ECONOMIC
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PRACTICE
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RECENT DEVELOPMENTS IN DIRECT & INDIRECT TAX

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DIRECT TAX - RECENT CASE LAWS

Supreme Court[1] rules in favour of the Revenue validating the sanctity of the reassessment notices issued between June 2022 to September 2022. Upholds applicability of Taxation and Other Laws (Relaxation and Amendment of Certain Provisions Act) (TOLA) for the overlapping period post tax amendments brought under Finance Act 2021.

FACTS OF THE CASE

- TOLA was enacted in the backdrop of the COVID-19 pandemic to provide relaxation of time limits specified, inter-alia, under the provisions of the Income Tax Act ('The Act').
- Resultantly, time limits prescribed for passing of any reassessment order or issuance of any reassessment notice, etc. that fell for completion between March 20, 2020 and March 31, 2021 were extended to June 30, 2021.
- Finance Act 2021 substantially amended the scheme of reassessment procedure under Sections 147 to 151 of the Act, applicable from April 1, 2021 (new reassessment regime).
  - Time limit for reassessment reduced from 4 years to 3 years, not exceeding 10 years where income chargeable to tax has escaped assessment exceeds INR 50,00,000.
- Following the TOLA extended limits, the revenue issued reassessment notices between April 1, 2021 and June 30, 2021 based on the old regime of reassessment under Section 148 of the Act.
- High Courts ('HC'), ruling in favour of the assesses, treated such notices as invalid and held that notices should have been issued under the new tax regime on the ground that revenue could initiate reassessment proceedings after 01st April 2021 only in accordance with the provisions of the new reassessment regime as the Act stood substituted by Finance Act 2021 from April 1, 2021.
- The sanctity of reassessment notices issued during April 2021 to June 2021 was already decided by the Supreme Court ('SC') in the case of Ashish Agarwal[2] where the SC deemed the impugned notices issued under old reassessment regime (i.e. prior to its amendment vide FA 2021) to be a 'show cause notice' (SCN) under new reassessment regime (i.e. post amendment vide FA 2021) for conducting reassessment procedure.
- Following the SC judgement in Ashish Agarwal, Central Board of Direct Taxes (CBDT) on May 11, 2022 issued an instruction that reassessment notices issued under old regime after 01st April 2021 shall be deemed as SCN under the new reassessment regime and such instruction shall apply to all cases where extended reassessment notices have been issued irrespective of the fact whether such notices have been challenged or not.
- The revenue considered the replies furnished by the assessee against so deemed SCN and consequently issued reassessment notices under new reassessment regime between July 2022 and September 2022 for the assessment years 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18.
- Above notices were challenged by the assessee before the HC and HC declared that the notices are invalid on the ground that they were time-barred and issued without the appropriate sanction of the specified authority.
- Revenue filed an appeal before SC against the above order of the HC.

ISSUES BEFORE THIS SUPREME COURT

- Whether TOLA and notifications issued thereunder will also apply to reassessment notices issued after April 1, 2021? and
- Whether the reassessment notices issued under Section 148 of the new regime between July 2022 and September 2022, post compliance with deemed SCN are valid?

[1] Union of India & Ors. vs Rajeev Bansal, Civil Appeal No 8629/2024
[2] Union of India and others vs. Ashish Agarwal, Civil Appeal No. 3005/2022

REVENUE'S CONTENTION

- TOLA, being a free-standing legislation, was enacted to provide relief and relaxation to both the assesses and the revenue during the time of COVID-19. TOLA has an overriding effect over the provisions of the Act.
- Since TOLA has an overriding effect over the Act, it would extend to the amended provisions of the Act as well brought under Finance Act 2021.
- The proviso to Section 149(1)(b) of the new reassessment regime stipulates that the Revenue Authority can issue reassessment notices if the time limit survives according to Section 149(1)(b) of the old regime of the Act. Accordingly, the said proviso read with TOLA, all the notices issued between 01st April 2021 and 30th June 2021 pertaining to assessment years 2013-14, 2014-15, 2015-16, 2016-17, and 2017-18 will be within the period of limitation.
- SC in Ashish Agarwal's case treated Section 148 notices issued by the Revenue between April 1, 2021 and June 30, 2021 as show-cause notices. Consequently, the Revenue issued notices under Section 148 of the new reassessment regime between July 2022 and September 2022. Treating such notices issued under the new reassessment regime as being time barred will completely frustrate the judicial exercise undertaken by SC in Ashish Agarwal (supra).

