

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 18TH DAY OF APRIL 2022

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR.JUSTICE S. VISHWAJITH SHETTY

W.P. No.22348 OF 2021 (T-IT)

BETWEEN:

MOHAMMED MUSTAFA
S/O SRI. CHAND PATEL
AGED 48 YEARS
NO.41, DYNASTY LAYOUT
MARRIYANNAPALAY, H A FARM POST
BANGALORE-560024
PAN APDPM9562R.

... PETITIONER

(BY MR. A. SHANKAR, SR. CCOUNSEL FOR
MR. A. ANNAMALAI, ADV.,)

AND:

1. THE INCOME TAX OFFICER
WARD -6(3) (1), BMTc BUILDING
80 FEET ROAD, 6TH BLOCK
NEAR KHB GAMES VILLAGE
KORAMANGALA, BENGALURU-560 095.
2. CENTRAL BOARD OF DIRECT TAXES
THROUGH THE SECRETARY
DEPARTMENT OF REVENUE
MINISTRY OF FINANCE
NORTH BLOCK, NEW DELHI-110002.
3. THE PRINCIPAL COMMISSIONER OF INCOME TAX
BENGALURU-1 BMTc BUILDING

80 FEET ROAD, 6TH BLOCK
NEAR KHB GAMES VILLAGE
KORAMANGALA, BENGALURU-560 095.

... RESPONDENTS

(BY MR. K.V. ARAVIND A/W
MR. DILIP M, ADVS.,)

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THIS W.P. IS FILED UNDER ARTICLE 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASHING THE NOTICE ISSUED UNDER SECTION 148 OF THE INCOME TAX ACT, 1961 DATED 30.06.2021 FOR THE ASSESSMENT YEAR 2016-17 HEREIN MARKED AS ANNEXURE-A. DECLARE THAT THE EXPLANATION BELOW CLAUSE (A) IN THE NOTIFICATION BEARING NO.20/2021/F.NO.370142/35/2020-TPL DATED 31.03.2021 HEREIN MARKED AS ANNEXURE-B AND NO.38/2021/F.NO.370142/35/2020-TPL DATED 27.04.2021 HEREIN MARKED AS ANNEXURE-C ISSUED BY THE RESPONDENT NO 2 IS ULTRA VIRES THE PROVISIONS OF THE INCOME TAX ACT 1961 AND THE PROVISIONS OF THE TAXATION AND OTHER LAWS (RELAXATION AND AMENDMENT OF CERTAIN PROVISIONS) ACT, 2020 AND THUS BAD IN LAW & ETC.,

THIS W.P. COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, **ALOK ARADHE J.**, MADE THE FOLLOWING:

ORDER

The petitioner in this writ petition has sought quashment of explanation below Clause (A) in the notification bearing No.20/2021370142/35/2020-tl dated 31.03.2021 and notification No.38/2021f. No.370142/35/2020-TPL dated 27.04.2021 issued by Central Board of Direct Taxes, as *ultra vires* the provisions of Income Tax Act, 1961 (hereinafter referred to as '1961 Act' for short) and the provisions of Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (hereinafter referred to as '2020 Act' for short). The petitioner has also prayed for relief that extension of time limit by the 2020 Act does not apply to notices issued under erstwhile Section 148 of the 1961 Act, after 01.04.2021. The petitioner also seeks a writ of certiorari for quashing the notice dated 30.06.2021 issued under Section 148 of the 1961 Act for the

Assessment year 2016-17. In order to appreciate the petitioner's grievance, few relevant facts need mention, which are stated infra.

2. The petitioner filed the return of income for the assessment year 2016-17 on 30.07.2016 and declared a total income of Rs.7,84,730/-. The petitioner thereafter received notices dated 30.06.2021 under Section 148 of the 1961 Act for the assessment year 2016-17.

