

Decoding the judgement of SC in UOI vs Rajeev Bansal, for assessment under Sec. 148 and way forward

By Ramdev Bhutada, FCA, &
Srinarayan Toshniwal, CA, CS, LLB





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Old Regime vs New Regime

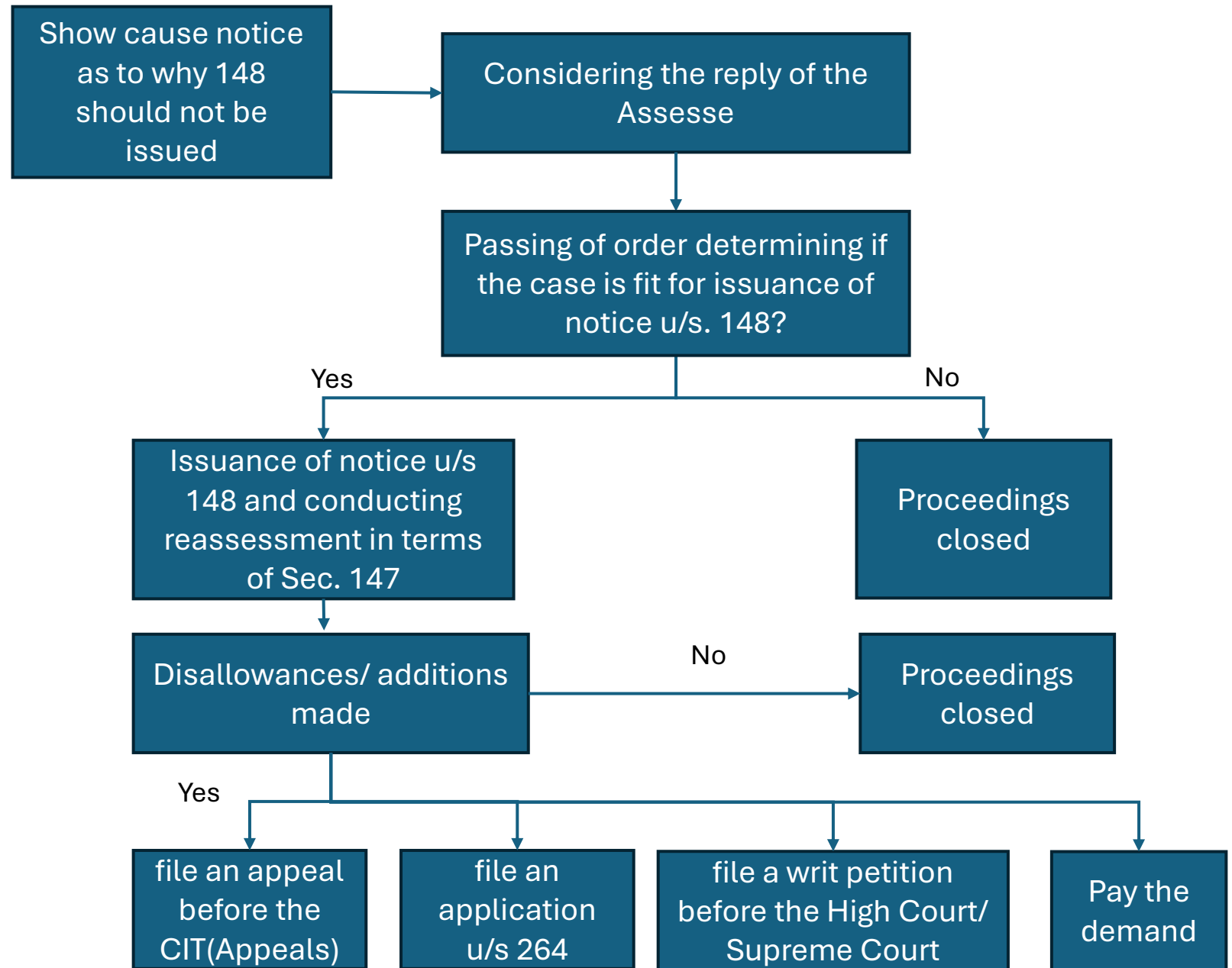
Old

- **Reason to believe** - Assessing Officer's *prima facie* belief, and material which has live link with tangible material leading him to reopen the assessment (2021) 130 taxmann.com 492 (Guj).
- There should be some **material at the time of recording reasons**. The sufficiency or correctness of the material is not a thing to be considered at this stage. It will be open to the assessee to prove that the assumption of fact made in the notice was erroneous at the time of assessment proceedings. Raymond Woollen Mills Ltd vs ITO (1999) 236 ITR 34

