

Supreme Court on Reassessment Notices: Whether The Dust Has Been Settled?

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A. Introduction

The Indian Spiritual Leader, **Sadhguru**, has stated in one of his quotes, that,

'Clarity is the consequence of handling your confusion consciously.' [\[i\]](#)

The validity of re-assessment notices issued under section 148 between April 1, 2021, and June 30, 2021, has been clarified by the Supreme Court's recent landmark ruling in **Union of India & Others v. Rajeev Bansal** [\[TS-725-SC-2024\]](#), **Civil Appeal No 8629 of 2024, dated: 03.10.2024**. Whether the decision of the Apex Court will settle the dust or is the mystery still unsolved? During the 1st phase of litigation, over 10,000 writ petitions were filed against the more than 90,000 notices u/s 148, and the verdict in the **Union of India v. Ashish Agarwal** [\[TS-339-SC-2022\]](#) case by the Apex Court was expected to be the last word in the matter, however, it started a new legal battle that took over two years to resolve.

The **CBDT vide Instruction dated May 11, 2022**, explained its understanding of the SC ruling in the case of Ashish Agarwal (*ibid*) and showed how the ruling should be applied while giving effect to it. However, the interpretation of the SC order by CBDT and its reading with the new regime of reassessment proceedings had again opened Pandora's box where thousands of writ petitions were filed again to oppose the notices issued based on such interpretation.

The Delhi High Court ('HC'), Gujarat HC, Rajasthan HC, and many others had interpreted this matter differently. Where the Allahabad HC considered the CBDT instructions as a "**surreptitious**" attempt to overturn the directive of the Supreme Court's ruling in the case of **Rajeev Bansal v. Union of India**, the Delhi HC passed the order in favour of the Revenue considering these instructions in line with the SC ruling in the case of **Touchstone Holdings (P.) Ltd. V. Income-tax Officer** [\[ii\]](#). For two years, this saga continued. It caused 2nd phase of writ petitions before the SC to clarify its own decision in the case of Ashish Agarwal (*supra*) which ended with the decision of the Supreme Court in Rajeev Bansal Case (*supra*). Further, the recent decision of the **Hon'ble Delhi HC in the case of Felix Generics Private Limited v. Deputy Commissioner of Income Tax, Delhi, dated: 08.10.2024** [\[iii\]](#), which has followed the decision of the Apex Court in the Rajeev Bansal Case (*supra*) and also the its own decision in the case of **Manju Somani v. Income Tax Officer Ward-70(1) & Ors.** [\[iv\]](#), has also provided immense relief to the taxpayers.

As per the author's understanding, the SC's recent decision in the case of Rajeev Bansal (supra) has settled most of the issues which can be said to be some in favour of the revenue and some in favour of the Assessee. In this article, the author has attempted to analyze how it will apply to different AYs amid the extension of time limit, required approval u/s 151, threshold limit, stay period, and many other related aspects. **It is still to be seen, whether the recent decision of the Apex Court or Delhi HC, will start a 3rd phase of litigation in this matter or will it be a full stop.**

B. Background

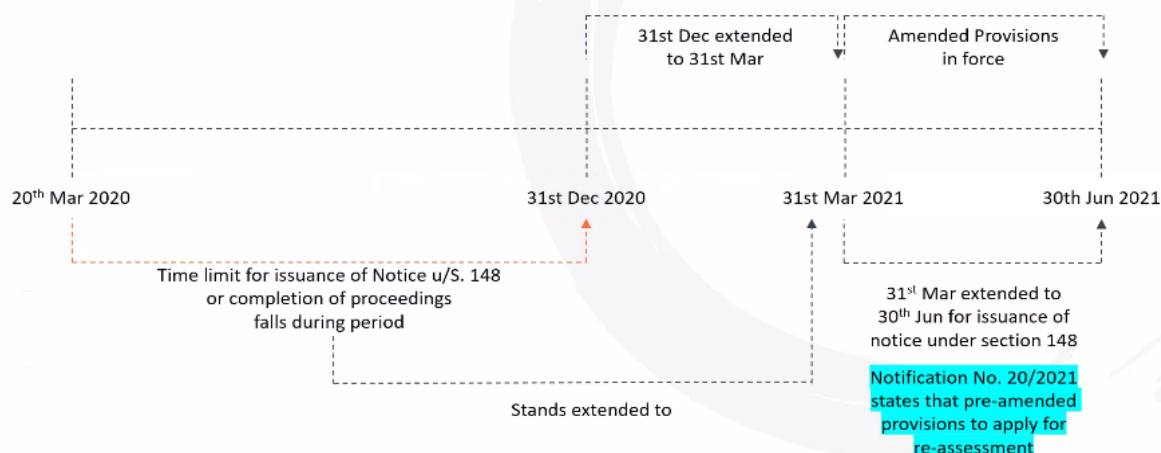
The issue of the validity of re-assessment notices came into the picture when the due date for the issue of re-assessment notices was extended by the Central Government due to the COVID-19 pandemic by TOLA and the applicability of the Finance Act, 2021 (FA, 2021) which had replaced the old provision under section 147 to 151 related to reassessment. To understand and analyse the issue, we can go through all the events in detail which are described as follows:

