, 1950 SCR 940; Mahadeolal Kanodia v. Administrator General of W.B., (1960) 3 SCR 578; State of Bombay v. Vishnu Ramchandra, (1961) 2 SCR 924; Rafiquennessa (Mst.) v. Lal Bahadur Chetri, (1964) 6 SCR 876; Arjan Singh v. State of Punjab, (1969) 2 SCR 347; Ex,-Capt. K.C. Arora and Another v. State of Haryana and Others, (1984) 3 SCC 281; Mithilesh Kumari and Another v. Prem Bahadur Khare, (1989) 2 SCC 95; State of Madhya Pradesh and Others v. Rameshwar Rathod, (1990) 4 SCC 21; Shyam Sunder and Others v. Ram Kumar and Another, (2001) 8 SCC 24; Zile Singh v. State of Haryana and Others, (2004) 8 SCC 1; Gem Granites v. Commr. of Income Tax, (2005) 1 SCC 229; C. Gupta v. Glaxo-Smithkline Pharmaceuticals Ltd., (2007) 7 SCC 171; J.S. Yadav v. State of Uttar Pradesh and Another, (2011) 6 SCC 570***

[6] ***Monnet Ispat & Energy Ltd. v. Union of India & Ors., (2012) 11 SCC 1***

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such a construction is textually inadmissible.[7] As stated by Lord Denning: "*The rule that an Act of Parliament is not to be given retrospective effect applies only to statutes which affect vested rights. It does not apply to statutes which only alter the form of procedure or the admissibility of evidence, or the effect which the courts give to evidence*".[8] If the new Act affects matters of procedure only, then, *prima facie*, "*it applies to all actions pending as well as future*".[9] In fact, there is line of authority to the effect that, in the absence of contrary intention, procedural changes apply to pending as well as future proceedings[10]. The nature of the exception was also clearly encapsulated in ***R. v. Makanjuola, (1995) 2 Cr. App. R. 469 at 472A-B***, where Lord Taylor of Gosforth CJ held, "*The general rule against the retrospective operation of statutes does not apply to procedural provisions…Indeed, a general presumption is that a statutory change in procedure applies to pending as well as future proceedings*."[11]

RATIONALE BEHIND THE PRINCIPLE THAT CHANGE IN PROCEDURAL LAW OPERATES RETROSPECTIVELY

57. In stating the principle that "*a change in the law of procedure operates retrospectively and unlike the law relating to vested right is not*

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[7] ***Gardner v. Lucas (1878) 3 AC 582 (HL); Delhi Cloth & General Mills Co. Ltd. v. CIT, Delhi, AIR 1927 PC 242; Jose De Costa v. Bascora Sadashiva Sinai Narcornim, (1976) 2 SCC 917; Gurbachan Singh v. Satpal Singh, (1990) 1 SCC 445***

[8] ***Blyth v. Blyth, (1966) 1 All ER 524***

[9] ***A.G. v. Vernazza, (1960) 3 All ER 97; K. Eapin Chako v. Provident Fund Investment Company (P) Ltd., (1977) 1 SCC 583***

[10] ***Athlumney, Re, ex p Wilson [1898] 2 QB 54 per R S Wright J at 551-552; Kensinghton International Ltd. v. Republic of the Congo [2007] EWHC, 1632 (Comm), [2007] All ER (D) 209 (Jul) at [74]***

[11] ***See also: R. v. Bradley [2005] EWCA Crim. 20. Also Justice GP Singh in his treatise Principles of Statutory Interpretation states, "Fiscal legislation imposing liability is generally governed by the normal presumption that it is not retrospective and it is a cardinal principle of the tax law that the law to be applied is that in force in the assessment year unless otherwise provided expressly or by necessary implication. The above rule applies to the charging section and other substantive provisions such as a provision imposing penalty and does not apply to machinery or procedural provisions of a taxing Act which are generally retrospective and apply even to pending proceedings."***

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only prospective"[12], the Supreme Court has quoted with approval the reason of the rule as expressed in MAXWELL.[***MAXWELL: Interpretation of Statutes, 11th Edition, p. 216***]. *"No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being by or for the Court in which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode*". In the opinion of this Court, this is because a procedural change is expected to improve matters for everyone concerned (or at least to improve matters for some, without inflicting detriment on anyone else who uses ordinary care, vigilance and promptness).

