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Analysis of

UOI vs Rajeev Bansal

[2024] 167 taxmann.com 70 (SC)

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BACKGROUND

Covid-19 and TOLA

- **TOLA Enactment** : Parliament enacted the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act (TOLA) with retrospective effect from 31 March 2020. It applied to specified Acts, including the Income Tax Act.

- **Section 3(1) of TOLA:** Extended the time limit for compliance or completion of actions under the specified Acts, from 20 March 2020 to 31 December 2020, to 31 March 2021. Empowered the government to further extend this period by notification

FINANCE ACT 2021

- Introduced key reforms to Sections 147-151 of the Income Tax Act, affecting reassessment proceedings, w.e.f. 28.03.2021 (Date of President Assent)
- **Section 148 Limitation**:
    - Old regime: 4 years (extendable to 6 if escaped income > ₹1,00,000).
    - New regime: 3 years (extended to 10 if escaped income > ₹50,00,000 and represented as an asset).
- **Section 151 Approving Authority**:.
    - Old regime: JCIT (within 4 years), PCIT (after 4 years).
    - New regime: PCIT (within 3 years), PCCIT (after 3 years

- **Section 148A Procedure:** Requires sharing information with the assessee and passing an order under Section 148A(d) after considering their reply.

- **First Proviso to Section 149**: No notice can be issued for AY 2021-22 or prior years if barred by the old regime's limitation period at the time of issuance.

CBDT Notifications

- **Notification No. 20/2021 (31 March 2021):** Extended the time limit for compliance under the Income Tax Act till 30 April 2021.
- **Notification No. 38/2021 (27 April 2021):** Further extended the deadline till 30 June 2021 and specified that provisions of the Income Tax Act as of 31 March 2021 would continue to apply to notices issued between 1 April 2021 and 30 June 2021.
- Explanation to Notifications not only extended the time limit for compliance but also specified that the provisions of the Income Tax Act, as they stood on 31 March 2021, would continue to apply to notices issued between 1 April 2021 and 30 June 2021.

FIRST ROUND OF LITIGATION

. **Challenge to Notifications:**

Grounds: Notifications No. 20/2021 and 38/2021 were challenged for:

a) Contradicting the new procedure introduced by the Finance Act, 2021, which applied from 01.04.2021.

b) Extending time limit in old law after 1-4-2021.

FIRST ROUND OF LITIGATION

.**Court Rulings:**

a) **Allahabad High Court (Ashok Kumar Agarwal v. UOI, [2021] 131 taxmann.com 22 (All.)):** Held that the notifications extending time limits could not operate beyond 31.03.2021 due to the absence of a saving clause in the Finance Act, 2021.

b) **Delhi High Court (Mon Mohan Kohli v. Asstt. CIT, [2021] 133 taxmann.com 166 (Delhi)):** Quashed notices but clarified that the power of reassessment existed until 30.06.2021, even though the Finance Act, 2021 changed the procedure from 01.04.2021.

UOI vs Ashish Agarwal, [2022] 138 taxmann.com 64 (SC)

Supreme Court Ruling (Ashish Agarwal Case)

- Affirmed that the new reassessment provisions apply to notices issued on or after 01.04.2021, even for past assessment years.
- Modified High Court decisions, deeming notices issued under the unamended Section 148 to be treated as issued under Section 148A(b) of the amended Act.
- Preserved the defense of limitation under Section 149 of the Income Tax Act.
- No finding on applicability of TOLA

CBDT Notification 1/2022, dated 11.05.2022

- Following the Ashish Agarwal judgment, CBDT issued Notification 1/2022. The said notification:
- Permitted issuance of notices for AYs 2013-14, 2014-15, and 2015-16, if conditions prescribed in section 149(1)(b) are satisfied, interalia:
  - Escaped income exceeds ₹50 lakhs.
  - Approved by PCCIT under as per Section 151(ii) of the amended regime.
- For AYs 2016-17 and 2017-18, notices could be issued if conditions under Section 149(1)(a) and Section 151(i) were satisfied.

