



Tax Flash News



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Supreme Court decides on procedural disputes of reassessment proceedings conducted pursuant to its earlier decision in the *Ashish Agarwal* case

Executive summary



The Finance Act, 2021 revamped the reassessment procedures (new reassessment regime) with effect from 1 April 2021. Even after the introduction of the new reassessment regime, the tax officers issued the reassessment notices following the old reassessment procedures during 1 April 2021 to 30 June 2021 on the ground that the Taxation and Other Laws (Relaxation of Certain Provisions) Act, 2020 (TOLA) had extended compliance timelines.

The taxpayers challenged such notices and the Supreme Court in the case of *Ashish Agarwal*¹, agreed with the taxpayer's view that notices issued on or after 1 April 2021 should have been issued under the new reassessment regime. However, the Supreme Court exercised its jurisdiction under Article 142 of the Constitution of India and revived the disputed reassessment notices by deeming those as Show Cause Notice (SCN) under the new reassessment regime (revived proceedings).

¹ *UOI & Others v. Ashish Agarwal* [2022] 444 ITR 1 (SC)

The tax authorities, pursuant to Supreme Court's direction, continued the reassessment proceedings under the new reassessment regime. However, the taxpayers disputed various procedural aspects such as time limitations and issuance of notice without sanction from appropriate authority under new regime. This dispute again reached the Supreme Court in the case of *Rajeev Bansal*² and the Supreme Court held as follows:

1. TOLA applies to any action or proceeding which falls for completion between 20 March 2020 and 31 March 2021, even if it is under a provision of the Income-tax Act, 1961 (the Act) introduced after 1 April 2021 i.e., new reassessment regime in the instant case.
2. Tax authorities were required to obtain sanction for issue of the reassessment notice for the revived proceedings as per the new regime. TOLA will also extend the time limit for the grant of sanction by the specified authority required during the proceedings.
3. The Supreme Court order in Ashish Agarwal case applies to all the ninety-thousand reassessment notices issued under the old regime during the period 1 April 2021 and 30 June 2021.

4. The timeline for issuance of final reassessment notices under section 148 for the revived proceedings shall exclude the period for which the original show cause notice was deemed to be stayed i.e., from the date of issue of the disputed notice till the tax authorities supplied relevant information pursuant to the Supreme Court's direction in Ashish Agarwal case and the period of two weeks given to the taxpayer to respond to the notice.

Supreme Court's decision



TOLA v. New reassessment regime

The reference in TOLA to the Act should mean the Income-tax Act as amended by the Finance Act, 2021. Though the new regime is applicable from 1 April 2021, the amendment or substitution of a provision under the Act will not affect the application of TOLA, which will continue to apply to the Act after 1 April 2021 so long as the action contemplated under the provision falls for completion during the period specified by TOLA, that is, 20 March 2020 to 31 March 2021.

² *UOI & Others v. Rajeev Bansal (Civil Appeal No. 8629 of 2024)*. Source: *Taxsutra*

After 1 April 2021, the Act has to be read along with the substituted provisions. The substituted provisions apply retrospectively for past assessment years as well.

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 after 1 April 2021, the Revenue would still have to look at: (i) the time limit specified under 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.

For instance, 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 TOLA read with its notifications. Consequently, the Revenue had time until 30 June 2021 to issue a reassessment notice for assessment year 2017-2018.

Sanction of the specified authorities

In *Ashish Agarwal* decision, though the Supreme Court waived off the requirement of obtaining the prior approval for conducting an enquiry and for issuing the SCN, it did not waive off any requirement of obtaining the prior approval for passing the order that it is a fit case for issuing reassessment notice and obtaining the prior approval for the issuance of reassessment notice.

If the time limit of three years falls between 20 March 2020 and 31 March 2021, then the specified authority under the new regime has an extended time till 30 June 2021 to grant approval. For instance, as three-year limit for AY 2017-18 falls for completion on 31 March 2021 (i.e., between 20 March 2020 and 31 March 2021), the authority specified under the new regime can grant sanction till 30 June 2021.

If the time limit of four years falls between 20 March 2020 and 31 March 2021, then the specified authority under the old regime has time till 31 March 2021 to grant approval. The time limit for the old regime expires on 31 March 2021 because the new regime comes into effect on 1 April 2021.

Applicability of Ashish Agarwal decision

In *Ashish Agarwal* decision, the Supreme Court rendered its decision on the premise that the Revenue issued approximately ninety thousand notices under the old regime and all of them were the subject matter of writ petitions before the High Courts. Further the court directed that its directions shall be applicable PAN India.

The purpose of the Supreme Court in reviving the reassessment proceedings was strike a balance between the rights of taxpayers and Revenue and also to avoid any further appeals before this Court by the Revenue on the same issue by challenging similar judgments and orders of the High Courts.

The scope of the directions in *Ashish Agarwal* case 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.

Exclusion in the limitation period

While computing the period of limitation, the following period needs to be excluded:

- (a) The period during which the proceedings under section 148A (i.e., issuing SCN, making enquires etc.) are stayed by an order or injunction of any court (the period from the date of issuance of the deemed SCN and the date of the decision in *Ashish Agarwal* i.e., 4 May 2022) as the tax officers were deemed to have been prohibited from passing a reassessment order.
- (b) Due to the legal fiction, the tax officers were deemed to have been inhibited from acting in pursuance of the SCN till the relevant material was supplied to the assesses. Therefore, the SCN were deemed to have been stayed until the assessing officers provided the relevant information or material to the taxpayer.
- (c) Time allowed for the assesses to respond to the show cause notice has to be excluded for computing the period of limitation (which as per the direction in *Ashish Agarwal* decision was two weeks).

The SCNs were deemed to be stayed from the date of issuance of notice till the supply of relevant information and material by the tax officers to the taxpayers in terms of the directions issued by this Court in Ashish Agarwal, and the period of two weeks allowed to the taxpayers to respond to the show cause notices.

The tax officers were required to issue the reassessment notice under the new regime within the time limit surviving under the Act read with TOLA. All notices issued beyond the surviving period are time barred and liable to be set aside.

For instance, if the deemed SCN was issued on 1 May 2021, the tax officer would have sixty-one days (1 May 2021 till 30 June 2021) to issue reassessment notice. If the taxpayer submits the response on 18 June 2022, the tax officer will have sixty-one days from 18 June 2022 to issue a reassessment notice under the new regime. Thus, in this illustration, the time limit for issuance of a reassessment notice under the new regime will end on 18 August 2022.

Our comments



This decision will put an end to the long litigation around the timelines for the issuance of the reassessment notices under the new reassessment regime in view of the time-limit extended by the TOLA.



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