



MAJESTY LEGAL
Advocates & Solicitors

REASSESSMENT NOTICES UNDER THE OLD REGIME, ARE TIME-BARRED

M/S ARATI MARKETING PVT. LTD. VS UNION OF INDIA & ORS.

Hon'ble Calcutta High Court in the case of *M/s Arati Marketing Pvt. Ltd. Vs Union of India & Ors.*¹ has held that applying the provisions of the previous regime under Section 148 of the Income Tax Act, as amended by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TOLA), to the new regime effective from 01.04.2021 would imply the enforcement of a provision that Parliament has repealed without any saving or exception clause. This application would extend the life of the provision beyond its intended period, which is legally impermissible.

In this case, the assessee has challenged the notices because the notices have already become time-barred after March 31, 2021, under the old, unamended Section 149(1)(b) of the Income Tax Act, 1961. It further observed that the provisions of TOLA exclusively pertained to the law before its amendment, effective until March 31, 2021. Section 3 of TOLA explicitly extended the deadline for taking any necessary actions from March 20, 2020, to March 31, 2021, only. Hence, the clauses of TOLA, which are pertinent to the previous law, cannot be reasoned to assess the legality of a notice issued under the old Section 148 of the Act on or after 01.04.2021, notably under the new regime. Hon'ble Court after considering the one-time relaxation provided by the Hon'ble Supreme Court in the case of Principal CIT Vs Ashish Agarwal, the validity of such a notice under the new/substituted regime must be evaluated exclusively according to the provisions of the new/substituted regime.

Considering the pronouncement above, it held that the impugned notices are time-barred under the power exercised under TOLA. Therefore, all subsequent proceedings based on the aforementioned impugned notices, deemed unlawful due to the limitation, are invalid. Accordingly, it allowed the writ petitions.

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¹ WPO No. 2747 of 2022

² Majesty legal is a LAW FIRM established in 2013 by Ms. Mahi Yadav. Objective of this legal update is to provide insights on law, statutes and is personal in nature, not to be deemed as legal advice.

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Original Side

Present :- Hon'ble Mr. Justice Md. Nizamuddin

WPO No. 2747 of 2022

M/s Arati Marketing Pvt. Ltd.

Vs

Union of India & Ors.

With

WPO No. 2560 of 2022

M/s Instyle Agencies Pvt. Ltd. & Anr.

Vs

Income Tax Officer Ward 12/1, Kolkata & Ors.

With

WPO/2454/2022, WPO/2467/2022, WPO/2472/2022, WPO/2497/2022,
WPO/2500/2022, WPO/2501/2022, WPO/2504/2022, WPO/2507/2022,
WPO/2508/2022, WPO/2509/2022, WPO/2512/2022, WPO/2513/2022,
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 WPO/1603/2023

For the Petitioners :-

Mr. J.P. Khaitan, Sr. Adv., Mr. Abhrotosh Majumder, Sr. Adv. Mr. Rohit Jain, Mr. Pranit Bag, Bar-at-Law, Mr. Avra Mazumder, Mr. Aniket D. Agarwal, Mr. Protyush Jhunhunwala, Ms. Arijita Ghosh, Mr. Sanjay Bhowmick, Mr. Saurabh Bagadia, Mr. Saumya Kejriwal, Mr. Samarth Chaudhuri, Mr. Samrat Das, Mr. Suman Bhowmik, Ms. Ananya Rath, Mr. Salil Kapoor. Mr. Vibhu Jain, Mr. A.K. Dey, Ms. Sanjukta Gupta, Ms. Sonia Sharma, Mr. Kushagra Shah, Ms. Swapna Das, Mr. Siddharth Das, Mr. Subash Agarwal, Mr. Brijesh Kumar Singh, Mr. Arvind Agarwal, Mr. Farhan Ghaffar, Mr. Om Prakash Prasad, Ms. Debanjana De, Mr. Rites Goel, Mr. Gouri Shankar Gupta, Mr. Samit Rudra, Mr. Mrigank Kejriwal, Mr. Navin Mittal, Ms. Rosy Banerjee, Mr. Amit Agarwal, Mr. Pradeep Jewrajka, Ms. Pooja Jewrajka, Ms. Anjali Tulsian, Ms. Arti Agarwal, Mr. Binayak Gupta, Mr. Subrata Mukherjee, Mr. Hemant Tiwari, Mr. Sarban Bhattacharjee, Mr. A.K. Upadhyay, Mr. Anirudhya Dutta, Mr. Pranab Sharma, Mr. Arijit Sarkar, Mr. Sagnik Chatterjee, Mr. Indranil Banerjee, Ms. Anupa Banerjee, Mr. Anil Kumar Dugar, Mr. Rajarshi Chattterjee, Anuj Kr. Mishra, Balaram Patra, Ananda Sen, Souvik Ghosh, Monika Kalra, Rajeev Agarwal, Dipayan Kundu,

Govind Jethalia, Debdutta Saha, Riddhiman Mukherjee, Sunil Singhanian, Sretapa Sinha, Mrigank Kejriwal, Advocates

For the Respondents :-

Mr. Omnarayan Rai, Mr. Vipul Kundalia, Mr. Tilak Mitra, Ms. Smita Das De, Mr. Prithu Dudhuria, Mr. Smarajit Roy Chowdhury, Mr. Aryak Dutt, Mr. Soumen Bhattacharjee, Mr. Amit Sharma, Advocates

Judgement On :- 09.02.2024

MD. NIZAMUDDIN, J.

