

Reassessment notices issued on or after 1 April 2021 deemed to be issued under the new reassessment regime - Supreme Court

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Summary

The Supreme Court (SC), in a recent case¹, has settled the controversy around validity of reassessment notices issued on or after 1 April 2021, under the erstwhile reassessment regime (old regime). The SC held that all such notices would be deemed to have been issued under the new reassessment regime (new regime), which was introduced by Finance Act, 2021 with effect from 1 April 2021. This is subject to compliance with all the procedural and other requirements under the new regime.

The SC has modified verdicts of various High Courts (HCs) wherein HCs had quashed such reassessment notices. It has given some time to the tax department to comply with procedural requirements for initiating reassessment under the new regime.

Facts of the case

- On account of the pandemic, the government had extended various due dates under the Income-tax Act, 1961 (the Act). The last date for issuing reassessment notice² was also extended³ from 31 March 2020 to 30 June 2021.
- Accordingly, even after 1 April 2021, the tax department issued reassessment notices following procedures and timelines provided in the old regime, by relying on the due-date extension notifications.
- The new regime introduced by Finance Act, 2021 with effect from 1 April 2021 mandated different procedures⁴ and timelines.
- Taxpayers challenged these notices by way of writ petition before several HCs.
- In this case the order passed by the Allahabad HC was the subject matter of appeal before the SC.
- The Allahabad HC⁵ had quashed the reassessment notices and held that -
 - Due to the amendment in law from 1 April 2021 and in absence of any saving clause in respect of the pre-existing provisions, tax department could only initiate reassessment proceedings (on or after 1 April 2021) in accordance with the provisions of the new regime.
 - The tax authorities are free to initiate reassessment proceedings in accordance

¹ Union of India & Ors. vs Ashish Agarwal (Civil Appeal No 3005/2022)

² Section 148 of the Act

³ Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, dated 31 March 2020 (Ordinance) and 29 September 2020 (Act), Notification No. 35 of 2020 dated 24 June 2020, Notification No. 20 of 2021 dated 31 March 2021 and Notification No. 38 of 2021 dated 27 April 2021

⁴ Section 148A of the Act

⁵ [2021] 131 taxmann.com 22 (Allahabad HC)

with the new provisions, after meeting all compliances, as required by law.

- The SC took cognisance of other judgments passed by various HCs⁶ and in exercise of constitutional power⁷, decided to settle the issue and repeated litigation thereon through this verdict.

Decision of the SC

- The SC agreed with the view taken by various HCs, wherein the HCs have held that the benefit of new reassessment provisions⁸ should be made available in respect of the proceedings relating to past assessment years, provided the reassessment notice has been issued on or after 1 April 2021.
- It observed that quashing of reassessment proceedings by HCs makes the tax department remediless in many cases. While issuing notices under the old regime on or after 1 April 2021 the tax department was under a bonafide belief that the new regime may not yet have been enforced.
- The SC modified judgments of respective HC's as follows:
 - The respective notices will be deemed to have been issued under the new regime⁹ and treated as show cause notice (SCN)¹⁰ under such provisions.
 - The tax officers will, within 30 days from 4 May 2022, provide the taxpayers, all the information and material relied upon by them to issue these deemed SCNs. Taxpayers can reply to the notices within two weeks.

- The requirement of conducting any enquiry with the prior approval of the specified authority¹¹ before issuing such notices has been dispensed with, as a one-time measure.
 - Thereafter, the tax officers will pass the orders¹² after following the due procedure.¹³
 - All the defences which may be available to the taxpayer under the new regime and the related rights of the tax department will continue to be available.
- The SC has stated that this judgment will substitute/modify respective orders passed by the HCs (quashing reassessment notices under the old regime), whether or not they have been challenged before the SC. Further, this decision will have 'PAN India' ramifications.

⁶ Delhi HC; Rajasthan HC; Calcutta HC; Madras HC; Bombay HC etc.

⁷ Article 142 of the Constitution of India

⁸ Being remedial and benevolent in nature and substituted with a specific aim and object to protect the rights and interest of the taxpayer as well as and the same being in public interest

⁹ Section 148A of the Act

¹⁰ In terms of Section 148A(b) of the Act

¹¹ Under section 148A(a) of the Act

¹² In terms of section 148A(d) of the Act

¹³ As required under section 148A(b) of the Act

Our comments

Around 90,000 reassessment notices were issued under old regime on or after 1 April 2021 and approximately 9,000 writ petitions were filed before various HCs across the country, challenging the validity of such reassessment notices. The SC has in this ruling, tried to strike a balance between the rights of the tax department as well as the taxpayers. It has also tried to protect the interest of the exchequer.

Taxpayers, who got relief from various HCs, will now need to deal with the restored proceedings. They need to evaluate if some respite is still possible under the realms of the new reassessment regime.

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