

ERGO

Analysing developments impacting business

SUPREME COURT GIVES MAJOR RELIEF TO THE REVENUE IN TAX CONTROVERSY RELATING TO REASSESSMENT NOTICES ISSUED UNDER THE OLD REGIME

11 May 2022

Introduction

In a recent order in *Union of India & Ors v Ashish Agarwal (Civil Appeal No. 3005/2022)* (Order), the Hon'ble Supreme Court (Supreme Court) has held that reassessment notices issued under the old reassessment regime (ie law existing prior to 1 April 2021) are deemed to have been issued under new Section 148A of 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). Further, the New Law also requires the IT Authorities to follow the prescribed procedures (such as conducting enquiries, providing show cause notices to taxpayers before reopening the assessment, considering the taxpayer's reply, etc in terms of section 148A of the IT Act) before issuing a reassessment notice.

Even though the New Law became effective from 1 April 2021, the 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This caused a conflicting position as the Date Extension Notifications sought to extend a repealed provision.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 (approximately around 90,000 notices) after 31 March 2021 under the Old Law challenged such notices and consequential reassessment proceedings in writ petitions (approximately around 9,000 writ petitions) before various High Courts in the country. Please refer to 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* (Please refer to 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) (Please refer to our ERGO dated 21 December 2021), etc.

Pertinently, a further appeal was preferred by the IT Authorities before the Supreme Court against the aforesaid order passed by the Allahabad High Court.

Order

The Supreme Court observed that the New Law, being remedial and benevolent in nature, was substituted with the specific aim of protecting the rights and interest of the taxpayer as well as ensuring that the law is in public interest. The Supreme Court agreed with the reasoning provided by the High Courts that the New Law ought to have been applied while issuing reassessment notices after 31 March 2021.

The Supreme Court further noticed that the judgments of several High Courts in favour of the taxpayers would have resulted in no reassessment proceedings at all even if the same was permissible under the New Law. The Supreme Court thus remarked that the Revenue cannot be made remediless, and the object and purpose of reassessment proceedings cannot be frustrated in entirety. It stated that the act of the IT Authorities in issuing reassessment notices under the Old Law as against the New Law appeared to be a genuine non-application of the amendments by the IT Authorities as they may have been under a bonafide belief that the New Law may not yet have been enforced. Therefore, it would not be prudent to entirely quash and set aside such reassessment notices issued under the Old Law.

Considering the above, the Supreme Court held the following:

- Reassessment notices issued under the Old Law shall be deemed to have been issued under section 148A of the IT Act and treated to be show cause notices in terms of Section 148A(b).
- IT Authorities ought to provide information and material relied based on which they believe that income has escaped assessment within 30 days to the taxpayers, who may file replies within two weeks.
- The requirement of conducting any enquiry, if required, with the prior approval of specified authority under Section 148A(a) has been dispensed with as a onetime measure *vis-à-vis* those notices which have been issued under the Old Law including those which have been quashed by the High Courts. Even otherwise, holding any enquiry with the prior approval of specified authority is not mandatory but it is for the concerned assessing officers to hold any enquiry, if required.
- The IT Authorities must pass an order in terms of section 148A(d) after following the due procedure in respect of each taxpayer and may issue a reassessment notice under the New Law.
- All defences which may be available to the taxpayers under the New Law and all rights/contentions which may be available to the taxpayers/IT Authorities under the New Law are kept open and shall continue to be available.

The Supreme Court remarked that the Order will strike a balance between the rights of the Revenue as well as the respective taxpayers. It was stated that the Revenue should not suffer due to a bonafide belief of the IT Authorities in issuing approx. 90,000

reassessment notices under the Old Law, as ultimately it is the public exchequer which would suffer.

The Supreme Court in exercise of its powers under Article 142 of the Constitution of India (*under Article 142, the Supreme Court may pass such decree or order as is necessary for doing complete justice in any cause or matter pending before it*) has also made the Order applicable in respect of similar judgments and orders passed by various High Courts across the country (whether appealed before the Supreme Court or not) and writ petitions pending before various High Courts on the same subject. Therefore, the present Order shall be applicable pan India.

Comments

Article 142 is not ordinarily invoked unless considered necessary to resolve difficult cases where the law is ambiguous or incomplete and ensure the delivery of complete justice. The power to do complete justice is a corrective power, which gives preference to equity over law. To put the controversy to rest, once and for all, the Supreme Court invoked its extraordinary powers under Article 142 of the Constitution of India and modified all the High Court judgments where reassessment notices issued under the Old Law were quashed. The Order comes as a major relief to the IT Authorities and saves them from huge revenue loss due to the issuance of reassessment notices under the Old Law. The present Order has been passed by the Supreme Court to avoid any further appeals by the Revenue challenging identical issues and with a view to not burden the Supreme Court with approx. 9,000 appeals.

The Supreme Court, through this Order, aims to follow a pragmatic approach by striking a balance between the Revenue's right to reassess the taxpayers to bring an end to the uncertainty looming over the taxpayers and the rights of the taxpayers.

The reassessment notices quashed by the High Courts have been given a fresh lease of life. The hope now is that the Revenue will conduct a fair enquiry and drop those notices which do not pass the tests laid down by the New Law.

The term reassessment ordinarily means that the past concluded assessments are disturbed. So, by default, reassessment has severe consequences. The Order is a big shift in jurisprudence — the full consequences of which will be felt much later.

- Sanjay Sanghvi (Partner), Ujjval Gangwal (Senior Associate), Priyanshi Chokshi (Associate)

For any queries please contact: editors@khaitanco.com

We have updated our [Privacy Policy](#), which provides details of how we process your personal data and apply security measures. We will continue to communicate with you based on the information available with us. You may choose to unsubscribe from our communications at any time by clicking [here](#).