Heard learned counsel appearing for the respective parties in respective writ petitions.

Subject matter of challenge by the petitioners, in common in all these writ petitions are the impugned notices issued on or after 1st April, 2021, under Section 148 (old) of the Income Tax Act, 1961, by converting or treating the same under Section 148A(b) of the Income Tax Act, 1961 inserted by the Finance Act, 2021 which came into effect from 1st April, 2021 and all subsequent proceedings thereunder relating to assessment years 2013-14 and 2014-15 on the basis of judgment of the Hon'ble Supreme Court in the case of Union of India Vs Ashish Agarwal reported in (2022) 444 ITR I (SC) and on the basis of Section 3 (1) of Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TOLA) and subsequent Notifications No. 20 of 2021 dated 31st March, 2021 and No. 38 of 2021 dated 27th April, 2021 issued by CBDT in aid of old provisions relating to reassessment proceedings, on the ground that the impugned notices have already become time barred after 31st March, 2021 under the old unamended Section 149(1)(b) of the Income Tax Act, 1961, by submitting gist of which are as hereunder.

Reference to some relevant notifications, legislation etc. chronologically as hereunder are necessary before detail discussion in these cases.

On March 31, 2020 the Taxation & Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 promulgated. In terms of Section 3 (1), time to

issue notice under old unsubstituted Section 148 of the Income Tax Act, 1961 which was due to expire on March 31, 2020, was extended to June 30, 2020.

On June 24, 2020 Notification No. 35/2020 was issued by the CBDT in exercise of the power of Section 3(1) of the Ordinance extending the time for issue of notice under Section 148 to March 31, 2021. The said notification came into force from June 30, 2020.

On September 29, 2020 the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 ("TOLA") was enacted, inter alia, to replace the Ordinance, which received the assent of the President. TOLA was deemed to have come into force on March 31, 2020. In terms of Section 3(1), the time to issue notice under Section 148 of the Income Tax Act (old unsubstituted), stood extended to March 31, 2021.

On March 28, 2021, Finance Act, 2021, it received the assent of the President, by Sections 40, 41, 43, 44, old Sections 147, 148, 149 and 151 were to stand substituted with effect from April 1, 2021 and by Section 42, Section 148A was to be inserted also with effect from April 1, 2021.

On March 31, 2021 Notification No 20/2021 was issued by the CBDT in purported exercise of power under Section 3(1) of TOLA to extend the time limit under the old Section 149 of the Act for issue of notice under the old Section 148 of the Act for the assessment years 2013-14 and 2014-15 (which was to expire on March 31, 2021) to April 30, 2021.

On April 27, 2021 Notification No. 38/2021 was issued by the CBDT in exercise of power under Section 3 (1) of TOLA to extend the time limit under the old Section 149 of the Act for issue of notice under the old Section 148 of the Act for the assessment years 2013-14 and 2014-15 which was extended to 30th June, 2021.

On May 4, 2022 judgment of the Hon'ble Supreme Court was passed in the case of Union of India Vs Ashis Aggarwal (2022) 444 ITR 1 (SC) by which

the judgment dated January 17, 2022 of this Hon'ble Court was modified/substituted by directing that the notice under the old Section 148 of the Act shall be deemed to have been issued under the new Section 148A(b) and all defences which may be available to the assessee including under Section 149 of the Act and all rights and contentions which may be available to the assessee and revenue under the Finance Act, 2021 and in law shall continue to be available.

On May 11, 2022 Instruction No. 01/2022 issued by the Central Board of Direct Taxes. The said circular proceeded on the basis that proceedings under Sections 147/148 of the Act for, inter alia, the assessment years 2013-14 and 2014-15 did not get time barred on March 31, 2021.

The Finance Act, 2021 completely reformed the system of reassessment by bringing in a completely new procedure of reassessment with effect from April 1, 2021.

In terms of Sections 40, 41, 43 and 44 of the Finance Act, 2021, which came into force on April 1, 2021, as per Section 2(a) thereof, the old Sections 147, 148, 149 and 151 stood repealed/abrogated and replaced by a new set of provisions.

Further, by Section 42, a new Section 148A was inserted also with effect from April 1, 2021.

By Section 43 of Finance Act 2021, old Section 149 of the Act was substituted with effect from April 1, 2021 without any savings clause. The new Section 149 laid down new time limits for issue of notice under the new Section 148 of the Act. As such, the first proviso to the new Section 149(1) of the Act stipulated that no notice under the new Section 148 of the Act shall be issued at any time if such notice could not have been issued at that time on account of being beyond the time limit specified under the old Section 149(1)(b) of the Act.

The first proviso to the new Section 149(1) of the Act placed an embargo on the issue of notice under the new Section 148 of the Act in cases where time limit for issue of notice under the old Section 148 of the Act had expired in terms of the old Section 149(1)(b) of the Act.

Since by the Finance Act, 2021, the old Section 149 of the Act was repealed and replaced by a new provision with effect from April 1, 2021, there was no question of complying with the old Section 149 of the Act after March 31, 2021. Similarly, there was no question of extension of the time limit for compliance of the old Section 149 of the Act after March 31, 2021. Having regard to the proviso to the new Section 149(1) of the Act, the only purpose for which one was required to look at the old Section was to ascertain whether limitation for issue of notice under the old Section 149 of the Act had set in before April 1, 2021.