FOR DETERMINING WHETHER THE AMENDMENT IS A PROCEDURAL OR A SUBSTANTIVE LAW ONE WILL HAVE TO EXAMINE THE INTENT, PURPOSE AND SCOPE OF THE AMENDMENTS.

58. Though the Black's Law Dictionary defines a procedural law as "*that which prescribes method of enforcing rights or obtaining redress for their invasion*" and a substantive law is one that which "*fixes duties, establish rights and responsibilities among and for persons natural or otherwise*", yet the question whether legislation is procedural or substantive in the context of retrospectivity needs to be considered by the reference to the facts of each particular case.

59. The same provision may be procedural in one context and substantive in another. Lord Brightman said in ***Yew Bon Tew v. Kenderaan Bas Mara.***

[12] ***Anant Gopal Sheorey v. State of Bombay, 1959 SCR 919; Union of India v. Sukumar Pyne, 1966 (2) SCR 34; Tikaram & Sons v. Commr. of Sales Tax, U.P., (1968) 3 SCR 512; State of Madras v. Lateef Hamid & Co. (1971) 3 SCC 560; Balumal Jamnadas Batra v. State of Maharashtra, (1975) 4 SCC 645; Rai Bahadur Seth Sriram Durgaprasad v. Director of Enforcement, (1987) 3 SCC 27; Gurbachan Singh v. Satpal Singh, (1990) 1 SCC 445***

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[1983] 1 AC 553 at 558, *'….these expressions "retrospective" and "procedural," though useful in a particular context, are equivocal and therefore can be misleading … and an Act which is procedural in one sense may in particular circumstances do far more than regulate the course of proceedings, because it may, on one interpretation, revive or destroy the cause of action itself….'* Consequently, the Court will have to examine the intent, purpose and scope of the amendments.

THE INTENT, PURPOSE AND SCOPE OF THE AMENDMENTS INTRODUCED BY THE FINANCE ACT, 2021 WAS TO PROTECT THE RIGHTS AND INTERESTS OF ASSESSEES AS WELL AS PROMOTE PUBLIC INTEREST. IT IS SETTLED LAW THAT IF LEGISLATION IS INTRODUCED TO REMEDY THE DEFECTIVE RULE AND NO ONE SUFFERS THEREBY, IT IS SENSIBLE TO APPLY IT TO PENDING PROCEEDINGS.

60. The Finance Minister in her Budget Speech clearly stated that the object behind the amendment to the Income Tax Act, 1961 was "*to simplify the tax administration, ease compliance, and reduce litigation*."

61. In the memorandum explaining the provisions in the Finance Bill, 2021, it was categorically admitted that it "*proposes a completely new procedure of assessment of such cases. It is expected that the new system would result in less litigation and would provide ease of doing business to taxpayers as there is a reduction in time limit by which a notice for assessment or reassessment or re-computation can be issued…*"

62. In fact, the unamended Sections 147 to 149 and 151 of the Income Tax Act, 1961 prescribed the procedure governing initiation of reassessment proceedings. However, the same gave rise to numerous litigations, particularly on the issues that reassessment proceedings were often initiated:

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(a) without recording any valid 'reason to believe', (b) in absence of any tangible/reliable material/information in possession the Assessing Officer leading to formation of belief that income has escaped assessment, (c) without any enquiry being conducted by the Assessing Officer prior to the issuance of notice, (d) without following the mandatory procedure laid down by the Supreme Court in the case of ***GKN Driversafts (India) Ltd. Vs. ITO*** (supra) etc. Further, since reopening was permissible maximum up to six years and in some cases up to sixteen years, there was continuing uncertainty for a considerable long time.

63. The Legislature, being conscious of the shortcomings in the unamended Sections 147 to 151 of the Income Tax Act, 1961, which were relaxed by the aforesaid provisions of the Relaxation Act and the Notifications issued thereunder, introduced reformative changes to the said Sections governing the procedure for reassessment proceedings by way of the Finance Act, 2021 passed on 28th March, 2021.

