

Daily Tax Report ®

# India's Top Court Revives Notices to Reopen Old Tax Audits (1)

By Shefali Anand

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In a blow to taxpayers, India's Supreme Court Wednesday revived thousands of notices sent by the tax department last year to reopen old assessments, even though such notices had been quashed by several local high courts.

Lawyers said thousands of taxpayers will have to face tax proceedings that they thought had been put to rest by high court orders in recent months.

"It will be a renewed battle for all the assesseees who painstakingly spent both time and money to file and argue writs before various High Courts who have given speaking orders on the subject," said Aastha Dhowan, partner, taxation at Mumbai-based accounting firm N.A. Shah Associates.

The Supreme Court invoked a constitutional provision, Article 142, that gives the court extraordinary powers for doing "complete justice" in any cause or matter pending before it. The court has never invoked this article with respect to a tax matter.

"This will create doubts in the minds of taxpayers regarding certainty in tax proceedings," said Shallesh Kumar a partner in the direct taxation team at Nangia & Co.

Around 90,000 tax notices fall under the purview of the Supreme Court's ruling. While the Supreme Court agreed with the high courts that these notices were bad in law, it said that the tax department officials had made a bonafide mistake and so could not be left without remedy.

Its order will "strike a balance between the rights of the Revenue as well as the respective assesseees," said the court.

The Supreme Court ruling settles a months-long dispute between thousands of taxpayers and India's tax department over notices sent to reopen old assessments for recomputation of tax.

## Amended Rules

The Income-tax Act of 1961 has rules that tax officers should follow if they want to reopen an old assessment or audit. These rules were amended by Finance Minister Nirmala Sitharaman in last year's budget.

A lack of tax certainty, and particularly retrospective tax demands, are common complaints of companies doing business in India. Prime Minister Narendra Modi's administration has made efforts to address this, and Sitharaman's tweaks fit that pattern.

One key amendment was that taxpayers should have a chance to explain any alleged gap in tax payments before the tax department issued a formal notice for reassessment. The 2021 budget also reduced the time limit for reopening of income tax assessment from four to three years, or longer if the amount that had escaped assessment was large.

Sitharaman indicated that these changes were aimed at reducing uncertainty for taxpayers. A new section 148A was introduced in the Income-tax Act, and that became law from April 1, 2021.

However, the tax department issued multiple notifications to delay the adoption of the new rules until June 30. Between April 1 and June 30, tax officials sent around 90,000 reassessment notices, including reopening assessments that went back more than three years. Taxpayers weren't given a chance to explain themselves before launching the reassessment process.

### Challenges Filed

Taxpayers had filed 9,000 writ petitions in courts across the country in recent months, according to the Supreme Court order.

"If the idea is to bring in certainty, then the volume of litigation has to go down compared to earlier. Now volume is, in fact, going up," said Tushar Hemani, a senior advocate and founder Lexperts Advocates, in the western city of Ahmedabad.

The tax department has held that its notifications were issued under special powers granted under a law enacted in 2020 in the wake of the Covid-19 pandemic. The Taxation and Other Laws (Relaxation of Certain Provisions) Act, 2020, granted government authorities the ability to extend statutory limits that couldn't be met due to the pandemic.

### Leeway Needed

In its ruling on Wednesday, the Supreme Court said that it agreed with the stance of the high courts that after April 1, the tax department should have issued notices using the new provisions. However, it disagreed with the lower courts' ruling in quashing all notices, as that would mean no reassessments would happen for the April to June period.

"The Revenue cannot be made remediless," said the Supreme Court order. It said the tax officials had made a genuine mistake, and should be given leeway.

The court ordered that all notices that were sent between April 1 and June 30 should be treated as having been sent under the revised Section 148A, and the tax department would have to follow all new procedures to follow these through. It said tax officers would have 30 days from the date of the ruling to provide material based on which he wanted to reopen an old assessment. In turn, the taxpayer would have two weeks to respond to this notice.

Some tax experts said the tax department would have simply issued new assessment notices had the old ones not been held to be valid by the apex court. So, the Supreme Court order may end up saving paperwork for taxpayers.

"Its a practical solution to a big logjam which otherwise would have been created," said Ashutosh Dikshit, partner, Deloitte India.

The case is: Union of India & Ors. v. Ashish Agarwal, Civil Appeal No. 3005/2022, May 4, 2022