



W.P.No.19010 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 24.01.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.19010 of 2022

and

W.M.P.Nos.18331 and 18332 of 2022

Mrs.Thulasidass Prabavathi,
Proprietrix,
M/s.Venkateshwara Traders,
No.35, Pillaiar Koil Street,
Jaferkhanpet,
Chennai – 600 083.
PAN : AHIPP1581A

... Petitioner

Vs.

Income Tax Officer,
Non-Corporate Ward 19(4),
Chennai – 600 034.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the respondent relating to order passed under Section 148A(d) of the Income Tax Act, 1961 for the Assessment Year 2017-2018 in DIN and Order No.ITBA/COM/F/17/2022-2023/1043685307(1) dated 30.06.2022 and quash the same.

For Petitioner : Mr.T.Vasudevan

For Respondent : Mr.V.Mahalingam
Senior Standing Counsel



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ORDER

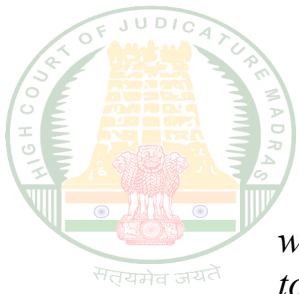
I have heard the learned counsel for the Petitioner and the learned Senior Standing Counsel for the Respondent. I have perused the Affidavit, Counter Affidavit; Rejoinder and the additional Counter Affidavit filed in support of the present Writ Petition and the decisions cited by the learned counsel for the Petitioner and the Respondents.

2. In this Writ Petition, the Petitioner has challenged the Impugned Order dated 30.06.2022 bearing DIN & Order No.ITBA/COM/F/17/2022-2023/1043685307(1) passed by the Respondent under Section 148(A)(d) of the Income Tax Act, 1961 (*hereinafter referred to as "the Act"*).

3. Relevant Portion of the Impugned Order dated 30.06.2022 reads as under:-

"The assessee is an individual. The assessee during the F.Y. 2016-17 relevant to the A.Y. 2017-18 deposited cash of Rs.48,96,000/- in bank a/cs during demonetization period. As on 31.03.2016 only Rs.16,971/- cash balance – failed to explain source for cash deposit online verification. However the assessee filed return of income without considering the said amount.

Hence Notice u/s 148A(b) of the Income Tax Act, 1961



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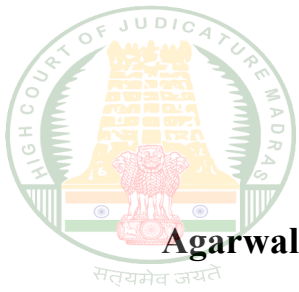
was issued to the assessee on 18.05.2022 requiring the assessee to show cause within two weeks as to why a Notice u/s 148 of the Income Tax Act, 1961 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in this case for the Assessment Year 2017-18. The information in the possession of the undersigned was also communicated to the assessee while granting such opportunity of being heard.

In response to the said Notice u/s 148A(b) of the Income Tax Act, 1961, assessee filed reply on 31.05.2022. I have considered the reply of assessee and the same is not acceptable for the following reasons:

- Though the assessee has submitted the details called for, the statements and details filed by the assessee is not sufficient and could not sustainable the source of the cash deposits. Hence the amount of transaction mentioned above remains undisclosed.*

After considering the material available on record and the reply of the assessee, I am satisfied that it is a fit case for issue of notice u/s 148 of the Income Tax Act, 1961. This order is passed with the prior approval of Principal Commissioner of Income Tax-3, Chennai.”

4. In the background of the Impugned Order is the proceeding initiated by the Respondent against the Petitioner vide Notice dated 21.06.2021 issued under Section 148 of the Act under the old regime stating that the chargeable income of the Petitioner for the AY 2017-2018 has escaped assessment within the meaning of Section 147 of the Act in the light of the judgement of the Hon'ble Supreme Court in the case of **Union of India & Ors Vs. Ashish**



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Agarwal, (2023) 1 SCC 617.

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5. Thereafter, the Respondent issued Notice dated 18.05.2022 under 148A(b) of the Act asking the Petitioner to show cause as to why the proceeding under Section 148 of the Act should not be initiated them. The Petitioner filed its reply on 31.05.2022 to the said Notice dated 18.05.2022 and objected to the proposal to initiate proceeding under Section 148 of the Act. Thereafter, the Respondent passed the Impugned Order dated 30.06.2022 and consequently the Notice under Section 148 of the Act was issued on the same day.

6. Relevant Portion of the aforesaid Notice dated 30.06.2022 issued under Section 148 of the Act reads as under:-

“Sir/Madam/M/s.

- 1. I have the following information in your case or in the case of the person in respect of which you are assessable under the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for Assessment Year 2017-18:-*

“The assessee during the F.Y. 2016-17 relevant to the A.Y. 2017-18 deposited cash of Rs.48,96,000/- in bank a/cs during demonetization period. As on 31.03.2016 only Rs.16,971/- cash balance – failed to explain source for cash deposit online verification. However, the assessee filed return of Income without considering the said amount.”

suggesting that income chargeable to tax has escaped assessment within the meaning of section 147 of the Act. Order



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under sub-section (d) of section 148A of the Act has been passed in such case vide DIN-ITBA/COM/F/17/2022-23/1043685307(1) dated 30/06/2022 and annexed herewith for reference.

2. *I, therefore, propose to assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for the Assessment Year 2017-18 and I, hereby, require you to furnish, within 30 days from the service of this notice, a return in the prescribed form for the Assessment Year 2017-18.*
3. *This notice is being issued after obtaining the prior approval of the Principal Commissioner of Income Tax-3, Chennai accorded on date 30/06/2022 vide Reference No.ITBA/COM/F/17/2022-23/1043677784(1).*

7. The case of the Petitioner is that the Petitioner is the proprietor of M/s Venkateshwara Traders engaged in the business of wholesale and retail traders in rice and food grains. It is stated that the Petitioner had deposited a sum of Rs.48,96,000/- pursuant to demonetisation during November, 2016 between the period 08.11.2016 and 31.12.2016.

8. The Petitioner filed its return of income on 03.11.2017 for the AY 2017-2018 admitting a taxable income of Rs.21,14,624/- and thereafter, proceedings were initiated against the Petitioner both under the old and new regime on 21.06.2022 and 26.06.2022. It is therefore submitted that Notice under Section 148 of the Act was issued to the Petitioner pursuant to the



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aforesaid judgement of the Hon'ble Supreme Court without jurisdiction.

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9. The learned counsel for the Petitioner would draw the attention of this Court to the amended Section 149 of the Act as in force with effect from 01.04.2021. It is submitted that the Impugned Order dated 30.06.2022 passed under Section 148A(d) of the Act and the Notice dated 30.06.2022 issued under Section 148 of the Act are contrary to the aforesaid provision of the Act as the income chargeable has not acceded to Rs.50,00,000/-. Therefore, it is stated that the impugned proceedings which have culminated in the Impugned Order dated 30.06.2022 and Notice dated 30.06.2022 under Section 148A(d) of the Act are without jurisdiction.

10. On the other hand, the learned Senior Standing Counsel for the Respondent would submit that when the proceedings were initiated on 21.06.2021 and the subsequent notice was issued on 18.05.2022, the country was still under COVID-19 lock down and therefore, the limitation for issuance of Notice under Section 148 of the Act was protected/saved under the provisions of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions Act, 2020).



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11. The learned Senior Standing Counsel for the Respondent placed reliance on the judgement of the Hon'ble Supreme Court in the case of **Union of India and others Vs. Rajeev Bansal**, [2024] 469 ITR 46 (SC). Operative portion of the Judgement reads as under:-

“114. In view of the above discussion, we conclude that:

a.

b. TOLA will continue to apply to the Income Tax Act after 1 April 2021 if any action or proceeding specified under the substituted provisions of the Income Tax Act falls for completion between 20 March 2020 and 31 March 2021;

c.

d. TOLA will extend the time limit for the grant of sanction by the authority specified under Section 151. The test to determine whether TOLA will apply to Section 151 of the new regime is this; if the time limit of three years from the end of an assessment year falls between 20 March 2020 and 31 March 2021, then the specified authority under Section 151(i) has extended time till 30 June 2021 to grant approval;

e.

f.



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g. The time during which the show cause notices were deemed to be stayed is from the date of issuance of the deemed notice between 1 April 2021 and 30 June 2021 till the supply of relevant information and material by the assessing officers to the assesseees in terms of the directions issued by this Court in Ashish Agarwal (supra), and the period of two weeks allowed to the assesseees to respond to the show cause notices; and

h. The assessing officers were required to issue the reassessment notice under Section 148 of the new regime within the time limit surviving under the Income Tax Act read with TOLA. All notices issued beyond the surviving period are time barred and liable to be set aside.”

12. Considering the submissions made by the learned counsel for the Petitioner and the learned Senior Standing Counsel for the Respondent, the issue for consideration is whether the Notice dated 30.06.2022 issued under Section 148 of the Act as in force from 01.04.2021 would be construed to have been issued within the period of limitation prescribed under amended Section 149 of the Act.

13. The confusion on account of limitation has arisen on account of the implementation of the decision of the Hon'ble Supreme Court in **Union of India and others Vs Ashish Agarwal**, 2022 SCC Online SC 543. As per the decision of the Hon'ble Supreme Court in aforesaid case, which held that all the Notices for re-open of the assessment for the tax period after 01.04.2021 will



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have to be dealt under the new regime as in force from 01.04.2021. The period

of limitation under the old regime would have been either four years or six years or sixteen years under Section 149 of the Act as it stood till 31.03.2021.

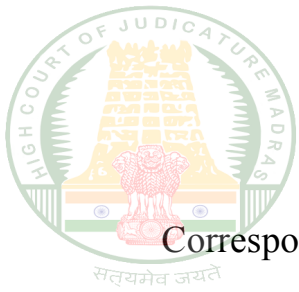
For the sake of clarity, Clauses (a), (b) and (c) of Section 149 of the Act as it stood till 31.03.2021 is reproduced below:-

“149. Time limit for notice.-

(1) No notice under Section 148 shall be issued for the relevant assessment year,-

- (a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b) or clause (c);
- (b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year;
- (c) if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.”

14. However, in accordance with the new regime, the period for limitation for issuance of Notice under amended Section 148 of the Act to re-open an assessment, it is three years but not more than 10 years.



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Correspondingly, the monetary and pecuniary jurisdiction for reopening the

assessment were also altered. This has also been captured by the Hon'ble

Supreme Court in **Union of India Vs. Rajeev Bansal, 2024 SCC OnLine SC**

2693. Relevant portion of the Judgement of the Hon'ble Supreme Court in the

aforesaid case reads as under:-

“Another important change under Section 149(1)(b) of the new regime is the increase in the monetary threshold from Rupees one lakh to Rupees Fifty lakhs. The old regime prescribed a time limit of six years from the end of the relevant assessment year if the income chargeable to tax which escaped assessment was more than Rupees one lakh. In comparison, the new regime increases the time limit to ten years if the escaped assessment amounts to more than Rupees fifty lakhs. This change could be summarized thus:

Regime	Time Limit
Old Regime	Four years but not more than six years
New Regime	Three years but not more than ten years”

15. The Hon'ble Supreme Court has also taken note of the relaxation in the period of limitation for various assessment years in the light of the Taxation and Other Laws (Relaxation & Amendment of Certain Provisions) Act, 2020 (hereinafter referred to as the 'TOLA') with effect from 20.11.2020 and the Finance Act, 2021 amending the provisions of the Income Tax Act, 1961 with effect from 01.04.2021. In accordance with TOLA, as far as the Assessment



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Year 2017-2018 is concerned, the period of limitation **for issuance of Notice**

under Section 148 read with Section 149 of the Act as amended by Finance

Act, 2021 with effect from 01.04.2021 would be till 30.06.2021, instead of

30.03.2021 and under the old regime on 31.03.2024. This was also captured

in the submissions of the Additional Solicitor General of India on behalf of the

Income Tax Department before the Hon'ble Supreme Court in **Union of India**

Vs. Rajeev Bansal, 2024 SCC OnLine SC 2693. This position has not been

disputed. Relevant Paragraph 19 is reproduced below:-

19. Mr.N.Venkataraman, learned Additional Solicitor General of India, made the following submissions on behalf of the Revenue:

A. Parliament enacted TOLA as a free-standing legislation to provide relief and relaxation to both the assesses and the Revenue during the time of Covid-19. TOLA seeks to relax actions and proceedings that could not be completed or complied within the original time limits specified under the Income Tax Act;

