

TAX FLASH NEWS

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Notice issued after 1 April 2021 under the old reassessment regime shall be deemed to have been issued under the new reassessment regime - Supreme Court

Recently, the Supreme Court in the case of Ashish Agarwal¹ dealt with the reassessment notice issued after 1 April 2021 under the old reassessment regime after such provisions have been amended with effect from 1 April 2021². The Supreme Court observed that notices issued under the old reassessment regime shall be deemed to have been issued under the new reassessment regime i.e. under Section 148A.

The Supreme Court modified several High Court decisions which quashed the notices issued under the old reassessment regime, irrespective of whether they had been raised before the Supreme Court or not.

There appears to be a genuine non-application of amendments to reassessment provisions as the tax department may have been under a bonafide belief that the amendments may not yet have been enforced. Therefore, some leeway must be shown in that regard which the High Courts could have done so. Instead of quashing and setting aside the reassessment notices issued under the unamended reassessment provisions, the High Courts ought to have passed an order construing such notices as deemed to have been issued under the new provision of Section 148A. The tax department ought to have been permitted to proceed further with the reassessment proceedings as per the substituted provisions, subject to compliance of all the procedural requirements.

Facts of the case

In pursuance to the power vested under Section 3 of the Relaxation Act, 2020, the Central Government issued certain Notifications to extend the timelines for the issuance of reassessment notices under the old reassessment regime³. The time limit for issuing notices was extended beyond 31 March 2021. The Notifications⁴ stated that the old reassessment provisions that existed prior to the amendment by the Finance Act, 2021, shall apply to the newly initiated reassessment proceedings.

Subsequently, the Finance Act, 2021 introduced reformative changes to reassessment proceedings. The substituted reassessment provisions were applicable with effect from 1 April 2021. Despite the new reassessment provisions coming into force on 1 April 2021, the tax department issued various reassessment notices under the erstwhile reassessment provisions relying on Explanations in the Notifications. The said reassessment notices were the subject matter of writ petitions before various High Courts.

Some of the High Courts⁵ had held that all the respective reassessment notices issued under the erstwhile reassessment regime were bad in law as the reassessment notices issued after 1 April 2021 were governed by the new reassessment provisions.

¹ UOI & Others v. Ashish Agarwal (Civil Appeal No. 3005/2022) – Taxsutra.com

² By the Finance Act, 2021 to substitute Section 147 to 151 and introduction of new Section 148A

³ Sections 147 to 149 and Section 151

⁴ Dated 31 March 2021 and 27 April 2021

⁵ Allahabad High Court, Rajasthan High Court, Bombay High Court

Supreme Court decision

The new reassessment provisions substituted by the Finance Act, 2021 being remedial and benevolent in nature and substituted with a specific aim and object to protect the rights and interest of the taxpayer and the same being in the public interest, the High Courts have rightly held that the benefit of new provisions shall be made available even in respect of the proceedings relating to past assessment years, provided Section 148 notice has been issued on or after 1 April 2021. The Supreme Court agreed with the view taken by the various High Courts.

However, the Supreme Court observed that the decisions of the several High Courts to discard the reassessment notices under the old reassessment provisions would result in no proceedings at all, even if the same is permissible under the Finance Act, 2021 and as per the substituted provisions. The tax department cannot be made remediless, and the object and purpose of reassessment proceedings cannot be frustrated.

It is true that due to a bonafide mistake and in view of the subsequent extension of time vide various notifications, the tax department issued the notices after the amendment was enforced with effect from 1 April 2021, under the unamended Section 148. The Supreme Court observed that the same ought not to have been issued under the unamended Act and ought to have been issued under the substituted provisions as per the Finance Act, 2021.

There appears to be genuine non-application of the amendments as the officers of the tax department may have been under a bonafide belief that the amendments may not yet have been enforced. Therefore, Supreme Court observed that some leeway must be shown in that regard which the High Courts could have done so. Therefore, instead of quashing and setting aside the reassessment notices issued under the unamended provision of the Act, the High Courts ought to have passed an order construing the notices issued under the unamended provisions of the Act as those deemed to have been issued under the new provision of Section 148A. The tax department ought to have been permitted to proceed further with the reassessment proceedings as per the substituted provisions, subject to compliance of all the procedural requirements.

Accordingly, the Supreme Court modified the decisions passed by respective High Courts as follows:

- The notices issued under old reassessment provisions shall be deemed to have been issued under new reassessment provisions and treated to be show-cause notices in terms of Section 148A(b). The AO shall, within 30 days from pronouncement of this decision i.e. 4 May 2022 provide to the taxpayer the information and material relied upon to issue the notice so that the taxpayers can reply to the notices within two weeks thereafter.
- The requirement of conducting any enquiry with the prior approval of the specified authority under the new provisions of Section 148A(a) shall be dispensed with as a one-time measure vis-à-vis those notices which have been issued under old provisions from 1 April 2021 to 4 May 2022, including those which have been quashed by the High Courts.
- The AOs shall thereafter pass an order in terms of Section 148A(d) after following due procedure as required under Section 148A(b) in respect of each of the concerned taxpayers.
- All the defenses which may be available to the taxpayer under Section 149 and/or which may be available under the Finance Act, 2021 and in law and whatever rights are available to the AO under the Finance Act, 2021 are kept open and/or shall continue to be available.
- The present order shall substitute/modify decisions passed by several High Courts quashing similar notices issued under old provisions irrespective of whether they have been raised before the Supreme Court or not.

