Tax alert: OGE not passed within prescribed time, assessment and penalty proceedings abate

17 July 2026

The Bombay High Court (HC) has held that assessment proceedings would stand abated where an Order Giving Effect (OGE) is not passed within the prescribed time limit. Further, the consequential penalty order is also liable to be quashed since the very foundation of the penalty proceedings (i.e. original assessment order) did not survive.

In a nutshell

It is difficult to hold that an OGE is an administrative order. An order contemplated by section 153(5) of the ITA is not ministerial in nature but quasi-judicial, as it determines the rights and liabilities of the taxpayer in accordance with the appellate directions.

It may involve verification, quantification of income, re-computation of tax liability and net sum payable by the taxpayer - all of which, collectively or independently have substantive civil consequences. Therefore, such an OGE cannot be trivialised as administrative so as to escape the rigor of limitation.

The term 'assessment' bears a comprehensive meaning. It comprehends the whole procedure for ascertaining the total income and for the determination of tax liability. The latter is as crucial as the former. The AO must determine, by an order in writing, not only the total income but also the net sum which will be payable by the taxpayer, in consequence of such an order.

In a situation where demand is sought to be raised, the Revenue cannot impose a tax liability if the OGE was not passed within the period of limitation provided for. It is a settled principle that the Revenue cannot take advantage of its own default.

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Background:

- The taxpayer[1] is a company incorporated in and a tax resident of Luxembourg. It is engaged in the business of providing marketing activities on a central / group basis to a chain of hotels worldwide. Initially the taxpayer's group company had entered into an International Marketing Program Participation Agreement (IMPPA) with various Indian hotels, which were later on assigned to the taxpayer.
- The taxpayer claimed the receipts in terms of the IMPPA, as not taxable in India under the Income-tax Act 1961 and, accordingly, claimed a refund of the tax deducted at source (TDS).
- During the course of assessment proceedings, the Assessing Officer (AO) treated the IMPPA receipts as business profits under the provisions of the ITA and taxed them at the rate of 40%. Further, TDS credits were not allowed and interest under sections 234A and 234B of the ITA was levied [Section 423 and 424 of the Income-tax Act 2025]. Simultaneously, the AO also initiated penalty proceedings under the ITA.
- Aggrieved, the taxpayer filed an appeal before the Commissioner of Income-tax [CIT(A)]. The CIT(A), *inter alia*, gave partial relief to the taxpayer and directed the AO to give the taxpayer an opportunity of being heard before passing an order in pursuance of his order.
- It may be pertinent to note that, post the CIT(A)s order, the AO was obligated to pass an Order Giving Effect (OGE) as per the directions of the CIT(A). Since no OGE to the CIT(A) order was passed by AO within the statutory time limit, and on the understanding that the assessment proceedings were consequently abated, the taxpayer sought withdrawal of its appeal against the CIT(A)'s order [filed before the Income-tax Appellate Tribunal (ITAT)], which the ITAT permitted.

  Consequently, on the penalty proceedings, the taxpayer contended that since no OGE to the CIT(A) order was passed within the statutory due date, assessment proceedings stood abated and, hence, no penalty could be levied. The AO rejected the taxpayer's arguments and levied penalty on the taxpayer.
- Aggrieved, the taxpayer filed a writ petition before the Bombay High Court (HC).

Relevant provisions of the ITA

153. Time limit for completion of assessment, reassessment and recomputation.

…"(3) Notwithstanding anything contained in sub-sections (1) , (1A) and (2), an order of fresh assessment or fresh order under section 92CA, as the case may be, in pursuance of an order under section 250 or section 254 or section 263 or section 264, setting aside or cancelling an assessment, or an order under section 92CA, as the case may be, may be made at any time ***before the expiry of nine months*** *from the end of the financial year in which the order under section 250 or section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be:…*

…(5)…

…Provided further that where an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 requires verification of any issue by way of submission of any document by the assessee or any other person or where an opportunity of being heard is to be provided to the assessee, the order giving effect to the said order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 shall be made within the ***time specified in sub-section (3)."***

Decision of the HC:

The HC acknowledged that the issue for consideration was whether, in the absence of OGE passed by AO

[1] WRIT PETITION NO. 1611 of 2024 (Bombay – HC)

pursuant to the CIT(A) order within the period of limitation[2], the return of income filed by the taxpayer attains finality. If so, it must follow that the assessment proceedings stand abated and, consequently, all proceedings arising therefrom become infructuous. In such circumstances, the penalty order cannot be sustained in law.

The HC noted as follows:

- The CIT(A) directed the AO to tax the receipts from the IMPPA as royalty and compute the tax payable by applying the reduced tax rate. Further, the CIT(A) also directed to grant due credit of TDS subject to necessary verification and after providing an opportunity of being heard. Accordingly, under section 153(5) read with section 153(3) of the ITA, the AO had nine months from the end of the Financial Year (FY) to pass the OGE i.e. 31 December 2019.
- No OGE to the CIT(A) order was passed till date.

