Time to Reassess the Reassessment Imbroglio

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What was supposed to be an amendment to provide certainty to taxpayers and offer ease of doing business to the business community at large has turned to be one of keenly followed dispute between the taxpayer and the tax authorities. With the Hon'ble Delhi High Court emphatically quashing the reassessment notices issued by the department under the old law after 31st March 2021, the pendulum has swung in favour of the taxpayers and as of now the score stands 3:1 with the Delhi, Allahabad and Rajasthan High Courts deciding in favour of the taxpayers and the Chhattisgarh High Court deciding in favour of the department. The background, the decision of the Court and the related issues are subject matter of this article. With due respect to all the High Courts, only the decision of the Delhi High Court is being discussed in detail in this article.

Background

The procedure governing the initiation of reassessment proceedings prior to coming into force of the Finance Act, 2021 was governed by section 147 to section 151 of the Act. Due to the onset of Covid-19 pandemic by way of providing relaxations in order to comply with the statutory time limits, the Government introduced the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020. The purpose of this Ordinance was to relax certain provisions, including extension of certain time limits in the taxation and other laws. As the pandemic did not show any signs of abatement the legislature enacted The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act 2020 in September 2020 (the Relaxation Act) which replaced the said Ordinance. Section 3 of the Relaxation Act enabled the Central Government to issue notifications for further relaxing the time limits/limitations specified under various Acts including the Income-tax Act.

In pursuance to the power vested under Section 3 of Relaxation Act, 2020, the Central Government issued following Notifications inter-alia extending the time lines prescribed under Section 149 for issuance of reassessment notices under Section 148 of the Income Tax Act, 1961:

Date of Notification	Original limitation for issuance of notice under Section 148 of the Act	Extended Limitation
31.03.2020	20.03.2020 to 29.06.2020	30.06.2020
24.06.2020	20.03.2020 to 31.12.2020	31.03.2021
31.03.2021	31.03.2021	30.04.2021
27.04.2021	30.04.2021	30.06.2021

The Explanations to the Notifications dated 31st March 2021 and 27th April 2021 issued under the Relaxation Act, 2020 also stipulated that the provisions as existed prior to amendment made by Finance Act 2021, shall apply to the reassessment proceedings initiated thereunder. The Government meanwhile amended the reassessment procedure by Finance Act 2021 which was passed on 28th March 2021. Despite the substituted Sections 147 to 151 coming into force on 1st April 2021, the tax department issued notices to taxpayers under the erstwhile sections 148 to 151 relying on the Notifications dated 31st March 2021 and 27th April 2021. These notices were challenged by the taxpayers by way of writ petitions before the various Courts.

Decision of the High Courts

Chhattisgarh High Court

The Hon'ble Court considering the situation caused due to the pandemic upheld the validity of the notices under section 148. The operative part of the Order is given below:

"7. *The necessity occurred because of the Covid pandemic lock down in the backdrop of the fact that few of the assessee could not file their return. Likewise since the offices were closed, the department also could not perform the statutory duty under the Income-tax Act. Considering the complexity, the Parliament thought it proper to delegate the Ministry of Finance, the date of applicability of the amended section. The delegation is not a self-contained and complete Act and is only been made in the interest of flexibility and smooth working of the Act, and the delegation therefore was a practical necessity. The Ministry of Finance have been delegated with such power therefore this delegation can always be considered to be a sound basis for administrative efficiency and it does not by itself amount to abdication of power.*

Reading of both the notification dated 31-3-2021 and 27-4-2021, whereby the application of section 148 of the Income-tax Act, which was originally existing before the amendment was deferred meaning thereby the reassessment mechanism as prevalent prior to 31st March, 2021 was saved by the notification. It can be always be assumed that the deferment of the application of section 148A was done in a control way. It is settled proposition that any modification of the Executives implies certain amount of discretion and to be exercised with the aid of the legislative policy of the Act and cannot travel beyond it and run counter to it or certainly change the essential features, the identity, structure or the policy of the Act. Therefore, this legislative delegation which is exercised by the Central Government by notification to uphold the mechanism as prevailed prior to March, 2021 is not in conflict with any Act and notification by executive i.e. Ministry of Finance would be the part of legislative function"

