

Supreme Court overturns Allahabad and other High Court decisions, validating the reassessment notices issued after 01/04/2021 for AY 2013-14 to 2017-18; reading enabling provisions of TOLA¹ into the IT Act

I. Issues before the SC:

- a. Whether TOLA and notifications issued under it will also apply to reassessment notices issued after 1 April 2021;
- b. Whether reassessment notices issued under Section 148 of the new regime between July and September 2022 are valid.

To put it precisely, the SC was posed to decide as to whether 148 notices issued after 01/04/2021 especially during the period June-September 2022 for AY 2013-14 to 2017-18 in light of the SC decision in Ashish Agarwal's² case, are valid or not.

1. The Assessee contended that:

- i) Since FA 2021³ was enacted after TOLA, 148 notices ought to have been issued under the new regime without recourse to TOLA;
- ii) TOLA did not amend the erstwhile s. 149 but only extended time lines specified therein;
- iii) Notification No. 38 dated 17/04/2021 cannot be read into the new regime since it was issued after 01/04/2021;
- iv) 148 notices for AY 2013-14 and 2014-15 are barred by limitation since the six-year period under the

old regime expired on 31/03/2029 and 31/03/2020 respectively.

- v) for AY 2015-16, sanction obtained u/s. 151(2) instead of s. 151(1) of the old regime is incorrect and therefore reassessment is bad in law;
 - vi) for AY 2016-17 and 2017-18, sanction obtained u/s. 151(ii) instead of s. 151(i) of the new regime is incorrect and therefore reassessment is bad in law;
 - vii) decision in Ashish Agarwal's case is not applicable to those assesseees who did not challenge the validity of the notice before any High Court or SC;
 - viii) assuming that TOLA is to be read into the IT Act, yet, notices issued during the period July–September 2022 were time barred since TOLA extended the time limit only upto 30/06/2021;
 - ix) TOLA is applicable only to the provisions specifying time limits and does not apply to the sanction provisions contained in s. 151.
- #### **2. The Revenue contended that / conceded on:**
- i) TOLA seeks to relax actions/proceedings that could not be complied or completed

¹ Taxation and Other Laws (Relaxation of Certain Provisions) Act, 2020

² UOI v. Ashish Agarwal [2022] 444 ITR 1 (SC)

³ Finance Act, 2021 applicable w.e.f. 01/04/2021

within the original time limits under the old regime;

ii) By virtue of non-obstante provisions contained in s. 3(1) of TOLA, time limits prescribed under the IT Act are overridden;

iii) 1st proviso to s. 149 does not expressly bar application of TOLA and once the 1st proviso to s. 149(1)(b) is read with TOLA, all notices issued during 01/04/2021 to 30/06/2021 for AY 2013-14 to 2017-18 fall within the limitation period as per table below

AY	< 3 yrs	Expiry of limitation read with TOLA for (2)	< 6 yrs	Expiry of limitation read with TOLA for (4)
(1)	(2)	(3)	(4)	(5)
13-14	31.03.17	TOLA NA	31.03.20	30.06.21
14-15	31.03.18	TOLA NA	31.03.21	30.06.21
15-16	31.03.19	TOLA NA	31.03.22	TOLA NA
16-17	31.03.20	30.06.21	31.03.23	TOLA NA
17-18	31.03.21	30.06.21	31.03.24	TOLA NA

iv) for AY 2015-16, all notices issued after 01/04/2021 will have to be dropped as the limitation period did not fall within the prescribed period under TOLA i.e. 20/03/2020 to 31/03/2021;

v) all notices issued under the new regime by invoking six year time limit prescribed u/s. 149(1)(b) of the old regime will have to be dropped if income chargeable to tax which has escaped assessment is less than Rupees Fifty Lakh.

II. Summary of SC decision:

1. The provisions of s. 149(1) of new regime is not prospective and therefore it applies to past assessment years.
2. Having regard to the strict interpretation of provisions and workability thereof alongside the principles of harmonious interpretation between the IT Act, TOLA and the FA 2021 while dealing with assessment / reassessment proceedings, inevitably, TOLA can be read into the IT Act. Consequently, TOLA will continue to apply after 01/04/2021 if any action / proceedings falls for completion between the period prescribed under TOLA i.e. 20/03/2020 to 31/06/2021.
3. Time limits prescribed u/s. 149 apply retrospectively for three years for all situations and six years in case the escaped income is more than Rupees Fifty Lakh.
4. Since sanction u/s. 151 is governed by the time limits prescribed u/s. 148, provisions of TOLA also apply even to s. 151. Accordingly, the time limit of three years as per new regime falling due for completion within the period prescribed i.e. 20/03/2020 to 31/03/2021 under TOLA, then the sanction will be governed by s. 151(i) under new regime and the same shall have the extended time upto 30/06/2021. In case of the sanction u/s. 151 as per the old regime, if the time limit of four years fall within the prescribed period as per TOLA, the sanction will be governed by the provisions of s. 151(2) and the same shall have the extended time upto 31/03/2021.
5. The directions given in Ashish Agarwal (supra) are applicable to all 90,000 odd cases reopened during

01/04/2021 to 30/06/2021 on PAN India basis.

