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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 3230/2023, CM APPL. 12535/2023 (Stay)

SUNIL GHORAWAT .....Petitioner

Through: Mr. Sumit Lalchandani, Mr. Salil Kapoor, Ms. Ananya Kapoor, Mr. Shivam Yadav, Mr. Tarun Chanana, Advs.

versus

ASSISSTANT COMMISSIONER OF INCOME TAX, CIRCLE 10 -1, DELHI & ANR. .....Respondents

Through: Mr. Anurag Ojha, SSC with Mr. V.K. Saksena, Ms. Hemlata Rawat, JSCs, Mr. Dipak Raj, Mr. Subham Kr. & Mr. Kuldeep Mishra, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

O R D E R

% **06.02.2025**

1. The writ petitioner assails the validity of the reassessment action initiated by the respondents in terms of Section 148 of the Income Tax Act, 1961 [‘**Act**’]. The reassessment itself pertains to Assessment Year [‘**AY**’] 2013-14.

2. For the purposes of convenience, Mr. Lalchandani, learned counsel representing the writ petitioner, has placed for our consideration the following tabular statement: -

CHART IN ACCORDANCE WITH THE JUDGEMENT RENDERED IN THE CASE OF RAJEEV BANSAL, RAM BALRAM[2], AND KANWALJEET KAUR

Assessment Year	2013-14	
Notice under Section 148 of the Act [Pre-judgment dated 04.05.2022 rendered in the case of Union of	(Served on 02.07.2021)	Annexure P-12

India v. Ashish Agarwal]		
Surviving period/days before expiry of limitation on 30.06.2021 [Number of days computed by following formula: 30.06.2021 less date on which initial notice under section 148 was issued]	Zero days	
Notice under Section 148A(b) of the Act [along with annexure number]	26.05.2022	Annexure P-7
Date on which reply was required to be filed as per notice issued under Section 148A(b)	11.06.2022	
Date on which reply was filed by the assessee in response to the notice under section 148A(b) [along with annexure number]	08.06.2022	Annexure P-8
Last date to issue notice under section 148 after considering the surviving period	08.06.2022	
Last date to issue notice under Section 148 after considering fourth proviso to section 149	15.06.2022	
Order under Section 148A(d) of the Act	23.07.2022	Annexure P-9
Notice under Section 148 of the Act	23.07.2022	Annexure P-10
Applicability of Rajiv Bansal judgement (Yes/No)	Yes. Barred by Time Limitation	

3. It is on the basis of the disclosures made therein that it is contended that even if the benefit of surviving period were to be extended, the impugned notice dated 23 July 2022 would not sustain.

4. Having heard Mr. Lalchandani, learned counsel for the writ petitioner and Mr. Ojha, who appears for the respondents, we find that in **Union of India v. Rajeev Bansal**[1], the Supreme Court had principally identified three block periods which were liable to be excluded for the purposes of examining a challenge based on the Proviso to Section 149 of the Act. The first of those periods was 20

[1] 2024 SCC OnLine SC 2693

April 2020 to 30 June 2021 and which essentially was the outcome of Section 3(1) of Taxation and Other Laws [Relaxation and Amendment of Certain Provisions] Act, 2021 [‘**TOLA**’].

5. The second period which the Supreme Court took into consideration was the date of the issuance of the original notice upto 04 May 2022, when it came to render judgment in **Union of India & Ors. v. Ashish Agarwal**[2]. The third period which was identified as being liable to be taken into account was that factored in by the Third Proviso to Section 148 of the Act, and which deals with the exclusion of time which is connected to the opportunity granted to the assessee to file a response to a notice under Section 148A(b).

6. We had while dealing with the aforesaid in **Kanwaljeet Kaur v. Assistant Commissioner of Income Tax Circle (34) 1 Delhi & Ors.**[3] held as follows: -

> “14. The Supreme Court in Rajeev Bansal has exhaustively examined the impact of its judgment in Ashish Agarwal viewed in the context of the Third Proviso to Section 149(1) as well as the period liable to be excluded in light of Section 3 of TOLA. The Supreme Court has ultimately held that the period between 20 March 2020 to 30 June 2021 would clearly be entitled to be excluded for the purposes of answering the question of limitation for commencement of reassessment action. This it held in light of the statutory command of Section 3(1) of TOLA.
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> 15. In Rajeev Bansal, it was further declared that the period between the date of issuance of the impugned reassessment notices (if falling between 20 March 2020 to 30 June 2021) up to the date of the decision rendered by the Supreme Court in Ashish Agarwal, and that being 04 May 2022, would also be liable to be excluded in light of the Third Proviso to Section 149(1).
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> 16. The third period which was factored in was the date when material in support of the formation of opinion of income having escaped assessment would have been provided to the assessee and the time for furnishing of objections, and which too as the Supreme Court holds in Rajeev Bansal is liable to be excluded.