ASSESSEE'S CONTENTION

- Finance Act 2021 was enacted after TOLA. Consequently, TOLA only held the field till the new reassessment regime came into effect from April 1, 2021. Further time limit in TOLA through notification was extended after the new reassessment regime came into effect and old regime were repealed. Therefore, TOLA cannot be read into the new reassessment regime.
- TOLA applies only when the period of limitation expires between March 20, 2020 and March 31, 2021. Therefore, any reassessment notices issued after April 1, 2021 had to be under new reassessment regime without recourse to the TOLA.
- Assessee categorized its arguments year-wise for the following assessment years:
  - **Assessment years 2013-14 and 2014-15 –** 6-year period under the old reassessment regime expired on March 31, 2020 and March 31, 2021 respectively. Therefore, the notices issued after April 1, 2021 would be barred by limitation.
  - **Assessment year 2015-16 –** 4 year period under the old regime expired on March 31, 2020. Notice were issued after March 31, 2020 and sanction for issue of notice was obtained as per old reassessment regime instead of new reassessment regime. Hence invalid.
  - **Assessment years 2016-17 and 2017-18:** 3 year period under the new reassessment regime expired on March 31, 2020 and March 31, 2021 respectively. Notice were issued after April 1, 2021. Sanction for issue of notices was obtained as per old reassessment regime instead of new reassessment regime. Hence invalid.
- Compliance as per TOLA under new reassessment regime should have been done by June 30, 2021. Accordingly, notices issued during July 2022 to September 2022 stands barred by time limitation. The directions issued by SC in Ashish Agarwal (supra) case cannot contravene the substantive provisions contained in the Act.
- TOLA is only applicable to the provisions that specify time limits. TOLA does not apply to the provisions for issuance of sanctions by the specified authorities.

SUPREME COURT RULING

Reading TOLA into the Act for determining time limits:

- Though the new reassessment regime is applicable from April 1, 2021, the amendment or substitution of a provision under the Act will not affect the purpose of TOLA, which will continue to apply to the Act after April 1, 2021 if any action or proceeding specified under the substituted provisions of the Act falls for completion between March 20, 2020 and March 31, 2021.
- After April 1, 2021, the Income Tax Act has to be read along with the substituted provisions. The substituted provisions apply retrospectively for past assessment years as well.

- On April 1, 2021, TOLA was still in existence, and the Revenue could not have ignored the application of TOLA and its notifications. Therefore, for issuing a reassessment notice after April 1, 2021, the Revenue would still have to look at: (i) the time limit specified under the new reassessment 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 March 20, 2020 and March 31, 2021.
- The SC, applying the principle of harmonious interpretation, held that in case where there is apparent conflict between the two statutes, the proposition which makes both the provisions workable and is in line with the object and purpose of both the statues shall prevail.

Interplay of Sanctioning Authorities under old reassessment regime vs new reassessment regime:

- The new reassessment regime has specified different authorities for granting sanctions under Section 151 of the Act before issuing notice of reassessment. The new reassessment regime specifies a higher level of authority for the grant of sanctions in comparison to the old regime. This is beneficial for the assessee. The specified authority is directly co-related to the time when the notice is issued.
- In Ashish Agarwal (supra) decision, though the SC waived off the requirement of obtaining prior approval for conducting an enquiry and for issuing the show cause notice, it did not waive the requirement of obtaining the prior approval for the issuance of reassessment notice.
- Through the decision of the SC in Ashish Agarwal (supra), the SC deemed the reassessment notices issued under old regime after April 1, 2021 as show cause notices issued under Section 148A(b) of the new reassessment regime. Therefore, the revenue was required to obtain prior approval of the specified authority according to Section 151 of the new reassessment regime before issuing the notice of reassessment under the new reassessment regime.

