

THE CHAMBER OF TAX CONSULTANTS

Analysis of the judgment in case of Rajeev Bansal

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11.10.2024

Supreme Court Judgment in Ashish Agrawal

- Several High Courts in favour
- Supreme Court in **UOI vs. Ashish Agarwal (444 ITR 1)** – invokes Article 142 to deem the notice u/s 148 of the Act as issued u/s 148A(b) of the Act. Following directions are issued:
 - a. The Apex Court has deemed the notices issued u/s 148 of the Act, to be notices issued u/s 148A of the Act, and treated as show cause notices issued u/s 148A(b) of the Act;
 - b. AO has been directed to provide the assessee with the information and material relied upon within 30 days **from 04.05.2022** i.e., the date of the judgment;
 - c. Assessee has been given two weeks' time to reply to the notice, material and information provided;
 - d. Requirement of conducting inquiry, with the prior approval of the specified authority, has been dispensed with, as a one-time measure;
 - e. AO has to thereafter, pass order in terms of section 148A(d) of the Act, as per the Act;
 - f. All the defences available u/s 149 of the Act or under the amended provisions relating to reassessment shall be available to the assessee;
 - g. The said findings and directions of the Apex Court shall substitute and modify the respective judgments passed by High Courts.

Instruction No. 1/2022 dated 11.05.2022

- Para 2 –
 - Notices u/s 148 were issued under the law as it existed prior to 1.4.2021
 - w.e.f. 1.4.2021, old law has been substituted with new section 147-151
- Para 4 – instruction issued u/s 119 of the Act, for uniform implementation
- Para 5 – judgment applies to all notices irrespective of the fact whether notices have been challenged or not
- Para 6.1 - *“Decision of the Hon’ble Supreme Court read with the time extension provided by TOLA will allow the extended reassessment notices to travel back in time to their original date when such notices were to be issued and the new section 149 of the Act is to be applied at that point.”*
- Para 6.2 –
 - AY 2013-14, 2014-15 and 2015-16 – can be reopened – beyond three years – therefore, 149(1)(b) and 151(ii) applicable
 - AY 2016-17 and 2017-18 – within three years - therefore, 149(1)(a) and 151(i) applicable
- Para 7.1 – if for AY 2013-14, 2014-15 and 2015-16 – income escaping assessment is less than Rs. 50 lakhs, then no need to proceed

Instruction No. 1/2022 dated 11.05.2022

- Para 8.1 –
 - Notice u/s 148 deemed to be issued u/s 148A(b) of the Act, therefore, all prior requirements shall be deemed to be complied
 - Information material to be provided within 02.06.2022
 - 2 weeks to file reply – if extension sought, then extension to be granted

Findings of various Courts in second round of litigation

Judgments of various High Courts

- **AY 2013-14/ AY 2014-15**

- (2023) 453 ITR 153 (All) Rajeev Bansal vs. UOI
- (2023) 453 ITR 51 (Guj) Keenara Industries P. Ltd. vs. ITO
- [2024] 158 taxmann.com 367 (Bom) New India Assurance Company Ltd. vs. ACIT
- [2024] 160 taxmann.com 13 (Bom) Godrej Industries Ltd. vs. ITO
- (2024) 337 CTR (Cal) 137 Arati Marketing (P) Ltd. & Ors. vs. UOI
- (2023) 150 taxmann.com 50(SC) Salil Gulati vs. ACIT
- (2022) 142 taxmann.com 336 (Delhi) Touchstone Holdings (P.) Ltd. vs. ITO

- **AY 2015-16**

- [2024] 464 ITR 430 (Bombay) Hexaware Technologies Ltd. vs. ITO

- **AY 2016-17/ AY 2017-18**

- (2023) 457 ITR 647(Bom) Siemens Financial Services (P.) Ltd vs. DCIT
- [2024] 460 ITR 546 (Del) Ganesh Dass Khanna vs. ITO
- [2024] 158 taxmann.com 378 (Delh) Twylight Infrastructure (P.) Ltd. vs. ITO

AY 2013-14/ AY 2014-15

- TOLA does not apply to new law after 1.4.2021
- In any case, the Notifications are delegated piece of legislation, they cannot override the amendments by FA 2021
- Therefore, there is no extension of any time limit
- **All notices issued between July 2022 till September 2022 are barred by limitation**

