

## Direct Tax Alert

October 16, 2024



# Supreme Court<sup>1</sup> upholds validity of TOLA to new reassessment regime

Supreme Court has brought an end to the 2<sup>nd</sup> round of litigation on the reassessment saga. Reversing decisions of various High Courts, it has held that the extended time-period for issue of reassessment notice pursuant to TOLA<sup>2</sup> applies to the new reassessment regime in force from April 01, 2021, as well. It also held that sanction for issue of such reassessment notices needs to be obtained from authorities specified under new reassessment provisions. Further, it has provided clarity on computation of surviving time limit for issue of reassessment notices.

### Background

- During the covid-19 pandemic, TOLA was enacted to provide statutory relief by extending the timelines for certain actions, including notices to be issued for reassessments between March 20, 2020, and March 31, 2021. TOLA read along with the Notifications<sup>3</sup> issued thereunder, extended the time limits for issuing reassessment notices first to March 31, 2021, then to April 30, 2021, and finally to June 30, 2021.
- A new reassessment regime was introduced from April 1, 2021 ('new regime') by virtue of the Finance Act, 2021 substituting the prevailing reassessment regime ('erstwhile regime') under the Income Tax Act, 1961 ("IT Act").
- The new regime provided for time-period for initiating reassessment proceedings

<sup>1</sup>UOI vs. Rajeev Bansal - Civil Appeal No 8629 of 2024 [2024] 167 taxmann.com 70 (SC)[03-10-2024]

<sup>2</sup>The Taxation and Other Laws (Relaxation and amendment of certain provisions) Act, 2020

<sup>3</sup>Notification No. 93 of 2020  
Notification No. 20 of 2021  
Notification No. 38 of 2021



from close of the assessment year of (a) 3 years in all cases and (b) 10 years where income escaping assessment was INR 5 million or more. Under the erstwhile regime this period was 4 years and 6 years where the income escaping assessment was INR 1 Lac or more. The procedure for issue of reassessment notice was also amended.

- The new regime also provided for grandfathering of the time limit to 6 years available under the erstwhile regime for the assessment years beginning on or before April 1, 2021.
- Due to the extended time available under TOLA, the Revenue continued to issue reassessment notices in the months of April 2021 to June 2021, under the erstwhile regime despite the new regime coming into force from April 1, 2021.
- In the first round of litigation these reassessment notices were struck down by various High Courts in writ petitions as not validly initiated and matter finally reached the Supreme Court. The Hon'ble Supreme Court in the case of **Union of India v Ashish Agarwal**<sup>4</sup> invoked its powers under Article 142 of the Constitution of India and vide its order dated May 4, 2022 directed that all the ninety thousand reassessment notices issued under section 148 of the erstwhile regime shall be deemed to have been issued under Section 148A(b) of the new regime. While doing so, the Court had specifically left open all the defences available to the taxpayers under the law including defence on time barring of notices. The Court also granted a special time window for the Assessing Officers to share information and material and for the Assesseees to submit their responses.
- Pursuant to the directions in **Ashish Agarwal (supra)**, the Revenue after receiving replies from the Assesseees issued reassessment notices under section 148 of the new regime in the months of July to September 2022. These notices became the subject matter of second round of litigation.
- The Supreme Court in Ashish Agarwal (supra) had left unanswered the question whether the extension of time limit for issue of reassessment notices granted under TOLA will also apply to the reassessment notices so deemed to have been issued under the new regime.
- In the second round of litigation, multiple High Courts had disposed of the writ petitions in favour of the Assesseees quashing the reassessment notices as being time barred holding that the extension in time limit granted by TOLA did not apply to the new reassessment regime.
- Various High Courts also quashed the reassessment notices on the ground that they were issued without sanction of the appropriate authority as per the new regime.
- A linked question that came up was whether the decision in case of **Ashish Agarwal (supra)** applied to cases which were not disputed before the various High Courts.
- All these questions came up for consideration before the Hon'ble Supreme Court.

### Issues

- Whether TOLA and notifications issued under it will also apply to reassessment notices issued after April 1, 2021, under the new regime.

