

TAX FLASH NEWS

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The Delhi High Court deals with the nuances of the new reassessment regime

Recently, the Delhi High Court in the case of Divya Capital One Private Limited¹ (the taxpayer) dealt with the various aspects relating to the procedure to be followed for issuance of a reassessment notice under the new reassessment regime.

The High Court observed that the condition of 'escapement of income chargeable to tax' still remains the primary condition to be satisfied before invoking powers under Section 147 of the Income-tax Act, 1961 (the Act). If the tax department classifies a fact already on record as 'information', it may be vested with the power to issue a show cause notice under Section 148A(b). However, it did not vest the power to issue a reassessment notice under Section 148. Thus, the court held that the term 'information' cannot be lightly resorted to so as to re-open assessment.

The court further held that the show cause notice and the consequent order under Section 148A(d) were cryptic. The information forming basis of reopening the assessment was culled out from the taxpayer's own returns and records without mentioning as to what was wrong with the transactions and without expressing apprehensions and seeking clarifications. Further, the order was passed in great haste and a gross violation of the principle of natural justice as the taxpayer was not given reasonable time to file a reply.

Consequently, the order issued under Section 148A(d) and the reassessment notice issued under Section 148 were quashed. Further, the matter was remanded back to the Assessing Officer (AO) for a fresh determination.

Facts of the case

The taxpayer filed a writ petition challenging the show cause notice under Section 148A(b), order passed under Section 148A(d) and consequential reassessment notice issued under section 148 of the Act. The taxpayer challenged the show cause notice under Section 148A(b) on the ground that there was no information that suggested that income had escaped assessment and contended that the order under Section 148A(d) was passed without considering the replies filed by the taxpayer to the show cause notice and impugned order is arbitrary, cryptic and without application of mind as a huge sum of more than 'One lakh crores' is held to have escaped assessment without considering the return and business of the taxpayer.

High Court decision

The High Court observed that the new reassessment scheme was introduced by the Finance Act, 2021 with the intent of reducing litigation and to promote ease of doing business. The court further observed that under the amended provisions, the term 'information' could not be lightly resorted to so as to reopen the assessment. This information cannot be a ground to give unbridled powers to the tax department. Whether it is 'information to suggest' under amended law or 'reason to believe' under erstwhile law, the benchmark of 'escapement of income chargeable to tax' still remains the primary condition to be satisfied before invoking powers under Section 147. If the tax department classifies a fact already on record as 'information', it may be vested with the power to issue a show cause notice under Section 148A(b) but would certainly not vest it with the power to issue a reassessment notice under Section 148 post an order under Section 148A(d).

¹ Divya Capital One Private Limited v. ACIT (W.P.(C) 7406/2022) – Taxsutra.com

The Show Cause Notice under Section 148A(b) as well as order Section 148A(d) are cryptic

The High Court observed that the show cause notice under Section 148A(b) as well as order Section 148A(d) were cryptic, as was evident from the fact that information culled out from taxpayer's own return and records (namely Form 10DB, GST return, Form 26AS) was used to issue a notice under new reassessment provisions without mentioning as to what was wrong in these transactions, what were the apprehensions of the AO and what were the points on which clarification was required.

It was not understood as to how expenditure incurred by the taxpayer on salaries, payment of professional fees and purchases could amount to income having escaped assessment without there being any allegation that the employees/professionals to whom salaries and fees had been paid were dummies or fictitious entities.

The show cause notice suggests that the proceedings were sought to be initiated merely for verification. In such as case, the AO could have conducted an enquiry with respect to the said information in accordance with Section 148A(a). Also, the AO should have thoroughly scrutinised the contentions and submissions advanced by the taxpayer before passing an order under Section 148A(d).

The taxpayer was denied an effective opportunity to file a reply as the information/material stated in the show cause notice had not been shared with the taxpayer

The High Court observed that the information/material stated in the show cause notice dated 17 March 2022 issued under new reassessment provisions was not shared with the taxpayer, despite a specific request made by the taxpayer vide letter dated 24 March 2022, thereby denying the taxpayer an effective opportunity to file a response/reply. The non-sharing of the information was violative of the rationale of the guidelines laid down by the Delhi High Court in the case of Sabh Infrastructure Ltd.².

The taxpayer was not given reasonable time to file a reply

The Court observed that the taxpayer has a right to get adequate time to submit its reply. In the present case, the order under Section 148A(d) of the Act was passed in great haste and in gross violation of the principle of natural justice as the taxpayer was not given reasonable time to file a reply.

The mandate of Section 148A(c) was violated as the impugned order under Section 148A(d) was passed without considering the detailed reply filed by the taxpayer

The taxpayer filed two replies and the department contended that second reply was filed beyond the time given to the taxpayer and hence was not considered. The High Court held that since the order under Section 148A(d) was passed after receipt of the second reply by the taxpayer, the AO should have considered the same as it was available on record. By not considering the second reply, the mandate of Section 148A(c) was violated as it casts a duty on the AO, by using the expression 'shall', to consider the reply of the taxpayer in response to the show cause notice under Section 148A(b) before making an order under Section 148A(d).

Significance of issuance of a show cause notice at a stage prior to issuance of a reassessment notice under Section 148 has been lost

The Court took judicial notice that in a majority of reassessment cases in the new regime, the orders under Section 148A(d) use a template / general reason to reject the defence of the taxpayer on merits. Such an implementation not only trifled the progressive scheme of reassessment but also had an unintended opposite result. The court directed to forward a copy of this order to the Central Board of Direct Taxes (CBDT) for necessary information and action.

Conclusion

The High Court quashed the order issued under Section 148A(d) and the reassessment notice issued under section 148 and remanded the matter back to the AO for a fresh determination with a direction to pass a fresh reasoned order under Section 148A(d) after considering the taxpayer's detailed reply dated 31 March 2022 in accordance with law within eight weeks.

Our comments

The High Court order has come at a very important time when the tax department is in the process of implementing the directions issued by the Supreme Court in the case of Ashish Agarwal and is expected to provide information in close to 90,000 reassessment cases where the reassessment notices issued under the old regime have been deemed as show cause notice under the new reassessment regime. The court has made strong observations on the casual implementation approach of the tax department and directed this order to be sent to CBDT for necessary information and action. It would be apt if the tax department follows the important observations of this Court to achieve the objective behind the introduction of the new reassessment regime and it will also help to reduce unwarranted litigation.

² Sabh Infrastructure Ltd. v. ACIT 398 ITR 198 (Del)

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