



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

161

CWP-8416-2025

Date of decision: **21.05.2025**

Suman Kandoi

...Petitioner

Versus

National Faceless Assessment Centre and another

...Respondent

**CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Nikhil Goyal, Advocate for the petitioner.

Mr. Gauri Neo Rampal, Advocate for the respondents.

SUDEEPTI SHARMA, J. (ORAL)

1. Challenge in the present writ petition is to assessment order dated 30.05.2023, notice of demand notice dated 30.05.2023, notice initiating penalty proceedings under Section 271(1)(b) of the Act dated 30.05.2023, show cause notice under Section 271(1)(b) of the Act dated 15.03.2024, order concluding penalty proceedings under Section 271(1)(c) dated 05.02.2025 and notice of demand dated 05.02.2025.

BRIEF FACTS

2. Case of the petitioner pertains to Assessment Year 2014-2015. Brief facts of the present case as per pleadings in the writ petition are as follows:

a) For Assessment Year (AY) 2014-15, the petitioner was issued a notice under Section 148 of the Act on 29.06.2021 by respondent No.2 without following the procedure established for issuance of notice as per the



law amended by Finance Act, 2021. Various challenges to the issuance of notice by Assessing Officer without following the amended provisions of the Act were raised and the issue was finally settled by Hon'ble Supreme Court on 04.05.2022 in Union of India Vs. Ashish Aggarwal.

b) In compliance of the decision dated 04.05.2022 by Hon'ble the Supreme Court, respondent No. 2 issued a notice under Section 148A(b) of the Act on 27.05.2022. Petitioner responded to this notice vide reply dated 08.07.2022, however without considering the reply of the petitioner, respondent No. 2 proceeded to pass an order under Section 148A(d) on 29.07.2022, confirming jurisdiction to reassess income of the petitioner under Section 147 of the Act and issued the consequential notice under Section 148 of the Act dated 29.07.2022, initiating the assessment under Section 147 of the Act.

c) That petitioner challenged notice dated 29.07.2022 and consequential proceedings thereto in Civil Writ Petition registered as CWP-11442-2023 titled as "Suman Kandoi vs. Central Board of Direct Taxes & Ors." on 25.05.2023 wherein notice of motion was issued and interim relief was granted in terms of CWP-18032-2022.

d) That the petitioner duly informed respondent No.1 regarding interim order dated 25.05.2023 and requested that proceedings be kept in abeyance till the disposal of the civil writ petition.

e) That without taking into consideration the replies filed, respondent No.1 concluded the assessment and passed an order, issued computation sheet and notice of demand under Section 156 of the Act. Additionally, respondent No.1 initiated proceedings for penalty under



Section 271(1)(c) and Section 271(1)(b) of the Act.

f) That respondent No.1 proceeded to issue show cause notice under Section 271(1)(b) of the Act dated 15.03.2024 requiring the petitioner to submit reply as per the annexure attached along with the supporting evidences.

g) That on 03.10.2024 the Hon'ble Supreme Court in Union of India & Ors. vs. Rajeev Bansal settled the controversy with respect to the computation of limitation taking into consideration the directions issued in Ashish Aggarwal and Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. CWP-11442-2023 was disposed off by this Court on 19.10.2024, directing the revenue to examine each and every case relating to the deemed notices issued under Section 148 of the Act, in light of the observations made by the Hon'ble Supreme Court in Rajeev Bansal's case and reach to a conclusion as to whether the proceedings would fall within the limitation or have become time barred in terms of sub-para F, G & H of paragraph No. 114.

h) That on 17.12.2024, respondent No.1 restored the penalty proceedings under Section 271(1)(c) and continued the proceedings by directing the petitioner to show cause why an order should not be passed. Petitioner vide reply dated 02.01.2025 duly responded to the show cause notice stating that in view of order dated 19.10.2024 passed in CWP-11442-2023 by this Court, the penalty proceedings be dropped and no penalty be levied.

i) Respondent No.1 issued another show cause notice under Section 271(1)(c) of the Act giving final opportunity to the petitioner to



show cause why an order imposing penalty under Section 271(1)(c) of the Act should not be passed. The petitioner vide reply dated 13.01.2025 submitted a detailed response to the show cause notice. The petitioner raised objection with respect to limitation as interpreted by the Hon'ble Supreme Court in Rajeev Bansal's case (supra).

