

(2022) 04 RAJ CK 0034

In the Rajasthan High Court

Case No : D.B. Civil Writ Petition No. 4753 Of 2022

Ajay Kumar Choudhary

APPELLANT

Vs

Income Tax Officer And Others

RESPONDENT

Date of Decision : 07-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 14
Finance Act, 2021 — Section 148, 149, 149(1), 149(1)(a)
Relaxation Act, 2020 — Section 3(1)

Citation : (2022) 04 RAJ CK 0034

Hon'ble Judges : Sandeep Mehta, J;Farjand Ali, J

Bench : Division Bench

Advocate : Hardik Gautam, Rakesh Arora, G.S. Chauhan, K.K. Bissa

Final Decision : Allowed

Judgement

It is stated by learned counsel representing the parties that the controversy involved in these writ petitions is squarely covered by the ratio of judgment rendered by a Coordinate Division Bench of this Court in the case of Sudesh Taneja vs. Income Tax Officer & Ors. (D.B. Civil Writ Petition No.969/2022) decided on 27.01.2022, wherein while quashing the impugned notices of re-assessment, this Court observed as under:-

"37. In this context we have perused the provisions of reassessment contained in the Finance Act, 2021. We have noticed earlier the major departure that the new scheme of reassessment has made under these provisions. The time limits for issuing notice for reassessment have been changed. The concept of income chargeable to tax escaping assessment on account of failure on the part of the assessee to disclose truly or fully all material facts is no longer relevant. Elaborate provisions are made under Section 148A of the Act enabling the Assessing Officer to make enquiry with respect to material suggesting that income has escaped assessment, issuance of notice to the assessee calling upon why notice under Section 148 should not be issued and passing an order

considering the material available on record including response of the assessee if made while deciding whether the case is fit for issuing notice under Section 148. There is absolutely no indication in all these provisions which would suggest that the legislature intended that the new scheme of reopening of assessments would be applicable only to the period post 01.04.2021. In absence of any such indication all notices which were issued after 01.04.2021 had to be in accordance with such provisions. To reiterate, we find no indication whatsoever in the scheme of statutory provisions suggesting that the past provisions would continue to apply even after the substitution for the assessment periods prior to substitution. In fact there are strong indications to the contrary. We may recall, that time limits for issuing notice under Section 148 of the Act have been modified under substituted Section 149. Clause (a) of sub-section (1) of Section 149 reduces such period to three years instead of originally prevailing four years under normal circumstances. Clause (b) extends the upper limit of six years previously prevailing to ten years in cases where income chargeable to tax which has escaped assessment amounts to or is likely to amount to 50 lacs or more. Sub-section (1) of Section 149 thus contracts as well as expands the time limit for issuing notice under Section 148 depending on the question whether the case falls under clause (a) or clause (b). In this context the first proviso to Section 149(1) provides that no notice under Section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 01.04.2021 if such notice could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of Section 149 as they stood immediately before the commencement of the Finance Act, 2021. As per this proviso thus no notice under Section 148 would be issued for the past assessment years by resorting to the larger period of limitation prescribed in newly substituted clause (b) of Section 149(1). This would indicate that the notice that would be issued after 01.04.2021 would be in terms of the substituted Section 149(1) but without breaching the upper time limit provided in the original Section 149(1) which stood substituted. This aspect has also been highlighted in the memorandum explaining the proposed provisions in the Finance Bill. If according to the revenue for past period provisions of section 149 before amendment were applicable, this first proviso to section 149(1) was wholly unnecessary. Looked from both angles, namely, no indication of surviving the past provisions after the substitution and in fact an active indication to the contrary, inescapable conclusion that we must arrive at is that for any action of issuance of notice under Section 148 after 01.04.2021 the newly introduced provisions under the Finance Act, 2021 would apply. Mere extension of time limits for issuing notice under section 148 would not change this position that obtains in law. Under no circumstances the extended period available in clause (b) of sub-section (1) of Section 149 which we may recall now stands at 10 years instead of 6 years previously available with the revenue, can be pressed in service for reopening assessments for the past period. This flows from the plain meaning of the first proviso to sub-section (1) of Section 149. In plain terms a notice which had become time barred prior to 01.04.2021 as per the then

prevailing provisions, would not be revived by virtue of the application of Section 149(1)(b) effective from 01.04.2021. All the notices issued in the present cases are after 01.04.2021 and have been issued without following the procedure contained in Section 148A of the Act and are therefore invalid.

38. The second question framed by us arises in this context. Would the explanation contained in both the notifications of CBDT dated 31.03.2021 and 27.04.2021 save the situation for the revenue?

