
**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.4164 OF 2025

Hitesh Ramniklal Shah

.. Petitioner

Versus

Assistant Commissioner of Income Tax-23(1),
Mumbai & Ors.

.. Respondents

**Mr.P. J. Pardiwalla, Senior Advocate a/w Jeet Kamdar
i/b Atul Jasani, Advocates for the Petitioner.**

Ms.Mamta Omle, Advocate for the Respondents.

**CORAM : B. P. COLABAWALLA &
AMIT S. JAMSANDEKAR, JJ.**

DATE : NOVEMBER 11, 2025

P. C.

1. At the outset, Mr.Pardiwalla, the learned senior counsel appearing on behalf of the Petitioner, tenders a draft amendment to substitute paragraph 12 of the above Writ Petition. This amendment is necessitated because the statement made in paragraph 12 is factually incorrect. It is to correct that mistake the amendment is sought.

2. Considering this is an amendment which does not in any way change the nature of the Writ Petition, and also considering that it is an amendment sought at the pre-admission stage, we do not find any impediment in allowing the said amendment. Accordingly, the draft amendment tendered to the Court is taken on record and marked “X” for identification.

3. The Petitioner is permitted to amend the Writ Petition in terms of the draft handed in. Re-verification is dispensed with. The amendment shall be carried out within a period of 1 week from today and the amended copy of the Petition shall be served on the advocates for the Revenue.

4. Rule. Respondents waive service. With the consent of parties, Rule made returnable forthwith and heard finally.

5. By this Petition, the Petitioner challenges a notice dated 27 July 2022 issued under Section 148 of the Income-tax Act, 1961 (“**the Act**”), the subsequent notices dated 9 October 2025 and 14 October 2025 issued under Section 142(1) of the Act, and the show cause notice dated 18 October 2025 issued by Respondent No.1, *inter alia* on the

ground that the notice under Section 148 of the Act is issued beyond the period of limitation, and therefore, all subsequent notices will also be bad in law.

6. The brief facts of the case are this. For the year under consideration, i.e. the A.Y. 2014-15, the Petitioner filed his return of income on 29 September 2014 declaring a total income of Rs.64,86,660/- in respect of which no scrutiny assessment was made. Respondent No.1 issued a notice dated 29 June 2021 under the unamended provisions of Section 148 of the Act, after obtaining the approval of the Principal Commissioner of Income Tax, Mumbai-19. The Petitioner filed his return of income on 18 November 2021 in response to the notice issued under Section 148 of the Act declaring the same income that was declared in the original return of income.

7. After the judgment of the Hon'ble Supreme Court in ***UOI V/S Ashish Agarwal [444 ITR 1 (SC)]*** delivered on May 4, 2022, Respondent No.1 issued a notice dated May 25, 2022 under Section 148A(b) of the Act and called upon the Petitioner to furnish his reply within two weeks to show cause as to why a notice under Section 148 of the Act should not be issued to the Petitioner. In reply thereto, the

Petitioner filed a letter dated June 3, 2022 requesting Respondent No.1 to drop the reopening proceedings. A further reply was filed on 17 June 2022 *inter alia* pointing out that the notice is time barred as per Section 149 of the Act; that there was no information with Respondent No.1 which suggested that income chargeable to tax has escaped assessment; and submissions were made on the merits to demonstrate that no income has escaped assessment. The Petitioner filed another reply on 25 June 2022 pointing out that the same information was already considered while seeking to reassess the income for the A.Y. 2015-16 and, hence, the reopening for the A.Y. 2014-15 should be dropped. However, Respondent No.1 passed an order under Section 148A(d) dated 26 July 2022 rejecting the submissions of the Petitioner and issued the impugned notice dated 27 July 2022 under Section 148 of the Act.

8. Being aggrieved by this action, the Petitioner filed Writ Petition No.130 of 2024 challenging the validity of the notice dated 27 July 2022 issued under Section 148 of the Act on the following grounds:- (i) the notice dated 29th June 2021 issued under Section 148 of the Act cannot be deemed to be a notice issued under Section 148A(b) of the Act; (ii) The impugned notice dated 27th July 2022 issued under

Section 148 of the Act is barred by limitation as per Section 149 of the Act; (iii) that there exists no ‘information’ as contemplated in Section 148 of the Act; (iv) the order under Section 148A(d) of the Act is bad in law; (v) the sanction granted is bad in law; (vi) the jurisdictional Assessing Officer lacked jurisdiction to issue the impugned notice and pass the impugned order; and (vii) even on merits of the case no income had escaped assessment.

