

The Allahabad High Court denies the benefit of the extension of the time limit¹ to deemed reassessment notices² for computation of the time limit under the new reassessment regime

Executive Summary

The Delhi High Court in Touchstone Holding Pvt Ltd³ held that since the time period for issuance of reassessment notice for Assessment Year (AY) 2013-14 under the old reassessment provisions was extended until 30 June 2021 by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act 2020 (TOLA), the notice issued on 29 June 2021, deemed to be a notice under amended Section 148A under the direction of the Supreme Court, was thus within the time limit provided under amended Section 149 and the restriction under the first proviso to amended Section 149(1)⁴ was not attracted.

Recently, the Allahabad High Court, in the case of Rajeev Bansal and Others⁵ (petitioner) disagreed with the view of the Delhi High Court in the case of Touchstone Holdings and held that reassessment notices issued after 31 March 2021 under the new regime are time-barred, where the maximum limitation period of six years under the old regime to reopen the assessment had expired. In such cases, an extension granted by the TOLA would not apply.

Facts of the case

- Various writ petitions were filed challenging the time limitation of the reassessment notices issued under the amended Section 148 for AY 2013-14 to AY 2017-18 in cases of the reassessment notices issued after 1 April 2021 but before 30 June 2021 (i.e., in the extended period of the TOLA) treated as deemed reassessment notice under Section 148A(b) by the Supreme Court.

Taxpayer's contentions

- The TOLA will not extend the time limit provided for the initiation of reassessment proceedings under the amended provisions from 1 April 2021 onwards.
- The tax department has to comply with all the requirements of the amended provisions in the reassessment proceedings initiated on or after 1 April 2021. Simultaneously, all defenses under the amended provisions will be available to the taxpayer.
- For the AY 2013-14 and 2014-15, the assessment cannot be reopened, as the maximum period of six years prescribed in old Section 149(1)(b) had expired on 31 March 2021. For the AY 2015-16 to 2017-18, it was contended that the monetary threshold and other requirements in the new regime have to be followed.
- The validity of the notice under Section 148 was, thus, to be tested on the compliance or fulfillment of requirements by the tax department as per Section 149(1)(b)⁶ and restriction under the first proviso to Section 149(1).

¹ Under the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act 2020

² The Supreme Court, in the case of Union of India v. Ashish Agarwal [2022] 444 ITR 1 (SC), directed that reassessment notices issued under the old reassessment regime between 1 April 2021 and 30 June 2021 (i.e., during the extension period under the TOLA) shall be deemed to notice issued under Section 148A(b) under the new regime.

³ Touchstone Holding Pvt Ltd [2022] 289 Taxman 462 (Del)

⁴ First proviso restricts the initiation of reassessment proceedings in cases that have become time-barred under the old regime

⁵ Rajeev Bansal and Others v. UOI (Writ Tax No. 1086 of 2022, dated 22 February 2023) – Taxsutra.com

⁶ The time limit to issue reassessment notice is up to 10 years where escaped income amounts to or is likely to amount to fifty lakh rupees or more

Tax department's contentions

- The extension in time up to 30 June 2021 by the TOLA would apply to the time limit provided under the amended reassessment provisions. Thus, the cases where the period of six years had expired on 31 March 2020 and 31 March 2021 but extended by TOLA would not be hit by the first proviso to amended Section 149(1).
- For the AY 2013-14, and AY 2014-15 reassessment proceedings have to be conducted in accordance with the amended Section 149(1)(b), being beyond the period of three years but within the limitation of ten years.
- For the AY 2015-16, on the expiry of three years on 31 March 2019, the extension up till 30 June 2021 is to be granted to bring the reassessment proceedings under amended clause (b) of sub-section (1) of Section 149.
- For the AY 2016-17 and 2017-18, the period of three years under the amended provisions was expired on 31 March 2020 and 31 March 2021, respectively. The extension in the time limit up to 30 June 2021 as per the TOLA is to be granted to such AYs to validly fall under the amended Section 149(1)(a).

High Court's decision

- The time limit in unamended Section 149(1)(b) of six years cannot be extended upto ten years under the amended Section 149(1)(b) to initiate reassessment proceeding in view of the first proviso to Section 149(1).
- The amendments brought to Section 149(1), by insertion of the first proviso and clause (b), are substantive amendments which confer the right upon the taxpayer to seek immunity from the reopening of the assessment proceedings after the maximum period prescribed in the unamended Section 149.
- If the arguments of the tax department were accepted, the benefits provided to the taxpayer in the substantive provisions of Section 149 have to be ignored or deferred. The first proviso to Section 149(1) cannot be rendered useless by allowing the tax department to take shelter of the extension notifications.
- The Supreme Court in the case of Ashish Agarwal permitted the tax department to proceed further with the reassessment proceedings under the amended provisions, subject to compliance of all the procedural requirements and defences under the new regime.

- The deemed reassessment notices cannot be allowed to travel back in time to their original date when such notices were to be issued and then to apply amended Section 149 as interpreted by the tax department in the CBDT Instruction. The CBDT Instruction is a surreptitious attempt to circumvent the decision of the Supreme Court.
- The Delhi High Court in the case of Touchstone Holding Pvt Ltd held that in view of the extension in the time limit to issue reassessment notices under the TOLA, the first proviso to Section 149(1) was not attracted for the AY 2013-14. These observations of the Delhi High Court were in direct conflict with the Supreme Court's decision in the case of Ashish Agarwal.
- The time limit prescribed under the new regime, cannot be counted after considering the extension provided under the TOLA. In respect of the proceedings where the first proviso to Section 149(1) was attracted, the benefit of the TOLA will not be available to the AO.

Our comments

Recently, the Gujarat High Court also dealt with a similar issue in the case of Keenara Industries Pvt Ltd⁷. While dealing with the AY 2013-14 and 2014-15, the Gujarat High Court held that in view of the express language in the first proviso to Section 149(1), the deemed reassessment notices issued under Section 148A between 1 April to 30 June 2021, are time-barred.

Though the Allahabad High Court as well as the Gujarat High Court have distinguished the Delhi High Court's decision in Touchstone Holding Pvt Ltd, one would have to wait to see how other Courts will deal with this issue and for it to reach to the Supreme Court to attain finality.

⁷ Keenara Industries Pvt Ltd v. ITO (R/Special Civil Application No. 17321 of 2022) (Guj)

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