

TP Alert: Madras HC holds provisions related to the Dispute Resolution Panel to apply prospectively from AY 2010-11

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Summary

The Madras High Court (HC), in a recent case, has held that the provisions related to “Reference to dispute resolution panel” in the Income-tax Act, 1961 (the Act) shall apply prospectively, i.e., from assessment year (AY) 2010-11 onwards. The HC also held that since the provisions were made effective prospectively in 2009, the right that has inured to the parties cannot be modified by a Central Board of Direct Taxes (CBDT) clarification issued in 2013.

Facts of the case

- The petitioner is a public limited company, engaged in the manufacture and sale of non-ferrous metals and telephone cables. The petitioner filed its return of income for AY 2007-08, wherein it had claimed various deductions under Chapter VI-A and Section 10B of the Act.
- During the course of assessment, the tax officer forwarded a draft assessment order to the petitioner under cover of forwarding letter dated 30 December 2010.
- The petitioner filed a writ petition before the Madras HC regarding the disallowances made under Section 80IA, 80IB and 10B of the Act and the assumption of jurisdiction by the assessing authority¹ for AY 2007-08.

Petitioner’s contention

- The petitioner stated that the Dispute Resolution Panel (DRP) provisions were inserted vide Finance (No. 2) Act, 2009, with retrospective effect from 1 April 2009. The petitioner also submitted that the CBDT had issued an explanatory circular immediately after its insertion clarifying that the provisions would be operative with effect from AY 2010-11.
- The petitioner argued that the clarificatory circular issued by CBDT in the year 2013 stating that the provisions of Section 144C are applicable to proceedings pending on 1 April 2009 was incorrect.
- The petitioner relied on the Supreme Court (SC) decision in the case of Karimtharuvi Tea Estate Ltd. vs. State of Kerala² and Madras HC ruling in the case of A.L.A. Firm vs. CIT³ and contended

¹ under Section 144C

² [1966] 60 ITR 262 (SC)

³ [1976] 102 ITR 622 (Madras)

that the law applicable to all the matters of assessment would be the law that is in force as on the first date of the relevant AY only.

- The petitioner relied upon various case laws⁴ and contended that the new provision does not merely bring about a procedural change, but also a substantive change and hence the same cannot be made applicable retrospectively.

HC's observations and order⁵

- The HC observed that provisions related to DRP are not merely procedural provisions but a substantive exercise in assessment.
- The explanatory circular makes it clear that the scheme of assessment⁶ will apply in relation to AY 2010-11 and subsequent AYs only.
- The right which has inured to the parties in 2009 cannot be modified by a clarification issued by the CBDT three years thereafter.
- The HC relying on the SC decision in the case of *Kairmtharavi (supra)* held that the Act as it stands amended on the first day of April of any financial year must apply to the assessments of

that year. Further, the HC relied on the ruling of *Prasad Productions (P) Ltd. (supra)*, wherein it was held that where a circular has explained a provision to be applicable qua a particular AY, the benefit of such circular cannot be withdrawn at a later date so as to deny the assess the benefit extended earlier.

Our comments

This is an important decision which will particularly be useful for cases wherein taxpayers have been challenging the validity of the assessment proceedings undertaken via the DRP route for earlier years' litigations, i.e., before AY 2010-11. The HC has dispelled the doubt created by the 2013 CBDT circular by holding that the said circular does not lay down the correct position of law.

⁴J.K.Synthetics Ltd. and others vs CBDT and others (83 ITR 335) and Commissioner of Income Tax, Bangalore vs. R.Sharadamma [(1996) 8 SCC 388], Madras HC in the case of CIT vs. Prasad Productions (P) Ltd. (179 ITR 147)

⁵ Writ petition No. 1729 of 2011 dated 22 October 2019

⁶ Under Section 144C

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