AY 2015-16

- TOLA does not apply to new law after 1.4.2021
- In any case, the Notifications are delegated piece of legislation, they cannot override the amendments by FA 2021.
- TOLA in any event does not apply to AY 2015-16 onwards.
- Therefore, there is no extension of any time limit.
- First proviso to section 149 restricts issuance of notice till 6 years. Last day therefore, is 31.03.2022.
- **All notices issued between July 2022 till September 2022 are barred by limitation**

AY 2016-17/ AY 2017-18

- TOLA does not apply to new law after 1.4.2021
- In any case, the Notifications are delegated piece of legislation, they cannot override the amendments by FA 2021.
- TOLA in any event does not apply to AY 2015-16 onwards.
- TOLA also does not apply to approvals u/s 151 as there is no time barring date.
- **Approval taken u/s 151(i) is of an incorrect authority and therefore, the notices are bad in law**
- Also, since the notices are issued beyond three years from the end of the relevant assessment, year, therefore, conditions of section 149(1)(b) ought to be fulfilled.
- **Wherever, the income escaping assessment is less than Rs. 50,00,000/-, the cases are time barred.**

Findings of Supreme Court in [2024] 167
taxmann.com 70 (SC) UOI vs. Rajiv Bansal
judgment dated 03.10.2024

Ashish Agrawal - Applicable PAN India

- Findings in Part F – para 89 – 93
 - Para 91 – *“The scope of the directions in Ashish Agarwal (supra) applied PAN INDIA, including all the ninety thousand reassessment notices issued under the old regime during the period 1 April 2021 and 30 June 2021”*
 - Para 92 – *“The operation of the directions cannot be limited to the above three categories, especially when this Court has specifically held that “the present order shall be applicable PAN INDIA.”*
- What if the notice u/s 148 between 1.4.2021 till 30.06.2021 was already disposed off by way of an assessment order?
 - **(2024) 338 CTR (Del) 641 Anindita Sengupta vs. ACIT (favourable)**
 - **Writ Petn. No. 2062 of 2023 (Del) Jaswant Singh Juneja vs. ITO (favourable)**
- Since, the Court has held that discretionary power under Article 142 invoked, therefore, one can take a view that even, in cases where assessment order is passed, then the judgment in Ashish Agrawal would apply.
 - Finality after, the above judgments reach SC

Approval of notice u/s 148A(b)

- Para 80 – *“When this Court deemed the Section 148 notices under the old regime as Section 148A(b) notices under the new regime, it impliedly waived the requirement of obtaining prior approval from the specified authorities under Section 151 for Section 148A(b).”*

AY 2016-17 –approval issue

- Issues noted by the SC in the judgment
 - *Para 16 – “Subsequently, notices under Section 148 of the new regime were issued to the assesses by the assessing officers between **July and September 2022** for the assessment years 2013-2014, 2014-2015, 2015-2016, **2016-2017, and 2017-2018**. These notices were challenged before several High Courts. The High Courts declared the notices to be invalid on the ground that they were: (i) time-barred; and (ii) **issued without the appropriate sanction of the specified authority”***
 - *Para 18(b) - **Whether the reassessment notices issued under Section 148 of the new regime between July and September 2022 are valid.***
- *Para 74 – “The above table indicates that the specified authority is directly co-related to the time when the notice is issued.”*
- *Para 76 – “Grant of sanction by the appropriate authority is a precondition for the assessing officer to assume jurisdiction under Section 148 to issue a reassessment notice”*
- *Para 76 – “Section 151 of the new regime does not prescribe a time limit within which a specified authority has to grant sanction. Rather, it links up the time limits with the jurisdiction of the authority to grant sanction”*

AY 2016-17 –approval issue

- Para 77 – *“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.”*
- Para 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.”*
- Para 114 (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 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 extended time till 30 June 2021 to grant approval”*

AY 2016-17 – limitation issue

- *Para 52 – “Mr Venkataraman has also conceded on behalf of the Revenue that all notices issued under the new regime by invoking the six year time limit prescribed under Section 149(1)(b) of the old regime will have to be dropped if the income chargeable to tax which has escaped assessment is less than Rupees fifty lakhs.”*
- *Para 69 - 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).*
- If surviving period concept is applied (in para 108-113) – then if notice issued beyond the surviving period then time barred.