The first proviso to the new section 149(1) of the Act is not a savings clause as contended on behalf of the revenue. It is neither worded nor reads as a savings clause. Rather, the new provision manifests a clear intention that the new section 149 of the Act cannot be resorted to where limitation had set in terms of the old Section 149(1)(b) of the Act. The first proviso did not save anything which expired prior to its enactment. On the following three decisions relied upon by the revenue, the proviso were in fact worded and read as savings clauses which are referred as hereunder:

- (i) Shah Bhojraj Kuverji Oil Mills & Ginnings Factory Vs Subbash Chandra Yograaj Sinha, AIR 1961 SC 1596 – Paragraph 5 at Page 1080.
- (ii) Mohanlal Kanyalal Vs Lalchand Motilal Malani, 1960 SCC OnLine Bom 119 – Paragraph 2 at Page 1086
- (iii) Mahapalika of the City of Agra Vs The Agra Brick Kiln Owners Asscn., (1976) 3 SCC 42 – Paragraph 9 at Page 1093-94

Petitioners submit that Section 6 of the General Clauses Act relied upon on behalf of the revenue does not help it, rather it helps the assessee/petitioners. As per clause (a) of Section 6 of the said Act, rights, liabilities, etc. not existing at the time of repeal are not saved. In the instant case, the time to issue notice under the old Section 148 of the Act for the assessment years 2013-14 and 2014-15 expired on March 31, 2021 before the old provisions stood repealed and replaced by the new provisions with effect from March 31, 2021. The old provisions stood repealed and replaced by the new provisions with effect from April 1, 2021. According to the petitioners the following decisions relied upon on behalf of the revenue do not advance its case;-

(i) State of Punjab Vs Mohar Singh, AIR 1955 SC 84

(ii) Tarak Chandra Banerjee Vs Ratan Lal Ghosal, AIR 1957 Cal 257 (FB)

(iii) Gammon India Ltd. Vs Special Chief Secretary, (2006) 3 SCC 354

(iv) Kolhapur Canesugar Works Ltd. Vs Union of India, (2000) 2 SCC 536

Petitioners submit that Section 3(1) of TOLA merely relaxed the period of limitation prescribed under various specified statutes, one of which was the Income Tax Act. The power under Section 3(1) of TOLA could be exercised only for the purpose of relaxing i.e. extending the time limit specified in various statutes. The exercise of power under Section 3(1) of TOLA was dependent on the continued existence of the statutory provision, the time limit under which was sought to be extended.

Petitioners submit that Section 3(1) of TOLA is a secondary or ancillary legislation, dependant on the continued existence of the principal legislation. Section 3(1) of TOLA is not a completion on the continued existence of the principal legislation. It merely relaxes the time limit in the specified Acts. It is in aid of such specified Acts. No question arises of choosing between TOLA and any specified Act as to which one should prevail.

Reliance which was placed on behalf of the revenue on Harishankar Bagla Vs State of Madhya Pradesh, AIR 1954 SC 465, in that case, the statute was one relating to essential supplies and Section 6 of the Act thereof expressly gave overriding effect to any order made under Section 3 of the statute notwithstanding anything inconsistent therewith contained in any other statute or any instrument having effect by virtue of any other statute. There is no such provision in TOLA. The non-obstante clause in Section 3 of TOLA is only in respect of the date of limitation specified in the principal legislation so as to extend the same.

Petitioners submit that the contention of the revenue that TOLA is a special law and has to be preferred over the Act/Finance Act, 2021 which are sought to be termed as general law is misconceived. The following decisions relied upon by the revenue in this behalf have no application-

- (i) Commercial Tax Officer Vs Binani Cements Ltd., (2014) 8 SCC 319
- (ii) Atma Ram Properties Pvt. Ltd. Vs Oriental Insurance Co. Ltd., (2018) 2 SCC 27
- (iii) Kaushalya Rani Vs Gopal Singh, AIR 1964 SC 260

Petitioners submit that by Section 3(1) of TOLA, for the assessment year 2013-14, the time limit for issuance of notice under the old Section 148 of the Act and sanction under the old Section 151 of the Act was extended to March 31, 2021. Without such extension, limitation would have set in on March 31, 2020, in terms of the old Section 149 of the Act. The provisions of old Section 149 of the Act, with reference to which the time limit was extended, ceased to exist after March 31, 2021. In the absence of old Section 149 of the Act, there can be no extension of the time limit specified thereunder beyond March 31, 2021.

For the assessment year 2014-15, the time limit under old Section 149 of the Act for issuance of notice under old Section 148 of the Act and sanction

under old Section 151 of the Act was in the normal course available up to March 31, 2021. In the absence of old Section 149 after March 31, 2021, there can be no extension of the time limit specified thereunder beyond March 31, 2021.

By notification no. 20/2021 the time limit laid down in the old Section 149 for issue of notice under old Section 148 after sanction under Section 151 of the Act was sought to be extended beyond March 31, 2021. The Central Government was conscious of the fact that the old reassessment provisions including the old section 149 and the old Section 151 of the Act will not be on the statute book from April 1, 2021. The Finance Act, 2021 had received Presidential assent on March 28, 2021. As such, the said notification contained an Explanation that the old reassessment provisions, namely the old Sections 148, 149 and 151 of the Act as they stood on March 31, 2021 before repeal shall continue to apply. Such Explanation found place in the said notification because without the continued existence of the old reassessment provisions, there could be no extension of the time limit specific therein.