Second Round of Litigation

- **Challenge:** Notices Re-issued for AY 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18 issued between 01.04.2021 and 30.06.2021, were challenged as time-barred, on the ground that TOLA had no applicability on Provisions of section 148/149 as amended by the Finance Act, 2021 coming into effect on 01.04.2021.
- **Key Judgments**:
  - **Gujarat High Court (Keenara Industries (P.) Ltd. v. ITO [2023] 147 taxmann.com 585 (Guj.),): ** Held that the unamended reopening provisions ceased to exist after 01.04.2021, rendering the notifications inapplicable.
  - **Bombay High Court (Siemens Financial Services (P.) Ltd. v. Dy. CIT, [2023] 154 taxmann.com 159 (Bom.))** : Stated that TOLA, as subordinate legislation, could not override the Finance Act, 2021, and the extension of time limits was not applicable after 31.03.2021.

Second Round of Litigation

- **Similar Rulings:** Other courts followed the same reasoning, including the Allahabad, Bombay, Rajasthan, Orissa, and Delhi High Courts in cases such as Rajeev Bansal v. UOI, [2023] 147 taxmann.com 549 (All.), M Financial and Investment Consultancy Services Pvt. Ltd., Geeta Agarwal, Ambika Iron and Steel Pvt Ltd,
- Ganesh Dass Khanna v. ITO, [2023] 156 taxmann.com 417 (Delhi) [Case of income less than 50 lakhs for AY 2017-18 - TOLA not applicable.]
- TwylightInfrastructure (P.) Ltd. v. ITO, [2024] 158 taxmann.com 378 (Delhi) [Case of income more than 50 lakhs for AY 2017-18 – Approval of PCCIT u/s 151(ii)]
- **Contrary Judgments (Delhi High Court):** In cases like Salil Gulati v. Asstt. CIT [2023] 150 taxmann.com 49 (Delhi) and TouchstoneHoldings (P.) Ltd. v. ITO [2022] 142 taxmann.com 336 (Delhi), the Delhi High Court upheld that the time limit for issuing notices under Section 148 was extended till 30.06.2021 by TOLA notifications.

ISSUES

DECISION OF RAJEEV BANSAL (supra)

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Issues before Supreme Court

- Whether TOLA shall be applicable to notices issued after 1-4-2021 read with the decision of Hon'ble Supreme Court in the case of Ashish Agarwal (supra)?
- Consequently, whether notices issued under section 148 after following procedure of 148A (as per direction of Supreme Court) between July 2022 and September, 2022 are valid?

KEY FINDINGS

KEY FINDINGS

1. Re-affirmation of SC decision in Ashish Agarwal (supra), that FA 2021 substituted old regime w.e.f. 1-4-2021

"60. The above principles can be applied as follows to the factual situation in the present appeals: (i) The Finance Act 2021 substituted Sections 147 to 151 of the Income Tax Act with effect from 1 April 2021; (ii) Sections 147 to151 of the old law ceased to operate from 1 April 2021; (iii) After 1 April 2021, any reference to the Income Tax Act means the Income Tax Act as amended by the Finance Act 2021; (iv) The time limits prescribed for issuing reassessment notices under Section 149 operate retrospectively for three years for all situations and six years in case the escaped assessment amounts to or is likely to amount to more than Rupees fifty lakhs."

DECISION OF RAJEEV BANSAL (supra)

2. **TOLA existed on 1-4-2021 and applied to new regime as well.**

"68……On 1 April 2021, TOLA was still in existence, and the Revenue could not have ignored the application of TOLA and its notifications. Therefore, for issuing a reassessment notice under Section 148 after 1 April 2021, the Revenue would still have to look at: (i) the time limit specified under Section 149 of the new regime; and (ii) the time limit for issuance of notice as extended by TOLA and its notifications. The Revenue cannot extend the operation of the old law under TOLA, **but it can certainly benefit from the extended time limit for completion of actions falling for completion between 20 March 2020 and 31 March 2021.**"

DECISION OF RAJEEV BANSAL (supra)

2. **Illustration - TOLA existed on 1-4-2021 and applied to new regime as well.**

"69……For instance, Section 149(1)(a) of the new regime specified the time limit of three years from the end of the relevant assessment year for reopening of the assessment. For assessment year 2017-2018, the three year period expired on 31 March 2021. The expiry of time fell within the time period contemplated by Section 3 of TOLA read with its notifications. Resultantly, the Revenue had time until 30 June 2021 to issue a reassessment notice for assessment year 2017-2018 under Section 149(1)(a)."

