IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH MUMBAI

BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.4812/Mum/2024
(Assessment Year :2015-16)

ITA No.4814/Mum/2024
(Assessment Year :2014-15)
&
ITA No.4816/Mum/2024
(Assessment Year :2013-14)

ITO 10(3)(1), Mumbai 129A, Aayakar Bhavan M.K.Road Mumbai- 400 020	Vs.	Pushpak Realities Pvt. Ltd. 205, Adarsh Industrial Estate, Chakala Andheri East Maharashtra-400 099
PAN/GIR No.AAFCP3752J		
(Appellant)	..	**(Respondent)**

Assessee by	None
Revenue by	Shri Jayant Jhaveri, CIT DR & Shri Krishna Kumar, Sr.DR
Date of Hearing	**30/10/2024**
Date of Pronouncement	**07/11/2024**

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeals have been filed by the Revenue against separate impugned orders of even date 22/07/2024

passed by NFAC, Delhi for the quantum of assessment passed u/s.147 for the A.Ys. 2013-14, 2014-15 & 2015-16.

2. In all the years the Revenue has challenged quashing of the notices u/s.148 in various grounds of appeals.

3. None appeared on behalf of the respondent assessee despite of service of notice, therefore, the appeals are being disposed off after considering the relevant material and the arguments to be verified by the ld. DR. The validity of notice u/s.148 /148A has been challenged by the Revenue that Ld. CIT (A) has quashed the notices on the ground that it is barred by limitation. The main contention of the revenue is that the notices issued u/s.148 have been deemed to be extended by Section 3 of TOLA, therefore, all the notices sent are within time limit and same is in consonance of the judgment of the Hon'ble Supreme Court in the case of **Union of India vs. Ashish Agarwal reported in (2023) 1 SCC 617.** With the help of relevant dates mentioned in the assessment as well as appellate order following chronology of dates for the issue of notice u/s. 148 is culled out:

A.Y.	**Time Limit For Issuance of Notice (Within Six Years)**	**Date of Notice**
2013-14	**31/03/2020**	**29/07/2022**
2014-15	**31/03/2021**	**31/07/2022**
2015-16	**31/03/2022**	**28/07/2022**

4. The case for **A.Y.2013-14** was reopened by Jurisdictional Assessing Officer by issue of notice u/s.148 on 23/04/2021 and then ld. AO stated that in view of the decision of the Hon'ble Supreme Court in the case of **Union of India vs. Ashish Agarwal reported in (supra)** wherein it has been held that notice u/s.148 of the Act issued during the period 01/04/2021 to 30/06/2021 under the old law are deemed to be show-cause notice issued under 148(b) under the new law and has directed the ld. AO to follow the procedure with respect to such notices. Accordingly, ld. AO provided the information and material relied upon the issue of notice u/s.148 to the assessee on 28/05/2022 as per the provision of Section 148A(b) and order u/s.148A(d) was passed and simultaneously **notice u/s.148 was issued on 29/07/2022.**

5. Similarly, in **A.Y.2014-15** first notice u/s.148 was issued on 23/04/2021 and thereafter, another notice was issued u/s.148 on 26/04/2021. The reasons for reopening were provided on 04/08/2021 against which assessee filed an objection on 24/09/2021 which was disposed of by the ld. AO vide order dated 13/12/2021. The ld. AO thereafter, issued a letter dated 28/05/2022, in view of the decision of the Hon'ble Supreme Court in the case of Ashish Agarwal (supra) wherein, ld. AO treated the notice u/s.148 issued on 26/04/2021 as notice issued u/s.148(b) which was issued by the JAO. Order u/s. 148A (d) passed on 28/07/2022 and **notice u/s.148 was issued on 31/07/2022.**

6. For **A.Y.2015-16** first notice and second notice was issued on 23/04/2021 and 26/04/2021 and assessee objection was disposed of on 13/12/2021. However, later on ld. AO issued a letter dated 28/05/2022 stating that now in view of the decision of the Hon'ble Supreme Court in the case of Ashish Agarwal notice u/s.148 was issued on 26/04/2021 as notice issued u/s. 148A(b) finally, the ld. AO passed an order u/s.148A(d) on 28/07/2022 and **notice u/s.148 was issued on 29/07/2022**.

7. In all the years, the ld. CIT (A) has quashed the notice after holding as under:-

A.Y.2013-14

7.1 The ld. CIT(A) while quashing the notice has relied upon the judgment of the Hon'ble Bombay High Court in the case of Siemens Financial Services Pvt. Ltd. reported in 457 ITR 647 and had quashed the notice.