B.1 Extension of the due dates related to the issue of reassessment notices

The Government had extended the due dates of various compliances on multiple occasions due to the COVID-19 Pandemic. In these compliances, one was due dates related to the issue of reassessment notices u/s 148 of the Act. The chronology of such extensions is described in the below table and pictorial presentation:

Due dates- between Mar 20, 2020, to)	Extensions	Reference
June 29, 2020	June 29, 2020	Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 [TOLA]
Dec 31, 2020	March 31, 2021	Notification S.O. 2033(E) [No.35/2020], June 24, 2020
Mar 30, 2021	March 31, 2021	Notification S.O. 4805(E) [No.93/2020], Dec 31, 2020
Mar 31, 2021	April 30, 2021	Notification S.O. 1432(E) [No.20/2021], Mar 31, 2021
Mar 31, 2021	June 30, 2021	Notification S.O. 1703 (E) [No.38/2021], Apr 27, 2021

Structure of provisions and notifications



B.2 Introduction of a new procedure of reassessment by Finance Act, 2021

When the CBDT was extending the due date of issuing the notices u/s 148, the Central Government also made a drastic change in the scheme of reassessment. The FA, 2021 replaced sections 147 to 151 with new provisions and procedures which were effective from April 1, 2021.

Till March 31, 2021, if the amount of income that has escaped assessment (i) is less than Rs.1 lakh, the notice under section 148 for revenue escaping assessments could be issued within 4 years after the end of the relevant AY and, (ii) the notice could be issued within 6 years wherever the amount of escaped income surpasses Rs.1 lakh.

From April 1, 2021, under the new provision, the re-assessment notice can be issued (i) within 3 years from the end of the relevant AY and, (ii) if the amount of escaped income exceeds Rs. 50 lakhs, the notice can be issued within 10 years. Further, the process of issuing the notice has also been described in detail by inserting a new provision under section 148A of the Act.

B.3 Disputed Matter

The Assessing Officers (AOs) were allowed an extended period to issue a notice under section 148 till June 30, 2021, vide notifications as discussed in the previous paragraph. The additional time was allowed if the original due dates for issuing such notices fell between March 20, 2020, to March 31, 2021.

The new provisions (section 147 to section 151) came into force w.e.f. April 1, 2021, which explicitly stated that any notice under section 148 on or after April 1, 2021, should be issued as per the new provisions only. However, the notification as **highlighted** in the pictorial presentation also provided authority to the AOs to issue notices under section 148 as per the old law up to the extended timeline of June 30, 2021, which was in contravention of the amended provisions. A dispute arose in respect of the validity of those notices which were issued during the common period between April 1, 2021, and June 30, 2021, where more than 90,000 of such notices were issued by the Revenue. **The assesses challenged the validity of such notices on the ground that the old provisions were not in existence at that time and the new provisions were in force with effect from April**

1, 2021, hence, the notices should have been issued in compliance with the new provisions and timelines provided therein. The taxpayers filed writ petitions to quash these notices which were in thousands.

