

## THE SEPARATION OF POWER IN THE FRAMEWORK OF TAX ASSESSMENT

**AUTHOR** – SNEHA RAWAT & HARSH TYAGI, STUDENT AT SYMBIOSIS LAW SCHOOL, NOIDA, SYMBIOSIS INTERNATIONAL (DEEMED UNIVERSITY), PUNE

**BEST CITATION** – SNEHA RAWAT & HARSH TYAGI, THE SEPARATION OF POWER IN THE FRAMEWORK OF TAX ASSESSMENT, INDIAN JOURNAL OF LEGAL REVIEW (IJLR), 5 (1) OF 2025, PG. 73-77, APIS – 3920 – 0001 & ISSN – 2583-2344.

### INTRODUCTION

The assessment and the reassessment proceedings mentioned mainly in §140 – §149 of the income tax act, 1961 (herein referred as the Act), has undergone several amendments since its inception. It has been, from the beginning, the main focus of legislative reforms and judicial scrutiny, due to its pertinent nature. Every individual, whoever exceeds the exemption limit, is subjected to file an income tax return within a prescribed date.<sup>128</sup> Similarly, every company, having a turnover above the prescribed upper limit, is subjected to a tax audit,<sup>129</sup> or an audit in another act<sup>130</sup> within a due date as per the section. Most of these declarations are facilitated by a CA or a knowledgeable expert in this field. However, all declarations are not completely scrutinized by the tax authorities. That is where the assessment provision comes in.<sup>131</sup> Assessment verifies and validate these declarations such that losses are not overstated, and accuracy and legitimacy of the returns filed are preserved. The goal is to ensure the integrity of tax collection and avert any possibility of misuse and inconsistencies in the financial data reported. Because the executive body is vested with such powers to seize declare and check the data anytime, it becomes pertinent to have a balance and check of judiciary.

GRASP - EDUCATE - EVOLVE

<sup>128</sup> Income Tax Act 1961, § 140 - § 149.

<sup>129</sup> Income Tax Act 1961, § 44AB.

<sup>130</sup> After the amendment of 2023, proviso 2 of § 44AB, gives such an exemption.

<sup>131</sup> Income Tax Act 1961, § 143.

## INTERPRETATION OF THE LAW OF TAXATION IN INDIA

It is two basic principles upon which Indian system of taxation is based. First, it emanates from Article 265 of the Constitution, which states that tax cannot be levied without the legal sanction to levy the same. The idea is to make everybody who is eligible and capable to pay tax, pays it to this welfare state. Second, there should be clarity in taxation, consistency, and predictability that any tax must be uncomplicated and certain.<sup>132</sup> It is understood by the common idea that the law of taxation is difficult to comprehend by many, one of the reasons could be because the basics are not included within the educational system. Therefore, the idea is to make it as widely comprehensible as possible.<sup>133</sup>

These principles, in turn, attest to the generality of adherence to the rule of law, namely legality and certainty. The observance of these requires the legislature to be as committed to them as the judiciary in ensuring those ideals are safeguarded and perpetuated.

## THE ROLE OF JUDICIARY AS AN INTERPRETER AND DISPUTE RESOLVER IN ASSESSMENT AND REASSESSMENTS PROCEEDINGS

[¶1] Tax laws are always difficult to comprehend and are subjected to different interpretations. It is the judiciary's responsibility to interpreting the provisions of such provisions to determine their scope, meaning, and applicability and to make sure the power vested on the assessing officer is not arbitrary. Most of the laws, including assessment and reassessment comes with a limitation period imposed upon the jurisdiction of the assessing officer, the jurisdiction then shifts upon the judiciary to deal with the matter.<sup>134</sup>

<sup>132</sup> Separation of powers - definition, what is separation of powers, advantages of separation of powers, and latest news (2021) cleartax. Available at: <https://cleartax.in/glossary/separation-of-powers> (Accessed: 10 September 2024).

<sup>133</sup> John, K.B. (2020) 'Tax enforcement procedure under section 104 of Personal Income Tax Act: Matters arising', *Journal of Legal Studies*, 26(40), pp. 100–142.

<sup>134</sup> Income Tax Act 1961, § 149.

