

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 9757/2021

Geeta Maheshwari D/o Ganesh Lal Maloo, Aged About 72 Years,
R/o A-29 Nulite Colony, Tonk Road, Jaipur, Jaipur 302018

-----Petitioner

Versus

Income Tax Officer, Ward 6 (3), Income Tax, New Central
Revenue Building, Bhagwan Das Road, Jaipur, Rajasthan 302005

-----Respondent

connected with

S.B. Civil Writ Petition No. 13756/2021

B Ralhan Stock Brokers Private Limited, S-2, Shopping
Complex, Tilak Nagar, Jaipur - 302004, Rajasthan Through Its
Director Anmol Ralhan S/o Bhushan Ralhan, Aged About 50
Years, R/o 5 Marudhara Enclave, Opp. Punjab National Bank,
Malviya Nagar, Jaipur - 302017.

-----Petitioner

Versus

Office Of The Assistant Commissioner Of Income Tax, Acit/dcit
Circle-6, Income Tax Department, New Central Revenue
Building, Bhagwan Das Road, Jaipur, Rajasthan 302005.

-----Respondent

S.B. Civil Writ Petition No. 13722/2021

B Ralhan Stock Brokers Private Limited, S-2 Shopping
Complex, Tilak Nagar, Jaipur 302004, Rajasthan Through Its
Director Anmol Ralhan S/o Bhushan Ralhan, Aged About 50
Years, R/o 5 Marudhara Enclave, Opp. Punjab National Bank,
Malviya Nagar, Jaipur 302017, Rajasthan.

-----Petitioner

Versus

Office Of The Assistant Commissioner Of Income Tax, Acit/dcit
Circle-6, Income Tax Department, New Central Revenue
Building, Bhagwan Das Road, Jaipur Rajasthan. 302005

-----Respondent

S.B. Civil Writ Petition No. 13723/2021

B Ralhan Stock Brokers Private Limited, S-2 Shopping Complex, Tilak Nagar, Jaipur 302004, Rajasthan Through Its Director Anmol Ralhan S/o Bhushan Ralhan, Aged About 50 Years, R/o 5 Marudhara Enclave, Opp. Punjab National Bank, Malviya Nagar, Jaipur 302017, Rajasthan.

-----Petitioner

Versus

Office Of The Assistant Commissioner Of Income Tax, Acit/dcit Circle-6, Income Tax Department, New Central Revenue Building, Bhagwan Das Road, Jaipur Rajasthan. 302005

-----Respondent

S.B. Civil Writ Petition No. 13713/2021

Girnar Software Private Limited, 6Th Floor, Jaipur Textile Market, B-2, Near Model Town, Malviya Nagar, Jaipur-302017, Rajasthan Through Its Authoried Representative Tej Kumar Jain S/o Late Sh. Gyan Chand Jain, Aged About 59 Years, R/o A-3, Ashok Vihar Girdhar Marg, Maliviya Nagar, Jaipur-302017, Rajasthan.

-----Petitioner

Versus

Office Of The Assistant Commissioner Of Income Tax, Circle-4, Income Tax Department, New Central Revenue Building, Bhagwan Das Road, Jaipur, Rajasthan 302005

-----Respondent

S.B. Civil Writ Petition No. 13711/2021

Girnar Software Private Limited, 6Th Floor, Jaipur Textile Market, B-2, Near Model Town, Malviya Nagar, Jaipur- 302017, Rajasthan Through Its Authorized Representative Tej Kumar Jain S/o Late Sh. Gyan Chand Jain, Aged About 59 Years, R/o A-3, Ashok Vihar Girdhar Marg, Maliviya Nagar, Jaipur- 302017, Rajasthan.

-----Petitioner

Versus

Office Of The Assistant Commissioner Of Income Tax, Circle-4, Income Tax Department, New Central Revenue Building,

Bhagwan Das Road, Jaipur, Rajasthan 302005.

-----Respondent

S.B. Civil Writ Petition No. 13692/2021

Uma Gupta W/o Deepak Gupta, Aged About 48 Years, R/o 9,
Shopping Centre, Janta Colony, Jaipur- 302020, Rajasthan.

-----Petitioner

Versus

Office Of The Income Tax Officer, Ito Wd 5(2), Income Tax
Department, New Central Revenue Building, Bhagwan Das
Road, Jaipur, Rajasthan 302005.

