



Tax Insights

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Extended time limit of 16-years for reassessment to tax foreign asset not applicable to assessments that are concluded and time-barred prior to effective date of amendment providing time limit – Mumbai bench of the Tribunal

In brief

The Mumbai bench of the Income-tax Appellate Tribunal (Tribunal)¹ held that the extended time limit of 16 years for reassessment to tax foreign asset would not be applicable to assessments which stood concluded and time-barred prior to the effective date of the amendment providing the time limit.

In detail

Facts

- The taxpayer was subject to reassessment for assessment years (AYs) 1999–2000 and 2004–05 *vide* notices issued in March 2015, as certain evidence was found during a search investigation conducted at the taxpayer's father's residence which showed the following:
 - The taxpayer was the beneficial owner or beneficiary to certain deposits in a bank account in Geneva, and the taxpayer had not disclosed details of the same in the tax return filed in India.
 - The taxpayer's parents had invested in Resurgent India Bonds, and the taxpayer received its maturity proceeds; however, the source of investment had not been furnished.
- Based on the above evidence, the Tax Officer (TO), relying on section 149(1)(c) of the Income-tax Act, 1961 (the Act) as it stood at the time of initiation of proceedings (March 2015), reopened the assessments and made an addition on account of undisclosed asset or investment.

Issue before the Tribunal

Whether the extended period of 16 years for reassessment for taxing foreign asset would be applicable to assessments which stood concluded and time-barred prior to the effective date of the amendment providing the time limit?

¹ ITA No. 968/Mum/2020 (AY 2004-05) & ITA No. 974/Mum/2020 (AY 1999-2000)

Tribunal's observations and ruling

- Section 147 of the Act empowers the TO to initiate reassessment proceedings if they have reason to believe that any income chargeable to tax has escaped assessment for any AY. Such power is, however, subject to the provisions of sections 148 to 153 of the Act. Section 149 of the Act prescribes the time limit within which reassessment proceedings can be initiated under the Act.
- In the subject case, AYs 1999–2000 and 2004–05 were reopened for taxing foreign assets. The timelines provided in section 149 of the Act, as per Finance Act, 1999 and Finance Act, 2004 were seven and six years, respectively. This time limit was extended, *vide* the Finance Act, 2012, to 16 years where the income that has escaped assessment is in relation to an asset outside India. This amendment was accompanied with an Explanation which states that 'For the removal of doubts, it is hereby clarified that the provisions of sub-sections (1) and (3) of section 149, as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April 2012'. However, the time limit for initiating reassessment proceedings for AYs 1999–2000 and 2004–05 had expired before this amendment.
- The Mumbai bench of the Tribunal placed reliance on the Delhi High Court's decision in the case of Brahm Datt² and the Calcutta High Court decision in the case of Jayashree Jayakar Mohankar³, to hold that 'amendment of section 149 of the Act by Finance Act, 2012, which extended limitation for reopening assessment to 16 years could not be resorted to for reopening proceedings concluded before amendment came into effect'. A Special Leave Petition was filed by the Revenue against the decision of the Delhi High Court in the case of Brahm Datt² which was dismissed by the Supreme Court⁴ making the Delhi High Court judgement final.
- The aforesaid rulings placed reliance on the following decisions of the Supreme Court:
 - The law of limitation is intended to give certainty and finality to legal proceedings and to avoid exposure to risk of litigation for the litigant for an indefinite period on future unforeseen events. Proceedings which have attained finality under existing law due to bar of limitation cannot be held to be open for revival unless the amended provision is clearly given retrospective operation so as to allow upsetting of proceedings, which had already been concluded and attained finality.⁵
 - A taxing provision imposing a liability is governed by the ordinary presumption that it is not retrospective, and the settled principle of law is that the law to be applied is that which is in force in the AY, unless otherwise provided expressly or by necessary implication. Even a procedural provision cannot, in the absence of clear contrary intent expressed therein, be given greater retrospectivity than is expressly mentioned so as to enable the authorities to affect the finality of tax assessments or to open up liabilities which have become barred by time lapse.⁶
 - It is a well-settled principle of interpretation that unless the terms of a statute expressly so provide, retrospective operation should not be given so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure.⁷
- The Mumbai bench of the Tribunal, based on the above decisions of the High Courts and the Supreme Court, concurred with the conclusion of the CIT(A) that once the proceedings for a particular year have attained finality on expiration of the period of limitation, such concluded proceedings could not be reopened by merely resorting to the subsequent amendment in law.

The takeaways

This ruling highlights the limitations imposed on the tax authorities by the statute, particularly on the proceedings that are already time-barred. Contrary to the judgement discussed in this Tax Insights, a coordinate bench of the Tribunal has, in the case of the taxpayer's father⁸ and in the case of Mitali R

² Brahm Datt v. ACIT & Otrs [W.P. (C) 1109/2016]

³ DCIT v. Jayashree Jayakar Mohanka [IT(SS)A Nos. 37 & 38/Kol/2018 for AY 2005-06 and 2006-07]

⁴ Order dated 5 July 2019

⁵ K.M. Sharma v. ITO [2002] 254 ITR 772 (SC)

⁶ S.S. Gadgil v. Lal & Co. [1964] 53 ITR 231 (SC)

⁷ Govind Das v. ITO [AIR 1977 SC 552]

⁸ ITA No. 966/Mum/2020

Lakhanpal⁹, held that the amendment made in section 149 of the Act providing an extended period of 16 years for reopening an assessment is retrospective in nature, as per the Explanation to section 149(3) of the Act which had not been considered in the case of Brahm Datt² dealt by the Delhi High Court.

Vide the Finance Act, 2021, section 149 of the Act was substituted, further reducing the time limits for reassessment proceedings. Additionally, a proviso was also inserted, namely, that these provisions of the substituted section would not be applicable to proceedings which were time-barred before the commencement of the Finance Act, 2021. This exclusion, however, was not available in the section as it stood at the time of initiation of the proceedings of the current case (March 2015).

The Explanation to section 149 of the Act, as existed in March 2015, mentioned that the extended period of 16 years for reopening of an assessment is retrospective in nature. Considering the difference in interpretation on whether the retrospective amendment also applies to years that are barred by the period of limitation, a possible beneficial interpretation could be considered placing reliance on this Tribunal ruling and other similar rulings mentioned above. Though, given the contradictory rulings on the topic, this issue will continue to be litigative.

⁹ DCIT v. Smt. Mital R Lakhanpal [ITA No. 967/Mum/2020]

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