Section 3 of TOLA merely provided for extension of time specified in the old reassessment provisions. Section 3 did not confer any power on the Central Government to stipulate that the old reassessment provisions including the old Section 149 of the Act, which had been repealed by the Parliament and replaced by a new set of provisions from April 1, 2021, which would continue to apply after March 31, 2021 even after such repeal.

The extension purported to be made by the notification dated March 31, 2021, was completely dependent upon the Explanation contained therein. Since the Explanation was unauthorized, the extension of time for compliance with the repealed Section 149 beyond March 31, 2021 did not take effect at all.

Notification No. 20/2021 though dated March 31, 2021 was to come into force on April 1, 2021, this is because time extension up to March 31, 2021 was already granted by Section 3 of TOLA. The said notification sought to grant

extension beyond March 31, 2021 i.e. for the period from April 1, 2021 and was thus meant to take effect from April 1, 2021.

The aforesaid notification dated March 31, 2021 was in direct conflict with the provisions of Sections 40 to 44 of the Finance Act, 2021 which came into force on April 1, 2021 in terms of Section 2(a) thereof. Whereas the said provisions of the Finance Act, 2021 repealed, inter alia, the old Sections 147, 148, 149 and 151 from April 1, 2021, the said notification purported to provide that the repealed provisions would continue to exist and further purported to extend the time for compliance with the repealed provisions beyond March 31, 2021.

The position with regard to the notification dated April 27, 2021 is the same as that of the notification dated March 31, 2021. Both the said notifications are ultra vires to the extent mentioned hereinabove.

Once the enactment repealed the old reassessment provisions and replaced the same with new provisions with effect from April 1, 2021, the power under Section 3 (1) of TOLA could not be exercised for extending the time limit in the old Section 149 of the Act beyond March 31, 2021 particularly since the old Section 149 of the Act was no longer on the Statute Book after March 31, 2021. The power of extending time limit specified in the old reassessment provisions could not be so exercised as to extend the time limit to any date beyond the repeal of the old reassessment provisions.

The power under Section 3(1) of TOLA was never exercised with reference to the new reassessment provisions under Finance Act, 2021 effective from April 1, 2021.

Respondents/revenue in defending the aforesaid notices issued under Section 148A(b) of the Act and subsequent proceedings initiated on or after 1st April, 2021 relating to assessment year 2013-14 and 2014-15 submit as hereunder.

a. The provisions of TOLA, 2020, especially Section 3 thereof despite being an earlier enactment than the Finance Act, 2021 would override the Finance Act, 2021, in view of the fact that TOLA is a special legislation enacted during special times when the Covid-19 pandemic had gripped the world. That being so the extension of time period done by the notifications issued under TOLA would survive despite the amendment of Section 149 of the Income Tax Act, 1961 by the Finance Act, 2021.

b. Although Income Tax Act, 1961 (and the subsequent Finance Act, 2021) are special law yet, since TOLA has been enacted during the period of Covid-19 specifically for the purpose of tiding over the situation then prevailing, therefore TOLA will have more special character than that of the Income Tax Act. This fact will be evident from the fact that TOLA has been used to amend and relax the provisions of the Income Tax Act itself. This distinction can be well understood in the light of the following case law.

Kaushalya Rani vs Gopal Singh (AIR 1964 SC 260 Para 7)

In support of the submission that TOLA being a special legislation will prevail over a later general enactment, the following case laws are relied upon by the revenue:

i. Commercial Tax Officer Rajasthan Vs Binani Cement Limited & Anr.
(2014) 8 SCC 319 para 43

ii. Atma Ram Properties Pvt. Ltd. Vs Oriental Insurance Company Ltd.
(2018) 2 SCC 27 para 20

Arguments of the revenue in the alternative are as hereunder.

Even the new Section 149 of the Act permits operation of old Section 149 of the Act.

It was submitted by the respondents that reading of the first proviso to the amended Section 149 of the Income Tax Act, 1961 would reveal that what

could be done on the basis of the un-amended law could also be done after the amendment. Thus if the un-amended provision is read with the notifications issued under TOLA the extended time period will be perfectly valid. In this case the proviso itself acts as the saving clause.

Revenue relied on the following judgments on point that proviso can be read as a savings clause:

- i. Shah Bhojraj Kuverji Oil Mills & Ginnings Factory Vs Subbash Chandra Yograj Sinha, AIR 1961 SC 1596 Para 10
- ii. Mohanlal Kanyalal Vs Lalchand Motilal Malani, 1960 SCC OnLine Bom 119 Para 4
- iii. Mahapalika of the City of Agra Vs The Agra Brick Kiln Owners Asscn., (1976) 3 SCC 42 Para 9

Respondents revenue submit that the notifications issued under TOLA became a part of the statute the moment they were issued. On this aspect the following judgments are relied upon:

- a. Harishankar Bagla Vs State of Madhya Pradesh, AIR 1954 SC 465 para 5,6,12
- b. State of Bombay & Anr. Vs F.N. Balsara, 1951 SCC 860 Para 63
- c. Kailash Nath Vs State of U.P., AIR 1957 SC 790 Para 2
- d. Collector of Central Excise Vs M/s Parle Exports (P) Ltd., (1989) 1 SCC 345 Para 17

It was contended by the revenue that the notifications became law the moment the same were issued and they became part of the present Section 149 of the Act in terms of the proviso thereto which says that what could be done on the basis of the un-amended law could also be done after the amendment.

