TaxAaram.com

AFR

Court No. - 3

Case :- WRIT TAX No. - 524 of 2021

Petitioner:- Ashok Kumar Agarwal

Respondents:- Union of India through its Revenue Secretary North Block and 2 Others

Counsel for Petitioner:- Suyash Agarwal

Counsel for Respondents:- Gaurav Mahajan, Ashish Agrawal, Gopal Verma

Hon'ble Naheed Ara Moonis, J.
Hon'ble Saumitra Dayal Singh, J.

Heard Sri Rakesh Ranjan Agarwal, learned Senior Advocate, assisted by Sri Suyash Agarwal, Sri Shambhu Chopra, learned Senior Advocate, assisted by Ms. Mahima Jaiswal, Sri Abhinav Mehrotra, Sri Akhilesh Kumar along with Sri Ashish Bansal, Sri Divyanshu Agarwal along with Sri Ankit Saran, Sri Deepak Kapoor along with Sri Shubham Agarwal, Sri V.K. Sabarwal and Shri R.B. Gupta along with Sri Rishi Raj Kapoor, Sri Shakeel Ahmad, Sri Parv Agarwal, Sri Salil Kapoor along with Sri Anuj Srivastava & Ms Soumya Singh alongwith Sri Satya Vrat Mehrotra, Sri Ankur Agarwal, Sri Krishna Deo Vyas, Sri Ashok Shankar Bhatnagar & Sri Harshul Bhatnagar, Sri Pranchal Agarwal, Sri V.K. Sabharwal, Sri R.B. Gupta, Ms. Shalini Goel and Ms. Rupal Agarwal, learned counsel for the petitioners; Sri Shashi Prakash Singh, learned Additional Solicitor General of India assisted by Sri Gopal Verma, Sri Dinesh Kumar Mishra, Sri Gaya Prasad Singh, Sri Sudarshan Singh, Sri Santosh Kumar Singh Paliwal, Sri Ajai Singh, Sri Gaurav Kumar Chand and Sri Krishna Agarwal, learned counsel appearing for the Union of India; Sri Gaurav Mahajan, Sri Praveen Kumar, Sri Krishna Agarwal, Sri Ashish Agarwal and Sri Manu Ghildyal, learned Standing Counsel for the revenue authorities.

2. This writ petition along with the other petitions mentioned in paragraph 4 below, have been filed by individual petitioners, to challenge initiation of re-assessment proceedings under Section 148 of the Income Tax

Act, 1961 for different assessment years. All reassessment proceedings have been initiated upon notices issued after the date 01.04.2021.

3. These petitions had been entertained and interim protection granted. Pursuant to earlier orders passed in the leading petitions - Writ Tax Nos. 524 of 2021 and 521 of 2021 and other matters, the revenue and the Union of India were required to file counter affidavits in those cases. Copies of such counter affidavits were, under a direction of this Court, served on all learned counsel for the petitioners. Replies by way of rejoinder affidavits have also been received in some of the cases. Those affidavits thus filed, have been read in all the writ petitions.

4. Since, the dispute arising in the present writ petitions is purely legal, with respect to the validity of the re-assessment proceedings initiated against the individual petitioners, after 01.04.2021, having resort to the provisions of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') as they existed, read with the provisions of Act No. 38 of 2020 and the notifications issued thereunder, the peculiar fact pleadings of each case are not material to the adjudication of the legal issues involved here. However, for the purposes of convenience, the basic relevant facts, obtaining in each individual case are recorded in the below given chart:

Sl. No.	Writ Tax No.	Name of the Petitioner	A.Y.	Date of Notice U/s 148	Date of filing of original return
1.	521/2021	KAUKAB GHULAM MOHAMED QURESHI	**2015-16**	29.06.2021	29.12.2017
2.	524-2021	ASHOK KUMAR AGARWAL	**2017-18**	09.04.2021	08.03.2018
3.	531-2021	M/S ARIHANT PUBLICATIONS (INDIA) LTD.	**2015-16**	30.06.2021	30.09.2015
4.	540-2021	BAJAJ STEELS AND INDUSTRIES LTD.	**2017-18**	29.06.2021	07.11.2017
5.	549-2021	BAJAJ STEELS AND INDUSTRIES LTD.	**2016-17**	29.06.2021	17.10.2016
6.	554-2021	SMT. NEERAJ AGARWAL	**2016-17**	09.04.2021	21.03.20217

7.	559-2021	FIROZ AHMED ZAHIR AHMED SHAIKH	2015-16	29.06.2021	20.07.2015
8.	561-2021	M/S JUBILANT PHARMOVA LIMITED	2015-16	30.06.2021	29.11.2015
9.	562-2021	SHOBHIT SHUKLA	2013-14	30.06.2021	--
10.	564-2021	VARDHMAN INDUSTRIES	2015-16	16.04.2021	25.09.2015
11.	565-2021	YOGESH JAISWAL	2017-18	25.05.2021	29.10.2017
12.	567-2021	NEERAJ PRAKASH	2013-14	30.06.2021	31.12.2015
13.	573-2021	PARVEEN QURESHI	2016-17	30.06.2021	15.06.2017
14.	592-2021	SARLA JAIN	2013-14	26.04.2021	31.03.2014
15.	612-2021	J.M. HOUSING LIMITED	2016-17	30.06.2021	15.10.2016
16.	613-2021	J.M. HOUSING LIMITED	2017-18	30.06.2021	27.01.2018
17.	614-2021	GSR MOVIES	2013-14	28.06.2021	28.09.2013
18.	615-2021	PAWANPUTRA HOTELS AND RESORTS PVT. LTD.	2013-14	30.06.2021	27.09.2013
19.	623/2021	HIRA LAL JAIN	2013-14	27.04.2021	29.07.2013
20.	624-2021	DEVOY BENARA	2013-14	27.04.2021	--
21.	625-2021	JAI JAGDAMBA METALLOYS LIMITED	2017-18	14.04.2021	31.10.2017
22.	636-2021	STAR CORPORATION	2014-15	30.06.2021	29.09.2014
23.	640-2021	STAR CORPORATION	2013-14	29.06.2021	29.09.2013
24.	641-2021	STAR ASSOCIATES	2013-14	29.06.2021	28.09.2013
25.	642-2021	NAMAN GOVIL	2013-14	19.04.2021	30.11.2013
26.	643-2021	RUPA GOYAL	2017-18	25.05.2021	28.10.2018
27.	655-2021	NAMAN GOVIL	2014-15	19.04.2021	22.09.2014
28.	665-2021	RAJEEV BANSAL	2016-17	16.06.2021	08.10.2016
29.	667-2021	MOHD SHAKIR	2017-18	10.06.2021	31.10.2017
30.	668-2021	AMIT SONI	2016-17	30.06.2021	22.07.2016
31.	669-2021	AMIT SONI	2015-16	30.06.2021	16.07.2015
32.	670-2021	ARUN KUMAR	2013-14	25.06.2021	05.09.2013
33.	677-2021	CRESCENT TANNERIES PVT LTD	2015-16	11.05.2021	26.09.2015
34.	678-2021	SURENDRA PRATAP SINGH	2013-14	30.06.2021	29.03.2014

35.	679-2021	METAL CANS AND CLOSURES PRIVATE LIMITED	2013-14	17.06.2021	30.09.2013
36.	680-2021	METAL CANS AND CLOSURES PRIVATE LIMITED	2014-15	17.06.2021	28.11.2014
37.	681-2021	METAL CANS AND CLOSURES PRIVATE LIMITED	2015-16	17.06.2021	29.09.2015
38.	691-2021	ARBIND KUMAR OMER	2016-17	30.06.2021	17.10.2016
39.	693-2021	SUBHASH KUMAR GUPTA	2014-15	29.06.2021	30.03.2015
40.	695-2021	KAMAL KUMAR AGARWAL (HUF)	2013-14	30.06.2021	31.07.2013
41.	696-2021	SHRI BHUVENDRA KUMAR VARSHNEY	2015-16	21.06.2021	31.03.2016
42.	697-2021	NITIN AGGARWAL HUF	2013-14	30.06.2021	29.07.2013
43.	707-2021	SUNITA AGARWAL	2013-14	30.06.2021	--
44.	724-2021	NIRMAL KUMAR GOYAL	2014-15	06.04.2021	26.07.2014
45.	727-2021	MADHUR MITTAL	2013-14	22.06.2021	24.07.2013
46.	728-2021	SUMIT MITTAL	2013-14	26.06.2021	25.07.2013
47.	732-2021	NAVDEEP VARSHNEYA	2013-14	06.04.2021	16.08.2013
48.	735-2021	MADHU AGARWAL	2013-14	06.04.2021	31.03.2014
49.	740-2021	KARAN MAHANA	2015-16	04.04.2021	27.03.2016
50.	742-2021	ASHISH AGARWAL	2013-14	29.06.2021	30.03.2018
51.	743-2021	AJAY GUPTA	2013-14	28.06.2021	27.07.2013
52.	744-2021	ASHISH AGARWAL	2014-15	29.06.2021	30.03.2018
53.	746-2021	BALA AGARWAL	2014-15	30.06.2021	23.08.2014
54.	749-2021	SHREE JEE ASSOCIATES	2013-14	23.04.2021	31.03.2014
55.	757-2021	JIVAN KUMAR AGARWAL	2013-14	27.04.2021	21.10.2013
56.	763-2021	KAPIL SHARMA	2013-14	25.06.2021	18.07.2013
57.	764-2021	KAPIL SHARMA	2014-15	25.06.2021	03.02.2015
58.	765-2021	NEERU GUPTA	2013-14	06.04.2021	27.09.2013
59.	769-2021	NEERU GUPTA	2015-16	01.04.2021	27.03.2016
60.	775-2021	MUKESH PAL SINGH	2014-15	30.06.2021	14.03.2015
61.	776-2021	SHIV SHAKTI CONSTRUCTIONS	2013-14	30.06.2021	21.10.2013
62.	777-2021	MUKESH KUMAR	2013-14	30.06.2021	01.02.2014

63.	778-2021	EXOTIC BUILDMART PVT. LTD	**2014-15**	30.06.2021	25.03.2015
64.	779-2021	KIRTI SINGH	**2014-15**	30.06.2021	14.03.2015
65.	780-2021	SUSHIL JOSHI	**2013-14**	30.06.2021	31.03.2014
66.	781-2021	SHIV SHAKTI CONSTRUCTIONS	**2014-15**	30.06.2021	29.11.2014
67.	782-2021	MUKESH KUMAR	**2014-15**	30.06.2021	14.03.2015
68.	795-2021	AMBIKA ENCLAVE PRIVATE LIMITED	**2015-16**	28.06.2021	30.03.2016
69.	796-2021	KUSUM ENCLAVE PRIVATE LIMITED	**2015-16**	28.06.2021	20.09.2015
70.	797-2021	AMBIKA ENCLAVE PRIVATE LIMITED	**2017-18**	28.06.2021	27.11.2017
71.	801-2021	KANTA DEVI	**2015-16**	10.06.2021	19.03.2017
72.	810-2021	MRITUNJAY KUMAR	**2013-14**	06.04.2021	--
73.	811-2021	VINITA KEJRIWAL	**2014-15**	28.06.2021	31.07.2014
74.	813-2021	MRITUNJAY KUMAR	**2014-15**	06.04.2021	–

5. As to the exact challenge raised, it may be noted, the petitioners have challenged the validity of the re-assessment notices issued to them, under Section 148 of the Act. Another challenge has been raised to the validity of the Explanation appended to clause (A)(a) of CBDT Notification No. 20 of 2021, dated 31.03.2021 and Explanation to clause (A)(b) of CBDT Notification No. 38 of 2021, dated 27.04.2021. Those notifications have been issued under the powers vested under Section 3(1) of the Act 38 of 2020 namely, the Taxation and Other Laws (Relaxation of Certain Provisions) Act, 2020 (hereinafter referred to as the 'Enabling Act').