64. The reformative substitutions carried out by the Finance Act, 2021 with effect from 1st April, 2021 can be summarized as under:-

a. **Section 147**: The earlier existing concept of income escaping assessment was simplified by substituting a new provision;

b. **Section 148**: The provision governing issuance of notice for initiation of reassessment proceedings was substituted with a new provision, inter alia, prohibiting issuance of such notice, (a) in absence of any 'information' [as explained in Explanation 1] with the Assessing Officer suggesting escapement of income; (b) in absence of approval from the specified authority & (c) without following the procedure prescribed under Section 148A

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of the Income Tax Act, 1961. Moreover, the said notice issued under Section 148 was now required to be served along with order passed under Section 148A of the Income Tax Act, 1961;

c. **Section 148A**: New provision was introduced in the Income Tax Act, 1961, inter alia prescribing, (a) Assessing Officer to conduct inquiry, if required, with prior approval; (b) opportunity of heard to be given to the assessee, with prior approval; (c) Assessing Officer to consider reply of assessee; and (d) order to be passed as to whether it was a fit case for issuance of notice under Section 148 of the Income Tax Act, 1961;

d. **Section 149**: The provisions governing time limit for issuance of notice under Section 148 of the Income Tax Act, 1961 were replaced with new provisions, inter alia, reducing the permissible time limit for issuance of such notice to three years [and ten years only in exceptional cases] and further changing the earlier existing criteria governing such time limit;

e. **Section 151**: The earlier existing provision prescribing the sanctioning authorities for issuance of notice under Section 148 was replaced with new provisions prescribing the sanctioning authorities for the purposes of Sections 148 & 148A; pertinently for issuance of notice after three years from the end of relevant Assessment Year, wherein reopening is permitted in exceptional cases, sanction from the highest level of Income Tax Department is required to be obtained.

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65. Based on the aforesaid substituted provisions as well as the speech of Finance Minister and the Memorandum explaining the provisions in the Finance Bill, 2021, it is apparent that the legislative intent behind the aforesaid substitutions/amendments is to reduce the time limit in ordinary cases to three years and to increase the threshold amount of income having escaped assessment to Rs.50 lakhs for invoking extended time limit of ten years is to reduce litigation and compliance burden, remove discretion, impart certainty and promote ease of doing business.

66. This Court is of the opinion that the new provisions are remedial and benevolent provisions which are meant and intended to protect the rights and interests of assessees as well as promote public interest. In ***Imperial Tobacco Ltd v. Attorney General [1979] QB 555 at 581,*** Omrod LJ said, '*The object of all procedural rules is to enable justice to be done between the parties consistently with the public interest*'. If the procedural rules are defective, the legal apparatus works less efficiently and the public interest suffers. If legislation is introduced to remedy the defective rule and no one suffers thereby, it is sensible to apply it to pending proceedings.

67. Consequently, this Court is of the view that the Finance Act, 2021 introduces a new regime regarding the procedure to be complied with in respect of the re-opening of an Income-tax assessment and accordingly, the benefit of the new provisions must necessarily be made available even in respect of proceedings relating to past Assessment Years provided, of course, Section 148 notice has been issued on or after 1st April, 2021. [13]

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[13] ***M.D. Frozen Foods Exports Private Limited and Others Vs. Hero Fincorp Limited, (2017) 16 SCC 741.***

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*NEITHER THE CONCEPT OF VESTED RIGHT IN FAVOUR OF THE REVENUE NOR THE JUDGMENT OF THE SUPREME COURT IN **M.P. STEEL CORPORATION V. CCE (2015) 7 SCC 58** HAS ANY APPLICATION.*

68. In the opinion of this Court, neither the concept of vested right in favour of the Revenue nor the judgment passed by the Supreme Court in ***M.P. Steel Corporation v. CCE (2015) 7 SCC 58*** has any application to the present batch of matters.

69. Admittedly, time limit to issue notices for re-assessment under the Income Tax Act, 1961 stood expired long time ago. The Legislature by virtue of the Relaxation Act, 2020 had extended the time limit till 31st December, 2020 and had given discretion to the executive to issue Notification to extend the timeline alone. However, extending the time limit or giving power to issue Notification to extend the time cannot be taken to be a vested right of the respondents.

70. Consequently, this Court is of the view that vested right in favour of the Revenue stood exhausted/expired long ago and no vested right of the respondents has been infringed leave alone violated.

THE ARGUMENT OF THE RESPONDENT THAT THE SUBSTITUTIONS MADE BY THE FINANCE ACT, 2021 IS NOT APPLICABLE TO PAST ASSESSMENT YEARS, AS IT IS SUBSTANTIAL IN NATURE IS CONTRADICTED BY ITS OWN CIRCULAR 549 OF 1989 AND ITS OWN SUBMISSION THAT FROM 1ST JULY, 2021, THE SUBSTITUTIONS MADE BY THE FINANCE ACT, 2021 WILL BE APPLICABLE.