3. Section 147 of the 1961 Act as it stood prior to 01.04.2021 authorized the issuance of a notice under Section 148, if the Assessing officer had 'reason to believe' that income had escaped assessment. The existence of expression 'reason to believe' was sufficient to sustain a notice under Section 148 of the Act and it was necessary for any

final determination to be made regarding escapement of income at that stage.

4. However, vide Finance Act, 2021, which came into force with effect from 01.04.2021, major changes were made in the provisions relating to re-opening of assessment under Sections 147, 148, 148A, 149 151 of 1961 Act. Amended Section 148 provides that before making assessment, re-assessment or re-computation under Section 147 of the Act and subject to the provisions of Section 148A of the 1961 Act, the Assessing Officer has to serve on the assessee a notice along with a copy of the order passed if required under clause – (d) of Section 148A of the Act requiring him to furnish the return within the specified time and in the prescribed form. The proviso to Section 148 of the 1961 Act mandates that no notice shall be issued unless there is information with the Assessing Officer which suggests the income

chargeable to tax has escaped assessment in case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority for issuing such notice. Explanation 1 and 2 appended to Section 148 specify the precise circumstances when the assessing officer has information in his possession which suggests that income has escaped assessment for a particular assessment year.

5. Section 148A of the 1961 Act provides for conducting an enquiry, affording an opportunity of hearing before issue of notice under Section 148 of the 1961 Act. Section 148A reads as under:

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

(a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which

suggests that the income chargeable to tax has escaped assessment;

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

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

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

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

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

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

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

Explanation.—For the purposes of this section, specified authority means the

specified authority referred to in section 151.]

6. Thus, before issuing notice under Section 148 of the 1961 Act, the assessing officer has to comply with the following conditions as set out in Sections 148A:

(i) The assessing officer has to issue a show cause notice to the assessee calling upon the assessee to show cause as why a notice under Section 148 of the Act should not be issued to him having regard to the information available which suggests that income has escaped assessment.

(ii) The Assessing Officer has to provide an opportunity of hearing to the assessee.

(iii) The Assessing Officer must consider reply furnished by the assessee to the show cause notice.

(iv) The Assessing Officer must then pass an order with the prior approval of the

specified authority and has to decide whether it is a fit case to issue notice under Section 148 of the 1961 Act.

The aforesaid conditions are sine qua non for invoking powers under Section 148 of the 1961 Act and are mandatory conditions which have to be fulfilled before issue of notice under Section 148 of the 1961 Act.

7. Section 159(1) of the Act prescribes a time limit of three years from the end of relevant assessment year unless the case falls under clause – (b) where the period available for issuing such notice is ten years. Clause – (b) applies to cases where the Assessing Officer has in his possession books of accounts or their 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 total of Rs.50

Lakhs or more. Explanation to Section 149 of the Act provides that for the purpose of clause – (b) the asset shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.

8. Section 149(1) read with Section 147 of the 1961 Act provides that if the assessment has been completed under Section 143(3) of the Act, no notice under Section 148 of the 1961 Act could be issued beyond a period of four years from the end of relevant assessment year unless the income chargeable to tax had escaped assessment for the reason of the failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment and in case, no such notice could be issued beyond a period of six years from the relevant assessment year. Section 151 of the Act mandates that where more than three years have lapsed from the end of relevant

assessment year, the specified authority for the purposes of Section 148, 148A of the Act would be Principal Chief Commissioner or other Officers referred to in the provision.

9. Thus, on careful scrutiny of existing and substituted provisions, it is evident that major changes have been introduced. It is evident that for issuance of notice under Section 148 of the 1961 Act, fresh time lines have been prescribed. Under amended Section 147, the time limit is prescribed as 3 years unless income chargeable to tax, which has escaped assessment, amounts to or is likely to amount Rs.50 Lakhs or more in which time limits for issuance of notice under Section 148 is 10 years from the end of relevant assessment year. The requirement of assessing officer having 'reason to believe' as referred to in Section 147 of the Act has been dispensed with and proviso to Section 148 of the Act

provides that no notice for re assessment could be issued unless there is information with the assessing officer which suggest that income chargeable to tax has escaped assessment.

