

Amicus Tax Alert

Invalid information exchange request cannot extend limitation period

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Background:

Indian Revenue issued tax scrutiny notices on the taxpayer¹. During audit, the Tax Officer sought information on bank accounts of the Taxpayer with HSBC Bank, Geneva. Indian Competent Authority made a request for administrative assistance to Swiss tax authorities under Indo-Swiss DTAA's Exchange of Information provisions. The information sought related to the years 2005-06 to 2011-12. The Swiss authorities denied the request outright as the Amending Protocol (2010) to DTAA did not entail obligation to provide information for period prior to April 1, 2011.

Under the Indian tax code, if a reference for information exchange is made under tax treaty, an extended limitation period of one year is allowed for completion of audit².

After the regular rounds of appeal before Appellate Authorities, the matter reached Delhi High Court.

High Court Ruling:

The Delhi High Court applied the principle of novation. The Court ruled that when the Amending Protocol (2010) replaced Article 26 of the Indo-Swiss DTAA, it completely extinguished the earlier provision.

1. **Complete Substitution:** The amended Article 26 of DTAA expressly limited information exchange to fiscal years beginning on or after April 1, 2011.
2. **No Automatic Revival:** Following the Supreme Court's precedent in Koteswar Vittal Kamath³, the Court held that substituted provisions cease to exist entirely.

"The process of substitution consists of two steps: the old is repealed and the new rule is brought into existence in its place. Although the said decisions were rendered in the context of legislative amendments, the enunciated principles of construction are instructive. In the case of agreements, substitution of a covenant would novate the agreements and unless the intention of the parties to preserve the rights and obligations under the agreement prior to novation is expressly preserved, the same cannot be inferred."

3. **Clear Legislative Intent:** The non-obstante clause⁴ in the Amending Protocol left no room for interpretation. It stated clearly that Article 26 would be applicable only for the information that related to a fiscal year beginning on or after April 1, 2011.

Delhi High Court categorically rejected Revenue's claim for extended limitation period under Section 153B Explanation (ix) and ruled that invalid procedural steps cannot provide relief from limitation periods, regardless of Revenue's good faith efforts.

Conclusion:

Time and again Supreme Court has held that defective procedural steps cannot extend limitation period.

In K.M. Sharma⁵, the Hon'ble Supreme Court ruled that a fiscal statute, more particularly on a provision such as the present one regulating the period of limitation, must receive strict construction. The law of limitation is intended to give certainty and finality to legal proceedings and to avoid exposure to risk of litigation to a litigant for an indefinite period of unforeseen future events.

Delhi High Court ruling reiterates the novation principle of interpretation in the context of treaty protocols. It is expected to impact all pending cases wherein information request for period prior to 2011 has been made after amendment to the treaty. In all cases where invalid reference under the treaty is made for exchange of information, as per Delhi High Court Ruling, the benefit of extended limitation period

of one year shall not be available. However, this decision would most likely be challenged before the Apex Court.

[1] The PCIT V. Sneha Lata Sawhney and Ors. 2025:DHC:3617-DB

[2] Section 153B explanation (ix), The Income Tax Act, 1961

[3] Koteswar Vittal Kamath v. K. Rangappa Baliga & Co. (1969) 1 SCC 255

[4] Article 14, Amending protocol, 2010

.....Notwithstanding paragraph 2 of this Article, with respect to Article 26 of the Agreement, the exchange of information provided for in this Amending Protocol will be applicable for information that relates to any fiscal year beginning on or after the first day of January of the year next following the date of signature of this Amending Protocol.....

[5] K.M. Sharma v. Income Tax Officer, Ward 13(7), New Delhi (2002) 4 SCC 339

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