

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

% Judgment delivered on: 30.01.2025

+ **W.P.(C) 16232/2024 & CM APPL. 68188/2024**

RAM BALRAM BUILDHOME PVT. LTD. Petitioner

Versus

INCOME TAX OFFICER AND ANR. Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Keshav Sehgal, Mr Shivam Gaur, Mr Kshitij Joshi and Mr Aryan Kumar, Advocates.

For the Respondent : Mr. Aseem Chawla, Sr. Advocate with Ms. Pratishtha Choudhary, Mr Puneet Rai, Senior Standing Counsel with Mr Ashvini Kumar and Mr Rishabh Nangia, Advocates.

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HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR JUSTICE TUSHAR RAO GEDELA

JUDGMENT

VIBHU BAKHRU, J

INTRODUCTION

1. The petitioner (hereafter *the Assessee*) has filed the present petition under Article 226 of the Constitution of India, *inter alia*, impugning (i) a notice dated 01.06.2021 issued under Section 148 of the Income Tax Act, 1961 (hereafter *the Act*); (ii) a notice dated 30.05.2022



issued in furtherance of the notice dated 01.06.2021; (iii) an order dated 30.07.2022 passed under Section 148A(d) of the Act; (iv) a notice dated 30.07.2022 issued under Section 148 of the Act; and (v) an assessment order dated 30.05.2023 framed under Section 147 of the Act read with Section 144 and 144B of the Act. These abovementioned impugned notices and orders were issued in respect of the assessment year (AY) 2013-14.

2. Mr Sehgal, the learned counsel appearing for the Assessee has confined the challenge to the notices and the orders impugned in this petition on a singular ground – that the order dated 30.07.2022 passed under Section 148A(d) of the Act (hereafter *the impugned order*) as well as the notice dated 30.07.2022 (hereafter *the impugned notice*) issued under Section 148 of the Act were beyond the period as stipulated under Section 149(1) of the Act.

3. Mr Chawla, learned senior counsel appearing for the Revenue stoutly disputed the Assessee's claim that the impugned order and the impugned notice, are barred by limitation. He, however, did not dispute that if the Assessee's contention was accepted and the impugned notice was found to have been issued beyond the period of limitation, further proceedings pursuant to the impugned notice as well as the assessment order dated 30.05.2023, would, as a consequence, be liable to be set aside.

4. In view of the above, the only controversy that is required to be addressed by this court is whether the impugned order and the impugned



notice was issued beyond the period as prescribed under Section 149(1) of the Act.

THE FACTUAL CONTEXT

5. The Assessee is a company incorporated under the Companies Act, 1956. The petitioner claims that it has been regularly filing its return of income and had done so for the AY 2013-14 as well.

6. On 24.03.2020, the Government of India announced the nationwide lockdown (initially for a period of twenty-one days) in the wake of spread of the novel coronavirus (COVID-19) pandemic.

7. On 31.03.2020, the President of India promulgated the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020, whereby time limits as stipulated in respect of various actions and compliances, were extended. Thereafter, the Parliament enacted the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 [hereafter *TOLA*], which came into force with effect from 31.03.2020.

8. The Assessing Officer [hereafter *the AO*] issued a notice dated 01.06.2021 under Section 148 of the Act on the basis that he had reason to believe that the income of the Assessee chargeable to tax in respect of AY 2013-14 had escaped assessment within the meaning of Section 147 of the Act. Such reason to believe is the jurisdictional condition for issuance of such notices under the provisions for reassessment as existed prior to 01.04.2021. The Assessee responded to the notice dated 01.06.2021 disputing the validity of the notice. The Assessee claimed



that the notice was *void ab initio* as the necessary procedure as prescribed under Section 148A of the Act was not followed.

9. A similar challenge, as raised by the Assessee, was sustained by this court in ***Mon Mohan Kohli v. ACIT & Anr.***¹ and such notices were set aside. However, subsequently, on 04.05.2022, the Supreme Court rendered a decision in ***Union of India and Ors. v. Ashish Agarwal***². And, in exercise of its powers under Article 142 of the Constitution of India, the Supreme Court issued directions construing such notices issued under Section 148 of the Act as the notices under Section 148A(b) of the Act. The AOs were also directed to furnish such material to the assessee, as was required on the basis of which such notices were premised.

10. In compliance with the said directions, the AO issued another notice dated 30.05.2022 in furtherance of the notice dated 01.06.2021 construing the same as a notice under Section 148A(b) of the Act. The Assessee was called upon to furnish a response to the said notice within a period of two weeks from the said date, that is, on or before 13.06.2022.

11. The petitioner furnished its response to the notice dated 30.05.2022 on 13.06.2022.

12. Thereafter, the AO passed the impugned order dated 30.07.2022 under Section 148A(d) of the Act holding that it was a fit case to re-open the Assessee's assessment for the AY 2013-14. According to the Assessee, the impugned notice was issued beyond the period of

¹ Neutral Citation No.: 2021:DHC:4181-DB

² (2023) 1 SCC 617



limitation as prescribed under Section 149(1) of the Act as extended by the Supreme Court.