B.4 Decision of Supreme Court in the case of UOI v. Ashish Agarwal (supra), dated May 4, 2021

The Supreme Court tried to settle the controversy in the case of **Ashish Agarwal (supra)**. The SC exercised its power under article 142 of the Constitution of India to avoid any further appeals by the revenue or taxpayers on the very issue by challenging similar judgments and orders. **It was held that this order will apply to PAN INDIA on all judgments and orders passed by different High Courts on the issue under which similar notices issued after 1-4-2021 under section 148 are set aside and shall be governed by the present order and shall stand modified to the aforesaid extent.**

The Court provided relief to both the parties. The Revenue got relief as the re-assessment notice issued under the old provision during this disputed period got a new life and the assessee got the relief as the Court held that all the defenses available under section 149 shall continue to be available to the assessee. **All the notices issued under section 148 of the old regime were deemed to be notices under section 148A of the new provision and treated to be show-cause notices in terms of section 148A (b) with a direction to continue the proceedings after following the procedure laid down under the new provisions.**

B.5 Instruction by CBDT, dated May 11, 2022

The CBDT issued Instruction No. 01/2022, dated 11.5.2022, containing guidelines for the implementation of the SC judgment. The guidelines for the years under dispute are as follows:

i. AY 2013-14, AY 2014-15 and AY 2015-16:

Fresh Notice u/s 148 can be issued in these cases, with the approval of the specified authority, only if the assessing officer has in his possession books of accounts or other documents or evidence which reveal that the income chargeable to tax, represented in the form of an asset, which has escaped assessment, amounts to or is likely to amount to fifty lakh rupees or more, for that year.

ii. AY 2016-17, AY 2017-18:

Fresh Notice u/s 148 can be issued in these cases, with the approval of the specified authority, since they are within a period of three years from the end of the relevant assessment years.

In other words, the benefit of extended time limit as provided under TOLA would be available to all the notices issued under the disputed period.

C. Analysis of the dispute in the light of the SC order and CBDT Instruction

The instruction mentioned above has given rise to conflicting opinions. The Revenue again issued thousands of notices u/s 148 following the CBDT instruction which were challenged by considering the instructions as erroneous and illegal.

The Delhi High Court ('HC'), Gujarat HC, Rajasthan HC, and many others had interpreted this matter differently. Where the Allahabad HC considered the CBDT instructions as a

"surreptitious" attempt to overturn the directive of the Supreme Court's ruling in the case of **Rajeev Bansal (supra)**, wherein the Delhi HC passed the order in favour of the Revenue considering these instructions in line with the SC ruling in the case of **Touchstone Holdings (supra)**. Different interpretations were taken by the different High Courts that how the decision of the Supreme Court should be read along with the CBDT instruction and newly inserted reassessment provision. Again, number of writ petition filed before the Supreme Court for clarity of the position which should be taken in respect of these notices.

The gist of the contentions put forward by the Revenue and the taxpayers in these writ petitions can be discussed in the following paragraphs:

C.1 Argument by Taxpayers

It is being argued that the instruction is not in accordance with the provisions of the Income Tax Act, 1961 on the following grounds i.e.:

i. AY 2013-14 & 2014-15 can't be reopened under the new provision in view of the first proviso to section 149(1) which stipulates that no notice can be issued under the new law if they could have not been issued under the time limit as prescribed under the old law which is 6 years, hence, the time limit have already elapsed on 31-3-2021.

ii. As regards AY 2015-16, AY 2016-17 & 2017-18, it is being argued that proper sanction of the revenue authorities had not been taken as required under the new regime of assessment. These notices are barred by limitation as three years have already elapsed on 31-3-2021 & therefore, no notice under section 148 can be issued under the new provision on or after 1-4-2021, in respect of the cases, where the amount of escaped income is less than Rs.50 lakhs.

iii. The applicability of the first proviso to Section 149(1)(b) of the new regime has to be tested on the date of issuance of notice under Section 148 of the new regime. Even if TOLA is read into the Income Tax Act, the time limits for completion or compliance of actions can be extended till 30 June 2021. **However, the notices under Section 148 of the new regime were issued by the Revenue from July to September 2022. The period of July to September 2022 is beyond the extended time limits stipulated under the Income Tax Act read with TOLA.**

iv. TOLA is only applicable to the provisions that specify time limits. Section 151 does not prescribe any time limit for the issuance of sanctions by the specified authorities. Therefore, TOLA does not apply to Section 151.