6. Before recording the individual submissions advanced by learned counsel for the parties, we may take note of the legislative provisions giving rise to the issues before us. Prior to enforcement of the Finance Act, 2021, the law for making re-assessment under the Act was governed by the provisions of Sections 147, 148, 149 read with Sections 150, 151, 152 and 153 of the Act. Under that law, the jurisdiction to reassess an assessee could arise upon necessary 'reason to believe' being recorded by the jurisdictional Assessing Officer, of that assessee - as to escapement of any income from

assessment. Subject to the rule of limitation and prior sanction (where applicable), the Assessing Officer would then assume jurisdiction to reassess such an assessee, by issuing a notice under Section 148 of the Act.

7. As to the challenge procedure available to that assessee, the Supreme Court, in the case of **GKN Driveshafts (India) Ltd. Vs. Income-tax Officer, (2003) 259 ITR 19 (SC),** had observed as below:

> *"We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under section 148 of the Income Tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the Assessing Officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the abovesaid five assessment years."*

8. Around March, 2020, the pandemic COVID-19 reached our shores and spread all over country. It led to enforcement of a lockdown. Even thereafter, life is yet to normalise. The pandemic severely impacted the normal functioning of the Government as also all other institutions and it obstructed the normal life of the citizens as well. In such facts, judicial intervention had been made by the Supreme Court as also by this Court, to relax the rules of limitation - to institute various proceedings. The Central Government also recognized that difficulty and promulgated the Ordinance No. 2 of 2020 dated 31.03.2020 titled Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (hereinafter referred to as the 'Ordinance'). Relevant to our discussion, the introductory text of the said Ordinance together with provisions of Sections 1, 2 and 3 of the Ordinance are quoted below:

> *"TAXATION AND OTHER LAWS (RELAXATION OF CERTAIN PROVISIONS) ORDINANCE, 2020*
>
> *NO.2 OF 2020, DATED 31-3-2020*
>
> *Promulgated by the President in the Seventy-first Year of the Republic of India.*
>
> *An Ordinance to provide relaxation in the provisions of certain Acts and for matters connected therewith or incidental thereto.*
>
> *WHEREAS, in view of the spread of pandemic COVID-19 across many*

countries of the world including India, causing immense loss to the lives of people, it has become imperative to relax certain provisions, including extension of time limit, in the taxation and other laws;

AND WHEREAS, Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance.

CHAPTER I

PRELIMINARY

Short title and commencement

1. *(1) This Ordinance may be called the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020.*

(2) Save as otherwise provided, it shall come into force at once.

Definitions

2. *(1) In this Ordinance, unless the context otherwise requires,—*

(a) "specified Act" means —

(i) the Wealth-tax Act, 1957 (27 of 1957);

(ii) the Income-tax Act, 1961 (43 of 1961);

(iii) the Prohibition of Benami Property Transactions Act, 1988 (45 of 1988);

(iv) Chapter VII of the Finance (No. 2) Act, 2004 (22 of 2004);

(v) Chapter VII of the Finance Act, 2013 (17 of 2013);

(vi) the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (22 of 2015);

(vii) Chapter VIII of the Finance Act, 2016 (28 of 2016); or

(viii) the Direct Tax Vivad se Vishwas Act, 2020 (3 of 2020).

b) "notification" means the notification published in the Official Gazette.

(2) The words and expressions used herein and not defined, but defined in the specified Act, the Central Excise Act, 1944 (1 of 1944), the Customs Act, 1962 (52 of 1962), the Customs Tariff Act, 1975 (51 of 1975) or the Finance Act, 1994 (32 of 1994), as the case may be, shall have the meaning respectively assigned to them in that Act.

CHAPTER II

RELAXATION OF CERTAIN PROVISIONS OF SPECIFIED ACT

Relaxation of certain provision of specified Act.

3. *(1) Where, 'any time-limit' has been specified in, or prescribed or notified under, the specified Act which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020, or such other date after the 29th day of June, 2020, as the Central Government may, by notification, specify in this behalf, for the completion or compliance of such action as—*

(a) completion of any proceeding or passing of any order or 'issuance of any notice', intimation, notification, sanction or approval or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called, under the provisions of the specified Act; or

b) filing of any appeal, reply or application or furnishing of any report, document, return statement or such other record, by whatever name called, under the provisions of the specified Act; or

(c) in case where the specified Act is the Income-tax Act, 1961 (43 of 1961), —

(i) making of investment, deposit, payment, acquisition, purchase, construction or such other action, by whatever name called, for the purposes of claiming any deduction, exemption or allowance under the provisions contained in —

(I) sections 54 to 54GB or under any provisions of Chapter VI-A under the heading "B.—Deductions in respect of certain payments" thereof; or

(II) such other provisions of that Act, subject to fulfillment of such conditions, as the Central Government may, by notification, specify; or

(ii) beginning of manufacture or production of articles or things or providing any services referred to in section 10AA of that Act, in a case where the letter of approval, required to be issued in accordance with the provisions of the Special Economic Zones Act, 2005 (28 of 2005), has been issued on or before the 31st day of March, 2020 (28 of 2005),

and where completion or compliance of such action has not been made within such time, then, the time limit for completion or compliance of such action shall, notwithstanding anything contained in the specified Act, stand extended to the 30th day of June, 2020, or such other date after the 30th day of June, 2020, as the Central Government may, by notification, specify in this behalf:

Provided that the Central Government may specify different dates for completion or compliance of different actions.

Provided further that such action shall not include payment of any amount as is referred to in sub-section (2).

(2) Where any due date has been specified in, or prescribed or notified under, the specified Act for payment of any amount towards tax or levy, by whatever name called, which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020 or such other date after the 29th day of June, 2020 as the Central Government may, by notification, specify in this behalf, and such amount has not been paid within such date, but has been paid on or before the 30th day of June, 2020, or such other date after the 30th day of June, 2020, as the Central Government may, by notification, specify in this behalf, then, notwithstanding anything contained in the specified Act, —

(a) the rate of interest payable, if any, in respect of such amount for the period of delay shall not exceed three-fourth per cent for every month or part thereof;

(b) no penalty shall be levied and no prosecution shall be sanctioned in respect of such amount for the period of delay.

Explanation.— For the purposes of this sub-section, "the period of delay" means the period between the due date and the date on which the amount has been paid."

Further, in view of the submissions as have been received, it would be fruitful to also quote the provisions of Chapter III of the Ordinance - containing the amendments made to the Act. It reads:

"CHAPTER III

AMENDMENT TO THE INCOME-TAX ACT, 1961

Amendment of sections 10 and 80G of Act 43 of 1961

***4**. In the Income-tax Act, 1961, with effect from the 1st day of April, 2020 (43 of 1961), –*

(i) in section 10, in clause (23C), in sub-clause (i), after the word "Fund", the words and brackets "or the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES FUND)" shall be inserted;

(ii) in section 80G, in sub-section (2), in clause (a), in sub-clause (iiia), after the word "fund", the words and brackets "or the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES FUND)" shall be inserted."

9. Acting in exercise of powers vested under the Ordinance, the Central Government then issued Notification Nos. 35 of 2020, 39 of 2020 and 56 of 2020, dated 24.06.2020, 29.06.2020 and 29.07.2020, respectively. Briefly, by those Notifications, general time extension was granted under the Act for certain purposes. Since, the present dispute does not arise in the context of those Notifications, no useful purpose would be served in extracting their contents.

10. The aforesaid Ordinance was succeeded by the Enabling Act. It received the assent of the President on 29.09.2020 and was published in the Official Gazette, on that date itself. It was enforced retrospectively, with effect from 31.03.2020. By the Enabling Act, further provisions were made in addition to the provisions of Section 3 of the Ordinance. We may therefore take note of Sections 1, 2 and 3 of the Enabling Act. They read as below:

"THE TAXATION AND OTHER LAWS (RELAXATION AND AMENDMENT OF CERTAIN PROVISIONS) ACT, 2020

NO. 38 OF 2020

[29th September, 2020.]

AN ACT to provide for relaxation and amendment of provisions of certain Acts and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Seventy-first Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. *(1) This Act may be called the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020.*

(2) Save as otherwise provided, it shall be deemed to have come into force on the 31st day of March, 2020.

2. *(1) In this Act, unless the context otherwise requires,—*

(a) "notification" means the notification published in the Official Gazette;

(b) "specified Act" means—

(i) the Wealth-tax Act, 1957;

(ii) the Income-tax Act, 1961;

(iii) the Prohibition of Benami Property Transactions Act, 1988;

(iv) Chapter VII of the Finance (No. 2) Act, 2004;

(v) Chapter VII of the Finance Act, 2013;

(vi) the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015;

(vii) Chapter VIII of the Finance Act, 2016; or

(viii) the Direct Tax Vivad se Vishwas Act, 2020.

(2) The words and expressions used herein and not defined, but defined in the specified Act, the Central Excise Act, 1944, the Customs Act, 1962, the Customs Tariff Act, 1975 or the Finance Act, 1994, as the case may be, shall have the same meaning respectively assigned to them in that Act.

