



## Global Business Tax Alert

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**Amendment made in proviso to section 142(2C) allowing assessing officer to extend timeline of special audit is clarificatory in nature**

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## Facts of the case

- Income Tax Appellate Tribunal (the Tribunal) in its order dated 18 September 2009 concluded that expression *suo motu* inserted by Finance Act, 2008 in proviso to section 142(2C) of the Income-tax Act, 1961 (the Act) with effect from 1 April 2008 is prospective in nature
- Tax authorities appealed against Tribunal's order before the Delhi High Court which was dismissed *vide* order dated 27 May 2011
- Apex Court granted leave in special leave petitions filed by tax authorities against the judgement of Delhi High Court

## Key contention of the assesseees

- It was submitted that the assessing officer (AO) has no authority to extend time for furnishing of audit report under section 142(2A) of the Act unless an application is made by the assessee and there exists good and sufficient reasons for doing so
- Reference was made to CBDT circular<sup>1</sup>, notes on clauses to Finance Bill, 2008, and memorandum to Finance Act, 2008 to support the above view
- It was argued that consequence of exercise of jurisdiction to extend time would lead to extension of period of limitation for completion of assessment under explanation (ii) to section 153B of the Act
- It was also urged that failure to furnish the special audit report would lead to best judgement assessment under section 144 of the Act
- Considering the above, it was submitted that provision must be interpreted in the context of section 153B and section 144 of the Act and hence, the amendment is not procedural in nature
- The expression '*and*' in the phrase '*on an application made in this behalf by the assessee and for any good and sufficient reason*' must be considered as a conjunctive in view of the Apex Court's decision<sup>2</sup>

1. Circular No. 1/2009 dated 27 March 2009 issued by Central Board of Direct Taxes (CBDT) contains explanations on amendments made by Finance Act, 2008
2. Sahara India (Firm) Lucknow v. Commissioner of Income-tax

## Key contentions of the tax authorities

It was contended that incorporation of *suo motu* exercise of power by the AO only intended to remove ambiguity and was clarificatory in nature which allows AO to extend time, even without an application made by the assessee, subject to ceiling of 180 days specified under the provision.

## Ruling of the Apex Court

The Apex Court held that amendment made in proviso to section 142(2C) of the Act is retrospective in nature and AO can exercise authority to extend timeline of special audit report subject to ceiling of 180 days even prior to 1 April 2008 irrespective of an application by the assessee.

Key observations of the Apex Court are outlined below:

- Under the substantive part of sub-section (2C), the AO can fix time for submission of audit report subject to overall limit of 180 days specified in the proviso
- A particular time fixed in the first instance is based on an estimate, however, exigencies of the situation may require extension for genuine reasons or as statute calls it *good and sufficient reason*
- The proviso acts as a remedy to the assessee when such reasons exists from assessee's end, however, such remedy cannot preclude AO to extend the time when otherwise such reasons exists. It is to remove this inherent ambiguity, the amendment was made
- Having fixed a time limit in the first instance, the interpretation that AO cannot extend such time limit without assessee's request would lead to absurd consequence defeating the purpose and object of the provision and hence, must be avoided
- In the given context, the expression *and good and sufficient reason* in the impugned provision should be read as *or good and sufficient reason*. The case of Sahara India (supra) held the expression *and* as conjunctive in the context of formation of opinion by the AO and the present case is in connection with extension of time
- Further, the mere fact that amendment was made effective from 1 April 2008, does not detract it from being procedural or clarificatory in nature. Reference in this regard was made to the Apex Court decisions<sup>3</sup> which relied on principal of statutory interpretation by Justice GP Singh
- Furthermore, there exists a presumption of retrospective application of amendments which are procedural in nature<sup>5</sup>
- The extension by the AO does not enable him to extend time limit for assessment under section 153B of the Act since principle governing the exclusion of time remains the same
- Also, there is no contrary hypothesis in the circular or memorandum as stated by the assessee
- Whether an amendment is clarificatory or not would depend on the context and while interpreting the same, the Courts would have due regard to following parameters<sup>6</sup>:
  - General scope and purview of the statute;
  - The remedy sought to be applied;
  - The former state of law; and
  - What power that the legislature contemplated.

3. Commissioner of Income-tax-1 Ahmedabad v. Gold Coin Health Food Pvt Ltd, Commissioner of Income-tax (Central-I) v. Vatika Township (P) Ltd.

4. 11<sup>th</sup> edition (2008)

5. Relied on interpretation of statute - Sweet and Maxwell, 11<sup>th</sup> edition (1962)

6. Zile Singh v. State of Haryana, (2004) 8 SCC 1

## Key take-away

The Apex Court iterated the principal of interpretation of statutes and held that a statutory provision which intends to remove an ambiguity inherent in the provision or remedy the unintended and absurd consequences of an interpretation should be considered as clarificatory or retrospective in nature.

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