

# Supreme Court Ruling in Rajeev Bansal: A Silver Lining for Taxpayers?

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## A. Introduction:

The Hon'ble Supreme Court in the case of **Union of India v. Rajeev Bansal** [\[TS-725-SC-2024\]](#) (Civil Appeal No.8629 of 2024 dated 3 October 2024) has conclusively resolved a pivotal issue in the ongoing litigation surrounding the new reassessment provisions, specifically addressing the issue of period of limitation. This judgment puts to rest on how the limitation period for initiating reassessment proceedings under the new reassessment provisions of section 149 of the Act for notices issued during 1 April 2021 to 30 June 2021 should be calculated when juxtaposed with the relaxations granted under Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 ('TOLA').

In this article, we offer a nuanced analysis of the impact of the Supreme Court's decision. Through examples, we also illustrate how certain notices issued during the extended TOLA period could either be valid or still be considered to be time-barred, depending on the factual matrix.

## B. Background to the controversy:

As we all know, TOLA was enacted to provide relief from the challenges posed by the COVID-19 pandemic, benefiting not only taxpayers but also Tax Authorities by extending timelines for seeking sanctions and issuing statutory notices. TOLA extended the period of limitation until 30 June 2021, granting additional time for actions that were required to be taken between 20 March 2020 and 31 March 2021. Consequently, during this extended period (1 April 2021 to 30 June 2021), the Department issued approximately 90,000 notices under the old reassessment provisions for Assessment Years 2013-14 to 2017-18, operating under the assumption that TOLA allowed issuances of notices under the pre-amended law.

Initially, the validity of these notices was challenged on the grounds that the new reassessment provisions, effective from 1 April 2021, rendered any notices issued under the old provisions invalid. The Hon'ble Supreme Court, in its landmark judgment dated 4 May 2022 in the case of **Union of India v. Ashish Agarwal** (2023 1 SCC 617), while ruled the issue principally in favour of the assessee but sought to strike a balance due to the wide-reaching consequences of invalidating these notices. To resolve the impasse, the Court invoked its extraordinary jurisdiction under Article 142 of the Constitution.

The Hon'ble Supreme Court ruled that the notices issued between 1 April 2021 and 30 June 2021 would be deemed show-cause notices under the new provisions of section 148A(b) of the Act. The Hon'ble Court also provided a procedural framework for how these reassessment proceedings should be conducted:

**1. Disclosure of material by the AO:** The Assessing Officer (AO) must, within 30 days of the judgment, furnish the assessee with the material or information that the Revenue relied upon to issue the notice.

**2. Response from the Assessee:** The assessee is required to submit their response within two weeks of receiving the information.

**3. Final Order by the AO:** The AO must then consider the assessee's response and pass an order under Section 148A(d), either accepting the assessee's objection and dropping the reassessment proceedings or rejecting the same, following which a fresh notice under Section 148 may be issued.

The Hon'ble Supreme Court emphasized that all defences available to the assessee, including those under Section 149 of the Act, as well as all rights and contentions under the Finance Act, 2021, remain intact.

The Central Board of Direct Taxes (CBDT) issued an **Instruction No.1/2022 dated 11 May 2022** to implement the Supreme Court's decision in *Ashish Agarwal*. The key highlights of this Instruction are as follows:

(a) The Hon'ble Supreme Court's ruling applies to all reassessment notices issued between 1 April and 30 June 2021 under the old reassessment regime, irrespective of whether these notices were challenged in court.

(b) The CBDT interpreted the ruling to suggest that the decision of the Hon'ble Supreme Court read with the time extension provided by TOLA will allow extended reassessment notices to "travel back" in time to their original date when such notices were to be issued and then new section 149 of the Act is to be applied at that point.

(c) For AY 2013-14 to AY 2015-16, the CBDT clarified that reassessment notices could not be issued unless the conditions for invoking the new reassessment regime beyond 3-year from the end of AY, were satisfied. In other words, if the income escaping assessment was less than INR 50 lakhs, the CBDT directed that no notices be issued for these years.

(d) For AY 2016-17 to AY 2017-18, fresh reassessment notices could be issued based on the 3-year limitation period prescribed under the new regime.

(e) The CBDT emphasized that the requisite approval from the Principal Commissioner of Income Tax (PCIT) or Principal Chief Commissioner of Income Tax (PCCIT) under the provisions of new reassessment regime i.e., under Sections 151(i) or 151(ii) of the Act must be obtained, depending on whether the notices fall within the 3-year or 6-year limitation period.