The present order shall be applicable PAN India and all decisions and orders passed by different High Courts on this issue and under which similar notices which were issued after 1 April 2021 under the old provisions are set aside and shall be governed by the present order and shall stand modified to the aforesaid extent.

The present order is passed in exercise of powers under Article 142 of the Constitution of India so as to avoid any further appeals by the tax department on the very issue by challenging similar decisions and orders, with a view not to burden the Court with approximately 9000 appeals. The Supreme Court also observed that the present order shall also govern the pending writ petitions before various High Courts in which similar notices under the old provisions were issued after 1 April 2021 and are under challenge.

Our comments

Prior to the amendment made by the Finance Act, 2021 i.e., under the old reassessment regime, tax authority could reopen past assessments if there is a reason to believe that income has escaped assessment. These provisions were applicable till 31 March 2021. The Finance Act, 2021 has introduced a new set of provisions for conducting reassessment proceedings under the Act by substituting the old regime. The new regime of reassessment is made effective from 1 April 2021. The new regime of reassessment provides a separate mechanism to be followed by tax authorities before issuing a notice for opening assessment and it is materially different than the procedure laid down under the old regime till 31 March 2021.

With a view to relieve the compliance burden of the taxpayers (who were going through an unprecedented health and economic crisis due to the onset of the COVID-19 pandemic) as also of the tax authority, the Central Government had, from time to time, provided several timeline extensions including the issuance of reassessment notice. The validity of notices issued after 1 April 2021 under the erstwhile reassessment regime by way of the Relaxation Act despite the introduction of the new regime was questioned before various High Courts.

The said issue was decided upon by a single-judge Bench of the Chhattisgarh High Court in the case of Palak Khatuja & others⁶ wherein the single-judge Bench of the High Court, while upholding the validity of the notice of reopening assessment of the past year issued in June 2021 without following the new procedure, held that the applicability of the old regime of reassessment was validly extended by the Central Government after 1 April 2021 vide various notifications issued pursuant to powers under the Relaxation Act. Such notifications amount to conditional legislation necessitated by the lockdown and associated difficulties. Accordingly, it was held that the said notifications are implied to have the effect of deferring the operation of the new reassessment regime after 1 April 2021.

On the other hand, the Allahabad High Court in the case of Ashok Kumar Agarwal & Others v. UOI & Others⁷, while dealing with a bunch of writ petitions, ruled in favour of taxpayers and quashed the reassessment notices issued from 1 April to June 2021 for past year which followed the old procedure of reassessment which was already substituted vide Finance Act 2021 with effect from 1 April 2021. Amongst other arguments, the High Court held that the old provisions of reassessment were substituted and repealed vide Finance Act, 2021 with effect from 1 April 2021 and in the absence of any saving provisions, the same cannot be resurrected by the tax authority under the guise of the Relaxation Act and various notifications issued thereunder.

Subsequently, the Rajasthan High Court⁸ without delving into the facts of each individual petition, observed that the issue raised before it was squarely covered by the Allahabad High Court decision, which fact was not disputed even by the tax authorities. In this backdrop, the Rajasthan High Court, after considering Palak Khatuja & others, held that the Allahabad High Court decision represented the correct view of the

matter. However, the High Court left it open to the respective tax authority to initiate reassessment proceedings in accordance with the provisions of the Act as amended vide Finance Act 2021, after making all compliances, as required by law.

Separately, there were many other writ petitions which were pending for adjudication before different High Courts (Bombay, Delhi, Karnataka, Kerala and Calcutta).

The Supreme Court in the present case has modified the decisions passed by the several High Courts, which quashed the notices issued under the old reassessment regime. The Supreme Court observed that notices issued under the old provisions shall be deemed to have been issued under the new reassessment provisions of Section 148A. Such notices are construed or treated to be show-cause notices in terms of new reassessment provisions of Section 148A(b).

The Supreme Court has observed that while the change in law for reassessment has been made by the legislature for the benefit of taxpayers, the tax department cannot be left remediless due to a bona-fide mistake of extending time limits by notification and issuing such reassessment notices on or after 1 April 2021 under the old reassessment regime.

It is important to note that the Supreme Court's decisions shall be applicable PAN India and all decisions and orders passed by different High Courts on the issue shall be governed by the present order and shall stand modified. The Supreme Court's order shall also govern the pending writ petitions before various High Courts in which similar notices under old provisions were issued after 1 April 2021 and are under challenge.

The Supreme Court decision will provide much-needed clarity on the subject matter. The taxpayers are now required to assess the impact of this decision on their reassessment cases.

⁶ Palak Khatuja & others v. UOI [2021] 438 ITR 622 (Chhattisgarh)

⁷ Ashok Kumar Agarwal & Others v. UOI & Others [2021] 131 taxmann.com 22 (Allahabad)

⁸ Bpip Infra Pvt. Ltd. v. ITO & Others [2022] 440 ITR 300 (Rajasthan)

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