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RESERVED ON 15.12.2022
DELIVERED ON 22.02.2023

Court No. - 39

Case :- WRIT TAX No. - 1086 of 2022
Petitioner :- Rajeev Bansal
Respondent :- Union Of India And 3 Others
Counsel for Petitioner :- Abhinav Mehrotra,Satya Vrata Mehrotra
Counsel for Respondent :- A.S.G.I.,Gaurav Mahajan,Manu Ghildyal, Sudarshan Singh

Alongwith

WTAX/1452/2022,WTAX/1502/2022,WTAX/1465/2022,WTAX/1478/2022,WTAX/1346/2022, WTAX/1524/2022,WTAX/1527/2022,WTAX/1302/2022,WTAX/1525/2022,WTAX/1499/2022, WTAX/1498/2022,WTAX/1500/2022,WTAX/1482/2022,WTAX/1504/2022,WTAX/1501/2022, WTAX/1328/2022,WTAX/1469/2022,WTAX/1432/2022,WTAX/1291/2022,WTAX/1198/2022, WTAX/1319/2022,WTAX/1324/2022,WTAX/1323/2022,WTAX/1162/2022,WTAX/1158/2022, WTAX/1107/2022,WTAX/1108/2022,WTAX/1109/2022,WTAX/1119/2022,WTAX/1436/2022, WTAX/1301/2022,WTAX/1387/2022,WTAX/1304/2022,WTAX/1335/2022,WTAX/1249/2022, WTAX/1374/2022,WTAX/1336/2022,WTAX/1337/2022,WTAX/1372/2022,WTAX/1316/2022, WTAX/1315/2022,WTAX/1382/2022,WTAX/1282/2022,WTAX/1286/2022,WTAX/1283/2022, WTAX/1284/2022,WTAX/1300/2022,WTAX/1293/2022,WTAX/1298/2022,WTAX/1148/2022, WTAX/1305/2022,WTAX/1303/2022,WTAX/1115/2022,WTAX/1079/2022,WTAX/1173/2022, WTAX/1235/2022

Hon'ble Mrs. Sunita Agarwal,J.

Hon'ble Vipin Chandra Dixit,J.

1. Heard Sri Abhinav Mehrotra, Sri Rahul Agarwal, Sri Ashish Bansal, Sri Shubham Agarwal, Sri Ankur Agarwal, Sri Suyash Agarwal, Sri V.K. Sabarwal, Sri R.B. Gupta and Sri Krishna Vyas learned counsels for the petitioners in the bunch cases; Sri Gaurav Mahajan, Sri Krishna Agarwal, Sri Ashish Agarwal, Sri Manu Ghildyal, learned counsels appearing for the respondent-Revenue, Sri Anant Kumar Tiwari, Sri Gopal Verma and Sri N.C. Gupta, learned counsels for the Union of India.

Introduction:-

2. The writ petitions in this bunch are directed against the orders passed by the Assessing Authority under Section 148-A(d) of the Income Tax Act' 1961 (hereinafter referred as Act' 1961) and the consequential notices issued under Section 148 of the Act' 1961. The dispute pertains to the assessment years 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18. The disputed notices having been issued on or after 01.04.2021, the period concerned is between 01.04.2021 to 30.06.2021.

3. At the outset, learned counsels for the parties had agreed to address the Court on two questions framed and discussed jointly, answer to which would decide the fate of the individual notices under challenge, on factual aspects.

4. We have, therefore, not entered into the merits of the individual notices under challenge and heard the learned counsels for the parties on the following two legal issues:-

(i) Whether the reassessment proceedings initiated with the notice under Section 148 (deemed to be notice under Section 148-A), issued between 01.04.2021 and 30.06.2021, can be conducted by giving benefit of relaxation/extension under the Taxation and Other Laws (Relaxation & Amendment of Certain Provisions) Act' (TOLA)' 2020 upto 30.03.2021, and then the time limit prescribed in Section 149 (1) (b) (as substituted w.e.f. 01.04.2021) is to be counted by giving such relaxation, benefit of TOLA from 30.03.2020 onwards to the revenue.

(ii) Whether in respect of the proceedings where the first proviso to Section 149(1)(b) is attracted, benefit of TOLA' 2020 will be available to the revenue, or in other words the relaxation law under TOLA' 2020 would govern the time frame prescribed under the first

proviso to Section 149 as inserted by the Finance Act' 2021, in such cases?

5. As noted above, the impugned notices have been issued between 01.04.2021 and 30.06.2021. For the assessment year 2013-14 and 2014-15, it was argued by the learned counsels for the assessees that the assessment for these years cannot be reopened, in as much as, maximum period of six years prescribed in pre-amendment provision of Section 149(1)(b) had expired on 31.03.2021. No notice under Section 148 could be issued in a case for the assessment year 2013-14 and 2014-15 on or after 01.04.2021 being time barred, on account of being beyond the time limit specified under the provisions of Section 149(1)(b) as they stood immediately before the commencement of the Finance Act' 2021. For the assessment year 2015-16, 2016-17, 2017-18, the contention is that the monetary threshold and other requirements of the Income Tax Act in the post-amendment regime, i.e. after the commencement of the Finance Act' 2021 have to be followed. The validity of the jurisdictional notice under Section 148 is, thus, to be tested on the touchstone of compliances or fulfillment of requirements by the revenue as per Section 149(1)(b) and the first proviso to Section 149(1) inserted by the amendment under the Finance Act' 2021, wef 01.04.2021.

6. Before proceeding further, it may be noticed as a clarification at this stage itself, that there is no dispute about the fact that the notices issued under Section 148 after the amendment brought by the Finance Act' 2021 i.e. on or after 01.04.2021 be treated as notices under Section 148-A as per the amended provisions. It has also been agreed by the counsel for the parties that the date of issuance of notice under Section 148 of the Income Tax Act (as per pre-amended provisions) shall be treated as the date of issuance of

notice under Section 148-A (post amendment) and all notices issued under Section 148 of the Income Tax Act after 01.04.2021 shall be treated to be the notices under Section 148-A of the Income Tax Act, inserted by the Finance Act 2021, w.e.f. 01.04.2021. The jurisdictional notice under Section 148 after the amendment brought by the Finance Act 2021 will have to be issued after conclusion of the preliminary enquiry required under Section 148-A.

Legislative Scheme:-

7. To deal with the above noted issues, at the outset, we are required to note the legislative scheme of Section 148 of reopening of assessment pre and post amendment by the Finance Act 2021. The relevant provisions of TOLA 2020 are also to be noted herein:-

8. The pre-amendment Section 148 is quoted as under:-

> *148. Before making the assessment, reassessment or re-computation 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 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 charge. able 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,-

(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 1324, 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 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 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.

9. Post Amendment Section 148 is quoted as under:-

"148. **Issue of notice where income has escaped assessment.--**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,--

(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 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 orsection 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 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."

10. Relevant extract of Section 3(1) of TOLA 2020 is to be noted hereunder:-

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 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, 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:

11. The relevant notifications issued by Central Government dated 31.03.2021 and 27.04.2021 are quoted hereunder:-

MINISTRY OF FINANCE

(Department of Revenue)

(CENTRAL BOARD OF DIRECT TAXES)

NOTIFICATION

New Delhi, the 31st March, 2021

"S.O. 1432(E).—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 31 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.

(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.

(1) the 31 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.

[Notification No. 20/2021/F. No. 370142/35/2020-TPL]

SHEFALI SINGH, Under Secy., Tax Policy and Legislation Division

Note: The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) vide S.O. No. 4805 dated 31" December, 2020.”

….....

“MINISTRY OF FINANCE

(Department of Revenue)

(CENTRAL BOARD OF DIRECT TAXES)

NOTIFICATION

New Delhi, the 27th April, 2021

S.O. 1703(E).- 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 31" December, 2020, No. 10/2021 dated the 27th February, 2021 and No. 20/2021 dated the 31 March, 2021, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub- section (ii), vide number S.O. 4805(E), dated the 31" December, 2020, vide number S.O. 966(E) dated the 27thFebruary, 2021 and vide number S.O. 1432(E) dated the 31" 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 31" day of March 2021, before the commencement of the Finance Act, 2021, shall apply.

(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.

[Notification No. 38 /2021/ F. No. 370142/35/2020-TPL]

RAJESH KUMAR BHOOT, Jt. Secy. Tax Policy & Legislation Division

Note: The principal notification was published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) vide S.O. No. 4805 dated 31st December, 2020"

12. These petitions are offshoot of the decision of the Coordinate Bench of this High Court in Writ Tax No.524 of 2021 **Ashok Kumar Agarwal Vs. Union of India** [1], affirmed by the Apex Court in the judgement and order dated 04.05.2022 in Civil Appeal No.3005 to 3017, 3019-3020 of 2022 **Union of India Vs. Ashish Agarwal** [2].

13. Before proceeding further, we are, thus, require to note the history of litigation *inter-se* parties.

History of Litigation:-

(i) Coordinate Bench Decision in Ashish Agarwal (supra)

14. Upon enforcement of the Finance Act' 2021, the pre-existing Sections 147 to 151 had been repealed and replaced by new provisions, bringing changes in the entire statutory scheme of initiating, enquiring, conducting and concluding the reassessment proceedings. The validity of the reassessment proceeding initiated against individual assessees, after 01.04.2021, came up for consideration before this Court in **Ashok Kumar Agarwal (Supra).** The provisions of the Income Tax Act' 1961, as they existed prior to the amendment by Finance Act' 2021, read with the provisions of TOLA/Relaxation Act No.38 of 2020 were applied in

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the reassessment proceedings initiated against the assessees while issuing notices under Section 148 of the Income Tax Act on or after 01.04.2021. The challenge to the notices therein was made on the ground that the pre-existing Sections 147 to 151 of the Act' 1961 stood repealed and replaced by the Finance Act 2021 and upon enforcement of the amendment, the entire statutory scheme of conducting reassessment proceedings underwent a sea change. With the substitution of old provisions, pre-existing provisions pertaining to reassessment under the Act could not be applied to conduct the proceedings after enforcement of the Finance Act' 2021.

15. The Relaxation Act/Enabling Act/TOLA, 2020 was enacted in March 2020 on account of unforeseen circumstances faced by the country due to onset of the pandemic Covid 19 which has led to enforcement of intermittent lock downs. Normal functioning of the government and its institutions had been put to halt. Because of the obstructions due to spread of the Pandemic Covid-19, the Enabling Act' 2020 was enacted solely to extend the limitation under the provisions of the IT Act' 1961.

16. It was argued therein that the Finance Act 2021, which is a latter Act does not contain any saving clause as may allow the pre-existing provisions an extended life. After the enforcement of the amendment, the pre-existing provisions, thus, could not be pressed into service by the revenue. The Enabling Act does not and could not save the pre-existing Sections 147, 148 to 151 of the IT Act, pertaining to reassessment nor overriding effect can arise or be given to the pre-existing reassessment legislative regime by the Enabling Act, since on the date of enactment of the Enabling Act, the Finance Act 2021 was not born. In absence of any saving clause in the Finance Act' 2021, there exists no power either under Section 3(1) of the Enabling Act or any other law as may validate the issuance of the

impugned notification by the Central Government to apply pre-existing provisions in the reassessment proceeding initiated on or after 01.04.2021. The Enabling Act, therefore, became wholly unenforceable or unacceptable to the proceedings that would arise under the latter Act, i.e. the substituted provisions of Section 147 to 151 of the Income Tax Act' 1961, upon enactment of the Finance Act' 2021 on or after 01.04.2021.

17. The submissions advanced by the learned counsel for the petitioners therein to challenge the validity of the notice under Section 148 of the Act' 1961 after 01.04.2021, have been extracted pointwise in paragraph No.'63' as under:-

> *"(i) By substituting the provisions of the Act by means of the Finance Act, 2021 with effect from 01.04.2021, the old provisions were omitted from the statute book and replaced by fresh provisions with effect from 01.04.2021. Relying on the principle - substitution omits and thus obliterates the pre-existing provision, it has been further submitted, in absence of any saving clause shown to exist either under the Ordinance or the Enabling Act or the Finance Act 2021, there exists no presumption in favour of the old provision continuing to operate for any purpose, beyond 31.03.2021.*
>
> ***(ii)*** *The Act is a dynamic enactment that sustains through enactment of the Finance Act every year. Therefore, on 1st April every year, it is the Act as amended by the Finance Act, for that year which is applied. In the present case, it is the Act as amended by the Finance Act 2021, that confronted the Enabling Act as was pre-existing. In absence of any legislative intent expressed either under the Finance Act, 2021 or under the Enabling Act, to preserve any part of the pre-existing Act, plainly, reference to provisions of Sections 147 and 148 of the Act and the words 'assessment' and 'reassessment' appearing in the Notifications issued under the Enabling Act may be read to be indicating only at proceedings already commenced prior to 01.04.2021, under the Act*

(before amendment by the Finance Act, 2021). The delegated action performed under the Enabling Act cannot, itself create an overriding effect in favour of the Enabling Act.