10. In view of outbreak of Covid-19 pandemic, a nation wide lockdown was imposed across the country. Therefore, it was felt necessary to extend the timelines specified under the 1961 Act for completion of assessments or other proceedings and for issuance of notices. The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Ordinance, 2020 was promulgated on 31.03.2020 and the same was approved and accordingly the 2020 Act came into force with effect from 29.09.2020. Section 3(1) of the 2020 Act provided that time limits prescribed in the specified Acts which fell during the period from March 2020 to 31st December 2020 or such other date after 31.12.2020 as the Central Government

may notify were extended to 31.03.2021 or such other dated after 31.03.2021 as the Central Government may by notification specify. The extension of timelines was directed to operate notwithstanding anything contained in the specified Act.

11. The Central Government in exercise of powers under Section 3(1) of the Act 2020 through Central board of Direct Taxes issued a notification No.20/21 dated 31.03.2021 and extended the time limit for issuance of notice under Section 148 of the 1961 Act from 31.03.2021 to 30.04.2021. The aforesaid notification reads as under:

Notification No.20 of 2021 dated 31st March 2021
MINISTRY OF FINANCE
(Department of Revenue)
(CENTRAL BOARD OF DIRECT TAXES)
NOTIFICATION

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 for issuance of notice under Section 148 as per time-limit specified in Section 149 or sanction under Section 151 of the Income Tax Act, -

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

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

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

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

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

(i) the 31st day of March, 2021 shall be the end date of the period during which the timelimit, 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 31st December, 2020.

12. Another notification No.38/2021

No.370142/35/2020-TPL dated 27.04.2021 was

issued under Section 3(1) of the Act by the Central

Government, by which the time limit for issuance of

notice under Section 148 of the 1961 Act was further extended from 30.04.2021 to 30.06.2021. As per the explanation in the aforesaid notification, it was provided that unamended provisions of Section 148, 149 and 151 shall apply to the notices issued under Section 148 of the 1961 Act even after the expiry of time period mentioned in unamended Section 149 of the 1961 Act. The aforesaid notification reads as under:

*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 31st December, 2020, No. 10/2021 dated the 27th February, 2021 and No. 20/2021 dated the 31st March, 2021, published in the Gazette of India, Extraordinary, Part-II, Section 3, Subsection (ii), vide number S.O. 4805(E), dated the 31st December, 2020, vide number S.O. 966(E) dated the 27th February, 2021 and vide number S.O. 1432(E) dated the 31st

March, 2021, respectively (hereinafter referred to as the said notifications), the Central Government hereby specifies for the purpose of sub-section (1) of section 3 of the said Act that, —

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

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

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

(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.

13. Learned Senior counsel for the petitioner submitted that controversy involved in this petition is squarely covered by division bench decisions of High Court of Allahabad in **ASHOK KUAR AGARWAL VS. UNION OF INDIA**', Rajasthan High Court in **'BPIP INFRA (P.) LTD. VS. INCOME TAX OFFICER, WARD 4(1), JAIPUR**, Delhi High Court decision in **MON MOHAN KOHLI VS. ASSISTANT COMMISSIONER OF INCOME TAX & ANR.** And decision of Bombay

High Court in **TATA COMMUNICATIONS
TRANSFORMATION SERVICES LIMITED, VS.
ASSISTANT COMMISSIONER OF INCOME TAX
14(1) AND OTHERS, W.P.NO.1334/2021.** It is

further submitted that amended provisions of the 1961 Act apply to every proceeding initiated after 01.04.2021 in which assessment / re-assessment is done. It is also urged that impugned notices are per se without jurisdiction as the procedure contemplated under Section 148A of the Act which is a condition precedent has not been fulfilled. It is also urged that notifications dated 31.03.2021 and 27.04.2021 only grant an extension of time and cannot possibly be construed to amend or modify any of the procedural requirements in respect of re-assessment of income laid down under Sections 147, 148 and 148A of the Act. The impugned notice is therefore liable to be quashed.