13. Pursuant to the aforesaid notice, the Assessee filed its return of income on 26.08.2022. The said proceedings culminated in the assessment order dated 30.05.2023, whereby the AO held that an entry amounting to ₹75 lacs remained unexplained and thus, added the said amount under Section 69 of the Act, to the Assessee's returned income. charged to tax under Section 115BBE of the Act.

THE ISSUE

14. As noted at the outset, the question that falls for consideration of this court is whether the impugned order and the impugned notice were issued beyond the period as stipulated for passing such an order or issuance of such a notice.

15. Section 149(1) of the Act as in force with effect from 01.04.2021 and prior to its substitution with effect from 01.09.2024 by the Finance (No.2) Act, 2024, expressly provided that no notice under Section 148 of the Act can be issued for the relevant assessment year if three years had elapsed from the end of the relevant assessment year unless the case fell within Clause (b) of the said sub-section. Clause (b) proscribed issuance of notice if three years, but not more than ten years, had elapsed from the end of the relevant assessment year unless the AO had in its possession books of account, other documents, or evidence, which revealed that the income chargeable in the form as stipulated, had escaped assessment. And, such income amounted to or was likely to ₹50 lacs or more. Thus, no notice under Section 148 of the Act could



be issued beyond the period of ten years from the end of the relevant assessment year. However, in terms of the first proviso to Section 149(1) of the Act, no notice under Section 148 of the Act could be issued in respect of the relevant assessment year beginning on or before 01.04.2021, if such a notice could not be issued, *inter alia*, under Section 148 of the Act.

16. Concededly, no notice under Section 148 of the Act could be issued under the provisions of Section 149(1) of the Act as was in force prior to 01.04.2021 if, (i) four years had elapsed from the end of the relevant assessment year; (ii) four years but not more than six years had elapsed from the end of the relevant assessment year if the income chargeable to tax, which had escaped assessment, amounted to or was likely to amount to ₹1 lac or more for that year; or (iii) four years but not more than sixteen years had elapsed from the end of the relevant assessment year if the income in relation to any asset (including financial interest) in any entity located outside India and chargeable to tax had escaped assessment.

17. In the present case, there is no allegation that the Assessee's income that had escaped assessment in respect of AY 2013-14 was in relation to any asset located outside India. Thus, in terms of Section 149(1)(b) of the Act as in force prior to 01.04.2021, no notice under Section 148 of the Act could have been issued beyond the period of six years from the end of the relevant assessment year.



18. In view of the above, no notice under Section 148 of the Act could have been issued in this case after 31.03.2020 in respect of AY 2013-14.

19. However, it is the Revenue's case that the impugned notice is within the time as extended by virtue of the TOLA [Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020] and the decision of the Supreme Court in *Union of India & Ors. v. Ashish Agarwal*². The Revenue contends that the impugned notice has been issued within the time as prescribed under Section 149(1) of the Act computed in accordance with the third and fourth proviso to Section 149 of the Act as was in force at the material time³. The learned counsel for the Revenue contends that the issue is substantially covered by the decision of the Supreme Court in *Union of India & Ors. v. Rajeev Bansal*⁴. Whilst the learned counsel for the Revenue contends that it is favour of the Revenue however, the learned counsel for the Assessee contends otherwise.

20. Thus, the central question to be addressed is whether the impugned notice was issued within the extended time as available to the AO by virtue of the provisions of the TOLA, the directions issued under Article 142 of the Constitution of India by the Supreme Court in the case of *Union of India & Ors. v. Ashish Agarwal*² and the timelines as

³ As in force with effect from 01.04.2021 but prior to 01.04.2023

⁴ 2024 SCC OnLine SC 2693



explained by the Supreme Court in *Union of India & Ors. v. Rajeev Bansal*⁴.

UNION OF INDIA AND ORS. V. ASHISH AGARWAL²

21. As noted at the outset, the proceedings for reassessment were initiated by issuance of the notice dated 01.06.2021 under Section 148 of the Act as in force prior to 01.04.2021. The question regarding validity of such notices was considered by the Supreme Court in *Union of India & Ors. v. Ashish Agarwal*². It is thus necessary to briefly consider the import of the directions issued by the Supreme Court in that case and the context in which the same were issued.

22. Substantial amendments were introduced by the Finance Act, 2021 with effect from 01.04.2021 in respect of the provisions relating to re-assessment of income that has escaped assessment and Section 147 to 151 of the Act, were substituted. As noted above, notwithstanding the amendments to the said Sections, the AOs had issued various notices under Section 148 of the Act to various assesses – including the notice dated 01.06.2021 to the Assessee – under the regime for re-assessment that was in force prior to 01.04.2021.

23. The aforementioned notices were issued on the premise that the TOLA permitted the AOs to issue such notices by imputing that the same were issued prior to 31.03.2021. It was, thus, assumed that the notices could be issued under the provisions as were extant prior to 31.03.2021.