(iii) *The Enabling Act read with its Notifications does not validate the initiation of any proceeding that may otherwise be incompetent under the law. That law only affects the time limitation to conduct or conclude any proceeding that may have been or may be validly instituted under the Act, whether prior to or after its amendment by Finance Act, 2021. Insofar as, Section 1(2)(a) unequivocally enforced Sections 2 to 88 of the Finance Act, 2021, w.e.f. 01.04.2021, there can be no dispute if any valid proceeding could be initiated under the pre-existing Section 148 read with Section 147, after 01.04.2021. In support thereof other submission also appear to exist - based upon the enactment of Section 148A (w.e.f. 01.04.2021).*

(iv) *The delegation made could be exercised within the four corners of the principal legislation and not to overreach it. Insofar as the Enabling Act does not delegate any power to legislate - with respect to enforceability of any provision of the Finance Act, 2021 and those provisions (Sections 2 to 88) had come into force, on their own, on 01.04.2021, any exercise of the delegate under the Enabling Act, to defeat the plain enforcement of that law would be wholly unconstitutional.*

(v) *It also appears to be the submission of learned counsel for the petitioners that the Parliament being aware of all realities, both as to the fact situation and the laws that were existing, it had consciously enacted the Enabling Act, to extend certain time limitations and to enforce only a partial change to the reassessment procedure, by enacting section 151-A to the Act. It then enacted the Finance Act, 2021 to change the substantive and procedural law governing the reassessment proceedings. That having been done, together with introduction of section 148-A to the Act, legislative field stood occupied, leaving the delegate with no room to manipulate the law except as to the time lines with respect to proceedings that may have been*

initiated under the Act (both prior to and after enforcement of the Finance Act, 2021). To bolster their submission, learned counsel for the petitioners also rely on the principle - the delegated legislation can never defeat the principal legislation.

(vi) *Last, it has also been asserted, the non-obstante clause created under section 3(1) of the Enabling Act must be read in the context and for the purpose or intent for which it is created. It cannot be given a wider meaning or application as may defeat the other laws."*

18. On the effect of amendment brought by the Finance Act 2021, it was observed therein that undeniably on 01.04.2021 by virtue of plain/unexcepted effect of Section 1(2)(a) of the Finance Act' 2021, the provisions of Sections 147, 148, 149, 151 (as they existed upto 31.03.2021), stood substituted and a new provision by way of Section 148-A was inserted. In absence of any saving clause, to save the pre-existing (and now substituted) provisions, the revenue authority could only initiate reassessment proceeding on or after 01.04.2021, in accordance with the substituted law and not the pre-existing laws. It was noted that the Enabling provisions, that was pre-existing, is an enactment to extend timelines only. In absence of any express provisions in the latter statute the Finance Act' 2021, to save applicability of the provisions of Section 147 to 151, as they existed upto 31.03.2021, all references to issuance of notice contained in the Enabling Act must be read as reference to the substituted provisions only, from 01.04.2021 onwards. However, there is no difficulty in applying the pre-existing provisions to pending proceeding.

19. The submission of the revenue that the provision of Section 3(1) of the Enabling Act gave overriding effect to that Act and, therefore, saved the provisions as existed under the unamended law has been turned down with the finding that the saving could arise only if jurisdiction had been validly assumed before 01.04.2021. It

was observed that reassessment proceeding can be said to be pending before the Assessing Authority only upon jurisdiction being validly assumed by the Assessing Authority. All reassessment notices issued on or after 01.04.2021 cannot be dealt with by applying the pre-existing provisions, as applicable to pending proceedings. No time extension could be given under Section 3(1) of the Enabling Act, read with the Notifications issued thereunder.

20. It was held that the Section 3(1) of the Enabling Act only speaks of saving or protecting certain proceedings from being hit by the rule of limitation. The Enabling Act and the notifications issued thereunder only protected certain proceedings that may have become time barred on 20.03.2020, upto the date 30.06.2021 or till 31.03.2022, in accordance with the Notification No.3814 dated 17.09.2021 issued under Section 3(1) of the Enabling Act. But to allow the Central Government to extend such limitation by virtue of the notifications after 31.03.2021 indefinitely, would be to allow the validity of an enacted law i.e. Finance Act' 2021 to be defeated by a purely colourable exercise of power, by the delegates of the Parliament (Central Government). Hence, no extension could be made under Section 3(1) of the Enabling Act read with the notifications thereunder.

21. It was, thus, concluded in paragraph Nos.72, 73, 75, 76, 79 and 80 by this Court as under:-

> *72. Reference to reassessment proceedings with respect to pre-existing and now substituted provisions of Sections 147 and 148 of the Act has been introduced only by the later Notifications issued under the Act. Therefore, the validity of those provisions is also required to be examined. We have concluded as above, that the provisions of Sections 147, 148, 148A, 149, 150 and 151 substituted the old/pre-existing provisions of the Act w.e.f. 01.04.2021. We have further*

concluded, in absence of any proceeding of reassessment having been initiated prior to the date 01.04.2021, it is the amended law alone that would apply. We do not see how the delegate i.e. Central Government or the CBDT could have issued the Notifications, plainly to over reach the principal legislation. Unless harmonized as above, those Notifications would remain invalid.

73. Unless specifically enabled under any law and unless that burden had been discharged by the respondents, we are unable to accept the further submission advanced by the learned Additional Solicitor General of India that practicality dictates that the reassessment proceedings be protected. Practicality, if any, may lead to legislation. Once the matter reaches Court, it is the legislation and its language, and the interpretation offered to that language as may primarily be decisive to govern the outcome of the proceeding. To read practicality into enacted law is dangerous. Also, it would involve legislation by the Court, an idea and exercise we carefully tread away from.

75. As we see there is no conflict in the application and enforcement of the Enabling Act and the Finance Act, 2021. Juxtaposed, if the Finance Act, 2021 had not made the substitution to the reassessment procedure, the revenue authorities would have been within their rights to claim extension of time, under the Enabling Act. However, upon that sweeping amendment made the Parliament, by necessary implication or implied force, it limited the applicability of the Enabling Act and the power to grant time extensions thereunder, to only such reassessment proceedings as had been initiated till 31.03.2021. Consequently, the impugned Notifications have no applicability to the reassessment proceedings initiated from 01.04.2021 onwards.

76. Upon the Finance Act 2021 enforced w.e.f. 1.4.2021 without any saving of the provisions substituted, there is no room to reach a conclusion as to conflict of laws. It was for the assessing authority to act according to the law as existed on and after 1.4.2021. If the rule of limitation permitted, it could initiate, reassessment proceedings in accordance with the new law, after making adequate compliance of the same. That not done, the reassessment proceedings

initiated against the petitioners are without jurisdiction.

79. As to the decision of the Chhattisgarh High Court, with all respect, we are unable to persuade ourselves to that view. According to us, it would be incorrect to look at the delegation legislation i.e. Notification dated 31.03.2021 issued under the Enabling Act, to interpret the principal legislation made by Parliament, being the Finance Act, 2021. A delegated legislation can never overreach any Act of the principal legislature. Second, it would be over simplistic to ignore the provisions of, either the Enabling Act or the Finance Act, 2021 and to read and interpret the provisions of Finance Act, 2021 as inoperative in view of the fact circumstances arising from the spread of the pandemic COVID-19. Practicality of life de hors statutory provisions, may never be a good guiding principle to interpret any taxation law. In absence of any specific clause in Finance Act, 2021, either to save the provisions of the Enabling Act or the Notifications issued thereunder, by no interpretative process can those Notifications be given an extended run of life, beyond 31 March 2020. They may also not infuse any life into a provision that stood obliterated from the statute with effect from 31.03.2021. Inasmuch as the Finance Act, 2021 does not enable the Central Government to issue any notification to reactivate the pre-existing law (which that principal legislature had substituted), the exercise made by the delegate/Central Government would be de hors any statutory basis. In absence of any express saving of the pre-existing laws, the presumption drawn in favour of that saving, is plainly impermissible. Also, no presumption exists that by Notification issued under the Enabling Act, the operation of the pre-existing provision of the Act had been extended and thereby provisions of Section 148A of the Act (introduced by Finance Act 2021) and other provisions had been deferred. Such Notifications did not insulate or save, the pre-existing provisions pertaining to reassessment under the Act.

80. In view of the above, all the writ petitions must succeed and are allowed. It is declared that the Ordinance, the Enabling Act and Sections 2 to 88 of the Finance Act 2021, as enforced w.e.f. 01.04.2021, are not conflicted. Insofar as the

> *Explanation appended to Clause A(a), A(b), and the impugned Notifications dated 31.03.2021 and 27.04.2021 (respectively) are concerned, we declare that the said Explanations must be read, as applicable to reassessment proceedings as may have been in existence on 31.03.2021 i.e. before the substitution of Sections 147, 148, 148A, 149, 151 & 151A of the Act. Consequently, the reassessment notices in all the writ petitions are quashed. It is left open to the respective assessing authorities to initiate reassessment proceedings in accordance with the provisions of the Act as amended by Finance Act, 2021, after making all compliances, as required by law.*

22. By applying the rule of harmonious construction of Statutes, it was held therein that the Explanation appended to Clauses A(a), A(b) of the impugned notifications dated 31.03.2021 and 27.04.2021; respectively, issued under Section 3(1) of the Enabling Act, must be read as applicable to reassessment proceedings as may have been in existence on 31.03.2021, i.e. before the substitution of Sections 147 to 151A of the I.T. Act' 1961. The reassessment notices issued on or after 01.04.2021 under the pre-existing provisions by applying extension of time with the help of the Enabling Act (TOLA 2020) were quashed leaving it open to the respective Assessing Authorities to initiate assessment proceedings in accordance with the provisions of the Act' 1961 as amended by the Finance Act' 2021 after making all compliances, as required by law.

(ii) **The Apex Court decision:-**

23. The order passed by this Court in Writ Tax No.524 of 2021 connected with other writ petitions was challenged by the revenue before the Apex Court. The Apex Court had taken note of the fact that similar decisions and orders had been passed by various High Courts quashing the reassessment notices issued by the revenue under Section 148 of the Act' 1961, in view of the amendment by the Finance Act' 2021, and that approximately 90,000/- such

reassessment notices were issued by the revenue under Section 148 of the unamended Income Tax Act' 1961 after 01.04.2021. It was held therein that the order passed in the said appeal, arising out of the common judgement and order passed by this High Court shall govern all other judgements and orders passed by various High Court on the similar issue. The revenue need not to file separate individual appeals which may be more than 90,000/- in number.

24. On the merits of the challenge, the Apex Court had taken note of pre and post amendment regime of Sections 147 to 151 of the Income Tax Act and also the Enabling Act/TOLA 2020. It was observed in paragraph Nos. '6, 6.1 to 6.6' of the judgement as under:-

> *"6. It cannot be disputed that by substitution of sections 147 to 151 of the Income Tax Act (IT Act) by the Finance Act, 2021, radical and reformative changes are made governing the procedure for reassessment proceedings. Amended sections 147 to 149 and section 151 of the IT Act prescribe the procedure governing initiation of reassessment proceedings. However, for several reasons, the same gave rise to numerous litigations and the reopening were challenged inter alia, on the grounds such as (1) no valid "reason to believe" (2) no tangible/reliable material/information in possession of the assessing officer leading to formation of belief that income has escaped assessment, (3) no enquiry being conducted by the assessing officer prior to the issuance of notice; and reopening is based on change of opinion of the assessing officer and (4) lastly the mandatory procedure laid down by this Court in the case of GKN Driveshafts (India) Ltd. Vs. Income Tax Officer and ors; (2003) 1 SCC 72, has not been followed.*
>
> *6.1 Further pre-Finance Act, 2021, the reopening was permissible for a maximum period up to six years and in some cases beyond even six years leading to uncertainty for a considerable time. Therefore, Parliament thought it fit to amend the Income Tax Act to simplify the tax administration, ease compliances and reduce litigation. Therefore, with a view to achieve the said object, by the Finance Act, 2021, sections 147 to 149 and section*

151 have been substituted.