Allahabad High Court

The Hon'ble Allahabad High Court quashed the reassessment notices in a very detailed order inter alia on the following grounds:

- By Virtue of Section 1(2)(a) of the Finance Act, 2021, the provisions of section 147 to 151 as existing prior to Finance Act 2021 stood amended by Finance Act 2021 and therefore the revenue authorities could only initiate reassessment proceedings in accordance with the substituted law.
- Section 3(1) of the Relaxation Act 2020 does not give an overriding effect to the Finance Act 2021. The Relaxation Act only extends the time period to do certain acts.

Rajasthan High Court

The Hon'ble Court relied on the decision of the Allahabad High Court and granted relief to the taxpayers.

Delhi High Court

In order to appreciate the order of the Court it is imperative to understand the arguments that were put forth before the Court. The arguments of the taxpayers and the revenue are tabulated below:

Arguments before Hon'ble Court

S.No.	Taxpayers	Revenue
1	As Finance Act 2021 had substituted the earlier provisions, with the new provisions, the same would result in repeal of the earlier provisions and therefore such earlier provisions could not be relied upon.	The Relaxation Act 2020 created a legal fiction by virtue of which the department was entitled to invoke Section 148 of the Act as it existed prior to 31st March 2021 during the extended time period. As a result of this fiction, the Revenue had the power to issue such notices.
2	It was pointed out that as per the new provisions reassessment proceedings could be initiated within 3 years from the end of the relevant assessment year and in exceptional circumstances within 10 years from the end of the relevant assessment year. Reliance was placed on the decision of C.B. Richard Ellis (Mauritius) Ltd. V Assistant Director of Income-tax [TS-364-HC-2012(DELHI)-O] (Delhi) where the Court held that the reduced time limit applied from the date when the Finance Act came into force. Further, for initiation of reassessment proceedings for any Assessment Year prior to Assessment Year 2018-19, exceptional conditions of Section 149 clause (b) were required to be satisfied by the Revenue and satisfaction of the aforesaid preconditions prescribed by clause (b) could be ascertained only when the procedure prescribed under Section 148A had been followed prior to issuance of notice under Section 148 of the Income Tax Act, 1961.	It was submitted that there was no conflict between the Relaxation Act 2020 and the Finance Act 2021 and if at all there was a conflict the Relaxation Act 2020 would override the Finance Act not only it being a Special Act but also for the reason that it contains a non-obstante clause which gives it an over-riding effect over the Income-tax Act, 1961. It was submitted that there is a vested right in favour of the Revenue under the old regime of Sections 147 to 151, which could not be taken away by applying retrospectively a shorter period of limitation in a new provision i.e., the substituted Section 149.