CHAPTER II

RELAXATION OF CERTAIN PROVISIONS OF SPECIFIED ACT

3. *(1) Where, any time-limit has been specified in, or prescribed or notified under, the specified Act which falls during the period from the 20th day of March, 2020 to the 31st day of December, 2020, or such other date after the 31st day of December, 2020, as the Central Government may, by notification, specify in this behalf, for the completion or compliance of such action as—*

(a) completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval, or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called, under the provisions of the specified Act; or

(b) filing of any appeal, reply or application or furnishing of any report, document, return or statement or such other record, by whatever name called, under the provisions of the specified Act; or

(c) in case where the specified Act is the Income-tax Act, 1961,—

(i) making of investment, deposit, payment, acquisition, purchase, construction or such other action, by whatever name called, for the purposes of claiming any deduction, exemption or allowance under the provisions contained in—

(I) sections 54 to 54GB, or under any provisions of Chapter VI-A under the heading "B.—Deductions in respect of certain payments" thereof; or

(II) such other provisions of that Act, subject to fulfilment of such conditions, as the Central Government may, by notification, specify; or

(ii) beginning of manufacture or production of articles or things or providing any services referred to in section 10AA of that Act, in a case where the letter of approval, required to be issued in accordance with the provisions of the Special Economic Zones Act, 2005, has been issued on or before the 31st day of March, 2020,

and where completion or compliance of such action has not been made within such time, then, the time-limit for completion or compliance of such action shall, notwithstanding anything contained in the specified Act, stand extended to the 31st day of March, 2021, or such other date after the 31st day of March, 2021, as the Central Government may, by notification, specify in this behalf:

Provided that the Central Government may specify different dates for completion or compliance of different actions:

Provided further that such action shall not include payment of any amount as is referred to in sub-section (2):

Provided also that where the specified Act is the Income-tax Act, 1961 and the compliance relates to—

(i) furnishing of return under section 139 thereof, for the assessment year commencing on the—

(a) 1st day of April, 2019, the provision of this sub-section shall have the effect as if for the figures, letters and words "31st day of March, 2021", the figures, letters and words "30th day of September, 2020" had been substituted;

(b) 1st day of April, 2020, the provision of this sub-section shall have the effect as if for the figures, letters and words "31st day of March, 2021", the figures, letters and words "30th day of November, 2020" had been substituted;

(ii) delivering of statement of deduction of tax at source under sub-section (2A) of section 200 of that Act or statement of collection of tax at source under sub-section (3A) of section 206C thereof for the month of February or March, 2020, or for the quarter ending on the 31st day of March, 2020, as the case may be, the provision of this sub-section shall have the effect as if for the figures, letters and words "31st day of March, 2021", the figures, letters and words "15th day of July, 2020" had been substituted;

(iii) delivering of statement of deduction of tax at source under sub-section (3) of section 200 of that Act or statement of collection of tax at source under proviso to sub-section (3) of section 206C thereof for the month of February or March, 2020, or for the quarter ending on the 31st day of March, 2020, as the case may be, the provision of this sub-section shall have the effect as if for the figures, letters and words "31st day of March, 2021", the figures, letters and words "31st day of July, 2020" had been substituted;

(iv) furnishing of certificate under section 203 of that Act in respect of deduction or payment of tax under section 192 thereof for the financial year commencing on the 1st day of April, 2019, the provision of this sub-section shall have the effect as if for the figures, letters and words "31st day of March, 2021", the figures, letters and words "15th day of August, 2020" had been substituted;

(v) sections 54 to 54GB of that Act, referred to in item (I) of sub-clause (i) of clause (c), or sub-clause (ii) of the said clause, the provision of this sub-section shall have the effect as if –

(a) for the figures, letters and words "31st day of December, 2020", the figures, letters and words "29th day of September, 2020" had been substituted for the time-limit for the completion or compliance; and

(b) for the figures, letters and words "31st day of March, 2021", the figures, letters and words "30th day of September, 2020" had been substituted for making such completion or compliance;

(vi) any provisions of Chapter VI-A under the heading "B.— Deductions in respect of certain payments" of that Act, referred to in item (I) of sub-clause (i) of clause (c), the provision of this sub-section shall have the effect as if—

(a) for the figures, letters and words "31st day of December, 2020", the figures, letters and words "30th day of July, 2020" had been substituted for the time-limit for the completion or compliance; and

(b) for the figures, letters and words "31st day of March, 2021", the figures, letters and words "31st day of July, 2020" had been substituted for making such completion or compliance;

(vii) furnishing of report of audit under any provision thereof for the assessment year commencing on the 1st day of April, 2020, the provision of this sub-section shall have the effect as if for the figures, letters and words "31st day of March, 2021", the figures, letters and words "31st day of October, 2020" had been substituted:

Provided also that the extension of the date as referred to in sub-clause (b) of clause (i) of the third proviso shall not apply to Explanation 1 to section 234A of the Income-tax Act, 1961 in cases where the amount of tax on the total income as reduced by the amount as specified in clauses (i) to (vi) of sub-section (1) of the said section exceeds one lakh rupees:

Provided also that for the purposes of the fourth proviso, in case of an individual resident in India referred to in sub-section (2) of section 207 of the Income-tax Act, 1961, the tax paid by him under section 140A of that Act within the due date (before extension) provided in that Act, shall be deemed to be the advance tax:

Provided also that where the specified Act is the Direct Tax Vivad Se Vishwas Act, 2020, the provision of this sub-section shall have the effect as if—

(a) for the figures, letters and words "31st day of December,

2020", the figures, letters and words "30th day of December, 2020" had been substituted for the time limit for the completion or compliance of the action; and

(b) for the figures, letters and words "31st day of March, 2021", the figures, letters and words "31st day of December, 2020" had been substituted for making such completion or compliance.

(2) Where any due date has been specified in, or prescribed or notified under the specified Act for payment of any amount towards tax or levy, by whatever name called, which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020 or such other date after the 29th day of June, 2020 as the Central Government may, by notification, specify in this behalf, and if such amount has not been paid within such date, but has been paid on or before the 30th day of June, 2020, or such other date after the 30th day of June, 2020, as the Central Government may, by notification, specify in this behalf, then, notwithstanding anything contained in the specified Act,—

(a) the rate of interest payable, if any, in respect of such amount for the period of delay shall not exceed three-fourth per cent. for every month or part thereof;

(b) no penalty shall be levied and no prosecution shall be sanctioned in respect of such amount for the period of delay.

Explanation.—For the purposes of this sub-section, "the period of delay" means the period between the due date and the date on which the amount has been paid."

11. Reference has also been made to provisions of Chapter III to the Enabling Act. Numerous amendments were made to the Act as were not contemplated by the Ordinance. While no useful purpose would be served in extracting the entire contents of Section 4 of the Enabling Act, it would be useful to reproduce, and indicate some of the provisions amended, together with reference to the date from which such amendments were made effective.

Sl. No.	Section no. of the Income Tax Act, 1961, amended	Insertion/Omission/Substitution with effect from
1.	Explanation 1(1) to Section 6	01.04.2021
2.	Section 10(4D)	01.04.2021
3.	Section 10(23C)	01.04.2020
4.	Provisos to Section 10	01.04.2021 & 01.06.2020
5.	Section 10(23FBC)	01.04.2021
6.	Explanation to Section 10(23FE)	01.04.2021
7.	Explanation II to Section 11(1)	01.04.2021
8.	Section 11(7)	01.06.2020
9.	Second Proviso to Section 11	01.06.2020 and 01.04.2021
10.	Omission of Section 12A(1)(ac)	01.06.2020
11.	Insertion of Section 12A(1)(ac)	01.04.2021
12.	Section 12A(2)	01.06.2020

13.	Proviso to Section 12A	01.04.2021
14.	Omission of Section 12AA(5)	01.06.2020
15.	Insertion of Section 12AA(5)	01.04.2021
16.	Omission of Section 12AB	01.06.2020
17.	Insertion of Section 12AB	01.04.2021
18.	Explanation I to Section 13	01.04.2021
19.	Section 35(1)	01.06.2020
20.	Sub-clause III to Explanation to Section 35	01.04.2021
21.	Omission of Fifth and Sixth Provisos to Section 35(1)(iv)	01.06.2020
22.	Insertion of Fifth and Sixth Provisos to Section 35(1)(iv)	01.04.2021
23.	Omission of Section 35(1A)	01.06.2020
24.	Insertion of Section 35(1A)	01.04.2021
25.	Section 35AC	01.11.2020
26.	Section 56(2)	01.06.2020 & 01.04.2021
27.	Section 80G	01.04.2021
28.	Section 80G(5)	01.06.2020 &01.04.2021
29.	Section 92CA	01.11.2020
30.	Section 115AD	01.04.2021
31.	Substitution in Explanation to Section 115BBDA(b)(iii)	01.06.2020 & 01.04.2021
32.	Substitution in Section 115TD	01.06.2020 & 01.04.2021
33.	Insertion of Section 130	01.11.2020
34.	Substitution of Proviso to Section 133A(6)	01.11.2020
35.	Section 133C	01.11.2020
36.	Insertion of Section 135	01.11.2020
37.	Insertion of Section 142A	01.11.2020
38.	Substitution of Proviso to Section 143(3B)	01.04.2021
39.	Insertion of Section 144A	01.04.2021
40.	Insertion of Section 144C(14A)	01.11.2020
41.	Insertion of Section 151A	01.11.2020
42.	Insertion of Section 157A	01.11.2020
43.	Insertion of Section 196D(1)	01.11.2020
44.	Insertion of Section 197B	14.05.2020
45.	Insertion of Section 206C(10)	14.05.2020
46.	Insertion of Section 231	01.11.2020
47.	Substitution in Section 253(1)(c)	01.06.2020 & 01.04.2021
48.	Insertion of Section 253(8), (9) and (10)	01.11.2020
49.	Section 263(1)	01.11.2020
50.	Section 264(1, 2, 3 and 4)	01.11.2020
51.	Insertion of Section 264A & 264B	01.11.2020
52.	Omission of Section 271K	01.06.2020
53.	Insertion of Section 271K	01.04.2021
54.	Substitution in Section 274(2A)(a)	01.04.2021
55.	Insertion of Section 279 (4, 5 and 6)	01.11.2020
56.	Insertion of Section 293D	01.11.2020

12. On 29.10.2020, Notification No. 88 of 2020 was issued by the Central Government for the purposes of extension of time limits stipulated under Section 139 of the Act. For ready reference, the said provision reads as below:

> *"MINISTRY OF FINANCE*
>
> *(Department of Revenue)*
>
> *(CENTRAL BOARD OF DIRECT TAXES)*
>
> ***NOTIFICATION***
>
> *New Delhi, the 29th October, 2020*
>
> ***TAXATION AND OTHER LAWS***
>
> ***S.O. 3906(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 Act), the Central Government hereby specifies, for the purpose of the said sub-section (1), that, in a case where the specified Act is the Income-tax Act, 1961 and the compliance for the assessment year commencing on the 1st day of April, 2020, relates to -*
>
> *(i) furnishing of return under section 139 thereof, the time-limit for furnishing of such return, shall–*
>
> *(a) in respect of the assessees referred to in clauses (a) and (aa) of Explanation 2 to sub-section (1) of the said section 139, stand extended to the 31st day of January, 2021; and*
>
> *(b) in respect of other assessees, stand extended to the 31st day of December, 2020:*
>
> *Provided that the provisions of the fourth proviso to sub-section (1) of the Act shall, mutatis mutandis apply to these extensions of due date, as they apply to the date referred to in sub-clause (b) of clause (i) of the third proviso thereof.*
>
> *(ii) furnishing of report of audit under any provision of that Act, the time-limit for furnishing of such report of audit shall stand extended to the 31" day of December, 2020.*
>
> *2. This notification shall come into force from the date of its publication in the Official Gazette."*