3. Thereafter, assessment order dated 30.05.2023, notice of demand issued under Section 156 dated 30.05.2023, notice initiating penalty proceedings under Section 271(1)(b) dated 30.05.2023, show cause notice under Section 271(1)(b) dated 15.03.2024, order issued under Section 271(1)(c) dated 05.02.2025 and notice of demand issued under Section 156 dated 05.02.2025, was issued, hence the present petition.

SUBMISSIONS

4. Learned counsel for petitioner contends:-

- a) That re-opening of assessment is barred by limitation under Section 149 of the Act as amended by Finance Act, 2021.
- b) That since more than 6 years have elapsed on 15.07.2022 i.e. the deem date of issuance of notice under Section 148 of the Act, as per the decision of Hon'ble Supreme Court in ***Union of India Vs. Ashish Aggarwal (2022) SCC Online SC 543*** and ***Union of India and others Vs. Rajeev Bansal (2024) 469 ITR 46 (SC)***, therefore, respondents have no jurisdiction to re-open assessment proceedings, as per explanation (1) to Section 149 of the Act.
- c) Further, that controversy in the present writ petition is already settled by the Hon'ble Supreme Court in the case of ***Union of India Vs. Rajeev Bansal (2024) 469 ITR 46 (SC)*** on 03.10.2024. Therefore, the present writ



petition be allowed in terms of the settled proposition of law in the case of ***Union of India Vs. Rajeev Bansal (supra)***.

5. Learned counsel for the respondents could not rebut the legal proposition of law as settled by Hon'ble Supreme Court in ***Union of India Vs. Rajeev Bansal (Supra)***, by which the case of the petitioner is covered.

6. We have heard learned counsel for the parties and perused the file of the present case with their able assistance.

JOINT READING OF JUDGMENTS OF HON'BLE SUPREME COURT IN UNION OF INDIA AND OTHERS VS. ASHISH AGGARWAL [2022] SCC ONLINE SC 543 AND UNION OF INDIA VS. RAJEEV BANSAL [2024] 469 ITR 46 (SC) CONCLUDES AS UNDER:-

7. The Finance Act, 2021 substituted the entire scheme of reassessment under Sections 147 to 151 of the Income Tax Act, 1961 w.e.f.01.04.2021.

8. Prior to the coming into force of Finance Act, 2021 initiation of reassessment proceedings was governed by the following provisions of Income Tax Act, 1961:-

"Income escaping assessment

147. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recomputed the loss or the



depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year):

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:

Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year:

Provided also that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or



revision, which is chargeable to tax and has escaped assessment.

Explanation 1.-Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

Explanation 2.-For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely :-

(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax;

(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

(ba) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E;



- (c) where an assessment has been made, but-*
- (i) income chargeable to tax has been underassessed; or*
 - (ii) such income has been assessed at too low a rate; or*
 - (iii) such income has been made the subject of excessive relief under this Act; or*
 - (iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed;*
- (ca) where a return of income has not been furnished by the assessee or a return of income has been furnished by him and on the basis of information or document received from the prescribed income-tax authority, under sub-section (2) of section 133C, it is noticed by the Assessing Officer that the income of the assessee exceeds the maximum amount not chargeable to tax, or as the case may be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;*
- (d) where a person is found to have any asset (including financial interest in any entity) located outside India.*

Explanation 3.-For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been



included in the reasons recorded under subsection (2) of section 148.

