AKSHAY SHAH
18-12-2021

DEC 2021
ISSUE 18

TAXTIME

NEWSLETTER

DIRECT TAX NEWS

DELHI HC QUASHES IT DEPT'S REASSESSMENT NOTICES

The Delhi High Court, on Wednesday, quashed reassessment notices that were issued under the old regime after April 1, 2021 without adhering to the procedure entailed in Section 148A of the Income Tax Act.
The order was passed after hearing a batch of 1,346 writ petitions challenging the action of the Income Tax Department. The judgement is in line with similar rulings given by the Allahabad High Court and the Rajasthan High Court. Experts feel this ruling will have positive impact on similar matter lying before courts all over the country.

\A division bench of Justices Manmohan and Navin Chawla made it clear that the executive cannot use the administrative power 'undermining the expression of Parliamentary supremacy in the form of an Act of Parliament.'
"This Court is also of the opinion that the Executive/Respondents/Revenue cannot frustrate the purpose of substituted statutory provisions, like Sections 147 to 151 of Income Tax Act, 1961 in the present instance, by emptying it of content or impeding or postponing their effectual operation," the bench said.
The whole issue behind this litigation is the substitution of provisions related with Sections 147 (income escaping assessment), 148 (issue of notice where income has escaped assessment), 149 (time limit for notice) and 151 (sanction for issue of notice) through the Finance Act 2021. The act also inserted new Section 148 A, which prescribes for conducting inquiry, providing opportunity before issue of notice under Section 148.
Validity challenged
The assessees challenged the validity of reassessment notices issued under the old regime of reassessment but after April 1, 2021 in the light of the extension notifications issued by the Central Board of Direct Taxes (CBDT) under Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TOLA), without adhering to the procedure entailed in Section 148A.
After going through detailed hearing, the Bench rejected the doctrine of conditional legislation relied upon by the Chhattisgarh High Court but concurred with the view of the Allahabad High Court and the Rajasthan High Court. It held the impugned explanations to extension notifications as ultra vires TOLA. It also held that that TOLA does not empower the Revenue to extend application of the old reassessment regime beyond March 31, 2021 as the Finance Act, 2021 introduced new scheme of reassessment with effect from April 1, 2021.

CANADA ADVANCES DIGITAL SERVICES TAX BILL DESPITE OECD PACT, US OBJECTIONS

Canada introduced draft legislation on December 14 to implement its planned digital services tax – with a built-in delay and contingency deferring to implementation of the OECD multilateral agreement. However, if the OECD agreement under Pillar 1 is not timely implemented, Canada's digital services tax would be imposed in 2024 with retroactive application to 2022.

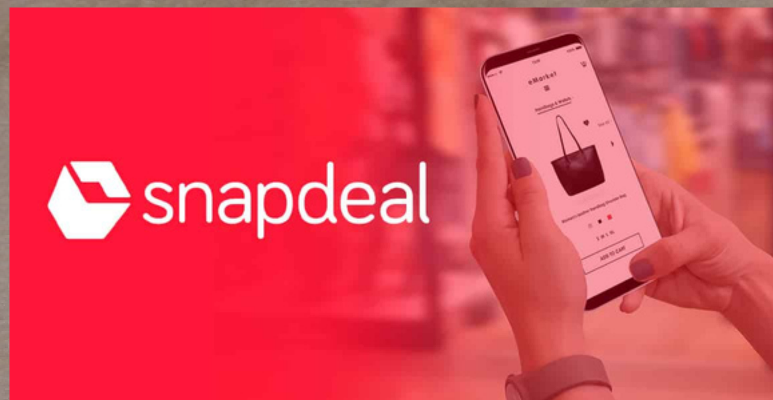
A response from a US Trade Representative spokesperson in a statement issued today was critical of Canada's advancing of the proposed bill, stating that the retroactive application would create "immediate consequences for U.S. companies." Noting Canada's participation in the October 8 OECD agreement, the statement adds that if Canada adopts the tax, the US Trade Representative "would examine all options, including under our trade agreements and domestic statutes."

Concurrently with the introduction of the bill, Canada's finance ministry stated in a December 14 economic and fiscal update that the government's "preference has always been a multilateral agreement." The government's update adds that it is their "sincere hope that the timely implementation of the new international system will make [Canada's digital services tax] unnecessary."

To allow time for implementation of the OECD agreement, Canada's digital services tax would not be imposed until January 1, 2024 – and then only if Pillar 1 the OECD agreement has not yet come into force.

However, if the implementation of Pillar 1 is delayed (or abandoned), the digital services tax would apply retroactively to revenues earned as of January 1, 2022, once it becomes due in 2024

EXPENDITURE ON PROMOTION BY E-COMM FIRMS IS REVENUE EXPENSE: ITAT



Expenditure incurred on promotion for brand 'Snapdeal' is purely revenue in nature, the Delhi Bench of Income Tax Appellate Tribunal (ITAT) said. Experts said the ruling will be a huge relief to e-commerce operators facing litigation on the same issue by treating advertisement expenses as revenue.

The assessee is a web-based platform of 'Snapdeal', which serves vendors and customers for online purchase of goods. The assessee has incurred expenditure on advertising, sales promotion and publicity, claiming it to be revenue expenditure. In contrast, the Assessing Officer held that half of such spending is capital expenditure as it has helped the assessee maintain and create a 'Snapdeal' brand.

However, on appeal before the Commissioner of Income Tax (Appeals), he held that the above expenditure could not be said to be a capital expenditure.

He relied upon several judicial precedents that had held that the incurring of advertisement, publicity and sales promotion expenditure is wholly necessitated for business purpose, though enduring in the long term cannot be held to be of capital expenditure. Therefore, he deleted the above addition.

Aggrieved by this, the Income Tax Department moved to ITAT.

ITAT observations:

After hearing all the arguments and going through the facts placed on record, ITAT said that there was nothing in the Income-tax Act, as well as there wasn't any material on record suggestive of the fact that the assessee could not claim these expenses as revenue expenditure. "The fact remained that as the assessee is operating in online marketing business as aggregator which is a highly competitive consumer market, the assessee had to stay ahead of its competition and thus engage itself in brand promotional activities and has necessity to incur these expenses," it said.

The Bench noted that no evidence was placed on record to show that the assessee has created any intangible asset, and even after the details of expenses are placed before the Assessing Officer, he held that ad-hoc percentage of certain expenditures are capital expenditure without pointing out that which nature of cost has resulted into creating an intangible asset.

Accordingly, "we find that the expenditure incurred by the assessee are purely revenue in nature and cannot be considered as capital expenditure," the Bench said while dismissing all the grounds in appeal by the Assessing Officer

TODAY'S QUOTE

“There are no limits to what you can accomplish, except the limits you place on your own thinking.”

– Brian Tracy

DISCLAIMER

This publication contains information for general guidance only. The contents are solely for information and knowledge purpose. It does not constitute any professional advice or recommendation. The contents are gathered from different newspaper and websites as mentioned in 'Source of content'. We do not accept any responsibility and liabilities for any loss or damage of any kind arising out of any information in this publication nor for any actions taken in reliance thereon. This is a private circulation for clients and professionals only.

Source of Content

https://epaper.thehindubusinessline.com/
https://epaper.thehindu.com/
https://economictimes.indiatimes.com/epaper-print-edition/
https://www.gst.gov.in/newsandupdates/read/509
https://mnetax.com/canada-advances-digital-services-tax-bill-despite-oecd-pact-us-business-objections-46454

AKSHAY SHAH
Email: ca.akshah@gmail.com
Contact No.: 9958975768
Website: www.jainshah.com