Revenue submits that out of the two impugned notifications, one is dated March 31, 2021 and the other is dated April 27, 2021. Going by the most conservative reasoning and assuming that the argument that TOLA is not a special act and also assuming that the proviso to Section 149 of the Act does not act as a saving clause then also the notification dated March 31, 2021 cannot be faulted at all. The same was issued before the Finance Act, 2021 took effect. Thus in any case the notification took effect and became a part of the statute before the Finance Act, 2021 came into force. The argument that the Finance Act got President's assent on March 28, 2021 is of no relevance since the Finance Act took effect on and from April 01, 2021 but before that the notification dated March 31, 2021 had been issued and it had become a part of the present Act i.e. unamended Section 149 of the Act according to revenue.

Revenue submits that contention of the assessee/petitioners that the Central or State Government cannot be empowered to issue notifications as they cannot legislate, in fact law is just to the contrary. In appropriate cases Central or State Government can be empowered to issue notifications which would be binding as law. In this case policy had been laid down in the object of TOLA which was preceded by an ordinance in the times of Covid-19 pandemic. In this connection the following judgments were relied upon by the respondents:

- a. Registrar of Co-Operative Societies Vs K. Kunjabmu (1980) 1 SCC 340 Para 3
- b. Ramesh Birch & Ors. Vs Union of India, 1989 Supp (1) SCC 430

It was submitted by the respondents that the Covid-19 pandemic was a harsh reality and the Hon'ble Supreme Court took suo moto cognizance of the then prevailing situation and rose to the occasion by rendering orders in the recognizance for extension of Limitation matters. In fact the limitation period for all suits, appeals, applications or proceedings were extended from time to

time and finally by the order dated January 10, 2022 the period of limitation from 15.03.2022 till 28.02.2022 was excluded for the purpose of limitation.

Respondents submit that TOLA and its provisions must be read in the light of the aforesaid factual situation since the effect of Covid has been appreciated by the Hon'ble Supreme Court at least till February 2022 as would be clear from the aforesaid order dated January 10, 2022. TOLA therefore must be treated as a special legislation enacted for a special purpose during special time and circumstances.

Respondents submit that in any case it is settled law that every statute must be given full effect. Here TOLA must be given full effect and the proviso to Section 149 permits the same by imbibing in it that what could be done on the basis of the un-amended law could also be done after the amendment. It was submitted that the best course would be to harmonise the two laws and find a solution so that both exist. On the proposition that every statute must be given full effect reliance was placed in the case of Nathi Devi Vs Radha Devi Gupta (2005) 2 SCC 271 Para 13, 14, 15 and 17. It was submitted that even if there is no saving clause then also the power to issue notice in terms of the extensions done under TOLA is saved under Clause 6 of the General Clauses Act. In this regard reliance was placed on in the case of State of Punjab Vs Mohar Singh (AIR 1955 SC 84 Para 4 and 8)

Revenue submits that as regards the judgments delivered by the Hon'ble Allahabad High Court in the case of Rajeev Bansal Vs Union of India, Hon'ble Gujarat High Court in the case of Keenara Industries Pvt. Ltd. Vs Income Tax Officer and the Hon'ble Delhi High court in the case of Ganesh Das Khanna Vs Income Tax Officer, it will be clear from reading thereof that none of the points argued in the instant case was argued or considered there. Further the judgment in the case of Ganesh Das Khanna (supra) is not at all one which pertains to or relates to the proviso to Section 149 of the Act which is very much relevant there. The assessee's reliance on the judgments in the case of

Man Mohan Kohli Vs ACIT, Ashok Kumar Aggarwal Vs UOI is wholly misplaced in as much as the judgments in cases of Man Mohan Kohli Vs ACIT, Ashok Kumar Aggarwal Vs UOI stood substituted and modified by the judgment in UOI Vs Ashish Aggarwal. Similarly placing reliance on the case of Rajeev Bansal for stating that these points were dealt with is again misplaced because in Rajeev Bansal's case the same Man Mohan Kohli Vs ACIT and Ashok Kumar Aggarwal Vs UOI had been referred which stood substituted and modified by the judgment in UOI Vs Ashish Aggarwal as aforesaid. None of the other cases cited by the assessee helps the assessee at all. The same are wholly inapplicable to the facts of the present case. It was submitted that in view of the aforesaid submission of revenue the writ petitions should be dismissed.

In reply to the submission of revenue, petitioners submit as hereunder.

On behalf of the revenue, reliance which was placed on Nathi Devi Vs Radha Devi Gupta, (2005) 2 SCC 271 to which it was contended by the petitioners that TOLA confers the power to issue two notifications and such power must be given effect to. It was submitted that by reason of enactment by the Parliament of Sections 40 to 44 of the Finance Act, 2021 repealing the old reassessment provisions including old Sections 147, 148, 149 and 151 of the Act and replacing the same with the new provisions with effect from April 1, 2021, the power under Section 3 of TOLA could no longer be exercised to issue any notification for extending the time limit specified in the old reassessment provisions beyond March 31, 2021.

