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TAX FLASH NEWS

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Re-assessment proceedings cannot be initiated after 1 April 2021 under the old re-assessment regime – Delhi High Court

Executive Summary

Recently, the Delhi High Court in the case of Mon Mohan Kohli[1] (the taxpayer) while dealing with several appeals, has quashed reassessment notices issued after 31 March 2021 under the old reassessment provisions as the Finance Act, 2021 has introduced new assessment provisions with effect from 1 April 2021. The High Court observed that the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act 2020 [Amendment Act] does not empower the Government to extend the erstwhile reassessment provisions beyond 31 March 2021 and /or defer the operation of new reassessment provisions enacted by the Finance Act, 2021. The Amendment Act and Notifications issued thereunder can only change the timelines applicable to the issuance of a reassessment notice, but they cannot change the statutory provisions applicable thereto which are required to be strictly complied with.

Facts of the case

Due to the COVID-19 pandemic followed by nationwide lockdown in March 2020, the citizens and authorities *inter alia* faced difficulties in complying with the statutory time limits. To provide relaxation as well as to avoid any adverse consequence to either party, the Government of India announced various relaxations by way of the Amendment Act. Additionally, Section 3 of the Amendment Act enabled the Central Government to issue Notifications for further relaxing the time limits/limitations.

In pursuance to the power vested under Section 3 of Amendment Act, 2020, the Central Government issued various Notifications issued under Amendment Act (the Notifications) inter-alia extending the timelines prescribed under Section 149 for issuance of reassessment notices under Section 148. Further explanation under the Notifications stated that for the purposes of issuance of notice under section 148 as per time-limit specified in Section 149 or Sanction under section 151, the provisions of Section 148, Section 149 and Section 151 as the case may be, as they stood as on the 31 March 2021, before the commencement of the Finance Act, 2021, shall apply. As per tax department Explanation suggests that while notice for reassessment can be issued within the extended time period (where new regime is applicable), but the old re-assessment procedure provisions shall apply.

Subsequently, the Finance Act, 2021 introduced reformative changes to reassessment proceedings. Despite the new reassessment provisions coming into force on 1 April 2021, the tax department issued reassessment notices to the taxpayers under the erstwhile reassessment provisions relying on the Notifications. The taxpayers filed a writ petitions challenging the legality and validity of said Notifications as well as the reassessment notices issued pursuant thereto.

High Court's decision

The High Court held that the notices issued between April to June 2021 following the old regime of reassessment are invalid and, hence, liable to be quashed. The High Court observed as follows:

Since the provisions for reassessment are being substituted with effect from 1 April 2021, reopening notices issued on or after that date be only under the new regime

[1] Mon Mohan Kohli v. ACIT [W.P.(C) 6176/2021] - Taxsutra.com

The legislature had introduced the new assessment provisions with effect from 1 April 2021. The significance of the expression 'shall' in the Finance Act, 2021 cannot be lost sight of. It is settled law that the law prevailing on the date of issuance of the reassessment notice has to be applied[2].

Section 3(1) of the Amendment Act empowers the government to extend timelines only

The Amendment Act does not give power to the Government to extend the erstwhile reassessment provisions beyond 31 March 2021 and/or defer the operation of new reassessment provisions enacted by the Finance Act, 2021. Consequently, the Amendment Act, 2020 and Notifications issued thereunder can only change the time-lines applicable to the issuance of a reassessment notice, but they cannot change the statutory provisions applicable thereto which are required to be strictly complied with.

Notification is ultra vires the present statute

The Explanation to the Notifications is not only beyond the power delegated to the Government, but also in conflict with the provisions of the Act which had specifically made the new reassessment scheme applicable from 1 April 2021. It is settled law that the delegation of authority must be express. There was no scope for any implied delegation of authority. The delegated authority must act strictly within the parameters of the authority delegated to it. The delegated authority cannot override the Act either by exceeding the authority or by making provisions inconsistent with the Act.

The distinction between conditional legislation or delegated legislation is irrelevant to the controversy at hand, as the person to whom the power is entrusted in either situation can do nothing beyond the limits which circumscribe the power.

Normally, changes in the substantive law does not apply retrospectively except in relation to procedural matters

A procedural change is expected to improve matters for everyone concerned (or at least to improve matters for some, without inflicting detriment on anyone else who uses ordinary care, vigilance and promptness). The statutes dealing with merely matters of procedure are presumed to be retrospective, unless such a construction is textually inadmissible.