13. Then, on 31.12.2020, another Notification No. 4805 (E) was issued under Section 3(1) of the Enabling Act. Without making any specific reference to reassessment proceedings under the Act, time extensions were granted. For ready reference, that provision reads as below:

> *"**NOTIFICATION S.O. 4805 (E) [NO. 93/2020/F. No. 370142/35/2020-TPL], DATED 31.12.2020***
>
> *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 the Act) and in supersession of*

the notification of the Government of India in the Ministry of Finance, (Department of Revenue) No. 88/2020 dated the 29th October, 2020, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii), vide number S.O. 3906(E), dated the 29th October, 2020, except as respects things done or omitted to be done before such supersession, the Central Government hereby specifies, for the completion or compliance of action referred to in-

(A) clause (a) of sub-section (1) of section 3 of the Act, -

(i) the 30th 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 specified Act falls for the completion or compliance of such action as specified under the said sub-section; and

(ii) the 31st day of March, 2021 shall be the end date to which the time limit for completion or compliance of such action shall stand extended:

Provided that where the specified Act is the Direct Tax Vivad Se Vishwas Act, 2020 (3 of 2020), the provision of this clause shall have the effect as if—

(a) for the figures, letters and words "30th day of March, 2021", the figures, letters and words "30th day of January, 2021" had been substituted; and

(b) for the figures, letters and words "31st day of March, 2021", the figures, letters and words "31st day of January, 2021" had been substituted:

***Provided further** that where the specified Act is the Income-tax Act, 1961 (43 of 1961) and completion or compliance of action referred to in clause (a) of sub-section (1) of section 3 of the Act is an order under sub-section (3) of section 92CA of the Income-tax Act, 1961, the provision of this clause shall have the effect as if—*

(a) for the figures, letters and words "30th day of March, 2021", the figures, letters and words "30th day of January, 2021" had been substituted; and

(b) for the figures, letters and words "31st day of March, 2021", the figures, letters and words "31st day of January, 2021" had been substituted;

(B) clause (b) of sub-section (1) of section 3 of the Act, where the specified Act is the Income-tax Act, 1961 (43 of 1961) and the compliance for the assessment year commencing on the 1st day of April, 2020 relates to -

(i) furnishing of return under section 139 thereof, the time limit for furnishing of such return, shall -

(a) in respect of the assessees referred to in clauses (a) and (aa) of Explanation 2 to sub-section (1) of the said section 139, stand extended to the 15th day of February 2021; and

(b) in respect of other assessees, stand extended to the 10th day of January, 2021:

Provided that the provisions of the fourth proviso to sub-section (1) of section 3 of the Act shall, mutatis mutandis apply to these extensions of due date, as they apply to the date referred to in

sub-clause (b) of clause (i) of the third proviso thereof;

(ii) furnishing of report of audit under any provision of that Act, the time limit for furnishing of such report of audit shall stand extended to the 15th day of January, 2021.

2. This notification shall come into force from the date of its publication in the Official Gazette."

14. On 27.02.2021, Notification No. 966E was issued under Section 3(1) of the Enabling Act. It, for the first time, made specific reference to reassessment proceedings under Section 153 or Section 153B of the Act. For ready reference, the said provisions read as below:

"NOTIFICATION NO. S.O. 966(E) [NO. 10/2021/F. NO. 370142/35/2020-TPL], DATED 27-2-2021

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 (i), vide number S.O. 4805(E), dated the 31st December, 2020 (hereinafter referred to as the said notification), the Central Government hereby specifics, 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 the completion of any action, as referred to in clause (a) of sub-section (1) of section 3 of the said Act, relates to passing of any order-

(a) for imposition of penalty under Chapter XXI of the Income-tax Act, -

(i) the 29th day of June, 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 June, 2021 shall be the end date to which the time limit for completion of such action shall stand extended;

(b) 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,-

(i) expires on the 31st day of March, 2021 due to its extension by the said notification, such time limit shall stand extended to the 30th day of April, 2021;

(ii) is not covered under (1) and expires on 31st day of March, 2021, such time limit shall stand extended to the 30th day of September, 2021;

(B) where the specified Act is the Prohibition of Benami Property Transaction Act, 1988, (45 of 1988) (hereinafter referred to as the Benami Act) and the completion of any action, as referred to in clause (a) of sub-section (1) of section 3 of the said Act, relates to issue of notice under sub-section (1) or passing of any order under sub-section

(3) of section 26 of the Benami Act,—

(i) the 30th day of June, 2021 shall be the end date of the period during which the time limit specified in or prescribed or notified under the Benami Act falls, for the completion of such action; and

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

15. Next, at the time of enforcement of the Finance Act, 2021, another Notification No. 1432 dated 31.03.2021 came to be issued under Section 3(1) of the Enabling Act, containing specific stipulations, both with respect to issuance of notices under Section 148 of the Act and also with respect to completion of reassessment proceedings. For ready reference, the said provisions read as below:

"NOTIFICATION S.O. 1432(E) [NO. 20/2021/F. NO. 370142/35/2020-TPL), DATED 31-3-2021

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, the Central Government hereby specifies that,-

(A) where the specified Act is the Income-tax Act, 1961 (43 Income-tax Act) and, -

(a) the completion of any action referred to in clause (a) of sub-section (1) of section 3 of the Act relates to passing of an order under sub-section (13) of section 144C or issuance of notice under section 148 as per time-limit specified in section 149 or sanction under section 151 of the Income-tax Act, -

(i) the 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 time-limit, specified in, or prescribed or notified under, the Finance Act falls for the completion of such action; and

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

16. Last, Notification No. 1703 (E) dated 27.04.2021 came to be issued under Section 3(1) of the Enabling Act, again providing for extensions of time to initiate reassessment proceedings and to conclude said proceedings. It reads thus:

"***NOTIFICATION S.O. 1703(E) [NO. 38/2021/F.NO. 370142/35/2020-TPL], DATED 27-4-2021***

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 30th day of April, 2021 due to its extension by the said notifications, such time limit shall further stand extended to the 30th day of June, 2021;

(b) the completion of any action, referred to in clause (a) of sub-section (1) of section 3 of the said Act, relates to passing of an order under sub-section (13) of section 144C of the

Income-tax Act or issuance of notice under section 148 as per time-limit specified in section 149 or sanction under section 151 of the Income-tax Act, and the time limit for completion of such action expires on the 30th day of April, 2021 due to its extension by the said notifications, such time limit shall further stand extended to the 30th day of June, 2021.

***Explanation**.— For the removal of doubts, it is hereby clarified that for the purposes of issuance of notice under section 148 as per time-limit specified in section 149 or sanction under section 151 of the Income-tax Act, under this sub-clause, the provisions of section 148, section 149 and section 151 of the Income-tax Act, as the case may be, as they stood as on the 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."

17. In the meanwhile, the Finance Act, 2021, being Act No. 13 of 2021 came into force. Relevant to our discussion, we consider it appropriate to extract Sections 1 and 40 to 45 of the said Act. They read as below:

"*FINANCE ACT, 2021*

[13 OF 2021]

An Act to give effect to the financial proposals of the Central Government for the financial year 2021-2022.

BE it enacted by Parliament in the Seventy-second Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title and commencement.

1. (1) This Act may be called the Finance Act, 2021.

(2) Save as otherwise provided in this Act,-

(a) sections 2 to 88 shall come into force on the 1st day of April, 2021;

(b) sections 108 to 123 shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Substitution of new section for section 147.

40. For section 147 of the Income-tax Act, the following section shall be substituted, namely:—

> *147. Income escaping assessment.—If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).*
>
> *Explanation.—For the purposes of assessment or reassessment or recomputation under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of section 148A have not been complied with.*

Substitution of new section for section 148.

41. For section 148 of the Income-tax Act, the following section shall be substituted, namely:—

> *148. Issue of notice where income has escaped assessment.—Before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A, requiring him to furnish within such period, as may be specified in such notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:*
>
> ***Provided** that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice.*
>
> *Explanation 1.— For the purposes of this section and section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,—*
>
> > *(i) any information flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;*
> >
> > *(ii) any final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has*

not been made in accordance with the provisions of this Act.

Explanation 2.— For the purposes of this section, where,—

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

(ii) a survey is conducted under section 133A, other than under sub-section (2A) or sub-section (5) of that section, on or after the 1st day of April, 2021, in the case of the assessee; or

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

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

the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.

Explanation 3. — For the purposes of this section, specified authority means the specified authority referred to in section 151.

Insertion of new section 148A.

42. *After section 148 of the Income-tax Act, the following section shall be inserted, namely:—*

"148A. Conducting inquiry, providing opportunity before issue of notice under section 148.— *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."

Substitution of new section for section 149.

43. *For section 149 of the Income-tax Act, the following section shall be substituted, namely:—*

149. Time limit for notice.—*(1) No notice under section 148 shall be issued for the relevant assessment year,—*

(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year:

Provided *that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before*

1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section, as they stood immediately before the commencement of the Finance Act, 2021:

Provided further *that the provisions of this sub-section shall not apply in a case, where a notice under section 153A, or section 153C read with section 153A, is required to be issued in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or before the 31st day of March, 2021:*

Provided also *that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (b) of section 148A or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded:*

Provided also that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of section 148A is less than seven days, such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly.

Explanation.—For the purposes of clause (b) of this sub- section, "asset" shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.

Substitution of new section for section 151.

44. *For section 151 of the Income-tax Act, the following section shall be substituted, namely:—*

151. Sanction for issue of notice.*—Specified authority for the purposes of section 148 and section 148A shall be,—*

(i) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year;

(ii) Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year

Amendment of section 151A.

45. *In section 151A of the Income-tax Act, in sub-section (1), in the opening portion, after the words and figures "issuance of notice under section 148", the words, figures and letter "or conducting of enquiries or*

issuance of show-cause notice or passing of order under section 148A" shall be inserted."

18. In the above statutory context and reference, submissions have been advanced by learned counsel for the petitioners and have been responded to by the learned Additional Solicitor General of India representing the Union and the CBDT and learned counsel for the revenue.