V. The directions issued by this Court in Ashish Agarwal (supra) were not intended to apply to assesses who did not challenge the reassessment notices before the High Courts or this Court. Therefore, reassessment proceedings could not have been initiated for such assesses.

C.2 Argument by Revenue

The Revenue argued that as per their view, the new provisions of reopening read with the provisions of TOLA shows that the above interpretation by taxpayers is wholly erroneous and misleading. The basis of such argument is as follows:

i. TOLA still subsists and has not been struck down was one of the prominent defence taken by the Revenue. It was argued that 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 Act.**

ii. 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, 2016-2017, and 2017-2018 will be within the period of limitation.**

iii. The Revenue conceded 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;

It is therefore argued that there is no legal infirmity in the CBDT instruction and it is perfectly per the provisions of law.

D Interplay between the IT Act, TOLA, and FA, 2021 the GIST of the Apex Court ruling in the case of Rajeev Bansal (Supra)

While analyzing its early ruling in the case of Ashish Agarwal (supra) and the interplay between the IT Act, 1961, TOLA, and FA, 2021, the Apex Court has not only gone through every line of its earlier decision and respective provisions of the related Act but also interpret them amid the basic principles that how an order or a statute should be read. It clarified their sanctity amid the principle of literal and strict interpretation, the principle of harmonious construction, Jurisdiction in the case of an assessment, how assessment is a quasi-judicial function and also referred to hundreds of its earlier rulings and rulings of Apex Courts of other countries

In this article, the author has tried to summarize the ruling of the Hon'ble Apex Court under the following heads:

D.1 TOLA extended the time limit to 30.06.2021 for any order or issuance of any notice, sanction, or approval fell for completion or compliance from 20.03.2020 to 31.03.2021_

TOLA extended the time limits for completion or compliance of certain actions under the specified Act, which fell for completion during the COVID-19 outbreak. The use of the expression **“any”** in Section 3(1) indicates that the relaxation applies to **“all” or “every” action** whose time limit falls for completion from 20 March 2020 to 31 March 2021. Section 3(1) is only concerned with the performance of actions contemplated under the provisions of the specified Acts. Consequently, the amendment or substitution of a provision under the specified Acts will not affect the application of TOLA, so long as the action contemplated under the provision falls for completion during the period specified by TOLA, 20 March 2020 to 31 March 2021. In other words,

- i. If the time prescribed for the passing of any order or issuance of any notice, sanction, or approval fell for completion or compliance **from 20 March 2020 to 31 March 2021**; and
- ii. if the completion or compliance of such action could not be made during the stipulated period,

then the time limit for completion or compliance of such action was extended to 30 June 2021.

For example, for the AY 2016-17 and AY 2017-18, the time limit of 3 years expires on 31.03.2020 and 31.03.2021, hence the time limit of issue of any notice u/s 148 was extended for these years up to 30.06.2021

In the same manner, when we interpret the **impact of TOLA on the AY 2013-14 and AY 2014-15, it can be understood in the following manner:**

The effect of TOLA is that at the time of issuance of a reassessment notice under Section 148, the Revenue has to determine two things:

- i. The time limit specified under Section 149; and
- ii. the extent of relaxation provided by TOLA and its notifications for issuance of notices.

Thus, although TOLA did not amend Section 149 of the Income Tax Act, it has to be read with Section 149 to determine the time limit for issuance of a notice. For instance, the 6 year time limit for AY 2013-14 and AY 2014-15 under Section 149(1)(b) of the old regime expired on 31.03.2020 and 31.03.2021 respectively. TOLA extended the period for issuing notice until 30.06.2021, given the difficulties that arose because of the COVID-19 pandemic.