24. The said notices were impugned in various petitions filed in High Courts across the country. Various High Courts (including this court) sustained the said challenge and set aside such notices issued under Section 148 of the Act on the ground that the same could not be issued under the statutory regime for reassessment as was in force prior to 31.03.2021. The Revenue appealed the said decisions before the Supreme Court.

25. The Supreme Court examined the amendments introduced in the Act relating to re-assessment of income and concurred with the views expressed by various high courts that it was incumbent upon the AO to follow the procedure as prescribed under Section 148A of the Act after 01.04.2021. The relevant extract of the said decision is set out below:

“15. It cannot be disputed that by substitution of sections 147 to 151 of the Income Tax Act (“the IT Act”) by the Finance Act, 2021, radical and reformative changes are made governing the procedure for reassessment proceedings. Amended Sections 147 to 149 and Section 151 of the IT Act prescribe the procedure governing initiation of reassessment proceedings. However, for several reasons, the same gave rise to numerous litigations and the reopening were challenged inter alia, on the grounds such as:

(1) no valid “reason to believe”,

(2) no tangible/reliable material/information in possession of the assessing officer leading to formation of belief that income has escaped assessment,



(3) no enquiry being conducted by the assessing officer prior to the issuance of notice; and reopening is based on change of opinion of the assessing officer and

(4) lastly the mandatory procedure laid down by this Court in the case of *GKN Driveshafts (India) Ltd. Vs. Income Tax Officer and Ors*; (2003) 1 SCC 72, has not been followed.

16. Further pre-Finance Act, 2021, the reopening was permissible for a maximum period up to six years and in some cases beyond even six years leading to uncertainty for a considerable time. Therefore, Parliament thought it fit to amend the Income Tax Act to simplify the tax administration, ease compliances and reduce litigation. Therefore, with a view to achieve the said object, by the Finance Act, 2021, Sections 147 to 149 and Section 151 have been substituted.

17. Under the substituted provisions of the IT Act vide Finance Act, 2021, no notice under section 148 of the IT Act can be issued without following the procedure prescribed under Section 148-A of the IT Act. Along with the notice under Section 148 of the IT Act, the assessing officer (“AO”) is required to serve the order passed under Section 148-A of the IT Act. Section 148-A of the IT Act is a new provision which is in the nature of a condition precedent. Introduction of Section 148-A of the IT Act can thus be said to be a game changer with an aim to achieve the ultimate object of simplifying the tax administration, ease compliance and reduce litigation.

18. But prior to pre-Finance Act, 2021, while reopening an assessment, the procedure of giving the reasons for reopening and an opportunity to the assessee and the decision of the objectives were required to be followed as per the judgment of this Court in the case of *GKN Driveshafts (India) Ltd. (supra)*.



19. However, by way of Section 148-A, the procedure has now been streamlined and simplified. It provides that before issuing any notice under Section 148, the assessing officer shall:

(i) conduct any enquiry, *if required*, with the approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;

(ii) provide an opportunity of being heard to the assessee, with the prior approval of specified authority;

(iii) consider the reply of the assessee furnished, if any, in response to the show cause notice referred to in clause (b); and

(iv) decide, on the basis of material available on record including reply of the assessee, as to whether or not it is a fit case to issue a notice under section 148 of the IT Act: and

(v) the AO is required to pass a specific order within the time stipulated.

20. Therefore, all safeguards are provided before notice under Section 148 of the IT Act is issued. At every stage, the prior approval of the specified authority is required, even for conducting the enquiry as per section 148-A(a). Only in a case where, the assessing officer is of the opinion that before any notice is issued under section 148-A(b) and an opportunity is to be given to the assessee, there is a requirement of conducting any enquiry, the assessing officer may do so and conduct any enquiry. Thus if the assessing officer is of the opinion that any enquiry is required, the assessing officer can do so, however, with the prior approval of the specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment.



21. Substituted Section 149 is the provision governing the time-limit for issuance of notice under Section 148 of the IT Act. The substituted Section 149 of the IT Act has reduced the permissible time-limit for issuance of such a notice to three years and only in exceptional cases ten years. It also provides further additional safeguards which were absent under the earlier regime pre-Finance Act, 2021.

22. Thus, the new provisions substituted by the Finance Act, 2021 being remedial and benevolent in nature and substituted with a specific aim and object to protect the rights and interest of the assessee as well as and the same being in public interest, the respective High Courts have rightly held that the benefit of new provisions shall be made available even in respect of the proceedings relating to past assessment years, provided Section 148 notice has been issued on or after 1-4-2021. We are in complete agreement with the view taken by the various High Courts in holding so.”

26. However, the Supreme Court was also of the view that the Revenue could not be left remediless and the object of re-assessment could not be frustrated. Accordingly, the Supreme Court allowed the appeals in part and modified and substituted the directions issued by various high courts. The relevant extract of the said order containing the aforesaid directions is set out below:

“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 Aggarwal 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 assesseees 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 assesseees information and material relied upon by the Revenue, so that the assesseees 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 concerned Assessing Officers 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 assesseees 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 assesseees including those available under section 149 of the IT Act and all rights and contentions which may be available to the assesseees concerned and Revenue under the Finance Act, 2021 and in law shall continue to be available.”