71. Circular 549 of 1989 issued by the CBDT explaining the provisions of the Direct Tax Laws (Amendment Act), 1989 amending erstwhile Sections 147 to 152 clarified that the said provisions were procedural in nature and would have retrospective effect, unless the amending statute provides

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otherwise. The relevant provisions of Circular 549 of 1989 issued by the CBDT is reproduced hereinbelow:-

> ***"…7.13 Amendments to have retrospective effect****. - These amendments come into force with effect from the 1st day of April, 1989. However, it may be clarified that since the provisions of sections 147 to 152 lay down procedural law, these have retrospective effect, unless the amending statute provides otherwise. Therefore, the amendments made to these sections by the Amending Acts, 1987 and 1989, discussed in the preceding paragraphs, which came into force with effect from 1st April, 1989, will be retrospective in the sense that these will apply to all matters which were pending on 1st April, 1989 and had not become closed or dead on this date.*
>
> ***7.14*** *Thus, from 1st April, 1989 onwards, any action for opening or re-opening an assessment for the assessment year 1988-89 and earlier assessment years will have to be taken in accordance with the amended provisions. The following examples will clarify the position:-*
> *(i) No notice under section 148 can now be issued for the assessment years 1973-74 to 1978-79 even if the escaped income is Rs. 50,000 or more in each year, although under the old provisions this could have been done with Board's approval.*
>
> *(ii) Notice under section 148 can now be issued for any of the assessment years 1979-80 to 1981-82 if the following conditions are ful-filled:-*
>
> *(#) In a scrutiny case [i.e., where an assessment order had been passed under section 143(3) or 147], if the escaped income is Rs. 1 lakh or more in each year and approval of the Chief Commissioner or Commissioner has been obtained.*
>
> *(c) In a non-scrutiny case, if the escaped income is Rs. 50,000 or more in each year, and approval of the Deputy Commissioner has been obtained.*

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(Under the old provisions, there was no distinction between a scrutiny and a non-scrutiny case. Action could have been taken in respect of both types of cases for the assessment year 1981-82, with the approval of the Chief Commissioner or Commissioner, whatever be the amount of escaped income, while for the assessment years 1979-80 and 1980-81, action could have been taken with Board's approval if the escaped income was Rs. 50,000 or more in each year. These old provisions, however, have no application now from 1-4-1989 onwards)."

72. On the one hand, the Respondents are contending that the amendment made by the Finance Act, 2021 shall not be applicable to past assessment years, while on the other hand, they are contending that from 1st July, 2021, the amendments made by the Finance Act, 2021 will be applicable. This is contradictory inasmuch as for three months starting on or after 1st April, 2021, the amendment made by the Finance Act, 2021 shall be considered as substantive in nature and hence applicable prospectively, while from 1st July, 2021, the amendment made by the Finance Act, 2021 will be considered as procedural and hence will be applicable retrospectively for any assessment year including earlier years.

73. Keeping in view its own submission and past precedent to treat Sections 147 to 152 of the Income Tax Act, 1961 as procedural, the respondents are estopped from contending to the contrary.

IF THE ARGUMENT OF THE RESPONDENTS THAT THE EXPLANATION IN NOTIFICATION NO. 20 DATED 31ST MARCH, 2021 EXTENDED THE APPLICABILITY OF OLD PROCEDURE OF REASSESSMENT BEYOND 31ST MARCH, 2021 IS ACCEPTED, THE SAME SHALL LEAD TO MANIFEST ARBITRARINESS AND CONFLICT.

74. Further, if the argument of learned counsel for the respondents that the Explanation in Notification No. 20 dated 31st March, 2021 extended the

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applicability of old procedure of reassessment beyond 31st March, 2021 is accepted the same shall lead to patent arbitrariness since:

a. during the period from 1st April, 2021 to 30th June, 2021, both old as well as new procedure as enacted by Finance Act, 2021 shall simultaneously operate [more so, since there is no statutory provision deferring the implementation of the new/mandatory procedure];

b. for example: For A.Y.'s 2015-16 to 2017-18 [with limitation upto March, 22 to 24], in case of two identically placed taxpayers (say A & B) with "information" of having asset above Rs.50 lakh, Assessing Officer shall have absolute discretion to choose either the old or the new mechanism;

c. 'doctrine of election' normally confers two separate alternative statutory powers/remedies (like Sections 154, 147, 263) for same/similar cause, but same provision (Section 147) with two opposite procedure for same cause can never be envisaged and shall necessarily lead to manifest arbitrariness and conflict.

