
REINCARNATION OF REASSESSMENT PROCEEDINGS; WAY FORWARD POST SC RULING IN RAJEEV BANSAL¹ CASE

Background & Controversy:

1. The unprecedented lockdown due to the pandemic had brought the whole world to a standstill and the statutory timelines could not be met by the executive and the assesses at large. To remedy, this situation, the Legislature enacted TOLA², thereby extending the timelines prescribed under the various statutes, including the Act³. For the extension of timelines, appropriate power was delegated to the executive.
2. During the extension of timelines, vide notifications dated 31.03.2021 & 27.04.2021 issued under TOLA, the legislature enacted the FA-21⁴, inter-alia:
 - (a) Substituting section 149, thereby reducing the time limit under section 149(1)(a) from 4 years to 3 years;
 - (b) Freezing the time limit for all AYs prior to AY 2021-22 to the timelines prescribed under section 149(1)(b), as it existed prior to the substitution by FA-21.
 - (c) Enhancing the time limits for all AYs from AY 2021-22 to 10 years from 6 years;
 - (d) The procedure prescribed by Hon'ble Supreme Court in the judgement of GKN Driveshafts⁵ was codified in the form of section 148A, which was mandatorily required to be followed prior to the issuance of notice under section 148.
 - (e) The aforesaid change was made effective from 01.04.2021.
 - (f) The CBDT in exercise of powers prescribed under TOLA, issued notifications dated 31.03.2021 & 27.04.2021, thereby extending the time limits under section 149 from 01.04.2021 to 30.06.2021 and also prescribing that the notices issued between 01.04.2021 and 30.06.2021 will be governed by the law as it existed prior to amendment by FA-21.
 - (g) Accordingly, relying on the aforesaid notifications, the Revenue directly issued notices under section 148, without complying with the provisions of section 148A⁶.

¹ UOI vs. Rajiv Bansal: Judgment dated 03.10.2024 passed in CA No. 8629 of 2024

² The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020

³ Income Tax Act, 1961

⁴ Finance Act, 2021

⁵ GKN Driveshafts (India) Ltd vs. Income Tax Officer: 3 (2003) 1 SCC 72

⁶ Stated by Revenue that 90,000 such notices were issued across the Country

- (h) Such notices were challenged by assessees across various High Courts, primarily on the following grounds:
- i. Non-adherence to the procedure prescribed under section 148A [raised in all cases]
 - ii. Bar of time limit prescribed under section 149 [raised in limited cases]
- (i) Various High Courts quashed such notices issued in violation of the mandatory procedure, additionally, the respective explanations in the notification dated 31.03.2021 & 27.04.2021 were also declared as *ultra vires* the TOLA. However, the High Court did not adjudicate upon the issue of bar of limitation. The Revenue challenge the judgement rendered by the Hon'ble Allahabad High Court before the Hon'ble Supreme Court⁷, which gave rise to the judgement rendered by Hon'ble Supreme Court in the case of Asish Agarwal⁸.
- (j) The Hon'ble Supreme Court, in exercise of power under Article 142 of the Constitution, inter-alia, held as under:
- (A) Issuance of notices under section 148, without following the procedure under section 148A, was a bonafide mistake on the part of Revenue.
 - (B) The Revenue was directed to provide information on the basis of which notices were issued under section 148 and the notices issued under section 148, were deemed to be notices issued under section 148A(b). Accordingly, the assesseees were granted time to file objections to the said notice.
 - (C) The assessing officers were directed to dispose the objections raised by the assesseees following the procedure prescribed under section 148A.
 - (D) All the defences, including the defences under section 149 will be available to the assessee. However, pertinently no reference was made to/about TOLA.
- (k) The aforesaid directions were made applicable PAN India, i.e., to all the 90,000 notices.
- (l) The CBDT issued instruction No. 01/2022 dated 11 May 2022, providing guidelines for implementation of the judgment rendered by the Supreme Court in the case of Ashish Agarwal. Pertinently, the CBDT applied the provisions of TOLA & the notifications issued thereunder for computing time limits under section 149 of the Act.
- (m) The proceedings that culminated into orders under section 148A(d) and new notices issued under section 148, gave rise to second round of challenge before various High Courts, inter-alia, on the following grounds:

⁷ Judgement rendered by other High Courts were not challenged before the Hon'ble Supreme Court