[emphasis added]



27. The Supreme Court also directed that the aforesaid directions would be applicable PAN India to all notices issued under Section 148 of the Act after 01.04.2021, which were similar to the ones that were impugned before various high courts.

28. It is apparent from the above that while the Supreme Court had dispensed with the inquiry under Section 148A(a) of the Act and had directed that the notices issued under Section 148 of the unamended Act be treated as a notice under Section 148A(b) of the Act as a onetime measure. The AOs were directed, within a period of thirty days from date, to provide the assessee's information and material relied upon by the Revenue so that the assessee could respond to the notices within a period of two weeks thereafter. The AOs were required to pass orders under Section 148A(d) of the Act.

29. It is material to note that the Supreme Court expressly held that all defences "*including those available under Section 149 of the Act would continue to be available to the assessee*".

THE RELEVANT STATUTORY FRAMEWORK

30. The controversy in the present case is required to be addressed is whether in respect of the provisions relating to procedure of re-assessment as were in force with effect from 01.04.2021 but prior to 01.03.2023. The references to Sections 147, 148, 148A and 149 of the Act hereafter, unless the context indicates otherwise, are to the said provisions as in force with effect from 01.04.2021 but prior to 01.03.2023.



31. In terms of Section 147 of the Act as in force prior to 01.04.2021, an AO would assess/re-assess the income of an assessee for the relevant assessment year if he had reason to believe that the income chargeable to tax for the said relevant AY had escaped assessment. However, this power was not open ended and the period, which an officer could travel back for re-opening the assessment was not indefinite. Section 149(1) of the Act proscribed the issuance of notice under Section 148 of the Act – which was necessary for initiating the assessment/re-assessment proceedings under Section 147 of the Act – beyond the period of four years from the end of the relevant assessment year. This period was extended to six years if the amount, that has, escaped assessment was ₹1 lac or more, and to sixteen years if the income that has escaped assessment was in relation to any asset located outside India. Additionally, the AO could assume jurisdiction to reopen assessments under Section 147 of the Act only where he had reason to believe that the income had escaped assessment. The reason to believe was not construed expansively. It was necessarily required to be based on tangible material having nexus with the view that an assessee's income had escaped assessment.

32. In *GKN Driveshafts (India) Ltd. v. ITO & Ors.*⁵, the Supreme Court upheld the procedure evolved to ensure that the assessments are not re-opened on the basis of reasons that are unsustainable. The Supreme Court had, thus, enabled the assessee to obtain a copy of the reasons for reopening of the assessments and file objections to the same.

⁵ (2003) 1 SCC 72



The AO was required to consider and decide the same. If the AO accepted the objections, the reassessment proceedings were required to be dropped.

33. The procedure for re-assessment was substantially amended by virtue of the Finance Act, 2021. Section 148A of the Act was introduced, which included the procedure for providing the assessee an opportunity to address any information available with the AO, which was suggestive of the assessee's income escaping assessment for any relevant year. The procedure enabled the AO to take an informed decision whether it was a fit case for issuance of a notice under Section 148 of the Act after considering the material on record including responses furnished by the assessee.

34. It is relevant to refer to the provisions of Section 148, 148A and 149 of the Act as were brought in force with effect from 01.04.2021. The same are set out below:

“148. Issue of notice where income has escaped assessment. —Before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A, requiring him to furnish within such period, as may be specified in such notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed;



and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:

Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice.

Explanation 1.—For the purposes of this section and section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,—

- (i) any information flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;
- (ii) any final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act.

Explanation 2.—For the purposes of this section, where,—

- (i) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 1st day of April, 2021, in the case of the assessee; or
- (ii) a survey is conducted under section 133A, other than under sub-section (2A) or sub-section (5) of that section, on or after the 1st day of April, 2021, in the case of the assessee; or
- (iii) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or



(iv) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee, the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.

Explanation 3.—For the purposes of this section, specified authority means the specified authority referred to in section 151.”

“148A. Conducting inquiry, providing opportunity before issue of notice under section 148. —The Assessing Officer shall, before issuing any notice under section 148,—

(a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;

(b) provide an opportunity of being heard to the assessee, with the prior approval of specified authority, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his



case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);

(c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);

(d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:

Provided that the provisions of this section shall not apply in a case where,—

(a) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of the assessee on or after the 1st day of April, 2021; or

(b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under section 132 or requisitioned under section 132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

(c) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under section 132 or requisitioned under section 132A, in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee.

Explanation.—For the purposes of this section, specified authority means the specified authority referred to in section 151.”

“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 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 subsection, “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.”

35. Subsequent to the Finance Act, 2021, the Finance Act, 2023 was brought into force with effect from 01.04.2023, wherein two additional provisos were added before the third and fourth proviso to Section 149(1) of the Act, making the existing third and fourth provisos to fifth and sixth. In addition, by the Finance Act, 2023, the words “is less than seven days” were replaced by the words “does not exceed seven days” in the sixth proviso to Section 149(1) of the Act.