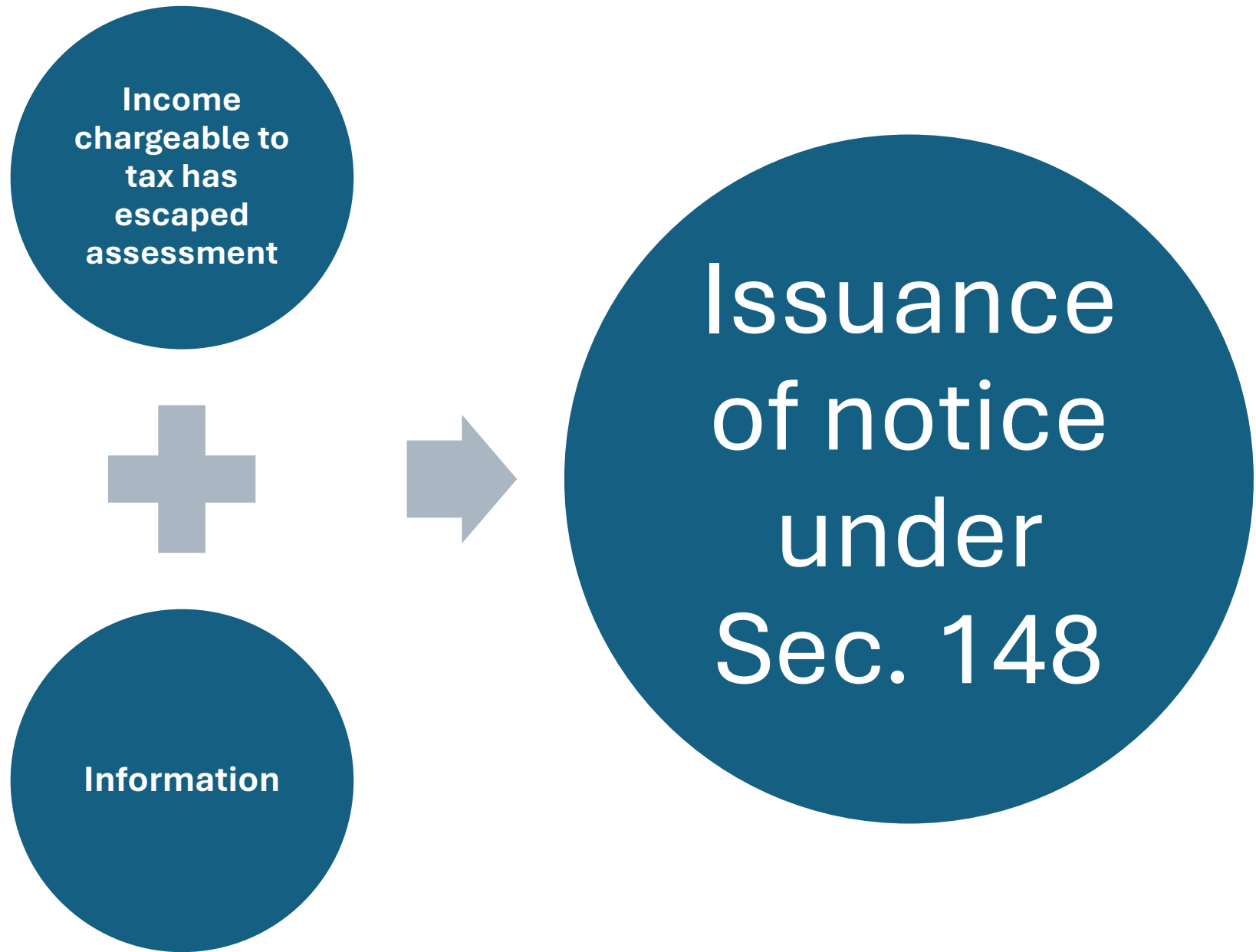
New

- Reassessment can be initiated only when there is **information** with the Assessing Officer which **suggest** that **income chargeable to tax has escaped assessment**.
- To provide an **Opportunity** of being heard to the Assessee before issuance of notice u/s 148.

Road map of new re-assessment scheme



Preliminary requirements for issuance of notice u/s 148



Key changes brought in by Finance Act, 2021 in reassessment scheme



**CONDUCTING ENQUIRY BEFORE
ISSUANCE OF NOTICE U/S 148**



**CHANGES IN TIME LIMIT FOR
ISSUING NOTICES**



**APPROVALS TO BE SOUGHT FOR
ISSUING NOTICES**

Section 148A, w.e.f. 01.09.2024

The law laid down by the Hon'ble Supreme Court in **GKN driveshafts (India) Ltd vs ITO (2003) 259 ITR 19 (SC)**, have been brought into the Act