75. Also, the new scheme of reassessment provides for a uniform manner of reassessment of two categories of cases, namely, regular reassessments and search/survey cases. Insofar as search/survey cases are concerned, the provisions are clear that the new scheme is to apply where the proceedings are initiated after 1st April, 2021 as Explanation 2 to Section 148 states that the Assessing Officer will be deemed to have 'information' for the purposes of Section 148/148A when search/survey is initiated on or after 1st April, 2021 and the first proviso to Section 148A states that the procedure in

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Section 148A will not apply to cases where search/survey is initiated after 1st April, 2021. Also, the second proviso to Section 149 states that the new limitation will not apply where search/survey is initiated on or before 1st April, 2021. In fact, the department's interpretation would also make the provisions relating to search cases completely unworkable. As per Sections 153A and 153C, the provisions of these two sections will not apply where search/survey is done after 1st April, 2021. Department contends that the erstwhile law continues to apply from 1st April, 2021 to 30th June, 2021. The erstwhile law on reopening did not cover search/survey cases. Consequently, for the search/survey done from 1st April to 30th June, there can neither be an assessment under sections 153A/153C or under 147, which cannot be the case. Further, Sections 148, 148A and 149 specifically cover cases where search/survey is done after 1st April, 2021. If department's interpretation is accepted, this specific date in all three Sections will have to be changed and read as 1st July, 2021, which cannot be done. Moreover, as the new provisions seek to bring uniformity between regular reassessments and search/survey cases, it follows that the cut off date for initiation of reassessment proceedings even for regular reassessment is 1st April, 2021.

REVENUE CANNOT RELY ON COVID-19 FOR CONTENDING THAT THE NEW PROVISIONS SHOULD NOT OPERATE DURING THE PERIOD 1st APRIL, 2021 TO 30th JUNE, 2021.

76. When Finance Minister moved the Finance Bill, 2021 in Parliament on 1st February, 2021 and the Finance Act, 2021 was enacted in March, 2021, COVID-19 was widely prevalent and Parliament was fully aware of the same. Nevertheless, with the objective of promoting ease of doing business and reducing litigation, Parliament specifically enacted that the

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new reassessment provisions would come into operation on 1st April, 2021. The Revenue cannot, therefore, rely on COVID-19 for contending that the new provisions should not operate during the period 1st April, 2021 to 30th June, 2021 or that Relaxation Act, 2020 deals with the situation arising out of Covid-19 and the Finance Act, 2021 was passed being oblivious of the Covid-19 Pandemic.

NON-OBSTANTE CLAUSE HAS TO BE CONSTRUED STRICTLY. SECTION 3(1) OF RELAXATION ACT IS EXPRESSLY CONFINED TO AND ONLY SUPERSEDES THE TIME LIMITS. IT DOES NOT EXCLUDE THE APPLICABILITY OF PROVISIONS SUBSTITUTED BY FINANCE ACT, 2021.

77. It is settled law that the non-obstante clause in a statute has to be given a contextual interpretation and cannot be interpreted in a way which defeats or extends the object and purpose of the enactment. In ***Nawal Singh vs. State of U.P. & Anr.***[14], the Supreme Court has held that the non-obstante clause has to be construed strictly and has an overriding effect over the other statutes only to the limited extent that it expressly so provides. In other

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[14] ***2003(8) SCC 117. In this case, the Supreme Court held, "…However, we would refer to the decision in A.G. Varadarajulu v. State of T.N. [(1998) 4 SCC 231] which was relied upon by the learned Senior Counsel Mr Dwivedi, wherein (in para 16) this Court held as under: (SCC p. 236)***