36. It is also relevant to refer to Section 3 of TOLA. The relevant extract of Section 3(1) of the Act is set out below:-

“3(1) Where, any time-limit has been specified in, or prescribed or notified under, the specified Act which falls during the period from the 20th day of March, 2020 to the 31st day of December, 2020, or such other date after the 31st day of December, 2020, as the Central Government, may, by notification, specify in this behalf, for the completion or compliance of such action as –

(a) completion of any proceedings or passing of any order or issuance of any notice, intimation, notification, sanction or approval, or such other action, by whatever name called, by any authority,



commission or tribunal, by whatever name called,
under the provisions of the specified Act;

and where completion or compliance of such action
has not been made within such time, then, the time-limit
for completion or compliance of such action shall,
notwithstanding anything contained in the specified
Act, stand extended to the 31st day of
March, 2021, or such other date after 31st day of March,
2021, as the Central Government may, by
notification, specify in this behalf.”

37. In exercise of the powers under Section 3(1)(a) of the TOLA, the Government of India issued three notifications successively extending the time for completion of the specified acts. In terms of the Notification No.93/2020 dated 31.12.2020, the time limit for completion of the specified acts which fell within the period of 20.03.2020 to 31.12.2020 was extended till 31.03.2021. The said period thereafter was extended till 30.04.2021 by the Notification No.20/2021 dated 31.03.2021 and further stood extended till 30.06.2021 by the notification No.38/21 dated 27.04.2021.

38. Thus, by virtue of the provisions of the TOLA and the notifications issued by the Government of India, the time limit for completion of the specified acts [as defined under Section 3(1)(a) of the TOLA] stood extended till 30.06.2021.

OVERARCHING PERIOD OF LIMITATION UNDER SECTION 149 OF ACT.

39. For the purposes of the present petition, it is important to examine the time periods for issuing notices and passing orders under Section



148A of the Act and the overarching period of limitation as stipulated under Section 149 of the Act.

40. Clause (b) of Section 148A of the Act expressly provides that the AO is required to give a notice to the assessee to show cause why a notice under Section 148 of the Act not be issued, within such time as may be specified in the notice. This time is required to be not less than seven days but not more than thirty days. This time can be further extended by the AO, if an application is made by the assessee in this regard.

41. In terms of Sub-clause (c) of Section 148A of the Act, the AO is required to consider the response to the show cause notice furnished by the Assessee.

42. Clause (d) of Section 148A of the Act requires the AO to decide on the basis of the material on record, including the response furnished by the assessee to the notice issued under Section 148A(b) of the Act, whether it is a fit case for issuance of notice under Section 148 of the Act. The said clause also stipulates that such a decision is required to be made within one month from the end of the month in which a reply referred to Clause (c) is received by the AO or in case where no reply is furnished by the assessee, within one month from the end of the month in which time or extended time to furnish the reply expires.

43. Section 148 of the Act requires the AO to serve a copy of the notice under Section 148 of the Act along with an order passed under Clause (d) of Section 148A of the Act. As is apparent from the above,



the procedure as prescribed under Section 148A of the Act including holding of inquiry as contemplated under Clause (a) of Section 148A of the Act; issuance of a show cause notice under Section 148A(b) of the Act; considering the reply of the assessee under Clause (c) of Section 148A of the Act; and deciding in terms of Clause (d) of Section 148A of the Act, whether it is a fit case for issuance of notice under Section 148 of the Act, is required to be completed prior to issuance of notice under Section 148 of the Act.

44. Section 149(1) of the Act prohibits issuance of notice beyond the time period as specified. In terms of Clause (a) of Section 149(1) of the Act, a notice cannot be issued for relevant assessment year if more than three years had elapsed from the end of the relevant assessment unless the case falls under Clause (b) of the said sub-section.

45. In terms of Clause (b) of Section 149(1) of the Act, the following conditions are required to be satisfied:

- (i) that the AO has in its possession books of account or other documents or evidence, which reveal that the income had escaped assessment;
- (ii) that such income chargeable to tax, which is revealed from the material available with the AO is in the form of (a) an asset; or (b) expenditure in respect of transaction or in relation to an event or occasion; or (c) an entry or entries in the books of account;



- (iii) that the income which has escaped assessment amounts to or is likely to amounts to ₹50 lacs or more.

46. If the aforesaid conditions are satisfied, a notice under Section 148 can be issued beyond the period of three years but not beyond the period of ten years.

47. The opening sentence of Section 149(1) of the Act clearly indicates that the time limit as prescribed under Section 149(1) of the Act is a hard stop. Therefore, the procedure that is required to be completed for issuance of notice under Section 148 of the Act is required to be completed prior to the expiry of the time limit as prescribed under Section 149(1) of the Act. Such time limit cannot be breached on account of the AO not completing the procedure required for issuance of notice under Section 148 of the Act. There is no ambiguity in this regard given the construct of Section 149(1) of the Act, which is not in the nature of enabling provision but a provision that proscribes an action.

48. Having stated the above, it is also important to note the provisos to Section 149(1) of the Act also provide for exclusion of that certain time periods for the purposes of computing the period of limitation as prescribed under Section 149(1) of the Act as well as for extending the period of limitation.