DECISION OF RAJEEV BANSAL (supra)

- Chart of Expiry of Limitation

Assessment Year (1)	Within 3 Years (2)	Expiry of Limitation read with TOLA for (2) (3)	Within six Years (4)	Expiry of Limitation read with TOLA for (4) (5)
2013-2014	31.03.2017	TOLA not applicable	31.03.2020	30.06.2021
2014-2015	31.03.2018	TOLA not applicable	31.03.2021	30.06.2021
2015-2016	31.03.2019	TOLA not applicable	31.03.2022	TOLA not applicable
2016-2017	31.03.2020	30.06.2021	31.03.2023	TOLA not applicable
2017-2018	31.03.2021	30.06.2021	31.03.2024	TOLA not applicable

DECISION OF RAJEEV BANSAL (supra)

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3. Sanction u/s 151 of the Act

"77…….TOLA will accordingly extend the time limit for the grant of sanction by the authority specified under Section 151. The test to determine whether TOLA will apply to Section 151 of the new regime is this: **if the time limit of three years from the end of an assessment year falls between 20 March 2020 and 31 March 2021, then the specified authority under Section 151(i) has an extended time till 30 June 2021 to grant approval.**

In the case of Section 151 of the old regime, the test is: if the time limit of four years from the end of an assessment year falls between 20 March 2020 and 31 March 2021, then the specified authority under Section 151(2) has time till 31 March 2021 to grant approval. The time limit for Section 151 of the old regime expires on 31 March 2021 because the new regime comes into effect on 1 April 2021."

[For Second Para: Applicable to old law: AY 2015-16 – Notice to be issued within 4 years by JCIT. Approval by JCIT u/s 151(2) upto 31-3-2021 shall be valid and not to be issued by PCIT as per old 151(1); Situation of Delhi High Court in Abhinav Jindal HUF v. ITO: [2024] 166 taxmann.com 536 (Delhi)]

DECISION OF RAJEEV BANSAL (supra)

3. Sanction u/s 151 of the Act

"78. For example, the three year time limit for assessment year 2017-2018 falls for completion on 31 March 2021. It falls during the time period of 20 March 2020 and 31 March 2021, contemplated under Section 3(1) of TOLA.

Resultantly, the authority specified under Section 151(i) of the new regime can grant sanction till 30 June 2021..

81……. Therefore, the assessing officer was required to obtain prior approval of the specified authority according to Section 151 of the new regime before passing an order under Section 148A(d) or issuing a notice under Section 148. These notices ought to have been issued following the time limits specified under Section 151 of the new regime read with TOLA, where applicable."

DECISION OF RAJEEV BANSAL (supra)

4. Legal fiction created by the Judgement of Ashish Agarwal (supra) and 3rd Proviso

"105……The third proviso to Section 149 of the new regime provides that the period during which the proceedings under Section 148A are stayed by an order or injunction of any court shall be excluded for computation of limitation. During the period from the date of issuance of the deemed notice under Section 148A(b) and the date of the decision of this Court in Ashish Agarwal (supra), the assessing officers were deemed to have been prohibited from passing a reassessment order. Resultantly, the show cause notices were deemed to have been stayed by order of this Court from the date of their issuance (somewhere from 1 April 2021 till 30 June 2021) till the date of decision in Ashish Agarwal (supra), that is, 4 May 2022.

DECISION OF RAJEEV BANSAL (supra)

4. Legal fiction created by the Judgement of Ashish Agarwal (supra) and 3rd Proviso

"106. Due to the legal fiction, the assessing officers were deemed to have been inhibited from acting in pursuance of the Section 148A(b) notice till the relevant material was supplied to the assesses. Therefore, the show cause notices were deemed to have been stayed until the assessing officers provided the relevant information or material to the assesses in terms of the direction issued in Ashish Agarwal (supra). **To summarize, the combined effect of the legal fiction and the directions issued by this Court in Ashish Agarwal (supra) is that the show cause notices that were deemed to have been issued during the period between 1 April 2021 and 30 June 2021 were stayed till the date of supply of the relevant information and material by the assessing officer to the assessee. After the supply of the relevant material and information to the assessee, time begins to run for the assesses to respond to the show cause notices.**"

DECISION OF RAJEEV BANSAL (supra)

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4. Legal fiction created by the Judgement of Ashish Agarwal (supra) and 3rd Proviso

"107. The third proviso to Section 149 allows the exclusion of time allowed for the assesses to respond to the show cause notice under Section 149A(b) to compute the period of limitation. The third proviso excludes "the time or extended time allowed to the assessee." Resultantly, the entire time allowed to the assessee to respond to the show cause notice has to be excluded for computing the period of limitation."