The Sec. 148A of the Act, as it stood before 01.09.2024, required the Assessing Officer to issue notice u/s 148A(b) and after considering the reply of the Assessee, an order is to be passed u/s 148A(d) of the Act, determining if the case of the Assessee is fit for issuance of notice u/s 148


From 01.09.2024, if the Assessing Officer has information which suggest that income chargeable to tax. He shall provide an opportunity to the Assessee before issuing notice u/s 148, and post considering the reply pass an order determining if the case is fit for issuance of notice u/s 148


If information is received under the faceless information scheme u/s 135A, then provisions of Sec. 148A, are not applicable


What is INFORMATION?


 Information in accordance with Risk Management Strategy, such as insight portal (FA 2021)

 Audit objection to the effect that the assessment is not done in accordance with Act.

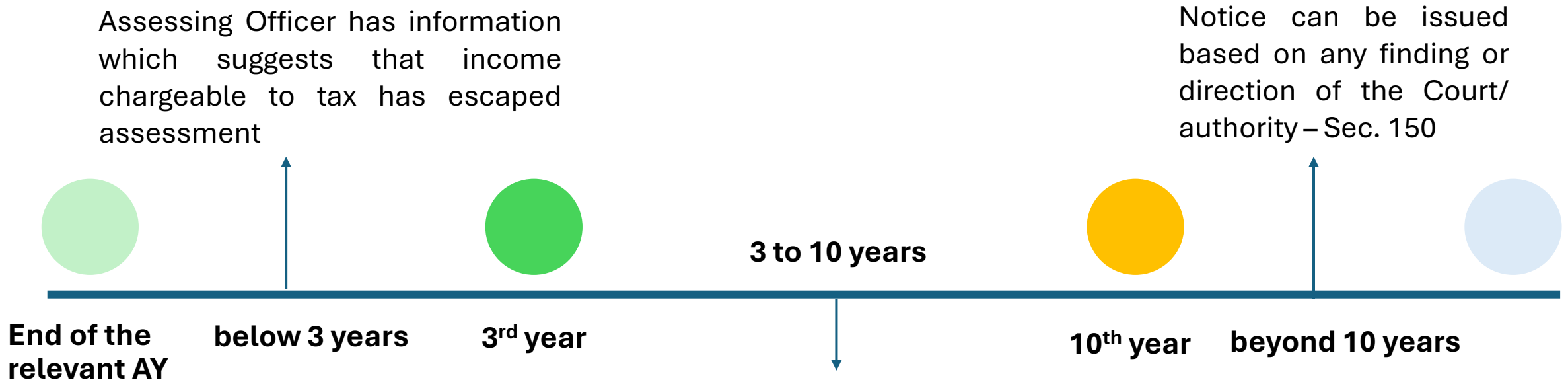
 Information received under agreement referred to in Sec. 90 or Sec. 90A.