49. The third to Section 149(1) of the Act (as existed prior to 01.04.2023) reads as under:



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

50. As is apparent from the above, third proviso to Section 149(1), provides for exclusion of time in computing of the limitation period to the aforesaid extent:

- (i) the time or extended time allowed to the assessee in the show cause notice issued under Section 148A(b) of the Act; and
- (ii) the period during which proceedings under Section 148A of the Act are stayed by an order or injunction by any court, are required to be excluded.

51. Thus the period of three years or ten years from the end of the relevant assessment year, as the case may be, is required to be computed after excluding the time allowed to an assessee as per the show cause notice issued under Section 148A(b) of the Act or if there is a stay order or injunction passed by any court staying the proceedings under Section 148A of the Act, the period during which the proceedings are so stayed.

52. The fourth proviso to Section 149(1) of the Act (as existed prior to 01.04.2023) is set out below:

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.

53. As is apparent from the plain language of the fourth proviso to Section 149(1) of the Act, it extends the period of limitation for issuing a notice under Section 148 of the Act so as to provide the AO a minimum of seven days to pass an order under Section 148A(d) of the Act. If the time available to the AO to decide whether it is a fit case for issuance of notice under Section 148 of the Act in terms of Section 148A(d) of the Act is less than seven days after excluding the period as provided under the third proviso, then the period of three years or ten years as prescribed is required to be extended by such period so as to make available to the AO at least seven days to pass an order under Section 148A(d) of the Act and issue a notice under Section 148 of the Act. Illustratively, if the show cause notice under Section 148A(b) of the Act is issued to an assessee, on the last date on which issuance of such a notice under Section 148 of the Act is permissible, that is, on the last day of expiry of three years from the end of the relevant assessment year or ten years from the end of the assessment year as the case may be, the time made available to the assessee to respond to a notice under Section 148A(b) of the Act (being a minimum of seven days but not exceeding thirty days as provided in the notice plus such further time as extended pursuant to an application), is required to be excluded for the calculation of the period of three years or ten years as the case may be. And, an additional period of seven days is made available for the AO to



pass an order. Thus, the period of limitation in such case would be three years (after excluding the time provided to the assessee to respond to the notice under Section 148A(b) of the Act) and seven days, or a period of ten years (after excluding the time provided to the assessee to respond to the notice under Section 148A(b) of the Act) and seven days as the case may be.

54. It is obvious, that in such a case, the AO would not have a time for passing an order under Section 148A(d) of the Act as stipulated under the said Clause, that is, one month from the end of the month in which the assessee furnishes a reply to the notices issued under Section 148A(b) of the Act. As noted above, the AO is required to complete the entire procedure for issuance of notice under Section 148 of the Act within the period as prescribed under Section 149 of the Act. Plainly, if the AO is unable to complete such procedure within the period of limitation, the AO would cease to have the jurisdiction to issue such a notice.

55. As noted above, in *Union of India & Ors. v. Ashish Aggarwal*², also emphasises the requirement of the notice under Section 148 being accompanied by an order under Section 148A(d) of the Act⁶.

56. This aforesaid aspect was examined by this court in *Raminder Singh v. Assistant Commissioner of Income Tax Circle 52(1) New Delhi*⁷. In that case, a notice under Section 148A(b) of the Act was

⁶ Paragraph 6.2

⁷ Neutral Citation No.:2023:DHC:6672-DB



issued on 31.03.2023 in respect of AY 2019-20. This was on the last date of limitation as prescribed under Section 149(1)(a) of the Act. The assessee in that case was granted an opportunity to respond to the said notice on or before 10.04.2023. Thus, it was held that the period between 31.03.2023 and 10.04.2023 was required to be excluded by virtue of the third proviso to Section 149(1) of the Act. Since the time remaining for the AO to pass an order under Section 148A(d) of the Act and issuance of notice under Section 148 of the Act was less than seven days, the period of limitation as provided under Section 149(1) of the Act was required to be extended by a period of seven days. Accordingly, the notice issued under Section 148 of the Act was held to be within the period of limitation as prescribed under Section 149(1) of the Act. It is relevant to refer to the following extract of the said decision:

“15. The Assessing Officer has one month from the end of the month in which time provided to the assessee to furnish a reply expires, to pass an order under clause (d) of Section 148A of the Act. However, it is also clear that the said order is to accompany the notice under Section 148 of the Act. This is apparent from the opening sentence of Section 148(1) of the Act, which is reproduced below:

“148. Before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A, requiring him to furnish within [a period of three months from the end of the month in which such notice is issued, or such further



period as may be allowed by the Assessing Officer on the basis of an application made in this regard by the assessee], a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139....”

16. It is apparent that an order under clause (d) of Section 148A of the Act must precede the issuance of notice under Section 148 of the Act. It follows that although in terms of clause (d) of Section 148A of the Act, the time available to the Assessing Officer to make an order under the said clause is one month from the end of the month in which the time provided to the assessee to respond to a notice under clause (b) of Section 148A of the Act expires; the said order is required to be necessarily passed within the time period available for issuing a notice under Section 148 of the Act. This is so because in terms of Section 148 of the Act, the order under clause (d) of Section 148A of the Act is required to accompany the notice under Section 148 of the Act.