14. On the other hand, learned counsel for the revenue submitted that Section 3(1) of the 2020 Act creates a legal fiction and the expression 'such action' used in Section 3(1) relates back to the provision as it existed at the time of completion or compliance of such action. It is further submitted that the legal fiction must be given full effect and must be taken to its logical conclusion. It is contended that expression 'such action' means the power to issue notice under Section 148 of the 1961 Act prior to coming into force of 2020 Act, which was available to the revenue, extended the time limit for compliance of such action. It is also argued that notices issued between 01.04.2021 and 30.06.2021, are deemed to have been issued within the time limit as envisaged under Section 149 of the Act, as it existed prior to its amendment.

15. It is also argued that Section 3(1) of the 2020 Act is in the nature of 'stop-the-clock', provision and therefore, for the limited purpose of extension of time limit under 2020 Act, the necessary legal fiction presupposes existence of erstwhile Section 148 even though in reality it stood repealed w.e.f. 01.04.2021. It is urged that non-obstante clause in Section 3(1) of 2020 Act must be given its full effect and 2020 Act being a beneficial legislation must be given purposive interpretation. It is contended that jural co-relative of the expression 'power' is 'liability' and there is no vested right in the assesseees under amended provisions of Section 148/149 and therefore, the contention that the impugned notices are bad in law is devoid of merit. In support of aforesaid submissions, reliance has been placed on the decisions in **'HARISH TANDON Vs. ADM, ALLAHABAD' (1995) 1 SCC 537, 'BHAVNAGAR**

**UNIVERSITY Vs. PALITANA SUGAR MILLS' (2003)
2 SCC 111, 'J.K.COTTON SPG. & WVG. MILLS L
TD. Vs. UNION OF INDIA' AIR 1988 SC 191,
'BHUWALKA STEEL INDUSTRIES LTD. & ANR. Vs.
UNION OF INDIA & ORS.' (2017) 5 SCC 598, 'CIT
Vs. URMILA RAMESH' (1998) 3 SCC 6, 'STATE OF
BOMBAY Vs. PANDURANG VINAYAK CHAPHALKAR'
1953 SCR 773, 'SARDAR BALDEV SINGH Vs. CIT'
AIR (1961) SC 736, 'CIT Vs. TEJA SINGH' AIR
(1959) SC 352, 'STATE OF WEST BENGAL Vs.
SADAN K.BORMAL & ANR.' (2004) 6 SCC 59,
'UNION OF INDIA & ORS. Vs. JALYAN UDYOG &
ANR.' (1994) 1 SCC 318, 'VISHIN
N.KHANCHANDANI Vs. VIDYA LACHMANDAS
KHANCHANDANI' (2000) 6 SCC 724, 'ATMA RAM
PROPERTIES PVT. LTD. Vs. ORIENTAL INSURANCE
COMPANY LTD.' (2018) 2 SCC 27, 'S.APPUKUTTAN
Vs. THUNDIYIL JANAKI AMMA & ANR.' (1988) 2**

SCC 372 AND 'KARTIKEYA VARMA Vs. UNION OF INDIA & ORS.' (2015) 3 KLT 424.

16. We have considered the rival submissions made on both sides and have perused the record. The cardinal issue which arises for consideration in this petition is whether a notice issued on or after 01.04.2021 under Section 148, without complying with provisions of Section 148 and Section 148A of the Act is valid. We may take note of the two well settled legal propositions which are relevant for adjudication of the controversy involved in the instant petition. (i) It is cardinal principle of law that law which has to be applied is the law in force in the assessment year unless otherwise provided expressly or by necessary implication. **(See: 'RELIANCE JUTE & INDUSTRIES LTD. Vs. COMMISSIONER OF INCOME TAX' AIR 1980 SC 251 AND 'COMMISSIONER OF INCOME TAX Vs. SARKAR**