First proviso to 149

- **Para 10(iii)** – *“However, first proviso to Section 149 prohibits the issuance of a reassessment notice under the new regime if such notices have become time-barred under the old regime;*
- **Para 19(b)**– *“Section 149 of the new regime provides three crucial benefits to the assesses: (i) the four-year time limit for all situations has been reduced to three years; (ii) the first proviso to Section 149 ensures that re-assessment for previous assessment years cannot be undertaken beyond six years; and (iii) the monetary threshold of Rupees fifty lakhs will apply to the reassessment for previous assessment years; ” **submission of ASG***
- **Para 46**– *“The ingredients of the proviso could be broken down for analysis as follows: (i) no notice under Section 148 of the new regime can be issued at any time for an assessment year beginning on or before 1 April 2021; (ii) if it is barred at the time when the notice is sought to be issued because of the “time limits specified under the provisions of” 149(1)(b) of the old regime. Thus, a notice could be issued under Section 148 of the new regime for assessment year 2021-2022 and before only if the time limit for issuance of such notice continued to exist under Section 149(1)(b) of the old regime.”*

First proviso to 149

- **Para 49** – *“The first proviso to Section 149(1)(b) requires the determination of whether the time limit prescribed under Section 149(1)(b) of the old regime continues to exist for the assessment year 2021-2022 and before. Resultantly, a notice under Section 148 of the new regime cannot be issued if the period of six years from the end of the relevant assessment year has expired at the time of issuance of the notice. This also ensures that the new time limit of ten years prescribed under Section 149(1)(b) of the new regime applies prospectively.”*
- Therefore, judgment in Hexaware approved to this extent
- Upto AY 2021-22 – can reopen only till 6 years (subject to the amendment by FA 2022)

TOLA/ Finance Act 2021/ Ashish Agrawal

- **Para 60** – *“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”*
- **Para 67** – *“The substitution of Sections 147 to 151 will not affect the purpose of TOLA, which is, to provide relaxation of the time limit for completion or compliance of any actions falling for completion between 20 March 2020 and 31 March 2021. TOLA will continue to apply to the Income Tax Act after 1 April 2021 if any action or proceeding specified under the substituted provisions of the Income Tax Act falls for completion between 20 March 2020 and 31 March 2021”*
- **Para 68** – *“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.”*

TOLA/ Finance Act 2021/ Ashish Agrawal

- **Para 72** – “Section 3(1) overrides Section 149 only to the extent of relaxing the time limit for issuance of reassessment notice under Section 148. The time limit for issuance of a reassessment notices, which fall for completion between 20 March 2020 and 31 March 2021, has been extended till 30 June 2021.”

AY 2013-14/ AY 2014-15 - limitation

Effect of Article 142 and legal fiction

“94. Before we proceed, we need to bear in mind three important periods:

- i. The period up to 30 June 2021 – this period is covered by the provisions of the Income Tax Act read with TOLA;*
- ii. The period from 1 July 2021 to 3 May 2022 – the period before the decision of this Court in Ashish Agarwal (supra); and*
- iii. The period after 4 May 2022 – the period after the decision of this Court in Ashish Agarwal (supra). This period is covered by the directions issued by this Court in Ashish Agarwal (supra) and the provisions of the Income Tax Act read with TOLA”*

AY 2013-14/ AY 2014-15 - limitation

- **Para 105 –**

“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.”

AY 2013-14/ AY 2014-15 - limitation

- **Para 107 –**

“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. In Ashish Agarwal (supra), this Court provided two weeks to the assesses to reply to the show cause notices. This period of two weeks is also liable to be excluded from the computation of limitation given the third proviso to Section 149.

