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Analysing developments impacting business

DELHI HIGH COURT QUASHES OVER 1300 REASSESSMENT NOTICES ISSUED UNDER THE OLD REASSESSMENT REGIME

21 December 2021 **Introduction:**

In a recent landmark order in *Mon Mohan Kohli v ACIT and others* (WP(C) No. 6176/2021) (Order), the Hon'ble Delhi High Court (High Court) has quashed over 1300 (thirteen hundred) 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 (Finance Act) 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) / 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 high stake matters). Further, the New Law also requires the IT Authorities 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 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This caused a conflicting position as the Date Extension Notifications sought to extend a repealed provision.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](#) and [14 September 2021](#) in this regard.

Order:

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After multiple rounds of detailed arguments made by the taxpayers and revenue officers, High Court accepted the arguments of the taxpayers and quashed the reassessment notices issued under the Old Law primarily based on the following:

- When the legislature has permitted reassessment to be made only in accordance with the New Law, it can only be done in this manner, or not at all: High Court noted that by virtue of section 1(2)(a) of the Finance Act, the New Law pertaining to reopening of assessments came into force on 1 April 2021. It further observed that the expression 'shall' in section 1(2)(a) was in contrast to the language under section 1(2)(b) of the Finance Act which stated that sections 108 to 123 of the Finance Act shall come into force on such date as notified in the Official Gazette. The Memorandum to the Finance Bill 2021 also clarified that sections 2 to 88 which included the provisions relating to New Law will take effect from 1 April 2021. High Court noted that no power is granted to the Executive / Government to defer / postpone the implementation of sections 2 to 88 of the Finance Act which included the provisions relating to New Law. High Court also observed that it is a settled position that the law prevailing on the date of issuance of reassessment notice has to be applied.

The High Court thus held that if the intention of the legislature had been to keep the Old Law alive, it would have introduced the New Law with effect from 1 July 2021, which has not been done. High Court also remarked that wherever legislature intended that the old procedure is to be followed in respect of any assessment year as against the new procedure post the amendment, then it has specifically provided so. Accordingly, High Court ruled that reassessment notices issued on or after 1 April 2021 have to comply with the provisions of New Law.

- Relaxation Act empowered Government / Executive to extend only the timelines: High Court upon perusal of the Relaxation Act noted that it empowered the Government to extend the timelines only and that it did not empower the Government to postpone the applicability of any provision which has been enacted from a particular date. High Court highlighted that there is a difference between extension of time of an action which is getting time barred and applicability of a provision which has been enacted and notified by the legislature. Relaxation Act nowhere delegated power to the Government to postpone the date of applicability of a new law enacted by the legislature.
- Explanations contained in the Date Extension Notifications are ultra vires the Relaxation Act and therefore bad in law: High Court noted that the explanations contained in the Date Extension Notifications were not only beyond the power delegated to the Government but also in conflict with the provisions of the IT Act which specifically made the New Law applicable from 1 April 2021. High Court remarked that the delegated authority cannot override the Act either by exceeding the authority or by making provisions inconsistent with the Act. High Court further held that it did not agree with the findings of Chhattisgarh High Court in the case of Palak Khatuja v Union of India and others (WP(T) No. 149 of 2021) (refer our ERGO [dated 14 September 2021](#) in this regard) and stated that challenge to legality / validity of the Date Extension Notifications was not made before the Chhattisgarh High Court. High Court remarked that it agreed with the views taken by the Allahabad High Court and the Rajasthan High Court (Bench at Jaipur) in Ashok Kumar Agarwal v UOI (Writ Tax No-524 of 2021) and Bpip Infra Private Limited vs ITO (S.B. Civil Writ Petition No 13297/2021), respectively. High Court observed that even if it is assumed that the explanations contained in Date Extension Notifications are valid, reassessment notices were still bad in

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law as the explanations only seek to effectuate the erstwhile sections 148,149 and 151 of the IT Act and did not cover section 147 of the IT Act.

