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Old becomes Gold for Revenue? - Supreme Court rules on reassessment controversy

Snapshot

In the "Old vs. New" reassessment controversy, the Hon'ble Supreme Court has held that all the notices issued under the old law are to be treated as notices issued u/s 148A. being new law, and pursuant to the same, the Department is required to conduct the reassessment procedure as per the new reassessment provisions applicable from 1st April 2021.

The Hon'ble Apex Court has also laid down a procedure for the Department to clarify the way reassessment is to be conducted specifically for the matters reopened under the old provisions.

It is also clarified that the Taxpayer shall be eligible to invoke the new reassessment law to challenge the consequent reassessment proceedings conducted by the Department.

Further, the Hon'ble Court has invoked Article 142 of Constitution of India and has held that this judgement shall be applicable not only to the impugned orders of the High Court but also to all the orders and judgements, across the country, which pertain to similar issue.

Background

On 1st February 2021 the Hon'ble Finance Minister presented the Finance Bill 2021. In the said Bill, the Government proposed to completely overhaul the reassessment law, from section 147 to section 149. Many changes were proposed in the reassessment law. It was inter-alia proposed that the from 1st April 2021 onwards, a notice u/s 148 of the Income Tax Act, 1961 ("the Act") could be issued only after the Department issued notice u/s 148A to the Taxpayer and provided information based on which assessment was sought to be reopened.

Further, it was also proposed that that assessment could not be reopened after 3 years from end of assessment year unless income exceeding Rs. 50 Lacs, represented in form of "asset" had escaped assessment. The Bill was passed and became part of the law. Such provisions were further amended to expand the scope of reassessment proceedings by various amendments under the Finance Act, 2022.

Controversy

As the period to reopen the assessment was reduced from 4/6 years to 3 years, the Department rushed to reopen the assessment for years which were getting time barred on 31st March 2021 as per the new law i.e., the years for which assessment could not be reopened on or after 1st April 2021 on account of expiry of 3 years.

However, in March 2021, the second wave of COVID-19 pandemic emerged, and the Department was compelled to extend the timelines for various compliances, by issuing Notification 20/2021 dated 31st March 2021, including the timeline for reassessment proceedings. In the said Notification, the Department also extended applicability of the provisions as existing on 31st March 2021 which were in fact replaced by the overhauled provisions from 1st April 2021.

Resultantly, the Department started issuing thousands of notices u/s 148 under the old provisions after 1st April 2021 without complying with the amended provisions applicable from 1st April 2021. Further notices were issued for assessment years for which 3 years had elapsed on 31st March 2021 as per the new reassessment provisions effective from 1st April 2021.

All these notices issued after 1st April 2021 borrowed their power from Notification No. 20/2021 which attempted to extend the applicability of provisions existing as on 31st March 2021.

Several writs were filed before various High Courts challenging the power of the Assessing Officer to issue notice under the old provisions. The primary ground for challenging the notices was that a Notification, being a sub-ordinated legislation could not override the provisions of the Act and therefore the applicability of the old provisions could not be extended by way of a Notification when as per the Act, the new provisions are effective.

The Allahabad High Court, Delhi High Court, Rajasthan High Court, Calcutta High Court, and Bombay High Court decided the issue in favor of the Taxpayer and held that notices issued after 31st March 2021, under the old law, were void and liable to be quashed.

The Department approached the Hon'ble Supreme Court challenging the view taken by various High Courts. The Hon'ble Apex Court on 4th May 2022 pronounced its judgement on the above controversy.

Findings of Supreme Court

At the outset, the Hon'ble Supreme Court deals with the purpose and object of overhauling the reassessment law. The Court held that no notice u/s 148 can be issued without issuing notice u/s 148A and that this is a *game changer* aspect of new law governing the reassessment proceedings. Under the old law there was no prescribed procedure, for the Assessing Officer to follow for carrying out reassessment proceedings, and therefore the same resulted in numerous litigations. Despite there being a Supreme Court decision in the case of GKN Driveshafts (India) Ltd. v. ITO), which clearly provided a specific reassessment procedure to be followed, Taxpayers often alleged that the Assessing Officer did not follow the said procedure.

The Hon'ble Court held that apart from above, the reopening of assessment under the old law was often challenged and litigated on the grounds that there was i) no "reason to believe" or ii) no "tangible/reliable material or information in possession while reopening or iii) no enquiry conducted by the Assessing Officer before issuing notice u/s 148.

To mitigate litigation on above issues and simplify tax administration, the Finance Act 2021 overhauled the reassessment provisions. Section 148A was introduced and the same provided the Assessing Officer to conduct enquiry, provide an opportunity of being heard to the Taxpayer and decide based on the reply filed, whether to issue notice u/s 148 or not. These are the safeguards provided by section 148A before issuing notice u/s 148.

Further, the Hon'ble Court also held that section 149 has been amended by Finance Act, 2021 to restrict the period available to the Department for reopening assessments. The Court held that section 149 provides additional safeguards which were absent in the old law.

