

# SC uses overriding power to settle 9k tax cases

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**NEW DELHI:** In a path-breaking verdict in income tax jurisprudence, the Supreme Court on Wednesday invoked its extraordinary powers under Article 142 to ward off a deluge of over 9,000 cases from inundating the top court's docket.

Article 142 of the Constitution empowers the Supreme Court to pass such "decree or order as may be necessary for doing complete justice between the parties", and is usually invoked by the apex court in matters of larger public interest or to settle disputes between the parties before it. However, a bench of justices MR Shah and BV Narasimha made an exception on Wednesday when it used Article 142 to hold that around 90,000 tax reassessment notices issued under the 1961 Income Tax Act should be treated as issued as per the new requirement of the amended 2021 Act.

This means that any notice sent to an assessee under the old regime should be treated as only a show-cause notice as per the amended act.

Noting that these notices are the subject matter of more than

9,000 petitions before various high courts and the I-T department proposes to move the SC in appeal in all these cases, the bench emphasised that it is imperative to resort to Article 142 "to lessen the burden of this court". "We propose to pass an order in exercise of powers under Article 142 of the Constitution of India. The present order shall govern all the other judgments and orders passed by various high courts on the similar issue. Hence, we observe that the Revenue need not file separate individual appeals which may be more than 9,000 in numbers," held the bench.

It underlined: "The present order is passed in exercise of powers under Article 142 of the Constitution of India so as to avoid any further appeals by the Revenue on the very issue by challenging similar judgments and orders, with a view not to burden this court with approximately 9,000 appeals."

Breaking new ground in the tax litigation, the court further underscored that its order under Article 142 shall govern not only the appeals against the HC orders pending before it, but shall also be made applicable in respect of the similar judgments and orders passed by all the HCs



The issue pertained to validity of reassessment notices issued to several entities under old provisions of the I-T Act, 1961.

and "therefore, the present order shall be applicable to pan India." The issue pending before the SC pertained to validity of reassessment notices issued to several entities under the old provisions of Section 148 of the I-T Act, 1961 after March 31, 2021. Earlier, the high courts of Allahabad, Bombay, Calcutta, Delhi, Madras and Rajasthan had allowed a clutch of petitions, which complained that the notices issued by the Revenue were untenable since several provisions of the 1961 Act, including Section 148, were substituted by the Finance Act, 2021 which came into force from April 1.

The 2021 Act, the petitioners pointed out, required the assessing officer to conduct an inquiry

and also provide assesses an opportunity of being heard before notices were sent, which was not done when notices were issued under the old regime.

The Central Board of Direct Taxes (CBDT), on the other hand, relied on the notifications issued by it under the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 in March and April this year, to maintain that it could issue the notice of reassessment under Section 148 by extending the time period.

Deciding the cases, the SC on Wednesday held that the new provisions under the 2021 Finance Act are remedial and benevolent in nature, and protect the interest of the assesses by

ensuring sufficient opportunities for them before reassessment notices are issued.

Even as the SC maintained that HCs were correct in ruling against the validity of the notices issued under the old regime after March 31, 2021, it clarified that the Revenue cannot be left remediless and the object and purpose of reassessment proceedings cannot be frustrated due to a bona fide mistake of the department in issuing notices under the 1961 Act. The high courts, it added, should have given some leeway to the I-T department by making the notices issued under the old regime to be treated as notices under the 2021 Act, subject to compliance of all the procedural requirements and the defence, which may be available to the assesses.

"It will strike a balance between the rights of the Revenue as well as the respective assesses as because of a bonafide belief of the officers of the Revenue in issuing approximately 90,000 such notices, the Revenue may not suffer as ultimately it is the public exchequer which would suffer," the top court said.

The bench, therefore, directed that all HC orders shall stand modified to the extent that reassessment notices under old Section 148 would be construed as show-cause notices under new Section 148A, and the assessing officers shall provide assesses

with relevant materials within 30 days to enable them to respond. It pointed out that the procedure as mentioned under the 2021 Act takes off after show-cause notices are issued.

"The present order shall be applicable PAN INDIA and all judgments and orders passed by different high courts on the issue and under which similar notices which were issued on or after April 1, 2021 issued under Section 148 of the Act are set aside and shall be governed by the present order and shall stand modified to the aforesaid extent," it said.

Haksh Nangia, chairman of Nangia Andersen India, called it a landmark order. "Till now, the Supreme Court has been refraining from invoking extra-ordinary constitutional power in tax matters, and would interpret tax laws based on statute book, as it stands. However, considering the very large number of cases, which might escape assessment of tax due to quashing of such reassessment notices issued on or after April 1, 2021 and its potential tax impact on the exchequer, the court has taken an exception in the present case", Nangia said. It is also crucial to note, he said, that reassessment proceedings are not revived in all 90,000 notices and that validity of proceedings in each case will be tested based on provisions of new law following replies to show-cause notices.