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<sup>4</sup> Union of India vs. Ashish Agarwal [2022] 138 taxmann.com 64 (SC)[04-05-2022]



- Whether the sanction of the specified authority under amended section 151 has been validly obtained or not.
- Whether the reassessment notices issued under Section 148 of the new regime between July and September 2022 are valid? This period was outside the extended time window under TOLA of June 30, 2021.
- Whether the decision in case of **Ashish Agarwal (supra)** applied to notices issued on a PAN India basis even if these notices were not disputed.
- The Supreme Court in **Ashish Agarwal (supra)** had only deemed the notices issued under section 148 of the old regime as deemed notices under section 148A(b) of the new regime. The final reassessment notices issued under section 148 of the new regime would be governed by time limits without extension granted under TOLA.

### Applicability of TOLA to new reassessment regime

#### Assessee Contentions

- TOLA only held the field till the new reassessment regime came into effect from April 1, 2021, since it applies only when the period of limitation expires between March 20, 2020, and March 31, 2021.
- TOLA merely extended specified time limits and did not amend section 149 of the erstwhile regime. The first proviso to section 149(1)(b) of the new regime only refers to the period of limitation under the section 149(1)(b) of the erstwhile regime and it did not require taking into consideration the extension available under TOLA.
- Notification issued after April 01, 2021, under the erstwhile regime cannot be read into new regime.
- For AY 2013-14 and AY 2014-15, the six-year period under the erstwhile regime expired on March 31, 2020, and March 31, 2021, respectively. Thus, reassessment notices issued after April 1, 2021, were barred by limitation as extension under TOLA does not apply to the new regime.
- Supreme Court has elaborately discussed and summarised the jurisprudence around various rules for interpretation of taxing statutes.
- Section 3(1) of TOLA contains a non-obstante clause and therefore overrides time limits for issuing a notice under section 148 read with section 149 of the IT Act.
- TOLA applies to 'Specified Act' which is defined to mean and include the IT Act. Consequently, it also applies to the IT Act as amended by Finance Act 2021.
- TOLA does not extend the life of erstwhile regime. It merely provides a relaxation for completion of actions and should therefore also apply to the procedure laid down under the new regime.
- The Court held that the IT Act and TOLA have different purposes and operate in separate and distinct fields. Therefore, the provisions of the two enactments are to be interpreted harmoniously.
- The use of the expression "any" in section 3(1) of TOLA indicates that relaxation applies to "all" or "every" action whose time limit falls for completion between March 20, 2020, to March 31, 2021.
- TOLA will continue to apply to the IT Act, after April 1, 2021, if any action or proceeding specified under the substituted provisions of the IT Act falls for completion between March 20, 2020, and March 31, 2021.



- Further, the Supreme Court has acknowledged that the Revenue has conceded that all notices issued under the new regime by invoking the six year time limit prescribed under erstwhile regime, where income escaping assessment is less than INR 5 million will have to be dropped. Further, notices for AY 2015-16 will have to be dropped since they do not fall for completion during the period prescribed under TOLA.

### Sanction of specified authority

#### Assessee Contentions

- TOLA is only applicable to provisions that specify time limits. It does not apply to section 151 since it does not prescribe any time limit for issuance of sanctions by specified authorities.
- For AY 2016-17 and 2017-18, the three-year period under new regime expired on March 31, 2020, and March 31, 2021, respectively. Yet notices were not issued by obtaining appropriate sanction as required under new regime for issuing notices beyond three years.

#### Supreme Court Ruling

- The Supreme Court in **Ashish Agarwal (supra)** has waived the requirement of obtaining prior approval for section 148A(a) and section 148A(b) of the new regime. However, it did not waive off the requirement of obtaining approval under section 148A(d) and section 148 of the new regime.
- These notices were required to be issued after obtaining prior approval of authorities according to section 151 of the new regime.

### Period of limitation for issuing notice under section 148 post decision of Ashish Agarwal (supra)

#### Revenue Contentions

- Invalidation of section 148 notices issued under the new regime on the ground that they were issued beyond time limit would completely frustrate the judicial exercise undertaken by the Supreme Court in **Ashish Agarwal (supra)**.

#### Assessee Contentions

- Section 148 notices issued during the period between July to September 2022 were issued beyond the extended time limits stipulated under the IT Act read with TOLA and hence barred by limitation.
- The decision of **Ashish Agarwal (supra)** cannot be read in a manner to exclude the entire period from April 2021 to September 2022.