(f) The Assessing Officer (AO) was instructed to provide the information or material relied upon by the Department by 2 June 2022 and grant the assessee two weeks to respond. The AO could extend the time for the assessee to respond if requested, as permitted under Section 148A(b) of the Act.

(g) Upon receiving the assessee's response, the AO, with the approval of the sanctioning authority, was required to pass an order under Section 148A(d), either accepting or rejecting the assessee's claim within one month from the end of the month in which the response was received.

Following this procedure, the Assessing Officers issued fresh notices for AY 2013-14 to AY 2017-18 between June 2022 and September 2022.

However, the revival of these notices under the new reassessment regime was again put to challenge by taxpayers before various High Courts. One of the lead case was the Rajeev Bansal's case before the Hon'ble Allahabad High Court. The Hon'ble Court examined whether TOLA, which extended the limitation period for actions to be undertaken by 31 March 2021, would also apply to the new reassessment

provisions of Section 149 (which takes effect from 1 April 2021), resultantly, deciding the fate of fresh notices under section 148 issued following the decision of the Hon'ble SC in the case of Ashish Agarwal.

The Hon'ble Allahabad High Court ruled in favor of the taxpayer, concluding that TOLA's provisions applied only when the period of limitation expired between 20 March 2020 and 31 March 2021. The Hon'ble Court held that since the Finance Act, 2021, came into force after TOLA, the latter only governed the period until the new regime took effect on 1 April 2021, especially in absence of any saving clause within the provisions of section 149 continuing applicability of TOLA provisions. Therefore, TOLA could not be used to extend the limitation period beyond the commencement of the new reassessment provisions.

The Department's appeal against the decision of the Hon'ble Allahabad High Court, along with similar judgments from other High Courts, was consolidated for hearing before the Hon'ble Supreme Court. The central questions framed for determination by the Hon'ble SC were:

a) Whether TOLA and the notifications issued under it extend to reassessment notices issued after 1 April 2021?

b) Whether the reassessment notices issued under Section 148 of the new regime between July and September 2022 are valid?

### C. Decision of the Hon'ble SC:

**1. Reading Finance Act, 2021 with TOLA:** The Finance Act, 2021 substituted the old provisions – so it should be read in a manner that the same is incorporated under the old provisions. Hence, after 1 April 2021, Section 2(1)(b)(ii) of TOLA must be read to mean the Income Tax Act as amended by the Finance Act 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.

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. 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. This harmonious reading gives effect to the legislative intention of both the Income Tax Act and TOLA. Moreover, Sections 147 to 151 are machinery provisions. Therefore, they must be given an interpretation that is consistent with the object and purpose of the Income Tax Act.

**2. Sanctions under section 151:** After 1 April 2021, the new regime has specified different authorities for granting sanctions under Section 151. 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. 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 3(1) of TOLA relaxes the time limit for compliance with actions that fall for completion from 20 March 2020 to 31 March 2021. TOLA will accordingly extend the time limit for the grant of sanction by the authority specified under Section 151.

The amended reassessment provisions requires the specified authority to grant approval at four stages. The first two stages i.e., for conducting inquiry and thereafter to issue notice under section 148A(b) are dispensed with in view of the Hon'ble SC decision in the case of Ashish Agarwal. However, for subsequent two stages i.e., for issuances of order under section 148A(d) and for issuance of notice under section 148 of the Act, the approvals are required.

**3. Critical time periods:** Thus, the Revenue Authorities were accorded approval for issuing reassessment notices for prior years during the period from 1 April 2021 to 30 June 2021. However, the notice under Section 148, after following the due procedure under the amended provisions of Section

148A and obtaining the necessary approval under Section 151, **should have been completed by 30 June 2021**. Due to the ongoing litigation, the final notices under Section 148 were issued much later, between 1 June 2022 and 30 September 2022, creating additional complexity and necessitating further judicial clarification on the validity of these delayed notices. There are following periods relevant in the present context:

- 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) during which the Revenue Authorities completed the procedure laid down in the said decision and issued notices under section 148 during period June 2022 to September 2022.

**4. Computation of period of limitation:** The Hon'ble SC referred to the principles in the context of Article 142 invoked by the Hon'ble SC in the case of Ashish Agarwal. It held the exercise of the jurisdiction under Article 142 is meant to supplement the existing legal framework to do complete justice between the parties. In a given circumstance, this Court can supplement a legal framework to craft a just outcome when strict adherence to a source of law and exclusive rule-based theories creates inequitable results. The Hon'ble Court also referred to third proviso to section 149 which for the purpose of computing the limitation period excludes extended time allowed to the Assessee under section 148A(b) or period during which the proceeding under section 148A is stayed by an order or injunction of any court. In view of the same, the Hon'ble Court laid down the following mechanism to calculate the period of limitation:

(a) **Exclusion of period covered in litigation upto the Hon'ble SC decision in the case of Ashish Agarwal:** The time period from the date of issuance of original notice under section 148 (deemed to be notice under section 148A(b)) till the date of providing relevant information/ material (i.e., within 30 days from the date of judgment on Hon'ble SC in the case of Ashish Agarwal – 4 May 2022) should be excluded.

