
SC dismisses revenue's SLP, upholding HC's view that time-limit prescribed for reassessment under section 149 cannot be lifted on the basis of Tribunal's finding in another case unless an opportunity of being heard has been accorded to taxpayer

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In brief

In a recent decision¹, the Supreme Court of India (SC) has dismissed revenue authorities' Special Leave Petition (SLP) challenging the judgement² of the Delhi High Court (HC) wherein it was held that notices issued for reassessment under section 148 of the Income-tax Act, 1961 (the Act) on taxpayer were time barred under section 149 of the Act and the relaxation under section 150 read with Explanation 3 to section 153 of the Act was not available as the pre-condition of opportunity of being heard had not been given to the taxpayer.

In detail

Facts

- The taxpayer (R), a public financial institution was engaged in the business of providing finance for rural electrification
- The taxpayer had advanced loans to a cooperative society, which created a special corpus fund and earned interest on this special fund.
- The interest earned on the above special fund was not

disclosed by the cooperative society in its return of income for the reason that the money actually belonged to the taxpayer and any income earned thereon was on behalf of the taxpayer.

- In a case against the aforesaid cooperative society proposing to tax the interest income earned on the special fund in the hands of the cooperative society, the Income-tax Appellate Tribunal

(Tribunal) held that the interest was not taxable in the hands of the cooperative society as the ownership of the corpus fund remained with the taxpayer.

- On the basis of the decision of the Tribunal, the Tax Officer (TO) issued notice under section 148 read with section 150 of the Act to the taxpayer alleging that the interest income earned by the cooperative society had escaped assessment and

¹ TS-360-SC-2017

² [2013] 355 ITR 345 (Delhi)

was taxable in the hands of the taxpayer.

- The objection raised by the taxpayer against the notices issued under section 148 of the Act was disposed-off by the revenue based on the stand taken that it was not at all necessary for the Tribunal to have allowed an opportunity of hearing to the taxpayer because the order was passed in respect of the assessment proceedings pertaining to the cooperative society.
- The taxpayer filed the writ petition before the HC on the question whether the notice under section 148 read with section 150 of the Act could be issued to the taxpayer beyond the time limits prescribed under section 149 in case an opportunity of being heard was not accorded to the taxpayer by the Tribunal.

Taxpayer's contentions

- The Tribunal (in the case of the concerned cooperative society) had given a finding that the said interest income was not taxable in the hands of the cooperative society. However, there was no specific or clear finding that the interest income should have been taxed in the hands of the taxpayer.
- The taxpayer contended that all the notices under section 148 of the Act were issued beyond the period of limitation stipulated in section 149 of the Act and submitted that bar of limitation prescribed in section 149 of the Act would be applicable unless the revenue was able to establish that the present case fell within the ambit of section 150 of the Act read with Explanation 3 to section 153 of the Act.

- As per taxpayer, if the interest income was to be taxed in its hands, an opportunity to that effect should have been given in line with the Explanation 3 to section 153 of the Act.

Revenue's contentions

- An opportunity of hearing could not have been given to the taxpayer because the Tribunal was hearing the appeal pertaining to the society and there was no way to ascertain as to whether the decision would go in favour of the said society or not.
- In particular, the question of taxability of interest in the hands of the taxpayer had come only after the Tribunal had decided that the interest income was not taxable in the hands of the society and till that stage there was no question of granting an opportunity of being heard to the taxpayer.

High Court decision

- It was apparent that before a notice under section 148 could be issued beyond the time limit prescribed under section 149, the ingredients of Explanation 3 to section 153 had to be satisfied.
- From the fact of the case, it was clear that no opportunity was ever afforded to the taxpayer before the order of the Tribunal was passed.
- The requirement of being heard flowed from the general principle that no prejudice should have been caused to anybody without that person having been heard.
- Since, one essential ingredient of Explanation 3 to section 153 of the Act of an opportunity of hearing to the taxpayer was missing in the current case, therefore, the deeming clause

of section 150 of the Act would not get triggered.

- Hence, the normal provisions of limitation prescribed under section 149 of the Act would apply to the taxpayer. Hence, the notices issued to the taxpayer under section 148 of the Act beyond the period of six years was time barred. Therefore, the said notices and subsequent proceedings was set aside.

Supreme Court decision

Upon hearing the counsel, the SC has dismissed the revenue's SLP challenging the HC ruling and held that there was no ground to interfere with the HC decision.

The takeaways

- The SC has declined to interfere with the Delhi HC's view on the sanctity of the opportunity to be granted to a person, where any income is excluded from the hands of another person in appeal or revision by an income tax authority or court, and sought to be taxed in his hands. Absent such opportunity before the appellate or revisionary order is passed, the extended period of limitation for reopening assessment cannot be invoked against the person in whose hands income is sought to be included. Thus, any such action, beyond the ordinary period of limitation may be challenged by the person sought to be assessed.
- The facts of each case would have to be considered while relying on the above decision.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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