It was further submitted that it is settled law that delegated legislation cannot be contrary to the statute under which it is made or to any other statutory provisions. Subordinate legislation must be in conformity with the provisions of the statute under which it is made as also the provisions of any other statute. Subordinate legislation cannot be violative of any plenary legislation made by the Parliament and on this proposition of law, reliance was placed on the following judgments:

- (i) Indian Express Newspapers (Bombay) Pvt. Ltd. Vs Union of India, (1985) 1 SCC 641 – Paragraphs 75 and 77
- (ii) Kerala Samsthana Chetu Thozhilali Union Vs State of Kerala, (2006) 4 SCC 327 – Paragraph 17

It was submitted by the petitioner that reliance which was also placed by the revenue on in the case of The Registrar of Co-Operative Societies Vs K. Kunjabmu (1980) 1 SCC 340 to emphasise the need for delegated or subordinate legislation, such need cannot be disputed but the legislation must not be ultra vires. In the event Section 3(1) of TOLA is construed as empowering the Central Government to extend the application of a repealed provision and the time limit prescribed therein is beyond the date of its repeal by the Parliament and thereby override parliamentary legislation, in that case and to such extent Section 3(1) of TOLA would have to be held as manifestly arbitrary and ultra vires. It would be a case of conferring unfettered, uncanalised power without laying down norms for enforcement and tantamounts to abdication of legislative power by the legislature which is not permissible in law as per view taken in the following judgments:

- (i) State of Tamil Nadu Vs K. Shyam Sunder (2011) 8 SCC 737 – Paragraphs 44, 45 and 49
- (ii) Union of India Vs Ganpati Dealcom Pvt. Ltd., (2023) 3 SCC 315 – Paragraphs 52 to 54

Petitioners submit that the notification issued under Section 3 of TOLA is not conditional legislation but is delegated legislation. Section 3 of TOLA is by itself complete inasmuch as it is operative and effective on its own. This Section merely confers power on Central Government to extend the time fixed by it under Section 3 to a subsequent date. The Tulsipur Sugar Co. Ltd. Vs The Notified Area Committee, AIR 1980 SC 882 relied upon on behalf of the revenue has no application and even assuming for the sake of argument that

notifications dated March 31, 2021 and April 27, 2021 issued under Section 3 of TOLA are conditional legislation, the same nevertheless have to pass muster having regard to the principles laid down in State of Tamil Nadu Vs K. Shyam Sunder (2011) 8 SCC 737 and Union of India Vs Ganpati Dealcon Pvt. Ltd., (2023) 3 SCC 315.

Petitioners submit that reliance on behalf of the revenue which was placed on Ramesh Birch Vs Union of India, 1989 Supp (1) SCC 430 to contend that it was sufficient if the legislature gave the broadest indication of its general policy, the said proposition cannot be disputed, however, the said test is not satisfied in the instant case. TOLA does not provide for placing of any notification issued under Section 3 before the Parliament. Even if TOLA had so stipulated, any notification issued under Section 3 would not have acquired the status of statute made by Parliament and would continue to be delegated legislation as per the view taken in the case of Bharat Hari Singhania Vs Commissioner of Wealth Tax, 1994 Supp (3) SCC 46 – Paragraph 24.

Petitioners submit that the following decisions were relied upon on behalf of the revenue to contend that the notifications issued under TOLA should be treated as part of TOLA:-

- (i) State of Bombay & Anr. Vs F.N. Balsara, 1951 SCC OnLine SC 47
- (ii) Kailash Nath Vs State of U.P., AIR 1957 SC 790
- (iii) Collector of Central Excise Vs M/s Parle Exports (P) Ltd., (1989) 1 SCC 345.

In none of the said cases there was any repugnancy between the notification and the statute under which it was issued or any other statute. If there is a conflict between the notification and the statute under which it is issued or any other statute, the principles laid down in Indian Express Newspapers (Bombay) Pvt. Ltd. Vs Union of India, (1985) 1 SCC 641 and Kerala Samsthana Chethu Thozhilali Union Vs State of Kerala, (2006) 4 SCC 327 will apply and it cannot

be disputed that in case of conflict, Parliament made legislation will prevail over a notification issued by the delegate.

Petitioners submit that though the revenue cited order dated January 10, 2022 in suo moto Writ Petition (C) No. 3 of 2020, and order dated September 23, 2021 passed by the Hon'ble Supreme Court in Misc. Application No. 665 of 2021 in SMW (C) No. 3 of 2020, it was not contended on behalf of the revenue that the said orders have any application in the instant case and rightly so, the said orders had no application in respect of the actions required to be taken by the authorities under the governing statutes that is why an ordinance was promulgated on March 31, 2020 to extend the time, which was subsequently replaced by TOLA.

The petitioners in support of their contentions rely on the judgments of the Hon'ble Gujarat High Court in Keenara Industries Pvt. Ltd. Vs Income Tax Officer, [2023] 453 ITR 51 (Guj.) and the Hon'ble Allahabad High Court in Rajeev Bansal Vs Union of India, [2023] 453 ITR 153 (All) and submit that by mere passing of interim order by the Hon'ble Supreme Court staying the operation of the said judgments [Income Tax Officer Vs Keenara Industries (P) Ltd., [2023] 153 taxmann.com 205 (SC) and Union of India Vs Rajeev Bansal, [2023] 150 taxmann.com 206 (SC) does not wipe out the existence thereof or undermine the authority of the said decisions as precedents and on this proposition relied on the judgments of the Division Bench of this Court in Pijush Kani Chowdhury Vs State of West Bengal, 2007 SCC OnLine Cal 267 and Niranjana Chatterjee Vs State of West Bengal & Ors., 2007 SCC OnLine Cal 283.