Hence, the total time that is excluded for computation of limitation for the deemed notices is:

- (i) the time during which the show cause notices were effectively stayed, that is, from the date of issuance of the deemed notice between 1 April 2021 and 30 June 2021 till the supply of relevant information or material by the assessing officers to the assesses in terms of the directions in Ashish Agarwal (supra); and*
- (ii) two weeks allowed to the assesses to respond to the show cause notices.”*

AY 2013-14/ AY 2014-15 - limitation

Para 108- 113 – concept of surviving period

- **Para 108** – *“The effect of creating the legal fiction is that this Court has to imagine as real all the consequences and incidents that will inevitably flow from the fiction.¹⁶³ Therefore, the logical effect of the creation of the legal fiction by Ashish Agarwal (supra) is that the time surviving under the Income Tax 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 30 June 2021.”*
- **Para 109** – *“This construction gives full effect to the legal fiction created in Ashish Agarwal (supra) and enables both the assesses and the Revenue to obtain the benefit of all consequences flowing from the fiction.”*
- **Para 111** – *“The surviving time limit, as prescribed under the Income Tax Act read with TOLA, was available to the assessing officers to issue the reassessment notices under Section 148 of the new regime.”*

AY 2013-14/ AY 2014-15 - limitation

Para 108- 113 – concept of surviving period

- **Para 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. 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.”*
- **Para 113 –** *“Therefore, the 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 Income Tax Act read with TOLA. A reassessment notice issued beyond the surviving time limit will be timebarred.”*

AY 2013-14/ AY 2014-15 - limitation

Para 114 – conclusion

“g. 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; and

h. The assessing officers were required to issue the reassessment notice under Section 148 of the new regime within the time limit surviving under the Income Tax Act read with TOLA. All notices issued beyond the surviving period are time barred and liable to be set aside”

AY 2013-14/ AY 2014-15 - limitation

Para 114 – conclusion

“g. 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; and

h. The assessing officers were required to issue the reassessment notice under Section 148 of the new regime within the time limit surviving under the Income Tax Act read with TOLA. All notices issued beyond the surviving period are time barred and liable to be set aside”

AY 2013-14/ AY 2014-15 - limitation

Table on limitation

Original Notice	Time from 30-06-2021	Material provided on	Reply filed on	148 notice date	time gap between order and reply filing date	Whether barred
01-04-2021	90	28-05-2022	15-06-2022	28-07-2022	43	N
15-05-2021	46	28-05-2022	15-06-2022	28-07-2022	43	N
16-05-2021	45	28-05-2022	15-06-2022	28-07-2022	43	N
17-05-2021	44	28-05-2022	15-06-2022	28-07-2022	43	N
19-05-2021	42	28-05-2022	15-06-2022	28-07-2022	43	Y
01-06-2021	29	28-05-2022	15-06-2022	28-07-2022	43	Y
15-06-2021	15	28-05-2022	15-06-2022	28-07-2022	43	Y
30-06-2021	0	28-05-2022	15-06-2022	28-07-2022	43	Y

AY 2013-14/ AY 2014-15 - limitation

Importance of providing material

- **Para 101** - *“Under Section 148A(b), the assessing officer has to comply with two requirements: (i) issuance of a show cause notice; and (ii) supply of all the relevant information which forms the basis of the show cause notice. The supply of the relevant material and information allows the assessee to respond to the show cause notice. The deemed notices were effectively incomplete because the other requirement of supplying the relevant material or information to the assessee was not fulfilled.”*
- **Para 102** – “While creating the legal fiction in Ashish Agarwal (supra), this Court was cognizant of the fact that the assessing officers were effectively inhibited from performing their responsibility under Section 148A until the requirement of supply of relevant material and information to the assessee was fulfilled. This Court lifted the inhibition by directing the assessing officers to supply the assessee with the relevant material and information relied upon by the Revenue within thirty days from the date of the judgment”

AY 2013-14/ AY 2014-15 - limitation

Importance of providing material

- **Para 106** – *“In Ashish Agarwal (supra), this Court directed the assessing officers to provide relevant information and materials relied upon by the Revenue to the assesses within thirty days from the date of the judgment. 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 ...”*
- **Para 107** – *“Hence, the total time that is excluded for computation of limitation for the deemed notices is: (i) the time during which the show cause notices were effectively stayed, that is, from the date of issuance of the deemed notice between 1 April 2021 and 30 June 2021 till the supply of relevant information or material by the assessing officers to the assesses in terms of the directions in Ashish Agarwal (supra); and (ii) two weeks allowed to the assesses to respond to the show cause notices.”*

AY 2013-14/ AY 2014-15 - limitation

Validity in the following cases:

- **Material not provided within 4 weeks as provided by SC in Ashish Agrawal?**
 - Bad in law
- **Material provided after 4 weeks as provided by SC in Ashish Agrawal, after Assessee's request?**
 - But complete within surviving period?
 - Not completed within surviving period?

