

Supreme Court allows appeal of the tax authorities – treats notices issued on or after 1 April 2021 under erstwhile reassessment regime to be valid and deemed to have been issued under the new reassessment regime

Background:

The procedure for initiating reassessment proceedings, including the timeline within which cases can be selected for reassessment was revamped vide the Finance Act, 2021 with effect 1 April 2021. Amongst others, the new reassessment regime (new regime) requires assessing officers to follow principles of natural justice while selecting a case and provide the taxpayer with an opportunity of being heard prior to initiating full-fledged reassessment proceedings.

Simultaneously, on account of the pandemic, certain statutory deadlines were relaxed by the Government of India - including the time limit for issuing reassessment notices under the erstwhile reassessment regime (erstwhile regime) being extended from 31 March 2021 to 30 June 2021. Relying on this position, reassessment notices were issued by tax officers under the erstwhile regime after 31 March 2021, even though technically the erstwhile regime was replaced by the new regime on 1 April 2021

Taxpayers challenged such notices before various High Courts on the ground that the same were not issued following the procedures prescribed under the new regime hence, the notices issued under the erstwhile regime after 31 March 2021 were invalid. The Hon'ble High Courts of Bombay, Delhi, Allahabad, etc. accepted the plea of the taxpayers and quashed these notices issued under the erstwhile regime. The tax authorities filed appeals against these judgments before the Supreme Court of India.

Held:

While accepting the rationale of the High Court judgments, considering the larger picture, the Supreme Court observed that:

- The notices issued by tax officers under the erstwhile regime were under a bona-fide belief based on relaxation of deadline by the Government of India;
- Quashing the notices altogether due to such bona-fide mistake would frustrate the object and leave the tax authorities without any remedy;
- Quashing of notices would ultimately be a loss / suffering for the public exchequer.

In light of the above, the Supreme Court passed an order under Article 142 of the Constitution of India whereby all the High Court judgments in favor of the taxpayers would stand modified across India to contain the following next steps:

- a) The notices issued under the erstwhile regime would be deemed to have been validly issued under the new regime;

- b) The tax officer shall within 30 days from the date of the Supreme Court decision (i.e., 4 May 2022) provide the taxpayer with the information and material relied upon for issuing the show cause notice;
- c) The taxpayer can file their response to the said information / material within 2 weeks;
- d) Thereafter the tax officer may take a decision on whether the case merits full-fledged reassessment proceedings and issue subsequent notices following the new regime.

The Supreme Court however has clarified that all defense's which may be available to the taxpayers (such as time limits within which the notices should be issued, etc.) and all rights and contentions which may be available to the concerned taxpayers and revenue authorities under the law shall continue to be available.

CNK COMMENT

The Supreme Court judgment seeks to balance the interests of both taxpayers and the revenue authorities. While the rationale of the judgment and its impact on the public exchequer can be understood, affected taxpayers may feel aggrieved that the notices have not been quashed. However, as all legal defenses and remedies continue to be available to taxpayers, they may consider evaluating their future strategy under these reassessment proceedings.

One interesting observation is that in the context of dispensing with the requirement of prior approval of the specified authority, the Supreme Court has used the words "*till date*" for notices issued under section 148 of the erstwhile regime from 1 April 2021. The question that arises whether "*till date*" also includes notices issued after 30 June 2021 under the erstwhile regime. In our view, the word "*till date*" would only include those notices issued between 1 April 2021 to 30 June 2021 and would not cover notices issued after 30 June 2021.

The Supreme Court has stated that notices issued under section 148 of the erstwhile regime will deemed to have been issued under section 148A(b) of the new regime (i.e., to be treated as a show cause notice). Therefore, such notices will now be governed by the provisions of the new regime. However, the time limits and conditions prescribed in the new regime for issuing notice under section 148 are not the same as those prescribed under the erstwhile regime. Accordingly, one would now need to evaluate the validity of these notices which would now be issued under section 148 in the context of the time limits and conditions under the new regime.

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