19. Shri Rakesh Ranjan Agarwal, learned Senior Advocate has first submitted, upon enforcement of the Finance Act, 2021, the pre-existing Sections 147 to 151 of the Act stood repealed and replaced by the above noted provisions. The entire statutory scheme of initiating, inquiring, conducting, and concluding the reassessment proceedings underwent a sea change. The act of substitution of the old provision obliterated from the statute book the pre-existing provisions pertaining to reassessment under the Act. The unamended provision became dead and unenforceable, by that operation of law. Since the Enabling Act only sought to enlarge limitation with respect to the pre-existing provisions, it could not, and it did not resurrect the pre-existing provisions that were already dead. In short, it has been submitted, the procedural amendments cannot recreate a non-existing substantive law. He has placed reliance on a decision of the Supreme Court in **Government of India & Ors. Vs. Indian Tobacco Association, (2005) 7 SCC 396**, wherein it has been observed as follows:

> *"**15.** The word "substitute" ordinarily would mean "to put (one) in place of another"; or "to replace". In Black's Law Dictionary, Fifth Edition, at page 1281, the word "substitute" has been defined to mean "To put in the place of another person or thing" or "to exchange". In Collins English Dictionary, the word "substitute" has been defined to mean "to serve or cause to serve in place of another person or thing"; "to replace (an atom or group in a molecule) with (another atom or group)"; or "a person or thing that serves in place of another, such as a player in a game who takes the place of an injured colleague".*

20. Further reliance has been placed on a decision of the Supreme Court in **Gottumukkala Venkata Krishamraju Vs. Union of India & Ors., (2019) 17 SCC 590**, wherein it was observed as under:-

> *"**13.** This expression has also come up for interpretation by the Courts in **Zile Singh v. State of Haryana and Others, (2004) 8 SCC 1**, the import and impact of substituted provision were discussed in the following manner:*
>
> > *"**23.** The text of Section 2 of the Second Amendment Act*

> *provides for the word "upto" being substituted for the word "after". What is the meaning and effect of the expression employed therein — "shall be substituted"?*
>
> ***24.*** *The substitution of one text for the other pre-existing text is one of the known and well-recognised practices employed in legislative drafting. "Substitution" has to be distinguished from "supersession" or a mere repeal of an existing provision."*
>
> ***14.*** *Ordinarily wherever the word 'substitute' or 'substitution' is used by the legislature, it has the effect of deleting the old provision and make the new provision operative. The process of substitution consists of two steps: first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place. The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all. No doubt, in certain situations, the Court having regard to the purport and object sought to be achieved by the Legislature may construe the word "substitution" as an "amendment" having a prospective effect. Therefore, we do not think that it is a universal rule that the word 'substitution' necessarily or always connotes two severable steps, that is to say, one of repeal and another of a fresh enactment even if it implies two steps. However, the aforesaid general meaning is to be given effect to, unless it is found that legislature intended otherwise. Insofar as present case is concerned, as discussed hereinafter, the legislative intent was also to give effect to the amended provision even in respect of those incumbents who were in service as on September 01, 2016."*

21. Reference has also been made to another decision of the Supreme Court in **PTC India Limited Vs. Central Electricity Regulatory Commissioner, (2010) 4 SCC 603**, wherein again it was observed as below:

> *"... Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision. Substitution is a combination of repeal and fresh enactment."*

22. Last, reference has been made to a decision of the Delhi High Court, applying the same principle, in **C.B. Richards Ellis Mauritius Ltd. Vs. Assistant Director of Income-tax, (2012) 208 Taxman 322 (Delhi).**

23. Second, it has been submitted, the Enabling Act was enacted solely to extend the limitation under the pre-existing provisions of the Act, as they stood prior to the amendment made by the Finance Act, 2021. The later Act, i.e. the Finance Act, 2021 does not contain any saving clause as may allow the pre-existing provisions an extended life, after the enactment of the

Finance Act, 2021. Thus, the pre-existing provisions cannot be pressed into service by the revenue. Reliance has been placed on a decision of the Supreme Court in **Kolhapur Canesugar Works Ltd. & Anr. Vs. Union Of India & Ors., (2000) 2 SCC 536**.

24. Third, it has been submitted, even otherwise, the Enabling Act does not, and it could not save the pre-existing Sections 147, 148 and other provisions pertaining to reassessment, nor overriding effect can arise or be given (to itself) by the Enabling Act, since on the date of enactment of the Enabling Act, the Finance Act, 2021 was not born. Therefore, it was only through the Finance Act, 2021 that the provisions of the pre-existing law may have been saved if it had been so intended by the Parliament. In absence of that saving clause, there exists no power either under Section 3(1) of the Enabling Act or any other law as may validate the issuance of the impugned Notification.

25. To validate such Notification, would be to resurrect and enforce a dead law, contrary to the statutory law in force, on the date of issuance of impugned Notification dated 27.04.2021. Clearly, that would be a legislative overreach by the delegate and therefore, ultra vires the Constitution of India. In that regard, reliance has been placed on another decision of the Supreme Court in **Assam Company Ltd. & Anr. Vs. State of Assam & Ors., (2001) 248 ITR 567 (SC)**. Therein, it was held as below:

> *"We will now consider the effect of Rule 5 of the State Rules. As noticed hereinabove, Rule 5 of the Rules in its proviso has in unequivocal terms empowered the State authorities in given cases to refuse to accept the computation of agricultural income made by the Central Officers after examining the books already examined by such Central Officers. The appellants contend that this provision is beyond the rule-making power under the Act, hence, is in excess of the power delegated under the State Act. They also contend that assuming that such rule-making power has entrusted the delegation under Section 50 of the State Act, same would be ultra vires the Constitution.*
>
> *We see force in the above contention. A perusal of Section 50 of the Act shows that the State Government has been empowered to make such Rules as are necessary for the purpose of carrying out the purposes of the Act. We have already noticed that the object and the scheme of the Act do not contemplate the State authorities being empowered to recompute the agricultural income contrary to the computation made by the Central Officers, nor do the subjects specified in sub-sections 2(a) to (m) of Section 50 provide for making such rules empowering the State Officers*

to make computation of agricultural income contrary to what is computed by the Central Officers under the Central Act. We have noticed that by virtue of the provisions made by the legislature in Explanation to Section 2(a)(2), the second proviso to Section 8 and Section 20D, it is clear that the State Legislature intended to adopt the computation of agricultural income made under the provisions of the Central Act. Having specifically said so in the above Sections of the Act, if the Legislature wanted to deviate from that scheme of the Act, it could have in clear terms provided for a power being vested with its officers in any given case to recompute the income keeping in mind the revenue of the State but the Legislature has not thought it necessary to do so. Even under Section 50, we do not see any provision which specifically authorises the State Government to make any such rules in the nature of the proviso to Rule 5 of the State Rules. It is an established principle that the power to make rules under an Act is derived from the enabling provision found in such Act. Therefore, it is fundamental that a delegate on whom such power is conferred has to act within the limits of the authority conferred by the Act and it cannot enlarge the scope of the Act. A delegate cannot override the Act either by exceeding the authority or by making provision which is inconsistent with the Act. Any Rule made in exercise of such delegated power has to be in consonance with the provisions of the Act, and if the Rule goes beyond what the Act contemplates, the Rule becomes in excess of the power delegated under the Act, and if it does any of the above, the Rule becomes ultra vires the Act."

26. It is also submitted, the delegation authorized being only for the purpose of enlarging limitation under a valid law, such delegation could not be exercised to resurrect the provision of law that stood omitted from the statute book by virtue of its substitution made by the Finance Act, 2021, w.e.f. 01.04.2021.

27. Shri Agarwal has further relied on **Union of India & Ors. Vs. S. Srinivasan, (2012) 7 SCC 683**, wherein that principle was clearly recognized and applied:

*"**21**. At this stage, it is apposite to state about the rule making powers of a delegating authority. If a rule goes beyond the rule making power conferred by the statute, the same has to be declared ultra vires. If a rule supplants any provision for which power has not been conferred, it becomes ultra vires. The basic test is to determine and consider the source of power which is relatable to the rule. Similarly, a rule must be in accord with the parent statute as it cannot travel beyond it.*

***22.** In this context, we may refer with profit to the decision in General Officer Commanding-in-Chief v. Dr. Subhash Chandra Yadav, (1988) 2 SCC 351, wherein it has been held as follows:-*

> *"14.....Before a rule can have the effect of a statutory provision, two conditions must be fulfilled, namely (1) it must conform to the provisions of the statute under which it is framed; and (2) it must also come within the scope and purview of the rule making power of the authority framing the rule. If either of these two conditions is not fulfilled, the rule so framed would be void."*

***23.** In Additional District Magistrate (Rev.) Delhi Administration v.*

Shri Ram, (2000) 5 SCC 451, it has been ruled that it is a well recognised principle that the conferment of rule making power by an Act does not enable the rule making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto.

24. *In Sukhdev Singh v. Bhagatram Sardar Singh Raghuvanshi, (1975) 1 SCC 421, the Constitution Bench has held that:*

> *"18. ... statutory bodies cannot use the power to make rules and regulations to enlarge the powers beyond the scope intended by the legislature. Rules and regulations made by reason of the specific power conferred by the statute to make rules and regulations establish the pattern of conduct to be followed."*

25*. In State of Karnataka and another v. H. Ganesh Kamath, (1983) 2 SCC 402, it has been stated that:*

> *"7. ... It is a well settled principle of interpretation of statutes that the conferment of rule making power by an Act does not enable the rule-making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto."*

28. Last, serious attempt has been made by Shri Agarwal, learned Senior Advocate to demonstrate that the decision of the learned Single Judge of the Chhattisgarh High Court in **W.P. (T) No. 149 of 2021 Palak Khatuja Vs Union of India & Ors.**, decided on 23.08.2021 does not lay down the correct law. He has taken us through that decision at length and sought to draw points of distinction. Thus, it has been submitted that the Chhattisgarh High Court has applied a wrong test to look at the notification dated 31.03.2021 issued under the Enabling Act to interpret the principal legislation made by Parliament, being the Finance Act, 2021. He would submit, the delegated legislation can never overreach any Act of principal legislature. Second, though it may be true that the Ordinance was enforced arising from the spread of the pandemic COVID-19 and the circumstances emerging therefrom, yet 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 those circumstances. Similarly, practicality of life may never be a good guiding principle to interpret any law less so taxation laws which must be interpreted of their own language and scheme. 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. In fact, any notification issued under the Enabling Act, after the date 31.03.2021 is plainly in conflict with the law as enforced by the Finance Act 2021. It would remain a dead letter of law. It may also not infuse any life into a provision that stood obliterated from the statute with effect from 31.03.2021. Such an exercise made by the delegate would be plainly unconstitutional. No discretion may arise in the executive authority as may be impliedly or expressly barred by statutory law. 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 is *de hors* any statutory basis. It is *ultra vires*. A completely wrong principle has been applied by the Chhattisgarh High Court while relying on the decision of the Supreme Court in **A.K. Roy Etc. Vs. Union of India & Anr., AIR 1982 SC 710**, as that fact or legal situation does not exist in the present case. Last, it has been submitted that in absence of any express saving of the pre-existing laws, the presumption drawn in favour of that saving, is plainly impermissible.

29. Shri Shambhu Chopra, learned Senior Advocate has, besides adopting the submissions so advanced by Shri Rakesh Ranjan Agarwal, further submitted, the notifications extending time as had been issued under the Ordinance and under the Enabling Act were only for the purpose of overcoming the immediate difficulty arising from the spread of the pandemic COVID-19. Both, the assessees as also the authorities under the Act were vastly inconvenienced and even obstructed. The authorities were inconvenienced in issuing and serving notices and orders as also in receiving replies and objections and conducting hearing in pending cases. Similarly, the assessees were inconvenienced. They could not have availed their rights both on account of initial lockdown enforced all over the country as also on account of the devastation caused by the spread of COVID-19 and its aftermath with which we are still dealing, today.