 Information in terms of scheme notified in Sec. 135A, i.e., Faceless Collection of Information.

 Information which requires action in accordance with the Order of Tribunal or Court.

 Information emanating from Survey, other than survey u/s 133(2A), w.e.f. 01.09.2024

Section 149 – Time limit for issuing notice u/s 148 (from 01.04.2021 to 31.08.2024)



Notices can be issued on satisfaction of following conditions:

- ✓ Income escaped assessment **is/likely =>Rs 50 lakhs**
- ✓ Assessing Officer has possession books of accounts or other documents which reveal that income chargeable to tax has escaped assessment
- ✓ Income chargeable to tax shall be in the form of an asset or expenditure in respect of transaction or event or occasion or entry or entry in books of accounts

Changes in the time limits in the re-assessment regime

Sec. 148A

No time limit

Income chargeable to tax as per information available with AO
< 50 lakhs - 3 years
=> 50 lakhs - 5 years
From the end of the relevant AY

Sec. 148

Income chargeable to tax as per information available with AO
< 50 lakhs - 3 years
=> 50 lakhs - 10 years
From the end of the relevant AY

Income chargeable to tax as per information available with AO
< 50 lakhs - 3 years 3 months
=> 50 lakhs - 5 years 3 months
From the end of the relevant AY

Sec. 148A(b)

Min 7 days to Max 30 days which can be further extended by the AO

No time limit

Sec. 148A(d)

One month from the end of the month in which reply is received or due date to receipt reply

No time limit

Section 151A and e-Assessment of Income Escaping Assessment Scheme, 2022

- The Central Board of Direct Taxes, vide Notification dated 29.03.2022, introduced the e-Assessment of Income Escaping Assessment Scheme, 2022.
- Scope of the scheme:
 - a. Issuance of notice under Sec. 148 of the Act, and,
 - b. Assessment, re-assessment, or re-computation under Sec. 147 of the ActShall be through automated allocation, in a faceless manner
- In terms of the said scheme, notice under Sec. 148 of the Act, shall be issued in a faceless manner.
- The Hon'ble High Court of Telangana, Bombay, Guwahati, and Punjab and Haryana have held that the notices issued by the local jurisdictional officer are bad in law.
- Hon'ble High Court of Andhra Pradesh and Rajasthan have been granting interim stay in such matters

Understanding the legal journey....

Taxation and Other Laws (Relaxation Amendment of certain provisions) Act, 2020

Supreme Court's decision in Union of India vs Ashish Agarwal

Instruction No. 1 of 2022, dated 11.05.2022, issued by the CBDT

Allahabad HC in Rajeev Bansal vs Union of India

Supreme Court in Union of India vs Rajeev Bansal and ors

Taxation and Other Laws (Relaxation and Amendment Act), 2020

Covid-19 had caused significant disruptions in day-to-day life, business and legal compliance. Need to relax provisions had become critical

Parliament was not in session and in view of urgency, the Taxation and Other Laws (Relaxations of Certain Provisions) Ordinance, 2020, was promulgated on 31.03.2020

The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Bill, 2020, replaced the Ordinance, on 29.09.2020, with retrospective effect from 01.04.2020

Vide various notifications, timelines were extended from time to time, i.e., 20.03.2020 to 31.03.2021

Notification No. 20/2021 & 38/2021, dated 31.03.2021 & 27.04.2021, extended the timelines to 30.04.2021 & 30.06.2021 respectively. Explanation to the respective notifications provided that for the re-assessment regime, provisions as it stood before Finance Act, 2021, would apply

The challenge before the High Court concerning validity of the notices issued between 01.04.2021 to 30.06.2021

Contentions of the Assessee:

- Notifications were ultra-vires and in excess of enabling powers prescribed under Sec. 3 of the Relaxation Act, 2020
- Both the schemes could not co-exist at the same time
- The procedure prescribed under Sec. 148A is not followed

Contention of Revenue:

- TOLA is a conditional legislation
- The doctrine of legal fiction
- Harmonious construction
- Sec. 3(1) of the TOLA Act, overrides other Acts and therefore would prevail over Income Tax Act

Judgement of the High Court :-

- Law prevailing on the date of notice is to be applied
- If legislature had intention to keep the earlier provisions alive, then the legislature would have deferred the provisions of Finance Act, 2021
- TOLA does not empower the government to defer the provisions
- Explanations of the Notification dated 31.03.2021 & 27.04.2021 are ultra-vires the Relaxation Act, and bad in law
- Legal fiction is not applicable

Union of India vs Ashish Agarwal [2022] 138 taxmann.com 64 (SC)

After the judgement of the Hon'ble High Courts in favour of the Assesseees, the Department approached the Hon'ble Supreme Court.

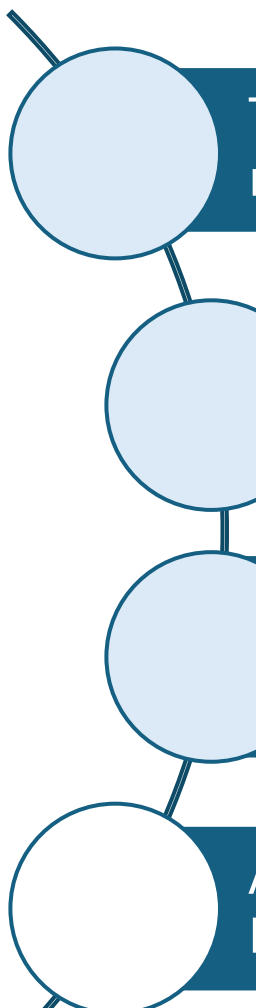
The Hon'ble Supreme Court exercising its power under Article 142 of the Constitution of India, awarded new life to the notices issued under the old regime, after 01.04.2021.

The Hon'ble Supreme Court affirmed the view of various High Courts that notice under section 148, under the old law could not be issued after 01.04.2021.

It held that the notice issued u/s 148 (challenged before judicial forums) under the old law during the period 01-04-2021 to 30-06-2021, shall be deemed to be a notice issued under section 148A(b) under the new law. The Assessing Officer shall provide information and material relied, within one month. Requirement of 148A(a) is dispensed as a one-time measure.

All the defences available under the Act and Sec. 149 to both sides shall continue to be available

CBDT Instruction No. 1 of 2022, dated 11.05.2022



The decision of the Supreme Court read with the extension provided by TOLA will allow the notices to travel back in time and 149 as on that date shall be applied

CBDT applied the judgment of supreme court to all notices, whether or not they have been challenged

Assessment Year 2013-14 to Assessment Year 2015-16 – Notices can be issued if it falls under Sec. 149(1)(b). Specified authority shall be PCCIT/PDGIT/CCIT/DGIT

Assessment Year 2016-17 to 2017 – 18 – within three years. Specified authority PCIT/CIT/DIT/PDIT

Understanding the controversy

Particulars	Case I	Case II
Assessment Year	2016 - 17	2014 – 15
Income escaped assessment	18,00,000	1,00,00,000
Date of issuance of notice under Sec. 148 as per old time limit	15.04.2021	15.05.2021
UOI vs Ashish Agarwal Judgement	04.05.2022	04.05.2022
Date of issuance of information/ material	15.05.2022	20.05.2022
Date of response of the Assessee	25.05.2022	-
Date to 148 notice	09.08.2022	19.07.2022
Actual due date (as per taxpayer before)	31.03.2021 (pursuant to TOLA extension)	30.03.2021

Supreme Court - Union of India vs Rajeev Bansal and Ors

Questions which arise for SC

- Whether TOLA will apply to notices issued after 01.04.2021?
- Whether Re-assessment notices issued between July to Sep 2022 are valid?