17. Section 149(1) of the Act expressly provides the time limit for issuing the notice under Section 148 of the Act. The relevant extract of the Section 149(1) of the Act is set out below:

“149. (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 also that for the purposes of computing the period of limitation as per this section, the time or extended time 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 [does not exceed 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.”



18. Thus, the notice under Section 148 of the Act (accompanied by an order under clause (d) of Section 148A of the Act) is required to be issued within the period of three years from the end of the relevant assessment year if the income escaping assessment is less than ₹50,00,000/-. The sixth proviso to Section 149(1) of the Act makes it amply clear that if the time available to the Assessing Officer to pass an order under Clause (d) of Section 148A is truncated to less than 7 days on account of the period of limitation available for issuing a notice under Section 148, the same shall be extended for the said period.

19. In our view, the period of one month from the end of the month in which the time available to the assessee to respond to the notice under Clause (b) of Section 148A expires, is available to the Assessing Officer to pass an order under clause (d) of Section 148A of the Act only within the rubric of Section 149 of Act, that is, within the overall time available in terms of Section 149(1) of the Act for issuance of a notice under Section 148 of the Act. This is because a notice under Section 148 of the Act which is not accompanied with the order under Clause (d) of Section 148 of the Act would be non-compliant with the Act. And, no such notice can be issued beyond the period as specified under Section 149(1) of the Act.”

UNION OF INDIA & OTHERS V. RAJEEV BANSAL⁴.

57. The question arose as to the applicability of the TOLA to the notices issued for reassessment after 01.04.2021; as to the validity of the notices issued under Section 148 of the Act; and the Finance Act, 2021 which fell for consideration of the Supreme Court in the case of *Union of India & Ors. v. Rajeev Bansal*⁴.



58. The question whether the impugned notices were issued within the time is, thus, required to be addressed by referring to the decision rendered by the Supreme Court in *Union of India & Ors. v. Ashish Agarwal*² and *Union of India & Others v. Rajeev Bansal*⁴.

59. The Supreme Court noted the effect of TOLA and the notifications issued by the Government of India as under:-

“9.The effect of Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 and the notifications issued under the legislation was that: (i) if the time prescribed for passing of any order or issuance of any notice, sanction, or approval fell for completion or compliance from March 20, 2020 to March 31, 2021; and (ii) if the completion or compliance of such action could not be made during the stipulated period, then the time limit for completion or compliance of such action was extended to June 30, 2021.”

60. In regard to the applicability of Section 149(1) of the Act, the Supreme Court concluded as under:-

“53. The position of law which can be derived based on the above discussion may be summarized thus: (i) section 149(1) of the new regime is not prospective. It also applies to past assessment years; (ii) The time limit of four years is now reduced to three years for all situations. The Revenue can issue notices under Section 148 of the new regime only if three years or less have elapsed from the end of the relevant assessment year; (iii) the proviso to section 149(1)(b) of the new regime stipulates that the Revenue can issue reassessment notices for past assessment years only if the time limit survives



according to section 149(1)(b) of the old regime, that is, six years from the end of the relevant assessment year; and (iv) all notices issued invoking the time limit under section 149(1)(b) of the old regime will have to be dropped if the income chargeable to tax which has escaped assessment is less than Rupees fifty lakhs.”

61. The next question examined by the Supreme Court was the applicability of the TOLA in the context of provisos to Section 149(1) of the Act.

62. The Supreme Court also considered the directions in *Union of India & Ors. v. Ashish Agarwal*² in the context of third proviso to Section 149 of the Act (as existed prior to 01.04.2023), which expressly extends the time allowed to an assessee to respond to the notice under Section 148A of the Act and the period during which the proceedings under Section 148 are stayed by an injunction order or an order of the court to be excluded for the purpose of limitation under Section 149 of the Act. In the aforesaid context, the Supreme Court held as under:-

“99. In *Union of India v. Ashish Agarwal* (supra), this court created a legal fiction by deeming the section 148 notices issued under the old regime as show-cause notices under Section 148A(b) of the new regime. The purpose of the legal fiction was to enable the Revenue “to proceed further with the reassessment proceedings as per the substituted provisions” of the Income-tax Act. Accordingly, all the reassessment notices issued under the old regime were deemed to always have been show-cause notices issued under section 148A(b) of the new regime. The fiction replaced section 148



notices with section 148A(b) notices with effect from the date when the notices under section 148 of the old regime were issued between April 1, 2021 and June 30, 2021, as the case may be. This ensured the continuance of the reassessment process initiated by the Revenue from April 1, 2021 to June 30, 2021 under the old regime.

100. Importantly, this Court in *Union of India v. Ashish Agarwal* (supra) did not quash the reassessment notices issued under section 148 of the old regime. In *Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association* : (1992) 3 SCC 1, a three-Judge Bench of this court explained the distinction between quashing an order and staying the operation of an order thus:

“10. [...] Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence.”