AY 2013-14/ AY 2014-15 - limitation

Validity in the following cases

- Reply not filed in 2 weeks, but late?
- No reply filed?

Para 107 –

Hence, the total time that is excluded for computation of limitation for the deemed notices is: (i) the time during which the show cause notices were effectively stayed, that is, from the date of issuance of the deemed notice between 1 April 2021 and 30 June 2021 till the supply of relevant information or material by the assessing officers to the assesses in terms of the directions in Ashish Agarwal (supra); and (ii) two weeks allowed to the assesses to respond to the show cause notices.

Para 114(g) - *“g. 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;*

AY 2013-14/ AY 2014-15 - limitation

Original Notice	Time from 30-06-2021	Material provided on	time limit to provide material (4 weeks)	time limit to reply (2 weeks)	Reply filed on	148 notice date	time gap between order and reply filing date	Whether barred
01-04-2021	90	28-05-2022	02-06-2022	16-06-2022		28-07-2022	42	N
15-05-2021	46	28-05-2022	02-06-2022	16-06-2022		28-07-2022	42	N
16-05-2021	45	28-05-2022	02-06-2022	16-06-2022		28-07-2022	42	N
17-05-2021	44	28-05-2022	02-06-2022	16-06-2022		28-07-2022	42	N
19-05-2021	42	28-05-2022	02-06-2022	16-06-2022		28-07-2022	42	N
01-06-2021	29	28-05-2022	02-06-2022	16-06-2022		28-07-2022	42	Y
15-06-2021	15	28-05-2022	02-06-2022	16-06-2022		28-07-2022	42	Y
30-06-2021	0	28-05-2022	02-06-2022	16-06-2022		28-07-2022	42	Y

AY 2013-14/ AY 2014-15 - limitation

Original Notice	Time from 30-06-2021	Material provided on	time limit to provide material (4 weeks)	time limit to reply (2 weeks)	Reply filed on	148 notice date	time gap between order and reply filing date	time gap between order and actual reply filing date	Whether barred from deemed date	Whether barred from actual reply
01-04-2021	90	28-05-2022	02-06-2022	16-06-2022	01-07-2022	14-08-2022	59	44	N	N
15-05-2021	46	28-05-2022	02-06-2022	16-06-2022	01-07-2022	14-08-2022	59	44	Y	N
16-05-2021	45	28-05-2022	02-06-2022	16-06-2022	01-07-2022	14-08-2022	59	44	Y	N
17-05-2021	44	28-05-2022	02-06-2022	16-06-2022	01-07-2022	14-08-2022	59	44	Y	N
19-05-2021	42	28-05-2022	02-06-2022	16-06-2022	01-07-2022	14-08-2022	59	44	Y	Y
01-06-2021	29	28-05-2022	02-06-2022	16-06-2022	01-07-2022	14-08-2022	59	44	Y	Y
15-06-2021	15	28-05-2022	02-06-2022	16-06-2022	01-07-2022	14-08-2022	59	44	Y	Y
30-06-2021	0	28-05-2022	02-06-2022	16-06-2022	01-07-2022	14-08-2022	59	44	Y	Y

AY 2015-16 (new law)

- **Para 19(g)** – *“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”*
- Thus, Hexaware approved to the above effect
- What if notice issued on 31.03.2022 – dehors Ashish Agrawal – see the issues raised?

AY 2012-13

- **Para 49**

“For example, for the assessment year 2012-2013, the ten year period would have expired on 31 March 2023, while the six year period expired on 31 March 2019. Without the proviso to Section 149(1)(b) of the new regime, the Revenue could have had the power to reopen assessments for the year 2012- 2013 if the escaped assessment amounted to Rupees fifty lakhs or more. The proviso limits the retrospective operation of Section 149(1)(b) to protect the interests of the assesses. “

Not considered the amendment by FA 2022

AY 2015-16 (old law)

- **WP No. 1050 of 2022 (Bom) J M Financial and Investment Consultancy Services Pvt. Ltd. v. ACIT**
 - Notice issued between 01.04.2021-31-03-2021
 - Approval by JCIT/ Addl. CIT
 - Held bad in law, since beyond four years

- SC has held in par 79 - *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*