9. After hearing the parties, the impugned notice dated 27th July 2022 was quashed by this Court vide its order dated 1 March 2024 solely on the ground that the notice was barred by limitation. This was done by relying on its earlier judgment in ***Godrej Industries v. ACIT [160 taxmann.com 13(Bom)]***. All other grounds canvassed by the Petitioner were kept open by this Court.

10. Being aggrieved by the order of this Court, Respondent No.1 filed a Special Leave Petition before the Hon’ble Supreme Court on 24 January 2025 being SLP No.5515 of 2025. This SLP was disposed off vide order dated 24 February 2025 in terms of the findings given in ***UOI v. Rajeev Bansal [(469) ITR 46 (SC)]***.

11. The Petitioner submitted that the present Petition challenges the validity of the reassessment proceedings on the grounds which were not disposed off and expressly kept open in Writ Petition No.130 of 2024 as well as on the ground of limitation having regard to the interpretation placed by the Supreme Court in its judgment in *Rajeev Bansal (Supra)* on Section 149 read with the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 [TOLA].

12. In view of the order passed by the Hon'ble Supreme Court on 24th January 2025, Respondent No. 1 issued a notice dated 9 October 2025 under Section 142(1) of the Act to the Petitioner to provide details in connection with the assessment for the A.Y.2014-15 on or before 14 October 2025 and referred to the assessment being revived consequent to the judgment of the Supreme Court in *Rajeev Bansal (supra)*. In response thereto, the Petitioner filed letters dated 13 October 2025 and 14 October 2025 pointing out the effect of the judgment of the Supreme Court in *Ashish Agarwal (supra)* and the effect of the “surviving period” as per the judgment of the Supreme Court in *Rajeev Bansal (supra)* specifying that the notice dated 27 July 2022 issued under Section 148 of the Act fell beyond the “surviving period” as per the judgment of

Rajeev Bansal (supra), and hence, the reopening proceedings should be dropped and Respondent No.1 is precluded from issuing the notice under Section 142(1) of the Act.

13. Thereafter, Respondent No.1 issued another notice dated 14 October 2025 also under Section 142(1) of the Act to the Petitioner to provide details in connection with the assessment for the A.Y. 2014-15 on or before October 17, 2025. In this notice, Respondent No.1 noted the Petitioner's objections as to limitation but held that *prima facie* the notice and the ensuing proceedings appear to be within the relaxation/extension framework under TOLA. He also called upon the Petitioner to file a brief note setting out its contentions. Accordingly, the Petitioner filed a letter dated 17 October 2025 pointing out that the reopening under Section 147 of the Act is not sustainable as it is barred by limitation in terms of Section 149 of the Act read with TOLA as interpreted by the Supreme Court in its judgment in *Rajeev Bansal (supra)*.

14. Respondent No.1 thereafter issued a show cause notice dated 18 October 2025 fixing the hearing on 24 October 2025 to explain why the proposed additions should not be made for the A.Y.2014-15

before finalizing the assessment. In this notice, Respondent No.1 dealt with the Petitioner's objections on limitation and found the same to be untenable for the reasons set out from page 8 of the show cause notice.

15. For the sake of convenience and more particularly to understand the argument of limitation, the sequence of events and the relevant dates detailed hereinbefore are tabulated as under:-

<u>Sr. No.</u>	<u>Date</u>	<u>Event</u>
1.	29-06-2021	Notice under erstwhile section 148 [deemed to be a notice under new section 148A(b)]
2.	04-05-2022	Judgment of the Hon'ble Supreme Court in Ashish Agarwal
3.	25-05-2022	Notice conveying reasons for reopening provided to the Petitioner pursuant to the judgment in Ashish Agarwal and providing a period of two weeks to the Petitioner to respond
4.	03-06-2022	Reply filed by the Petitioner to the notice under section 148A(b)
5.	08-06-2022	The two weeks' time granted elapsed.
6.	17-06-2022	Second reply filed by the Petitioner to the notice issued under section 148A(b)
7.	25-06-2022	Third reply filed by the Petitioner to the notice issued under section 148A(b)
8.	26-07-2022	Order passed under section 148A(d)

9.	27-07-2022	Notice issued under section 148
10.	09-10-2025	Notice under section 142(1)
11.	13-10-2025 & 14-10-2025	Reply filed by the Petitioner
12.	14-10-2025	Notice under section 142(1)
13.	17-10-2025	Reply filed by the Petitioner
14.	18-10-2025	Show cause notice issued by Respondent No. 1

16. Although multiple grounds are raised in the present writ petition, we propose to confine ourselves to the challenge to the notice under Section 148 of the Act on the ground that the same is barred by limitation in view of the first proviso to the substituted Section 149(1) as interpreted by the Hon'ble Supreme Court.

17. In this backdrop, the learned senior counsel for the Petitioner urged that the Hon'ble Supreme Court in its judgment in the case of *Rajeev Bansal (supra)* accepted the contention that had found favour with this Court in *Godrej Industries (supra)* that to test the validity of the notice under Section 148 issued after 1 April 2021, the law in force on that date would have to be applied. The Supreme Court also

held that applying this principle to test whether a notice under Section 148 is issued within the period of limitation one would have to give effect to the terms of the first proviso to Section 149(1)(b). The first proviso to Section 149(1)(b) enacts that a notice issued after 1 April 2021 has to be issued within such time as was permissible under the unamended Section 149(1)(b). Thus, for Assessment Year 2014-15, the notice under Section 148 under the unamended section provisions could have been issued in terms of Section 149(1)(b) by 31 March 2021. On this basis, Counsel urged that as the impugned notice is dated 27 July 2022, the same is beyond the period of limitation. It was further submitted that the Supreme Court thereafter held that in order to construe whether the notice was issued within the period of limitation one would have to give effect to the provisions of TOLA as well as the judgment of the Hon'ble Supreme Court in *Ashish Agarwal* and the requirements of the provisos to Section 149. The Court held that during the period from the date of issuance of the deemed notice under Section 148A(b) and the date of the judgment in *Ashish Agarwal (supra)*, [i.e. from 29th June 2021 to 4th May 2022] the Assessing Officers were deemed to have been prohibited from passing a reassessment order, and thus, the show cause notices were deemed to have been stayed by an order of the Supreme Court from the date of the issuance till 4 May

2022. The Court further extended this limitation and stated that the show cause notices were deemed to have been stayed not only upto 4 May 2022 but till the date when the Assessing Officer provided the relevant information and material to the Assessee in terms of the directions issued in its judgment in *Ashish Agarwal (supra)*. The Court further noted that the provisos to Section 149 allows the exclusion of time allowed to an Assessee to respond to the show cause notice under Section 148A(b) to compute the period of limitation. The Hon'ble Supreme Court therefore summarized that the total time that is excluded for computation of the period of limitation within which the notice is to be issued as encompassing the time during which the show cause notices were effectively stayed, that is, from the date of the original notice under Section 148 till the supply of the relevant information or material by the Assessing Officers to the Assessee in terms of the directions in *Ashish Agarwal* and a further period of two weeks to allow to the Assessee to respond to the show cause notice. The effect of this conclusion of the Supreme Court was that the time surviving under the Act read with TOLA that will be available to the revenue to issue the reassessment notice under Section 148 of the new regime will have to be calculated by computing the number of days between the date of the issuance of the deemed notice, till 30 June 2021,

and accordingly, the reassessment notices to be issued must be within the time limit surviving. Thus, in the present case it would be within two days of the furnishing of the reply by the Petitioner.

18. The Petitioner submitted that the ‘surviving period’ is required to be computed to determine the validity of the notice issued under Section 148. The surviving period is calculated by taking into account the number of days between the erstwhile notice under Section 148 of the Act (i.e. 29 June 2021) and 30 June 2021 which is to be excluded. Hence, based on the facts of the Petitioner’s case 2 days will be added to the time granted to the Petitioner to respond to the deemed show cause notice i.e. 8 June 2022. Therefore, for the notice to fall within the surviving period it would have to be issued before 10 June 2022. However, in the present case the notice under Section 148 of the Act is issued on 27 July 2022 which is clearly beyond the surviving period. Further, the Petitioner submitted that it furnished its reply within the time prescribed and did not ask for any additional time to file its reply, and therefore, no further period can be excluded while computing the period of limitation. However, on a demurer, even assuming that the date of the last reply filed by the Petitioner is to be considered, i.e., 25 June 2022, yet the notice under Section 148 of the

Act would have to be issued by 27 June 2022. As the impugned notice is issued on 27 July 2022 it is beyond the surviving period as contemplated in *Rajeev Bansal (supra)*. The Petitioner has also placed reliance on the judgment of this Court in ***Gurpreet Singh V/S DCIT [176 taxmann.com 673 (Bom)]***, the Delhi High Court judgment in ***Ram Balram Buildhome (P.) Ltd V/S ITO [477 ITR 133 (Del)]*** the Gujarat High Court in ***Dhanraj Govindram Kella V/S ITO [177 taxmann.com 194 (Guj)]***, and the Madras High Court in ***Mrs.Thulasidass Prabavathi V/S ITO [174 taxmann.com 508 (Mad)]*** to substantiate their argument.

19. The Respondent on the other hand has sought to justify the impugned notices on two grounds. The first is that the notice is issued within the ten year time limit available in Section 149 of the Act for issuing a notice under Section 148 of the Act and contends that the notice issued on 27 July 2022 is within such time. Secondly, the Respondent relies on the period available for passing the order under Section 148A(d), viz., within one month from the end of the month in which the reply is received and since the replies were received on 3 June 2022, 17 June 2022 and 25 June 2022, one month from the end of the month would be 31 July 2022, and therefore, contended that the order

under Section 148A(d) and the notice under Section 148 of the Act are within time.

20. We have heard the learned Counsel for the parties. We have also perused the papers and proceedings in the above Writ Petition. In view of the controversy involved, it is necessary to refer to the judgment of the Hon'ble Supreme Court in *Rajeev Bansal (supra)* which held as under:-

*“...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..***

...105. A direction issued by this Court in the exercise of its jurisdiction under Article 142 is an order of a court. The third proviso to Section 149 of the new regime provides that the period during which the proceedings under section 148A are stayed by an order or injunction of any court shall be excluded for computation of limitation. During the period from the date of issuance of the deemed notice under section 148A(b) and the date of the decision of this Court in *Ashish Agarwal (supra)*, the assessing officers were deemed to have been prohibited from passing a reassessment order. **Resultantly, the show cause notices were deemed to have been stayed by order of this Court from the date of their issuance (somewhere from 1 April 2021 till 30 June 2021) till the date of decision in *Ashish Agarwal (supra)*, that is, 4 May 2022**

106. In *Ashish Agarwal (supra)*, this Court directed the assessing officers to provide relevant information and materials relied upon by the Revenue to the assesses 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 assesses. **Therefore, the show cause notices were deemed to have been stayed until the assessing officers provided the relevant information or material to the assesses in terms of the direction issued in *Ashish Agarwal (supra)*. To summarize, the combined effect of the legal fiction and the directions issued by this Court in *Ashish Agarwal (supra)* is that the show cause notices that were deemed to have been issued during the period between 1 April 2021 and 30 June 2021 were stayed till the date of supply of the relevant information and**

material by the assessing officer to the assessee. After the supply of the relevant material and information to the assessee, time begins to run for the assesses to respond to the show cause notices.

107. The third proviso to Section 149 allows the exclusion of time allowed for the assesses to respond to the show cause notice under section 149A(b) to compute the period of limitation. The third proviso excludes "the time or extended time allowed to the assessee." ***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), this Court provided two weeks to the assesses to reply to the show cause notices. This period of two weeks is also liable to be excluded from the computation of limitation given the third proviso to Section 149. Hence, the total time that is excluded for computation of limitation for the deemed notices is: (i) the time during which the show cause notices were effectively stayed, that is, from the date of issuance of the deemed notice between 1 April 2021 and 30 June 2021 till the supply of relevant information or material by the assessing officers to the assesses in terms of the directions in Ashish Agarwal (supra); and (ii) two weeks allowed to the assesses to respond to the show cause notices***

b. Interplay of Ashish Agarwal with TOLA

108. The Income-tax Act read with TOLA extended the time limit for issuing reassessment notices under section 148, which fell for completion from 20 March 2020 to 31 March 2021, till 30 June 2021. All the reassessment notices under challenge in the present

appeals were issued from 1 April 2021 to 30 June 2021 under the old regime. Ashish Agarwal (*supra*) deemed these reassessment notices under the old regime as show cause notices under the new regime with effect from the date of issuance of the reassessment notices. The effect of creating the legal fiction is that this Court has to imagine as real all the consequences and incidents that will inevitably flow from the fiction. *East End Dwellings Co. Ltd. v. Finsbury Borough Council* [1952] AC 109. [Lord Asquith, in his concurring opinion, observed: "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it."] **Therefore, the logical effect of the creation of the legal fiction by Ashish Agarwal (*supra*) is that the time surviving under the Income-tax Act read with TOLA will be available to the Revenue to complete the remaining proceedings in furtherance of the deemed notices, including issuance of reassessment notices under section 148 of the new regime. The surviving or balance time limit can be calculated by computing the number of days between the date of issuance of the deemed notice and 30 June 2021.**

109. If this Court had not created the legal fiction and the original reassessment notices were validly issued according to the provisions of the new regime, the notices under section 148 of the new regime would have to be issued within the time limits extended by TOLA. As a corollary, the reassessment notices to be issued in pursuance of the deemed notices must also be within the time limit surviving under the Income-tax Act read with TOLA. This construction gives full effect to the legal fiction created in Ashish

Agarwal (supra) and enables both the assesses and the Revenue to obtain the benefit of all consequences flowing from the fiction.

*110. The effect of the creation of the legal fiction in Ashish Agarwal (supra) was that it stopped the clock of limitation with effect from the date of issuance of Section 148 notices under the old regime [which is also the date of issuance of the deemed notices]. **As discussed in the preceding segments of this judgment, the period from the date of the issuance of the deemed notices till the supply of relevant information and material by the assessing officers to the assesses in terms of the directions issued by this Court in Ashish Agarwal (supra) has to be excluded from the computation of the period of limitation. Moreover, the period of two 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.***

*111. The clock started ticking for the Revenue only after it received the response of the assesses to the show causes notices. After the receipt of the reply, the assessing officer had to perform the following responsibilities: (i) consider the reply of the assessee under section 149A(c); (ii) take a decision under section 149A(d) based on the available material and the reply of the assessee; and (iii) issue a notice under section 148 if it was a fit case for reassessment. **Once the clock started ticking, the assessing officer was required to complete these procedures within the surviving time limit. The surviving time limit, as prescribed under the Income-tax Act read with TOLA, was available to the assessing officers to issue the reassessment notices under section 148 of the new regime.***

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.

113. In *Ashish Agarwal (supra)*, this Court allowed the assesses to avail all the defences, including the defence of expiry of the time limit specified under section 149(1). In the instant appeals, the reassessment notices pertain to the assessment years 2013-2014, 2014-2015, 2015-2016, 2016-2017, and 2017-2018. To assume jurisdiction to issue notices under section 148 with respect to the relevant assessment years, an assessing officer has to: (i) issue the notices within the period prescribed under section 149(1) of the new regime read with TOLA; and (ii) obtain the previous approval of the authority specified under section 151. **A notice issued without complying with the preconditions is invalid as it affects the jurisdiction of the assessing officer. Therefore, the reassessment notices issued under section 148 of the new regime, which are in pursuance of the deemed notices, ought to be issued within the time limit surviving under the Income-tax Act read with TOLA. A reassessment notice issued beyond the surviving time limit will be time-barred...**

(emphasis supplied)

21. Subsequently several High Courts have considered the judgment in *Rajeev Bansal* while dealing with the issue of the surviving period. The Delhi High Court in *Ram Balaram Buildhome (P.) Ltd (supra)* while considering the issue held as under:-

“...65. Thus, in the facts of the present case, the last date for issuance of notice under Section 148 of the Act for AY 2013-14 under the statutory framework, as was existing prior to 01.04.2021 was 31.03.2020, that is, six years from the end of the relevant assessment year.

*66. By virtue of Section 3(1) of TOLA time for completion of specified acts, which fell during the period 20.03.2020 to 31.12.2020 were extended till 30.06.2021. Thus, the notice dated 01.06.2021 was issued twenty-nine days prior to the expiry of period of limitation for issuing a notice under Section 148 of the Act as was extended by TOLA. As noted above, the period from 01.06.2021, the date of issuance of notice, and 04.05.2022, being the date of decision of the Supreme Court in *Ashish Agarwal (supra)* is required to be excluded by virtue of the third proviso to Section 149(1) of the Act.*

*67. Additionally, the period from the date of decision in *Ashish Agarwal (supra)* till the date of providing material, as required to the accompanied with a notice under Section 148A(b) of the Act, is required to be excluded. Thus, the period between 04.05.2022 to 30.05.2022, the date on which the AO had issued the notice under Section 148A(b) of the Act in furtherance of his earlier notice dated 01.06.2021, is also required to be excluded by virtue of the third proviso to Section 149(1) of the Act as held by the Supreme Court in *Rajeev Bansal (supra)*.*

68. In addition to the above, the time granted to the petitioner to respond to the notice dated 30.05.2022 - the period of two weeks -is also required to be excluded by virtue of the third proviso to Section 149(1) of the Act. The petitioner had furnished its response

to the notice under Section 148A(b) of the Act on 13.06.2022. Thus, the period of limitation began running from that date.

69. *As noted above, by virtue of TOLA, the AO had period of twenty-nine days limitation left on the date of commencement of the reassessment proceedings, which began on 01.06.2021, to issue a notice under Section 148 of the Act. The said notice was required to be accompanied by an order under Section 148A(d) of the Act. Thus, the AO was required to pass an order under Section 148A(d) of the Act within the said twenty-nine days notwithstanding the time stipulated under Section 148A(d) of the Act. This period expired on 12.07.2022.*
70. *Since the period of limitation, as provided under Section 149(1) of the Act, had expired prior to issuance of the impugned notice on 30.07.2022. The said is squarely beyond the period of limitation...*

22. The Gujarat High Court in *Dhanraj Govindram Kella* (*supra*) while considering the issue held as under:-

- “...65. The alternative contention of the petitioner as to whether notices would be valid notice or invalid notice considering 'surviving time' between the date of the issuance of notices under TOLA and 30th June, 2021 or not is required to be considered and for that each matter has to be considered separately on the basis of the facts of case considering the date of issuance of notices under section 148 under TOLA by the Revenue and thereafter date of supplying information to the assessee and date of passing of order under section 148A(d) and date of issuance of notice under section 148 of the Act so as to consider whether issuance of notice under section 148 of the Act is within 'surviving time' as per the direction of Hon'ble Apex Court in case of *Rajeev Bansal* (*supra*) or not.*
66. *So far as Assessment Years 2013-2014 and 2014-2015 are concerned, the period of three years from the end of the assessment year would be over prior to 20.03.2020 and the period of six years would be over between 20.03.2020 and 30.06.2021. Therefore, the notices issued under section 148 of the Act under old regime between 01.04.2021 and 30.06.2021 as per TOLA, will be a valid notice if the notice under section 148 of the Act under new regime*

is issued within the period of 'surviving time' as per the directions issued by Hon'ble Apex Court in case of Rajeev Bansal (supra). For the Assessment Years 2016-2017 and 2017-2018 are concerned, the notice issued under section 148 of the Act under old regime between 01.04.2021 and 30.06.2021 under TOLA would be considered to be issued within three years from the end of the relevant assessment year as three years would complete within the period of 20.03.2020 and 30.06.2021.

67. *Therefore, in facts of these petitions, following data is required to be considered to find out 'surviving time' to decide as to whether the impugned notices under section 148 of the Act issued under the new regime as per the decision of Hon'ble Apex Court in case of Ashish Agarwal (supra) would be valid notice or not in view of the decision of the Hon'ble Apex Court in case of Rajeev Bansal (supra):*

<i>SCA NO</i>	<i>AY</i>	<i>Date of notice under section 148 under TOLA</i>	<i>No of days of surviving time available till 30.06.2021</i>	<i>Date of providing information under section 148A(b)</i>
6387/2023	2013-2014	17.06.2021	13	26.05.2022
5688/2023	2014-2015	09.06.2021	21	23.05.2022
22260/2022	2016-2017	30.06.2021	1	23.05.2022
996/2023	2017-2018	30.06.2021	1	24.05.2022

<i>SCA NO</i>	<i>Due date of filing reply</i>	<i>Date of reply:-</i>	<i>Date of order under section 148A(d) and notice under section 148:-</i>	<i>Last date for issuance of notice under section 148 as per surviving time:-</i>
6387/2023	09.06.2022	04.06.2022	29.07.2022	22.06.2022
5688/2023	06.06.2022	-	27.07.2022	27.06.2022