DECISION OF RAJEEV BANSAL (supra)

4. Legal fiction created by the Judgement of Ashish Agarwal (supra) and 3rd Proviso

"112. Let us take the instance of a notice issued on 1 May 2021 under the old regime for a relevant assessment year. Because of the legal fiction, the deemed show cause notices will also come into effect from 1 May 2021. After accounting for all the exclusions, the assessing officer will have **sixty-one days [days between 1 May 2021 and 30 June 2021]** to issue a notice under Section 148 of the new regime. [Assumption 148A(b) notice issued on 3-6-2022]. This time starts ticking for the assessing officer after receiving the response of the assessee. In this instance, if the assessee submits the response on 18 June 2022, the assessing officer will have sixty-one days from 18 June 2022 to issue a reassessment notice under Section 148 of the new regime. Thus, in this illustration, the time limit for issuance of a notice under Section 148 of the new regime will end on 18 August 2022."

DECISION OF RAJEEV BANSAL (supra)

- Legal fiction created by the Judgement of Ashish Agarwal (supra) and 3rd Proviso
- For Example:

Deemed date of Show cause notice u/s 148A(b) (date of issuance of original notice u/s 148)	Due date of issuance of notice	No of days between date of original 148 and due date of issuance of notice u/s 148 (deemed to be stayed, thus added in the total limitation)	Date of filing of response to notice u/s 148A(b)	Date of limitation for passing order u/ 148A(d) 18.06.2022 + 61 days
01.05.2021	30.06.2021	61 days	18.06.2022	18.08.2022

DECISION OF RAJEEV BANSAL (supra)

- **Notices for AY 2015-16 to be withdrawn**

- The Revenue concedes that for the assessment year 2015-16, all notices issued on or after 1 April 2021 will have to be dropped as they will not fall for completion during the period prescribed under TOLA; **[Para 19(f)]**

PRESENT POSITION

DECISION OF RAJEEV BANSAL (supra)

- Chart of Limitation v. Other Arguments (Notices issued between 1-4-2021 to 30-6-2021)

Assessment Year (1)	Within 3 Years (Less than 50 lakhs) (2)	Expiry of Limitation read with TOLA for (2) (3)	Within six Years (More than 50 Lakhs) (4)	Expiry of Limitation read with TOLA for (4) (5)	Remaining Test
2013-2014	31.03.2017	Barred by Limitation	31.03.2020	Within Limitation	Third Proviso
2014-2015	31.03.2018	Barred by Limitation	31.03.2021	Within Limitation	Third Proviso
2015-2016	31.03.2019	Barred by Limitation	31.03.2022	Barred by Limitation (TOLA not applicable)	Conceded by Revenue
2016-2017	31.03.2020	Within Limitation	31.03.2023	TOLA not applicable	Approval should by PCCIT (As per CBDT by PCIT)
2017-2018	31.03.2021	Within Limitation	31.03.2024	TOLA not applicable	Approval should by PCCIT (As per CBDT by PCIT)

OTHER KEY FINDINGS

DECISION OF RAJEEV BANSAL (supra)

- **FIRST PROVISO TO SEC 149(1)(b)**
- The Hon'ble Supreme Court while interpreting the First Proviso to section 149 of the Act has clearly held that, if a notice pertaining to AY 2021-22 and prior is barred by limitation at the time, under the erstwhile section 149 of the Act as existing prior to the Finance Act, 2021, at the time when the notice is sought to be issued, the same will be barred by limitation under the new regime. **[Para 46 and 49]**

DECISION OF RAJEEV BANSAL (supra)

- **Finding of SC in Ashish Aggarwal – applicable PAN India**
- The Hon'ble Supreme Court further clarified that the decision of Hon'ble Supreme Court in Ashish Aggarwal was applicable PAN India and not just to parties forming part of SLP before the Supreme Court in the said case. Thus, all notices issued under section 148 between 1-4-2021 to 30-6-2021 were deemed to be notices under section 148A(b) as per finding of SC in Ashish Agarwal, notwithstanding no writ or SLP before the High Court or Supreme Courts.
- The distinction to the aforesaid finding could still be cases where assessment order under section 147 stood passed as per the old notice, which was not challenged by the assessee. [Decision of Delhi High Court in the case of Anindita Sen Gupta v. Asstt. CIT: [2024] 161 taxmann.com 39 (Delhi)]

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