6.2 Under the substituted provisions of the IT Act vide Finance Act, 2021, no notice under section 148 of the IT Act can be issued without following the procedure prescribed under section 148A of the IT Act. Along with the notice under section 148 of the IT Act, the assessing officer (AO) is required to serve the order passed under section 148A of the IT Act. section 148A of the IT Act is a new provision which is in the nature of a condition precedent. Introduction of section 148A of the IT Act can thus be said to be a game changer with an aim to achieve the ultimate object of simplifying the tax administration, ease compliance and reduce litigation.

6.3 But prior to preFinance Act, 2021, while reopening an assessment, the procedure of giving the reasons for reopening and an opportunity to the assessee and the decision of the objectives were required to be followed as per the judgment of this Court in the case of GKN Driveshafts (India) Ltd. (supra).

6.4 However, by way of section 148A, the procedure has now been streamlined and simplified. It provides that before issuing any notice under section 148, the assessing officer shall (i) conduct any enquiry, if required, with the approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment; (ii) provide an opportunity of being heard to the assessee, with the prior approval of specified authority; (iii) consider the reply of the assessee furnished, if any, in response to the showcause notice referred to in clause (b); and (iv) decide, on the basis of material available on record including reply of the assessee, as to whether or not it is a fit case to issue a notice under section 148 of the IT Act and (v) the AO is required to pass a specific order within the time stipulated.

6.5 Therefore, all safeguards are provided before notice under section 148 of the IT Act is issued. At every stage, the prior approval of the specified authority is required, even for conducting the enquiry as per section 148A(a). Only in a case where, the assessing officer is of the opinion that before any notice is issued under section 148A(b) and an opportunity is to be given

to the assessee, there is a requirement of conducting any enquiry, the assessing officer may do so and conduct any enquiry. Thus if the assessing officer is of the opinion that any enquiry is required, the assessing officer can do so, however, with the prior approval of the specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment.

6.6 Substituted section 149 is the provision governing the time limit for issuance of notice under section 148 of the IT Act. The substituted section 149 of the IT Act has reduced the permissible time limit for issuance of such a notice to three years and only in exceptional cases ten years. It also provides further additional safeguards which were absent under the earlier regime pre Finance Act, 2021."

25. It was held that the revenue ought not to have issued notices under Section 148 after the amendment was enforced, w.e.f 01.04.2021 under the unamended Act and the notices ought to have been issued under the substituted proceedings of Section 147 to 151 of the Income Tax Act as per the Finance Act 2021. However, in order to strike a balance, noticing that the judgements of the High Courts would result in no reassessment proceeding at all, even if the same are permissible under the Finance Act' 2021 as per substituted Sections 147 to 151 of the Income Tax Act, it was directed that the notices issued under the unamended act/provisions of the Income Tax Act shall be deemed to have been issued under Section 148A of the I.T. Act as per the substituted provisions. The act of the revenue in issuing notices under the unamended Section 148 of the Income Tax Act after 01.04.2021 was considered to be a bonafide mistake in view of the subsequent extension of time vide notifications issued by the Central Government. The judgement and order dated 30.09.2021 passed by this Court was, thus, modified and substituted as under:-

26. It was, thus, observed in paragraph '9' and '10' by the Apex Court as under:-

9. There is a broad consensus on the aforesaid aspects amongst the learned ASG appearing on behalf of the Revenue and the learned Senior Advocates/learned counsel appearing on behalf of the respective assessees.
We are also of the opinion that if the aforesaid order is passed, it will strike a balance between the rights of the Revenue as well as the respective assesses as because of a bonafide belief of the officers of the Revenue in issuing approximately 90000 such notices, the Revenue may not suffer as ultimately it is the public exchequer which would suffer.....
….....

10. In view of the above and for the reasons stated above, the present Appeals are ALLOWED IN PART. The impugned common judgments and orders passed by the High Court of Judicature at Allahabad in W.T. No. 524/2021 and other allied tax appeals/petitions, is/are hereby modified and substituted as under:

(i) The impugned section 148 notices issued to the respective assessees which were issued under unamended section 148 of the IT Act, which were the subject matter of writ petitions before the various respective High Courts shall be deemed to have been issued under section 148A of the IT Act as substituted by the Finance Act, 2021 and construed or treated to be showcause notices in terms of section 148A(b). The assessing officer shall, within thirty days from today provide to the respective assessees information and material relied upon by the Revenue, so that the assesees can reply to the showcause notices within two weeks thereafter;

(ii) The requirement of conducting any enquiry, if required, with the prior approval of specified authority under section 148A(a) is hereby dispensed with as a onetime measure visàvis those notices which have been issued under section 148 of the unamended Act from 01.04.2021 till date, including those which have been quashed by the High Courts. Even otherwise as observed hereinabove holding any enquiry with the prior approval of specified authority is not mandatory but it is for the concerned Assessing Officers to hold any enquiry, if required;

(iii) The assessing officers shall thereafter pass orders in terms of section 148A(d) in

respect of each of the concerned assessees; Thereafter after following the procedure as required under section 148A may issue notice under section 148 (as substituted);

(iv) All defences which may be available to the assesses including those available under section 149 of the IT Act and all rights and contentions which may be available to the concerned assessees and Revenue under the Finance Act, 2021 and in law shall continue to be available

27. While exercising the power under Article 142 of the Constitution of India, it was directed by the Apex Court that the above directions shall be applicable PAN INDIA and would govern all such orders passed by different High Courts on the issue where similar notices under Section 148 of the Act issued after 01.04.2021, were quashed. It was observed that the directions issued therein shall govern all the pending matters before various High Courts wherein similar notices were under challenge. It was, thus, concluded in paragraph No.'12' as under:-

"12. The impugned common judgments and orders passed by the High Court of Allahabad and the similar judgments and orders passed by various High Courts, more particularly, the respective judgments and orders passed by the various High Courts particulars of which are mentioned hereinabove, shall stand modified/substituted to the aforesaid extent only."

The CBDT Instructions:-

28. It has been placed before us that Instructions regarding implementation of the judgement of the Apex Court dated 04.05.2022 (Union of India Vs. Ashish Agarwal) (supra), was issued in exercise of the power under Section 119 of the I.T. Act' 1961 by the Central Board of Direct Taxes, namely Instruction No. 1/2022 dated 11.05.2022 issued by the DCIT (OSD), ITJ-1. The Instructions purported to have been issued for implementation of the judgement of

the Apex Court provided that the decision of the Apex Court would apply to all such cases where "extended reassessment notices" have been issued, irrespective of the fact whether such notices have been challenged or not.

29. In the opening paragraph of the said Instruction, it is noted that the reassessment notices issued by the Assessing Officers during the period beginning on 01.04.2021 and ending with 30.06.2021, within the time extended by TOLA 2020 and various notification issued thereunder, shall be referred as "extended reassessment notices". It was then directed in paragraph '6' of the Instruction that the operation of the new Section 149 of the Act where fresh notices under Section 148 of the Act can be issued, may be seen as under:-

> "6. Operation of the new section 149 of the Act to identify cases where fresh notice under section 148 of the Act can be issued.
>
> *6.1 With respect of operation of new section 149 of the Act, the following may be seen:*
>
> - *Hon'ble Supreme Court has held that the new law shall operate and all* ***the defences available to assessees under section 149 of the new law and whatever rights are available to the Assessing Officer under the new law shall continue to be available.***
>
> - ***Sub-section (I) of new section 149 of the Act as amended by the Finance Act, 2021 (before its amendment by the Finance Act, 2022) reads as under:-***
>
> ***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 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 (12) of sub-section (1) of this section, as they stood immediately before the commencement of the Finance Act, 2021:

- *Hon'ble Supreme Court has upheld the views of High Courts that the benefit of new law shall be made available even in respect of proceedings relating to past assessment years. Decision of Hon'ble Supreme Court read with the time extension provided by TOLA will allow extended reassessment notices to travel back in time to their original date when such notices were to be issued and then new section 149 of the Act is to be applied at that point.*

6.2 Based on above, the extended reassessment notices are to be dealt with as under:

(i) AY 2013-14, AY 2014-15 and AY 2015-16: Fresh notice under section 148 of the Act can be issued in these cases, with the approval of the specified authority, only if the case falls under clause (b) of sub-section (1) of section 149 as amended by the Finance Act, 2021 and reproduced in paragraph 6.1 above. Specified authority under section 151 of the new law in this case shall be the authority prescribed under clause (ii) of that section.

(ii) AY 16-17, AY 17-18: Fresh notice under section 148 can be issued in these cases, with the approval of the specified authority, under clause (a) of sub-section (1) of new section 149 of the Act, since they are within the period of three years from the end of the relevant assessment year. Specified authority under section 151 of the new law in this case shall be the authority prescribed under clause (i) of that section."

30. In cases where the Assessing Officer is required to provide an information and material relied upon, it was directed in clause 7.1 therein as under:-

> "7.1 Hon'ble Supreme Court has directed that information and material is required to be provided in all cases within 30 days. However, it has also been noticed that notices cannot be issued in a case for AY 2013-14, AY 2014-15 and AY 2015-16, if the income escaping assessment, in that case for that year, amounts to or is likely to amount to less than fifty lakh rupees. Hence, in order to reduce the compliance burden of assessees, it is clarified that information and material may not be provided in a case for AY 2013-14, AY 2014-15 and AY 2015-16, if the income escaping assessment, in that case for that year, amounts to or is likely to amount to less than fifty lakh rupees. Separate instruction shall be issued regarding procedure for disposing these cases."

31. The procedure required to be followed by the Assessing Officer in compliance of the order of the Apex Court provided therein as under:-

> *"The extended reassessment notices are deemed to be show cause notices under clause (b) of 148A of the Act in accordance with the judgment of Flon'ble Supreme Court. Therefore, all requirement of new law prior to that show cause notice shall be deemed to have been complied with.*
>
> *The Assessing Officer shall exclude cases as per clarification in paragraph 7.1 above. Within 30 days i.e. by 2nd June 2022, the Assessing Officer shall provide to the assessees, in remaining cases, the information and material relied upon for issuance of extended reassessment notices.*
>
> *The assessee has two weeks to reply as to why a notice under section 148 of the Act 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. The time period of two weeks*

shall be counted from the date of last communication of information and material by the Assessing Officer to the assessee.

In view of the observation of Hon'ble Supreme Court that all the defences of the new law are available to the assessee, if assessee makes a request by making an application that more time be given to him to file reply to the show cause notice, then such a request shall be considered by the Assessing Officer on merit and time may be extended by the Assessing Officer as provided in clause (b) of new section 148A of the Act.

After receiving the reply, the Assessing Officer shall 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 of the Act. The Assessing Officer is required to pass an order under clause (d) of section 148A of the Act to that effect, with the prior approval of the specified authority of the new law. This order is required to be passed within one month from the end of the month in which the reply is received by him from the assessee. In case no such reply is furnished by the assessee, then the order is required to be passed within one month from the end of the month in which time or extended time allowed to furnish a reply expires.

If it is a fit case to issue a notice under section 148 of the Act, the Assessing Officer shall serve on the assessee a notice under section 148 after obtaining the approval of the specified authority under section 151 of the new law. The copy of the order passed under clause (d) of section 148A of the Act shall also be served with the notice u/s 148.

If it is not a fit case to issue a notice under section 148 of the Act, the order passed under clause (d) of section 148A to that effect shall be served on the assessee."

32. Before proceeding further, we may record that in some of the writ petitions, the challenge to the offending clauses of the Instruction dated 11.05.2022 issued by CBDT, in exercise of its power under Section 119 of the Act, has been raised on the ground that the same is in direct conflict/contravention of the observations

and directions issued by the Apex Court in the case of **Ashish Agarwal (supra).**

Arguments of the counsels on behalf of the petitioners:-

33. The arguments of all the learned counsels for the petitioners are being noted, collectively, hereunder:-

(I) After the amendment brought by the Finance Act' 2021, new/amended provisions will apply to reassessment proceedings.

(ii) Enabling Act (TOLA 2020) will not extend the time limit provided for initiation of reassessment proceedings under the unamended Sections 147 to 151 of the I.T. Act from 01.04.2021 onwards.

