

Over 1,300 I-T Notices from Old Regime Quashed by Delhi HC

Move to impact 133,000 notices, say officials; leg up for similar pleas across the country

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New Delhi: The Delhi High Court on Wednesday quashed more than 1,300 reassessment notices that the income-tax department had issued, saying that the new tax regime did not empower it to reopen cases after March 31 this year.

The court's verdict may have a bearing on around 133,000 reassessment notices issued by the department after March 31, an income tax department official said. The department may challenge the ruling in the Supreme Court and also seek to amend the Income Tax Act in the upcoming budget to proceed with the reassessment cases, the official said.

"Notifications dated March 31, 2021 and April 21, 2021 are declared ultra vires the Relaxation Act, 2020 and therefore bad in law and null and void," the high court said, while quashing the notices and allowing the writ petitions.

The tax department had issued these notices under Section 148 of the Income Tax Act between April 1 and June 30, alleging improper disclosures of income for years prior to the last

Regime Change

I-T dept issues over 1 lakh reassessment notices

Notices Issued between April and June under old regime

Thousands of taxpayers contest move across the country

Taxpayers argue notices are contradictory to new regime

New regime allows dept to reopen cases only up to 3AYsa

three assessment years. Section 148 deals with the issuance of a notice on an income that has escaped re-computation or assessment. Taxpayers moved the high court contesting the notices on the ground that they were contradictory to the provisions of the new tax regime.

The government had in the budget 2021 amended the provision governing reassessment proceedings under Section 148, capping the period for issue of notice reopening past years' assessment to three years from six years earlier.

The amendment was to come into ef-

fect from April 1, 2021, implying that the notices were to be issued by March 31, 2021. But income tax authorities extended the time limit to June 30, 2021, citing the second wave of Covid-19.

The high court ruled that Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TOLA), does not empower the revenue department to extend the application of the old reassessment regime beyond March 31 as the Finance Act, 2021 had introduced a new scheme of reassessment with effect April.

Tax experts said this judgement brings relief not just to taxpayers who had filed similar petitions before the Delhi High Court, but will also have a favourable impact for those who have filed similar petitions before other high courts.

"The view taken by one high court is not binding on other high courts, but definitely carries persuasive value for other high courts," said Shallesh Kumar, partner, Nangla & Co LLP.

Kumar pointed out that on the issue of legal validity of reassessment notices issued under old Section 148 after April 1, 2021, three high courts — Allahabad, Rajasthan and now Delhi — have taken a decision in favour of the taxpayers, treating the reassessment notices as bad in law. "Therefore, it will be now difficult for other high courts to distinguish and differ from this view and take a decision in favour of the income tax department," he said.

This judgement will be applicable only on those taxpayers who had challenged the reassessment notices before the High Court. Taxpayers, who have not challenged the notices, may still have to go through the long process of reassessment proceedings and appellate proceedings.

Delhi HC quashes IT Dept's reassessment notices

Decision likely to have a positive impact on similar matters in other High Courts

SHISHIR SIMHA

New Delhi, December 17

The Delhi High Court, on Wednesday, quashed reassessment notices that were issued under the old regime after April 1, 2021 without adhering to the procedure entailed in Section 148A of the Income Tax Act.

The order was passed after hearing a batch of 1,346 writ petitions challenging the action of the Income Tax Department. The judgement is in line with similar rulings given by the Allahabad High Court and the Rajasthan High Court. Experts feel this ruling will have positive impact on similar matter lying before courts all over the country.

A division bench of Justices Manmohan and Navin Chawla made it clear that the executive cannot use the administrative power 'undermining

the expression of Parliamentary supremacy in the form of an Act of Parliament.'

"This Court is also of the opinion that the Executive/Respondents/Revenue cannot frustrate the purpose of substituted statutory provisions, like Sections 147 to 151 of Income Tax Act, 1961 in the present instance, by emptying it of content or impeding or postponing their effectual operation," the bench said.

The whole issue behind this litigation is the substitution of provisions related with Sections 147 (income escaping assessment), 148 (issue of notice where income has escaped assessment), 149 (time limit for notice) and 151 (sanction for issue of notice) through the Finance Act 2021. The act also inserted new Section 148 A, which prescribes for conduct-



Decision given after hearing a batch of 1,346 writ petitions

ing inquiry, providing opportunity before issue of notice under Section 148.

Validity challenged

The assessee challenged the validity of reassessment notices issued under the old regime of reassessment but after April 1, 2021 in the light of the extension notifications issued by the Central Board of

Direct Taxes (CBDT) under Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TOLA), without adhering to the procedure entailed in Section 148A.

After going through detailed hearing, the Bench rejected the doctrine of conditional legislation relied upon by the Chhattisgarh High Court but concurred with the view of the Allahabad High Court and the Rajasthan High Court. It held the impugned explanations to extension notifications as ultra vires TOLA. It also held that that TOLA does not empower the Revenue to extend application of the old reassessment regime beyond March 31, 2021 as the Finance Act, 2021 introduced new scheme of reassessment with effect from April 1, 2021.

Commenting on the ruling, Shailish Kumar, Partner, Nangia & Co LLP feels this judgement will not only provide re-

lief to thousands of taxpayers, who have filed similar petitions before the Delhi High Court, but will also have favourable impact for taxpayers, who have filed similar petitions before other High Courts across the country, viz. Bombay High Court, Gujarat High Court, Karnataka High Court, Calcutta High Court, etc.

"It is also important to note that this judgment will be binding only on those taxpayers, who have challenged the reassessment notices before the High Court. In case of other taxpayers, who have not challenged the notices and continue to participate in reassessment proceedings initiated by the Income Tax Department, they may have to go through the long process of reassessment proceedings and appellate proceedings (if any adjustment is made by income tax department after conclusion of reassessment proceedings)," Kumar said.

Delhi HC quashes recent tax notices issued under old regime

FE BUREAU

New Delhi, December 15

The Delhi High Court (HC) on Wednesday quashed all tax reassessment notices issued under the old regime after April 1, 2021, bringing respite to thousands of taxpayers.

Over 1,300 writ petitions were filed in the HC challenging the validity of reassessment notices issued under the old regime of reassessment but after Apr 1, 2021 in the light of the extension notifications issued by the CBDT under Taxation and Other Laws (Relaxation and Amendment of Cer-



tain Provisions) Act, 2020 (TOLA) due to Covid, without adhering to the procedure entailed in Section 148A.

The Court held that TOLA did not empower the tax department to extend application of the old reassessment regime beyond March 31, 2021 as the Finance Act, 2021 introduced new scheme of reassessment with effect from April 1, 2021.

Under the old tax regime, reassessment notice could be issued up to 4 years, 6 years, or 16 years, depending on the cases. Under the new tax regime, reassessment notices

can be sent up to 3 years or 10 years only. In the new regime, taxmen have to provide opportunity to the assessee to explain his case when revenue requires it to be reopened (no such provision earlier).

"This judgment will not only provide relief to thousands of taxpayers, who have filed similar petitions before Delhi High Court, but will also have favourable impact for taxpayers, who have filed similar petitions before other High Courts across the country, viz. Bombay High Court, Gujarat High Court, Karnataka High Court and Calcutta High Court," said Shailish Kumar, Partner, Nangia & Co LLP.