39. It is well settled that there is presumption of constitutionality of a statute (refer to the Constitution Bench judgment in case of *The State of Jammu & Kashmir, Vs. Triloki Nath Khosa and Ors.*, reported in AIR 1974 SC 1). The said principle of presumption of constitutionality also applies to piece of delegated legislation. In case of *St. Johns Teachers Training Institute Vs. Regional Director, National Council For Teachers Education and Another*, reported in (2003) 3 SCC 321, it was observed that it is well settled in considering the vires of subordinate legislation one should start with the presumption that it is intra vires and if it is open to two constructions, one of which would make it valid and other invalid, the courts must adopt that construction which makes it valid. However it is equally well settled that the subordinate legislation does not enjoy same level of immunity as the law framed by the Parliament or the State Legislature. The law framed by the Parliament or the State Legislature can be challenged only on the grounds of being beyond the legislative competence or being contrary to the fundamental rights or any other constitutional provisions. Third ground of challenge which is now recognized in the judgment in case of *Shayara Bano Vs Union of India* reported in 2017 9 SCC 1 is of legislation being manifestly arbitrary. A subordinate legislation can be challenged on all these grounds as well as on the grounds that it does not conform to the statute under which it is made or that it is inconsistent with the provisions of the Act or it is contrary to some of the statutes applicable on the subject matter. In case of *J.K. Industries Ltd. and Ors. Vs. Union of India and Ors.*, reported in (2007) 13 SCC 673, it was observed as under:-

"63. At the outset, we may state that on account of globalization and socio-economic problems (including income disparities in our economy) the power of Delegation has become a constituent element of legislative power as a whole. However, as held in the case of *Indian Express Newspaper v. Union of India* reported in (1985) 1 SCC 641 at page 689, subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent Legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition, it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is inconsistent with the provisions of the Act or that it is contrary to some other statute applicable on the same subject matter.

Therefore, it has to yield to plenary legislation. It can also be questioned on the

ground that it is manifestly arbitrary and unjust. That, any inquiry into its vires must be confined to the grounds on which plenary legislation may be questioned, to the grounds that it is contrary to the statute under which it is made, to the grounds that it is contrary to other statutory provisions or on the ground that it is so patently arbitrary that it cannot be said to be inconformity with the statute. It can also be challenged on the ground that it violates Article 14 of the Constitution.”

40. With this background we may revert to the Relaxation Act, 2020 and the two notifications issued by the CBDT. We may recall, under sub-section (1) of Section 3 of the Relaxation Act, 2020 while extending the time limits for taking action and making compliances in the specified Acts upto 31.12.2020 the power was given to the Central Government to extend the time further by issuing a notification. This was the only power vested in the Central Government. As a piece of delegated legislation the notifications issued in exercise of such powers, had to be within the confines of such powers. In plain terms under sub- section (1) of Section 3 of the Relaxation Act, 2020 the Government of India was authorized to extend the time limits by issuing notifications in this regard. Issuing any explanation touching the provisions of the Income Tax Act was not part of this delegation at all. The CBDT while issuing the notifications dated 31.03.2021 and 27.04.2021 when introduced an explanation which provided by way of clarification that for the purposes of issuance of notice under Section 148 as per the time limits specified in Section 149 or 151, the provisions as they stood as on 31.03.2021 before commencement of the Finance Act, 2021 shall apply, plainly exceeded its jurisdiction as a subordinate legislation. The subordinate legislation could not have travelled beyond the powers vested in the Government of India by the parent Act. Even otherwise it is extremely doubtful whether the explanation in the guise of clarification can change the very basis of the statutory provisions. If the plain meaning of the statutory provision and its interpretation is clear, by adopting a position different in an explanation and describing it to be clarificatory, the subordinate legislature cannot be permitted to amend the provisions of the parent Act. Accordingly, these explanations are unconstitutional and declared as invalid.

41. As noted, two Division Benches of Allahabad and Delhi High Courts have taken similar view. Two learned Single Judges of Calcutta and this High Court have followed this trend. Independently also we hold the same beliefs. As noted earlier we are conscious that Single Judge of Chhattisgarh High Court in Palak Khatuja (supra) has taken a different view. The view of the High Court was that the impugned notices were valid since by virtue of notifications dated 31.03.2021 and 27.04.2021 the application of Section 148 which was originally existing before amendment was deferred. It was further observed as under:-

“Reading of the aforesaid notification would show that it was issued in exercise of power conferred under the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 and time for issuance of notice under Section

148, the end date was initially extended uptill on 30th day of April 2021 and subsequently again by notification dated 27th April, 2021 the time limit of 30th day of April 2021 was further extended up till 30th day of June, 2021. By effect of such notification, the individual identity of Section 148, which was prevailing prior to amendment and insertion of section 148A was insulated and saved uptill 30.06.2021.”

With respect, we are unable to persuade ourselves to accept this analysis of the situation. In our understanding by virtue of notifications dated 31.03.2021 and 01.04.2021 issued by CBDT substitution of reassessment provisions framed under the Finance Act, 2021 were not deferred nor could they have been deferred. The date of such amendments coming into effect remained 01.04.2021.

42. In the result we find that the notices impugned in the respective petitions are invalid and bad in law.

The same are quashed and set aside. The learned Single Judge committed no error in quashing these notices. All the writ petitions are allowed. Appeals of the revenue are dismissed. Pending applications if any stand disposed of.”

In view of the Sudesh Taneja’s judgment (supra), the impugned notice/s and all consequential proceedings, if any, are invalid and bad in law and hence, the same are quashed and set aside. The writ petition is allowed. Stay application is disposed of.