

Retrospective amendments

**HT Chandigarh Live
Tax Matters/ S.P. Babuta
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IN THE 2006-07 Budget certain amendments and clarifications have been inserted with retrospective effect:

Sec 43B: **Interest not 'actually paid' not eligible for deduction under section 43B** (w.e.f 1.4.1989)

Sec 120: **Clarification regarding the powers of the Board to issue directions regarding the power and function of the Income-tax Authorities (w.e.f 1.4.1988)**

Sec 142: **Clarificatory amendment regarding the time limit for issue of notice under section 142** (w.e.f 1.4.1990)

Sec 148: **The time limit for issue of notice under sub-section (2) of section 143 for the purposes of making assessment or reassessment under section 147 (w.e.f 1.10.1991)**

Powers of the legislature : It is a well-settled judicial position that the legislature, in exercise of its legislative powers, can enact laws that are retrospective in their operation. Courts have upheld the powers of the legislature in enacting amendments retrospectively. Ref: Rai Ramanakrishna vs State of Bihar (1963 50 ITR 171) SC

Judicial thought : It is being a settled proposition that there is no legal disability in the powers of the legislature in enacting laws that are retrospective in operation.

In the case of Rai Ramanakrishna vs State of Bihar (1963 50 ITR 171) as apex court held that if a law passed by the legislature is struck down by the courts as being invalid on account of one infirmity or another, it is competent for the legislature to cure the said infirmity and pass a validating law to make the earlier law effective from the date when it was passed.

PROBLEMS THAT MAY ARISE DUE TO AMENDMENTS WITH RETROSPECTIVE EFFECT :

1. Impact on pending matters

A retrospective amendment of law must be given effect to by all, including the appellate and revisional authorities. A completed assessment may be re-opened under Section 147 of the I-T Act or rectified under Section 154, if the relevant provisions of the law are amended with retrospective effect. However, such reassessment/rectification proceeding cannot be initiated where the prescribed period of limitation has elapsed.

Reference can be drawn to the decisions of the Supreme Court in the case of CIT vs Bai Navajibai N Gamadia (1959 35 ITR 793) (Bom) and MK Venkatachalam, ITO vs Bombay Dyeing and Manufacturing Co (1958 34 ITR 143) (SC).

2. Retrospective amendments result in potential complications and hardships to the tax payers. For example, if any tax assumptions are built into business plans, the same have to be revisited. Where such business plans and financial models are used by bankers and project lenders to make lending decisions, the change in law provisions are often invoked and rates renegotiated by them. Needless to say, this results in avoidable litigation.

3. Irregular Decline in Profit

In the case of listed companies, where an additional tax provision needs to be booked as a result of past years' adjustments due to retrospective amendments to the law, the profit figure show an irregular decline, which affect stock market sentiments.

4. Discretion

With retrospection galore „even in cases of amendments with prospective effect ,it is quite possible that tax authorities would be inclined to treat these explanation as clarificatory in nature and apply the same for earlier years.

Although it is clear that the Parliament has the right to legislate retrospectively and often it is necessary to do so, caution is essential to ensure that retrospective amendments do not result in unsettling existing commercial and business arrangements.

In this context, the views of the noted jurist Nani Palkhivala on the subject of retrospective amendments, make interesting reading. While commenting on the budget proposals for '75-'76, he observed “ retrospective provisions can only serve to bring the law into contempt. They imply that the citizen's right to appeal is illusory, that the executive is omnipotent.