(iii) The result is that the revenue has to comply with all the requirements of the substituted/amended provisions of Sections 147 to 151A in the reassessment proceedings, initiated on or after 01.04.2021. All compliances under the amended provisions will have to be made by the revenue.

(iv) Simultaneously, all defences under the substituted/amended provisions will be available to the assessee.

(v) About the impact of the Enabling Act (TOLA 2020) on the amendment by the Finance Act' 2021, it was argued that no time extension under Section 3(1) of the Enabling Act (TOLA 2020) can be granted in the time limit provided under the substituted unamended provisions. The contention is that Section 3(1) of TOLA 2020 saved only the reassessment proceeding as they existed under the unamended law.

(vi) The scheme of assessment underwent a substantial change

with the enforcement of the Finance Act' 2021. The general provisions of the Enabling Act (TOLA 2020) cannot vary the requirements of the Finance Act' 2021, which is a special provision as the special overrides general.

(vii) It was argued that reassessment notice under Section 148 can be issued only upon the jurisdiction being validly assumed by the assessing authority, for which the compliances of substituted provisions of Sections 149 to 151A have to be made by the revenue.

(viii) New/amended provisions are beneficial in nature for the assessee and provide certain pre-requisite conditions/monitory threshold etc. to be adhered to by the revenue to issue jurisdictional notice under Section 148. The revenue has to meet higher threshold to discharge a positive burden because of the substantive changes made in the new regime.

(ix) The pre-requisite conditions to issue notice under Section 148 in the pre and post amendment regime have been placed before us to demonstrate that for the reassessment notice after elapse of the period of three years but before 10 years from the end of the relevant assessment year, notice under Section 148 cannot be issued 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 assets, which has escaped assessment, amount to or is likely to amount to Rs.50 lacs rupees or more for that year.

(x) It was submitted that the monetary threshold for opening of assessment after elapse of three years for the period upto ten years has, thus, been put in place.

(xi) Further, first proviso to sub-section (1) of Section 149 has

been placed to assert that the cases wherein notices were not issued within the period of six years as per clause (b) of sub-section (1) of Section 149 under the unamended provision, reassessment notices cannot be issued on or after 01.04.2021 after the commencement of the Finance Act 2021, as such cases have become time barred.

(xii) It was argued that such cases cannot be reopened by giving extension in the time limit by applying the provisions of Enabling Act (TOLA 2020).

(xiii) It was argued that the Finance Act 2021 had limited the applicability of the Enabling Act (TOLA 2020) and after amendment, the compliances/conditions under the amended provisions have to be fulfilled.

34. In the crux, it was argued by the learned counsels for the assessees that the Apex Court in **Ashish Agarwal (supra)** has categorically provided that all defences which may be available to the assessee including those available under Section 149 of I.T. Act and all rights and contentions which may be available to the concerned assessee and revenue under the Finance Act' 2021 and in law, shall continue to be available. The effect of the said observation is that the revenue though may be able to maintain the notices issued under the unamended Section 148 of the I.T. Act, as preliminary notices under Section 148-A of the I.T. Act as inserted by the Finance Act' 2020, but for issuance of jurisdictional notice under Section 148 of the I.T. Act, the requirements of the amended Section 149 of the I.T. Act under the Finance Act 2021 have to be fulfilled. It was argued that the Enabling Act (TOLA 2020) was enacted by the Parliament to deal with the contingency and the extension of time limit under Section 3(1) of TOLA and was contemplated not to remain in perpetuity, TOLA had only substituted the limitation that was expiring. The

extension under TOLA for the assessment year 2015/16, 2016-17, 2017-18 was not permissible as the time limit for reopening of assessment proceedings for the said assessment years even under the unamended Section 149 was not expiring at the time of enforcement of the Enabling Act (TOLA 2020). The findings returned by the Division Bench and the Apex Court as noted above have been reiterated that the relaxation granted by the Apex Court to save Section 148 notices under the unamended Act as Section 148A preliminary notices inserted under the Finance Act' 2021, was a one time measure treating them as bona fide mistake of the revenue. However, it is evident from the said finding that the provisions of the Finance Act' 2021 have to be given their full effect.

35. It was vehemently urged that in any case, the Enabling Act 2020 cannot infuse life into the pre-existing law to provide extension of time to the revenue in the time limit therein, to reopen cases for the assessment years which have became time barred under the first proviso to Section 149.

36. As regards the Instruction issued under Section 119 of the I.T. Act' 1961, it was argued that the executive instructions cannot limit or extend the scope of the Act or cannot alter the provisions of the Act. The decision of the Apex Court in **1992 (2) SCC 231** has been placed to assert that an Instructions or Circular cannot impose burden on a tax payer higher than what the Act itself as a true interpretation envisages. However, the departmental circular/Instructions beneficial to the assessee and if it tone down the rigors of the law issued in exercise of the statutory powers under Section 119 of the Act or under corresponding provisions of the Act, are binding on the revenue in the administration of the Act.

37. The offending clauses of the Instruction dated 11.05.2022,

have been placed before us to assert that the direction issued in (clause 6.1, in third bullet point) that the decision of the Apex Court read with the time extension provided by TOLA, will allow "extended reassessment notices" to travel back in time to their original date when such notices were to be issued and then new Section 149 of the Act is to be applied at that point, is based on the wrong interpretation of the judgement of the Apex Court and the High Court. In clause 6.2 (i) of the Circular, it is provided that reassessment notices for assessment years 2013-14 and 2014-15 can be issued with the approval of the specified authority, if the case falls under clauses (b) of sub section (1) of Section 149 amended by the Finance Act 2021. The submission is that by issuing such instructions contained in clauses 6.1 and 6.2 of the Circular dated 11.05.2022, the CBDT has deviced a novel method to revive the reassessment proceedings which otherwise became time barred under the amended Section 149, specifically for the assessment year 2013-14 and 2014-15 being beyond the time limit specified under the provisions of unamended clause (b) of sub section (1) of Section 149.

38. Reference has been made to the decision of the High Court of Bombay in **Tata Communications Transformation Services Limited Vs. Assistant Commissioner of Income Tax**[3] by the learned counsels for the assessee to assert that Section 3(1) of the Enabling Act does not provide that any notice issued under Section 148 of the Act after 31.03.2021 will relate back to the original date when it ought to have been issued or that the clock is stopped on 31.03.2021 such that the provisions as existing on said date will be applicable to notices issued thereafter, relying on the provisions of the Enabling Act. It was observed therein that the purpose of Section 3(1) of the Enabling Act is not to postpone or extend the applicability of the unamended provisions of the specified

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Act (I.T. Act). The observations made by the Bombay High Court therein that the Enabling Act is not applicable for assessment year 2015-16 or any subsequent year as the time limit to issue notice under Section 148 of the Income Tax Act for these assessment years was not expiring within the period for which Section 3(1) of the Enabling Act was applicable and hence the Enabling Act could not apply for these assessment years, has been pressed into service. It was, thus, argued that as a consequence, there can be no question of extending the period of limitation for such assessment years, where the revenue could have issued notice of reassessment by complying with the requirements of the unamended provisions. It was urged that in a case where the revenue did not initiate proceedings within the time limit under the unamended Income Tax Act extended by the Enabling Act, further extensions for inaction of the revenue cannot be granted by the notifications issued under the Enabling Act on 31.03.2021 or thereafter, once the amendments have been brought into place on 01.04.2021, to extend the time limit under the unamended provisions.

39. It was vehemently urged that from all angles, the revenue cannot be permitted to argue that after the decision of this Court affirmed by the Apex Court, it can issue notices under the amended section 148 without making compliances of the amended provisions of Section 149 of the I.T. Act. It cannot seek extension of the time limit for taking action under the unamended provision by seeking relaxation under TOLA 2020, in turn, for further extension of the time limit under the amended Section 149 brought by the Finance Act 2021. All notices under Section 148 which were issued on or after 01.04.2021, with respect to the assessment years 2013-14 to 2017-18, therefore, have to comply with the requirements of Section 149 amended by the Finance Act' 2021.

Arguments of the Counsels on behalf of the Revenue:-

40. Sri Gaurav Mahajan learned Advocate for the revenue, in rebuttal, would submit that the Enabling Act 2020 was enacted by the Parliament to grant relaxation in the time limit provided in the 'Specified Act' defined therein, one of which is the Income Tax Act' 1961. Sub-section (1) of Section 3 of the Act provide that the time limit specified or prescribed or notified under the Specified Act shall stand extended/relaxed for completion and compliances of such action, issuance of such notice, which fall during the period prescribed therein. Clause (c) of sub section (1) of Section 3 is specific to the Income Tax Act' 1961. Section 3(1)(c)(ii) contains a 'Non-Obstante' clause and provides that time limit for completion and compliances of such action shall, notwithstanding anything contained in the Specified Act, shall stand extended to 31st March 2021 or such other date after 31.03.2021, as the Central Government may specify, by notification in this behalf. The notifications dated 27.02.2020, 31.12.2020,, 31.03.2021 and 27.04.2021 have been issued in exercise of the power under the said provision by the Central Government. The end date to which the prescribed time limit for completion and compliances of such action as per sub section (1) of Section 3 of the Enabling Act 2020 was extended upto 31.03.2021 under the notification dated 31.12.2020. In partial modification of the notification dated 31.12.2020, the time limit specified in Section 149 for issuance of notice under Section 148 or sanctions under Section 151 of the Act' 1961 has been extended upto 30.04.2021. Further, by the notification dated 27.04.2021 issued in partial modification of the previous notifications dated 31.12.2020, 22.02.2021 and 31.03.2021, the time limit was further extended upto 30.06.2021.

41. The submission, thus, is that issuance of notice under Section 148 as per the prescribed time limit in Section 149 was permissible uptil 30.06.2021. The extension of time granted by the

subsequent notifications dated 31.03.2021 and 27.04.2021 would save all notices issued by the revenue on after 01.04.2021, by applying the procedure under the amended provisions. The challenge to the validity of notices issued under Section 148, in the instant case, after rejection of the objections filed by the petitioners under Section 148-A, cannot be sustained.

42. It was argued that the Explanation attached to clause A(a) of the notification dated 31.03.2021 and the explanation clause A (b) of notification dated 27.04.2021 though have been read down by this Court in **Ashok Kumar Agarwal (supra)** holding that the said explanations must be read as applicable to reassessment proceedings as may have been in existence on 31.03.2021, i.e. before enforcement of Finance Act' 2021, but it was held that the notice to initiate reassessment proceedings after 01.04.2021 can be issued in accordance with the provisions of the I.T. Act as amended by Finance Act' 2021. It was argued that the notices issued on or after 01.04.2021 under Section 148 of the Income Tax Act, for reassessment were issued in accordance with the substituted laws and not as per the pre-existing laws and the Enabling Act (TOLA 2020) was only applied for extension in the timeline. The Enabling Act has overriding effect over the Specified Act namely the Income tax Act and has been enacted in the exigencies due to spread of Covid 19, it will extend the time limit for issuance of notice/action under the I.T. Act. The CBDT Instructions dated 11.05.2022 has only clarified the manner in which the implementation of the judgement of the Apex Court is to be made. The extension of time granted by TOLA 2020 uptil 31.03.2021 and the subsequent notifications issued under sub section (1) of Section 3 of the Enabling Act (TOLA 2020) to further extend the timeline upto 31.06.2021 would save all notices issued on or after 01.04.2021.

43. Sri Krishna Agarwal learned Advocate for the revenue

adding to the submissions of Sri Gaurav Mahajan would argue that Section 3(1) of the Enabling Act (TOLA 2020) granted extension of time limit provided for any action/compliances/issuance of notices under the I.T. Act' 1961. TOLA 2020, as it stands today, has not been read down. Substantive provisions of the Enabling Act' 2020 which is a parliamentary legislation enacted specifically to extend the limitation under I.T. Act, would extend the time limit by virute of the Notification No.20 of 2021 dated 31.03.2021 and Notification No.38 dated 27.04.2021 upto 31.06.2021 even after reading down the explanations therein. He would submit that as on 31.03.2021, the Income Tax Act' 1961 was existing on the statute book. A set of procedure of reassessment provided under the Act had been changed with the amendment brought by the Finance Act 2021 wef 01.04.2021. Only the time limit for various action/compliances/issuance of notices has been changed in the Finance Act' 2021. For instance, the timeline for issuance of notice under the pre-existing Section 148 was 4 years and 6 years, which has now been changed to 3 years and 10 years. In any case, timeline remained there under both the enactments, pre and post amendment. The reassessment notices would have been barred by time had there been no extension of the timelimit under the Income Tax Act' 1961 by the Enabling Act (TOLA 2020). The applicability of Explanation to Clause A(a) of the notification dated 31.03.2021 and Explanation to clause A(b) of the notification dated 27.04.2021, may have been restricted to reassessment proceedings as in existence on 31.03.2021 and have been read down as applicable to the pre-existing Section 147 to 151-A of the Act' 1961, but the substantive provisions of extension of time for action/compliances/issuance of notice of the notifications dated 31.03.2021 and 27.04.2021, still survive.