3	It was also submitted that once the Parliament had exercised its powers of legislation (enactment of Finance Act, 2021), then any action, such as issuance of Notifications dated 31st March, 2021 and 27th April, 2021 contrary to said legislation, taken by any other agency/wing of the Government was bad in law as the same fell foul of the doctrine of 'Occupied Field'. They submitted that the entire law stood substituted and was specifically made applicable from a particular date. Accordingly pursuant to the Legislature occupying the field governing initiation of reassessment proceedings, no authority was vested in Government to issue the Notifications dated 31st March, 2021 and 27th April,2021, so as to disturb/intrude into the field occupied by the Legislature.	It was contended that the Relaxation Act, 2020 maintains equality ensuring that notices under old Section 148 were issued to all similarly placed assessees i.e. the assessees to whom notices were issued prior to March, 2020 and those to whom notices could not be issued due to the pandemic. It would lead to unreasonable classification between those assessees who could not be issued notices only due to pandemic, who would be treated more favourably and unequally than those set of assessees in whose favour notices stood issued prior to March, 2020, for escapement of income for the same set of assessment years.
4	It was further argued that the Notifications were in excess of the enabling powers prescribed under Section 3 of Relaxation Act 2020, as Relaxation Act 2020 did not delegate the power to legislate on provisions to be followed for initiation of reassessment proceedings and that the Notifications were ultra vires the provisions of Sections 147, 148, 148A, 149 & 151 of the Income Tax Act, 1961, as amended by the Finance Act, 2021, as the said provisions had been substituted /inserted with effect from 1st April, 2021, effectively repealing old provisions that existed prior thereto.	The Revenue relied on Hohfeld's theory on Jural Relations, to argue that there is a liability imposed on the person against whom the power exists and if the power under the erstwhile Section 148 existed, then consequently, the corresponding liability to be reopened under unamended Section 148 continued. Section 6 of the General Clauses Act, 1897 allows the Revenue to issue notices since by operation of Section 3(1) of the Relaxation Act 2020 a right had accrued in favour of the Revenue to re-open the assessment within the extended time period in such cases where limitation to reopen under section 148/149 expired on 31st March

		2021.
5	It was also argued that since the impugned notices issued between 1st April 2021 and 30th June 2021 had been issued in violation of the mandatory procedure prescribed under section 148A of the Act as substituted by Finance Act 2021	

Findings of the Delhi High Court:

- The Court noted that by virtue of Section 1(2)(a) of the Finance Act, 2021, which includes the substituted section 147 to 151 (covered in section 2 to 88 of the Finance Act), the sections contained therein shall come into force on 1st April, 2021 which is in contrast to the language under Section 1(2)(b) which states that Sections 108 to 123 of the Finance Act, 2021 shall come into force on such date, as the Central Government may, by Notification in the Official Gazette, appoint. The Memorandum to the Finance Bill, 2021, too, clarifies that its Sections 2 to 88 which included the substituted Sections 147 to 151 of the Income Tax Act, 1961 will take effect from 1st April, 2021. The Court therefore held that there is no power with the Executive/Respondents/Revenue to defer/postpone the implementation of the substituted Sections 147 to 151 of the Income Tax Act, 1961.
- The Court held that Section 3(1) of Relaxation Act, 2020, extends only the timelines. It does not empower the Central Government to postpone the applicability of any provision which has been enacted from a particular date. Accordingly, the Court held that the impugned Explanations in the Notifications dated 31st March, 2021 and 27th April, 2021 are beyond the power delegated to the Government. The Court further held that, the impugned Explanation is in conflict with the provisions of the Act, which had specifically made the new reassessment scheme applicable from 1st April, 2021. It is settled law that the delegation of authority must be express. There is no scope for any implied delegation of authority. The delegated authority must act strictly within the parameters of the authority delegated to it. The delegated authority cannot override the Act either by exceeding the authority or by making provisions inconsistent with the Act.
- The Hon’ble Court did not accept the argument of the Revenue on the application of the Hohfeld’s theory on Jural Relations. The Court held that with the coming into force of the Finance Act, 2021 w.e.f. 1st April, 2021, there has been no curtailing or taking away the power of the Revenue. It has merely changed the procedure of issuing notice. Consequently, the “power” as per Hohfeld’s theory that existed prior to 31st March, 2021 continues to exist even thereafter.
- The Court noted that the provisions of section 149 were amended multiple times to enhance or reduce the time limit for reassessment. In all such cases such enhancement/reduction to the time limit was made effective from different dates of the relevant financial year. The Court relied on its earlier decision in the case of C.B. Richards Ellis Mauritius Ltd. to buttress its findings.
- The Court referred to the speech of Finance Minister and the Memorandum explaining the provisions in the Finance Bill, 2021, and noted that it is apparent that the legislative intent behind the aforesaid substitutions/amendments is to reduce the time limit in ordinary cases to three years and to increase the threshold amount of income having escaped assessment to Rs.50 lakhs for invoking extended time limit of ten years, to reduce litigation and compliance burden, remove discretion, impart certainty and promote ease of doing business. The Court accordingly held that the new provisions are remedial and benevolent provisions which are meant and intended to protect the rights and interests of assessees.
- The Court noted the provisions of Circular 549 of 1989 issued by the CBDT explaining the provisions of the Direct Tax Laws (Amendment Act), 1989 amending erstwhile Sections 147 to 152, wherein it was clarified that the said provisions were procedural in nature and would have retrospective effect, unless the amending statute provides otherwise. The Court therefore held that on the one hand, the Respondents are contending that the amendment made by the Finance