> ***"16. It is well settled that while dealing with a non obstante clause under which the legislature wants to give overriding effect to a section, the court must try to find out the extent to which the legislature had intended to give one provision overriding effect over another provision. Such intention of the legislature in this behalf is to be gathered from the enacting part of the section. In Aswini Kumar Ghose v. Arabinda Bose [AIR 1952 SC 369] Patanjali Sastri, J. observed:***
>
> > ***'The enacting part of a statute must, where it is clear, be taken to control the non obstante clause where both cannot be read harmoniously.'***
>
> ***In Madhav Rao Scindia v. Union of India [(1971) 1 SCC 85] (SCC at p. 139) Hidayatullah, C.J. observed that the non obstante clause is no doubt a very potent clause intended to exclude every consideration arising from other provisions of the same statute or other statute but 'for that reason alone we must determine the scope' of that provision strictly. When the section containing the said clause does not refer to any particular provisions which it intends to override but refers to the provisions of the statute generally, it is not permissible to hold that it excludes the whole Act and stands all alone by itself. 'A search has, therefore, to be made with a view to determining which provision answers the description and which does not.' "***

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words, the remaining parts of the other statutes are left untouched by the non-obstante clause.

78. In the present case, the ambit of the non-obstante clause in Section 3(1) of Relaxation Act, 2020 is expressly confined to and supersedes the time limits only for the completion or compliance of actions which are laid down in the specified Acts and Relaxation Act, 2020 only provides that these time limits shall stand extended as provided. The intent and purpose behind enactment of Section 3 of Relaxation Act, 2020 is relaxation of statutory timelines in various provisions of the specified Acts and thus, as a natural corollary the relaxation provided in Section 3 of Relaxation Act, 2020 inherently conflicts with various timelines provided in the specified Acts. To get over this inherent conflict between Section 3 of Relaxation Act, 2020 and various timelines provided in provisions prescribed in the specified Acts, the legislature has carefully incorporated the non-obstante clause in the said Section. Consequently, this non-obstante provision only operates to prevail over the time lines laid down in the specified Act. Apart from these timelines, no other provision of any specified Act is suspended or overridden. This non-obstante clause cannot, therefore, possibly be relied upon by the Revenue to contend that a Notification issued under Section 3 of Relaxation Act, 2020 overrides any provision of the Income-tax Act, 1961 other than the applicable time-lines. Any Notification issued under Relaxation Act, 2020 cannot possibly have a reach and ambit wider than the Relaxation Act, 2020 itself for that would be contrary to the settled canons of construction of statutes.

79. It is also necessary to appreciate that the Relaxation Act, 2020 was enacted long before the Finance Act, 2021. Consequently, it cannot possibly

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be contended that any provision of Relaxation Act, much less of any Notification issued thereunder, can be so construed as amending or modifying or excluding the applicability of the yet to be enacted Finance Act, 2021. Further, as the Petitioners are not questioning any of the time extensions made by or under Relaxation Act, 2020, the said non-obstante clause is totally irrelevant to controversy at hand.

THE REVENUE'S CHOOSING AND PICKING OF TWO TERMS VIZ. "SUCH ACTION" & "EXTENSION/EXTENDED" IS CONTRARY TO BASIC PRINCIPLES OF INTERPRETATIONS WHICH PROHIBITS SELECTIVELY CHOOSING/IGNORING WORDS FROM THE STATUTORY LANGUAGE AS WELL AS THE FACT THAT THE RELAXATION ACT, 2020 WAS ENACTED LONG BEFORE FINANCE ACT, 2021.

80. To substantiate its stand that the impugned notices are not barred by limitation, the Revenue without even considering the pre-condition prescribed by Section 3 of Relaxation Act, 2020 has selectively chosen and picked up two terms viz. "*such action*" & "*stand extended*" to put forward an interpretation which could not have been contemplated by the Legislature at the time of enactment of the said provision, namely, that notices under Section 148 will relate back and be governed by old law. In the opinion of this Court, the submission of the Revenue is completely flawed, as the same is contrary to basic principles of interpretations, which prohibits selectively choosing/ignoring words from the statutory language.

81. It is settled law that when the words of a statute are clear and unambiguous, it is not permissible for the Court to read words into the

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statute[15]. In fact, the principle of interpretation of taxing statutes was best enunciated by Rowlatt J. in his classic statement in ***Cape Brandy Syndicate v I.R.C. (1 KB 64, 71)***, *"In a taxing statute one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can look fairly at the language used."*

82. The Judiciary cannot transgress into the domain of policy making by re-writing a statute, however strong the temptations maybe[16]. The Supreme Court in ***A.V Fernandez vs. State of Kerala (AIR 1957 SC 657)*** has held, "*In construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of law. If the revenue satisfies the court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter"*.