In the light of the above discussion, it can be interpreted that the notices u/s 148 issued during the extended period **for AY 2013-14 and AY 2014-15 (if the amount of escaped income is likely to be more than Rs.50 lakhs) and for AY 2016-17 and AY 2017-18 (irrespective of the amount of escaped income) are valid. However, they are subject to required approvals and other procedures under the Act.**

D.2 Notices must be judged according to the law on the date the notice is issued

The effect of the substitution of the reassessment procedure by the FA, 2021 can be understood through the following points, i.e.,

- i. The Finance Act 2021 substituted Sections 147 to 151 of the Income Tax Act w.e.f. 01.04.2021;
- ii. Sections 147 to 151 of the old law ceased to operate from 01.04.2021;
- iii. W.e.f. 01.04.2021, any reference to the IT Act means the IT Act as amended by the FA, 2021;
- iv. Given Section 149(1)(b) of the new regime, reassessment notices could be issued after three years only if the income chargeable to tax which escaped assessment is more than Rupees fifty lakhs. The proviso to Section 149(1)(b) limits the retrospectivity of that provision with respect to the time limits specified under Section 149(1)(b) of the old regime.

Hence, the time limits prescribed for issuing reassessment notices under Section 149 operate retrospectively for three years for all situations and six years in case the escaped assessment amounts to or is likely to amount to more than Rupees fifty lakhs.

For example, for the AY 2012-2013, the ten-year period would have expired on 31 March 2023, while the six-year period expired on 31 March 2019. Without the proviso to Section 149(1)(b) of the new regime, the Revenue could have interpreted that it has the power to reopen assessments for the year 2012-2013 if the escaped assessment amounted to Rupees fifty lakhs or more. The proviso limits the retrospective operation of Section 149(1)(b) to protect the interests of the assesses. Hence, any notice issued for the AY 2012-13, whether under the new regime or old regime required to be set aside and void ab initio.

D.3 The time limit of 4 years under the old regime is now reduced to 3 years for all situations

It is interpreted by the Apex Court that the time limit of four years is now reduced to 3 years for all situations. The Revenue can issue notices under Section 148 of the new regime only if 3 years or less have elapsed from the end of the relevant assessment year in

case **income chargeable to tax which has escaped assessment is up to Rs.50 lakhs. It interpreted that,**

- i. The proviso to Section 149(1)(b) of the new regime stipulates that the Revenue can issue reassessment notices for past assessment years only if the time limit survives according to Section 149(1)(b) of the old regime, that is, six years from the end of the relevant assessment year; and
- ii. All notices issued invoking the time limit under Section 149(1)(b) of the old regime will have to be dropped if the income chargeable to tax which has escaped assessment is up to Rs. 50 lakhs.

In other words, in case there is a notice where income chargeable to tax which has escaped assessment is up to Rs.50 lakhs, the time limit of 3 years will apply and in case it exceeds, the time limit of 6 years will apply. So only 2-time limits have to be seen, i.e., 3 years and 6 years.

D.4 Impact of change in the sanctioning authority by FA, 2021

The Apex court waived off the requirement of obtaining prior approval under Section 148A(a) and Section 148A(b) in its judgment in Ashish Agarwal (*supra*) however it did not waive the requirement for Section 148A(d) and Section 148.

Therefore, the assessing officer was required to obtain prior approval of the specified authority according to Section 151 of the new regime before passing an order under Section 148A(d) or issuing a notice under Section 148. These notices ought to have been issued following the time limits specified for approvals under Section 151 of the new regime read with TOLA, wherever applicable.

Section 3(1) of TOLA relaxes the time limit for compliance in respect of sanctions that fall for completion from 20 March 2020 to 31 March 2021. TOLA would accordingly extend the time limit for the grant of sanction by the authority specified under Section 151 of the new regime. In other words, it has extended the time limit up to 30.06.2021, but such extension should be checked as per the provisions of the new regime.

For example, the three-year time limit for assessment year 2017-2018 falls for completion on 31 March 2021. It falls during the period of 20 March 2020 and 31 March 2021, contemplated under Section 3(1) of TOLA. Resultantly, the authority specified under Section 151(i) of the new regime can grant sanction till 30 June 2021, in case any notice is issued after 30 June 2021 is issued, it should be issued with prior approval of higher authorities as defined u/s 151(ii) of the new regime.

D.5 The scope of Ashish Agarwal (supra) extended to all the reassessment notices

The Apex Court, while delivering the order in the Ashish Agarwal Case (*supra*), deemed all the notices u/s 148 issued between 01.04.2021 and 30.06.2021 as show cause notices issued under Section 148A(b) of the new regime. The Apex court mentioned that it was done for two purposes, i.e.,

- i. to strike a balance between the rights of the assessee and the Revenue which issued approximately 90,000 reassessment notices after 1 April 2021 under the old regime; and
- ii. to avoid any further appeals before this Court by the Revenue on the same issue by challenging similar judgments and orders of the High Courts (arising from approximately nine thousand writ-petitions).