Petitioners submit that the foundation of the judgments of the Hon'ble Delhi High Court in Salil Gulati Vs Assistant Commissioner of Income Tax, [2023] 455 ITR 24 (Del.) and Touchstone Holdings Pvt. Ltd. Vs Income Tax Officer, [2023] 451 ITR 196 (Del.) is paragraph 98 of the judgment of the Hon'ble Delhi High Court in Mon Mohan Kohli Vs Assistant Commissioner of Income Tax

[2022] 441 ITR 207 (Del.) and that it would appear from paragraph 15 of Touchstone Holdings Pvt. Ltd. Vs Income Tax Officer, [2023] 451 ITR 196 (Del.) that the petitioner in that case did not dispute that time to issue notice under Section 148 for the assessment year 2013-14 stood extended till June 30, 2021 as would be evident from the detailed submissions made therein, the said paragraph 98 does not state the legal position correctly.

It was further submitted by the petitioners that in view of the judgment of the Hon'ble Supreme Court in Union of India Vs Ashis Agarwal, [2021] 444 ITR 1 (SC), in terms of paragraph 10 of its judgment and leaving all defences including those available under 149 of the Act, paragraph 98 of Mon Mohan Kohli does not stand in the way of the assessee to contend that the time limit to issue notice under Section 148 for the assessment years 2013-14 and 2014-15, cannot be extended beyond March 31, 2021. The Hon'ble Delhi High Court in a later judgment in Ganesh Das Khanna Vs ITO, WP (C) 11527/2022 decided on November 10, 2023, held in paragraph 44.5 and paragraph 48(ii)(d) that if the judgments in Touchstone Holdings Pvt. Ltd. Vs Income Tax Officer, [2023] 451 ITR 196 (Del.) and Salil Gulati Vs Assistant Commissioner of Income Tax, [2023] 455 ITR 24 (Del.) were read in the manner in which the revenue was seeking, they would run counter to the ratio of the judgment of the Hon'ble Supreme Court in Union of India Vs Ashis Agarwal, [2021] 444 ITR 1 (SC). This Court has taken note of the view taken by the Hon'ble Bombay High Court in a recent unreported judgment dated 15th January, 2024 in the case of The New India Assurance Company Limited -Vs- Assistant Commissioner of Income Tax.

Considering the facts and circumstances of the case, submission of the parties, relevant provisions of law including unamended old Sections 147, 148, 149 and 151 of the Income Tax Act, 1961 as stood on March 31, 2021, prior to enactment of the Finance Act, 2021, and present substituted Sections 147, 148, 149, 151 and newly inserted Section 148A of the Income Tax Act, 1961 as

enacted by Finance Act, 2021, without having any savings clause for the old provisions relating to reassessment proceedings, Section 3 of the Taxation and Other Laws (Relaxation and Amendment of certain Provisions) Act, 2020 (TOLA), Notification No. 20/2021 dated 31st March, 2021 and Notification No. 38/2021 dated 27th April, 2021 issued by the CBDT in exercise of alleged delegated power conferred under TOLA, for aiding the old provisions relating to reassessment proceedings which stood and remained in force till 31st March, 2021, various judgments relied upon by the parties referred hereinabove and on reading all together I am inclined to hold that all the impugned notices issued under newly inserted Section 148A(b) of the Income Tax Act, 1961 by Finance Act, 2021, relating to assessment years 2013-14 and 2014-15, which have been issued on or after 1st April, 2021 by extending the time of limitation by the CBDT for issuance of notice under Section 148 of the old Act in exercise of power under Section 3 of TOLA is unauthorised in law and all such impugned notices are barred by limitation and that all subsequent proceedings on the basis of the aforesaid impugned notices are not sustainable in law and accordingly the same are quashed for the following summarized reasons:

i. TOLA which was initially enacted and subsequent notifications being Notification No. 20/2021 dated 31st March, 2021 and Notification No. 38/2021 dated 27th April, 2021 issued by CBDT in aid of unamended and unsubstituted old provisions of Sections 147, 148, 149 & 151 of the Income Tax Act, 1961 for extending the period of limitation for the purpose of issuance of notice under Section 148 by converting or treating the same as notice under Section 148A(b) of the Income Tax Act, 1961, relating to assessment years 2013-14 and 2014-15 after 31st March, 2021 for the period 1st April, 2021 to 30th June, 2021 or thereafter is arbitrary, unreasonable and not sustainable in law in view of coming into effect the Finance Act, 2021, enacted by the Parliament which became effective from 1st April, 2021 by which old Sections 147, 148, 149 and 151 of the Act were substituted and also new Section 148A which was inserted without any saving clause and as a consequence of which old unamended

Sections 147, 148, 149 and 151 have ceased to exist in statute book after 31st March, 2021 and extending the period of limitation under the old unamended ceased provisions for issuance of notice under old Section 148 of the Income Tax Act, 1961, by converting the same into notices under Section 148A of the Act, newly inserted by Finance Act, 2021 on the basis of the aforesaid two notifications by the CBDT in exercise of power under TOLA, is highly arbitrary and not sustainable in law.

ii. The provisions of TOLA applied only to the pre-amended law as applicable till 31.03.2021 – Section 3 of TOLA clearly provided for extension of time limit for undertaking any action required to be undertaken from 20.03.2020 to 31.03.2021 only.