Explanation 4.-For the removal of doubts, it is hereby clarified that the provisions of this section, as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.

Issue of notice where income has escaped assessment

148. (1) *Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the 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 in a case-

(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005 in response to a notice served under this section, and



(b) subsequently a notice has been served under sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to subsection (2) of section 143, as it stood immediately before the amendment of said sub-section by the Finance Act, 2002 (20 of 2002) but before the expiry of the time limit for making the assessment, re-assessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice:

Provided further that in a case-

(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005, in response to a notice served under this section, and

(b) subsequently a notice has been served under clause (ii) of sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to clause (ii) of sub-section (2) of section 143, but before the expiry of the time limit for making the assessment, reassessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice.

Explanation.-For the removal of doubts, it is hereby declared that nothing contained in the first proviso or the second proviso shall apply to any return which has been furnished on or after the 1st day of October, 2005 in response to a notice



served under this section.

(2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so.

Time limit for notice :-

149. *(1) No notice under section 148 shall be issued for the relevant assessment year-*

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

(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year;

(c) if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.

Explanation.-In determining income chargeable to tax which has escaped assessment for the purposes of this subsection, the provisions of Explanation 2 of section 147 shall apply as they apply for the purposes of that section.

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

(3) If the person on whom a notice under section 148 is to be



served is a person treated as the agent of a non-resident under section 163 and the assessment, reassessment or recomputation to be made in pursuance of the notice is to be made on him as the agent of such non-resident, the notice shall not be issued after the expiry of a period of six years from the end of the relevant assessment year.

Explanation.-For the removal of doubts, it is hereby clarified that the provisions of sub-sections (1) and (3), as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.

Sanction for issue of notice :-

151. (1) *No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice.*

(2) *In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.*

(3) For the purposes of sub-section (1) and sub-section (2), the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or the Joint Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue such notice himself."

3.1 In pursuance to the power vested under section 3 of the Relaxation Act, 2020, the Central Government issued following Notifications inter-alia extending the time lines prescribed under section 149 for issuance of reassessment notices under section 148 of the Income Tax Act, 1961:

<i>Date of Notification</i>	<i>Original limitation for issuance of notice under Section 148 of the Act</i>	<i>Extended Limitation</i>
<i>31.03.2020</i>	<i>20.03.2020 to 29.06.2020</i>	<i>30.06.2020</i>
<i>24.06.2020</i>	<i>20.03.2020 to 31.12.2020</i>	<i>31.03.2021</i>
<i>31.03.2021</i>	<i>31.03.2021</i>	<i>30.04.2021</i>
<i>27.04.2021</i>	<i>30.04.2021</i>	<i>30.06.2021</i>

The Explanations to the Notifications dated 31st March, 2021 and 27th April, 2021 issued under section 3 of the Relaxation Act, 2020 also stipulated that the provisions, as they existed prior to the amendment by the Finance Act, 2021, shall apply to the reassessment proceedings initiated thereunder.

3.2 The Parliament introduced reformative changes to sections 147 to 151 of the Income Tax Act, 1961 governing reassessment proceedings by way of the Finance Act, 2021,



which was passed on 28th March, 2021. The substituted sections 147 to 149 and section 151 applicable w.e.f. 01.04.2021, passed in the Finance Act, 2021, are as under:-

Income escaping assessment-

"147. *If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).*

Explanation.-For the purposes of assessment or reassessment or recomputation under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of section 148A have not been complied with".

Issue of notice where income has escaped assessment:-

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 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 under 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."

Conducting inquiry, providing opportunity before issue of notice under section 148 –

"148A. 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."

Time limit for notice –

"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 asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year:



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 such notice 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, 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.'

Sanction for issue of notice-

"151. Specified authority for the purposes of section 148 and section 148A shall be-

(i) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year;

(ii) Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year."