Ashish Agarwal (*supra*) was primarily concerned with the validity of the reassessment

notices issued between 1 April 2021 and 30 June 2021 under the old regime. The scope of the directions in **Ashish Agarwal (supra)** is applicable **PAN INDIA**, including all the 90,000 reassessment notices issued under the old regime during the period 01.04.2021 to 30.06.2021

D.6 Surviving time for issuing notices u/s 148 in consequence of such deeming fiction

The Ashish Agarwal (supra) case created deeming fiction of considering notice u/s 148 issued during the period between 01.04.2021 to 30.06.2021, as SCN issued u/s 148A(b) of the new regime.

Further, the third proviso to section 149 reads as under:

*“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.”*

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.”

The Apex court has interpreted the third proviso to section 149, and directions under Ashish Agarwal case (supra) along with the deeming fiction created as mentioned above in the following manner:

- i. The SCNs were deemed to have been stayed from the date of the issue of notice u/s 148 (somewhere from 01.04.2021 to 30.06.2021) till the date of decision in **Ashish Agarwal** (supra), that is, 04.05.2022.

- ii. In **Ashish Agarwal** (supra), this Court directed the assessing officers to provide relevant information and materials relied upon by the Revenue to the assessee within thirty days from the date of the judgment. A show cause notice is effectively issued in terms of Section 148A(b) only if it is supplied along with the relevant information and material by the assessing officer. Due to the legal fiction, the assessing officers were deemed to have been inhibited from acting in pursuance of the Section 148A(b) notice till the relevant material was supplied to the assessee. **Therefore, the show cause notices were deemed to have been stayed until the assessing officers provided the relevant information or material to the assessee.**

- iii. The third proviso to Section 149 also allows the exclusion of time allowed for the assessee to respond to the show cause notice under Section 149A(b) to compute the period of limitation. Resultantly, the entire time allowed to the assessee to respond to the show cause notice has to be excluded for computing the period of limitation. In **Ashish Agarwal** (supra), The Apex Court provided 2 weeks to the assessee to reply to the show cause notices. This period of 2 weeks is also liable to be excluded from the computation of limitation given the third proviso to Section 149.

The combined effect is that the total time that is to be excluded for computation of limitation for the deemed notices is:

- i. the time during which the SCNs were effectively stayed, that is, from the date of issuance of the deemed notice between 01.04.2021 and 30.06.2021 till the supply of relevant information or material by the assessing officers to the assessee in terms of the directions

in **Ashish Agarwal** (supra); and

ii. two weeks allowed to the assesses to respond to the SCNs.

TOLA extended the time limit of issuing notices u/s 148 till 30.06.2021, hence, if we consider the time of stay as mentioned above (including two weeks of response), the period from the date of the issuance of the deemed notices till the end of the period of 2 weeks granted to the assesses to reply to the show cause notices must also be excluded in terms of the third proviso to Section 149.

Hence, after the end of the 2 weeks granted to the assesses to reply to the SCN, the time remaining to issue the notice u/s 148 is the time between the date of issuance of the deemed notice (somewhere from 01.04.2021 to 30.06.2021) to the extended time limit of up to 30.06.2021.

This interpretation **can severely impact all those notices that had been issued close to the date of 30.06.2021** e.g., a notice issued on 25.06.2021, would have time of only 6 days (from 25.06.2021 to 30.06.2021) after the submission of the response from the assessee in reply to the SCN u/s 148A(b).

E. Impact of the ruling of the Apex Court in the case of Rajeev Bansal (supra) AY-wise

i. Notice issued u/s 148 for the AY 2012-13

These notices would be considered as time-barred and required to be set aside.

ii. Notice issued u/s 148 for the AY 2013-14 and AY 2014-15

These notices would be considered as valid subject to the following conditions:

- a. the likely amount of income to be escaped should be more than Rs.50 lakhs
- b. Required approval u/s 151(ii) of the new regime has been taken. (Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General)
- c. The impact of **stay period as mentioned in the point no. D.6** is required to be seen that whether the notices issued u/s 148 of the old regime close to 30.06.2021 has not become time-barred, in case they have been reissued after the decision of the Supreme Court in the case of Ashish Agarwal (supra) between the months of June'22 to September'22.

iii. Notice issued u/s 148 for the AY 2015-16

The Revenue has conceded while filing its submission that for the AY 2015-16, all 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.