Considering the above, the Hon'ble Court held that new reassessment law is *remedial and benevolent* in nature and has been brought into force with the *object to protect the rights and interest of the Taxpayer*. Since the same is in public interest, the High Courts have rightly held that benefit of new provisions shall be made applicable to earlier years, provided that the notice u/s 148 is issued on or after 1st April 2021. Hence, the High Courts have rightly held that reassessments for notice issued on or after 1st April 2021 is to be conducted as per new law.

However, the Hon'ble Apex Court objected to the action of the High Court in quashing the reassessment proceedings in toto. The Hon'ble Court held that Revenue cannot be made remediless, and object and purpose of reassessment proceedings cannot be frustrated.

The Hon'ble Apex Court *accepted that notice issued u/s 148 on or after 1st April 2021 should have been issued under the new reassessment provisions* and unamended reassessment provisions could not be invoked for notices issued on or after 1st April 2021. However, the Hon'ble Court noted that **there was a genuine non-application of the amendments as the *officers of Revenue may have been under a bonafide belief that amendments may not yet have been enforced*** **and therefore *some leeway must be shown* in that regard.**

The Hon'ble Court held that the Revenue ought to have been permitted by the High Courts to proceed with the reassessment proceedings, albeit, under the new reassessment provisions. The Hon'ble Court held that this could be done by deeming all the notices u/s 148 issued on or after 1st April 2021 under the old provisions as notices issued u/s 148A.

Accordingly, the Hon'ble Court held that all notices issued u/s 148 on or after 1st April 2021 by invoking old reassessment provisions as deemed to be issued u/s 148A and further, the pursuant reassessment proceedings should be conducted considering the new reassessment provisions.

Further, the Hon'ble Court has invoked Article 142 of the Constitution of India and held that the findings and directions given in its judgement shall be applicable not only to the impugned orders of the High Court but also **to all the orders, judgements, and proceedings, across the country**, which pertain to similar issue. This means that even for the cases which are pending before the Assessing Officer or before High Courts, the notices issued u/s 148 shall be deemed to be notices u/s 148A and accordingly.

What next?

The Hon'ble Supreme Court has laid down specific procedure which has to be followed by the Department while dealing with the notices issued u/s 148 on or after 1st April 2021 under the old reassessment provisions. The Hon'ble Court has elaborated the procedure to be followed as under:

- All section 148 notices issued under old provision on or after 1st April 2021 shall be deemed to be show cause notices issued u/s 148A(b).
- The Assessing Officer shall be required to provide information within 30 days from the date of the judgement i.e., 4th May 2022. This

means the Assessing Officer would be required to *provide information to the Taxpayers* latest by 3rd June 2022.

- The Hon'ble Court has waived the requirement to conduct inquiry u/s 148A(a) as a *one-time measure* for the deemed notices us/148A.
- The Assessing Officers are required to pass orders u/s 148A(d) deciding whether it is a fit case to reopen the assessment in respect of each of the Taxpayers. After passing such order, the Assessing Officer can proceed to issue notice u/s 148.
- As for Taxpayers, the Hon'ble Court has held that the Taxpayers shall be eligible to use defenses available under amended section 149 and all the rights and contentions made available through amendments by Finance Act 2021 shall continue to remain available to the Taxpayers.

KCM Note

The Hon'ble Supreme Court has indeed taken a very lenient view towards Revenue and allowed it to pursue the reopening of the assessment, albeit, under the new provisions. The Hon'ble Court has held that officers of the Revenue may have been under a bonafide belief that amendments by Finance Act 2021 had not yet been enforced. However, no justification has been provided as to how such belief is bonafide.

In respect of the above finding, attention is invited to section 1(2)(a) of Finance Act, 2021 which provides that sections 2 to 88 shall come into force on the 1st day of April 2021. The amendments relating to reassessment proceedings are covered by section 40 to 45 of Finance Act, 2021 and therefore as per section 1(2)(a), the said amendments would be effective from 1st April 2021.

However, the Hon'ble Court has held that officers of Revenue could have been under a belief that the amendments had not been enforced as on 1st April 2021. This implies that the officers of Revenue were not aware about section 1(2)(a) of Finance Act, 2021 and the said fact has been condoned by the Hon'ble Court.

At this juncture it is important to introduce the legal maxim of ***"ignorantia juris non-excusat",*** which translates to "ignorance of law is no excuse". This means that every party is aware of the law and hence cannot claim ignorance of the law as a defense.

Hence, the decision of the Hon'ble Court has the potential to engender a debate on whether the view taken the Hon'ble Court would lead to judicial extinction of the abovementioned legal maxim and thereby allow even the Taxpayers to claim the "benefit" of ignorance of law. It is therefore interesting to see as to how the ratio of such decision can be applied by either side in future to justify the respective position in law.

Further, it appears that the decision is heavily outweighed in favor of Revenue mainly on the fact of issuance of more than 90,000 reassessment notices under old law by the Tax Department.

It must be noted that the Taxpayer will remain eligible to challenge the reassessment proceedings afresh under the new reassessment law on various grounds such as invalid information, time barred notice, absence of income exceeding Rs. 50 lacs. The Hon'ble Apex Court has very categorially stated that the Taxpayer has all right to safeguard his side by applying the amended law, however, the Taxpayer is required to pass through the process of reassessment.

For further analysis and discussion, you may please reach out to us.

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