83. Further, the Relaxation Act, 2020 received the President's assent on 29th September, 2020, whereas the Finance Act, 2021 received the assent on 31st March, 2021. Consequently, it cannot be contended that any provision of the Relaxation Act, 2020, much less of any Notification issued

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[15] ***A Constitution Bench of the Supreme Court in Padma Sundara Rao and Others v State of Tamil Nadu and Others (2002) 3 SCC 533 has observed: "12…..the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in the statute is determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said…....14.While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary….."***

16 ***Saregama India Ltd. vs. Next Radio Limited & Ors., 2021 SCC OnLine SC 817***

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thereunder, should be so construed as amending or modifying or excluding the applicability of the yet to be enacted Finance Act, 2021.

THE CONSEQUENCE OF NOT MENTIONING SUBSTITUTED SECTION 147 OF THE INCOME TAX ACT, 1961 IN THE IMPUGNED EXPLANATIONS.

84. Even if it is assumed that the impugned Explanations in the two Notifications are valid, still the impugned notices are bad in law, as the impugned Explanations only seek to effectuate the erstwhile Sections 148, 149 and 151 and they do not cover Section 147. However, the conditions provided for in the substituted Section 147 were not considered while issuing notices by the Assessing Officer. In fact, the said Section 147 is itself subject to Sections 148 to 153, which would include Section 148A.

THE "LEGAL FICTION" ARGUMENT IS WITHOUT ANY FOUNDATION. THERE IS NO PROVISION IN RELAXATION ACT STATING THAT IF THE "ACTION" IS TAKEN WITHIN THE EXTENDED TIME LIMIT, IT WOULD BE DEEMED TO HAVE BEEN TAKEN BEFORE THE EXPIRY OF THE ORIGINAL (UN-EXTENDED) TIME LIMIT.

85. The "legal fiction" argument is without any foundation. A statute can be said to enact a legal fiction when it assumes the existence of something which is known not to exist. The extension of time for completing an assessment or issuing a Section 148 notice has no element of legal fiction in it. The only effect and consequence of this extension of the time limit is that if the act in question is performed within the extended time limit, it will be considered to be legally compliant. However, there is no assumption that the act in question is deemed to have been performed within the original time limit, as wrongly contended by the learned counsel for the Respondents. For achieving that result, clear and unequivocal language was required in the

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Relaxation Act, 2020 – which is missing. In fact, there is no provision in Relaxation Act, 2020 laying down that if the "*action*" is taken within the extended time limit, it would be deemed to have been taken before the expiry of the original (un-extended) time limit.

THE ESSENTIAL CONDITION FOR A PROVISION TO BE TERMED AS STOP THE CLOCK PROVISION IS ABSENT INASMUCH AS THE TIME DURING WHICH SUCH CLOCK IS STOPPED HAS NOT BEEN STIPULATED TO BE EXCLUDED.

86. Section 3 of the Relaxation Act, 2020 is not a 'stop the clock' provision, as it only relaxes the time limit, so as to facilitate the cases in which the Revenue/assessee has not been able to take the specified action within the statutory timelines. The essential condition for a provision to be termed as stop the clock provision is that the time during which such clock is stopped, such period has to be excluded. In the present instance, time limit is extended, not excluded or stopped.

IT CANNOT BE THAT A FICTION IS CREATED OR CLOCK STOPPED ONLY FOR REASSESSMENT AND NOT FOR ASSESSMENT AND/OR FACELESS PENALTY SCHEME.

87. Further, if the interpretation being placed by the Respondent that Section 3(1)(a) creates a fiction and the clock gets stopped because of Section 3(1) of Relaxation Act, 2020 is correct, then all the actions and procedures should have been under that law and procedure which were on the day when the fiction was created or the clock stopped.

88. It may be relevant to point out that Section 144B was inserted in the Income Tax Act, 1961 by Relaxation Act, 2020 w.e.f. 1st April, 2021 for making faceless assessment. By virtue of Section 144B, the entire procedure for assessment under Sections 143(3) and 144 has changed. The time period

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for both assessment as well as reassessment was extended under Notifications issued under Relaxation Act, 2020 itself. If the Respondent's stand is to be accepted that all such assessments had to be made under the unamended law, then assessments orders should not have been passed under the amended Section 144B of the Act. However, all the assessments after 31st March, 2021 have been made following the new procedure prescribed for the assessment after the amendment. In fact, it is pertinent to mention that CBDT itself vide its order No. 187/3/2020-ITA-1 dated 31st March, 2021 has directed that all pending assessments as on 31st March, 2021 are to be completed under Section 144 B i.e. the new procedure applicable w.e.f. 01st April, 2021.