30. However, the only intervention offered by the Ordinance and the Enabling Act was to extend the timelines under then pre-existing provisions of the Act, with reference to pending proceedings. Those provisions of the Ordinance and the Enabling Act had been enforced much before the enforcement of the Finance Act, 2021. Therefore, the Enabling Act was not visualized to impact the provisions of the Finance Act, 2021. The Notifications that may have been issued under the Ordinance and the Enabling Act cannot be read to remedy the situation upon the enforcement of the Finance Act, 2021 which has substituted and thus repealed the pre-existing provisions of the Act and has re-enacted a new scheme for reassessment under the Act, with effect from 01.04.2021.

31. He would further submit, the provisions of Section 148 read with Section 148A as substituted by Finance Act, 2021 are completely mandatory. There can be no exception to the same. If the impugned Notifications were to be held to be valid after 01.04.2021, it would create a conflict of laws wherein solely on account of that delegated legislation, the mandatory provision of the principal legislature would have been rendered ineffective or inoperative. That may never be done. Elaborating his submissions, Shri Chopra would state, the impugned Notifications read together only provide for an extension of time, limited to the permissions contained in the Enabling Act. Since the Enabling Act does not, in any way, seek to save the pre-existing provisions of the Act, notwithstanding any change of legislation, that intent cannot be created by those Notifications.

32. Next, it has been submitted by Sri Chopra, *cassus omisus* cannot be supplied, either by the delegated legislation or by Courts. Reliance has been placed on the decision of the Supreme Court in **Parle Biscuits (P) Ltd. Vs State of Bihar And Ors. (2005) 9 SCC 669**.

33. He would further submit, the delegate cannot override the principal legislation as has been sought to be done in the present case. Reliance has been placed on two decisions of the Supreme Court in **Chairman and Managing Director, Food Corporation of India & Ors. Vs.**

Jagdish Balaram Bahira & Ors., (2017) 8 SCC 670 and **Dilip Kumar Ghosh & Ors. Vs Chairman & Ors., (2005) 7 SCC 567**, wherein it was clearly recognized that a Circular cannot override the Rules. In **Jagdish Balaram Bahira (supra)**, it was recognized that the administrative Circulars are subservient to legislative action, and they cannot act contrary either to the Constitutional or statutory provisions.

34. Sri Chopra has further sought to draw a distinction in the decision of the Chhattisgarh High Court by submitting, a wrong presumption has been drawn in the aforesaid decision that by issuance of the Notification 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. He would submit, there is no cannon of law as would allow such an interpretation to be made by this Court. Similarly, he would submit, the Chhattisgarh High Court has erred in reaching the conclusion that the Notifications insulated and saved (up to 30.06.2021), the pre-existing provisions pertaining to reassessment under the Act. It is his submission, unless there was a clear legislative enactment by the principal legislature - to keep in abeyance Sections 2 to 88 of the Finance Act, 2021, no such saving or insulation by whatever name called, may ever arise.

35. On facts, once the principal legislature expressed its intent otherwise by enforcing those provisions w.e.f. 01.04.2021, the situation in law arises otherwise. The pre-existing provisions no longer continue to exist. No amount of effort by the delegate could resurrect those provisions or infuse life into those dead letters of law, in absence of enabling law delegating such function to the delegate of the Parliament i.e. to the Central Government or any other authority.

36. Adopting the submissions advanced by Sri Agarwal and Sri Chopra and Sri Abhinav Mehrotra, learned counsel for the petitioner has laid stress on the fact - by virtue of Sections 4 and 6 read with Section 292 of the Act, both substantive and procedural provisions under that Act remain dynamic

since the Act seeks material validation every year through enactment of the Finance Act. Income tax laws suffer a process of continuous change and there is no inherent logic or principle embedded in that law, to save a pre-existing provision despite enactment of another law in the subsequent year. Such changes are suffered, both by substantive law as also procedural law.

37. Relying on the above, he vehemently urged, the provisions of the Enabling Act together with the Notifications issued thereunder must be seen as they confronted the Act as amended by the Finance Act, 2021, on the date of issuance of the impugned re-assessment notices. Upon enforcement of the Finance Act 2021, the entire situation and dynamics of statutory law underwent a change. While the Enabling Act did not undergo any statutory amendment or change upon enactment of the Finance Act, the latter Act substituted the provisions of Sections-147, 148, 149, 150 and 151 of the Act, w.e.f. 01.04.2021. Therefore, the Enabling Act became wholly unenforceable or incapable to the proceedings that would now arise under those provisions, after 01.04.2021.

38. Sri Mehrotra, has then referred to certain provisions under Chapter II of the Enabling Act to contend, even under that Act, different dates had been specified for different provisions introduced to the Act. We have already taken note of such changes in the earlier part of this order. Referring to those, it has been submitted, there is nothing in the Enabling Act and in fact there could never be any provision in that Act as may have put in abeyance the provisions of the Finance Act, 2021, that was yet to be born/enacted. Inasmuch as the Enabling Act has not undergone any amendment as may put in abeyance, provisions of Sections 2 to 88 of the Finance Act, 2021 and there is no other law to that effect, those provisions continue to be the only law occupying the field, w.e.f. 01.04.2021. All Notifications issued with reference to the pre-existing laws would therefore remain confined to the time limits to conclude pending proceedings, beyond the date 31.03.2021. Those Notifications may never be read to enable the executive authorities to initiate any fresh proceedings under the pre-existing laws, which

proceedings did not exist on 01.04.2021.

39. Third, it is his submission, while enacting the Finance Act, 2021, the Parliament was aware of the ground realities. The Parliament was also aware of the existing statutory laws both under the Act as amended by the Finance Act, 2020 as also the Ordinance and the Enabling Act and Notifications issued thereunder. Still, it chose to enforce the new scheme for re-assessment w.e.f. 01.04.2021 without enacting a saving clause. Thereby it brought an end to the possibility of any fresh proceeding being initiated under the pre-existing/unamended reassessment provisions, after the date 01.04.2021.

40. In support of his submission, Shri Abhinav Mehrotra has referred to the decision of the Supreme Court in **Syndicate Bank v Prabha D. Naik & Anr., AIR 2001 SC 1968**, wherein it was held as below:

> *"Incidentally, the legislature is supposed to be aware of the needs of the society and the existing state of law: There is no reason whatsoever to consider that the legislature was unaware of the existing situation as regards the Portuguese Civil laws with a different provision for limitation. Needless to record, the special reference has been made to the State of Jammu and Kashmir but after incorporation of the State of Goa, Daman and Diu within the Indian Territory, if there was any intent of having the local law being made prevalent there pertaining to the question of limitation only, there would have been an express exclusion and in the absence of which no contra intention can be deduced, neither any contra inference can be drawn. In any event, as noticed above, the Portuguese Civil Code, in our view, could not be read to be providing a distinct and separate period of limitation for a cause of action arising under the Indian Contract Act or under the Negotiable Instruments Act since the Civil Code ought to be read as one instrument and cause of action arising therefrom ought only to be governed thereunder and not otherwise. The entire Civil Code ought to be treated as a local law or special law including the provisions pertaining to the question of limitation for enforcement of the right arising under that particular Civil Code and not dehors the same and in this respect the observations of the High Court in Cadar Constructions [AIR 1984 Bom 258 : 1984 Mah LJ 603] that the Portuguese Civil Code could not provide for a period of limitation for a cause of action which arose outside the provisions of that Code, stands approved. A contra approach to the issue will not only yield to an absurdity but render the law of the land wholly inappropriate. There would also be repugnancy insofar as application of the Limitation Act in various States of the country is concerned: Whereas in Goa, Daman and Diu, the period of limitation will be for a much larger period than the State of Maharashtra — the situation even conceptually cannot be sustained having due regard to the rule of law and the jurisprudential aspect of the Limitation Act."*

41. Next, it has been submitted, the Enabling Act only extended the limitation up to 31.03.2021 to do certain things only. Thereafter, it delegated

the power to cause such further extensions to do those things beyond the date 31.12.2020, upto 30.06.2021. Since after 31.03.2021, the provisions under which such things were required to be done underwent substitution of law, the delegate of the legislature cannot now, seek to do or allow doing such things under the law that no longer exists. To allow such a possibility to exist would be to allow the delegate to do colourably, that which it cannot directly do after the Parliament enforced Sections 2 to 88 of the Finance Act 2021, w.e.f. 01.04.2021.

42. Then, it has been submitted, once the principal legislation enacted the law as has been done in the present case, its delegate was denuded of its powers, in the field occupied by the principal legislature. Here, reliance has been placed on yet another decision of the Supreme Court in **A.B. Krishna & Ors. Vs. State of Karnataka & Ors., AIR 1998 SC 1050**, where it was observed as below:

> *"The Fire Services under the State Government were created and established under the Fire Force Act, 1964 made by the State Legislature. It was in exercise of the power conferred under Section 39 of the Act that the State Government made Service Rules regulating the conditions of the Fire Services. Since the Fire Services had been specially established under an Act of the legislature and the Government, in pursuance of the power conferred upon it under that Act, has already made Service Rules, any amendment in the Karnataka Civil Services (General Recruitment) Rules, 1977 would not affect the special provisions Validly made for the Fire Services. As a matter of fact, under the scheme of Article 309 of the Constitution, once a legislature intervenes to enact a law regulating the conditions of service, the power of the Executive, including the President or the Governor, as the case may be, is totally displaced on the principle of "doctrine of occupied field". If, however, any matter is not touched by that enactment, it will be competent for the Executive to either issue executive instructions or to make a rule under Article 309 in respect of that matter."*

43. Next, it has been submitted, the Enabling Act and the Finance Act 2021 do not conflict and, therefore, there is no repugnancy between the two. Both enactments operate in different time spaces. While the Enabling Act takes care of the law as it pre-existed i.e. before the enactment of the Finance Act 2021, the latter Act operates w.e.f. 01.04.2021. Since the old provisions did not exist beyond 31.03.2021 and since the provisions of the Finance Act 2021 have not been given retrospective effect, there is no occasion for any conflict between the two laws.

