



Tax Insights

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Allahabad High Court quashes notices issued under section 148 of the Act issued on or after 1 April 2021 under the old reassessment regime

In brief

The Allahabad High Court has allowed writ petitions challenging the validity of notices issued under section 148 of the Income-tax Act, 1961 (the Act). The High Court held that there was no conflict between the various relaxations issued by the Government under the Taxation and Other Laws (Relaxation of Certain Provisions) Act, 2020 (TOLA) and the amendments in the Finance Act 2021 pertaining to issuance of reassessment notices and that with effect from 1 April 2021, the amended provisions were applicable.

In summary, the High Court has held that reassessment notices issued on or after 1 April 2021 have to necessarily be in compliance with the amended provisions and related procedures laid down therein.

In detail

Facts

- The taxpayers¹ had been issued notice under section 148 of the Act to initiate reassessment proceedings.
- The taxpayers have challenged the validity of the notice issued under section 148 of the Act as well as the notifications² issued by the Central Board of Direct Taxes (CBDT) extending the timeline for issuance of such notices.

Taxpayer's contentions

- The pre-existing provisions governing reassessment proceedings stood replaced by the amendments brought in by the Finance Act 2021. The same are not enforceable anymore, since the old provisions had been substituted.
- The TOLA only sought to extend the limitation period for the existing provisions. The Finance Act 2021 does not contain any saving clause to elongate the applicability of the provisions prior to 1 April 2021 beyond 31 March 2021.

¹ Writ Tax No. - 524 of 2021

² Notification Nos. 20/ 2021 dated 31 March 2021 and 38/ 2021 dated 27 April 2021

- Delegation had been done only for the purpose of extending the time limit and not to resurrect the omitted provisions. Accordingly, exercising such delegation would be ultra vires to the Constitution of India.
- The Chhattisgarh High Court³ had erred in observing that the notifications insulated the old provisions upto 30 June 2021.
- There is no conflict between the Finance Act 2021 and the TOLA Act since they both operate in different time periods. While the TOLA governs the provisions existing upto 31 March 2021, the Finance Act 2021 operates from 1 April 2021 onwards.
- The non-obstante clause provided in the TOLA only seeks to protect the completion or compliance of proceedings initiated prior to 31 March 2021. Hence, the non-obstante clause would not apply after the enactment of the Finance Act 2021.
- The newly introduced section 148A of the Act lays down certain pre-requisite conditions to be met before the issuance of notice under section 148 of the Act. The notices issued under the pre-existing or amended law cannot be issued unless the same are complied with. In the instant case, since the mandatory procedure has not been followed, the notices issued are without jurisdiction.

Revenue's contention

- The extension notifications had been issued due to the COVID-19 pandemic since both the taxpayer and the TO were unable to perform their statutory obligations.
- The constitutional validity of a law can only be challenged in case there is legislative incompetence in enacting the law or the law impacts the fundamental rights specified in the Constitution of India.
- Since the time period was extended in favour of taxpayers to make compliances, corresponding extension was also provided in favour of the revenue to initiate reassessment proceedings beyond the due date.
- The non-obstante clause in section 3(1) of the TOLA has an overriding effect against all the provisions. The writ petition should be quashed, since nothing has been placed on record to demonstrate that the non-obstante clause is restricted by any law.

High Court's decision

- The High Court observed that the Finance Act 2021 replaced the pre-existing law, and in the absence of any saving clause, reassessment proceedings on or after 1 April 2021 could be initiated only in accordance with the amended laws.
- The argument of the revenue that the non-obstante clause of section 3(1) of the TOLA has an overriding effect over the Act was not sustained, since jurisdiction had not been assumed before 1 April 2021. The non-obstante clause seeks to prevent the ongoing proceedings from becoming time barring but does not save any proceeding arising from any law enacted by the Parliament in the future. Furthermore, the non-obstante clause is to be read in the context of the ongoing proceedings only.
- The High Court held that where reassessment proceedings have not been initiated prior to 1 April 2021, the amended laws shall apply, and the Central Government/ CBDT cannot overreach the principal legislation vide such notifications. The notifications would be treated as invalid unless they are harmonised.
- The applicability of the mischief rule in the present case was also denied since the same is applicable where there is any doubt in the interpretation of a provision. However, in the current case, there is no doubt that the old provisions have been substituted by the Finance Act 2021.
- The High Court further opined that in case no amendments on account of reassessment proceedings had been brought in vide the Finance Act 2021, the TO was well within its right to claim the benefit of extended time under the TOLA. However, the applicability of the TOLA was limited only to pending proceedings, since the Parliament had reformed such provisions. Recourse to notification was not available for proceedings initiated after 1 April 2021.

³ W.P.(T) No. 149 of 2021

- The Court also disagreed with the judgment passed by the Chhattisgarh High Court and upheld the contentions raised by the taxpayers.

The takeaways

The decision of the High Court is extremely crucial and is a welcome step granting relief to the taxpayers. This decision would bring relief to a lot of taxpayers who have been served with reopening notices on or after 1 April 2021 without following the procedure laid down under the amended law and would serve as an important precedent for taxpayers across the country who have been served with similar notices.

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