[¶12] Whenever disputes arise between taxpayers and the executive pertaining to the application of laws, the judiciary acts as an arbiter. Approaching the courts to challenge assessments or reassessments or seek relief from penalties is a possible solution in the hands of the tax payers. The judiciary ensures that the decision given would be fair and without bias.<sup>135</sup>

[¶13] The judiciary also possess the power of judicial review to review whether activities of the executive are legal or not, including reviewing the actions of assessment officers, to ensure they are within legal boundaries and not at the infringement of taxpayers' rights and no arbitrary power is vested upon them by the bare text.<sup>136</sup>

## IMPROVEMENT IN CHECKS AND BALANCES AFTER THE AMENDMENT.

The finance act 2021<sup>137</sup> brought an intricate amendment to the procedure and limitation period of assessment and reassessment of the income (if) subjected to tax. The amendment brought a significant change in the provisions from §140 – §149 of the act.<sup>138</sup> This origin of restructuring can be traced back to the Taxation and Other Laws Act, 2020 which defined all the procedures in issuing notices and other requirements and compliance measures. It also empowered the Central Government to extend these timelines through notifications.<sup>139</sup>

the well settled law under § 149(1)(a),<sup>140</sup> provides for a limitation period to be complied for the initiation of the reassessment proceedings. This provision was amended by

<sup>135</sup> *Supra note* at 8.

<sup>136</sup> Kanga, J.B., Palkhivala, N.A. and Palkhivala, B.A. (1969) *The law and practice of Income Tax by J.B. Kanga and N.A. Palkhivala, assisted by B.A. Palkhivala* (5 vols). 2nd edn. Bombay: N.M. Tripathi.

<sup>137</sup> Finance act, 2021. (Accessed: 12 September 2024).

<sup>138</sup> Income Tax Act 1961, § 140 - § 149.

<sup>139</sup> Indulia, B. and Ridhi (2024) *Decoding tax dynamics: Unravelling legal complexities in income tax reassessment notices under Section 148, IT act post-finance act, 2021, SCC Times*. Available at: <https://www.scconline.com/blog/post/2024/05/15/decoding-tax-dynamics-unravelling-legal-complexities-in-income-tax-reassessment-notices-under-section-148-it-act-post-finance-act-2021/> (Accessed: 11 September 2024).

<sup>140</sup> *Supra note* at 7.

the finance act,<sup>141</sup> providing that the expiration of this limitation period invokes § 149(1)(b)<sup>142</sup> stipulating that the AO must possess tangible information and evidence which constitutes revealing information pointing out that income chargeable to tax has escaped the assessment, and if the case does fall outside this limitation, the AO loses its jurisdiction, and then the matter shall be dealt in court.

The § 149(1)(b)<sup>143</sup> also puts a responsibility upon the AO to only exercise its jurisdiction when the income escaped falls outside the bracket of Fifty Lakh Rupees, which cannot be stated on an estimation basis. This provision was added to reduce the arbitrariness of the executive.

#### **THE JUDICIARY'S INTERPRETATION AFTER THE AMENDMENT.**

While the amended provision clearly states the limitation period to be applied and the limit of jurisdiction, it left the taxpayer confusing on what assessment years the new amended laws shall apply. The main question was if the amended limitation is subjected to the assessment year after the commencement or is retrospective. Further if the assessment is shall be in relevance or the day the notice was served holds more relevance. All these intricacies are generally not prescribed by the law makers in the amendment itself and further the executive cannot be trusted to do as they please, because firstly, it would create a longstanding confusion, with every other jurisdiction following a different timeline altogether and secondly, the arbitrary power would be vested upon such individuals which may give them an opportunity to do what pleases to them. It is therefore, the role of judiciary to present more clarity upon the matter and provides a settled dictum to every authority.

Similarly, on the assessment and reassessment provisions, the court clarified recently that the new provisions brought about by the Finance

Act, 2021 are remedial and benevolent in character so close the rights and interest of the assessee and further public interest. In consequence, the respective High Courts interpreted correctly that these new provisions shall be made to apply to proceedings for assessment years preceding by a period of four years or more from April 1, 2021, if a § 148 notice was issued on or after that date.<sup>144</sup>

The court has also been clear in its interpretation of the legislation, emphasizing that the taxpayer's duty is solely to fully and truthfully disclose all primary and relevant facts necessary for the assessment,<sup>145</sup> it does not extend beyond this. Shifting the burden to exercise the discretion to declare the income as faulty, shifts onto the assessing officer.