44. The challenge in **Ashok Kumar Agarwal (Supra)**

before the High Court was to the applicability of the pre-amendment provisions to the notices under Section 148 issued after 01.04.2021. The Explanations which provided that for the notices issued after 01.04.2021 the time line under the pre-existing provisions would apply, have been held to be offending provisions, but this Court had left it open to the respective assessing authorities to initiate reassessment proceedings in accordance with the amended provisions by Finance Act 2021. The extension in time uptil 31.06.2021 as granted by the notifications dated 31.03.2021 and 27.04.2021 would, thus, apply to the timeline provided under the amended provisions brought by the Finance Act 2021.

45. It is submitted that when two Parliamentary Acts are on the statute book, one providing substantive provisions and procedure for initiating reassessment proceeding and the other granting extension of time for action/compliances/issuance of notices under the substantive and procedural provisions of the Act' 1961, a harmonious construction of both the provisions has to be made, as has been done by this Court in **Ashok Kumar Agarwal (supra).** The result would be that whatever time limit is provided under the Principal Act namely the Income Act' 1961 as on 01.04.2021, the same has to be extended uptil 31.06.2021 to enable the revenue to initiate and process the reassessment proceedings under Section 148 of the Act' 1961 amended by the Finance Act' 2021.

46. It was argued that in view of the decision of the Apex Court in saving all notices issued by the revenue PAN INDIA by treating them as notices under Section 148-A of the amended provisions of the Income Tax Act, all actions of the revenue subsequent to the issuance of notices under Section 148-A in compliance of the directions of the Apex Court would have to be saved. The reference to the date of issuance of Section 148 notices, which were quashed by

different High Courts, thus, have to be the date of notices under Section 148-A of the amended provisions and extension of time, for compliances prescribed under the amended provisions, has to be granted to the revenue, accordingly. As observed by the Apex Court, when all defences remain available to the assessee, all rights of the revenue will have to be preserved/made available.

47. The observations of the Division Bench in paragraph No.'65' and '66' in **Ashok Kumar Agarwal (supra)** have been pressed into service to assert that even the Division Bench in **Ashok Kumar Agarwal (supra**) has recognized that the Enabling Act plainly is an enactment to extend timelines only. Consequently from 01.04.2021 onwards, all references to issuance of notices contained in the Enabling Act must be read as references to the substituted provisions only. This Court has observed that there is no difficulty in applying the pre-existing provisions to pending proceedings and then proceeded to harmonize two laws, i.e. the Enabling Act and the Finance Act 2021.

48. It was, thus, argued that giving this plain and simple meaning to the Enabling Act (TOLA 2020), it has to be seen by the Court that the extensions in time limit which were available to the revenue uptil 31.03.2021 under the Enabling Act, became available to the revenue after 01.04.2021 by the Notification No.20 of 2021 dated 31.03.2021 and the Notification No.38 dated 27.04.2021, which have not been quashed or held invalid by this Court or the Apex Court. The submission, thus, is that extension of three months uptil 30.06.2021 in the time limit provided under the Income Tax Act 1961, whether pre or post amendment, has to be granted. The time limit provided in the amended Section 149 of three years and 10 years has to be extended uptil 31.06.2021, by virtue of the notifications issued by the Central Government in exercise of power under Section 3(1) of the Enabling

Act. The CBDT Instruction dated 11.05.2022 under Section 119 of the Income Tax Act 1961 only clarifies the above stated position of two provisions namely the Enabling Act and the Finance Act 2021, wherein it is provided in para 6.1 of the Instructions that the time extension provided by TOLA' 2020 will allow "extended reassessment notices" to travel back in time to their original date when such notices were to be issued and then the new Section 149 of the Act is to be applied at that point of time.

49. It was submitted that based on the said logic, the "extended reassessment notices" for the assessment year 2013-14, AY 2014-15 and AY 2015-16 are to be dealt with by issuance of fresh notice under amended Section 148, with the approval of the specified authority, in the cases which fall under clause (b) of sub-section (1) of Section 149 as amended by the Finance Act' 2021. It is further clarified in the CBDT instruction that the specified authority under Section 151 of the amended provisions shall be the authority prescribed under clause (ii) of that Section. Similarly, for AY 2016-147 and AY 2017-18, fresh notice under Section 148 can be issued with the approval of the specified authority under clause (a) of sub section (1) of amended Section 149 of the Act, as they are within the period of three years from the end of the relevant assessment years because of the extension of time by TOLA' 2020. Specified authority under Section 151 of the amended provisions, in such cases, shall be the authority prescribed under clause (i) of that Section.

50. It is, thus, submitted by the learned Counsels for the revenue that doubts, if any, may arise about the implementation of the judgement of the Apex Court in **Ashish Agarwal (supra),** have been clarified by the Instruction No.1 of 2022 dated 11.05.2021 issued by the CBDT.

51. In support of their submissions, learned counsels for the revenue have placed the decision of the High Court of Delhi in **Touchstone Holdings Pvt. Ltd Vs. Income Tax Officer, Delhi & others** [4] wherein the earlier decision of the Delhi High Court in **Mon Mohan Vs. Assistant Commissioner** [5] has been relied. It was pointed out that the observation made in **Mon Mohan Kohli** by the Delhi High Court in paragraph No.'98', have been upheld with the decision of the Apex Court in **Ashish Kumar Agarwal (supra),** wherein reassessment notices issued on or after 01.04.2021 have been saved by treating them as notices under Section 148-A of the Income Tax Act. The relevant observations of **Mon Mohan Kohli (supra)** in para '98' as noted in **Touchstone Holdings (supra)** by the Delhi High Court, relied by the counsel for the revenue, are noted as under:-

> "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"*

52. It was, thus, noted in **Touchstone (supra)** that the Apex Court in **Ashish Agarwal (supra)** has simply held that Section 148 notice issued between 01.04.2021 to 30.06.2021 will be deemed to have been issued under Section 148-A of the Act and, therefore, Section 148 notice issued on 29.06.2021 therein, stood revived. The result is that the time period for issuance of reassessment notice for Assessment year 2013-14 stood extended until 30.06.2021 and the first proviso of Section 149 brought by the Finance Act' 2021 is not attracted in the facts of that case.

53. It was urged before us that taking note of the first proviso

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of Section 149 (amended), it was held by the Delhi High Court that the time limit for initiating assessment proceeding for assessment year 2013-14 stood extended till 30.06.2021. Consequently, the reassessment notice dated 29.06.2021 issued therein being well within the extended period of limitation was not time barred. The challenge to paragraph 6.2 (i) of CBDT Instruction No.1/2022 dated 11.05.2022, was turned down therein holding that with the declaration by the Apex Court that the reassessment notice issued on or after 01.04.2021 shall be deemed to be the notice under Section 148-A of the Act, the revenue was permitted to complete the reassessment proceedings in accordance with the amended provisions of Section 149. The contention of the petitioner that the assessment for AY 2013-14 became time barred on 31.03.2020 was accordingly, repelled.

54. Reliance has further been placed on the decisions of the Apex Court in **Raymond Woolen Mills Ltd. Vs. Income Tax Officer** [6], **Commissioner in Income Tax & others Vs. Chhabil Das Agarwal** [7], **Coca Cola India Inc. Vs. Additional Commissioner of Income Tax & others** [8], **Gian Casting Private Limited Vs. CBDT** [9], **Anshul Jain Vs. Pr. Commissioner of Income Tax** [10], the judgement of Delhi High Court in **Gulmuhar Silk Pvt. Ltd Vs. Income Tax Officer** [11], the judgement of Punjab and Haryana High Court in **Gian Casting Private Limited Vs. Central Board of Direct Taxes** [12], in **Anshul Jain Vs. Pr. Commissioner of Income Tax** [13], in **Midland Microfin Ltd. Vs. Union of India & others** [14] and

6. 1999 (236 ITR 34 (SC)
7. 2013 (217) Taxmann 143 (SC)
8. 2011 (336) ITR 1 (SC)
9. Special Leave to Appeal © No.10762/2022
10. Special Leave to Appeal (C) No.14823/2022
11. W.P. (C) 5787/2022 & CM Appl.17297/2022
12. CWP No.9142 of 2022
13. CWP No.10219 of 2022
14. CWP No.10583 of 2022 (O&M)

the decision of Mahdya Pradesh High Court in **Harinder Singh Bedi Vs. Union of India & others** [15] to assert that the writ petitions are directed against the order of rejection of objections raised by the assessees under Section 148-A of the Act' 1961 and the consequent notice under Section 148 issued to the assessees. The assessees have right to appeal under Section 246 of the Act' 1961 to challenge the orders/notices on the grounds raised herein even with respect to the jurisdiction of the authorities. The reassessment proceedings have not even been concluded by the statutory authority, the writ Court may not interfere at such a premature stage. The correctness of the orders under Section 148-A (d), being challenged on the factual premise contending that the jurisdiction though vested has wrongly been exercised, cannot be examined at this stage. For rectification of the jurisdictional error and error of law/fact in passing orders by the authority vested with the jurisdiction to pass such orders, statutory remedy has been provided. The writ petitions in this bunch, do not warrant interference by this Court in exercise of the jurisdiction under Article 226 of the Constitution of India at this intermediary stage and, as such, are liable to be dismissed.

55. At this stage of arguments, a pointed query was made to the learned counsels for the revenue to answer the effect of the first proviso to sub-section (1) of Section 149 of the amended provisions inserted by the Finance Act' 2021 which prohibits issuance of notice under Section 148, in a case where it has become time barred under the unamended (pre-existing) Section 149 clause (b) of sub section (1) of Section 149, (as they stood before the commencement of the Finance Act' 2021). The unamended Section 149(1)(b) provided that no notice under Section 148 shall be issued, if 6 years have been elapsed from the end of the relevant assessment years, which has escaped the assessment amount to one lac rupees or more for that

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year.

56. The answer of the learned counsels for the revenue was that time limit of 6 years provided in clause (b) of sub section (1) of Section 149 stood extended by virtue of the Enabling Act uptil 31.03.2021, and further extensions in the time limit (of six years) are to be granted under the notifications issued by the Central Government in accordance with Section 3(1) of the Enabling Act uptil 31.06.2021. The result would be that the cases for the Assessment Year 2013-14, AY 2014-15 where the period of six years had expired on 31.03.2020 and 31.03.2021: respectively, would not be hit by the first proviso to sub-section (1) of Section 149 brought by the Finance Act' 2021. The cases for these assessment years have to be evaluated and the reassessment proceedings have to be conducted for them in accordance with clause (b) of sub section (1) of Section 149 as amended by the Finance Act 2021, being beyond the period of three years but within the limitation of ten years. Similarly for the assessment year 2015-16, on the expiry of three years on 31.03.2019, the extension uptil 31.06.2021 is to be granted to bring the reassessment proceedings under amended clause (b) of sub section (1) of Section 149. For the assessment year 2016-17 and 2017-18, where the period of three years had expired on 31.03.2020 and 31.03.2021; respectively, the extension in the time limit of three years is to be granted under the Enabling Act and these cases would fall under the amended clause (a) of sub section (1) of Section 149 being within the prescribed limit of three years uptil 31.06.2021.

Analysis:-

57. Before analyzing the arguments of counsel for the parties in the light of the decisions of the Division Bench of this Court and the Apex Court in the previous rounds of litigation, interse parties, we

may note at this juncture, that we find inherent fallacy in the arguments of the learned counsels for the revenue, in so far as the interpretation/implementation of the first proviso to sub-section (1) of Section 149 inserted by the Finance Act' 2021 which prohibits initiation of reassessment proceedings in cases which have became time barred under the unamended clause (b) of sub-section (1) of Section 149, where six years have elapsed from the end of the relevant assessment year on 01.04.2021.

