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TAX JURISPRUDENCE

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EXECUTIVE SUMMARY OF JUDGEMENTS / ADVANCE RULINGS UNDER DIRECT AND INDIRECT TAXES

We are pleased to draw your attention to following important decisions which might be useful for you to take call on tax position.

Case & Citation	Issue Involved	Decision
Direct Tax		
New India Assurance Company Limited Vs. ACIT and others (Writ petition no. 1945 of 2023) [Bombay HC]	Whether reassessment proceedings for AY 2013-14 initiated by AO by issuance of notice dated 28.07.2022 u/s. 148 under the new regime is bad in law?	The Hon. Bombay HC held that the notice dated 28.07.2022 u/s. 148 under the new regime is issued beyond the period of limitation and hence, reassessment proceedings for AY 2013-14 is illegal and bad in law.
Indirect Tax		
Diamond Beverages Pvt Ltd & Anr. Vs The Assistant Commissioner of CGST & CX [TS-705-HC(CAL)-2023-GST]	Whether SCN can be issued without any inquiry or investigation at the supplier's end?	Hon'ble Calcutta High Court set aside SCN issued which has not considered assessee's request to investigate supplier and allows writ-appeal.

The brief analysis of above referred decisions and rulings are given below.

New India Assurance Company Limited Vs. ACIT and others (Writ petition no. 1945 of 2023) [Bombay HC]

Facts in brief & issues involved:

- ♦ The taxpayer's case was selected for scrutiny u/s 143(3) of the Act (Original Assessment Proceedings) for AY 2013-14 with huge additions and the matter had been settled by ITAT. Further, reassessment order was passed u/s 147 of the Act against which appeal was pending before CIT(A).
- ♦ Thereafter, its case was again reopened by issuance of notice dated 28.07.2022 u/s. 148 under amended provisions wherein the taxpayer contended that the notice is issued beyond the period of limitation and hence, reassessment proceedings is illegal and bad in law.

Contention of the taxpayer:

- ♦ The taxpayer contended that the Hon. Supreme Court in the case of Ashish Agarwal has strike a balance between the rights of both parties which permitted the Revenue to re-initiate the reassessment proceedings by following the new procedure for reassessment. At the same time, also specifically granted liberty to the assesseees to raise all defences available to them including the defence u/s. 149.
- ♦ It is a settled position in law that the validity of a notice issued u/s. 148 must be judged on the basis of the law existing on the date on which such notice is issued. Even the Revenue accepts this well settled position.
- ♦ As per the unamended Section 149(1)(b), the outer time limit to issue a notice u/s. 148 was 6 years from the end of the relevant assessment year and thus for AY 2013-14, the time limit expired on 31.03.2020.

- ♦ In terms of first proviso to section 149(1), the applicability of Section 149 has to be seen qua notice u/s. 148, and not with respect to the notice issued u/s. 148A(b) or the order passed u/s. 148A(d).
- ♦ Taxation and Other Laws (Relaxation and Amendment of certain provisions) Act, 2020 (TOLA) has no application in the present case which pertains to AY 2013-14. Even reliance on Instruction No.1 of 2022 issued by CBDT is misplaced because neither the provisions of TOLA nor the judgment in Ashish Agarwal provide that any notice issued u/s. 148 after 31.03.2021 will travel back to the original date.

Contention of the Revenue:

- ♦ Section 3 of TOLA merely provides exclusion of Covid period while computing 4 years or 6 years, as the case may be u/s. 149. Hence, after excluding Covid period, if notice u/s. 148 is within 6 years, it has to be deemed as within limitation period of 6 years.
- ♦ The expression in TOLA Act and Notification issued thereunder that the end date to which the time limit for the completion of such action shall stand extended refers to the extension so arrived at after excluding the number of days/Covid period. The Notification No.20 of 2021 dated 31.03.2021 seeks to extend the limitation which expires on 31.03.2021 under the Act.
- ♦ SC in the case of Ashish Agarwal has deemed the notices u/s. 148 of the amended Act issued between 01.04.2021 to 30.06.2021 to be a notice u/s. 148A(b) issued within limitation. By following the manner of computation of limitation provided in TOLA, the days from 01.04.2021 to 30.06.2021 would stand excluded and therefore, the notices u/s. 148 of the unamended Act could be deemed to be issued on 31.03.2021.

Observation and Decision of the High Court:

- ♦ The validity of a notice issued u/s. 148 must be judged on the basis of law existing on the date on which such notice is issued. SC kept open expressly all contentions which

may be available to the assessee including those available u/s. 149 and all rights and contentions, which may be available to the assessee and Revenue under the Finance Act, 2021 and in law shall be continued to be available.