#### **ENCROACHMENT ON THE LEGISLATIVE FUNCTION BY THE JUDICIARY.**

Even when the legislative function and the judicial function have clear boundaries as to make laws and interpret laws, there stands a thin line between its actual meaning. In a recent case,<sup>146</sup> the Supreme Court restored reassessment notices given by the Revenue without valid sanction prescribed under § 292.<sup>147</sup> Judgments from the Allahabad High Court and many other High Courts were overturned in this recent case. The controversy arose on April 1, 2021, when a new regime for reassessment became applicable; however, the Revenue continued to issue notices under repealed provisions invoking executive notifications regarding the date for making payments based on notifications extending deadline due to COVID-19. Although declared invalid by the High Courts, they granted leave to the Income Tax Department to apply the new law if made within the time given by the Act. However, Revenue's ignorance of law cannot hurt the exchequer as

<sup>141</sup> *Supra note* at 8.

<sup>142</sup> Income Tax Act 1961, § 149(1)(b)

<sup>143</sup> *Ibid.*

<sup>144</sup> Godrej Industries Ltd. *V.* Assistant Commissioner of Income-tax, 160 taxmann.com 13 (2024)

<sup>145</sup> GOVINDARAJAN, Mr.M. *burden of proof*, Available at: [https://www.taxmanagementindia.com/visitor/detail\\_article.asp](https://www.taxmanagementindia.com/visitor/detail_article.asp) (Accessed: 08 September 2024).

<sup>146</sup> *Union of India vs Ashish Agarwal*, 2022. Available at: [https://main.sci.gov.in/supremecourt/2021/32623/32623\\_2021\\_12\\_1502\\_3\\_5515\\_Judgement\\_04-May-2022.pdf](https://main.sci.gov.in/supremecourt/2021/32623/32623_2021_12_1502_3_5515_Judgement_04-May-2022.pdf) (Accessed: 07 September 2024).

<sup>147</sup> Income Tax Act 1961, § 292

Supreme Court itself revived the quashed notices under the new legal regime in the process making constitutional browbeating by raising balance questions between judicial intervention and legislative authority.

#### RECOMMENDATIONS FOR THE ADMINISTRATION

##### [¶11] Operate Within Legal Frames

Tax authorities' actions and decisions should be strictly in compliance with the statutory provision and amendments only. It's not the job of the executive to interpret and to act as per their wills. It shall avoid issuing notices and assessments based on repealed or outdated laws and make procedures relevant to the current legal framework.

##### [¶12] Training and Education

Increase in the training of the tax official by filling them with the latest legal change and compliance requirements so as not to commit errors or mistakes that may readily lead to a dispute and judicial review.

#### RECOMMENDATIONS TO THE LEGISLATURE

##### [¶11] Legislative Guidance

Drafting tax laws and amendments in simple words would minimize the risk of ambiguity. It is pertinent to know that a legislation cannot include all the nitty-gritty of the procedure but still it should clearly indicate the effective date of the new provisions so that no misunderstanding would arise about which assessment year or which cases would be impacted and leave the rest for interpretation.

##### [¶12] Present Review and Reformation of Tax Laws

Reviewing of tax laws periodically could take care of all the issues arising and ensure that they remain relevant and effective. These reforms should redress the balance between administrative efficiency, taxpayer protection and legal certainty.

#### RECOMMENDATION FOR THE JUDICIARY

##### [¶11] Exercise Judicial Restraint

It is important to ensure judicial reviews stay within existing laws and do not trespass on the sphere of legislation. Stress interpretation and application of the law instead of developing a new standard or changing the legal framework.

##### [¶12] Transparency in Decisions

Providing judgments with proper reasoning for the judgment delivered such that the precise manner in which the legal enactments are interpreted and applied becomes known. It has been seen, especially in ITAT and High Court's judgement that the dictum is well focused but no clear reasoning is provided, therefore making it difficult for the other courts to rely interpret and rely upon the judgement because they don't know the exact context and applicability. A good reasoned judgement will, therefore, help keep a good degree of consistency in place and avoid ambiguity thereby allowing tax authorities as well as taxpayers to determine which standards of law are being applied.

#### CONCLUSION

It is the duty of the judiciary to interpret not only the law but also to keep a check on the actions of officers who derive their authority from these very laws. This creates a self-perpetuating system of checks and balances, through which abuse of authority is checked and preserves the integrity of the legal system. The apex court crossed its limits by not only assuming the legislative functions but also attempting to legalize acts that were altogether beyond law. The consequences of the judgment gave rise to panic, as notices issued during the existence of the old law were based on conditions that are no longer there, and thus a new spate of litigation arises. The Court's reliance on Article 142 of the Constitution – a power of delivering "full justice", though it is well-settled that such a power cannot be exercised in breach of statutory law, had revived actions without parliamentary amendment and set aside

rulings which were not even before it on appeal. The case shows grave judicial overreaches.

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