9. Despite the substituted Sections 147 to 151 of the Income Tax Act, 1961, by the Finance Act, 2021 which came into force on 01.04.2021



many reassessment notices under Section 148 of the Income Tax Act, 1961 were issued to the assesseees after coming into force of Finance Act, 2021 i.e. after 01.04.2021, which were assailed before different High Courts on different grounds. Different High Courts quashed the reassessment notices under Section 148 of the Income Tax Act, 1961. Union of India challenged the judgments passed by different High Courts setting aside reassessment notices under Section 148 of the unamended Income Tax Act, which were issued after 01.04.2021 i.e. after coming into force of Finance Act, 2021 before the Hon'ble Supreme Court of India in ***Union of India and Others Vs. Ashish Aggarwal [2022] SCC Online SC 543***. Hon'ble Supreme Court partly allowed the appeals filed by the Union of India. Relevant portion of the judgment of Hon'ble Supreme Court in ***Union of India and Others Vs. Ashish Aggarwal [2022] SCC Online SC 543*** is reproduced as under:-

“5. We have heard Shri N. Venkataraman, learned ASG appearing on behalf of the Revenue and Shri C.A. Sundaram and Shri S. Ganesh, learned Senior Advocates and other learned counsel appearing on behalf of the respective assessee.

6. It cannot be disputed that by substitution of sections 147 to 151 of the Income Tax Act (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. v. Income Tax Officer and ors; (2003) 1 SCC 72**, has not been followed.*

***6.1** 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.*

***6.2** 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 148A 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 148A of the IT Act. section 148A of the IT Act is a new provision which is in the nature of a condition precedent. Introduction of section 148A 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.

6.3 *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).*

6.4 *However, by way of section 148A, 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.

6.5 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 148A(a). Only in a case where, the assessing officer is of the opinion that before any notice is issued under section 148A(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.

6.6 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.



7. 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 1st April, 2021. We are in complete agreement with the view taken by the various High Courts in holding so.

8. However, at the same time, the judgments of the several High Courts would result in no reassessment proceedings at all, even if the same are permissible under the Finance Act, 2021 and as per substituted sections 147 to 151 of the IT Act. The Revenue cannot be made remediless and the object and purpose of reassessment proceedings cannot be frustrated. It is true that due to a bonafide mistake and in view of subsequent extension of time vide various notifications, the Revenue issued the impugned notices under section 148 after the amendment was enforced w.e.f. 01.04.2021, under the unamended section 148. In our view the same ought not to have been issued under the unamended Act and ought to have been issued under the substituted provisions of sections 147 to 151 of the IT Act as per the Finance Act, 2021. There appears to be genuine



nonapplication of the amendments as the officers of the Revenue may have been under a bonafide 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 IT Act, the High Courts ought to have passed an order construing the notices issued under unamended Act/unamended provision of the IT Act as those deemed to have been issued under section 148A of the IT Act as per the new provision section 148A 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 of sections 147 to 151 of the IT Act and which may be available under the Finance Act, 2021 and in law. Therefore, we propose to modify the judgments and orders passed by the respective High Courts as under: -

(i) The respective impugned section 148 notices issued to the respective assessees shall be deemed to have been issued under section 148A of the IT Act as substituted by the Finance Act, 2021 and treated to be show-cause notices in terms of section 148A(b). The respective



assessing officers shall within thirty days from today provide to the assesseees the information and material relied upon by the Revenue so that the assesseees can reply to the notices within two weeks thereafter;

(ii) The requirement of conducting any enquiry with the prior approval of the specified authority under section 148A(a) be dispensed with as a one-time measure vis-a-vis those notices which have been issued under Section 148 of the unamended Act from 01.04.2021 till date, including those which have been quashed by the High Courts;

(iii) The assessing officers shall thereafter pass an order in terms of section 148A(d) after following the due procedure as required under section 148A(b) in respect of each of the concerned assesseees;

(iv) 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 and;

(v) 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.