- ♦ The limitation for AY 2013-14 expired on 31.03.2020, which by virtue of Section 3(1) of TOLA, got extended to 31.03.2021. This was followed by a Notification dated 31.03.2021 which provided that under the Income Tax Act, when the completion of any action relates to issuance of notice u/s. 148 as per time limit specified in Section 149 was 31.03.2021, it shall stand extended to 30.04.2021. The time limit u/s. 149 expired on 31.03.2021 only for AY 2014-15 (and not for AY 2013-14 which expired on 31.03.2020) and has got extended by virtue of clause (a) of Section 3(1) of TOLA. The notification does not say "issuance of notice u/s. 148 as per time limit specified in Section 149 as extended under Section 3(1) of TOLA". Therefore, the provisions of TOLA cannot apply. Also, the notifications thereunder do not apply for AY 2013-14.
- ♦ The Revenue's contention that reopening notice was to relate back to an earlier date is entirely flawed and unacceptable. Thus, reassessment notices issued for AY 2013-14 are patently barred by limitation as the six years limitation period under the Act (as extended by Section 3 of TOLA) expired by 31.03.2021.
- ♦ The Notification No.20/2021 issued under TOLA, which is relied upon by the Revenue, only covers those cases where 31.03.2021 was the end date of the period during which the time limit specified in or prescribed or notified under the Income Tax Act falls for completion. The limitation under the erstwhile Section 149 for reopening the assessment for AY 2013-14 expired on 31.03.2020. Hence, Notification No.20/2021 did not apply to the facts of the case.
- ♦ The Circulars/ Instructions are only binding on the Revenue and not on the assessee and Courts.



NASA Comments:

- ♦ The decision of Bombay HC is a significant ruling reshaping the landscape of tax law. The Court, in its meticulous analysis quashed notices for AY 2013-14 issued post 31.03.2021 and declared TOLA as not applicable. This landmark ruling underscores the importance of understanding legal landscape at the time of notice issuance and upholds the principle of finality in legal proceedings. The decision serves as a safeguard against arbitrary or retrospective application of amendments ensuring a fair and just legal process.
- ♦ The Court's emphasis on binding nature of Court declarations and limited applicability of circulars and instructions underscores the importance of legal clarity and consistency. It provides taxpayers with a sense of assurance that legal interpretations will be based on established principles rather than ad-hoc directives.

Diamond Beverages Private Limited & Anr. Vs. The Assistant Commissioner of CGST & CX [TS-705-HC(CAL)-2023-GST]

Facts in brief & issues involved:

- ♦ M/s Diamond Beverages Pvt Ltd ("The applicant") was issued a Notice, alleging that the applicant had availed/utilized input tax credit (ITC) on supplies whose registration was cancelled retrospectively and on ITC where the suppliers, who had not filed FORM GSTR 3B returns.
- ♦ The appellants had submitted a detailed reply to the pre-show cause notice giving all the factual details.
- ♦ However, SCN u/s 73(1) was issued demanding the liability on above ITC.
- ♦ The applicant has filed the writ petition in Calcutta high court where the Single Judge disposed of the writ petition by directing the applicant to submit the reply to the SCN. Hence, aggrieved by such order, the present appeal.

Contention of Applicant:


- ♦ In the reply the appellant requested the authority to investigate at the supplier's end, where there was an allegation of retrospective cancellation of the supplier's registration and allegations, where the suppliers filed the returns for the concerned financial year.
- ♦ Further Applicant placed reliance on the decision of this Court in the case of **Suncraft Energy Private Limited & Anr. vs. The Assistant Commissioner, State Tax, Ballygunge Charge & Ors. reported in 2023 SCC Online Cal. 2226** as well as the Hon'ble Supreme Court.

Observations & Decision of High Court:

- ♦ Hon'ble High Court observed that at the first blush, on perusal of the show cause, it appears that the submissions made by the appellants in their reply to the pre-show cause notice appears to have been considered.
- ♦ However, on closure scrutiny of the impugned SCN, it is seen that except extracting the reply given by petitioner, the authority has not dealt with the contentions, which were placed by the petitioner.
- ♦ Further they added that the authority was required to examine the reply given in the pre-show cause notice and considering the nature of allegations in the pre-show cause notice, it goes without saying that the authority has to investigate or inquire into the matter by taking note of the relevant details at the supplier's end. If that is not done, the true facts will not emerge and consequently, the issuance of any show cause notice will be a fait accompli.
- ♦ Since the impugned SCN was issued without due application of mind, the Hon'ble High Court remanded the matter to the adjudicating authority to the stage of pre-show cause notice with the instructions that the adjudicating authority shall, first inquire/investigate into the matter from the supplier's end, collect the necessary information, thereafter afford an opportunity of personal hearing and then proceed to take a decision as to whether a show cause notice under section 73(1) of the Act has to be issued or otherwise.

NASA Comments:

- ♦ The Calcutta High Court has once again given great relief to the taxpayers who have been receiving demand notices on account of non-reporting or non-payment of GST by the suppliers.
- ♦ This judgement emphasis on the fact to conduct thorough investigation into supplier actions before acting against recipients.



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