

Direct Tax Alert

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Bombay High Court quashes notices issued on or after 1 April 2021 under the old reassessment regime

In a recent ruling¹, the Hon'ble Bombay High Court quashed the reassessment notices issued under section 148 of the Income-tax Act, 1961 ('the Act') on or after 1 April 2021 as the Income Tax department ('ITD') had not complied with the procedure laid down under the new reassessment regime (applicable from 1 April 2021)

I. Background and the High Court ruling

- The entire scheme of reassessment provided in the Act underwent major changes under the new regime, brought in by the Finance Act, 2021 (applicable with effect from 1 April 2021).
- The major amendments include:
 - Change in time limits for the issue of notice under section 148 (from four/six/sixteen years previously to three/ten years now).
 - Insertion of new section 148A for conducting an inquiry by the Assessing Officer ('AO') and passing an order prior to issuing notice under section 148.
- On account of the Covid-19 pandemic, the time limit for the issue of notices under section 148 falling between 20 March 2020 to 31 March 2021 was extended to 30 June 2021 by the Central Board of Direct Taxes ('CBDT') Notifications² read with section 3(1) of the Relaxation Act³.

¹ Tata Communications Transformation Services Limited v. ACIT and others (1377) Writ Petition No. 1334 of 2021

² CBDT Notification No. 20 dated 31 March 2021 and Notification No. 38 dated 27 April 2021

³ The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020



- Apart from extending the time limit, an *Explanation* has been inserted in the said CBDT Notifications. The Explanation states that the old provisions of the Act (section 148, 149 and 151), as they stood on 31 March 2021, shall apply to issue of notices under section 148 of the Act up to 30 June 2021 (for cases where the time limit was extended).
- Consequently, the ITD issued notices under section 148 of the Act on or after 1 April 2021 for various assessment years (AYs) based on the old reassessment regime (i.e. without following the mandatory procedure of section 148A of the Act under the new regime).
- Therefore, a controversy arose as to whether the new reassessment regime can be substituted by way of an Explanation under the CBDT Notification, and whether notices under section 148 can be issued on or after 1 April 2021, based on provisions of the Act as they existed before that date.
- Across the country, multiple writ petitions⁴ were filed before various High Courts. The High Courts in these cases have held that the Explanation in the Notifications are ultra vires/ unconstitutional and invalid.
- A similar view has been taken by the Bombay High Court recently. The High Court has held that no power is given under the Relaxation Act to postpone the applicability of the new reassessment regime. The Explanation in the Notification is declared ultra vires and is, therefore, bad in law and null and void.
- The Bombay High Court has further held that even if the Explanation is considered as valid, the reassessment procedure laid down under section 148A has not been followed by the Revenue. Therefore, the impugned notices do

not even comply with the relevant statutory provisions.

- The Bombay High Court has also held that it will be open to the AOs to initiate fresh reassessment proceedings in accordance with the relevant provisions of the Act, as amended by the Finance Act, 2021 after strictly complying with the provisions of the Act.
- Against the decision of the Allahabad High Court, the Revenue has preferred an appeal before the Supreme Court⁵. It is likely that similar action may be followed against the other High Court rulings as well, and hence, one will have to await the decision of the Supreme Court.

II. Key takeaways from the High Court ruling

While delivering the judgment against the Revenue, the Bombay High Court has held that it will be open to the revenue officials to initiate fresh reassessment proceedings in accordance with the relevant provisions of the Act as amended by the Finance Act, 2021. While this is the case, the Revenue may not be in position to reopen the assessments for years where time limit has already lapsed under the new reassessment regime.

The impacts on various AYs are summarized as follows:

(i) AY 2013-14 and AY 2014-15

The time limit for issue of notice under section 148 of the Act for these years lapsed on 30 June 2021. Therefore, where notice under section 148 of the Act was issued on or after 1 April 2021 without considering the procedure laid down under the

⁴ Ashok Kumar Agarwal v. UOI [2021] 131 taxmann.com 22 (Allahabad HC); Mon Mohan Kohli v. ACIT [2021] 133 taxmann.com 166 (Delhi HC); Sudesh Taneja v. ITO (Writ Petition No.969 of 2022) (Rajasthan HC); Vellore Institute of

Technology v. CBDT (Writ Petition No.15019 of 2021) (Madras HC)

⁵ UOI v. Ashok Kumar Agarwal (Diary no. 7666 of 2022) (SC)



new reassessment regime, based on the above High Court ruling, such notice would be treated as bad in law. Further, no recourse is likely to be available to the Revenue for reopening the assessment as the time limit for issue of notice under section 148 under the amended provisions has lapsed.

(ii) AY 2015-16

For AY 2015-16, the time limit for reopening the assessment was 31 March 2022, which has lapsed.

(iii) AY 2016-17 to AY 2021-22

The Revenue has time to reopen the assessment for six years from the end of the relevant AY subject to satisfaction of specified conditions [by virtue of Proviso to amended section 149(1)]. Therefore, although the notice under section 148 issued under erstwhile provisions is bad in law, the Revenue may seek to issue fresh notice under section 148 after following the procedure laid down under section 148A and other amended provisions.

(iv) AY 2022-23 and subsequent years

The extended time limit of ten years as per the Act is available on satisfaction of specified conditions.

Summary

Income belongs to AY	Time limit for issue of notice under section 148 from end of relevant AY ⁶		
	Up to 3 years	Up to 6 years	Up to 10 years
2022-23	31-Mar-26	--	31-Mar-33
2021-22	31-Mar-25	31-Mar-28	--
2020-21	31-Mar-24	31-Mar-27	--
2019-20	31-Mar-23	31-Mar-26	--
2018-19	31-Mar-22	31-Mar-25	--
2017-18	--	31-Mar-24	--
2016-17	--	31-Mar-23	--
2015-16	--	31-Mar-22	--
2014-15	--	30-Jun-21	--
2013-14	--	30-Jun-21	--

⁶ Section 149(1)(a), Proviso to section 149(1) and Section 149(1)(b) respectively

Dhruva Comments

While the Finance Act, 2021 was introduced only a year ago, revamping the entire scheme of reassessment provisions, the controversies and numerous issues arising from it have already knocked on the doors of the judiciary.

The taxpayers were just adapting to and decoding the new regime, when the Finance Act, 2022 kicked in by further expanding the scope of reassessment in cases where notice can be issued for up to ten years after the end of the AY. The expanded scope for issue of notices covers income escaped assessment represented in the form of *expenditure and entry in books of account* (for amounts exceeding Rs. 50 lakhs). This amendment is in effect from 1 April 2022. Therefore, where reassessment notices have been issued between 1 April 2021 and 31 March 2022, the expanded scope was not on statute. Hence, issuance of such reassessment notices (based on income escaped which is represented in form of *an asset*) could be prone to further litigation.

Thus, the new reassessment regime has brought several disputes and divergent views that are yet to test the waters.

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