(b) **Time allowed to the Assessee to respond to be excluded:** Further, the time period allowed to the Assessee to respond to the deemed notice under section 148A(b) of the Act (i.e., two weeks or extended time) should also be excluded in view of the third proviso to section 149 of the Act.

(c) **Surviving period to issue notice:** Thereafter, the period from the actual date of issuance of original 148 notice (during the period 1 April 2021 to 30 June 2021) until 30 June 2021 should be considered **as surviving period** within which the Authorities should have issued notice under section 148 of the Act.

**5. Example cited by the Hon'ble Court:** To explain the above mechanism, the Hon'ble Court at Para 112 also took an example, which is reproduced below for readers to understand the real outcome of the decision:

*"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."*

#### **D. Illustrations and practical insights:**

In view of the above conclusive decision of the Hon'ble SC, we have in the below paragraphs for readers benefit provided illustrations which depicts the cases where it can be said that the reassessment

provisions have been validly initiated and the cases where possibly it is time barred:

Sr. No.	Particulars	Year falling within 3 year time period incl TOLA for e.g AY 2016-17#		Year falling within 6 year time period incl TOLA for e.g AY 2014-15#	
		Example 1	Example 2	Example 1	Example 2
1	Date of issuance of notice under section 148 under old provision*	15 May 2021	15 June 2021	1 June 2021	25 June 2021
2	Date of when material/information was provided to the Assessee consequent to decision of SC in case of Ashish Agarwal	1 June 2022	1 June 2022	1 June 2022	1 June 2022
3	Response filed by the Assessee in response to the new notice issued by the AO	15 June 2022	25 June 2022 (after seeking extension)	15 June 2022	21 June 2022 (after seeking extension)
4	Date on which order under section 148A(d) has been passed and notice under section 148 has been issued	30 June 2022	15 July 2022	25 June 2022	10 July 2022
4	Surviving period/47 days available for issuance of notice under section 148 i.e., from the date of original 148 to 30 June 2021		16 days	30 days	6 days
5	Date upto which notice under section 148 could be issued	1 August 2022	11 July 2022	15 July 2022	27 June 2022
6	Whether notice issued under section 148 is valid?	Valid	Invalid	Valid	Invalid

# It is assumed that requisite approval of the Specified Authority under section 151(i) or 151(ii) has been obtained by the Assessing Officer before passing order under section 148A(d) and issuing notice under section 148 of the Act.

\* Deemed to be notice issued under section 148A(b) of the Act

As evident from the above analysis, the Hon'ble Supreme Court's decision does not validate all reassessment notices issued under Section 148 during the period from 1 April 2021 to 30 June 2021. In cases where notices were issued toward the end of June 2021, the remaining "surviving period" available to the Assessing Officer, as outlined by the Court, is significantly shorter. If the Assessing Officer, in line

with the CBDT guidelines, took up to one month from the end of the month in which the assessee responded to the new notice (following the Ashish Agarwal ruling), the eventual Section 148 notices would be time-barred.

### **E. Conclusion:**

The Finance Act, 2021 introduced new reassessment provisions from 1 April 2021, triggering widespread litigation as thousands of taxpayers challenged the validity of notices issued under the new regime. The Hon'ble Supreme Court's decision in *Rajeev Bansal* has resolved one key controversy regarding the validity of these notices, particularly clarifying the computation of the limitation period for reassessment.

A crucial takeaway is the concept of the "surviving period" available to Tax Authorities for calculating the limitation period, which may not fully align with the CBDT Instruction dated 11 May 2022. This difference can either shorten or extend the timeframe available to the authorities for issuing notices, depending on when the original notices were issued. Notices issued close to 30 June 2021 are more likely to result in the invalidation of proceedings. For taxpayers, this presents a potential silver lining, and each case needs to be assessed individually to evaluate the implications.

The legal landscape concerning reassessment proceedings still remains unsettled, as the Hon'ble Supreme Court is now poised to address a fresh wave of petitions that focus on a critical question: who holds the authority to issue reassessment notices under the new regime—the Jurisdictional Assessing Officer (JAO) or the Faceless Assessing Officer (FAO)?