**Legal conundrums in the wake of the Supreme Court decisions in Ashish Agarwal & Rajeev Bansal**

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Backdrop of the Case-Law

The judgment in *UOI vs. Ashish Agarwal[[1]](#footnote-1)* spread like wildfire not only amongst the legal fraternity but amongst litigants and every potential litigant as well, and many of them held the view that the reassessment controversy had been put at rest. However, the judgment resolved only a minute piece of the puzzle and when realization dawned, lawyers began reformulating how exactly to discover the root to the puzzle in order to end this perpetual ordeal.

In *Ashish Agarwal*, the decisions of various High Courts (including the decision of the Hon’ble Bombay High Court) were upheld to the extent it was laid down that Section 148A of the Income-tax Act, 1961(“**Act**”) was required to be complied with post 1st April, 2021 and the Revenue having issued the notices only under Section 148 of the old regime, the notices were indeed liable to be quashed. However, despite noting the aforesaid, the Hon’ble Apex Court observed that there would be no reassessment proceedings at all if roughly 90,000 notices(and counting) would be quashed. Also, the officers of the Revenue had only proceeded to issue the notices under the old regime on account of a bona fide mistake. Hence, Article 142 of the Constitution of India was invoked and the notices issued under Section 148 for the period between 1st April, 2021 – May 4th, 2022(till the date of the judgment) were converted into show-cause notices under Section 148A(b) of the amended law with a direction to the Revenue to provide the information and material to the assessee within 30 days and then to consider the reply of the assessee and pass a speaking order thereafter strictly in accordance with Section 148A(d) of the Act and to issue the notices under Section 148 of the Act.

However, since the Apex Court kept all defences open to be agitated once the above process was complied with, it resulted in tremendous litigation since on one pretext or the other the assessee’s continued to invoke grounds of limitation and sanction to assail the new Section 148(d) order and Section 148 notices.

Following the decision in *Ashish Agarwal*, the Hon’ble Bombay High Court delivered two decisions in *New India Assurance Company Ltd. vs. ACIT*[[2]](#footnote-2)and *Godrej Industries Ltd. vs. ACIT[[3]](#footnote-3)*. In a nutshell, both these decisions dealt *inter alia* with the application of the first proviso to Section 149 for the purpose of determining the legality of the notices on the ground of limitation; the former dealt with limitation to issue a notice for Assessment Year 2013-2014 and the latter for Assessment Year 2014-2015. The Hon’ble Bombay High Court held that the notices were barred under the first proviso to Section 149 since the maximum period upto which the notices could be issued was 31st March, 2021 only. Beyond that date, the notices could not be issued since they were hit by the first proviso to Section 149.

The Revenue filed appeals before the Hon’ble Apex Court and the Hon’ble Apex Court delivered its judgment in what is now a landmark case viz. *Union of India vs. Rajeev Bansal*[[4]](#footnote-4). The Hon’ble Apex Court in a detailed and erudite judgment, after over 100 citations of case law, held that the extension of timelines by the TOLA, 2021 was on account of the COVID-19 pandemic and every statute must be interpreted by keeping in mind the underlying object of the statute. Hence, the timelines could not be curtailed by reading the provisions of the statute in a manner inconsistent with the object of the statute. Therefore, it was held that since by a legal fiction the Section 148 notices issued post 1st April, 2021 were converted into show-cause notices under Section 148A(b), the final Section 148 notice also had to be issued before the timeline prescribed by the TOLA, 2021 i.e by 30th June, 2021. Hence, for this purpose, since the reassessment order could not have been passed after the original Section 148 notice was issued (for example on 1st May, 2021), the period between the date of this notice(which is a deemed show-cause notice under Section 148(A)(b) as per *Ashish Agarwal*) till the date when the reply of the assessee is received under Section 148A(c) will be excluded for the purposes of computing limitation under Section 149. Hence, the balance period remaining from the date of the original notice till 30th June, 2021 would be the limitation period to be applied from the date the reply of the assessee is received under Section 148A(c) of the Act.