High Court stated that the arguments of the Government that Date Extension Notifications extended the applicability of Old Law beyond 31 March 2021 cannot be accepted as it will lead to patent arbitrariness and conflict as during the period 1 April 2021 to 30 June 2021 both Old Law and New Law would operate simultaneously more so when there is no statutory provision deferring the implementation of New Law.

- Intent of the New Law was to protect the rights and interests of taxpayers: High Court upon perusal of budget speech of the Hon'ble Finance Minister, memorandum explaining the provisions of Finance Bill 2021 observed that the intent, purpose and scope of the New Law was to protect the rights and interest of the taxpayers as well as to promote the public interest. High Court thus held that benefit of New Law must necessarily be made available in respect of reassessment proceedings relating to prior years provided reassessment notice in such cases was issued on or after 1 April 2021.
- Revenue cannot rely on COVID-19 for contending that the New Law should not operate during the period 01 April 2021 to 30 June 2021: High Court noted that when the Finance Bill 2021 was introduced in the parliament and even at the time of its enactment in March 2021, COVID-19 was widely prevalent, and parliament was fully aware of the same. Thus, the revenue cannot rely on COVID-19 pandemic to contend that the New Law should not operate during the period 1 April 2021 to 30 June 2021.
- Relaxation Act is expressly confined to and only supersedes the time limits, and it does not exclude the applicability of provisions substituted by Finance Act: High Court observed that non-obstante clause in section 3(1) of the Relaxation Act has to be construed strictly and has an overriding effect over the other statutes only to the limited extent that it expressly so provides. High Court noted that in the present case, ambit of non-obstante clause in the Relaxation Act 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 the Relaxation Act only provides that these time limits shall stand extended as provided. Thus, non obstante clause contained in the Relaxation Act cannot be relied upon by the revenue to contend that Date Extension Notifications overrides any provisions of the IT Act other than the applicable timelines. High Court further observed that the Relaxation Act was enacted a long before the Finance Act and thus it cannot be contended that any provisions of Relaxation Act can be so construed as amending or modifying or excluding the applicability of the yet to be enacted Finance Act. High Court further stated that the argument of the revenue that special act overrides a general act has no application in the present case because Relaxation Act and Finance Act both operate in a distinct and separate sphere.

Comments

Reassessment is a very important aspect under the IT Act as it gives power to the IT Authorities to reopen past tax assessments subject to fulfilment of certain conditions. This is a landmark Order in the context of reassessments as this issue had cropped up ever since the IT Authorities had issued reassessment notices after 31 March 2021 under the Old Law by placing reliance on the Date Extension Notifications. It is a welcome precedent as a lot of taxpayers have been issued reassessment notices between the period 1 April

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2021 to 30 June 2021 under the Old Law. High Court also observed that even in the past, legislature had enhanced / reduced the time limit for reopening of past tax assessments and such enhancement / reduction to the time limit was made effective from different dates of the relevant FY. Thus, to ignore the legislative intent of the Finance Act in the present case would neither be legal nor reasonable. 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.

It is worth noting that the Chhattisgarh High Court had dismissed the writ petition filed by the taxpayers and upheld the validity of reassessment notices issued under the Old Law; however, High Court has dissented from that view and ruled that the reassessment notices issued under the Old Law are not valid. It would be interesting to see whether the IT Authorities will challenge this Order with the Hon'ble Supreme Court of India.

Further, challenges to such similar reassessment notices are pending for final adjudication before various other High Courts such as Bombay High Court, Calcutta High Court, etc. Thus, it would be interesting to see if those Courts will resonate with the reasoning of the High Court.

- *Sanjay Sanghvi (Partner), Raghav Kumar Bajaj (Principal Associate), Ujjval Gangwal (Senior Associate)*

For any queries please contact: editors@khaitanco.com

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