PICK OF THE DAY

# Tax reassessment: SC sets aside HC orders, revives show-cause notices

INDU BHAN & PRASANTA SAHU  
New Delhi, May 4

**THE SUPREME COURT** on Wednesday held that the reassessment notices issued under the unamended Section 148 of the Income Tax Act on or after April 1, 2021, will not be deemed to be invalid just because they were issued under the old law.

While modifying the relevant orders of various high courts that quashed the reassessment notices issued under the Section after the cut-off date, the SC said that those notices will be deemed as show-cause notices issued to the respective assessee under the new Section 148A of the Act.

The SC order would mean that the change in law can't be an alibi for taxpayers to escape the proceedings initiated via the notices. The rate stop taken by the apex court invoking the Constitution will help clear the backlog of over 9,000 appeals filed by the finance ministry in this connection. The apex court ruled that its order shall also govern the relevant pending cases before various HCs.

A Bench led by Justice MR Shah passed the judgment in a batch of cases led by Union of India vs Ashish Agarwal. In this batch of 24 cases, the high courts had ruled in favour of the assessee by quashing several



reassessment notices issued by the department under Section 148 on the ground that the same were bad in law in view of the amendment by the Finance Act, 2021.

Partly allowing the appeals filed by the government, the apex court said that the requirement of conducting any enquiry, if required, with the prior approval of specified authority under section 148A(a) is hereby dispensed with as a one-time measure vis a vis those notices which have been issued under section 148 of the unamended Act from April 1, 2021 till date, including those which have been quashed by the HCs.

"All defences which may be available to the assessee, including those available under Section 149 of the IT Act, and all rights and contentions which may be available to the concerned assessee and the Revenue under the Finance Act, 2021, and in law shall continue to be available," the

judgment stated.

The assessing officer has to provide respective assessee information and material relied upon by the Revenue within 30 days from today so that the latter can respond to the show-cause notices within two months from the date of receipt of

Welcoming the SC decision, Rakesh Nangia, chairman, Nangia Andersen India, said while reversing/modifying the orders the SC has acknowledged that the HC orders on this issue was correct, based on interpretation of statutory provisions. "However, the SC has also noted that while change in law for reassessment has been made by the legislature for the benefit of taxpayers and department cannot be left remediless due to a bona-fide mistake of extending time limits by extension notification and issuing such reassessment notices on/ after 01.04.2021 under old reassessment law when new law had become applicable."

Nangia added that the apex court has struck a balance between the rights of the department and taxpayers and taken care to prevent the loss to public exchequer. According to the tax expert, till now, the SC had been refraining from invoking extraordinary constitutional power in tax matters and interpreting tax laws based on statute book, as it stands.

# Tax Reassessment Notices Issued from April '21 Upheld by SC

Relief for I-T, setback for taxpayers as SC invokes Article 142 of Constitution to reverse HC rulings

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New Delhi: The Supreme Court on Wednesday invoked its extraordinary powers under Article 142 of the Constitution to uphold all reassessment notices issued after March 31, 2021, by the income tax department reopening assessments going back six years. In the budget for FY22, the government had reduced this reopening period to three years with effect from April 1, 2021, to reduce litigation.

The I-T department extended the old regime till June 30, 2022, citing restrictions due to the Covid second wave and sent out a flurry of notices reopening past assessments. Taxpayers appealed against the

decision, saying it violated the March 31, 2021, deadline as amended by the finance bill. The Allahabad High Court had ruled in favour of taxpayers and quashed all notices. The department had appealed against the decision in the Supreme Court.

The Supreme Court decision is a setback to thousands of taxpayers, including businesses and individuals who will now have to gear up for reassessment proceedings if they had been served a notice. The ruling will apply to all pending writs at different high courts.

**About 90,000 reassessment notices were issued by the I-T department and about 9,000 appeals**

**were filed in various HCs**

About 90,000 reassessment notices were issued by the I-T department across India and about 9,000 appeals were filed in various high courts, some of which are either pending or the bench has ruled against the department, according to Rakesh Nangia, chairman, Nangia Anderson India.

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The tax department issued these notices under Section 148, alleging improper disclosure of income for the period prior to the last three assessment years.

## ARTICLE 142

In an unprecedented move, the division bench of justices MR Shah and BV Nagarathna exercised extraordinary powers under Article 142 of the Constitution to hold that all reassessment notices issued under Section 148 of the Income Tax Act should be treated as notices issued under Section 148A, which was introduced in the FY22 budget.

Section 148 deals with the issuance of a notice on income that has escaped re-computation or assessment if there is "reason to believe" that's the case. Under Section 148A, the taxpayer has to be heard and approval sought from the specified authority before a notice can be issued.