22260/2022	07.06.2022	06.07.2022	30.07.2022	14.06.2022
996/2023	11.06.2022	10.06.2022	19.07.2022	18.06.2022

68. *It is apparent from the above details that impugned notice under section 148 of the Act is issued beyond the period of 'surviving time' as per the direction of Hon'ble Apex Court in case of Rajeev Bansal (supra) and therefore, such notices would be invalid notices...*

23. The Madras High Court in *Mrs.Thulasidass Prabavathi (supra)*, while considering the issue held as under:-

“...17. Dealing with almost an identical situation pursuant to the decision of the Hon'ble Supreme Court in Union of India v. Rajeev Bansal, 2024 SCC OnLine SC 2693, the Delhi High Court quashed the notice dated 31.03.2021 issued to the assessee under Section 148 of the Act and the proceedings. Since the law laid down by the Hon'ble Supreme Court in Union of India v. Rajeev Bansal, 2024 SCC OnLine SC 2693 is a settled law, it is binding on this Court. I am therefore unable to take a contra view in the light of the aforesaid decision of the Hon'ble Supreme Court in Union of India v. Rajeev Bansal, 2024 SCC OnLine SC 2693...”

24. Based on the above, we observe that a notice under Section 148 of the Act 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 relying on the first proviso to Section 149 of the Act. Hence, the submission of the Respondent that a period of ten years is available to issue the notice under Section 148 of the Act is misconceived.

25. Further, we find that the second ground was urged before this Court in the case of *Gurpreet Singh (supra)* where the Court records the argument of the Respondent [in paragraph 7(vii)] that the order under Section 148A(d) is to be passed within one month from the end of the month in which the reply has been received, specifically rejected the same in paragraph 18 as Section 148A(d) does not govern the computation of time as contemplated in terms of Section 149 of the Act. The said paragraph 18 is reproduced hereunder:-

“...18. The said contention is fundamentally misconceived. A notice under Section 148 of the IT Act accompanied by an order under Section 148A(d) is required to be issued within the time stipulated under Section 149 of the IT Act. Section 148A(d) does not govern the computation of time as contemplated in terms of Section 149 of the IT Act. The entire process under Section 148A(a) to (d) and the issuance of notice under Section 148 has to be completed within the total time available in terms of Section 149(1) of the IT Act for issuance of notice under Section 148. A notice issued under Section 148 of the IT Act which is beyond the time line stipulated under Section 149(1) is non-complaint and invalid. The timeline under Section 148A(d) is for the Assessing Officer to comply with the stipulations and the streamlining contemplated under Section 148A. This is primarily to bring in transparency and accountability into the system and is intended for the benefit of the assessee. However to suggest that Section 148A(d) extends the time limit under Section 149(1) and/or has a bearing on the time under Section 149(1) is a submission which is misconceived and lacks legal sanctity.”

emphasis supplied

26. After considering the above exclusion period, we observe that the remaining days for conclusion of the procedure for passing of

an order in terms of Section 148A(d) and issuance of the notice under Section 148 of the Act would be two days. In the present case, whichever way we see it, the period of two days would expire on 10 June 2022 or 27 June 2022 respectively and, therefore, the notice under Section 148 of the Act issued on 27 July 2022 is time barred, inasmuch as it is issued much after the surviving period. We concur with the judgments of the co-ordinate bench in *Gurpreet Singh (supra)*, of the Delhi High Court in *Ram Balram Buildhome (P.) Ltd (supra)* and the Gujarat High Court in *Dhanraj Govindram Kalle (supra)* which have dealt with the surviving period and quashed the notices issued under Section 148 of the Act passed beyond the surviving period.

27. In view of the above, it is apparent that Respondent No.1 has acted beyond jurisdiction and we accordingly set aside the impugned notice issued under Section 148 of the Act as well as all the subsequent notices issued under Section 142(1) and the show cause notice on the above ground. The other contentions raised by the Petitioner are kept open.

28. Rule is accordingly made absolute and the Writ Petition is also disposed of in terms thereof. However, there shall be no order as to costs.

29. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[AMIT S. JAMSANDEKAR, J.]

[B. P. COLABAWALLA, J.]