44. Then, neither the Enabling Act nor any other law, delegates to the Central Government any power to create any law except with respect to time extensions under the pre-existing law. In fact, it is only if the delegated legislation enforced under the Enabling Act is applied after 01.04.2021, that a situation of conflict of laws may arise. Relying on another decision of the Supreme Court in **State of M.P. Vs. Kedia Leather & Liquor Ltd. & Ors., (2003) 7 SCC 389**, he submits, the repeal is inferred by necessary implication if the provisions of the later Act are so repugnant to the provisions of the earlier Act that the two cannot stand together. Here, though, principally, there is no repugnancy between the Act as amended by the Finance Act 2021 and the enabling law viz-a-viz the Act as amended by the Finance Act 2021, as the later Act came into force only w.e.f. 01.04.2021 (with respect to re-assessment procedure), the repugnancy may arise only in the event, the delegated legislation under the Enabling Act is enforced after 01.04.2021. To the extent that was not the clear intent of the Enabling Act, there is no repugnancy. Relevant to our discussion, paragraph nos. 13, 14 and 15 of the aforesaid decision, are quoted as below:

> *"**13.** There is presumption against a repeal by implication; and the reason of this rule is based on the theory that the legislature while enacting a law has complete knowledge of the existing laws on the same subject-matter, and therefore, when it does not provide a repealing provision, the intention is clear not to repeal the existing legislation. When the new Act contains a repealing section mentioning the Acts which it expressly repeals, the presumption against implied repeal of other laws is further strengthened on the principle expressio unius (persone vel rei) est exclusio alterius. (The express intention of one person or thing is the exclusion of another), as illuminatingly stated in Garnett v. Bradley [(1878) 3 AC 944 : (1874-80) All ER Rep 648 : 48 LJQB 186 : 39 LT 261 (HL)] . The continuance of the existing legislation, in the absence of an express provision of repeal being presumed, the burden to show that these has been repeal by implication lies on the party asserting the same. The presumption is, however, rebutted and a repeal is inferred by necessary implication when the provisions of the later Act are so inconsistent with or repugnant to the provisions of the earlier Act that the two cannot stand together. But, if the two can be read together and some application can be made of the words in the earlier Act, a repeal will not be inferred.*
>
> ***14.** The necessary questions to be asked are:*
>
> *(1) Whether there is direct conflict between the two provisions.*
> *(2) Whether the legislature intended to lay down an exhaustive Code in respect of the subject-matter replacing the earlier law.*
> *(3) Whether the two laws occupy the same field.*
>
> ***15.** The doctrine of implied repeal is based on the theory that the legislature, which is presumed to know the existing law, did not intend to create any*

confusion by retaining conflicting provisions and, therefore, when the court applies the doctrine, it does no more than give effect to the intention of the legislature by examining the scope and the object of the two enactments and by a comparison of their provisions. The matter in each case is one of the construction and comparison of the two statutes. The court leans against implying a repeal, unless two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time, a repeal will not be implied, or that there is a necessary inconsistency in the two Acts standing together. To determine whether a later statute repeals by implication an earlier statute, it is necessary to scrutinize the terms and consider the true meaning and effect of the earlier Act. Until this is done, it is impossible to ascertain whether any inconsistency exists between the two enactments. The area of operation in the Code and the pollution laws in question are different with wholly different aims and objects, and though they alleviate nuisance, that is not of identical nature. They operate in their respective fields and there is no impediment for their existence side by side."

45. Last, relying on another decision of the Supreme Court in **Gammon India Ltd. Vs. Special Chief Secretary & Ors.**, **(2006) 3 SCC 354**, Sri Mehrotra would further emphasize - the first submission advanced by Sri Rakesh Ranjan Agarwal, learned counsel for the petitioners, that substitution has the twin effect of repeal and enactment by replacement.

46. Sri Ashish Bansal, learned counsel has adopted the submissions advanced by learned counsel for the petitioners, as noted above. He has further relied on the provisions of Section 151-A of the Act introduced by the Enabling Act. It reads as below:

*"**151A.** (1) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of assessment, reassessment or re-computation under section 147 or issuance of notice under section 148 or sanction for issue of such notice under section 151, so as to impart greater efficiency, transparency and accountability by—*

(a) eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible;

(b) optimising utilisation of the resources through economies of scale and functional specialisation;

(c) introducing a team-based assessment, reassessment, re-computation or issuance or sanction of notice with dynamic jurisdiction.

(2) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (1), by notification in the Official Gazette, direct that any of the provisions of this Act shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification:

Provided that no direction shall be issued after the 31st day of March, 2022.

(3) Every notification issued under sub-section (1) and sub-section (2) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.;"

47. He would submit that that provision alone-pertaining to re-assessment proceedings had been introduced by the Enabling Act w.e.f. 01.11.2020. Otherwise, the Enabling Act does not touch upon re-assessment proceedings in any way. Therefore, it is preposterous on part of the revenue authorities to rely on the Enabling Act for any other purpose. Only upon assumption of jurisdiction and issuance of jurisdictional notice under Section 148 of the Act, a proceeding could come into existence under the pre-existing laws. That procedure having been transformed completely, by the Finance Act, 2021, w.e.f. 01.04.2021 before any reassessment proceeding came into existence, there survives no room to rely on the pre-existing provisions of law. Thus, it has been emphasized by Sri Bansal, the scope of Section 3(1) of the Enabling Act is limited to extend the time qua reassessment proceedings, validly initiated under the unamended Income Tax Act, up to 31.03.2021. It neither creates any jurisdiction nor it confers validity on any reassessment proceedings instituted under the unamended law, after the enforcement of the Finance Act, 2021.

48. As to the non-obstante clause appearing in the latter part of Section 3(1) of the Enabling Act, it has been vehemently urged by Shri Bansal that that non-obstante clause cannot be given any applicability and it cannot be read into the first part of Section 3(1), which alone pertains to issuance of any notice under the Act as it existed upto 31.03.2021. A non-obstante clause has to be read in a manner as to allow for a overriding effect viz-a-viz other laws or such laws as may be specified in that non-obstante clause. However, its effect must remain confined to the intendment of such a clause. Plainly, a non-obstante clause cannot be interpreted to cause effect, not contemplated.

49. Insofar as the phrase 'notwithstanding anything contained in the specified act' appears only in the context of completion or compliance of such action, it can only be applied to a proceeding that was already in existence when that clause confronted the Act as amended by the Finance Act, 2021, on 01.04.2021. Inasmuch as, in all the petitions, re-assessment notices were issued after 01.04.2021, it can never be said that there were any

proceedings of re-assessment pending on the date when the non-obstante clause may be applied. He has placed reliance on a decision of the Supreme Court in **A.G. Varadarajulu & Anr. Vs. State of T.N. & Ors., (1998) 4 SCC 231**, wherein it was held as below:

> *"**14.** We shall now deal with the issues raised before us.*
>
> *Do the words "notwithstanding anything in any other provision of this Act" occurring in Section 21-A override Section 3(42)?*
>
> ***15.** It is true that the Tribunals below had accepted that the partition deed dated 24-9-1970 was executed after 15-2-1970 and before 2-10-1970 and was therefore a valid document. Section 21-A says that that section shall have effect "notwithstanding anything contained in Section 22 or in any other provision of this Act and in any other law for the time being in force" (emphasis supplied). The contention of the appellants is that if the partition deed is valid in view of Section 21-A, then in view of the above non obstante clause, the respondents cannot insist that the land allotted to the second appellant under the deed on 24-9-1990 shall further conform to the conditions contained in the definition of "stridhana land" in Section 3(42), namely, that she must be holding the land as on 15-2-1970.*
>
> ***16.** It is well settled that while dealing with a non obstante clause under which the legislature wants to give overriding effect to a section, the court must try to find out the extent to which the legislature had intended to give one provision overriding effect over another provision. Such intention of the legislature in this behalf is to be gathered from the enacting part of the section. In Aswini Kumar Ghose v. Arabinda Bose [AIR 1952 SC 369 : 1953 SCR 1] , Patanjali Sastri, J. observed:*
>
> > *"The enacting part of a statute must, where it is clear, be taken to control the non obstante clause where both cannot be read harmoniously;"*
>
> *In Madhav Rao Scindia v. Union of India [(1971) 1 SCC 85] (SCC at p. 139) Hidayatullah, C.J. observed that the non obstante clause is no doubt a very potent clause intended to exclude every consideration arising from other provisions of the same statute or other statute but "for that reason alone we must determine the scope" of that provision strictly. When the section containing the said clause does not refer to any particular provisions which it intends to override but refers to the provisions of the statute generally, it is not permissible to hold that it excludes the whole Act and stands all alone by itself. "A search has, therefore, to be made with a view to determining which provision answers the description and which does not."*

50. Sri Divyanshu Agarwal, learned counsel also appearing for the petitioners has adopted the submissions advanced by other learned counsel for the petitioners, as noted above. He has further emphasized; Section 3(1) of the Enabling Act only seeks to enlarge the time limit specified in or prescribed under the Act between the dates 20.03.2020 to 31.12.2020. Thereafter, a limited delegation was made in favour of the Central Government - to extend that time line, only for the purposes of completion or compliance etc. and issuance of certain notices. However, once the law

underwent a change, upon enactment of the Finance Act, 2021, whereby the re-assessment procedure was completely changed, the time extension provision is of no help to the respondents as such time extension, cannot be exercised in absence of statutory substratum to which that time extension may be applied.

51. Adopting the submissions advanced by learned counsel for the petitioners noted above, Sri Parv Agarwal, learned counsel has laid stress; besides the above, Section 148-A, first introduced by the Finance Act, 2021 lays down a mandatory procedure to be followed for the purpose of making a re-assessment. Unless that procedure is first followed, no notice under Section 148 of the Act, either under the pre-existing law or under the substituted law, could ever be issued. Therefore, in any case, the impugned notices are without jurisdiction. He has placed reliance on a Constitution Bench decision of the Supreme Court in **Memon Abdul Karim Haji Tayab, Central Cutlery Stories, Veraval Vs. Deputy Custodian-General, New Delhi & Ors., AIR 1964 SC 1256**, wherein it was observed as under:

> *"It will be seen that this is mainly a procedural section replacing the earlier Section 48 and lays down that sums payable to the Government or to the Custodian can be recovered thereunder as arrears of land revenue. The section also provides that where there is any dispute as to whether any sum is payable or not to the Custodian or to the Government, the Custodian has to make an enquiry into the matter and give the person raising the dispute an opportunity of being heard and thereafter decide the question. Further, the section makes the decision of the Custodian final subject to any appeal or revision under the Act and not open to question by any court or any other authority. Lastly the section provides that the sum shall be deemed to be payable to the Custodian notwithstanding that its recovery is barred by the Indian Limitation Act or any other law for the time being in force relating to limitation of action. Sub-sections (1) and (2) are clearly procedural and would apply to all cases which have to be investigated in accordance therewith after October 22, 1956, even though the claim may have arisen before the amended section was inserted in the Act. It is well settled that procedural amendments to a law apply, in the absence of anything to the contrary, retrospectively in the sense that they apply to all actions after the date they come into force even though the actions may have begun earlier or the claim on which the action may be based may be of an anterior date. Therefore, when the Assistant Custodian issued notice to the appellant on January 22, 1958 claiming the amount from him, the recovery could be dealt with under sub-section (1) and (2) of the amended Section 48, as they are merely procedural provisions. But it is urged on behalf of the appellant that sub-section (1) in terms does not apply to the present case, and if so, sub-section (2) would also not apply. The argument is that under sub-section (1) it is only any sum payable to the Government or to the Custodian in respect of any evacuee property which can be recovered as arrears of land revenue."*