89. Similar to assessment and reassessment, the time limit for levying penalty was also extended under Relaxation Act itself even up to 31st March, 2022. If the clock has stopped or fiction has been created as is being contended by the Respondents, then all the penalty orders passed under Section 274(2A) – Faceless Penalty Scheme till 31st March, 2022, following the new procedure will be bad in law. Consequently, it cannot be said that a fiction is created or clock stopped only for reassessment and not for assessment and/or Faceless Penalty Scheme.

90. In fact, wherever the Legislature intended that the old procedure is to be followed in respect of any assessment year as against the new procedure post the amendment, then it has specifically provided so. For instance, the Direct Laws (Amendment) Act, 1987 had introduced a new scheme for best judgment assessment (ex parte) under Section 144 w.e.f. 1st April 1989. However, in order to ensure that the assessments for years before coming into force of the new law is done under the old law, a specific sub-Section (2) was inserted in

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Section 144 to provide that the provisions of this Section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987, shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year.

THE PRINCIPLE THAT A SPECIAL ACT OVERRIDES A GENERAL ACT HAS NO APPLICATION TO THE PRESENT CASE BECAUSE RELAXATION ACT AND THE FINANCE ACT OPERATE IN DISTINCT AND SEPARATE SPHERES.

91. It is equally well-settled law that a special Act overrides a general Act. But this principle has no application whatsoever in the present case because Relaxation Act, 2021 and the Finance Act, 2021 operate in their distinct and separate spheres. Consequently, the question whether one prevails over and supersedes the other does not arise at all.

THE ARGUMENT OF THE RESPONDENTS THAT RELAXATION ACT PROMOTES THE EQUALITY PRINCIPLES UNDER ARTICLE 14 OF THE CONSTITUTION IS UNTENABLE IN LAW.

92. The argument of the Respondents that Relaxation Act, 2020, promotes the equality principles under Article 14 of the Constitution and that if Petitioner's arguments are accepted, it would lead to unreasonable classification with those assessees who could not be issued notices earlier is untenable in law. If this is taken to the logical end, then any amendment in the procedural law will create inequality since procedural law will be applicable for all pending assessments as on that date. In ***UOI vs. VKC Footsteps India Pvt. Ltd.: CA No.4810/2021***, the Supreme Court has held, "'*Perfect uniformity and perfect equality of taxation' in all aspects in which "the human mind can view it, is a baseless dream".*

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THE SUBMISSION OF THE REVENUE THAT SECTION 6 OF THE GENERAL CLAUSES ACT SAVES NOTICES ISSUED UNDER SECTION 148 POST 1ST APRIL, 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.

93. The provisions of the Finance Act, 2021 have not only repealed the erstwhile provisions of Sections 147, 148, 149 and 151 of the Income Tax Act, 1961 but also "substituted" them by new provisions. The process of 'substitution' consists of two steps: first, the rule is made to cease and the next, the new rule is brought into existence in its place.

94. '*Substitution*' has to be distinguished from '*suppression*' or a mere repeal of an existing provision. Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision.[17]

95. Consequently, the submission of the revenue that Section 6 of the General Clauses Act saves notices issued under Section 148 of the Income Tax Act, 1961 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.[18]

APPRECIATION

96. Before parting with this case, this Court places on record its deep appreciation for the assistance rendered by all the learned counsel, who appeared in the present batch of matters, in particular, Ms.Kavita Jha, Mr.Ved Jain, Mr.Sunil Agarwal and Mr.Zoheb Hossain, as they filed not

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[17] ***Zile Singh vs. State of Haryana, (2004) 8 SCC 1***.

[18] ***State of Punjab vs. Mohar Singh: AIR 1955 SC 84; Jayantilal Amrathlal vs UOI: (1972) 4 SCC 174; Brihan Maharashtra Sugar Syndicate Limited vs. Janardan Ramachandran Kulkarni: AIR 1960 SC 794***.

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only compilation of documents and judgments but they also ensured that the virtual hearing was conducted in an organized and proper manner.

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

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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

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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.

RELIEF:

104. Keeping in view the aforesaid conclusions, 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.

105. 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

DECEMBER 15, 2021
rn/KA/js/TS/AS

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