-----Respondent

S.B. Civil Writ Petition No. 9783/2021

Aman Jain Son Of Shri Satish Jain, Having Its Address At C-42,
Lajpat Marg, C-Scheme, Jaipur 302004.

-----Petitioner

Versus

Income Tax Officer, Ward 6(3), Jaipur Having Its Address At
New Central Revenue Building, Bhagwan Das Road, C-Scheme,
Jaipur- 302005.

-----Respondent

For Petitioner(s)	:	Mr. Sanjay Jhanwar Mr. Siddharth Ranka.
For Respondent(s)	:	Mr. R.B. Mathur. Mr. Anuroop Singhi. Mr. Anil Mehta. Ms. Parinitoo Jain

HON'BLE MR. JUSTICE INDERJEET SINGH

Order

30/11/2021

In all these writ petitions, since common question of law is involved, hence with consent of the parties all these writ petitions

have been heard together and are being decided by the present common order.

From perusal of the record, it is revealed that the petitioners are aggrieved of issuance of the re-assessment notice u/s.148 of the Income Tax Act, 1961 (**hereinafter to be referred as the Act**), which according to the petitioners is barred by limitation and that the respondent before issuing the notice under Section 148 of the Act has not followed the mandatory procedure prescribed under Section 148A of the Act as prescribed by the Finance Act, 2021 and applicable w.e.f. 01.04.2021 before issuance of notice under Section 148 of the Act.

At the outset, all the counsels appearing for the petitioners jointly submitted that the issue involved in these writ petitions has been considered and decided by the Division Bench of the Allahabad High Court in the matter of '**Ashok Kumar Agarwal Vs. Union of India through its Revenue Secretary North Block & Ors.**' (**Writ Tax No.524/2021**) decided on 30.09.2021 followed with order dated 08.10.2021 wherein it has been held as under:

"63. Having heard learned counsel for the parties and having perused the record, we find that the thrust of the submissions advanced by learned counsel for the petitioners, are:

(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.

64. As to the first line of reasoning applied by the learned counsel for the petitioner, as noted above, there can be no exception to the principle - an Act of legislative substitution is a composite act. Thereby, the legislature chooses to put in place another or, replace an existing provision of law. It involves simultaneous omission and re-enactment. By its very nature, once a new provision has been put in place of a pre-existing provision, the earlier provision cannot survive, except for things done or already undertaken to be done or things expressly saved to be done. In absence of any express saving clause and, since no reassessment proceeding had been initiated prior to the Act of legislative substitution, the second aspect of the matter does not require any further examination.

65. Therefore, other things apart, 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 those provisions existed upto 31.03.2021), stood substituted, along with a new provision enacted by way of Section 148A of that Act. In absence of any saving clause, to save the pre-existing (and now substituted) provisions, the revenue authorities could only initiate reassessment proceeding on or after 01.04.2021, in accordance with the substituted law and not the pre-existing laws.

66. It is equally true that the Enabling Act that was pre-existing, had been enforced prior to enforcement of the Finance Act, 2021. It confronted the Act as amended by Finance Act, 2021, as it came into existence on 01.04.2021. In the Enabling Act and the Finance Act, 2021, there is absence, both of any express provision in itself or to delegate the function - to save applicability of the provisions of sections 147, 148, 149 or 151 of the Act, as they existed up to 31.03.2021. Plainly, the Enabling Act is an enactment to extend timelines only. Consequently, it flows from the above - 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. Equally there is no difficulty in applying the pre-existing provisions to pending proceedings. Looked in that manner, the laws are harmonized.

67. It may also be not forgotten, a reassessment proceeding is not just another proceeding emanating from a simple show cause notice. Both, under the pre-existing law as also under the law enforced from 01.04.2021, that proceeding must arise only upon jurisdiction being validly assumed by the assessing authority. Till such time jurisdiction is validly assumed by assessing authority - evidenced by issuance of the jurisdictional notice under Section 148, no re-assessment proceeding may ever be said to be pending before the assessing authority. The admission of the revenue authorities that all re-assessment notices involved in this batch of writ petitions had been issued after the enforcement date

01.04.2021, is tell-tale and critical. As a fact, no jurisdiction had been assumed by the assessing authority against any of the petitioners, under the unamended law. Hence, no time extension could ever be made under section 3(1) of the Enabling Act, read with the Notifications issued thereunder.