58. However, to deal with the arguments of the learned counsel for the parties in detail, we deem it fit to make a comparative table of Section 149 pre and post amendment by the Finance Act 2020, to have a glance to the said provisions:-

	Section 149 of IT Act,1961		Section149 (Substituted by the Finance Act 2021) of IT Act,1961	
	Time limit for notice-		Time limit for notice-	
1.	No notice under section 148 shall be issued for the relevant assessment year,-		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 sub- clause (b) or clause (c);	(a)	if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause
	(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;	(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 has escaped assessment amounts to or is likely to amount to fifty 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.		
				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 01/04/2021, 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 31/03/2021:
				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- In determining income chargeable to tax which has escaped assessment for the purpose of this sub-section, the provisions of Explanation 2 of section 147 shall apply as they apply for the purpose of that section.	Explanation- For the purpose 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.
	The provisions of Sub-section (1) as to the issue of notice shall be subjected to the provision of Section 151.	The provision of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.

	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-section (1) and (3), as amended by the Finance Act, 2012 shall also be applicable for any assessment year beginning on or before the 1.4.2012.	**….……**
	Explanation- 1. For the purpose 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.	….....
	2. The provision of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151	….....

59. We are further required to go through the Division Bench judgement of this Court in **Ashok Kumar Agarwal (supra)** about the effect and applicability of the Enabling Act (TOLA 2020) on the amended provisions of the Income Tax Act' 1961 brought on the statute book by the Finance Act 2021, to understand the legal position with regard to the effect of the Enabling Act' 2020 on the pre and post amended provisions of the Income Tax Act' 1961**.**

60. Detailed observations of the Division Bench in **Ashok**

Kumar Agarwal (supra) have been noted/extracted in the preceding part of this judgment. It was held, in the crux, as follows:-

(i) By its very nature, once new provision has been put in place of the pre-existing provision, earlier provision cannot survive, except for the things done or already undertaken to be done or things expressly saved to be done.

(ii) In absence of any saving clause to save preexisting provisions, the revenue authorities could only initiate proceeding on or after 01.04.2021, in accordance with the substituted laws and not the pre-existing laws. The Enabling Act, that was pre-existing, confronted the Income Tax Act as amended by the Finance Act, 2021, as it came into existence on 01.04.2021. In both the provisions, i.e the Enabling Act and the Finance Act, 2021, there is absence, both of any express provision in its effort to delegate the function, to save the applicability of provisions of pre-existing Sections 147 to 151, as they existed upto 31.03.2021.

(iii) Plainly, the Enabling Act is an enactment to extend timelines only from 01.04.2021 onwards. Consequently, from 01.04.2021 onwards all references to issuance of notice contained in the Enabling Act must be read as reference to the substituted provisions only.

(iv) There is no difficulty in applying pre-existing provisions to pending proceedings and, this is how, the laws were harmonized.

(v) For all reassessment notices which had been issued after 01.04.2021, after the enforcement of amendment by the Finance Act, 2021, no jurisdiction has been assumed by the assessing authority against the assesses under the unamended law. No time extension could, thus, be made under Section 3(1) of the Enabling Act read with the Notifications issued thereunder.

(vi) Section 3 of the Enabling Act only speaks of saving or protecting certain proceedings from being hit by the rule of limitation. That provision also does not speak of saving any proceeding from any law that may be enacted by the Parliament, in future. The non obstante clause of Section 3(1) of the Enabling Clause Act does not govern the entire scope of the said provision. It is confined to and may be employed only with reference to the second part of Section 3(1) of the Enabling Act, i.e to protect the proceedings already underway. The Act, thus, only protected certain proceedings that may have become time barred on 20.03.2021 upto the date 30.06.2021. Correspondingly, by delegated limitation incorporated by the Central Government (notifications), it may extend that time limit. That timeline alone stood extended upto 30.06.2021.

(vii) Section 3(1) of the Enabling Act does not itself speak of reassessment proceeding or of Section 147 or Section 148 of the Act as it existed prior to 01.04.2021. It only provides a general relaxation of limitation granted on account of general hardship existing upon the spread of pandemic COVID-19. After enforcement of the Finance Act, 2021, it applies to the substituted provisions and not the pre-existing provisions.

The reference to reassessment proceedings with respect to pre-existing and new substituted provisions of Sections 147 and 148 of the Act has been introduced only by the later notifications issued under the Enabling Act. It was concluded that in absence of any proceedings of reassessment having been initiated prior to the date 01.04.2021, it is the amended law alone that would apply. The notifications issued by the Central Government or the CBDT Instructions could not have been issued plainly to overreach the principal legislation. Unless harmonised as such, those notifications would remain invalid.

(viii) On the submission of the revenue that practical difficulties faced by the revenue in initiation of reassessment proceedings due to onset of pandemic COVID-19 dictates that the reassessment proceedings be protected, it was noted that practicality, if any, may lead to legislation. Once the matter reaches the Court, it is the legislation and its language and the interpretation offered to that language as may primarily be decisive to govern the outcome of the proceedings. To read practicality into enacted law is dangerous.

(ix) It would be oversimplistic to ignore the provisions of, either the Enabling Act or the Finance Act 2021 and to read and interpret the provisions of Finance Act 2021 as inoperative in view of the facts and circumstances arising from the spread of the pandemic Covid-19.

(x) In absence of any specific clause in the Finance Act 2021 either to save the provisions of the Enabling Act or the notifications issued thereunder, by no interpretative process can those notifications be given an extended run of life, beyond 31.03.2021.

(xi) The notifications issued under the Enabling Act (TOLA 2020) may also not infuse any life into a provision that stood obliterated from the statute book w.e.f 31.03.2021, in as much as, the Finance Act' 2021 does not enable the Central Government to issue any notification to reactivate the pre-existing law, which has been substituted by the principal legislature. Any such exercise made by the delegate/Central government would be *dehors* any statutory basis.

(xii) In absence of any express saving of the pre-existing laws, the presumption drawn in favour of that saving, is plainly impermissible.

(xiii) No presumption exists by the notifications issued under the Enabling Act that the operation of the pre-existing provisions of the Act had been extended and thereby provisions of Section 148A of the I.T. Act (introduced by the Finance Act' 2021) and other provisions

had been deferred.

61. It was, thus, declared that the Explanations appended to Clauses A(a), A(b) of the impugned notifications dated 31.03.2021, and 27.4.2021; respectively, must be read applicable to reassessment proceedings as may have been in existence on 31.03.2021 or had been initiated till that date, i.e. before the substitution of Sections 147 to 151A of the Act. The Notifications have no applicability to the reassessment proceedings initiated from 01.04.2021 onwards.

62. With the above observations, all reassessment notices, subject matter of challenge therein were quashed. It was, however, left open to the respective assessing authorities to initiate reassessment proceedings in accordance with the provisions of the Act as amended by the Finance Act, 2021 after making all compliances, as required by law.

63. In the challenge to the aforesaid decision of the Division Bench in **Ashok Kumar Agarwal ,** the Apex Court in **Ashish Agarwal** (supra) has observed that:-

(I) By substitution of Sections 147 to 151 of the Income Tax by the Finance Act, 2021, radical and reformative changes are made governing the procedure for reassessment proceedings. Under pre-Finance Act, 2021, the reopening was permissible for a maximum period upto 6 years and in some cases beyond even 6 years leading to uncertainty for considerable time. Therefore, Parliament thought it fit to amend the Income Tax Act to simplify the Tax Administration, ease compliances and reduce litigation. With a view to achieve the said object, by the Finance Act, 2021, Sections 147 to 149 and Section 151 have been substituted.

(II) Section 148(A) of the I.T. Act is a new provision, which is in the nature of a condition precedent. Introduction of Section 148A

to the IT Act can, thus, be said to be a game changer with an aim to achieve ultimate object of simplifying the tax administration. By way of Section 148A, the procedure has now been streamlined and simplified. All safeguards are, thus, provided before issuing notice under Section 148 of the IT Act. At every stage, the prior approval of the specified authority is required, even for conducting the inquiry as per Section 148(A)(a).

(III) Substituted Section 149 is the provision governing the time limit for issuance of notice under Section 148 of the I.T. Act. The substituted Section 149 has reduced the permissible time limit for issuance of such a notice to three years and only in exceptional cases in ten years. It also provides further additional safeguards which were absent under the earlier regime pre-Finance Act, 2021.

(IV) The new provisions substituted by the Finance Act, 2021 being remedial and benevolent in nature and substituted with a specific aim and object to protect the rights and interest of the assesses as well as and the same being in public interest, the respective High Courts have rightly held that the benefit of new provisions shall be made applicable even in respect of the proceedings related to past assessment years, provided Section 148 notice has been issued after 01.04.2021.

64. The Apex Court has, thus, expressed complete agreement with the view taken by the various High Courts in holding so.

65. The reasoning given by the Division Bench of this Court in ***Ashok Agarwal*** (supra) which was subject matter of challenge therein, thus, has been upheld.

66. However, it was further noticed that :-

I) The judgments of several High Courts would result in no assessment proceedings at all, even if the same are permissible under

the Finance Act, 2021 as per substituted Sections 147 to 151 of the Income Tax Act.

To remedy the situation where revenue became remediless, in order to achieve the object and purpose of reassessment proceedings, it was observed that the notices under Section 148 after the amendment was enforced w.e.f 01.04.2021, were issued under the unamended Section 148, due to bonafide mistake in view of the subsequent extension of time by various notifications under the Enabling Act (TOLA 2020).

(II) The notices ought not to have been issued under the unamended Act and ought to have been issued under the substituted provisions of Sections 147 to 151 of the Income Tax Act as per the Finance Act, 2021.

(III) There appears to be a genuine non application of the amendments as the officers of the revenue may have been under a bonafide belief that the amendments may not yet have been enforced.

67. It was, thus, concluded that:-

68. Instead of quashing and setting aside the reassessment notices issued under the unamended provisions of IT Act, the High Courts ought to have passed order construing the notices issued under the unamended Act/unamended provision of the IT Act as those deemed to have been issued under Section 148(A) of the Income Tax Act, as per the new provision of Section 148(A). In that case, the revenue ought to have been permitted to proceed with the reassessment proceedings as per the substituted provisions of Sections 147 to 151 of the Income Tax Act as per the Finance Act, 2021, subject to compliance of all the procedural requirements and the defences which may be available to the assessee under the substituted provisions of Section 147 to 151 of the Income Tax Act,

and which may be available under the Finance Act, 2021 and in law.

69. While modifying the judgment and orders passed by the High Courts in view of the observations noted hereinabove, it was noted by the Apex Court that there was a broad consensus on the proposed modification on behalf of the revenue and the counsels appearing on behalf of respective assessees.

70. From a careful reading of the judgment of the Apex Court, there remain no doubt that the view taken by the Division Bench of this Court in ***Ashok Agarwal*** on the legal principles and the reasoning for quashing the notices under Section 148 of the unamended IT Act, issued after 01.04.2021 adopted by the Division Bench had been affirmed in toto.

71. The result is that all notices issued under the unamended IT Act were deemed to have been issued under Section 148A of the IT Act as substituted by the Finance Act, 2021 and construed to be show cause notices in terms of Section 148 A(b) of the Income Tax Act.
The inquiry as required under Section 148(B) was to be completed by the officers and after passing orders in terms of Section 148A(d) in respect of the assessee, notice under Section 148 could be issued after following the procedure as required under Section 148A. As one time measure, the requirement of conducting an inquiry with the approval of specified authority at the stage of Section 148 A(a) has been dispensed with.

72. In view of the above discussion, the question raised before us is as to what would be the effect and scope of the Enabling Act (TOLA' 2020) on the notices issued under Section 148 after completion of the inquiry and passing of orders in terms of Section 148 A(d). The question is as to whether the timeline provided in the unamended Section 149 would extend uptil 31.03.2021 under the Enabling Act, 2021, with further extensions by the notifications dated

31.03.2021 and 27.04.2021 issued under TOLA, in the timeline provided under the amended Section 149 of the Finance Act, 2021. The arguments of the learned counsels for the revenue is that the Enabling Act (TOLA' 2020) granted extension in the time limit provided in the pre-existing provisions of the Income Tax Act. The period of four years and six years provided in Clause (a) and (b) of the unamended Section 149 of the IT Act stood extended uptil 31.03.2021 by the extensions granted under TOLA 2020, as the reassessment notices, could have been issued, within the extended period of time uptil 31.03.2021. The amendment by the Finance Act, 2021 though have substituted the substantive and procedural amendment in the Income Tax Act 1961 and old provisions have been recasted and made applicable w.e.f 01.04.2021, but extensions already granted by the Enabling Act in the limitation prescribed under the unamended provisions of the Income Tax Act have not been curtailed. Further extensions in the limitation for issuance of reassessment notices have been made by the notifications dated 31.03.2021 and 27.04.2021 issued by the Central Government, in exercise of power conferred by Section 3(1) of the Enabling Act. The result is that the time limit for initiation of reassessment proceedings by issuance of notice under Section 148 of the Income Tax Act stood extended uptil 31.06.2021. The limitation of three years in clause (a) and (b) of sub Section (1) of Section 149, therefore, has to be extended by the extensions granted by the Enabling Act i.e 30.06.2021.