Amendment in time limit for reopening of assessment is procedural amendment and is applicable retrospectively to past years as well. Reference was made to Delhi High Court decision in case of C.B. Richards Ellis Mauritius Ltd[3].

For determining whether the amendment is a procedural or a substantive law, one will have to examine the intent, purpose and scope of the amendment. Since, the intent, purpose and scope of the amendment introduced by the Finance Act 2021 was to protect the rights and interests of taxpayers as well as promote public interest, it may be applied retrospectively.

If legislation is introduced to remedy the defective rule and no one suffers thereby, it would apply to pending proceedings

Based on the new provisions as well as the speech of Finance Minister and the Memorandum explaining the provisions in the Finance Bill, 2021, it is apparent that the legislative intent behind the substitutions /amendments is to reduce the time limit in ordinary cases to 3 years and to increase the threshold amount of income having escaped assessment to INR 50 lakhs for invoking extended time limit of ten years is to reduce litigation and compliance burden, remove discretion, impart certainty and promote ease of doing business.

The Court observed that the new provisions are remedial and benevolent provisions which are meant and intended to protect the rights and interests of taxpayers as well as promote public interest. Reference was made to the decision of Imperial Tobacco Ltd[4]. Consequently, the Court observed that the Finance Act, 2021 introduces a new regime regarding the procedure to be complied with in respect of the re-opening of an Income-tax assessment and accordingly, the benefit of the new provisions must necessarily be made available even in respect of proceedings relating to past assessment years provided, of course, Section 148 notice has been issued on or after 1 April 2021.

There is no vested rights in favour of the tax department

The time limit to issue notices for re-assessment under the Act stood expired long time ago. The Legislature by virtue of the Amendment Act, 2020 had extended the time limit and had given discretion to the executive to issue Notification to extend the timeline alone. However, extending the time limit or giving power to issue Notification to extend the time cannot be taken to be a vested right of the tax department. Consequently, the Court observed that vested right in favour of the tax department stood exhausted/expired long ago.

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[2] Foramer v. CIT [2001] 247 ITR 436 (All), affirmed by the Supreme Court in [2003] 264 ITR 566 (SC), Varkey Jacob Co. v. CIT and Anr. [2002] 257 ITR 231 (Ker), Smt. N. Illamathy vs. ITO [2020] 195 CTR 543 (Mad), RK Upadhyay v Shanabhai, [1987] 166 ITR 163 (SC), CIT v. Rameshwar Prasad, [1991] 188 ITR 291 (All), Dr. Onkar Dutt Sharma v CIT [1967] 65 ITR 359 (All)

[3] C.B. Richards Ellis Mauritius Ltd. v. ADIT [2012] 208 Taxman 322 (Del)

[4] Imperial Tobacco Ltd v. Attorney General [1979] QB 555 at 581

The argument of the tax department is contradicted by CBDT Circular[5]

The CBDT circular issued in the context of explaining the provisions of the Direct Tax Laws (Amendment Act), 1989 amending the erstwhile assessment regime clarified that the said provisions were procedural in nature and would have retrospective effect.

This is contradictory when the amendment made by the Finance Act, 2021 shall be considered as substantive in nature and hence applicable prospectively. Keeping in view its own submission and past precedent to treat Sections 147 to 152 of the Act as procedural, the tax department are estopped from contending to the contrary.

Further if the argument of tax department that the Explanation in Notification No. 20 dated 31 March 2021 extended the applicability of old procedure of reassessment beyond 31 March 2021 is accepted the same shall lead to patent arbitrariness.

The tax department cannot rely on COVID-19 to contend that the new provisions should not operate during the period 1 April 2021 to 30 June 2021

When Finance Minister moved the Finance Bill, 2021 in Parliament on 1 February 2021 and the Finance Act, 2021 was enacted in March 2021, COVID-19 was widely prevalent, and Parliament was fully aware of the same. Nevertheless, with the objective of promoting ease of doing business and reducing litigation, Parliament specifically enacted that the new reassessment provisions would come into operation on 1 April 2021.

The tax department cannot, therefore, rely on COVID-19 for contending that the new provisions should not operate during the period 1 April 2021 to 30 June 2021 or that Amendment Act, 2020 deals with the situation arising out of Covid-19 and the Finance Act, 2021 was passed being oblivious of the Covid-19 Pandemic.