The reassessment proceedings erroneously initiated by the Revenue under the old regime were not wiped out from existence. Consequently, the Revenue was not required to start the procedure of reassessment afresh after the decision of this Court in *Union of India v. Ashish Agarwal* (supra).

101. Under Section 148A(b), the Assessing Officer has to comply with two requirements: (i) issuance



of a show-cause notice; and (ii) supply of all the relevant information which forms the basis of the show-cause notice. The supply of the relevant material and information allows the assessee to respond to the show-cause notice. The deemed notices were effectively incomplete because the other requirement of supplying the relevant material or information to the assessee was not fulfilled. The second requirement could only have been fulfilled by the Revenue by an actual supply of the relevant material or information that formed the basis of the deemed notice.

102. While creating the legal fiction in *Union of India v. Ashish Agarwal* (supra), this court was cognizant of the fact that the Assessing Officers were effectively inhibited from performing their responsibility under Section 148A until the requirement of supply of relevant material and information to the assessee was fulfilled. This court lifted the inhibition by directing the Assessing Officers to supply the assessee with the relevant material and information relied upon by the Revenue within thirty days from the date of the judgment. Thus, during the period between the issuance of the deemed notices and the date of judgment in *Union of India v. Ashish Agarwal* (supra), the Assessing Officers were deemed to have been prohibited from proceeding with the reassessment proceedings.

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 *Union of India v. 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 April 1, 2021 till June 30, 2021) till the date of decision in *Union of India v. Ashish Agarwal* (supra), that is, May 4, 2022.

106. In *Union of India v. 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 *Union of India v. Ashish Agarwal* (supra). To summarize, the combined effect of the legal fiction and the directions issued by this court in *Union of India v. Ashish Agarwal* (supra) 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 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 Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020

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 (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 *Union of India v. Ashish Agarwal* (supra) 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 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 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* (supra) and enables both the assesses 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 [28]. (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 India v. 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 *Union of India v. 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 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.”

63. It is clear from the above that the Supreme Court had in unambiguous terms held that (a) the date of notices issued under Section 148 of the Act, under the old regime which was subject matter of challenge in *Union of India & Ors. v. Ashish Agarwal*², has not been struck off and further notices and orders issued under Section 148 of the Act were in continuance of the proceedings that had commenced on the date of issuance of such notices; (b) the period from the date of issuance of such notices till the date of the decision in the case of *Union of India & Ors. v. Ashish Agarwal*², that is 04.05.2021, was required to be excluded for the period of calculation of limitation by virtue of the third proviso to Section 149(1) of the Act. The AO could not continue any proceeding till the Supreme Court rendered its decision to treat the notices issued under Section 148 of the Act as notices issued under Section 148A(b) of the Act; and, (c) the period from the date of the decision in *Union of India & Ors. v. Ashish Agarwal*², that is 04.05.2022, to the date when the material was supplied by the AO to



the Assessee, as was required under Section 148A(b) of the Act, was also required to be excluded. The Supreme Court reasoned that the AO could not proceed further till the said material was supplied. Therefore, the said period is also required to be excluded by virtue of the third proviso to Section 149(1) of the Act.

64. It is material to note that the Supreme Court had also explained that provision of TOLA would be applicable to notices which were subject matter of challenge in *Union of India & Ors. v. Ashish Agarwal*².

ANALYSIS – IN THE FACTUAL CONTEXT

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

⁸ Notification No.38/21 dated 27.04.2021



in *Union of India & Ors. v. Ashish Agarwal*² 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*² till the date of providing material, as required to be 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*⁴.

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.

71. It is contended on behalf of the Revenue that the AO is required to pass an order under Section 148A(d) of the Act by the end of the month following the month on which the reply to the notice under Section 148A(b) of the Act was received. Thus, the order under Section 148A(d) of the Act as well as the notice under Section 148 of the Act (both dated 30.07.2022) are within the prescribed period. This contention is without merit as it does not take into account that proceedings under Section 148A of the Act necessarily required to be completed within the period available for issuing notice under Section 148 of the Act, as prescribed under Section 149 of the Act. Thus, the time available to the AO to pass an order under Section 148A(d) of the Act was necessarily truncated and the same was required to be passed on or before 12.07.2022. The fourth proviso to Section 149 of the Act did not come into play as the time period available for the AO to pass an order under Section 148A(d) of the Act was in excess of the seven days.

72. In view of the above, we find merit in Mr. Sehgal's contention that the impugned notice dated 30.07.2022 has been issued beyond the period of limitation.



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73. The petition is accordingly allowed and the impugned order dated 30.07.2022 passed under Section 148A(d) of the Act; the impugned notice dated 30.07.2022 issued under Section 148 of the Act; and the assessment order dated 30.05.2023 framed under Section 147 of the Act pursuant to the notice dated 30.07.2022 for AY 2013-14, are set aside. Pending application is also disposed of.

VIBHU BAKHRU, J

TUSHAR RAO GEDELA, J

JANUARY 30, 2025
RK