52. Sri Salil Kapoor alongwith Sri Anuj Srivastava and Ms. Saumya Singh, learned counsel for the petitioners, besides adopting the submissions noted above, laid great stress that the provisions of Sections 2 to 88 of the Finance Act, 2021 came into force w.e.f. 01.04.2021 and they completely replaced the pre-existing law. He further emphasized, different dates were prescribed by the Finance Act, 2021 for enforcement of different provisions. Thus, Sections 2 to 88 of that Act were enforced with effect from 01.04.2021 by virtue of the clear stipulation made in Section 1(2) (a) of that Act and different stipulations were made for enforcement of other provisions. By way of example, it has been stated that Section 54 of Finance Act, 2021 enforced the provisions of Section 194Q, with effect from 01.07.2021. Similarly, Section 56 of the Finance Act, 2021 introduced and enforced the proviso to Section 206 AA, with effect from 01.07.2021. Again, by Section 57 of the Finance Act, 2021, Section 206 AB was introduced and enforced with effect from 01.07.2021. Thus, it has been submitted, the legislature was conscious of the realities and in its own wisdom, the Parliament chose to substitute the provisions of Sections 147, 148, 149, 150 and introduced Section 148-A of the Act, with effect from 01.04.2021. That having been done without saving the pre-existing provisions and without any legislative intent expressed either under the Finance Act, 2021 or the Enabling Act to preserve any part of the pre-existing provisions for the purpose of assumption of jurisdiction and initiation of reassessment proceedings, for any of the previous years, no reassessment proceedings could be initiated under Section 148 of the Act after 01.04.2021 by taking resort to the pre-existing and now omitted provisions, pertaining to reassessment.

53. Other learned counsel for the petitioners have adopted the aforesaid submissions, noted above.

54. Shri Shashi Prakash Singh, learned Additional Solicitor General of India, appearing for the Union of India as also the CBDT and learned counsel for the revenue, have submitted, the Ordinance was promulgated, occasioned solely by the circumstances arising from the spread of the

pandemic COVID-19. The extension of limitation granted or, the strict rule of limitation relaxed by the Ordinance was for the benefit of the assessees as also the statutory authorities. These extensions were granted by way of legislative acceptance of the hard realities obtaining from the spread of the pandemic COVID-19, which largely disabled normal human activity and prevented statutory authorities from discharging their statutory obligations in accordance with law and obstructed and/or prevented the assessees from making compliances and pursing their rights.

55. Relying on the decision of the Supreme Court in **Union of India & Ors. Vs. Exide Industries Limited & Anr., (2020) 5 SCC 274**, it has been vehemently urged, the constitutional validity of a law may be challenged on only two grounds – either, it may be shown that there was legislative incompetence in enacting the law or that the law impinges on any of the fundamental rights enshrined in Part III of the Constitution of India. He would further submit, there always exists a presumption in favour of the constitutionality of the law and that no enacted law may be struck down on a simple reasoning of it being arbitrary or unreasonable. Strict application of that rule must be ensured while dealing with taxation legislation. Thus, he has placed reliance on paragraphs 15 and 16 of the aforesaid report, which read as below:

> *"**15.** The approach of the Court in testing the constitutional validity of a provision is well settled and the fundamental concern of the Court is to inspect the existence of enacting power and once such power is found to be present, the next examination is to ascertain whether the enacted provision impinges upon any right enshrined in Part III of the Constitution. Broadly speaking, the process of examining validity of a duly enacted provision, as envisaged under Article 13 of the Constitution, is premised on these two steps. No doubt, the second test of infringement of Part III is a deeper test undertaken in light of settled constitutional principles. In State of Madhya Pradesh vs. Rakesh Kohli & Anr. (2012) 6 SCC 312, this Court observed thus:*
>
> > *"17. This Court has repeatedly stated that legislative enactment can be struck down by Court only on two grounds, namely (i) that the appropriate legislature does not have competence to make the law, and (ii) that it does not take away or abridge any of the fundamental rights enumerated in Part III of the Constitution or any other constitutional provisions…." (emphasis supplied) The above exposition has been quoted by this Court with approval in a catena of other cases including Bhanumati & Ors. vs. State of Uttar Pradesh & Ors. (2010) 12 SCC 1, State of Andhra Pradesh & Ors. vs. McDowell & Co. (1996) 3 SCC 709 and Kuldip Nayar &*

Ors. vs. Union of India & Ors.(2006) 7 SCC 1, to state a few.

> *16. In furtherance of the twofold approach stated above, the Court, in Rakesh Kohli (supra) also called for a prudent approach to the following principleswhile examining the validity of statutes on taxability: (SCC p.327, para 32)*
>
> > *"32. While dealing with constitutional validity of a taxation law enacted by Parliament or State Legislature, the court must have regard to the following principles:*
> >
> > *(i) there is always presumption in favour of constitutionality of a law made by Parliament or a State Legislature,*
> >
> > *(ii) no enactment can be struck down by just saying that it is arbitrary or unreasonable or irrational but some constitutional infirmity has to be found,*
> >
> > *(iii) the court is not concerned with the wisdom or unwisdom, the justice or injustice of the law as Parliament and State Legislatures are supposed to be alive to the needs of the people whom they represent and they are the best judge of the community by whose suffrage they come into existence,*
> >
> > *(iv) hardship is not relevant in pronouncing on the constitutional validity of a fiscal statute or economic law, and*
> >
> > *(v) in the field of taxation, the legislature enjoys greater latitude for classification….." (emphasis supplied)"*

56. It has been further submitted, no ground has been raised in any of the petitions to test the validity of the law and, in fact, no such ground exists. The Enabling Act had become necessary to be enacted, considering the hardships arising from the spread of the pandemic COVID-19, affecting both the assessees as also the statutory authorities and their functioning. Once limitation had been extended in favour of the assessee, to submit replies and to make other compliances, correspondingly, extension of time was granted to the statutory authorities to initiate, amongst others, reassessment proceedings, beyond the normal limitation of time.

57. Placing further reliance on the aforesaid decision of the Supreme Court, the learned ASGI would submit, Section 3(1) of the Enabling Act contains a non-obstante clause which clearly overrides any period of limitation or any disability arising from such period of limitation as may

have been prescribed under the Act. That non-obstante clause has an overriding effect against all other provisions of general application, and it cannot be controlled or overridden, unless specifically permitted. Since the petitioners have been unable to show any provision of law as may restrict the operation of such non-obstante clause, the writ petition must fail. In that regard, paragraph 21 of the decision in **Union of India & Ors. Vs. Exide Industries Limited & Anr. (supra)**, is quoted below:

> *"**21.** Section 43-B bears heading "certain deductions to be only on actual payment". It opens with a non obstante clause. As per settled principles of interpretation, a non obstante clause assumes an overriding character against any other provision of general application. It declares that within the sphere allotted to it by the Parliament, it shall not be controlled or overridden by any other provision unless specifically provided for. Out of the allowable deductions, the legislature consciously earmarked certain deductions from time to time and included them in the ambit of Section 43-B so as to subject such deductions to conditionality of actual payment. Such conditionality may have the inevitable effect of being different from the theme of mercantile system of accounting on accrual of liability basis qua the specific head of deduction covered therein and not to other heads. But that is a matter for the legislature and its wisdom in doing so."*

58. Relying further on the aforesaid decision, the learned ASGI would also submit, if any ambiguity may exist or may be perceived on account of enforcement of the Finance Act, 2021 it must be examined, and the law may be interpreted by applying the mischief rule. As noted above, the mischief being the unforeseen and difficult circumstances arising from spread of pandemic COVID-19, the Enabling Act only sought to remedy the same. Examined in that light, the extension of limitation to issue a reassessment notice under the Act, is incidental to the mischief addressed.

59. Unless free play is given to Section 3(1) of the Enabling Act read with the Notifications issued thereunder, a wholly lop-sided situation would arise whereby the assessee would remain saved from adverse consequences despite non-compliance shown but the statutory authorities would be hand-tied and restrained from taking any corrective action, solely on account of *force majeure*. In that regard, reliance has been placed on paragraph 26 of the decision in **Union of India & Ors. Vs. Exide Industries Limited & Anr. (supra),** which is quoted below:

> *"**26.** Be it noted that the interpretation of a statute cannot be unrelated*

> *to the nature of the statute. In line with other clauses under Section 43-B, clause (f) was enacted to remedy a particular mischief and the concerns of public good, employees' welfare and prevention of fraud upon Revenue is writ large in the said clause. In our view, such statutes are to be viewed through the prism of the mischief they seek to suppress, that is, the Heydon's case, (1584) 3 Co Rep 7a: 76 ER 637, principle. In Crawford Statutory Construction, it has been gainfully delineated that "an enactment designed to prevent fraud upon the Revenue is more properly a statute against fraud rather than a taxing statute, and hence should receive a liberal construction in the government's favour."*

60. Applying the above principle, it has been further submitted, the time limitation existing under the Act had been extended under the Ordinance as also the Enabling Act, much prior to the introduction of the Finance Act, 2021. It is only that extension which was given one final push by the impugned Notification dated 27.04.2021 as it became necessary on account of the spread of the second wave of the pandemic COVID-19. It has further been submitted that no further extension has been granted beyond 30 June 2021. Therefore, the mischief that existed stands addressed and remedied, and no prejudice has been caused to the petitioners who were otherwise liable to suffer initiation of reassessment proceedings.

61. Then, it has been submitted, Explanation to Clause A(a) of Notification No. 20 of 2021 dated 31.03.2021 and Explanation to Clause A(b) of Notification No. 38 dated 27.04.2021 are only clarificatory. Even if those Explanations were to be ignored, by virtue of the clear language of Section 3(1) of the Enabling Act, the time limits specified under the Act (prior to is amendment by Finance Act, 2021), stood extended by the Parliament, in cases where such limitations were expiring after 20th March 2020 and upto 31st December 2020, upto 31st December 2020. It is only with respect to such extension that a power was delegated on the Central Government to grant further extension/s. Therefore, the Explanations referred to above do not create any new law and they do not, in any way, offend the existing law. Hence, the argument; the delegated power has been exercised in excess of the delegation made, is plainly erroneous and unfounded.

62. Last, reliance has been placed on a recent decision of the Supreme

Court in **Ramesh Kymal Vs. Siemens Gamesa Renewable Power Private Limited, (2021) 3 SCC 224**, wherein, according to learned ASGI, in similar facts, the Supreme Court has read a similar amendment made to the Insolvency and Bankruptcy Code 2016 to enlarge the limitation, as unexceptionally applicable, to all cases.

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 20.03.2021, 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 notified2in 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.

81. Accordingly, reassessment notice issued to the present petitioner dated 09.04.2021 for A.Y. 2017-18 is quashed.

82. All writ petitions are **allowed**. No order as to costs.

30.09.2021
Abhilash/Prakhar/AHA