In the example provided by the Apex Court:

*“****112****. 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.”*

Now, the above will also be subject to the timelines prescribed under Section 148A read with Section 149. Let us examine the legal conundrums arising in this context.

Legal Conundrums

The conundrums arising from the aforesaid judgment are intriguing; what are the legal consequences for the notices issued under the old regime and converted into Section 148A(b) show cause notices as per *Ashish Agarwal* that have been issued on the last day provided under TOLA, 2021 i.e 30th June, 2021? As per *Rajeev Bansal*, the Revenue would have 0 days to issue the fresh Section 148 notice in such cases. Does it mean that these notices are to be treated as time barred when such a notice has expressly been upheld in *Ashish Agarwal* which holds that the Revenue must provide the information within 30 days and thereafter pass a speaking order under Section 148A(d)? It seems absurd to hold that the Revenue is remediless in such a situation.

The answer to the above conundrum in my view lies in the fifth and sixth provisos to Section 149(before amendment by the Finance Act, 2024). The period provided to the assessee for furnishing a reply under Section 148A(c) is to be excluded from the computation as per the fifth proviso. Also, as per the sixth proviso, if the balance time remaining with the Revenue to pass the Section 148A(d) order is less than seven days, the time to pass the Section 148A(d) order would be extended to seven days. However, does this mean that the limitation to issue the notice under Section 148 of the Act also stands extended to 7 days? Clearly, by virtue of Rajeev Bansal, the limitation has to be computed as stipulated in the judgment and reproduced above. In my view, it is in the interests of justice that the Hon’ble High Courts interpret the seven days extension as per the sixth proviso to apply to Section 148 notices as well since the Section 148A(d) order as well as the notice under Section 148 are required to be issued simultaneously. It cannot be said that the time to issue the order under Section 148A(d) is extended by 7 days but the notice under Section 148 thereafter to be issued is a nullity as being beyond limitation.

Another legal conundrum arises on an interpretation of Section 148A(d) of the Act. While the legislature grants a period of one month under Section 148A(d) of the Act to pass the order(and to thereafter issue the notice under Section 148 simultaneously), a different period of limitation has been provided in *Rajeev Bansal*. The Apex Court has held that the balance period of limitation upto 30th June, 2021 is to be taken into account for the purpose of issuing the notice under Section 148. For example, if the old notice is issued under Section 148 on say 10th June, 2021, the Revenue would have only 20 days to pass the order under Section 148A(d) and issue the notice under Section 148. However, a larger period of one month is envisaged under Section 148A(d)(before amendment by the Finance Act, 2024). Which period of limitation will apply in such cases? The results are sketchy and the time periods for passing of orders under Section 148A(d) and issue of notices under Section 148 would be distorted.

Conclusion

The judgment of the Apex Court in *Rajeev Bansal*, effectively overruled several judgments of the Hon’ble High Courts for example *New India Assurance Ltd.* and *Godrej Industries*, and provided a new mechanism to compute the period of limitation under Section 149 of the Act. However, currently the larger issue of issuance of notice under Section 148 by the Jurisdictional Assessing Officer is holding the field and once that issue is resolved by the Apex Court(Appeal to the Apex court[[5]](#footnote-5) against the decision of the Bombay High Court in *Hexaware Technologies Ltd. vs. ACIT[[6]](#footnote-6))*, we will possibly witness how the judgment in *Rajeev Bansal* will be applied by the various High Courts. The saga seems to be never ending and new controversies surrounding reassessment are always brewing.

1. [2022] 138 taxmann.com 64 (SC) [↑](#footnote-ref-1)
2. [2024] 158 taxmann.com 367(Bombay) [↑](#footnote-ref-2)
3. [2024] 158 taxmann.com 367 (Bombay) [↑](#footnote-ref-3)
4. [2024] 167 taxmann.com 70 (SC) [↑](#footnote-ref-4)
5. Diary Number 37843/2024 filed on 21.8.2024 [↑](#footnote-ref-5)
6. [2024] 162 taxmann.com 225 (Bombay) [↑](#footnote-ref-6)