

## Tax Insights

11 January 2023

### Karnataka High Court quashes reassessment proceedings being barred by the period of limitation

#### In brief

The Karnataka High Court<sup>1</sup> quashed the reassessment proceedings initiated for assessment year (AY) 2014–15 vide a notice issued under section 148 of the Income-tax Act, 1961 (the Act) dated 30 June 2021. The petitioner has submitted that the aforesaid notice was issued under the erstwhile provisions of section 148 of the Act (applicable before the amendment was introduced by the Finance Act, 2021) which was challenged before the court by way of a writ petition and allowed to the petitioner. The Supreme Court, subsequently in the case of Ashish Agarwal<sup>2</sup>, cured the legality of such notices by treating the impugned notices as show cause notices issued under the amended law (applicable under the Finance Act, 2021). Relying on the aforesaid Supreme Court decision, reassessment proceedings were carried out, and an order was passed against the petitioner. The said impugned order was challenged before the court in the case under consideration. The court has held that the reassessment proceedings were initiated merely by change of opinion and barred by the period of limitation prescribed under section 149 of the Act; therefore, the proceedings deserved to be quashed.

#### In detail

##### Facts

- The petitioner is a private limited company and the sole trustee of a private discretionary trust (Trust).
- The Trust received 61 million shares of a listed company by way of gift to be held as a part of the corpus of the Trust from a charitable entity belonging to same Group of which the Trust is a part.
- During FY 2013–14, the petitioner sold a portion of the gifted shares and disclosed the capital gains in its audited financial statements.
- The petitioner was subjected to scrutiny proceedings under section 143 of the Act for AY 2014–15, wherein the sale of such shares was assessed to capital gains tax.
- The petitioner was later issued a notice under section 148 of the Act for the concerned year. The petitioner

<sup>1</sup> Writ Petition No. 15910 of 2022

<sup>2</sup> Civil Appeal No. 3005/2022

had submitted that the said notice was challenged<sup>3</sup> before this court and was allowed to the petitioner.

- Later, pursuant to the Supreme Court decision in the case of Ashish Agarwal<sup>2</sup>, where the legality of such notices was cured, a show cause notice for reassessment proceedings was issued to the Trust.
- The reassessment proceedings were concluded by treating the gifted shares received by the petitioner as income from other sources under the provisions of section 56(2)(vii)(c) of the Act.

### Petitioner's contention

The petitioner has urged that during the course of the scrutiny assessment, the respondent has specifically asked for and was given a copy of the petitioner's demat account, which provided the full information about the gift of such shares received by the petitioner. Thus, there was no failure or omission on the part of the petitioner to disclose any material facts or information in respect of the gift of such shares received by the petitioner.

### High Court's decision

- The applicable period of limitation for the issuance of the impugned notice under section 149(1)(a) of the Act (post amendment) is three years, which expired on 31 March 2018.
- The extended timeline of ten years for the issuance of the notice under section 149(1)(b) of the Act does not apply to the instant case because the allegation of escapement of income is not based on books of account or other documents or evidence in the possession of the respondent (as required by the law). On the contrary, the allegation of escapement of income is based only on the disclosure expressly made by the petitioner itself of the gift of the listed company's shares received by it, and the said information was readily available with the respondent when the original assessment order was passed.
- At the time of passing the scrutiny assessment order, the respondent came to the definite conclusion that section 56(2)(vii)(c) of the Act did not apply despite having all the details, information and material that was required at that time. Based on the very same material, it was impermissible for the respondent to simply or merely change his mind and initiate the reassessment proceedings.
- The court has also considered the law prior to amendment. It has held that the sale of the listed shares during AY 2014–15 was assessed to capital gains tax by the Tax Officer which clearly indicated that he was fully aware of the market price of such shares much prior to the issuance of the impugned notice. Consequently, it cannot be said that the income of the petitioner had escaped assessment due to failure on the part of the taxpayer to disclose fully and truly all the material facts necessary for assessment. It appears that the court, considering the law prior to amendment, has held that the extended period of six years can only apply in case full and true disclosure of facts was not made, which is not the case here.
- The proviso to the amended section 149(1)(b) of the Act also provides that if a reassessment notice could not have been issued at the time by application of law as it stood prior to the amendment, then such notice cannot be issued under the amended law which provides a longer period of limitation.
- The proviso is a safeguard in favour of the taxpayer which prevents or prohibits the respondent from invoking the larger or longer period of ten years in cases of time barred notices which had lapsed on account of the expiry of the period of limitation under section 149(1)(b) of the Act prior to the amendment.
- The reassessment order was quashed by the court on account of the above observations.

### The takeaways

The Karnataka High Court has held that once the taxpayer has submitted all the relevant information during the scrutiny proceedings in relation to the transaction which is the subject matter of the reassessment proceedings under section 147 of the Act, then, based on the same information, the extended period of ten years cannot be invoked for the AYs which are barred by the period of limitation under the erstwhile provisions of section 149 of the Act. This is an important decision interpreting the new reassessment law. It seems to suggest that the books of account or other documents or evidence in the possession of the Tax Officer that can be used to undertake reassessment proceedings must be new evidence which was not available at the time of passing the order which is a subject matter of reassessment proceedings.

<sup>3</sup> W.P. No. 12668/2021

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