BUILDERS' (2015) 7 SCC 579). (ii) When the statute vests certain power in an authority to be exercised in a particular manner, the said authority is required to exercise such power only in the manner provided therein. **(See: 'COMMISSIONER OF INCOME TAX, CHANDIGARH Vs. PEARL MECHANICAL ENGINEERING AND FOUNDRY WORKS PVT.' (2004) 4 SCC 597 AND 'THE GOA FOUNDATION Vs. SESA STERLITE LTD. AND ORS.' (2018) 4 SCC 218.**

17. On commencement of Finance Act, 2021 w.e.f. 01.04.2021, the 2020 Act was already in force. Even then, Parliament made the amended provisions of Section 147 to 151 of the Act effective from 01.04.2021. The said provisions have been substituted. It is well settled in law that substitution of a provision results in repeal of the earlier provision and its replacement by the new provision. Substitution thus combines repeal and fresh

enactment. **[SEE: STATE OF RAJASTHAN VS MANGILAL PINDWAL AIR 1996 SC 2181 AND ZILE SINGH VS STATE OF HARYANA AND OTHER (2004) 8 SCC 1]**. Therefore, the amended provision of Section 148A of the Act would apply in respect of notices issued with effect from 01.04.2021 and erstwhile provisions of Section 147 to 151 of the Act, cannot be resorted to as, it has been repealed by the amending Act viz., the 2020 Act. Even otherwise, no saving clause has been provided in the Act for saving the erstwhile provisions of Section 147 to 151 of the Act. From perusal of 2020 Act, it is evident that Central Government has been empowered to notify the period in which the actions are to be taken and to extend the time limit within which the said actions are to be taken. The conditions prescribed for issue of notice under Section 48 of the 1961 Act cannot be waived. The explanation below clause (A) in the

notifications dated 30.03.2021 and 27.04.2021, is clearly beyond the authority delegated to the Central Government under the 2020 Act to issue notifications extending time limit for various actions and compliances. By means of aforesaid explanation, the Central Government has extended the operation of Section 148, 149 and 151 prior to its amendment by Finance Act, 2021 and has sought to revive the non-existent provisions which is clearly beyond its authority. Therefore, the explanation contained in notification dated 30.03.2021 and 27.04.2021 is liable to be struck down as ultra vires 2020 Act.

18. In the instant case, the validity of notice has to be adjudged on the basis of law as existing on the date of notice. The mandatory conditions specified in Section 148A of the Act have not been complied with before issuance of impugned notice and the same has been issued in violation of mandate contained in

Section 148 and 148-A of the Act. Therefore the issue with regard to validity of notice has to be answered in the negative. The impugned notice dated 30.06.2021 is invalid and has to be struck down.

19. So far as submission made by learned counsel for the revenue that the 2020 Act creates a legal fiction and therefore, it pre supposes existence of erstwhile Section of 148 even though it has been repealed with effect from 01.04.2021 is concerned, suffice it to say that legal fiction cannot operate in contravention of a legal provision. The validity of the notice has to be adjudged on the basis of the law in existence at the time of issue of notice. Therefore, the aforesaid contention deserves to be repelled.

20. We are in respectful agreement with the reasons recorded and views expressed by Allahabad, Bombay, Delhi, Madras and Rajasthan High Courts. Therefore, the explanations to notification

No.20/2021 dated 31.03.2021 and notification No.38/2021 dated 27.04.2021 are declared ultra vires the provisions of 1961 Act and 2020 Act. The impugned notice dated 30.06.2021 issued under Section 148 of the Act is quashed.

However, it will be open to the Assessing Officer concerned to initiate fresh re-assessment proceeding in accordance with relevant provisions of the 1961 Act as amended by Finance Act, 2021 after strictly complying with the provisions of the Act.

In the result, the writ petition is disposed of.

Sd/-
JUDGE

Sd/-
JUDGE