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Analysing developments impacting business

CHHATTISGARH HIGH COURT UPHOLDS VALIDITY OF REASSESSMENT NOTICE ISSUED UNDER THE OLD LAW

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Introduction:

In a recent order in Palak Khatuja v Union of India and others (WP(T) No. 149 of 2021) (Order), a single judge bench of the Hon'ble Chhattisgarh High Court (High Court) has upheld the validity of reassessment notice issued under the old law (ie, law existing prior to 1 April 2021).

Background:

Recent amendments made by the Finance Act, 2021 led to a paradigm shift in the reopening of past tax assessments inasmuch as the number of years for which tax assessments can be reopened has been changed from 5 or 7 years (depending upon quantum of escaped income) from the end of relevant financial year (FY) (17 years from the end of relevant FY in case of foreign assets) (Old Law) to 4 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 income tax department (IT Department) to go back only till FY 2017-18 (other than high stake matters). Further, the New Law also requires the IT Department to follow prescribed procedures (like conducting enquiries, providing show cause notice to taxpayer before reopening the assessment, consider taxpayer's reply, etc) before issuing reassessment notice.

Even though the New Law became effective from 1 April 2021, IT Department 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).

This caused a conflicting position as the Date Extension sought to extend a repealed provision.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.

Order:

In the instant case, Palak Khatuja (Taxpayer) was issued reassessment notice dated 30 June 2021 for FY 2014-15 under the Old Law. The Taxpayer challenged the validity of such reassessment notice primarily on the ground that as the reassessment notice was

issued on 30 June 2021, prescribed procedures under the New Law which became effective from 01 April 2021, were not followed and thus, the reassessment notice was liable to be quashed.

High Court rejected the arguments of the Taxpayer and upheld the validity of reassessment notice issued under the Old Law based on the following:

- Legislative delegation given to Central Government to notify Date Extension not in contravention with any Act: High Court noted that the Date Extension by Central Government was in terms of power delegated to them under the Relaxation Act. The necessity occurred because of the COVID-19 pandemic lockdown on account of which the taxpayers could not file their return and since the offices were closed, the IT Department also could not perform its statutory duty under the Income-tax Act, 1961 (IT Act). In view of this complexity, the parliament thought it proper to delegate to the Ministry of Finance, the date of applicability of New Law. High Court noted that delegation to the Ministry of Finance can always be considered to be a sound basis for administrative efficiency and it does not by itself amount to abdication of power.

High Court thus noted that such legislative delegation was not in conflict with any act and notification by the Ministry of Finance would be the part of legislative function.

High Court also referred to the decision of Hon'ble Supreme Court in the case of A.K. Roy v UOI AIR 1982 SC 710, and observed that while delegating power to Central Government to notify Date Extension, the main purpose of Finance Act was not defeated and that it would be a conditional legislation.

- No encroachment of powers: High Court noted that by such Date Extension, operation of Old Law was extended whereby New Law was deferred under a conditional legislation in the peculiar circumstances which arose during the pandemic and lockdown and the Central Government cannot be said to have encroached upon turf of Parliament.
- Effect of the Date Extension: High Court noted that by such Date Extension, individual identity of Old Law and insertion of New Law was insulated and saved up till 30 June 2021.
- Rights of IT Department were also preserved: High Court noted that in view of the pandemic, taxpayers could not file their return or comply with various mandates of the IT Act. Considering such situation, for the benefit of the taxpayers and to facilitate the individual to come out of woods, time limits framed under the IT Act were extended. Likewise, certain rights which were reserved in favour of the IT Department were also preserved and were extended at parity. Consequently, the Old Law was also extended.

Comments

As per the Order, it seems that High Court's attention towards interim orders passed by other high courts on this issue (wherein the operation of such similar reassessment notices and consequential proceedings were stayed) was perhaps not brought.

Challenges to such similar reassessment notices are pending for final adjudication before various high courts such as Hon'ble Bombay high court, Hon'ble Delhi high court, Hon'ble Calcutta high court, etc. Please refer our [ERGO dated 21 July 2021](#) in this regard. Thus, it would be interesting to see if those courts will resonate with the reasoning of the single judge bench of the High Court. Further, since the concerned Order is passed

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by the single judge bench of the High Court, whether the Taxpayer will challenge this Order with the division bench or not should be observed closely.

One of the most important points for consideration on the subject is: whether the Date Extension to extend the validity of a repealed provision (ie, Old Law) is legally valid or not.

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