General findings

- **Article 265 – Para 22** – *“Article 265 makes a distinction between “levy” and “collection.” The expression “levy” has a wider connotation. It includes both the imposition of a tax as well as assessment.”*
- **Process of Assessment – Para 24** – *“The expression “assessment” comprehends the entire procedure for ascertaining and imposing liability upon taxpayers. The process of assessment involves computation of the income of the assessee, determination of tax payable by them, and the procedure for collecting or recovering tax”.*
 - Assessment involves – computation + determination of tax payable + procedure for collection
- **Vested right – Para 26** - *“An assessment acquires finality on the making of an assessment order by the assessing officer.⁴⁴ It creates a vested right in favour of the assessee.... The procedure of reassessment of tax is quasi-judicial because it prejudicially affects the vested rights⁴⁸ of the assessee.”*

General findings

- ***Reassessment vacates original assessment – Para 26*** – “Reassessment is nothing but a fresh assessment.⁴⁶ The effect of reopening the assessment is to vacate or set aside the order of assessment and to substitute in its place the order of reassessment.”
- ***Sanction is an administrative act – Para 27*** – “The process of reassessment is generally preceded by administrative proceedings, which require the assessing officer to obtain the sanction of the specified authorities.”.
- ***Sanction is an important safeguard- Para 31*** - “Further, Section 151 requires assessing officers to obtain sanction of the specified authority before issuing notice under Section 148. In Chhugamal Rajpal v. S P Chaliha, a three-Judge Bench of this Court held that Section 151 must be strictly adhered to because it contains “important safeguards.”
- ***Also see para 73, 76***

General findings

- ***No estoppel/ waiver – consequential order - Para 32*** – “A statutory authority may lack jurisdiction if it does not fulfil the preliminary conditions laid down under the statute, which are necessary to the exercise of its jurisdiction.⁶⁶ There cannot be any waiver of a statutory requirement or provision that goes to the root of the jurisdiction of assessment. An order passed without jurisdiction is a nullity. Any consequential order passed or action taken will also be invalid and without jurisdiction.⁶”
- ***Charging section – strict interpretation (para 34)***
- ***Machinery provision – liberal interpretation to make workable (para 36)***
- ***Section 147-151 is machinery provision (para 69)***
- ***SCN is not effective if not accompanied by material – para 101-*** “An assessment acquires finality on the making of an assessment order by the assessing officer.⁴⁴ It creates a vested right in favour of the assessee.... The procedure of reassessment of tax is quasi-judicial because it prejudicially affects the vested rights⁴⁸ of the assessee.”

General findings

- *Nothing unjust if an assessee escape the law – para 35*
- *Effect of repeal (para 39-43)*
- *Findings on Article 142 – can go beyond statutory provisions to do justice – (para 82-88)*
- *Deeming fiction to be taken to a logical conclusion (para 98)*
- *If preliminary conditions or essential pre-requisites before assuming jurisdiction u/s 148 are not fulfilled then the notice is bad in law (para 32)*

Other issues

- ***What now?***
 - *See consequential order*
- ***Will it apply PAN india?***
- ***What if writ filed and pending?***
- ***What if we are in appeal and no writ filed?***
- ***Change of opinion?***
- ***Other arguments still open***

Taxpayers' Charter

THE INCOME TAX DEPARTMENT

is committed to

1. provide fair, courteous, and reasonable treatment
2. treat taxpayer as honest
3. provide mechanism for appeal and review
4. provide complete and accurate information
5. provide timely decisions
6. collect the correct amount of tax
7. respect privacy of taxpayer
8. maintain confidentiality
9. hold its authorities accountable
10. enable representative of choice
11. provide mechanism to lodge complaint
12. provide a fair & just system
13. publish service standards and report periodically
14. reduce cost of compliance

and expects taxpayers to

1. be honest and compliant
2. be informed
3. keep accurate records
4. know what the representative does on his behalf
5. respond in time
6. pay in time

Apex Court in case of **CIT vs. J.H. Gotla [(1985) 156 ITR 323 (SC)]** has held that *“Though equity and taxation are often strangers, attempts should be made that these do not remain always so and if a construction results in equity rather than in injustice, then such construction should be preferred to the literal construction.”*

QUESTIONS, IF ANY?

THANK YOU

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