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REASSESSMENT NOTICES ISSUED BY INCOME-TAX AUTHORITIES FACE LEGAL CHALLENGE

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Several High Courts have stayed the reassessment proceedings in relation to reassessment notices issued by Income-Tax Authorities (IT Authorities) post 31 March 2021 for the financial year (FY) 2016-17 or prior FYs (Stay Orders). This is on account of the recent amendment to the law relating to reassessments under Income-Tax Act, 1961 (IT Act) which led to a paradigm shift in the number of FYs for which past tax assessments can be reopened.

Background:

Law prior to 1 April 2021 (Old Law): Prior to 1 April 2021, the IT Act provided for reopening of past tax assessments (17 FYs from the end of the relevant FY in case of foreign assets and 5 or 7 FYs (depending upon quantum of escaped income) from the end of relevant FY in other cases) if inter alia the tax officer had 'reasons to believe' that income had escaped assessment. For this purpose, the tax officer was required to follow a set procedure (record reasons for reopening, issue reopening notice, dispose-off taxpayer's objections against reopening, etc).

Law with effect from 1 April 2021 (New Law): With effect from 1 April 2021, the Finance Act, 2021 has changed the number of FYs for which past tax assessments can be reopened. The amended law provides that tax assessments cannot be reopened beyond 4 FYs from the end of the relevant FY. However, if the tax officer has material in his possession which reveal that income (represented as an asset) chargeable to tax has escaped assessment and amounts to or is likely amount to INR 5 million or more for that FY, tax assessments can be reopened within 11 FYs from the end of the relevant FY (High Stake Matters). Further, the New Law also requires the tax officer to undertake certain additional steps (like conduct enquiries, provide a show cause notice to taxpayer before reopening, consider taxpayer's reply, etc) before issuing reopening notice (Pre-Notice Steps).

As a result, after 1 April 2021, the New Law empowered the IT Authorities to go back only till FY 2017-18 (other than High Stake Matters).

Issue in challenge: recent reassessment notices issued by IT Authorities

Even though the New Law became effective from 1 April 2021, IT Authorities continued to issue reassessment notices under the Old Law even after 31 March 2021. For this purpose, it drew support from the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 read with certain notifications in terms of

which the time limit for issuing reassessment notices under the Old Law was extended till 30 June 2021 (Date Extension).

This caused a conflicting position as the Date Extension sought to extend a repealed provision. Consequently, several taxpayers who were issued reassessment notices after 31 March 2021 under the Old Law challenged such notices and consequential reassessment proceedings in writ petitions before the jurisdictional High Courts.

Till now, Hon'ble High Courts at Bombay, Delhi and Calcutta have stayed such reassessment notices as the same were issued under Old Law – viz. neither the Pre-Notice Steps as envisaged under the New Law have been followed, nor the FYs for which reassessment notices were issued was permissible.

Comments

These Stay Orders are a welcome news for taxpayers.

The New Law has changed the reassessment regime under IT Act. Notably, unlike the New Law – in which taxpayer has the right of hearing prior to the issuance of reopening notice – the Old Law did not provide any hearing opportunity to the taxpayer prior to the issuance of reopening notice. Under the Old Law, taxpayers got a right only after the issuance of reopening notice.

Lately, several taxpayers have received reassessment notices after 1 April 2021 for FY 2016-17 or prior FYs under the Old Law. While the final decision is awaited in these matters, the Stay Orders do give a sigh of relief to such taxpayers for the time being. Thus, taxpayers who have received such reassessment notices recently under the Old Law should consider the facts and merits of their case and evaluate further course of action for a timely resolution.

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