73. With the support of the observations of the Delhi High Court in para-'98' in ***Mon Mohan Kohli*** (supra), it was argued that the power of reassessment that existed prior to 31.03.2021 continued to exist till the end of the extended period, i.e 30.06.2021 and the Finance Act, 2021 has merely changed the procedure to be followed prior to issuance of notice w.e.f 01.04.2021. It was argued that the

first proviso to Section 149 (brought by the Finance Act, 2021) will have no application in such a situation.

74. To test this submission of the learned counsels for the revenue, we required to reiterate some of the reasoning of the Division Bench of this Court in ***Ashok Kumar Agarwal*** in paras-'75' and '76' (as extracted above), herein. We may reiterate that the Division Bench of this Court while considering the scope of application and enforcement of the Enabling Act and the Finance Act, 2021, juxtaposed, has held that if the Finance Act, 2021 had not made the substitution of the reassessment procedure, revenue authorities would have been within their rights to claim extension of time, under the Enabling Act. The sweeping amendments made by the Parliament by necessary implication or implied force limited applicability of the Enabling Act. The power to grant time extension thereunder was limited to only such reassessment proceedings as had been initiated till 31.03.2021. It was, thus, held that amended notifications have no applicability to the reassessment proceedings initiated from 01.04.2021 without any saving of the provisions substituted, the extensions granted under the Enabling Act (TOLA' 2020). It was incumbent for the assessing officer to act according to law as existed on and after 01.04.2021.

75. It is noted at the cost of repetition that the Division Bench has observed that it would be oversimplistic to ignore the provisions of either the Enabling Act or the Finance Act, 2021 and to read and interpret the provisions of Finance Act, 2021 as inoperative in view of the facts and circumstances arising from the spread of the pandemic COVID-19. Practicality of life *dehors* statutory provisions, may never be a good guiding principle to interpret any taxation law. It was, thus, held that in absence of any specific clause in the Finance Act, 2021 either to save the provisions of the Enabling Act or the Notifications issued thereunder, by no interpretative process, the

notifications can be said to infuse life into a provision that stood obliterated from the Statute book w.e.f 31.03.2021. It was held that the Finance Act, 2021 does not enable the Central Government to issue any notification to reactivate the pre-existing law, the exercises made by the delegate/Central Government would be *dehors* any statutory basis. It was, thus, categorically held by the Division Bench that the notifications did not insulate or save the pre-existing provisions pertaining to reassessment under the Act or the operation of the pre-existing provisions of the Act cannot be extended.

76. Adopting the above reasoning given by the Coordinate Bench of this Court, which is binding on us, we may further note that the contention of the revenue, if accepted, it will create conflict of laws. The limitation under the pre-existing provisions will have to be kept alive till 30.06.2021 with the aid of the extensions granted by the notifications issued by the Central Government, which have been read down by the Coordinate Bench. The time limit provided in unamended Section 149 of the Income Tax Act, as per the Division Bench judgment, cannot be extended beyond 31.03.2021, so as to render the amended provisions of Section 149 ineffective. The stand of the revenue that the Enabling Act simply extended the period of limitation uptil 31.06.2021, due to the disturbances from the spread of pandemic COVID-19, has been categorically turned down by the Division Bench with the observations noted above.

77. It was held therein that the notifications issued under the Enabling Act 2020 may extend time limit provided in the substituted provisions after enforcement of the Finance Act, 2021 but it will not extend or defer the applicability of the pre-existing provisions in view of general relaxation of limitation granted under Section 3(1) of the Enabling Act, on account of general hardship existing upon the spread of the pandemic COVID-19.

78. As noted above, sweeping amendments have been made in Sections 147 to 151 of the Income Tax Act by the Finance Act, 2021. As held by the Apex Court, the radical and reformative changes governing the procedure for reassessment proceedings in the substituted provisions are remedial and benevolent in nature.

79. To understand the nature of amendments, a comparison of pre and post amendment Section 149 has been noted in the table given above. A perusal thereof indicates that the period of notice for reassessment proceedings in pre-amended Section 149 was four years and six years. Whereas in the post-amendment sub-section (1) of Section 149, the time limit when notice for reassessment under Section 148 can be issued is three years in clause (a) and can be extended upto ten years after elapse of three years as per clause (b), but there is a substantial change in the threshold/requirements which have to be met by the revenue before issuance of reassessment notice after elapse of three years under clause (b) of sub-section (1). Not only monetary threshold has been substituted but the requirement of evidence to arrive at the opinion that the income escaped assessment has also been changed substantially. A heavy burden is cast upon the revenue to meet the requirements of clause (b) of sub-section (1) of Section 149 for initiation of reassessment proceedings after lapse of three years. Further four provisos have been inserted to sub-section (1) of Section 149.

80. The first proviso to sub-section (1) of Section 149 is relevant for our purposes, which provides that notice under Section 148, in a case for the relevant assessment year beginning on or before 1.4.2021, cannot be issued, if such notice could not have been issued at the relevant point of time, on account of being beyond the time limit specified under the unamended provisions of clause (b) of sub-section (1) of Section 149, i.e., pre-amended Section 149 prior to the

commencement of Finance Act, 2021. The time limit in clause (b) of sub-section (1) of unamended Section 149 of six years, thus, cannot be extended upto ten years under clause (b) of sub-section (1) of amended Section 149, to initiate reassessment proceeding in view of the first proviso to Section (1) of Section 149. In other words, the case for the relevant assessment year where six years period has elapsed as per unamended clause (b) of Section 149 cannot be reopened, after commencement of the Finance Act, 2021 w.e.f. 1.4.2021. The view taken by the Coordinate Bench of this Court in **Ashok Kumar Agarwal** (supra) that the Finance Act, 2021 had limited the applicability of the Enabling Act and the power to grant extensions thereunder, was applicable to only such reassessment proceedings as had been initiated till 31.3.2021, has been affirmed by the Apex Court in **Ashish Agarwal** (supra). It was held by the Coordinate Bench that the impugned notifications granting extensions in time limit provided under the unamended provisions of the Income Tax Act have no applicability to the reassessment proceedings initiated from 1.4.2021 onwards. It was held that after 1.4.2021, if the rule of limitation permitted, the revenue could initiate reassessment proceedings in accordance with the new law, after making adequate compliances has also been upheld by the Apex Court.

81. As noted above, there is no specific clause in the Finance Act, 2021 to save the provisions of the Enabling Act granting extensions in the time limit under the unamended Act, or the notifications issued thereunder on or before 31.3.2021. The Enabling Act, 2020 and Finance Act, 2021 are both parliamentary legislations. On the one hand, the Enabling Act, 2020 was enacted to tide over the hardships being faced both by the assessees and the statutory authorities or their functionaries due to spread of pandemic Covid-19 but, on the other, Finance Act, 2021 has been enacted to bring reformative changes to Sections 147 to 151 of the Income Tax Act,

1961 governing reassessment proceedings, with an aim to simplify the tax administration. The amendments brought to Section 149 of the Income Tax Act, by insertion of the first proviso to sub-section (1) of Section 149 and clause (b) of said sub-section are substantive amendments which confer right upon the assessee to seek immunity from reopening of the assessment proceedings after the maximum period prescribed in the unamended Section 149, six years from the end of the relevant assessment year having elapsed on or before 1.4.2021. In a case where three years period have elapsed from the end of the relevant assessment year, as noted above, higher threshold to meet the requirement of reopening assessment proceedings by the revenue has been provided under clause (b) of sub-section (1) of Section 149 (amended by the Finance Act, 2021).

82. In case the arguments of the learned counsels for the revenue are accepted, the benefits provided to the assessee in the substantive provisions of clause (b) of sub-section (1) of Section 149 and the first proviso to Section 149 have to be ignored or deferred. The defences which may be available to the assessee under Section 149 and/or which may be available under Finance Act, 2021 have to be denied. The crux of the submission of the learned counsels for the revenue is that the applicability of the amended provisions of Finance Act, 2021 will have to be postponed uptill 31.6.2021 because of the extensions granted by the Enabling Act, 2020 upto 31.3.2021 and further extensions in the time limit by the Notifications dated 31.3.2021 and 27.4.2021 thereunder.

83. The submission is that the extensions in the time limit provided under the unamended Section 149(1)(b) upto 31.3.2021, will be applicable even in those cases where reassessment notices were issued under the amended Section 148 on or after 1.4.2021, by extending the time limit provided in the unamended Section 149 by

plain and simple application of the Enabling Act (TOLA)' 2020.

84. At the first blush, this argument of the learned counsels for the revenue seemed convincing by simplistic application of the Enabling Act, treating it as a statute for extension in the limitation provided under the Income Tax Act, 1961, but on a deeper scrutiny, in view of the discussion noted above, if the argument of the learned counsels for the revenue is accepted, it would render the first proviso to sub-section (1) of Section 149 ineffective until 31.6.2021. In essence, it would render the first proviso to sub-section (1) of Section 149 otiose. This view, if accepted, it would result in granting extension of time limit under the unamended clause (b) of Section 149, in cases where reassessment proceedings have not been initiated during the lifetime of the unamended provisions, i.e. on or before 31.3.2021. It would infuse life in the obliterated unamended provisions of clause (b) of sub-section (1) of Section 149, which is dead and removed from the Statute book w.e.f. 1.4.2021, by extending timeline for actions therein.

85. In absence of any express saving clause, in a case where reassessment proceedings had not been initiated prior to the legislative substitution by the Finance Act 2021, the extended time limit of unamended provisions by virtue of Enabling Act cannot apply. In other words, the obligations upon the revenue under clause (b) of sub-section (1) of amended Section 149 cannot be relaxed. The defences available to the assessee in view of the first proviso to sub-section (1) of Section 149 cannot be taken away. The notifications issued by the delegates/Central Government in exercise of powers under sub-section (1) of Section 3 of the Enabling Act cannot infuse life in the unamended provisions of Section 149 by this way.

86. As held by the Apex Court, all defences which may be

available to the assessee including those available under Section 149 of the Income Tax Act and all rights and contentions which may be available to the assessee and revenue under Finance Act, 2021 shall continue to be available to reassessment proceedings initiated from 1.4.2021 onwards.

87. The contention of the learned counsels for the revenue that if such interpretation is given to the applicability of the Enabling Act, 2020, which has not been declared invalid by any Court of law, it would be rendered otiose is found misconceived, inasmuch as, the extensions in the time limit under the unamended Sections of the Income Tax Act prior to the amendment by the Finance Act, 2021, would still be applicable to the reassessment proceedings as may have been in existence on 31.3.2021. By harmonious construction of two parliamentary legislation, the Enabling Act, 2020 and Finance Act, 2021, the Coordinate Bench has explained the scope and limit of the Enabling Act, the Finance Act, 2021 and the Notifications issued under the Enabling Act. We are bound by the decision of the Coordinate Bench as affirmed by the Apex Court in **Ashish Agarwal** (supra).

88. As noted above, the view taken by the Coordinate Bench in **Ashok Kumar Agarwal** (supra) of this Court has been upheld by the Apex Court with the only modification that the notices issued on or after 1.4.2021 under Section 148 shall be treated as notices under Section 148-A of the Income Tax Act as substituted by the Finance Act, 2021, treating them to be show cause notices in terms of Section 148(A)(b) of the Income Tax Act.

89. At the cost of repetition, it may be noted here that the Apex Court has permitted the revenue to proceed further with the reassessment proceedings under the substituted provisions of Sections

147 to 151 of the Income Tax Act as per the Finance Act, 2021, subject to compliance of all the procedural requirements and the defences, which may be available to the assessee under the substituted provisions of the Income Tax Act and which may be available under the Finance Act, 2021 and in laws.

