

Centre mulls Ordinance as tax litigation mounts

Many assesseees have challenged reassessment notices under old law

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The government is exploring legal options, including bringing an Ordinance, to tackle the problem of income-tax litigation on reassessment notices under old, time-barred norms, according to official sources.

This has come in the wake of writ petitions filed by companies and individuals in recent weeks to challenge the validity of the notices issued by the tax department between April 1 and June 30 and under the old norms. They said the department's action was void and arbitrary because it could not extend the old provisions of the Act. More than a dozen assesseees have secured an interim stay by high courts across the country, including in Delhi, Mumbai, and Kolkata.

TAX TUSSLE



▶ Several companies and individuals have filed petitions in courts, challenging reassessment notices

▶ They say I-T action is void and arbitrary; dept can't extend the validity of old law

▶ Old law was in effect till March 31, and later got extended till June 30

▶ If courts rule in favour of assesseees, it will have a significant bearing on revenues

However, such legal remedy can be considered if the judiciary rules against the department and seeks the withdrawal of tax notices during the period, said two officials in know. They added the department was keenly examining the orders and preparing a reply sought by courts in respective cases.

The old law, amended with the passage of the Finance Bill 2021 and in effect till March 31, allowed reopening assessments of the previous six years. However, the tax department extended its validity till June 30 and accordingly issued reassessment notices to thousands of assesseees in the period.

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futures and options (F&O) segment, Bandyopadhyay said. Currently, they can invest only in those scrips that are part of the F&O segment, and have a market cap of ₹5,000 crore.

In the last 12 years, equity investments have delivered a compound annual growth rate of 11.3 per cent, he said.

The regulatory body is also considering allowing pension fund managers to invest in Real Estate Investment Trusts (REITs) and Infrastructure Investment Trust (InvITs). "These are well rated instruments," he said.

Ordinance...

The new law, which came into effect in April, allows reopening assessment for up to three years. For serious tax fraud cases, in which the concealment of income is ₹50 lakh or more, the period would be 10 years. The tax department is of the view that that assesseees can't challenge the selective move of the tax department because extensions have been given in various other tax compliance deadlines amid the second wave of the pandemic.

The extension was inti-

mated by the Central Board of Direct Taxes, which kept in mind the disruption caused due to the second wave.

"The government had extended the date of issue of reopening of cases till June 30 due to the second wave and state restrictions. This was in line with various tax compliance-related relief given to assesseees during the second wave. If extensions have been given to assesseees for their benefits, it is not proper that the government machinery also should not get the relaxation," said one of the two officials cited above.

Sources said the government was awaiting the final order by the courts listed for hearing in August and September. There is no official estimation of the revenue stalled but industry experts estimate that it could run into at least ₹1,000 crore.

Some of the petitions include those of Mudra Finance and Ansal Colours Engineering. While granting interim relief to them, the court stated, "Prima facie view that the impugned notification is contrary to the settled principles of statutory interpretation, namely, that any action

taken post the amendment of a procedural section would have to abide by the new procedures stipules in the amended Act. Further, it is of view that by virtue of a notification, which is a delegated legislation, the date for implementation of statutory provision, cannot be varied or changed."

Shailesh Kumar, partner, Nangia & Co LLP, said: "A lot of clients are getting reassessment notices after March 31, due to extension notifications issued by the government. In this case, the legal validity of extension notification is challenged and if petitions are successful, all such notices for reassessment will be held to be invalid."

Another expert questioned why the extension was given to only reassessment and not under the Black Money Act, which is also time-barred.

"The tax administration's statement that it couldn't undertake due to Covid is not tenable. Assessments under the Black Money Act, which is also time-barred, have been concluded. So delays in issuing notices and deemed extension is unfair to the assesseees," said Mitil Chokshi, Chokshi & Chokshi LLP.