9. 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 assesses as because of a bonafide belief of the officers of the Revenue in issuing approximately 90000 such notices, the Revenue may not suffer as ultimately it is the public exchequer which would suffer. Therefore, we have proposed to pass the present order with a view 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.

10. In view of the above and for the reasons stated above, the present Appeals are ALLOWED IN PART. The impugned common judgments and orders passed by the High Court of Judicature at Allahabad in W.T. No. 524/2021 and other allied tax appeals/petitions, is/are hereby modified and substituted as under: -

(i) 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 148A of the IT Act as substituted by the Finance Act, 2021 and construed or treated to be show cause notices in terms of section 148A(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;

(ii) The requirement of conducting any enquiry, if required, with the prior approval of specified authority under section 148A(a) is hereby dispensed with as a one-time measure vis-avis those notices which have been



issued under section 148 of the unamended Act from 01.04.2021 till date, including those which have been quashed by the High Courts. 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;

(iii) The assessing officers shall thereafter pass orders in terms of section 148A(d) in respect of each of the concerned assessee; Thereafter after following the procedure as required under section 148A may issue notice under section 148 (as substituted);

(iv) 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 concerned assessee and Revenue under the Finance Act, 2021 and in law shall continue to be available.

11. *The present order shall be applicable PAN INDIA and all judgments and orders passed by different High Courts on the issue and under which similar notices which were issued after 01.04.2021 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 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 present order shall also govern the pending writ petitions, pending before various High Courts in which similar notices under Section 148 of the Act issued after 01.04.2021 are under challenge.

12. The impugned common judgments and orders 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.

10. Therefore, in above referred to judgment of Hon'ble Supreme Court in case of ***Union of India and Others Vs. Ashish Aggarwal [2022] SCC Online SC 5431***, Hon'ble the Supreme Court held that the impugned notices under Section 148 issued to the respective assesseees which were issued under unamended Section 148 of the Income Tax Act and were subject matter of writ petitions before the various respective High Courts shall be deemed to have been issued under Section 148-A of the Income Tax Act as substituted by the Finance Act, 2021 and be construed or treated to be show cause notices in terms of Section 148A(b). It was further held that the Assessing Officer shall, within 30 days from the date of passing of the judgment i.e. 04.05.2022, 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 2 weeks thereafter. It was further held by the Hon'ble Supreme Court that the requirement of conducting any enquiry, if required, with the prior approval of specified authority under Section 148A(a) is dispensed with as one time measure viz-a-viz those notices which were issued under Section 148 of the unamended Act from 01.04.2021 (Finance Act, 2021) till date i.e. 04.05.2022 (Decision in Ashish Aggarwal). Further that the Assessing Officer shall thereafter pass orders in terms of Section 148A(d) in respect of each of the concerned assesseees and thereafter, after following the procedure as required under Section 148A may issue notice(s) under Section 148 (as substituted).

11. On 11.05.2022 following the decision in ***Union of India and Others Vs. Ashish Aggarwal***, the Central Board of Direct Taxes issued instructions for implementation of decision in ***Ashish Aggarwal's case (supra)***, wherein it was clarified that judgment in Ashish Aggarwal would apply to all the cases where extended reassessment notices were issued, irrespective of the fact whether such notices were challenged or not. These instructions further stated that reassessment notices would "travel back in time to their original date when such notices were to be issued and then new Section 149 of the Income Tax Act is to be applied at that point." The instructions further elaborated the mechanism for issuing notices under Section 148 of the new regime. The Assessing Officers accordingly after considering the replies furnished by the assesseees passed orders under Section 148A(d) and subsequently notices under Section 148 of the new regime were issued to the assesseees by the Assessing Officers, between July



and September 2022, for the Assessment Year 2013-2014, 2014-2015, 2015-2016, 2016-2017 and 2017-2018. These notices were challenged before several High Courts, who declared the notices to be invalid being time barred and being issued without the appropriate sanction of the specified authority.