Whether passing of OGE was an administrative exercise and non-passing had no adverse consequences?

- The CIT(A) had altered the very basis of taxation and directed application of the beneficial rate of taxation applicable to royalty. Consequently, even though the assessed income remained the same, the original computation of tax liability was set at naught and required fresh determination through a valid OGE.

  It was difficult to hold that such an OGE was an administrative order. An order contemplated by section 153(5) of the ITA was not ministerial in nature but quasi-judicial, as it determines the rights and liabilities of the taxpayer in accordance with the appellate directions.

  It may involve verification, quantification of income, re-computation of tax liability and net sum payable by the taxpayer - all of which, collectively or independently have substantive civil consequences. Therefore, such an OGE could not be trivialised as administrative so as to escape the rigor of limitation.
- The final OGE to the orders of the appellate authorities was an order of assessment and the same was complete only upon computation of the total income and the net tax payable by a taxpayer. It was well settled that such an order is an appealable order before the CIT(A).
- The term ‘assessment’ bears a comprehensive meaning. It comprehends the whole procedure for ascertaining the total income and the determination of tax liability. The latter was as crucial as the former. The AO must determine, by an order in writing, not only the total income but also the net sum which will be payable by the taxpayer, in consequence of such an order.
- Reliance was placed on an earlier ruling[3] of the HC in relation to the above.

Whether time-barred assessment would survive if interest were paid to the taxpayer for delay in refund?

- In a situation where demand is sought to be raised, the Revenue cannot impose a tax liability if the OGE was not passed within the period of limitation provided for. It is a settled principle that the Revenue cannot take advantage of its own default.

  Article 265 of the Constitution mandates that no tax shall be levied or collected except by authority of law.

  Consequently, any excess tax collected must be refunded, and section 244A(1A) of the ITA (relating to interest on refunds) merely compensates a taxpayer for delays in grant of such refunds; it does not legitimise proceedings or orders that are otherwise time-barred.

Whether the assessment stood abated and consequently the penalty?

- In the present case, no OGE was passed pursuant to the appellate order within the time limit. This resulted in the assessment abating, and the return of income of the taxpayer was to be regarded as accepted.

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[2] Period of limitation specified in section 153 of the ITA [section 286 of the Income-tax Act 2025]

[3] Laqshya Media Ltd. vs. ACIT/DCIT [2026] 187 taxmann.com 87 (Bombay-HC)

- The penalty proceedings were initiated in the course of the original assessment proceeding where Revenue had assessed the taxpayer's receipt from the IMPPA as its business income. That basis no longer survived.
- A penalty was levied on the amount of tax sought to be evaded. Since there was no tax that was evaded as it was the income that was declared in the return that now represented the income that was assessed, the levy of penalty was unsustainable. When the very foundation of the penalty proceedings did not survive, the penalty order, therefore, was unsustainable in law.

In view of the above, the HC held that the penalty order and the consequential demand notice were to be quashed and set aside. If any amount was recovered pursuant to the assessment and penalty proceedings, the same was to be refunded together with applicable interest in accordance with law.

Comments:

Under the ITA, passing of OGE by AO pursuant to appellate orders is an integral part of the assessment proceedings. Failure of the Revenue to pass an OGE within the strict limitation period mandated under the income-tax law, results in the statutory abatement of the primary assessment proceedings. This procedural lapse triggers a critical judicial inquiry into the independent survival of consequential penalty proceedings.

The HC in this ruling, has *inter-alia*, held the following:

- It is difficult to hold that an OGE is an administrative order. An order contemplated by section 153(5) of the ITA is not ministerial in nature but quasi-judicial, as it determines the rights and liabilities of the taxpayer in accordance with the appellate directions.
  It may involve verification, quantification of income, re-computation of tax liability and net sum payable by the taxpayer - all of which, collectively or independently have substantive civil consequences. Therefore, such an OGE cannot be trivialised as administrative so as to escape the rigor of limitation.
- The term 'assessment' bears a comprehensive meaning. It comprehends the whole procedure for ascertaining the total income and the determination of tax liability. The latter was as crucial as the former. The AO must determine, by an order in writing, not only the total income but also the net sum which will be payable by the taxpayer, in consequence of such an order.
- In a situation where demand is sought to be raised, the Revenue cannot impose a tax liability if the OGE was not passed within the period of limitation provided for. It is a settled principle that the Revenue cannot take advantage of its own default.

The ruling enforces a vital legal boundary wherein the tax authorities must strictly adhere to statutory timelines specially for passing an OGE. It is to be noted that section 286 of the Income-tax Act, 2025 (corresponding to section 153 of the ITA) prescribes time limit of 1 year from the end of the FY in which the appellate order is received by the AO.

The reason for remanding matter back to the AO (and consequently passing of OGE) would be relevant for determining whether the assessment proceedings stand abated due to non-passing of OGE within the required time frame.

Taxpayers may want to evaluate the impact of this ruling to the specific facts of their cases.