A.Y.2014-15

7.2. Ld. CIT(A) relied upon the judgment of the Hon'ble Bombay High Court in the case of Godrej Industries vs. ACIT in Writ Petition 450 of 2023 holding that notice u/s.148 for A.Y. 2014-15 could not have been issued on or after 01/04/2021 and the reopening notice issued on 31/07/2022 for A.Y.2014-15 was barred by limitation and after quoting such judgment he held that the facts in the case of Godrej Industries Ltd for A.Y.2014-15 is squarely applicable in the case of the assessee.

A.Y.2015-16:

7.3. In 2015-16, ld. CIT(A) relied upon the judgment of Hexaware Technologies Ltd., and held that notice issued u/s.148 have been issued beyond the time limit of six years which had expired on 31/03/2022 and here the notice has been issued after the due date.

8. We find that now this issue has been settled by the latest judgment of the **Hon'ble Supreme Court in the case of Union of India vs. Rajeev Bansal in Civil Appeal No.8629 of 2024** alongwith other civil appeal numbers. The Hon'ble Supreme Court had referred to the submissions made on behalf of the Revenue vide para 19 which is quite relevant and same is reproduced hereunder:-

19. Mr N Venkataraman, learned Additional Solicitor General of India, made the following submissions on behalf of the Revenue:

a. Parliament enacted TOLA as a free-standing legislation to provide relief and relaxation to both the assessees and the Revenue during the time of COVID- 19. TOLA seeks to relax actions and proceedings that could not be completed or complied with within the original time limits specified under the Income Tax Act,

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 re- assessment for previous assessment years,

c. The relaxations provided under Section 3(1) of TOLA apply "notwithstanding anything contained in the specified Act." Section 3(1), therefore, overrides the time limits for issuing a notice under Section 148 read with Section 149 of the Income Tax Act;

d. TOLA does not extend the life of the old regime. It merely provides a relaxation for the completion or compliance of actions following the procedure laid down under the new regime;

e. The Finance Act 2021 substituted the old regime for re-assessment with a new regime. The first proviso to Section 149 does not expressly bar the application of TOLA. Section 3 of TOLA applies to the entire Income Tax Act including Sections 149 and 151 of the new regime. Once the first proviso to Section 149(1)(b) is read with TOLA, then all the notices issued between 1 April 2021 and 30 June 2021 pertaining to assessment years 2013-2014, 2014-2015,2015-2016,2016-2017, and 2017-2018 will be within the period of limitation as explained in the tabulation below;

Assessment Year (1)	*Within 3 Years (2)*	*Expiry of Limitation read with TOLA for (2) (3)*	*Within six Years (4)*	*Expiry of Limitation read with TOLA for (4) (5)*
2013-2014	***31.03.2017***	***TOLA not applicable***	***31.03.2020***	***30.06.2021***
2014-2015	***31.03.2018***	***TOLA not applicable***	***31.03.2021***	***30.06.2021***
2015-2016	***3103.2019***	***TOLA not applicable***	***31.03.2022***	***TOLA not applicable***
2016-2017	*31.03.2020*	*30.06.2021*	*31.03.2023*	*TOLA not applicable*
2017-2018	*31.03.2021*	*30.06.2021*	*31.03.2024*	*TOLA not applicable*

f. 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;

g. Section 2 of TOLA defines "specified Act" to mean and include the Income Tax Act. The new regime, which came into effect on 1 April 2021, is now part of the Income Tax Act. Therefore, TOLA continues to apply to the Income Tax Act even after 1 April 2021; and

***h. Ashish Agarwal** (supra) treated Section 148 notices issued by the Revenue between 1 April 2021 and 30 June 2021 as show-cause notices in terms of Section 148A(b). Thereafter, the Revenue issued notices under Section 148 of the new regime between July and August 2022. Invalidation of the Section 148 notices issued under the new regime on the ground that they were issued beyond the time limit specified under the Income Tax Act read with TOLA will completely frustrate the judicial exercise undertaken by this Court in Ashish Agarwal (supra).*

9. Thus it can be seen that, one very important fact which has been stated by the Revenue before the Hon'ble Supreme Court in para 19 (f) wherein the Revenue concedes that for the A.Y.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. Further, for the A.Y.2013-14 and 2014-15 Revenue has accepted that the expiry of the limitation (TOLA) will expire on 30/06/2021.