However, as per the understanding of the Author, these notices still can be considered valid, if the following conditions are satisfied, i.e.,

- a. the likely amount of income to be escaped should be more than Rs.50 lakhs
- b. Required approval u/s 151(ii) of the new regime has been taken. (Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General)

If we consider the time limit of 6 years as available under the old regime, notices issued u/s 148 were still within the time limit between the period from 01.04.2021 to 30.06.2021, hence these notices are not prohibited by the 1st proviso to Section 149(1)(b) as they are not getting time-barred on 31.03.2021.

Further, the Apex Court has said nothing in its verdict about the conceding of the Revenue regarding the AY 2015-16. In such circumstances, it will be a question mark whether the Revenue has the right to consider such notices as valid notices while in its own submission, it has considered them as invalid.

iv. Notice issued u/s 148 for the AY 2016-17 and AY 2017-18

These notices should be considered valid subject to the required approval u/s 151(i) of the new regime (Principal Commissioner or Principal Director or Commissioner or Director), if the approval is received by 30.06.2021 as defined **in the point no. D.4 above. After that for any notice the approval u/s 151(ii) is required as it has crossed the time-limit of 3 years.**

However, the final notices u/s 148 were issued during the period from June 2022 to September 2022 after the decision of Ashish Agarwal (*supra*), in such a case, the approval from higher authorities defined u/s 153(ii) (Approval from Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General) was required as this period is beyond the time limit of 30.06.2021.

In most of the cases, the notices were issued during this period, with the approval of authorities as defined u/s 153(i) and not with the approval of authorities as defined u/s 153(ii), hence, in such a case these notices can be considered as invalid. However, once view can be taken that whether the benefit of the stay period as mentioned in the 3rd proviso to section 149 will also be available while analyzing the required approval for issuing notices during the month of June 2022 to September 2022 (post-Ashish Agarwal case (*supra*)). Whether the approval granted as per section 153(i) during the month of June 2022 to September 2022 can be considered as valid approval if we exclude the stay period as mentioned above.

As per the understanding of the Author, the benefit of the stay period should not be available to the revenue in the case the approval u/s 151, as the benefit of the stay period has been defined in the 3rd proviso to section 149 and it should be applicable only in respect of the time limit defined u/s 149 and not the time limit defined u/s 151.

F. Impact on notices u/s 148 issued in the new regime for the AYs 2021-22 and preceding years

The Supreme Court in the case of Rajeev Bansal (*supra*), has held as follows:

“46. The ingredients of the proviso could be broken down for analysis as follows: (i) no notice under Section 148 of the new regime can be issued at any time for an assessment year beginning on or before 1 April 2021; (ii) if it is barred at the time when the notice is sought to be issued because of the “time limits specified under the provisions of 149(1)(b) of the old regime. Thus, a notice could be issued under Section 148 of the new regime for assessment year 2021-2022 and before only if the time limit for issuance of such notice continued to exist under Section 149(1)(b) of the old regime.

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49. The first proviso to Section 149(1)(b) requires the determination of whether the time limit prescribed under Section 149(1)(b) of the old regime continues to exist for the assessment year 2021-2022 and before. **Resultantly, a notice under Section 148 of the new regime cannot be issued if the period of six years from the end of the relevant assessment year has expired at the time of issuance of the notice. This also ensures that the new time limit of ten years prescribed under Section 149(1)(b) of the new regime applies prospectively.** For example, for the assessment year 2012-2013, the ten year period would have expired on 31 March 2023, while the six year period expired on 31 March 2019. Without the proviso to Section 149(1)(b) of the new regime, the Revenue could have had the power to reopen assessments for the year 2012-2013 if the escaped assessment amounted to Rupees fifty lakhs or more. The proviso limits the retrospective operation of Section 149(1)(b) to protect the interests of the assesses.”