Therefore, the question of application of provisions of TOLA by the revenue in the case of notices on or after 1st April, 2021, issued under old Section 148 or newly inserted Section 148A of the Income Tax Act, 1961, relating to assessment years 2013-14 and 2014-15 after coming into effect the Finance Act, 2021 from 1st April, 2021 amending and subsisting the old provisions under Section 147 to 151 of the Income Tax Act, 1961, without any saving clause does not arise and such exercise by the authority under TOLA under the aforesaid two notifications by the CBDT in conflict of the relevant provisions under Finance Act, 2021 is wholly unwarranted and bad in law.

iii. The erstwhile regime of Section 148 of the Act (applicable up to 31.03.2021) had been repealed by the parliament without any savings and exception clause and was substituted with an altogether new regime vide the Finance Act, 2021 with effect from 01.04.2021.

iv. Therefore, the provisions of TOLA which applied to the old law cannot be read into the new substituted regime to test the validity of a notice under old Section 148 of the Act issued on or after 01.04.2021, admittedly under the new regime, in view of the one-time leeway granted by Hon'ble Supreme Court in Principal CIT Vs Ashish Agarwal [2022] 444 ITR 1 (SC) – validity of such

notice under the new/substituted regime has to necessarily be tested under the provisions of the new/substituted regime.

v. If the provisions of the old regime of Section 148 of Act (including TOLA) are read into/applied to the new regime applicable w.e.f. 01.04.2021, it would necessarily result in deferring the implementation of the new/substituted reassessment regime, which was never the intention of the Parliament, and which is not permissible in law.

vi. The aforesaid consequence would, in fact, be directly in the teeth of judgment (s) of Hon'ble Delhi High Court in the case of Mon Mohan Kohli vs. ACIT [2021] 441 ITR 207 (Del.) and Hon'ble Allahabad High Court in the case of Ashok Kumar Aggarwal vs. Union of India [2021] 439 ITR 1 (All), which were followed by this Hon'ble Court in the judgment rendered in a batch of matters titled Bagaria Properties & Investment Pvt. Ltd. Vs Union of India & Ors. [2022] 441 ITR 359 (Cal) – the aforesaid rulings have been duly affirmed by the Hon'ble Supreme Court in the case of Ashish Agarwal (supra) as laying down the correct law.

vii. If the provisions of the old regime of Section 148 (including TOLA) are read into/applied to the new regime applicable from 01.04.2021, it would also necessarily mean that a provision repealed by the Parliament without any savings and exception clause, is applied by the Revenue even after its life has come to an end which is clearly not permissible in law.

viii. If the submissions of the Revenue were to be accepted, it would imply that notwithstanding a complete overhaul of the reassessment provisions brought about by 01.04.2021 till 30.06.2021 two parallel schemes of reopening (i.e., unamended law as well as amended law) will operate simultaneously and it would result in a direct conflict between two altogether differing statutory scheme/provisions relating to reassessment, which could by no stretch of imagination be the intention of the Parliament, and which is not permissible in law.

ix. If validity of notices issued on or from 01.04.2021 to 30.06.2021 is tested on the basis of pre-amended provisions including TOLA and notifications issued thereunder, both issued in the context of pre-amended law, the same shall result in following ambiguity/anomaly:

a. During the period from 01.04.2021 to 30.06.2021 both pre-amended as well as amended scheme of reassessment shall continue to operate – this shall result in direct conflict of two provisions/statutory schemes;

b. Apex Court in Ashish Agarwal (supra) categorically held that all defences, including defense of limitation, as available under the amended provisions, including the amended Section 149, shall be available – application of old law shall, however, defeat the said right specifically recognized by the Apex Court as available to the assessee;

c. Even if the defense available to the assessee under the substantive provisions of Section 149(1)(b) and first proviso of the new Act thereto shall not be available, thereby rendering the said provision otiose and a dead letter of the law (from 01.04.2021 to 30.06.2021), and the operation of the amended provisions would have to be deferred/postponed up to and after 30.06.2021 without having any legislation by the Parliament to this effect.

Revenue Respondent no. 3/Central Board of Direct Taxes (“CBDT”) has erroneously resorted to Instruction No. 1 dated 11.05.2022 by contending that the Apex Court decision in Ashis Agarwal (supra) read with TOLA permits the notices to “travel back in time to their original date when such notices were to be issued” i.e., on or before 31.03.2021 and that consequent notices issued from 01.04.2021 to 30.06.2021 are within time permitted it will be contrary to the intention of legislating Finance Act, 2021, coming into effect from 1st April, 2021 subsisting the old law relating to reassessment.

The aforesaid interpretation canvassed in the CBDT Instruction is, in fact, is again in direct conflict with the judgments of various Hon’ble High Courts, which have duly been affirmed by the Apex Court in Ashis Agarwal (supra).

In view of the aforesaid declaration that the impugned notices issued on or after 1st April, 2021, by the CBDT, relating to assessment years 2013-14 and 2014-15, under Section 148 (old) of the Income Tax Act, 1961 by converting/treating the same as under newly inserted Section 148A of the Income Tax Act, 1961, by Finance Act, 2021 which came into effect from 1st April, 2021, in exercise of power under TOLA being barred by limitation, all subsequent proceedings on the basis of aforesaid impugned notices being not sustainable in law, are quashed and all legal consequences will follow automatically.

In view of discussion and observation made above all these writ petitions are disposed of accordingly by allowing the same. No order as to costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

MOHAMMAD NIZAMUDDIN
(MD. NIZAMUDDIN, J.)

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MOHAMMAD NIZAMUDDIN
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