10. In para 54 the Hon'ble Supreme Court has explained the extension of TOLA time limit till 31/06/2021 in the following manner:-

"54. The proviso to Section 149(1)(b) of the new regime uses the expression "beyond the time limit specified under the provisions of clause (b) of sub- section (1) of this section, as they stood

immediately before the commencement of the Finance Act, 2021." Thus, the proviso specifically refers to the time limits specified under Section 149(1)(b) of the old regime. The Revenue accepts that without application of TOLA, the time limit for issuance of reassessment notices after 1 April 2021 expires for assessment years 2013-2014, 2014-2015, 2015-2016, 2016-2017, and 2017-2018 in the following manner:

(i) for the assessment years 2013-2014 and 2014-2015, the six year period expires on 31 March 2020 and 31 March 2021 respectively; and

(ii) for the assessment years 2016-2017 and 2017-2018, the three year period expires on 31 March 2020 and 31 March 2021 respectively.

a. Finance Act 2021 substituted the old regime."

11. Thereafter, the Hon'ble Supreme Court has elaborated the law brought by the Finance Act, 2021 substituting u/s. 147 to 151 and the TOLA providing for relaxation of time limit prescribed under the specified Acts. Further, their Lordships have also observed that Section 3(1) of TOLA starts with non-obstante clause which has to be read as controlling the provisions of the specified Acts including the provision of Income Tax Act which also overrides Section 149 only to the extent of relaxing the time limit of issuing of re-assessment notice u/s.148. The Hon'ble Court held that time limit for issuance of re-assessment notices which falls for completion between 20th March 2020 and 31/03/2021 has been extended till 30/06/2021. However, non-obstante clause u/s.3(1) of TOLA will neither the extent of time limit of three years from the end of the relevant assessment year u/s.149(1)(a) neither the new regime extend the time limit of six years from the end of the relevant

assessment years u/s.149(1)(b) of the old regime. From para 73 to 76, the Lordships have elaborated the sanction of specified authority u/s.151 vis-à-vis the time limit prescribed in Section 151. For the sake of ready reference para 73-76 reads as under:-

"73. Section 151 imposes a check upon the power of the Revenue to reopen assessments. The provision imposes a responsibility on the Revenue to ensure that it obtains the sanction of the specified authority before issuing a notice under Section 148. The purpose behind this procedural check is to save the assesses from harassment resulting from the mechanical reopening of assessments.[128] A table representing the prescription under the old and new regime is set out below:

Regime	***Time Limits***	***Specified Authority***
Section 151(2) of the old regime	*Before expiry of four years from the end of the relevant assessment year*	*Joint Commissioner*
Section 151(1) of the old regime	*After expiry of four years from the end of the relevant assessment year*	*Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner*
Section 151(i) of the new regime	*Three years or less than three years from the end of the relevant assessment year*	*Principal Commissioner or Principal Director or Commissioner or Director*
Section 151(ii) of the new regime	*More than three years have elapsed from the end of the relevant assessment year*	*Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General*

74. The above table indicates that the specified authority is directly co-related to the time when the notice is issued This plays out as follows under the old regime

(i) If income escaping assessment was less than Rupees one lakh (a) a reassessment notice could be issued under Section 148 within four years after obtaining the approval of the Joint Commissioner, and (b) no notice could be issued after the expiry of four years, and

(ii) If income escaping was more than Rupees one lakh (a) a reassessment notice could be issued within four years after obtaining the approval of the Joint Commissioner: and (b) after four years but within six years after obtaining the approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner

75. After 1 April 2021, the new regime has specified different authorities for granting sanctions under Section 151 The new regime is beneficial to the assessee because it specifies a higher level of authority for the grant of sanctions in comparison to the old regime. Therefore, in terms of Ashish Agarwal (supra), after 1 April 2021, the prior approval must be obtained from the appropriate authorities specified under Section 151 of the new regime. The effect of Section 151 of the new regime is thus

(i) If income escaping assessment is less than Rupees fifty lakhs: (a) a reassessment notice could be issued within three years after obtaining the prior approval of the Principal Commissioner, or Principal Director or Commissioner or Director, and (b) no notice could be issued after the expiry of three years, and

(ii) If income escaping assessment is more than Rupees fifty lakhs: (a) a reassessment notice could be issued within three years after obtaining the prior approval of the Principal Commissioner, or Principal Director or Commissioner or Director; and (b) after three years after obtaining the prior approval of the Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General.

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 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 Section 151 (ii) of the new regime prescribes a higher level of authority if more than three years have elapsed from the end of the relevant assessment year Thus, non-compliance by the assessing officer with the strict time limits prescribed under Section 151 affects their jurisdiction to issue a notice under Section 148.

