

ERGO

Analysing developments impacting business

CALCUTTA HIGH COURT ALSO QUASHES REASSESSMENT NOTICES ISSUED UNDER THE OLD REASSESSMENT REGIME

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Introduction

In a recent order in *Manoj Jain v Union of India & Ors (WPA No. 11950 of 2021)* (Order), the Hon'ble Calcutta High Court (High Court) has quashed reassessment notices issued by the income-tax authorities (IT Authorities) under the old reassessment regime (ie, law existing prior to 1 April 2021) under the Income Tax Act 1961 (IT Act).

Background

Recent amendments made by the Finance Act 2021 led to a paradigm shift in relation to the reopening of past tax assessments in as much as the number of years for which tax assessments can be reopened has been changed from 5 (five) or 7 (seven) years (depending upon the quantum of escaped income) from the end of the relevant financial year (FY) or 17 (seventeen) years from the end of relevant FY in case of foreign assets (Old Law) to 4 (four) years from the end of relevant FY except in certain high stake matters (New Law). As a result, from 1 April 2021, the New Law empowered the IT Authorities to go back only till FY 2017-18 (other than in high stakes matters). Further, the New Law also requires the IT Authorities to follow prescribed procedures (such as conducting enquiries, providing show cause notices to taxpayers before reopening the assessment, considering the taxpayer's reply, etc) before issuing reassessment notice.

Even though the New Law became effective from 1 April 2021, IT Authorities continued to issue reassessment notices under the Old Law even after 31 March 2021. For this purpose, it drew support from the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act 2020 (Relaxation Act) read with certain notifications in terms of which the time limit for issuing reassessment notices under the Old Law was extended till 30 June 2021 (Date Extension Notifications).

This caused a conflicting position as the Date Extension Notifications sought to extend a repealed provision. Consequently, several taxpayers who were issued reassessment notices after 31 March 2021 under the Old Law challenged such notices and consequential reassessment proceedings in writ petitions before various High Courts in the country. Please refer our [ERGO dated 21 July 2021](#) in this regard.

Initially, the issue was decided against the taxpayers by the Chhattisgarh High Court in the case of *Palak Khatuja v Union of India and others [2021] 438 ITR 622* (refer our [ERGO dated 14 September 2021](#)) wherein the validity of reassessment notices issued under the Old Law was upheld. Subsequently, different High Courts dissented from the

view taken by the Chhattisgarh High Court and ruled in favour of the taxpayers by quashing such reassessment notices issued under the Old Law:

- Allahabad High Court in the case of *Ashok Kumar Agarwal v UOI* [2021] 131 *taxmann.com* 22;
- Rajasthan High Court in the case of *Bpip Infra Private Limited vs ITO* (S.B. Civil Writ Petition No 13297/2021);
- Delhi High Court in the case of *Mon Mohan Kohli v ACIT and others* (WP(C) No. 6176/2021) (refer our [ERGO dated 21 December 2021](#))

Order:

The High Court agreed with the views taken by the Allahabad High Court (supra), the Rajasthan High Court (supra) and the Delhi High Court (supra) and ruled in favour of the taxpayers by observing that the explanations contained in the Date Extension Notifications are *ultra vires* the Relaxation Act and quashed the reassessment notices issued under the Old Law.

Comments

It is a welcome precedent as a lot of taxpayers have been issued reassessment notices between the period 1 April 2021 to 30 June 2021 under the Old Law. Taxpayers who have been issued similar type of reassessment notices should evaluate the implications of this Order in the facts and circumstances of their cases.

Further, since the concerned Order is passed by the single judge bench of the High Court, whether the IT Authorities will challenge this Order with the division bench or not should be observed closely. It will be interesting to see if the Government brings out any amendment in relation to this issue as part of the upcoming Union Budget in February 2022.

Challenges to such similar reassessment notices are pending for final adjudication before various other High Courts such as Bombay High Court, Gujarat High Court, etc. Thus, it would be interesting to see if those Courts will resonate with the reasoning of the High Court. Recently, IT Authorities have filed special leave petition before the Hon'ble Supreme Court against the above order passed by the Allahabad High Court. Accordingly, any developments on this front should also be closely watched.

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