Applicability of SC's Decision in the case of Ashish Agarwal (Supra)

- Through SC's Decision in the case of Ashish Agarwal (Supra), all the reassessment notices issued in terms of Section 148 of the old regime were declared invalid and treated as SCN under the new reassessment regime. Further, the SCNs so issued between 01st April 2021 and 30th June 2021 were stayed till the date of supply of the relevant information and material by the revenue to the assessee. The said period therefore stood suspended for the purpose of computing the time limit for issuance of notice of reassessment.
- Consequentially, SC directed the Revenue to provide all the relevant material or information to the assesses and thereafter allowed the assesses to respond to the SCN by availing all the defences including those available under Section 149.
- The scope of the directions in Ashish Agarwal (supra) applied PAN India, including all the ninety thousand reassessment notices issued under the old regime during the period April 1, 2021 and June 30, 2021.

Legal Sanctity of notices issued between July 2022 and September 2022:

- The SC explained the computation of time limits for issuance of notice of reassessment pursuant to the deemed SCNs under the new reassessment regime as follows:

Period / Chronology	Description of the Period
Period beginning from April 1, 2021 till June 30, 2021.	Issue of deemed SCN. Such period is covered under the Act read with TOLA
Assuming, deemed SCN was issued on May 1, 2021	Revenue would have 61 days (i.e. from May 1, 2021 to June 30, 2021) to issue reassessment notice under Section 148 of the Act.
Period beginning from July 1, 2021 till outcome of the SC decision in Ashish Agarwal (Supra) i.e. till May 3, 2022 and the period after May 3, 2022 till date of supply of material / information to assesses basis the said SC decision in Ashish Agarwal (Supra).	This is the period of injunction of court, to be excluded from computation of time period for issuance of notice of reassessment.

The period after May 3, 2022 till date of supply of material / information to assesses basis SC decision in Ashish Agarwal (Supra). **Say, the revenue supplies material / information to assessee on June 1, 2022.**	This period is governed by the decision of the SC in Ashish Agarwal (Supra), read with the Act and TOLA
Submission of response by the assesses say on June 18, 2022, against the SCN and the supply of material / information thereto by the revenue.	The time starts ticking out of the balance 61 days (as computed above) for the revenue after receiving the response of the assessee to issue notice of reassessment under Section 148. The revenue gets 61 days from June 18, 2022 i.e. till August 18, 2022 to issue the notice of reassessment under the new reassessment regime.

For a notice of reassessment to be valid, following key criteria must be fulfilled:

- Notices must be issued within the time limit provided as per new reassessment regime read with TOLA;
- Sanction obtained by the revenue before issuing the reassessment notices under the new reassessment regime must be from the sanctioning authority specified under the new reassessment regime;
- Notice issued without complying with the preconditions are invalid;

Key highlights of the SC Conclusion:

- With effect from April 1, 2021, the Act has to be read according to the new reassessment regime.
- TOLA will continue to apply over the Act after April 1, 2021 for actions falling between March 20, 2020 and March 31, 2021.
- TOLA overrides the Act only to the extent of relaxing the time limit for issuance of a reassessment notice under Section 148. Time limit for the grant of sanction by the authority specified under Section 151 also stands extended.
- Revenue were required to issue the reassessment notice under Section 148 of the new reassessment regime within the surviving time limit under the Act read with TOLA. Notices issued beyond the surviving period stands time barred.

ELP Comments

The SC in this Rajeev Bansal case finally puts an end on the controversy of validity of reassessment notices issued in July 2022 to September 2022. TOLA extended time limits will be applicable on the reassessment notices issued after April 1, 2021 which was not dealt by the SC in Ashish Agarwal case. Consequently, the earlier HC rulings in favour of the assessee now stand overturned and all the 90,000 reassessment notices so quashed are now alive.

While the decision is ruled in favour of the revenue, it also offers defences to the assessee such as to examine whether the sanction obtained by the revenue before issuing the reassessment notices under the new reassessment regime ties with the sanctioning authority specified under the new reassessment regime. A detailed review of the facts in each specific case may be needed to assess potential strategies to decide the way forward.

INDIRECT TAX - RECENT CASE LAWS

Sufficient balance in Electronic Credit Ledger (ECrL) necessary for blocking credit under Rule 86A[3]

FACTS OF THE CASE

- The Petitioner, a manufacturing company, faced the blocking of Input Tax Credit ('ITC') amounting to Rs. 2,44,05,567 by the Assistant Commissioner, Una on 08.12.2023, without any formal notice or reason provided. Following inquiries, it was revealed that the blocking was at the behest of Surat Zonal Division of the Director General of GST Intelligence.
- As there was no balance in the ECrL, the blocking resulted in negative blocking.

PETITIONER'S CONTENTION

- In spite of various requests and communication made by the Petitioner, respondent authorities have not given any reason or opportunity of hearing to the Petitioner with regard to the blocking of the ITC though there is no balance in ECrL.
- If no ITC was available in the ledger, the blocking of ECrL under Rule 86A of the Central Goods and Services Tax Rules, 2017 ('CGST Rules') and insertion of negative balance in the ledger would be wholly without jurisdiction and illegal. In support of this, reliance was placed on the decision of Gujarat High Court in case of **Samay Alloys India Pvt. Ltd. v. State of Gujarat**[4].
- Blocking of ITC has been done merely on suspicion of wrongdoing without issuing any show cause notice or providing any opportunity of hearing and without any order passed under sections 73 and 74 of the Central Goods and Services Tax Act, 2017 ('CGST Act').

JUDGEMENT

- After referring to Circular No. 4 of 2021 dated 24.05.2021 issued by the Office of the Commissioner of State Tax, State Goods & Services Tax Department, Kerala with regard to blocking of the credit, it was observed that if there is Nil or insufficient balance in a particular tax head in the ECrL, then the balance in another tax head can be blocked only if the cross-utilization from such head is permissible in law. But such cross-utilization between CGST and SGST is not permissible and therefore, the SGST credit ledger cannot be blocked if sufficient credit balance is not available under the CGST head and vice versa.
- There cannot be any blocking of the credit in ECrL if there is no sufficient balance available
- The respondents were directed to withdraw the negative block of the ECrL at the earliest to the extent of Rs. 2,44,05,567/- and whatever balance remained in the ECrL after the removal of the balance of the negative figure, the same shall not be utilised by the Petitioner till the show cause notice is issued, if any, under sections 73 or 74 respectively of the CGST Act.

Development of e- learning course content and supply of tutors for online tutoring do not qualify as Online Information and Database Access or Retrieval Service [5]

FACTS OF THE CASE

- The Appellant was registered with the Service tax Department for providing Commercial Training or Coaching Service. Pursuant to scrutiny of their ST-3 returns and subsequent investigation, a Show Cause Notice was issued for recovery of Service tax not paid during the period from October 2013 to June 2017 inter-alia in respect of the following on the ground that such services constitute Online Information and Database Access or Retrieval ('OIDAR') Services:

[3] PMW METAL AND ALLOYS PVT. LTD. Versus UNION OF INDIA & ORS. [TS-637-HC(GUJ)-2024-GST]
[4] (2022) 91 GST 338 (Gujarat)
[5] M/S. FOCUS EDU CARE P. LTD. VERSUS THE PRINCIPAL COMMISSIONER OF SERVICE TAX [2024 (10) TMI 680 - CESTAT BANGALORE]

- Development of e-learning course content and supplied against consideration to their counterpart in USA who ultimately sold the same to other customers in USA;
- Supply of tutors for online tutoring to M/s. Advance Tech Enterprises, UAE.

APPELLANT'S CONTENTION

- The services in question constitute export of services since the recipient and hence, place of provision of service is located outside India and the consideration has been received in convertible foreign exchange.
- The Revenue's contention to treat such services as OIDAR and thereby, treat place of provision in India is erroneous since an E-learning course is an interactive teaching/ training course which cannot be equated with mere access to online information and data, as held by the Hon'ble Tribunal[6].

JUDGMENT

- The Appellant has designed and developed the e-learning course content and supplied against consideration to their counterpart in USA which ultimately sold the same to other customers in USA. The customers in USA placed the same on websites allowing the users to access and retrieve data. Therefore, the services rendered by the Appellant to M/s. Focus Care Inc, USA cannot fall within the scope of OIDAR service. Consequently, it is an export of service since the recipient of the service is located in USA in view of the Rule 3 of the POPS Rules, 2012 read with Rule 6A of the Service Tax Rules, 1994.
- Similarly, also in the case of supply of tutors for online tutoring to M/s. Advance Tech Enterprises, UAE, the Appellant merely provided tutors to M/s. Advance Tech Enterprises, UAE and the web platform is not hosted by the Appellant and also does not belong to the Appellant. The Appellant also does not provide any access to the web platform which is provided by M/s. Advance Tech Enterprises to its students. It was also held that it is not an automated web-based services which are completely automated and required minimum human intervention; but the online tutoring provided to M/s. Advance Tech Enterprises, UAE involves interaction between the tutors and the students.

ELP Comments

Interpretation of the term "essentially automated and involving minimum human intervention" occurring in the definition of OIDAR service has been a subject matter of litigation under the erstwhile Service tax as well as GST regime. Vide an amendment to the OIDAR services definition under the GST law made effective from 01.01.2023, the said term has been omitted from the definition, expanding the scope of OIDAR services.

Constitutional Validity of Chhattisgarh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 (Act of 1976) (governing Entry Tax) has been upheld[7]

FACTS OF THE CASE

- The Petitioners challenged the Act of 1976, claiming it was ultra vires to the Constitution of India, specifically Articles 14 and 304. They argued that the Act imposed discriminatory rates of entry tax on goods imported from other states compared to those produced within the State.
- The Petitioners sought to quash the Notification dated 04.03.2014, arguing it conferred arbitrary and unguided powers on the executive to enhance the rate of entry tax up to 50%. The Petitioners argued that the entire state could not be declared a "local area" for the purposes of Entry 52 of List II of the Constitution.
- In view of the above, the following questions came up for consideration before the Chhattisgarh High Court:

[6] Dewsoft Overseas P. Ltd v CST- [2008 (12) STR 730]
[7] M/S VODAFONE SPACETEL LIMITED, NOKIA INDIA PVT. LTD vs. OFFICERS OF COMMERCIAL TAXES [TS-456-HC-2024(CHAT)-VAT]

- Whether the Act of 1976 and Notification dated 04/03/2014 issued under Section 4-A of the Act of 1976 is unconstitutional on the ground that it is discriminatory and violate Articles 14 and 304 of the Constitution of India.
- Whether the entire State can be declared as a "local area" under Entry 52 of List II of the Constitution of India.
- The concept of compensatory tax and its application.

JUDGEMENT

- The Chhattisgarh High Court dismissed the writ petitions, upholding the Constitutional validity of the Act of 1976 and the Notification dated 04.03.2014.
- The Court referred to several precedents, including the Supreme Court's judgment in Jindal Stainless Ltd[8], which upheld the validity of similar entry tax laws by various States. The Court reaffirmed that non-discriminatory taxes do not per se violate Article 301 of the Constitution. It also noted that the validity of Act of 1976 had been previously upheld by the Supreme Court in cases like Bhagatram Rajeevkumar and Geo Millers Co. Pvt. Ltd[9].
- The Court noted that different tax rates for goods imported from outside the State and those produced within the State do not per se constitute discrimination. It emphasized that the burden of proving discrimination lies on the Petitioners, who failed to provide substantial evidence. The Court referred to the Supreme Court's judgment in Malwa Bus Service[10], which held that a difference in tax rates does not necessarily imply discrimination.
- As regards the question whether the entire State can be considered as local area, the Court referred to the Supreme Court's judgment in Jindal Stainless Ltd., where it was observed that the term "local area" could cover the whole State or specific areas as notified in the legislation. The Court found that the definition of "local area" in Section 2(d) of the Act of 1976 was precise and did not support the Petitioners' claim.
- The Court discussed the concept of compensatory tax, which judicially evolved as an exception to the provisions of Article 301 of the Constitution. It referred to the Supreme Court's judgment in Jindal Stainless Ltd., which clarified that compensatory taxes are permissible if they provide direct and substantial benefits to the taxpayers. The Court found that the revenue realized from the entry tax under the Act of 1976 was used to compensate local bodies for the loss of revenue due to the abolition of octroi, thus meeting the criteria for compensatory taxes.

We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at insights@elp-in.com or write to our authors:

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[8] (2017) 12 SCC 1
[9] 1995 (1) Supp 637 and (2004) 5 SCC 209
[10] (1983) 3 SCC 237

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