12. Thus, the Hon'ble Supreme Court clearly held that after 01/04/2021 the new regime has specified different authorities for granting sanction u/s.151 and since it is a beneficial to the assessee because it specifies the higher level of authority for the grant of sanctions in comparison to the old regime, therefore, in terms of Shri Ashish Agarwal judgment, after 01/04/2021 the prior approval must be obtained from the competent authorities specified u/s.151 of the new regime and then their Lordships have clearly held in para 76 that the non-compliance by the AO to the restricted time limit prescribed u/s.151 affects the jurisdiction to issue a notice u/s.148.

13. In para 94 the Hon'ble Supreme Court has mentioned about the three important periods to see the limitation which are as under:-

"4. 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 PART F this Court in Ashish Agarwal (supra) and the provisions of the Income Tax Act read with TOLA.

a. Third proviso to Section 149

95. The third proviso to Section 149 reads thus:

> *"Provided also that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (b) of section 148A or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded."*

96. The third proviso excludes the following periods to calculate the period of limitation: (i) the time allowed to the assessee under Section 148A(b); and (ii) the period during which the proceedings under Section 148A are "stayed by an order or injunction of any court."

14. Finally, after analyzing the judgment of Shri Ashish Agarwal in various time limits provided in the Act and the time extended by TOLA, the Hon'ble Supreme Court concluded as under:-

114. In view of the above discussion, we conclude that:

a. After 1 April 2021, the Income Tax Act has to be read along with the substituted provisions;

b. 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;

c. Section 3(1) of TOLA overrides Section 149 of the Income Tax Act only to the extent of relaxing the time limit for issuance of a reassessment notice under Section 148;

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;***

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 directions in Ashish Agarwal (supra) will extend to all the ninety thousand reassessment notices issued under the old regime during the period 1 April 2021 and 30 June 2021;

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;***

15. Thus, from the aforesaid judgment, it is clear that firstly, after 01/04/2021, the Income Tax Act has to be read alongwith

substituted provisions of TOLA will continue to apply after 01/04/2021 if any action or proceedings provided under the substituted provision of the Income Tax falls for completion between 21/03/2020 to 31/03/2021 and Section 3(1), overrides Section 149 of the Income Tax Act; Similarly, TOLA will extend the time limit for grant of sanction by the authorities specified u/s.151 and if the time limit of three years falls between 21/03/2021 and 31/03/2021 then the specified authority u/s.151(i) has extended time limit till 30/06/2021. The direction of Shri Ashish Agarwal will extent to all re-assessment notice issued in old regime i.e. from 01/04/2021 to 30/06/2021 and finally Court held that ld. AO was required to issue re-assessment notice u/s.148 under the new regime within the time limit surviving u/s.148 of the Income Tax Act r.w. TOLA. Thus, in all such instances for the relevant assessment years under question the time limit was extended only up to 30/06/2021 for issuance of notice u/s.148.

16. Now here in this case as noted above for A.Y.2013-14 after 148A (b), notice u/s.148 was issued on 29/07/2022; for A.Y. 2014-15 it was issued on 31/07/2022; and for A.Y.2015-16 it was issued 28/07/2022. Thus, in all these years as noted above the original time limit for six years for A.Y.2013-14 was upto 31/03/2020; for 2014-15 it was 31/03/2021; and for A.Y. 2015-16 it was 31/03/2022. **Even under the TOLA, the time limit for issuance of notice u/s 148 had expired on 30/06/2021 both for A.Y. 2013-14 & A.Y. 2014-15. For the A.Y.2015-16, the Revenue itself has contended before the Hon'ble**

Supreme Court as noted above, all the notices issued on or after 01/04/2021 will have to be dropped as they will not fall for completion during the period prescribed under TOLA. Here notice u/s. 148 for the A.Y. 2015-16 has been issued on 28/07/2022 which is admittedly barred by limitation under the new provision of Section 149(1) and it is not covered under TOLA. Accordingly, all the notices are quashed being barred by limitation on the reasons given above and we are not going on the reasons given by the ld. CIT (A) for quashing the notice.

17. Since the issue involved was squarely covered by the judgment of the Hon'ble Supreme Court in the case of Shri Rajeev Bansal therefore, the same has been decided on the principle laid down by the Hon'ble Supreme Court.

18. In the result, all the appeals of the Revenue are dismissed.

Order pronounced on 7th November, 2024.

Sd/-	**Sd/-**
(GIRISH AGRAWAL)	**(AMIT SHUKLA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated 07/11/2024
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

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BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai