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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	15.11.2024
Pronounced On	03.04.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANANW.P.No.22901 of 2022andW.M.P.No.21931 of 2022 and W.M.P.No.35254 of 2023

Ramadoss Srikanthi

... Petitioner

Vs.

The Assistant Commissioner of Income Tax,
 Circle 2(1), Cuddalore,
 II Floor, Cuddalore Income Tax Officer,
 Soorappa Naicken Chavadi,
 Cuddalore – 607 002.

... 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 on the file of the respondent and quash the

- (1) Impugned Notice No.1 issued by the respondent under Section 148 in PAN: AIOPS9321G, DIN: ITBA/AST/S/148/2020-2021/1032085453(1) dated 31.03.2021 (signed, issued and served on 12.04.2021) for the Assessment Year 2015-2016.
- (2) Impugned Order passed by the respondent under Section 148A(d) of the Income Tax Act, 1961, ('Act') in PAN: AIOPS9321G, DIN & Notice No.ITBA/COM/F/17/2022-2023/1044350361(1) dated 30.07.2022 for



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the Assessment Year ('AY') 2015-2016.

(3) Impugned Notice No.2 issued by the respondent under Section 148 of the Act in PAN: AIOPS9321G, DIN & Notice No.ITBA/AST/M/148-1/2022-2023/1044357259(1) dated 30.07.2022 for the Assessment Year 2015-2016.

For Petitioner : Mr.N.V.Balaji

For Respondent : Mr.V.Mahalingam
Senior Standing Counsel and
Mrs.S.Premalatha
Junior Standing Counsel

ORDER

In this writ petition, the petitioner has challenged the following Notice(s) and Order as detailed below:-

Sl.No.	Date	Details	Assessment Year
1.	31.03.2021	Impugned Section 148 Notice as in force till 31.03.2021.	2015-2016
2.	30.07.2022	Impugned Order passed under Section 148-A(d) of the Income Tax Act, 1961	
3.	30.07.2022	Impugned Section 148 Notice as in force with effect from 01.04.2021.	

2. The first mentioned Impugned Notice dated **31.03.2021** was issued under Section 148 of the Income Tax Act, 1961 as in force till 31.03.2021. It



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was however reportedly served on the petitioner on 12.04.2021.

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3. It was deemed to be a notice issued under Section 148A(b) of the Income Tax Act, 1961 as in force with effect from **01.04.2021** in terms of the decision of the Hon'ble Supreme Court in “**Union of India and others Vs. Ashish Agarwal**, 2022 SCC Online SC 543” rendered on **04.05.2022**.

4. The Hon'ble Supreme Court in “**Union of India and others Vs. Ashish Agarwal**, 2022 SCC Online SC 543”, summarized the legal position as follows:-

“24. There appears to be genuine non-application of the amendments as the officers of the Revenue may have been under a bona fide belief that the amendments may not yet have been enforced. Therefore, we are of the opinion that some leeway must be shown in that regard which the High Courts could have done so. Therefore, instead of quashing and setting aside the reassessment notices issued under the unamended provision of the IT Act, the High Courts ought to have passed an order construing the notices issued under the unamended Act/unamended provision of the IT Act as those deemed to have been issued under Section 148-A of the IT Act as per the new provision Section 148-A and the Revenue ought to have been permitted to proceed further with the reassessment proceedings as per the substituted provisions of Sections 147 to 151 of the IT Act as per the Finance Act, 2021, subject to compliance of all the procedural requirements and the defences, which may be available to the assessee under the substituted provisions



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of Sections 147 to 151 of the IT Act and which may be available under the Finance Act, 2021 and in law.

25. Therefore, we propose to modify the judgments and orders passed by the respective High Courts as under:

- 25.1. The respective impugned Section 148 notices issued to the respective assessees shall be deemed to have been issued under Section 148-A of the IT Act as substituted by the Finance Act, 2021 and treated to be show-cause notices in terms of Section 148-A(b). The respective assessing officers shall within thirty days from today provide to the assessees the information and material relied upon by the Revenue so that the assessees can reply to the notices within two weeks thereafter.**
- 25.2. The requirement of conducting any enquiry with the prior approval of the specified authority under Section 148-A(a) be dispensed with as a one-time measure vis-à-vis those notices which have been issued under Section 148 of the unamended Act from 1-4-2021 till date, including those which have been quashed by the High Courts.**
- 25.3. The assessing officers shall thereafter pass an order in terms of Section 148-A(d) after following the due procedure as required under Section 148-A(b) in respect of each of the assessees concerned.**
- 25.4. All the defences which may be available to the assessee under Section 149 and/or which may be available under the Finance Act, 2021 and in law and whatever rights are available to the Assessing Officer under the Finance Act, 2021 are kept open and/or shall continue to be available.**
- 25.5. The present order shall substitute/modify respective judgments and orders passed by the respective High Courts quashing the similar notices issued under unamended Section 148 of the IT Act irrespective of whether they have been assailed before this Court or not.**



26. *There is a broad consensus on the aforesaid aspects amongst the learned ASG appearing on behalf of the Revenue and the learned Senior Advocates/learned counsel appearing on behalf of the respective assessees. We are also of the opinion that if the aforesaid order is passed, it will strike a balance between the rights of the Revenue as well as the respective assessees as because of a bona fide belief of the officers of the Revenue in issuing approximately 90,000 such notices, the Revenue may not suffer as ultimately it is the public exchequer which would suffer.*
27. *Therefore, we have proposed to pass the present order with a view to avoiding filing of further appeals before this Court and burden this Court with approximately 9000 appeals against the similar judgments and orders passed by the various High Courts, the particulars of some of which are referred to hereinabove. We have also proposed to pass the aforesaid order in exercise of our powers under Article 142 of the Constitution of India by holding that the present order shall govern, not only the impugned judgments and orders passed by the High Court of Judicature at Allahabad, but shall also be made applicable in respect of the similar judgments and orders passed by various High Courts across the country and therefore the present order shall be applicable to PAN INDIA.*
28. *In view of the above and for the reasons stated above, the present appeals are allowed in part. The impugned common judgments and orders [Ashok Kumar Agarwal v. Union of India, 2021 SCC OnLine All 799] passed by the High Court of Judicature at Allahabad in WT No. 524 of 2021 and other allied tax appeals/petitions, is/are hereby modified and substituted as under:*
- 28.1. *The impugned Section 148 notices issued to the respective assessees which were issued under unamended Section 148 of the IT Act, which were the subject-matter of writ petitions before the various respective High Courts shall*



be deemed to have been issued under Section 148-A of the IT Act as substituted by the Finance Act, 2021 and construed or treated to be show-cause notices in terms of Section 148-A(b). The assessing officer shall, within thirty days from today provide to the respective assessee information and material relied upon by the Revenue, so that the assessee can reply to the show-cause notices within two weeks thereafter.

- 28.2. *The requirement of conducting any enquiry, if required, with the prior approval of specified authority under Section 148-A(a) is hereby dispensed with as a one-time measure vis-à-vis those notices which have been issued under Section 148 of the unamended Act from 1-4-2021 till date, including those which have been quashed by the High Courts.*
- 28.3. *Even otherwise as observed hereinabove holding any enquiry with the prior approval of specified authority is not mandatory but it is for the assessing officers concerned to hold any enquiry, if required.*
- 28.4. *The assessing officers shall thereafter pass orders in terms of Section 148-A(d) in respect of each of the assessee concerned; Thereafter after following the procedure as required under Section 148-A may issue notice under Section 148 (as substituted).*
- 28.5. *All defences which may be available to the assessee including those available under Section 149 of the IT Act and all rights and contentions which may be available to the assessee concerned and Revenue under the Finance Act, 2021 and in law shall continue to be available.*
29. *The present order shall be applicable PAN INDIA and all judgments and orders passed by the different High Courts on the issue and under which similar notices which were issued after 1-4-2021 issued under Section 148 of the Act are set aside and shall be governed by the present order and shall stand modified to the aforesaid*



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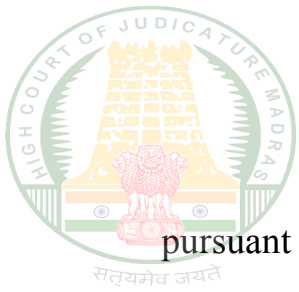
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extent. The present order is passed in exercise of powers under Article 142 of the Constitution of India so as to avoid any further appeals by the Revenue on the very issue by challenging similar judgments and orders, with a view not to burden this Court with approximately 9000 appeals. We also observe that the present order shall also govern the pending writ petitions, pending before various the High Courts in which similar notices under Section 148 of the Act issued after 1-4-2021 are under challenge.

30. *The impugned common judgments and orders [Ashok Kumar Agarwal v. Union of India, 2021 SCC OnLine All 799] passed by the High Court of Allahabad and the similar judgments and orders passed by various High Courts, more particularly, the respective judgments and orders passed by the various High Courts particulars of which are mentioned hereinabove, shall stand modified/substituted to the aforesaid extent only.*
31. *All these appeals are accordingly partly allowed to the aforesaid extent. In the facts of the case, there shall be no order as to costs.” (emphasis added)*

5. In fact, pursuant to the above directions of the Hon'ble Supreme Court, the Central Board of Direct Taxes (CBDT) had also issued guidelines **vide Instruction No.1 of 2022 dated 11.05.2022** to implement the above directions of the Hon'ble Supreme Court.

6. In this case, the decision of the Hon'ble Supreme Court was implemented by the respondent Department on the petitioner on **02.06.2022**



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pursuant to **Instruction No.1 of 2022** dated **11.05.2022** of the Central Board of

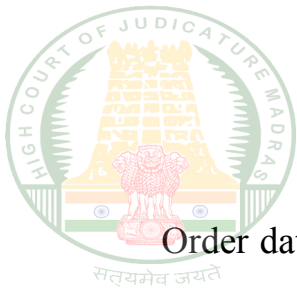
WEB **Direct Taxes (CBDT).**

7. It is in this background, certain informations were called for from the petitioner on **02.06.2022** which was also responded/replied by the petitioner on **11.06.2022**.

8. Thus, the 2nd mentioned Impugned Order dated **30.07.2022** was passed under Section 148-A(d) and the Notice dated **30.07.2022** issued under the amended Section 148 Notice as in force with effect from **01.04.2021** in terms of the above decision of the Hon'ble Supreme Court.

9. However, confusion arose insofar as limitation under Section 149 and Section 153 of the Income Tax Act, 1961 as amended due to the application of the decision of the Hon'ble Supreme Court in “**Union of India and others Vs. Ashish Agarwal**, 2022 SCC Online SC 543”, in its attempt to balance the interest of the Income Tax Assesseees and that of the Department.

10. The issue has attained some amount of clarity in “**Union of India Vs Rajeev Bansal** [2024] taxmann.com70, 2024 SCC Online SC 2693” vide its



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Order dated **03.10.2024** in **Civil Appeal No.8629 of 2024**. I shall refer to it in

same detail in this order in the back of the present disposition.

11. The Hon'ble Supreme Court in “**Union of India Vs Rajeev Bansal** [2024] taxmann.com 70, 2024 SCC OnlineSC 2693” clarified the position in Paragraph 114. In Paragraph 114, the Hon’ble Supreme Court in “**Union of India Vs. Rajeev Bansal**, [2024] 167 taxmann.com 70 / 2024 SCC OnLine SC 2693”, observed as under:-

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

- 1.*
- 2.*
- 3.*
- 4.*
- 5.*
- 6. The directions in **Union of India v. Ashish Agarwal** [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] will extend to all the ninety thousand reassessment notices issued under the old regime during the period April 1, 2021 and June 30, 2021;*
- 7. The time during which the show-cause notices were deemed to be stayed is from the date of issuance of the deemed notice between April 1, 2021 and June 30, 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 **Union of India v. Ashish Agarwal** [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.], and the period of two weeks allowed to the assesseees to respond to the show-cause notices; and*
- 8. The Assessing Officers were required to issue*



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*the reassessment notice under section 148 of the new regime within the **time limit surviving under the Income-tax Act read with the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020.** All notices issued beyond the surviving period are time barred and liable to be set aside.”*

12. The case of the petitioner is that the Impugned Order / Notice dated 30.07.2022 issued under Section 148-A(d) and Section 148 of the Income Tax Act, 1961 respectively were without jurisdiction in the light of the following observations of the Hon’ble Supreme Court in Paragraph 32 in “**Union of India Vs. Rajeev Bansal**, [2024] 167 taxmann.com 70 / 2024 SCC OnLine SC 2693”, wherein it was observed as under:-

“32. A statutory authority may lack jurisdiction if it does not fulfil the preliminary conditions laid down under the statute, which are necessary to the exercise of its jurisdiction. There cannot be any waiver of a statutory requirement or provision that goes to the root of the jurisdiction of assessment. An order passed without jurisdiction is a nullity. Any consequential order passed or action taken will also be invalid and without jurisdiction. Thus, the power of assessing officers to reassess is limited and based on the fulfilment of certain preconditions.”

13. The case of the petitioner is that once the Impugned Section 148 Notice dated **31.03.2021** issued under the old regime has been treated as a



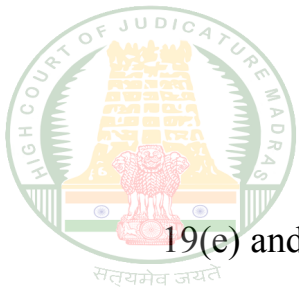
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notice issued under Section 148A(b) of the Income Tax Act, 1961 as in force

with effect from **01.04.2021** in terms of the decision of the Hon'ble Supreme Court in **Ashish Agarwal's case** (*cited supra*), the Impugned Order passed under Section 148-A(d) of the Income Tax Act, 1961 and the Impugned Section 148 Notice both dated **30.07.2022** should have been issued within the limitation prescribed under the 1st *Proviso* to Section 149 of the Income Tax Act, 1961 as in force between **01.04.2021** and **01.09.2024**.

14. It is the contention of the learned counsel for the petitioner that the Union of India had itself stated that even otherwise in view of the outbreak of Covid-19 pandemic and in view of the **Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Ordinance, 2020** and the **Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) ('TOLA') Act, 2020**, the limitation for passing the order would have stood extended up to September 2022.

15. In this connection, a reference is made to Paragraph 19(e) and (f) of the decision of the Hon'ble Supreme Court in **Rajeev Bansal's case** (*cited supra*) wherein, the stand of the Union of India has been recorded. Paragraph



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19(e) and (f) reads as under:-

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

(a)

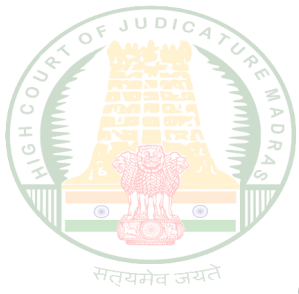
(b)

(c)

(d)

(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 Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. Section 3 of the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 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 Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, then all the notices issued between April 1, 2021 and June 30, 2021 pertaining to the 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	Expiry of Limitation read with TOLA for (2)	Within Six Years	Expiry of Limitation read with TOLA for (4)
1	2	3	4	5
2013-2014	31-3-2017	TOLA not applicable	31-3-2020	30-6-2021
2014-2015	31-3-2018	TOLA not applicable	31-3-2021	30-6-2021
2015-2016	31-3-2019	TOLA not applicable	31-3-2022	TOLA not applicable
2016-2017	31-3-2020	30-6-2021	31-3-2023	TOLA not applicable
2017-2018	31-3-2021	30-6-2021	31-3-2024	TOLA not applicable



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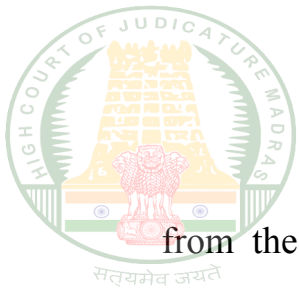


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(f) The Revenue concedes that for the assessment year 2015-2016, all notices issued on or after April 1, 2021 will have to be dropped as they will not fall for completion during the period prescribed under the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020.”

16. It is therefore submitted that even though the Impugned Notice dated **30.07.2022** was issued under Section 148 of the Income Tax Act, 1961 as in force with effect from **01.04.2021** after Section 148 Notice dated **31.03.2021** was issued under the old regime which transformed into a Notice under Section 148-A(b) of the Income Tax Act, 1961 under the new regime in the light of the decision of the Hon'ble Supreme Court in **Ashish Agarwal's case** (*cited supra*), the Impugned Notice dated **30.07.2022** issued under Section 148 of the Income Tax Act, 1961 as in force with effect from **01.04.2021** (under the new regime) ought to have been issued within the limitation period prescribed under the 1st *Proviso* to Section 149 of the Income Tax Act, 1961. In other words, it would be the submission of the petitioner that the proceeding initiated on **31.03.2021** was a still-born proceeding.

17. It is therefore submitted that in this case, the Impugned Notice dated **30.07.2022** issued under Section 148 of the Income Tax Act, 1961 under the new regime could have been issued latest by **31.03.2022** i.e., within 3 years



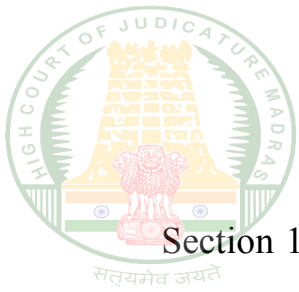
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from the end of the **Assessment Year 2015-2016** and since the Impugned Notice issued under Section 148 of the Income Tax Act, 1961 as in force with effect from 01.04.2021 (under the new regime) was issued only on **30.07.2022**, the proceedings initiated pursuant to Section 148 Notice dated **31.03.2021** had already lapsed in the light of the limitation.

18. Learned counsel for the petitioner also drew attention to a decision of the Bombay High Court in “**Hexaware Technologies Limited Vs. Assistant Commissioner of Income Tax**, [2024] 162 taxmann.com 225 (Bombay)” wherein under a similar circumstances, the Hon’ble Division Bench of the Bombay High Court quashed the proceedings.

19. Learned Senior Standing Counsel for the respondent on the other hand would submit that the proceedings initiated on **31.03.2021** under Section 148 of the Income Tax Act, 1961 which transformed into a Notice under Section 148-A(b) of the Income Tax Act, 1961 in the light of the decision of the Hon'ble Supreme Court in **Ashish Agarwal's case** (*cited supra*) has ultimately culminated in the Impugned Order dated 30.07.2022 under Section 148-A(d) of the Income Tax Act, 1961 and the Impugned Notice issued under



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Section 148 of the Income Tax Act, 1961 on **30.07.2022** as in force with effect from **01.04.2021** (under the new regime) and therefore it is in time.

20. Learned Senior Standing Counsel for the respondent submits that the conclusion in Paragraph 114(g) in **Rajeev Bansal's case** (*cited supra*), actually comes to the rescue of the Department and not to the petitioner.

21. It is submitted that the Notices issued under Section 148 of the Income Tax Act, 1961 under the old regime were deemed to have been stayed between **01.04.2021** and **30.06.2021**, and was to be excluded for computation of limitation. It is further submitted that the time taken to respond to the aforesaid Section 148 Notice dated **31.03.2021** was also to be excluded.

22. It is therefore submitted that if the aforesaid period is excluded, the Impugned Section 148 Notice dated **30.07.2022** of the Income Tax Act, 1961 as in force with effect from **01.04.2021** will be within the time limit prescribed by the Hon'ble Supreme Court in **Ashish Agarwal's case** (*cited supra*) and **Rajeev Bansal's case** (*cited supra*) on a harmonious reading of the 1st *Proviso* to Section 149 of the Income Tax Act, 1961 as in force with effect from



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01.04.2021. If this conclusion is accepted, this Writ Petition will be dismissed.

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23. By way of rejoinder, the learned counsel for the petitioner would submit that the decision of the Hon'ble Supreme Court in **Rajeev Bansal's case** (*cited supra*) cannot be applied to the facts of the present case as the Hon'ble Supreme Court was not concerned with the **Assessment Year 2015-2016** and was only concerned with the Assessment Years other than the **Assessment Year 2015-2016** and for the earlier Assessment Years. Hence, it is submitted that whichever way one looks at, there is no basis on which the Department can proceed with the Impugned Notice dated **31.03.2021** issued under Section 148 of the Income Tax Act, 1961 as in force with effect from **01.04.2021**.

24. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondent Income Tax Department. I have also perused the decisions of the Hon'ble Supreme Court in **Ashish Agarwal's case** and **Rajeev Bansal's case** and that of the decision of the Division Bench of the Bombay High Court in **Hexaware Technologies Limited** which have been referred to *supra*.



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26. The dispute pertains to the **Assessment Year 2015-2016**. The Impugned Notice dated **31.03.2021** was issued to the petitioner under Section 148 of the Income Tax Act, 1961 as it stood under the old regime till **31.03.2021**.

27. The Impugned Section 148 Notice dated **31.03.2021** was received by the petitioner on **12.04.2021** i.e., after the new set of provisions came into force with effect from **01.04.2021**. The normal period of limitation of 4 years under Section 149 of the Income Tax Act, 1961 for issuance of Notice under Section 148 of the Income Tax Act, 1961 under the old regime would have been expired on **31.03.2020**. (i.e., 4 years from the end of the Financial Year for the **Assessment Year 2015-2016**).

28. The Impugned Order dated **30.07.2022** passed under Section 148-A(d) of the Income Tax Act, 1961 was pursuant to Section 148 Notice dated **31.03.2021** (**under the old regime** as it stood till **31.03.2021**) which



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transformed into Section 148-A(b) Notice in terms of the decision of the Hon'ble Supreme Court in **Ashish Agarwal's case** (*cited supra*).

29. The Impugned Section 148 Notice dated **31.03.2021** was issued within 5 years from the end of the **Financial Year 2015-2016** but before the expiry period (larger period of limitation) under the *Proviso* to Section 147 of the Income Tax Act, 1961 on **31.03.2022** as it stood prior to **31.03.2021**. Thus, Section 148 Notice dated **31.03.2021** was issued in time. Therefore, the Impugned Section 148 Notice dated **31.03.2021** was in time as per the 1st *Proviso* to Section 149 of the Income Tax Act, 1961 as in force with effect from **01.04.2021**.

30. The extended period of limitation for issuance of Notice under Section 148 of the Income Tax Act, 1961 under the old regime as it stood till **31.03.2021** would have expired on **31.03.2022**. Both the period were during the period when the Country was still under both complete and intermittent lockdown due to outbreak of Covid-19 pandemic from March 2020.



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WEB COPY 31. The Parliament enacted the **Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) ('TOLA') Act, 2020**, to ensure that both the interests of the Revenue and Assessees were not defeated either because the Assessing Officer could not comply with the pre-conditions due to the difficulties that arose during the Covid-19 pandemic or an assessee could not keep up with the time. Section 3(1) of the **Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) ('TOLA') Act, 2020**, relaxed the time limit for compliance with actions that fell for completion between 20.03.2020 and 31.03.2021. The **Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) ('TOLA') Act, 2020** thus also extended the time limit for the grant of sanction by the authority specified under Section 151 of the Income Tax Act, 1961. Section 151 of the Income Tax Act, 1961 specifies the limitation for passing order.

32. The provisions of the Income Tax Act, 1961 stood amended / substituted with effect from **01.04.2021**. Section 149 of the Income Tax Act, 1961 which also stood amended reads as under:-

“149. Time Limit for Notice:

(1) No notice under Section 148 shall be issued for the



relevant assessment year,-

(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of-

- i. an asset;*
- ii. expenditure in respect of a transaction or in relation to an event or occasion; or*
- iii. an entry or entries in the books of account,*

which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more.

Provided that no notice under Section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if a notice under Section 148 or Section 153A or Section 153C could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this Section or Section 153A or Section 153C, as the case may be, as they stood immediately before the commencement of the Finance Act, 2021.

Provided further that the provisions of this sub-section shall not apply in a case, where a notice under Section 153A, or Section 153C read with Section 153A, is required to be issued in relation to a search initiated under Section 132 or books of account, other documents or any assets requisitioned under Section 132A, on or before the 31st day of March, 2021.

Provided also that for the purposes of computing the period of limitation as per this section, the time or extended time



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allowed to the assessee, as per show-cause notice issued under clause (b) of Section 148A or the period during which the proceeding under Section 148A is stayed by an order or injunction of any Court, shall be excluded.

Provided also that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of Section 148A is less than seven days, such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly.

Explanation.- For the purposes of clause (b) of this sub-section, “asset” shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of Section 151.”

33. Thus, as per the 1st *Proviso* to Section 149(1) of the amended provision, no notice under Section 148 of the Income Tax Act, 1961, shall be issued at any time in a case for the relevant Assessment Year beginning on or before 1st day of April 2021, if a notice under Section 148 or Section 153A or Section 153C of the Income Tax Act, 1961 could not have been issued at that time on account of it being beyond the time limit specified under the provisions of Clause (b) of Sub-Section (1) of Section 149 of the Income Tax Act, 1961 or Section 153A or Section 153C of the Income Tax Act, 1961, as the case may



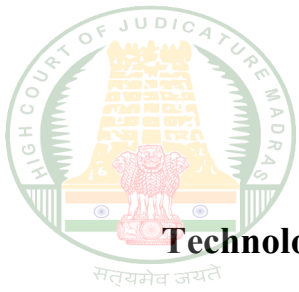
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be, as they stood immediately before the commencement of the Finance Act,

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34. In other words, a notice under Section 148 of the Income Tax Act, 1961 as amended with effect from **01.04.2021** cannot be issued, if the limitation for its issuance had already expired under the old regime as it stood till **31.03.2021**. The extended period of limitation would have been expired on **31.03.2022** under the old regime as per Section 149(1)(b) of the Income Tax Act, 1961 as it stood till **31.03.2021**. Therefore, the Impugned Notice dated **31.03.2021** issued under Section 148 of the Income Tax Act, 1961 as it stood till **31.03.2021** cannot be said to be time-barred even if the 1st *Proviso* to Section 149 of the Income Tax Act, 1961 as amended with effect from **01.04.2021** is made applicable.

35. This is also the decision of the Division Bench of the Bombay High Court in **Hexaware Technologies Limited** (*cited supra*). There is also no scope for taking a different view on the impact of the 1st *Proviso* to Section 149(1) of the Income Tax Act, 1961 as in force with effect from **01.04.2021** as held by the Division Bench of the Bombay High Court in **Hexaware**



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Technologies Limited (*cited supra*). Due emphasis also has to be given to the

3rd *Proviso* to Section 149(1) of the Income Tax Act, 1961.

36. As per the 3rd *Proviso* to Section 149(1) of the Income Tax Act, 1961 as in force with effect from **01.04.2021**, for the purposes of computing the period of limitation as per Section 149 of the Income Tax Act, 1961, the time or extended time allowed to the assessee as per the Show Cause Notice issued under Clause (b) of Section 148-A of the Income Tax Act, 1961 or the period during which the proceedings under Section 148A of the Income Tax Act, 1961 is stayed by an Order of Injunction of any Court is to be excluded.

37. The Division Bench of the Bombay High Court in Paragraph No.35 in “**Hexaware Technologies Limited Vs. Assistant Commissioner of Income-tax, Circle 15(1)(2)**, [2024] 162 taxmann.com 225 (Bombay)”, has also held that a case can be allocated randomly to any Officer who would then have jurisdiction to issue the notice under Section 148 of the Income Tax Act, 1961. Paragraph No.35 is reproduced below:-

“35. Further, in our view, there is no question of concurrent jurisdiction of the JAO and the FAO for issuance of reassessment of notice under section 148 of the Act or even for passing assessment or reassessment order. When



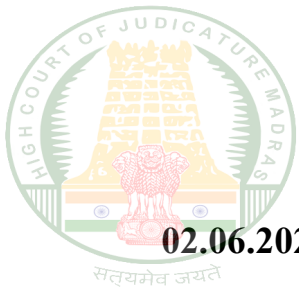
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*specific jurisdiction has been assigned to either the JAO or the FAO in the Scheme dated 29th March, 2022, then it is to the exclusion of the other. To take any other view in the matter, would not only result in chaos but also render the whole faceless proceedings redundant. If the argument of Revenue is to be accepted, then even when notices are issued by the FAO, it would be open to an assessee to make submission before the JAO and vice versa, which is clearly not contemplated in the Act. Therefore, there is no question of concurrent jurisdiction of both FAO or the JAO with respect to the issuance of notice under Section 148 of the Act. The scheme dated 29th March 2022 in paragraph 3 clearly provides that the issuance of notice “shall be through automated allocation” which means that the same is mandatory and is required to be followed by the Department and does not give any discretion to the Department to choose whether to follow it or not. That automated allocation is defined in paragraph 2(b) of the Scheme to mean an algorithm for randomised allocation of cases by using suitable technological tools including artificial intelligence and machine learning with a view to optimise the use of resources. **Therefore, it means that the case can be allocated randomly to any officer who would then have jurisdiction to issue the notice under Section 148 of the Act. It is not the case of respondent no.1 that respondent no.1 was the random officer who had been allocated jurisdiction.**”*

38. The time up to **02.06.2022** being the date of issuance of Show Cause Notice has to be excluded and a further period of 2 weeks was allowed for the petitioner to respond to Section 148 Notice issued under the old regime which was treated as Section 148-A(b) notice vide a communication dated



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02.06.2022.

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39. The Hon'ble Supreme Court in **Rajeev Bansal's case** (cited supra),
has held as under:-

“71. Section 3(1) of the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 contains a non obstante clause: “notwithstanding anything contained in the specified Act”. The legislative intention of including the non obstante clause is to remove any obstacles which may come in the way of the operation of the extension of the time limit till March 31, 2021 or such other date after March 31, 2021 specified by the Central Government. The purpose is to ensure that the full benefit of the relaxation should be provided to both the assesseees and the Revenue to tide over the difficulties caused by the covid-19 pandemic.

72. The non obstante clause in section 3(1) has to be read as controlling the provisions of the specified Acts, including the provisions of the Income-tax Act. (M.P.V. Sundararamier and Co. v. State of Andhra Pradesh [(1958) 9 STC 298 (SC); 1958 SCC OnLine SC 22.]. In the context of the issuance of a reassessment notice, the non obstante clause will override the provisions of the Income-tax Act in case of any direct conflict or inconsistency. Section 3(1) overrides section 149 only to the extent of relaxing the time limit for issuance of reassessment notice under section 148. The time limit for issuance of reassessment notices, which fall for completion between March 20, 2020 and March 31, 2021, has been extended till June 30, 2021. However, the non obstante clause under section 3(1) of the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 will operate neither to extend the time limit of three years from the end of the relevant



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assessment year under section 149(1)(a) of the new regime nor to extend the time limit of six years from the end of the relevant assessment years under section 149(1)(b) of the old regime. The non obstante clause ensures that the Revenue has additional time beyond the statutory stipulated time limit to complete or comply with the formalities given the administrative difficulties that arose due to the covid-19 pandemic.

(iii) Sanction of the specified authority.”

40. It is further clarified that the time during which the Show Cause Notices were deemed to be stayed is from the date of deemed issuance of notices between **01.04.2021** and **30.06.2021** till the supply of relevant informations and materials by the Assessing Officers to the assessees in terms of the directions issued by the Hon'ble Supreme Court in **Ashish Agarwal's case** (*cited supra*) and the period of 2 weeks was allowed to the assessees to respond to the Show Cause Notices.

41. The Hon'ble Supreme Court in **Rajeev Bansal's case** (*cited supra*), had clarified the position by holding that the direction of the Hon'ble Supreme Court in **Ashish Agarwal's case** (*cited supra*) will extend to all 90,000 reassessment notices issued under the old regime during the period between



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01.04.2021 and 30.06.2021.

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42. Insofar as limitation for sanction under Section 151 of the Income Tax Act, 1961 as in force with effect from 01.04.2021, the Hon'ble Supreme Court in **Rajeev Bansal's case (cited supra)** in Paragraph 77, observed as under:-

“77. 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 20.03.2020 and 31.03.2021, then the specified authority under Section 151(i) has an extended time till 30.06.2021 to grant approval. In the case of Section 151 of the old regime, the test is: if the time limit of four years from the end of an Assessment Year falls between 20.03.2020 and 31.03.2021, then the specified authority under Section 151(2) has time till 31.03.2021 to grant approval. The time limit for Section 151 of the old regime expires on 31.03.2021 because the new regime comes into effect on 01.04.2021.”

43. In Paragraph Nos.106 and 107, the Hon'ble Supreme Court observed as under:-

“106. In Union of India v. Ashish Agarwal [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.], this court directed the Assessing Officers to provide relevant information and materials relied upon by the Revenue to the assessee 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 assessee. Therefore, the show-cause notices were deemed to have been stayed until the Assessing Officers provided the relevant information or material to the assessee in terms of the direction issued in **Union of India v. Ashish Agarwal [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.]**. To summarize, the combined effect of the legal fiction and the directions issued by this court in **Union of India v. Ashish Agarwal [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.]** is that the show-cause notices that were deemed to have been issued during the period between April 1, 2021 and June 30, 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 assessee to respond to the show-cause notices.**

107. The third proviso to section 149 allows the exclusion of time allowed for the assessee 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 **Union of India v. Ashish Agarwal [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.]**, this court provided two weeks to the assessee 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 April 1, 2021 and June 30, 2021 till the supply of relevant information or



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material by the Assessing Officers to the assesseees in terms of the directions in Union of India v. Ashish Agarwal [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] ; and (ii) two weeks allowed to the assesseees to respond to the show-cause notices.

(b) Interplay of Union of India v. Ashish Agarwal [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] with Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020.”

44. In Paragraph Nos.108, 109 and 110, the Hon’ble Supreme Court held as under:-

“108. The Income-tax Act read with Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 extended the time limit for issuing reassessment notices under section 148, which fell for completion from March 20, 2020 to March 31, 2021, till June 30, 2021. All the reassessment notices under challenge in the present appeals were issued from April 1, 2021 to June 30, 2021 under the old regime. Union of India v. Ashish Agarwal [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] 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] A.C. 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



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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 *Union of India v. Ashish Agarwal* [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] is that the time surviving under the Income-tax Act read with Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 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 June 30, 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 Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. 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 Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. This construction gives full effect to the legal fiction created in *Union of India v. Ashish Agarwal* [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] and enables both the assessee and the Revenue to obtain the benefit of all consequences flowing from the fiction. (See *State of A.P. v. A.P. Pensioners' Association* [(2005) 13 SCC 161; 2006 SCC (L&S) 666. (This court observed that the “legal fiction undoubtedly is to be construed in such a manner so as to enable a person, for whose benefit such legal fiction has been created, to obtain all consequences flowing therefrom”.)])*

110. *The effect of the creation of the legal fiction in *Union of**



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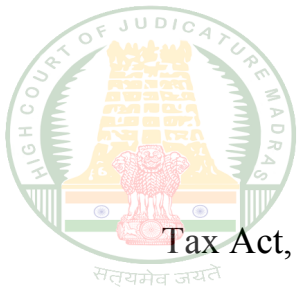


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India v. Ashish Agarwal [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] was that it stopped the clock of limitation with effect from the date of issuance of section 148 notices under the old regime [which is also the date of issuance of the deemed notices]. 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 assesseees in terms of the directions issued by this court in Union of India v. Ashish Agarwal [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] has to be excluded from the computation of the period of limitation. Moreover, the period of two weeks granted to the assesseees to reply to the show-cause notices must also be excluded in terms of the third proviso to section 149.”

45. As per Paragraph 72 from the decision of the Hon’ble Supreme Court in **Rajeev Bansal’s case** (*cited supra*), the period from the date of issuance of deemed notice dated **31.03.2021** till the supply of relevant material / information by the Assessing Officer to assess the income in terms of the directions of the Hon’ble Supreme Court in **Ashish Agarwal’s case** (*cited supra*) has to be excluded for the purpose of computation of period of limitation.

46. Only requirement to be followed is under Section 153(2) of the Income Tax Act, 1961 as in force with effect from **01.04.2021**. Thus, an Assessment Order has been passed within a period of 9 months from the end of the Financial Year in which the Notice was under Section 148 of the Income



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Tax Act, 1961 as in force with effect from **01.04.2021**.

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47. The Impugned Notice dated 31.03.2021 for the **Assessment Year 2015-2016** under Section 148 of the Income Tax Act, 1961 as it stood till **31.03.2021** was issued within the extended period of limitation, as 5 years had already expired from the end of the said Assessment Year. If the said notice is pigeonholed as a notice under Section 149(1)(a) of the Income Tax Act, 1961 as in force with effect from **01.04.2021**, for the purpose of computation of period of limitation, the entire proceedings initiated under Section 148 of the Income Tax Act, 1961 as it stood till **31.03.2021** for the purpose of Section 148 of the Income Tax Act, 1961 as in force with effect from **01.04.2021** will be a still-born i.e., at the time of its issuance. This is not what was intended by either of the decision of the Hon'ble Supreme Court.

48. Therefore, it has to be held that a Notice under Section 148 of the Income Tax Act, 1961 as in force with effect from **01.04.2021** was issued within the extended period of limitation prescribed under Section 149(1)(b) of the Income Tax Act, 1961, after the said Notice dated **31.03.2021** issued under Section 148 of the Income Tax Act, 1961, as it stood till **31.03.2021**



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transformed itself into a Notice under Section 148-A(b) of the Income Tax Act,

1961 under the new regime as in force with effect from **01.04.2021** in the light of the decision of the Hon'ble Supreme Court in **Ashish Agarwal's Case** (*cited supra*).

49. Therefore, computation of limitation for issuance of a Notice under Section 148 of the Income Tax Act, 1961 under the new regime with effect from **01.04.2021**, the period of limitation up to **02.06.2022** being the date of issuance of the Show Cause Notice and Reply dated **11.06.2022** of the petitioner, assessment has to be excluded even if it has to be construed that the case falls under Clause (a) to Section 149(1) of the Income Tax Act, 1961. However, the present case falls under Clause (b) to Section 149(1) of the Income Tax Act, 1961 as in force with effect from **01.04.2021**.

50. If the aforesaid period is excluded as per the decision of the Hon'ble Supreme Court, conclusion in Paragraph 114(g) in **Rajeev Bansal's case** (*cited supra*), read with 1st Proviso and 3rd Proviso to Section 149(1) of the Income Tax Act, 1961 as amended, it has to be necessarily concluded that the Impugned Notice issued on **30.07.2022** is in time.



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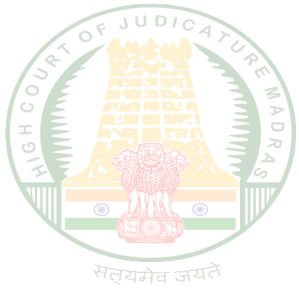
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51. Only if the Impugned Notice dated **31.03.2021** issued under Section 148 of the Income Tax Act, 1961 as it stood till the said date was already time barred under the old regime as it stood till **31.03.2021**, it can be said that the Notice was time barred. Since there were ingredients for invoking the extended period of limitation under the *Proviso* to Section 147 of the Income Tax Act, 1961 as it stood till **31.03.2021**, it cannot be said that the Impugned Notice dated **30.07.2022** is time barred.

52. Therefore, there is no merits in the challenge to the Impugned Notice issued to the petitioner on **31.03.2021** under the old regime or the Impugned Order passed by the respondent under Section 148-A(d) of the Income Tax Act, 1961 on **30.07.2022** or the Impugned Notice issued under Section 148 of the Income Tax Act, 1961 on **30.07.2022** under the new regime.

53. Therefore, this Writ Petition is liable to be dismissed and is accordingly dismissed. No costs. Connected Writ Miscellaneous Petitions are closed.

03.04.2025



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Neutral Citation: Yes / No

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To:

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Soorappa Naicken Chavadi,
Cuddalore – 607 002.

C.SARAVANAN, J.

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Pre-delivery Order in