B. Section 149 of the new regime provides three crucial benefits to the assesses; (I) the four-year time limit for all situations has been reduced to three years; (ii) the first proviso to Section 149 ensures that re-assessment for previous assessment years cannot be undertaken beyond six years; and (iii) the monetary threshold of Rupees Fifty lakhs will apply to the reassessment for previous assessment years;

C. The relaxations provided under Section 3(1) of TOLA apply “notwithstanding anything contained in the specified Act”, Section 3(1) , therefore, overrides the time



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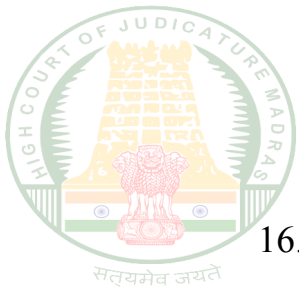
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limits for issuing a notice under Section 148 read with Section 149 of the Income Tax Act;

D. TOLA does not extend the life of the old regime. It merely provides a relaxation for the completion or compliance of actions following the procedure laid down under the new regime;

E. 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, 2015-2016, 2016-2017, and 2017-2018 will be within the period of limitation as explained in the tabulation below:-

Assessment Year	Within 3 years (2)	Expiry of Limitation read with TOLA for (2)(3)	Within six years (4)	Expiry of Limitation read with TOLA for (4)(5)
2013-2014	31.03.2017	TOLA not applicable	31.03.2020	30.06.2021
2014-2015	31.03.2018	TOLA not applicable	31.03.2021	30.06.2021
2015-2016	31.03.2019	TOLA not applicable	31.03.2022	TOLA not applicable
2016-2017	31.03.2020	30.06.2021	31.03.2023	TOLA not applicable
2017-2018	31.03.2021	30.06.2021	31.03.2024	TOLA not applicable



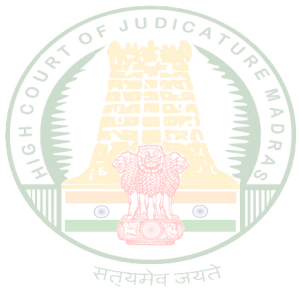
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16. However, the first proviso to Section 149 prohibits issuance of a reassessment notice under the new regime if such notices have become time-barred under the old regime. Therefore, the last date for issuance of Notice under Section 148 of the Act would have expired on 30.06.2021, as per the third *Proviso* 149(1)(b) of the Act as in force with effect from 01.04.2021. The time during which stay was in operation or the time during which, the assessee took time to file the reply, the Notice issued under Section 148 (A)(b) of the Act stands expelled. In this case, the reply itself was filed by the petitioner only on 31.05.2022, pursuant to which the Impugned Order was passed on 30.06.2022 under Section 148(A)(d) of the Act and Notice under Section 148 of the Act was issued. Though the limitation for issuance of a Notice under Section 148 of the Act under the old regime would have expired on 31.03.2024, a reading of conclusion in Paragraph 114 of the decision of the Hon'ble Supreme Court in **Union of India Vs. Rajeev Bansal**, 2024 SCC OnLine SC 2693 however indicates that the Impugned Notice dated 30.06.2022 has to be treated as having been issued beyond the limitation period. Relevant paragraph of the aforesaid Judgment reads as under:-

“114. In view of the above discussion, we conclude that:

a.

b.



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c.

d.

e.

f.

g. The time during which the show cause notices were deemed to be stayed is from the date of issuance of the deemed notice between 1 April 2021 and 30 June 2021 till the supply of relevant information and material by the assessing officers to the assesseees in terms of the directions issued by this Court in Ashish Agarwal (supra), and the period of two weeks allowed to the assesseees to respond to the show cause notices; and

h. The assessing officers were required to issue the reassessment notice under Section 148 of the new regime within the time limit surviving under the Income Tax Act read with TOLA. All notices issued beyond the surviving period are time barred and liable to be set aside."

17. Dealing with almost an identical situation pursuant to the decision of the Hon'ble Supreme Court in **Union of India Vs. 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 Vs. 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 Vs. Rajeev Bansal**, 2024 SCC OnLine SC 2693.



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18. Therefore, this Writ Petition deserves to be allowed and is accordingly allowed. No costs. Connected miscellaneous petitions are closed.

24.01.2025

Neutral Citation : Yes / No

MSM / drl

To:

Income Tax Officer,
Non-Corporate Ward 19(4),
Chennai – 600 034.



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C.SARAVANAN, J.

MSM / drl

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