Act, 2021 shall not be applicable to past assessment years, while on the other hand, they are contending that from 1st July, 2021, the amendments made by the Finance Act, 2021 will be applicable. This is contradictory inasmuch as for three months starting on or after 1st April, 2021, the amendment made by the Finance Act, 2021 shall be considered as substantive in nature and hence applicable prospectively, while from 1st July, 2021, the amendment made by the Finance Act, 2021 will be considered as procedural and hence will be applicable retrospectively for any assessment year including earlier years.

- The Court held that the "legal fiction" argument is without any foundation. A statute can be said to enact a legal fiction when it assumes the existence of something which is known not to exist. The extension of time for completing an assessment or issuing a Section 148 notice has no element of legal fiction in it. The only effect and consequence of this extension of the time limit is that if the act in question is performed within the extended time limit, it will be considered to be legally compliant.
- The Court Noted that the provisions of the Finance Act, 2021 have not only repealed the erstwhile provisions of Sections 147, 148, 149 and 151 of the Income Tax Act, 1961 but also "substituted" them by new provisions. The process of 'substitution' consists of two steps: first, the rule is made to cease and the next, the new rule is brought into existence in its place. 'Substitution' has to be distinguished from 'suppression' or a mere repeal of an existing provision. Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision. Consequently, the submission of the revenue that Section 6 of the General Clauses Act saves notices issued under Section 148 of the Income Tax Act, 1961 is untenable in law, as in the present case, the repeal is followed by a fresh legislation on the same subject and the new Act manifests an intention to destroy the old procedure.

The Court accordingly quashed the impugned notices and allowed the writ petitions.

Way Forward

It is very unfortunate to see how this whole situation around the reassessment proceedings has unfolded more so the manner in which the tax authorities have gone about issuing notices in utter disregard to the Legislative mandate. Be that it may, the question is that will the department be graceful in accepting its folly or knock at the door of the Supreme Court. Considering the number of cases in question it seems highly likely that this would be contested at the Apex Court. It may be noted that whether or not these judgements are contested, the department still gets another shot to re-open the cases subject to compliance of the conditions of the new law.

From a taxpayers perspective for those who filed a writ will heave a sigh of relief but a sword of uncertainty still looms as the Union Budget is round the corner. For those taxpayers who missed the bus should not worry as the High Court has held the Explanation to be ultra vires and therefore this judgement will come to the rescue of all taxpayers and it is not that other taxpayers cannot take benefit of the same. The taxpayers should write to their respective Assessing Officer to consider the decision of the jurisdictional High Court and end the proceedings. If the Assessing Officer does not respond within a suitable time period then the taxpayers would have to either challenge this as part of the normal appellate procedure or knock at the door of the jurisdictional High Court.

From a department's perspective while relief on account of these decisions of the High Court would accrue to thousands of taxpayers another aspect which would be weighing upon the Board is that orders have been passed under section 148 while the operation of the impugned notification were stayed by the Court. Whether this would be separately challenged by the taxpayers is another angle which would have to be considered by the Board.

The ball is surely now in the department's court and it is anybody's guess as to what would be the response from the department. One thing though is for sure, the more this matter is prolonged it would go against the Government's policy of 'ease of doing business' and therefore this reassessment litigation should be buried now and forever.