[2] (2023) 1 SCC 617
[3] 2025:DHC:656-DB

17. It is the aforenoted three periods which are thus liable to be added to the date when the notice for reassessment was issued in order to answer the question as to whether the reassessment notices could be said to be barred by the timelines as prescribed by Section 149 of the Act.

18. The surviving period with which Question ‗A' is concerned, was lucidly explained by the Supreme Court in *Rajeev Bansal*, and we thus deem it apposite to extract the following passages from that decision:-

> "**110.** The effect of the creation of the legal fiction in *Union of 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 assessees 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 assessees to reply to the show-cause notices must also be excluded in terms of the third proviso to section 149.
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> **111.** The clock started ticking for the Revenue only after it received the response of the assessees 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 Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, was available to the Assessing Officers to issue the reassessment notices under section 148 of the new regime.
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> **112.** Let us take the instance of a notice issued on May 1, 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 May 1, 2021. After accounting for all the exclusions, the Assessing Officer will have sixty-one days (days between May 1, 2021 and June 30, 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 June 18, 2022, the Assessing Officer will have sixty-one days from June 18, 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 August 18, 2022.

113. In *Union of India* v. *Ashish Agarwal* [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] , this court allowed the assessees to avail of 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 Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020; 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 Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. A reassessment notice issued beyond the surviving time limit will be time-barred.‖

19. The Division Bench of the Court in *Ram Balram* was called upon to deal with a live case and where it was directly called upon to answer whether the reassessment notice could be said to be sustainable when tested on the principles enunciated in *Rajeev Bansal*. The Division Bench of the Court in *Ram Balram* upon application of the salient principles propounded by the Supreme Court in *Rajeev Bansal* came to hold as follows:-

"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 30.06.20218 . 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 ***Union of India & Ors. v. Ashish Agarwal*** 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 ***Union of India & Ors. v. Ashish Agarwal*** 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 ***Union of India & Ors. v. Rajeev Bansal*** .

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 period to issuance of the impugned notice on 20.07.2022. the said is squarely beyond the period of limitation.

20. The Court in Ram Balram was concerned with a notice for reassessment which had come to be issued on 01 June 2021 and thus falling within the broad Section 3(1) TOLA period of 20 March 2020 to 30 June 2021. The Court thus firstly proceeded to exclude the 29 days period falling between 01 June 2021 to 30 June 2021.

21. It proceeded further to then factor in the period commencing from 01 June 2021 upto 04 May 2022 with the latter being the date when the judgment in Ashish Agarwal came to be pronounced, and which period too was liable to be excluded in light of what the Supreme Court had held in Rajeev Bansal. In Ram Balram, following the decision in Ashish Agarwal, the AO is stated to have issued a notice under Section 148A(b) on 30 May 2022. Thus, the Division Bench in Ram Balram correctly proceeded to recognize the period between 04 May 2022 to 30 May 2022 as being liable to be removed from consideration for purposes of computation of limitation.

22. It then proceeded further to factor in the period of two weeks within which the assessee was called upon to respond to the notice under Section 148A(b) and which period is statutory liable to be excluded by virtue of the Third Proviso to Section 149(1) of the Act.

23. The commencement point computed in accordance with the aforesaid was thus identified to be 13 June 2022, when the assessee had ultimately furnished a reply to the notice under Section 148A(b). The Court ultimately found that the period of limitation for issuance of a notice for reassessment would have expired on 12 July 2022 and consequently the reassessment notice dated 30 July 2022 being liable to be quashed and set aside."

7. Tested on aforesaid percepts, it becomes apparent that even if the period of 14 days and which represented the time within which the petitioner was called upon to furnish a response to the Section 148A(b) notice were to be added, the re-assessment notice which ultimately came to be issued on 23 July 2022, would not be within the period of limitation as prescribed. The aforesaid factual position is conceded to even by the respondents.

8. Consequently, and in light of the above, we allow the instant writ petition and quash the notice under Section 148 dated 30 June 2021.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

FEBRUARY 06, 2025/v