"The impugned Section 148 notices issued to the respective assesseees which were issued under unamended Section 148 of the IT Act, shall be deemed to have been issued under Section 148A of the IT Act as substituted by the Finance Act, 2021, and construed or treated to be show-cause notices in terms of section 148A(b)," the judgment said.

Under Article 142, the Supreme Co-

urt may pass an order as needed for exercising justice in any cause or matter pending before it. The decree is enforceable throughout India.

## REPLY TO NOTICES

The court directed that the assessing officer shall within 30 days provide to the respective assesseees information and material relied upon by the revenue department so that assessors can reply to show-cause notices within two weeks thereafter. The bench said the order will be applicable across India and all previous orders by high courts had been set aside. The order will also govern pending writ petitions pending before various high courts in which similar notices under Section 148 of the Act were issued after April 1, 2021, are under challenge.

This brings relief to the department of revenue as it would not be required to file any more appeals in similar cases where notices were quashed by several high courts and initiate proceedings against taxpayers as per the new law. "This comes as a major relief to the tax department and saves them from huge revenue loss due to technical error or oversight in legislative drafting. Taxpayers will have to get prepared to face the reassessment proceedings, which are likely to get restored and reinitiated at different stages," said S Vasudevan, executive partner, Lakshminikumar & Sridharan Attorneys.

# I-T reassessment notices valid: SC

SHRIMI CHOUDHARY

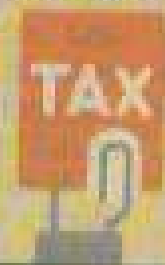
New Delhi, 4 May

The Supreme Court (SC) on Wednesday ruled in favour of the Revenue Department in the reassessment dispute case. The top court reversed the earlier high court orders that had quashed income-tax notices issued after March 31, 2021, under the old reassessment regime.

The SC ruling has come as a setback for thousands of taxpayers who had got favourable orders from several high courts on reassessment.

The apex court held that notices issued under the old regime will not be invalid and shall be deemed to have been issued under new provision of the reassessment regime introduced in the Finance Act, 2021.

## TAXING TIMES



Over 90,000 reassessment notices were issued under the old regime

9,000 plus writ petitions filed, challenging the validity of notices

Section 14B notice will

now be treated as notice under Section 148A of I-T Act (new law)

SC ruling applies to writ petitions pending in various high courts

Ruling will impact taxpayers on the tax and compliance front

...."In order to strike a balance between the rights of I-T and taxpayers and to prevent the loss of public exchequer, the Supreme Court, as one-time exception has directed that notices issued earlier under Section 148 to be deemed to have been issued under Section 148A of the Act under the new law," the Supreme Court said in the order.

The new reassessment law had capped the period for issuing notices with respect to reopening past cases at three years, down from six years earlier.

Even as the new regime kicked in from April 1, 2021, the tax department had issued over 90,000 notices between April 1 and June 30, 2021, for earlier years.

The notices were issued based on the government's notification extending the time limit to June 30, 2021, citing the second wave of the pandemic.

Following this, 9,000 plus writ petitions were filed in many courts challenging validation of the notices.

The tax department had issued these notices under section 148, alleging under-reporting and mis-reporting of income for years prior to the last three assessment years.

"Introduction of section 148A (new regime) of the IT Act can be said to be a game changer with an aim to achieve the ultimate object of simplifying the tax administration, ease compliance and reduce litigation," the apex court said.

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## IT notices...

Among foreign funds, the Singapore government's sovereign wealth fund (GIC) subscribed to shares worth over ₹400 crore through three funds, and BNP Investments subscribed to shares worth nearly ₹450 crore. A little over ₹1,600 crore came from overseas funds. The low demand from foreign funds is on the back of ongoing risk aversion among foreign portfolio investors.

Change in law for reassessment has been made by the legislature for the benefit of taxpayers and the IT department cannot be left remediless due to a bona-fide mistake of extending time limits by a notification and issuing such reassessment notices on or after April 1, 2021, under the old reassessment law, when new law had become applicable, it said.

It also directed the tax department to give sufficient opportunity to taxpayers.

"The judgment of SC is a landmark in the history of income tax jurisprudence, as it has invoked Article 142 of the Constitution, modifying and in a way reversing the orders passed by several courts," said Rakesh Nangia, chairman, Nangia Andersen India.

This ruling is on a special review petition filed by the Centre after three high Courts — Delhi, Allahabad and Rajasthan — quashed the notices issued by the tax department. Other high courts followed suit preventing the tax department from reopening cases for reassessment.

"Revenue cannot be without remedy and at the same time, a one-time opportunity for defence must be provided to assessee, thus upholding democracy, fairness and above all striking balance," said Mumbai-based chartered accountant Mitil Chokshi.

In the past, apex court has invoked Article 142 in some historical cases with wide ramifications such as Ayodhya Ram Janmabhoomi land dispute, Bhopal gas tragedy and coal block allocation, Nangia pointed out.