6. Time limit within which the SCN u/s. 148A(b) is 'deemed to be stayed' is period between the date of deemed SCN u/s. 148A(b) issued between 01/04/2021 to 30/06/2021 till the supply of relevant information and material by the AO to the assesseees in terms of directions given in Ashish Agarwal (supra) and the period of two weeks allowed to the assesseees to respond to the SCN.
7. The AOs were required to issue notice u/s. 148 under new regime within the time limit surviving under the Act read with TOLA. Notices issued beyond such surviving period will be time barred.

III. Our Comments:

1. The month of October this year, in literal sense has brought, what they call 'October heat', thanks to a yet another set-back decision coming from the SC for the assesseees relaxing after different High Courts knocking down the reassessment notices issued for AY 2013-14 to 2017-18, especially during the period July-September 2022 in the aftermath of Ashish Agarwal (supra).
2. Basis concession given by the tax department qua AY 2015-16, all notices issued for AY 2015-16 will be out of the net.
3. While assesseees with notices falling short of the monetary threshold of Rupees Fifty Lakh will also heave a sigh of relief straightaway, assesseees with notices falling outside the surviving period after excluding the limitation period under the Act read

with TOLA, will also have a breather once the computation of such surviving period is worked out. Therefore, like Ashish Agarwal (supra), even this decision is not a complete respite to all assesseees nor to the revenue, but for a few.

4. Interestingly, the game changer point of the decision is the aspect of 'deemed stay' of the notice u/s. 148A(b). The SC concluded that these notices to be 'deemed stayed notices' on the footing that 'but for the supply of relevant information and material by the AOs to the assesseees which they were supposed to give alongwith the notice u/s. 148A(b) as per the new regime', the AOs could not have proceeded with the reassessments. Therefore, although no direct stay of these reassessment proceedings was granted, yet, impliedly, these notices were deemed to have been stayed, applying the ratio of the SC decision in VLS Finance Ltd.⁴ With this deemed stay of notices and having recourse to 3rd proviso to s. 149, the SC held that the notices issued between July – September 2022 cannot be held to be time barred and consequently, the validity of such notices will have to be determined basis the computation of surviving period after excluding the limitation period under the Act read with TOLA.
5. Now, it will be worthwhile to ponder upon as to whether notices u/s. 148A(b) could be validly said to be 'deemed to be stayed' notices. Indeed, these notices, at first place, were 'deemed notices' u/s. 148A(b) in place of the original 148 notices which were under challenge in Ashish Agarwal (supra). As such, there was a fiction created by the SC for want of equity and justice.

⁴ VLS Finance Ltd. v. CIT [2016] 12 SCC 32 (SC)

6. The SC has referred to the decision in *K. Prabhakaran v. P. Jayarajan*⁵ wherein it has been held that the legal fictions are created for some definite purpose and the fiction is to be limited to the purpose for which it is created and should not be extended beyond that legitimate field. Here, if one were to examine the legitimate purpose for which the original notice u/s. 148 was 'deemed to be notice u/s. 148A(b)' it was only the validity of the said notice issued under the old regime although provisions of FA 2021 were in force. The stay of original reassessment proceedings was not the logical and legal consequence of such deeming. Therefore, by holding the notice u/s. 148A(b) of the Act to be 'deemed to be stayed notice' is something akin to telescoping a deeming fiction into another deeming fiction. It is well settled principle of interpretation as laid down in *Moon Mills Ltd*⁶. that there cannot be a legal fiction which can be extended by importing another fiction. Applying the said ratio, for deeming a notice to be stayed, there is already a fiction by way of deeming the original notice u/s. 148 to be a notice u/s. 148A(b).
7. Further, the said deemed notices u/s. 148A(b) have been deemed to be stayed right from the period of issuance between 01/04/2021 to 30/06/2021 upto the date of date of supply of relevant material and information by the AOs to the assessees. Here also, the 'deeming fiction of stay of notice' which has been so held on 03/10/2024 i.e. the date of the captioned decision, itself is retrospective in effect inasmuch as the original notices have been deemed to be 148A(b) notices only on 04/05/2022 i.e. the date of Ashish Agarwal (supra) decision. This, in our view, also needs further deliberation.
8. In the cases getting resurrected pursuant to the SC decision, Assesseees can still challenge the reassessment proceedings on other jurisdictional aspects.

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⁵ [2005] 1 SCC 754

⁶ CIT v. Moon Mills Ltd. [1965] 59 ITR 574 (SC)