Contentions of the Revenue:

- Sec. 3(1) of the TOLA Act, is a notwithstanding clause and overrides time limits under Sec. 149
- TOLA does not extend the life of old regime. It only gives relaxations for complying with actions, following the procedures laid down in new regime
- Assessment Year 2015-16 will have to be dropped as they do not fall under TOLA
- If the notices issued between July to Sept are treated as invalid, then judgment in UOI vs Ashish Agarwal will be frustrated

Contention of Assessee:

- TOLA held the field till a new regime came into effect
- Notifications cannot be read into new re-assessment regime
- TOLA applies to sections providing time limits and therefore will not apply to Sec. 151
- All the defences in Ashish Agarwal were kept open
- Without prejudice, TOLA extends time till 30.06.2021, but present notices have been issued between July to Sept, 2022
- UOI vs Ashish Agarwal, applied only to notices challenged before HC/SC
- AY 2013-14 & 2014-15:- Barred by limitation
- AY 2015-16:- sanction obtained u/s 151(2) instead of 151(1)
- AY 2016-17 & 2017-18:-sanction obtained u/s 151(i) instead of 151(ii)

Supreme Court - Union of India vs Rajeev Bansal and Ors

Notices issued invoking the earlier time limit will have to be dropped if conditions of 149(1)(b) are not satisfied

Sec. 3(1) of TOLA has non-obstante clause, which will override the provisions of Income Tax Act in case of conflict

When the notices under Sec. 148 were deemed to be notices under Sec. 148A(b), the requirement of obtaining prior approval was impliedly waived

UOI vs Ashish Agarwal cannot be limited to notices not challenged before judicial forums and will apply to all notices

Supreme Court - Union of India vs Rajeev Bansal and Ors

TOLA has to be read harmoniously with provisions of the IT Act. Operation of old law cannot be extended, but time limit to complete the action falling b/w 20.03.2020 to 31.03.2021 can be extended

Legal Fiction – Deemed that thing or event exist even though it does not exist

For sanction new law should be seen and extensions as per TOLA would apply

Notices u/s 148 issued between 01.04.2021 to 30.06.2021, shall be deemed to be stayed till decision of UOI vs Ashish Agarwal, i.e., 04.05.2022

Supreme Court - Union of India vs Rajeev Bansal and Ors



Supreme Court - Union of India vs Rajeev Bansal and Ors

Particulars	Case I	Case II	Case III
Date of issuance of notice under Sec. 148 as per old time limit	15.04.2021	15.05.2021	15.06.2021
UOI vs Ashish Agarwal Judgement	04.05.2022	04.05.2022	04.05.2022
Date of issuance of information/ material	15.05.2022	20.05.2022	30.05.2022
Date of response of the Assessee	25.05.2022	-	10.06.2022
No of Days from issuance until 30.06.2021	76	46	15
Due date to issue 148 notice	09 August, 2022	19 July, 2022	25 June, 2022

Take away from the Judgement

Take aways

Pursuant to the SC order, since the notice u/s 148A(b) has been issued between 01.04.2021 to 30.06.2021, definition of “information” as provided by Finance Act, 2021, would apply.

For the re-assessments falling within Sec. 149(1)(b) of the Act, i.e., Assessment Year 2013-14 & 2014-15, the conditions of Sec. 149(1)(b) are to be satisfied

Extended reassessment notices for the Assessment Year 2015 – 16, are to be quashed



Thank you

**Ramdev Bhutada, FCA
M/s R.D. Bhutada & Co,
Chartered Accountants
+91-9849005844**

**Srinarayan Toshniwal, CA, CS, LLB
M/s PPKG & Co,
Chartered Accountants
+91-8801701539**