(Emphasis Applied)

Further in the recent decision of the **Delhi HC in the case of M/s Felix Generics Private Limited (supra)**, the Delhi HC, has held that the time limit of 6 years will apply to all the AYs, i.e., AY 2021-22 and preceding to it. It has held that,

“5. In the present case, the period of six years for the relevant assessment year 2017-18 expired on 31.03.2024. The impugned notice has been issued thereafter, and the same is thus barred by limitation.”

We can describe in the following table how this concept can impact the validity of the notices issued in the new regime in respect of AY 2021-22 and its preceding AYs:

AY	The time limit to issue Notice u/s 148 in the new Regime expires on
2015-16	March 31, 2022
2016-17	March 31, 2023
2017-18	March 31, 2024
2018-19	March 31, 2025
2019-20	March 31, 2026
2020-21	March 31, 2027
2021-22	March 31, 2028

G. Conclusion and the way forward

The ruling mentioned above has indeed resolved the ambiguity regarding the interpretation and application of TOLA to the new provisions of sections 147 to 151 as amended by FA 2021 in conjunction with the Supreme Court's Ashish Aggarwal ruling. It would be misleading to take the verdict's final paragraph literally, stating that Revenue has prevailed and the assesses to whom 90,000 notices were sent have lost. The Hon'ble SC's ruling has brought peace and clarity to the entire dispute and also has kept defences for assesseees, such as the validity of the time limit to pass an order under Section 148A(d), the relevant authority approving notice under Section 151, and issuing notice under section 148 by the third proviso to Section 149, etc.

However, the question also arises as to whether the Revenue and the Taxpayers will not read the Supreme Court's ruling in the Rajeev Kumar (supra) case differently this time when all of the High Court's esteemed judges had given distinct interpretations of the Ashish Kumar (above) ruling. How is it reasonable to assume that the common perspective will be taken this time on the Supreme Court's ruling in the Rajeev Kumar (supra) case by the high courts or other jurisdictions?

The author believes that there is still ambiguity surrounding the legitimacy of the notices and also how to deal with them. Some of the issues can be described as follows:

- i. Notices u/s 148 issued for the AY 2015-16, since the Revenue acknowledged that the notifications were unlawful and the Supreme Court remained silent.
- ii. Notices u/s for the AY 2016-17 and 2017-18, allowing one to determine whether or not the stay period applies to the time limit outlined in section 151
- iii. Adherence to the procedure prescribed under section 148A and procedure for reassessment proceedings in the old regime as defined in the case of **GKN Driveshafts (India) Ltd v. Income Tax Officer.**[\[v\]](#)
- iv. When the case is of change of opinion, how does it have to be dealt with?
- v. Whether the information relied upon for initiation of re-assessment proceedings has been shared with the assessee
- vi. Sufficiency of information available with the Revenue to substantiate initiation of proceedings under section 148A/148

On a lighter note, I would like to quote the words of the famous writer, Ms. Chelsea Sedoti,

“Confusion is like curiosity; it reminds us that we’re alive. To not feel confused means, we no longer care. Not caring is death.”[\[vi\]](#)

(This article provides general information and discussion about tax-related matters. The words and other content provided in this article, are not intended and should not be construed as tax advice. If the reader or any other person has a tax concern, he or she should consult with his tax advisor before taking any action)

[\[i\]](https://isha.sadhguru.org/en/wisdom/quotes/date/january-30-2023) <https://isha.sadhguru.org/en/wisdom/quotes/date/january-30-2023>

[\[ii\]](#) Touchstone Holdings (P.) Ltd. v. Income-tax Officer, [\[TS-726-HC-2022\(DEL\)\]](#)

[\[iii\]](#) Felix Generics Private Limited v. DCIT, Delhi, dated: [\[TS-760-HC-2024\(DEL\)\]](#)

[\[iv\]](#) Manju Somani v. Income Tax Officer Ward-70(1) & Ors.: [\[TS-558-HC-2024\(DEL\)\]](#)

[\[v\]](#) (2003) 1 SCC 72 [5]

[\[vi\]](https://quotefancy.com/chelsea-sedoti-quotes) <https://quotefancy.com/chelsea-sedoti-quotes>