⁸ Union of India v. Ashish Agarwal: 9 (2023) 1 SCC 617

- (A) For assessment years 2013-2014 & 2014-2015, the six-year time limit in terms of Section 149 expired on 31 March 2020 and 31 March 2021 respectively and the reassessment notices issued after 1 April 2021 would be barred by limitation;
 - (B) For the assessment year 2015-2016, the issue pertained to whether the sanction of the appropriate authority was obtained by the assessing officers before issuing re-assessment notices under Section 148 of the old regime, since the four-year period expired on 31 March 2020. However, notices were issued after 31 March 2020 by obtaining sanction under Section 151(2) instead of Section 151(1) of the old regime;
 - (C) For assessment years 2016-2017 and 2017-2018, the three-year period in terms of the amended regime expired on 31 March 2020 and 31 March 2021, respectively. The notices under Section 148 were issued after the expiry of three years, that is, after 1 April 2021. However, the sanctions were obtained under Section 151(i) instead of Section 151(ii) of the new regime; and
 - (D) The directions issued by Hon'ble Court in Ashish Agarwal (supra) were not intended to apply to assesses who did not challenge the reassessment notices before the High Courts or the Supreme Court. Therefore, reassessment proceedings could not have been initiated for such assesses.
- (n) The aforesaid grounds were majorly accepted by the High Courts and consequently notices issued under section 148 were quashed.
- (o) The said judgements passed by the High Courts were assailed by Revenue before the Supreme Court and the decisions rendered by various High Courts have been reversed holding as under:
- (A) Section 3(1) of TOLA overrides section 149 of the Act, to the extent of relaxation of time limit specified therein;
 - (B) TOLA will continue to apply to the Act after 01.04.2021, if any action or proceeding specified under the substituted provisions of the Act falls for completion between 20.03.2020 and 31.03.2021.
 - (C) The effect of the creation of the legal fiction in Ashish Agarwal (supra) was that it stopped the clock of limitation with effect from the date of issuance of Section 148 notices under the old regime [which is also the date of issuance of the deemed notices]. The clock started ticking for the Revenue only after it received the response of the assesses to the show causes notices. Once the clock started ticking, the assessing officer was required to complete these procedures within the surviving time limit.

- (D) TOLA will 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 -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 extended time till 30 June 2021 to grant approval.
- (E) 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 extended time till 31 March 2021 to grant approval.
- (F) The time during which the show cause notices were deemed to be stayed is from the date of issuance of the deemed notice between 1 April 2021 and 30 June 2021 till the supply of relevant information and material by the assessing officers to the assesses in terms of the directions issued by this Court in Ashish Agarwal (supra), and the period of two weeks allowed to the assesses to respond to the show cause notices.
- (G) The assessing officers will dispose of the objections in terms of the law laid down by the Supreme Court. Thereafter, the assesseees who are aggrieved will be at liberty to pursue all the rights and remedies in accordance with law, save and except for the issues which have been concluded by this judgment⁹.
- (p) Thus, the Supreme Court has effectively rejected all the objections raised by the assesses under section 149 & 151 of the Act. However, the remaining issues are left open to be contested in separate/subsequent proceedings.

Way Forward:

3. The assesseees will have to weigh their respective cases on the issue of compliance with jurisdictional requests, inter-alia, on the following issues:
 - a. The Revenue has conceded on the issue of limitation for assessment year 2015-16, irrespective of the quantum;
 - b. The time limit of notices under section 148, issued as a consequence of the decision in the case of Ashish Aggarwal and particularly the notices issued at the fag end of June, 2021, has to be computed in accordance with the methodology prescribed by the Supreme Court
 - c. Adhere to the procedure prescribed under section 148A;
 - d. Sufficiency of information available with the Revenue so as to substantiate initiation of proceedings under section 148A/148;
 - e. Whether the information relied upon for initiation of re-assessment proceedings have been shared with the assessee

⁹ Paragraph 3 of the Record of Proceedings dated 03.10.2024 in

- f. Whether the objections raised by the assessee are judiciously considered while passing order under section 148A(d)
- g. Whether the case is of change of opinion
- h. Absence of DIN on the notice
- i. Depending on facts and circumstances of respective cases, multiple arguments emanating from the amended provisions of section 151A can be raised.
- j. If the case of the assessee is fit to be contested on merits, then the assessee has to take a call to participate in the re-assessment proceedings or to move the High Court, challenging the invocation of jurisdiction.

Thus, the litigation that arose from notices issued under section 148 between 01.04.2021 to 30.06.2021 is far from being over and the litigation saga continues.

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