90. Now coming to the CBDT Instructions dated 11.5.2022 is concerned, we find that the third bullet to clause (6.1) which states that the Apex Court has allowed time extension provided by TOLA and the "extended reassessment notices" will travel back in time to their original date when such notices were to be issued and then Section 149 of the Act is to be applied at that point, is a surreptitious attempt to circumvent the decision of the Apex Court. The observations in paragraph '7' of the judgment in **Ashish Agarwal** (supra) of the Apex court has been noted in piecemeal in the said bullet point to clause (6.1) of the CBDT instructions dated 11.5.2022 to give it a distorted picture.

91. The directions issued in clause 6.2 to deal with the cases of the assessment years 2013-14 to 2017-18 are based on the misreading of the judgment of the Apex Court in Para 6.1 of the Instructions. Terming reassessment notices issued on or after 1.4.2021 and ending with 30.6.2021 as "extended reassessment notices", within the time extended by the Enabling Act (TOLA 2020) and various notifications issued thereunder, in Para 6.1 is an effort of the revenue to overreach the judgment of this Court in **Ashok Kumar Agarwal** (supra) as affirmed by the Apex court in **Ashish Agarwal** (supra).

92. In any case, the CBDT Instruction No. 1/2022 dated 11.5.2022, issued in exercise of its power under Section 119 of the Income Tax Act, as per own stand of the revenue, is only a guiding instruction issued for effective implementation of the judgment of the

Apex Court in **Ashish Agarwal** (supra). The instructions issued in the offending clauses (third bullet to clause 6.1) and clause 6.2 (i) and (ii), being in teeth of the decision of the Apex Court have no binding force.

93. As regards the judgment of the Delhi High Court in **Touchstone Holding Pvt. Ltd.** (supra) wherein it is held that because of the extension in time granted under the Enabling Act and further extensions by the notifications issued thereunder, the first proviso to Section 149 (as amended by the Finance Act, 2021) is not attracted for the assessment year 2013-14, with all due respect to the Judges holding the Bench, suffice it to say that the said view is in direct conflict with the view taken by this Court in **Ashok Kumar Agarwal** (supra) affirmed by the Apex Court in **Ashish Agarwal** (supra). In fact, the observation in **Mon Mohan Kohli** (supra) by the Delhi High Court in paragraph '98' that the power of reassessment that existed prior to 31.3.2021 continue to exist till the extended period, i.e. till 30.6.2021, and the Finance Act, 2021 has merely changed the procedure to be followed prior to issuance of notice w.e.f. 1.4.2021, has been misread and misapplied in **Touchstone** (supra) by the Division Bench of the Delhi High Court.

94. Relevant is to note that even in **Mon Mohan Kohli** (supra), the Delhi High Court had quashed the reassessment notices issued on or after 1.4.2021 on the ground that the Relaxation Act (Enabling Act) does not give power to the Central Government to extend the erstwhile Sections 147 to 151 beyond 31.3.2021 and/or differ the operation of substituted provisions enacted by the Finance Act, 2021. The Delhi High Court therein concurring with the view of this Court in **Ashok Kumar Agarwal** (supra) has held the Explanation A(a) and A(b) to the notifications dated 31.3.2021 and 27.4.2021 as ultra vires the Enabling Act, 2020 and declared them as

bad in law and null and void. The observations in paragraph '99' in **Mon Mohan Kohli** (supra) are relevant to be extracted hereinunder:-

> *"**99.** This Court is of the opinion that Section 3(1) of Relaxation Act empowers the Government/Executive to extend only the time limits and it does not delegate the power to legislate on provisions to be followed for initiation of reassessment proceedings. In fact, the Relaxation Act does not give power to Government to extend the erstwhile Sections 147 to 151 beyond 31st March, 2021 and/or defer the operation of substituted provisions enacted by the Finance Act, 2021. Consequently, the impugned Explanations in the Notifications dated 31st March, 2021 and 27th April, 2021 are not conditional legislation and are beyond the power delegated to the Government as well as ultra vires the parent statute i.e. the Relaxation Act. Accordingly, this Court is respectfully not in agreement with the view of the Chhattisgarh High Court in Palak Khatuja (supra), but with the views of the Allahabad High Court and Rajasthan High Court in Ashok Kumar Agarwal (supra) and Bpip Infra Private Limited (supra) respectively."*

95. Learned counsels for the revenue further submitted that the Apex Court has invoked its power under Article 142 of the Constitution of India to save all reassessment notices issued on or after 1.4.2021 PAN INDIA, noticing that the revenue cannot be rendered remediless and cannot be put in a situation where it is prohibited from initiating reassessment proceedings, even if the same are permissible under Finance Act, 2021 as per the substituted Sections 147 to 151 of the Income Tax Act and the object and purpose of reassessment proceedings cannot be frustrated. The direction was, thus, issued to treat all reassessment notices under Section 148 of the amended provision as deemed notices under Section 148A of Income Tax Act (new provision brought by amendment) as a one time measure. The result is that all assessment

notices issued on or after 1.4.2021 till the decision of the Apex Court dated 4.5.2022 [in Ashish Agarwal (supra)] will have to be saved.

96. To strike a balance, the Apex Court kept all the defences available to the assessee under the amended provision open, while rights available to the assessing officer/revenue under the Finance Act, 2021 have been kept alive. The defect in the reassessment notices issued on or after 1.4.2021 had, thus, been removed. The directions issued by the Apex Court under Article 142 of the Constitution of India having a binding force PAN INDIA, will be violated if the extension in time for issuance of reassessment notices under Section 149 of the pre and post amended Income Tax Act, is not granted with the aid of the Enabling Act (TOLA 2020).

97. To deal with the said submission, we may note the decision of the Apex Court in Assistant Commissioner (CT) LTU, Kakinada & others vs. Glaxo Smith Kline Consumer Health Care Limited[16], wherein the Apex Court was confronted with the exercise of writ jurisdiction under Article 226 of the Constitution of India in a case where the statutory remedy of appeal stood foreclosed by the law of limitation. While making comparison of the powers of the High Court under Article 226 of the Constitution and that of the Apex Court under Article 142, it was observed that though the powers of the High Court under Article 226 of the Constitution are wide, but certainly not wider than the plenary powers bestowed on the Apex Court under Article 142 of the Constitution of India which is a conglomeration and repository of the entire judicial powers under the Constitution, to do complete justice to the parties. But even while exercising that power, the Apex Court is required to bear in mind the legislative intent and not to render the statutory provision otiose. The decision of the Constitution Bench in Union Carbide Corporation and others vs. Union of India and others[17] was relied to note therein that in

16.AIR 2020 Supreme Court 2819
17.(1991) 4 SCC 584

exercising powers under Article 142 and in assessing the needs of 'complete justice' of a cause or matter, the Apex Court will take note of the express prohibitions in any substantive statutory provisions based on some fundamental principles of public policy and regulate the exercise of its power and discretion, accordingly.

98. Moreover, in Ashish Agarwal (supra), the Apex Court has invoked the power under Article 142 of the Constitution of India to the limited extent to direct that the order passed in Ashish Agarwal (supra) shall govern and be made applicable to similar judgments and orders passed by the various High Courts across the country, as in the impugned judgments and orders passed by the High Court of Judicature at Allahabad. The order passed by the Apex Court in Ashish Agarwal (supra) has been applied to all similar matters in exercise of powers under Article 142 of the Constitution of India. The reassessment notices issued under the unamended Section 148 on or after 1.4.2021, were treated to be show cause notices in terms of Section 148-A(b) and the revenue was required to conduct enquiry in accordance with the amended provisions under the Finance Act, 2021, enforced w.e.f. 1.4.2021. The assessing officers are required to pass orders in accordance with the amended provisions after following the procedure as required under Section 148A to issue notice under Section 148 (as amended). All defences available to the assessee including those available under Section 149 of the Income Tax Act and all rights and contentions available to the assessee have been made available. The right and contentions to the revenue under the Finance Act, 2021 and in law are also continued to be available.

99. The said observations of the Apex Court cannot be read to me that extensions in time under the unamended Section 149 has been granted by the Apex court by applying TOLA, 2020 to the reassessment notices in respect of the proceedings relating to the past assessment years, where such notices were not issued uptill 31.3.2021

and they can be treated as "extended reassessment notices" and allowed to travel back in time to their original date when such notices were to be issued and then to apply amended Section 149 as interpreted by the revenue in Para 6.1 of the CBDT Instructions dated 11.5.2022.

100. In case, this argument of the learned counsels for the revenue is accepted it will result in permitting the revenue to initiate reassessment proceedings in a manner which cannot otherwise be done under the Statute.

101. The last submission of the learned counsels for the revenue is based on the observations of the Division Bench in Ashok Kumar Agarwal (supra) in paragraph '71' as under:-

> ***"71.*** *Here, it may also be clarified, Section 3(1) of the Enabling Act does not itself speak of reassessment proceeding or of Section 147 or Section 148 of the Act as it existed prior to 01.04.2021. It only provides a general relaxation of limitation granted on account of general hardship existing upon the spread of pandemic COVID -19. After enforcement of the Finance Act, 2021, it applies to the substituted provisions and not the pre-existing provisions."*

102. Placing the said observation, it was argued that even the Division Bench therein has held that after enforcement of the Finance Act, 2021, the general relaxation of limitation granted on account of general hardship existing upon the spread of pandemic Covid-19 applies to the substituted provisions. The extension of time, thus, can be granted even after amendment by the Finance Act, 2021 under Section 3(1) of the Enabling Act (TOLA 2020).

103. To deal with this submission, suffice it to say that extension in time uptill 30.6.2021 can be granted to the time limit provided in the amended Section 149 of the Income Tax Act brought by the Finance Act, 2021 by plain provisions of clause (A)(a) of the Notification No. 20 of 2021 dated 31.3.2021 ignoring Explanation to

the same (quashed by this Court). Similarly extension in time as per the plain provision of clause (A)(a)(b) of the Notification No. 38 dated 27.4.2021 ignoring Explanation to it, may be granted as and when the said extensions are applicable for issuance of notice under Section 148 as per the time limit specified in Section 149 or sanctions under Section 151 of the Income Tax Act as amended by the Finance Act, 2021, after making all compliances, as required under the Income Tax Act, 1961 (amended provisions).

104. It may profitably be noted, at this stage, that it is settled law that a taxing statute must be interpreted in the light of what is clearly expressed. It is not permissible to import provisions in a taxing statute so as to supply any assumed deficiency. In interpreting a taxing statute, equitable considerations are out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them; Interpreting taxing statute in the light of what is clearly expressed: it cannot imply anything which is not expressed. Before taxing any person it must be shown that he falls within the ambit of the charging section by clear words used in the section, and if the words are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject. There is nothing unjust in the taxpayer escaping if the letter of the law fails to catch him on account of the legislature's failure to express itself clearly. (Reference **Union of India & others Ind-Swift Laboratories Ltd** [18]; **CIT Vs. Modi Sugar Mills Ltd** [19]; **State of West Bengal Vs. Kesoram Industries Ltd** [20].

Conclusions:-

105. Our answer to the two questions posed to us are, thus, as under:-

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18.2011 (4) SCC 635
19.AIR 1961 SC 1047
20.2004 (10) SCC 201

(i) The reassessment proceedings initiated with the notice under Section 148 (deemed to be notice under Section 148-A), issued between 01.04.2021 and 30.06.2021, cannot be conducted by giving benefit of relaxation/extension under the Taxation and Other Laws (Relaxation And Amendment of Certain Provisions) Act' (TOLA) 2020 upto 30.03.2021, and the time limit prescribed in Section 149 (1)(b) (as substituted w.e.f. 01.04.2021) cannot be counted by giving such relaxation from 30.03.2020 onwards to the revenue.

(ii) In respect of the proceedings where the first proviso to Section 149(1)(b) is attracted, benefit of TOLA' 2020 will not be available to the revenue, or in other words, the relaxation law under TOLA' 2020 would not govern the time frame prescribed under the first proviso to Section 149 as inserted by the Finance Act' 2021, in such cases.

(iii) The reassessment notices issued to the petitioners in this bunch of writ petitions, on or after 1.4.2021 for different assessment years (A.Y. 2013-14 to 2017-18), are to be dealt with, accordingly, by the revenue.

106. As noted above, we have decided the issue only on the legal principles and the factual aspects of the matter are to be agitated, accordingly, by the petitioners before the appropriate Courts/Forum, based upon the above observations.

107. All the writ petitions in this bunch are, accordingly, **disposed of**.

108. No order as to costs.

(Vipin Chandra Dixit,J .) (Sunita Agarwal, J.)

Order Date:- 22.02.2023
Himanshu/B.K/H.