#### Supreme Court Ruling

- The period during which the proceedings under section 148A are “stayed by an order or injunction of any court” is excluded from the period of limitation by third proviso to section 149 of the new regime.
- In **Ashish Agarwal (supra)**, the Supreme Court created a legal fiction by deeming the section 148 notices issued under the old regime as show cause notices under section 148A(b) of the new regime.
- The purpose of the legal fiction was to enable the Revenue to proceed further with the reassessment proceedings as per the new regime.
- Resultantly, the show cause notices were deemed to have been stayed by order of this Court from the date of their issuance of the deemed notices till the date of judgment in **Ashish Agarwal (supra)** i.e. **May 4, 2022**.
- In **Ashish Agarwal (supra)**, this Court directed the Assessing Officers to provide relevant information and materials relied upon by the Revenue to the Assesseees



within thirty days from the date of the judgment and a two week period for Assesseees to reply thereafter (subject to extensions, if any). A show cause notice is effectively issued in terms of Section 148A(b) only if it is supplied along with the relevant information and material by the Assessing Officer. 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 time relevant material was supplied to the Assesseees.

- Therefore, the show cause notices were deemed to have been stayed until the Assessing Officers provided the relevant information or material to the Assesseees in terms of the specific direction issued in **Ashish Agarwal (supra)**.
- The entire time of two weeks allowed to the Assesseees in **Ashish Agarwal (supra)** to respond to the show cause notice has to be excluded for computing the period of limitation.
- The clock started ticking for the Revenue only after it received the response of the Assesseees to the show causes notices. Once the clock started ticking, the Assessing Officer was required to complete these procedures within the **surviving time limit**.
- The logical effect of the creation of the legal fiction by **Ashish Agarwal (supra)** is that the time surviving under the IT Act read with TOLA will be available to the Revenue to complete the remaining proceedings in furtherance of the deemed notices, including issuance of reassessment notices under Section 148 of the new regime. **The surviving or balance time limit can be calculated by computing the number of days between the date of issuance of the deemed notice and June 30, 2021.**
- Reassessment notices issued under Section 148 of the new regime, which are in pursuance of the deemed notices, ought to be issued within the time limit surviving under the IT Act read with TOLA. A reassessment notice issued beyond the surviving time limit will be time barred.
- The Supreme Court has explained the calculation of the surviving time limit by way of an example in para 112 of the order. If a reassessment notice was issued on May 1, 2021, then the available time limit under TOLA till June 30, 2021, would be 61 days. As per time window provided by Ashish Agarwal (supra) if the Assessee submits response by June 18, 2022, then the clock starts ticking for the revenue from this date. The period available after excluding exclusions due to deemed stay will be 61 days from June 18, 2022, i.e. up to August 18, 2022.

### **Applicability to the notices issued PAN – India**

#### **Assessee Contentions**

- Directions issued by SC in **Ashish Agarwal (supra)** were not intended to apply to Assesseees who did not challenge the reassessment notices.

#### **Supreme Court Ruling**

- The scope of the directions in **Ashish Agarwal (supra)** applied PAN INDIA including all ninety thousand notices issued under the old regime during the period from April 1, 2021, to June 30, 2021, whether or not these were challenged before various courts.

#### **Dhruva Comments**

- This judgement of the Hon'ble Supreme Court provides major relief to the Revenue by reading TOLA into the amended provisions of the IT Act and



upholding the validity of reassessment notices under section 148 of the new regime issued between July and September 2022.

- For AY 2015-16 the Revenue has conceded that notices issued after April 1, 2021, under old regime will have to be dropped since six year time limit under erstwhile regime would be March 31, 2022. The three year time limit under new regime will be March 31, 2019. As both time limits are not within the TOLA prescribed time window of March 20, 2020, and March 31, 2021, these notices will have to be dropped.
- An interesting issue likely to arise from the example explaining the surviving time limit is that if the date of issue of original notice was June 30, 2021, then as per the example given in para 112, the surviving time limit available to the Assessing

Officer for passing an order u/s 148A(d) and issue of notice under section 148 of the new regime shall be 0 days. It remains to be seen how this issue is addressed at practical level.

- The facts and the applicable time limits for each notice will need to be examined through the prism of the Supreme Court decision. Challenging the validity or otherwise of the notice on other grounds may need to be examined.

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