68. The submission of the learned Additional Solicitor General of India that the provision of Section 3(1) of the Enabling Act gave an overriding effect to that Act and therefore saved the provisions as existed under the unamended law, also cannot be accepted. That saving could arise only if jurisdiction had been validly assumed before the date 01.04.2021. In the first place Section 3(1) of the Enabling Act does not speak of saving any provision of law. It 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. For both reasons, the submission advanced by learned Additional Solicitor General of India is unacceptable.

69. Even otherwise the word 'notwithstanding' creating the non obstante clause, does not govern the entire scope of Section 3(1) of the Enabling Act. 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 proceedings already under way. There is nothing in the language of that provision to admit a wider or sweeping application to be given to that clause – to serve a purpose not contemplated under that provision and the enactment, wherein it appears.

70. The upshot of the above reasoning is, the Enabling Act only protected certain proceedings that may have become time barred on 20.03.2020, upto the date 30.06.2021. Correspondingly, by delegated legislation incorporated by the Central Government, it may extend that time limit. That time limit alone stood extended upto 30 June, 2021. We also note, the learned Additional Solicitor General of India may not be entirely correct in stating that no extension of time was granted beyond 30.06.2021. Vide Notification No. 3814

dated 17.09.2021, issued under section 3(1) of the Enabling Act, further extension of time has been granted till 31.03.2022. In absence of any specific delegation made, to allow the delegate of the Parliament, to indefinitely extend such limitation, would be to allow the validity of an enacted law i.e. the Finance Act, 2021 to be defeated by a purely colourable exercise of power, by the delegate of the Parliament.

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.

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. 74. Similarly, the mischief rule has limited application in the present case. Only in case of any doubt existing as to which of the two interpretations may apply or to clear a doubt as to the true interpretation of a provision, the Court may look at the mischief rule to find the correct law. However, where plain legislative action exists, as in the present case (whereunder the Parliament has substituted the old provisions regarding reassessment with new provisions w.e.f. 01.04.2021), the mischief rule has no application.

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.

77. Insofar as the decision of the Supreme Court in the case of **Ramesh Kymal Vs.**

Siemens Gamesa Renewable Power Private Limited (supra) is concerned, we opine, the same is wholly distinguishable. Therein The Insolvency and Bankruptcy Code 2016 was amended by the Parliament and a new Section 10A, was introduced, apparently again on account of the difficulties arising from the spread of pandemic COVID-19. That Section reads as under:

"10A. Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified² in this behalf: Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period. Explanation. – For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.]"

78. Plainly, in that case, the earlier provisions were not substituted rather they continued to exist. The parliamentary intervention by introducing Section 10A of that Act only provided - no proceeding be instituted for any default arising after 21.3.2020, for a period of six months or such period not exceeding one year, as may be notified. Thus, in that case, by virtue of amendment made, delegated power created, could be exercised to relax the otherwise stringent provisions of the Act, in cases, wherein difficulties arose from the spread of the pandemic COVID-19. Thus, that ratio is plainly distinguishable.

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.”

Counsels for the petitioners further submitted that various other High Courts including Delhi High Court, Punjab & Haryana High Court, Gujarat High Court, Bombay High Court & Madhya Pradesh High Court have also considered the same issue and passed the interim orders in favour of the assessee.

Counsels appearing on behalf of the respondents opposed the writ petitions and relied upon the judgment passed by the learned Single Judge of Chhattisgarh High Court in the matter of **Palak Khatuja Vs. Union of India & Ors.** (W.P. (T) No.149 of 2021) in favour of the Department, however, not disputed the judgment passed by the Division Bench of the Allahabad High Court in the matter of **Ashok Kumar (supra)** on the question of law involved in these writ petitions.

Heard counsel for the parties and perused the record.

I find that the issue involved in the present writ petitions is squarely covered by the decision of the Allahabad High Court in the matter of **Ashok Kumar (supra)**, which in my view is a correct view and has been taken after considering the judgment passed by the Single Bench of Chhattisgarh High Court in the matter of **Palak Khatuja (supra)** which has been relied upon by respondents' counsel and therefore in my considered view the present petitions deserve to succeed.

Accordingly, the writ petitions are allowed. The reassessment notice issued to the petitioners under Section 148 of the Income Tax Act is quashed. However, it is left open to the

(INDERJEET SINGH),J

MG/100,101,103,105,106,117,156 & 221