The enabling provision of the Amendment Act is expressly confined to and only supersedes the time limits in the Act pertaining to reassessment

It is settled law that the non-obstante clause in a statute has to be given a contextual interpretation and cannot be interpreted in a way which defeats or extends the object and purpose of the enactment. The Supreme Court[6] held that the non-obstante clause has to be construed strictly and has an overriding effect over the other statutes only to the limited extent that it expressly so provides. In other words, the remaining parts of the other statutes are left untouched by the non-obstante clause.

In the present case, the ambit of the non-obstante clause in Section 3(1) of Amendment Act, 2020 is expressly confined to and supersedes the time limits only for the completion or compliance of actions which are laid down in the specified Acts and Amendment Act, 2020 only provides that these time limits shall stand extended as provided. The intent and purpose behind enactment of Section 3 of Amendment Act, 2020 is relaxation of statutory timelines in various provisions of the specified Acts and thus, as a natural corollary the relaxation provided in Section 3 of Amendment Act, 2020 inherently conflicts with various timelines provided in the specified Acts.

To get over this inherent conflict, the legislature has carefully incorporated the non-obstante clause in the said Section. Consequently, this non-obstante provision only operates to prevail over the timelines laid down in the specified Act. Apart from these timelines, no other provision of any specified Act is suspended or overridden.

This non-obstante clause cannot, therefore, possibly be relied upon by the Revenue to contend that a Notification issued under Section 3 of Amendment Act, 2020 overrides any provision of the Act other than the applicable timelines.

It is also necessary to appreciate that the Amendment Act, 2020 was enacted long before the Finance Act, 2021. Consequently, it cannot possibly be contended that any provision of Amendment Act, much less of any Notification issued thereunder, can be so construed as amending or modifying or excluding the applicability of the yet to be enacted Finance Act, 2021.

The tax department's argument on legal fiction

The 'legal fiction' argument that if action is taken within the extended time limit of April to June 2021, it would have been deemed to have been taken before 31 March 2021 due to the operation of the Notifications in absence of any specific provision, is without any foundation.

A statute can be said to enact a legal fiction when it assumes the existence of something which is known not to exist. The extension of time for completing an assessment or issuing a reassessment notice provided under Amendment Act has no element of legal fiction in it. The only effect and consequence of this extension of the time limit is that if the act in question is performed within the extended time limit, it will be considered to be legally compliant.

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[5] Circular 549 of 1989, dated 31 October 1989
[6] Nawal Singh v. State of U.P. & Anr. 2003(8) SCC 117

Other observations

The High Court is not in agreement with the view of the Chhattisgarh High Court in the case of Palak Khatuja[7], but agreed with the views of the Allahabad High Court and Rajasthan High Court in Ashok Kumar Agarwal[8] and Bpip Infra Private Limited[9] respectively.

The submission of the Revenue that Section 6 of the General Clauses Act saves notices issued under Section 148 post 31 March 2021 is untenable in law, as in the present case, the repeal is followed by a fresh legislation on the same subject and the new Act manifests an intention to destroy the old procedure. Consequently, if the Legislature has permitted reassessment to be made in a particular manner, it can only be in this manner, or not at all.

The tax department cannot rely on Covid-19 for contending that the new provisions should not operate during the period 1 April 2021 to 30 June 2021 as Parliament was fully aware of Covid-19 Pandemic when it passed the Finance Act, 2021.

Keeping in view the aforesaid conclusions, Explanations under the Notifications are declared to be *ultra vires* the Relaxation Act, 2020 and are therefore bad in law and null and void. Consequently, the reassessment notices issued under Section 148 are quashed and the present writ petitions are allowed.

Our comments

The decision of the Delhi High Court is in line with the decisions given by the Allahabad High Court and the Rajasthan High Court. However, it is dissenting from the decision given by the Chhattisgarh High Court.

The Delhi High Court after quashing the assessment notices, observed that it is open to the concerned authorities to initiate reassessment proceedings in accordance with the new assessment provisions subject to fulfillment of specified conditions.

As per sources, various taxpayers have filed similar cases before respective High Courts. It would be interesting to see how other High Courts will deal with this matter.

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[7] Palak Khatuja v. UOI (W.P.(T) No. 149 of 2021) (Chhattisgarh)
[8] Ashok Kumar Agarwal v. UOI (Writ Tax No. 524/2021) (Allahabad)
[9] Bpip Infra Private Limited v. ITO (Civil Writ Petition No. 13297/2021) (Rajasthan)

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