12. In ***Ashish Aggarwal's case (supra)*** Hon'ble Supreme Court did not deal with the issue as to whether or not reassessment notices were issued within the time limits prescribed under the provisions of Income Tax Act, 1961 read with relaxations provided under the Taxation and Other Laws (Relaxation of Certain Provisions) Act, 2020 (TOLA). Different High Courts declared the notices under Section 148 of the new regime issued to the assesseees by the Assessing Officers between July and September 2022, for the Assessment Year 2013-2014, 2014-2015, 2015-2016, 2016-2017 and 2017-2018 to be invalid, being time barred and being issued without appropriate sanction of specified authority. The same were challenged by way of filing the appeals before the Hon'ble Supreme Court in ***Union of India and Others Vs. Rajiv Bansal***. The Hon'ble Supreme Court framed the following issues in ***Union of India and Others Vs. Rajiv Bansal*** :-

B. Issues

18. *The present batch of appeals gives rise to the following issues:-*

- a. Whether TOLA and notification issued under it will also apply to reassessment notices issued after 1 April 2021; and*
- b. Whether the reassessment notices issued under*



Section 148 of the new regime between July and September 2022 are valid.”

13. Before proceeding further it would be appropriate to reproduce the relevant portion of the judgment passed by the Hon’ble Supreme Court in the case of ***Union of India Vs. Rajeev Bansal [2024] 469 ITR 46 (SC)***.

The same is reproduced as under :-

“ii. TOLA

6. *On 24 March 2020, the Central Government announced "a complete lockdown for the entire nation" for twenty-one days to contain the spread of the COVID-19 pandemic. (14) Following this, the Central Government sought to implement various relief measures to redress the challenges faced by the taxpayers in meeting the statutory requirements due to the pandemic. (15) On 31 March 2020, the President of India promulgated the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance 2020 (16) to extend time limits for completion or compliance of actions under the specified Acts falling for completion or compliance between 20 March 2020 and 29 June 2020 till 30 June 2020. On 24 June 2020, the Central Government issued a notification under Section 3(1) of the TOLA Ordinance to extend the time limit for completion or compliance of actions under the specified Acts till 31 March 2021.*

7. *On 29 September 2020, Parliament enacted TOLA, which came into force with retrospective effect from 31 March 2020.*



(18) Section 2(1)(b) defines "specified Act" to mean and include the Income Tax Act. Section 3(1) of TOLA extended the time limit for completion or compliance of actions under the "specified Act", which fell for completion or compliance during the period from 20 March 2020 and 31 December 2020, to 31 March 2021. The relevant part of Section 3 reads thus:

"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 of compliance of such action has not been made within such time, then, the timelimit 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:"

8. Section 3(1) empowered the Central Government to extend the time limit beyond 31 March 2021 by a notification. In pursuance of its powers, the Central Government issued the following notifications to extend the period of relaxation till 30 June 2021: a. Notification No. 93 of 2020 dated 31 December 2020 extended the end date to 30 March 2021. Resultantly, TOLA covered the period between 20 March 2020 to 30 March 2021; b. Notification No. 20 of 2021 dated 31 March 2021 specified that 31 April 2021 shall be the end date of the time period covered by TOLA. It extended the time limit for completion or compliance of actions under the Income Tax Act till 30 April 2021; and c. Notification No. 38 of 2021 dated 27 April 2021 extended the time limit for completion or compliance of actions till 30 June 2021.

9. The effect of TOLA 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 20 March 2020 to 31 March 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 30 June 2021.

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B. Issues



18. *The present batch of appeals gives rise to the following issues:-*

- a. Whether TOLA and notification issued under it will also apply to reassessment notices issued after 1 April 2021; and*
- b. Whether the reassessment notices issued under Section 148 of the new regime between July and September 2022 are valid.*

C. Submissions

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

- a. Parliament enacted TOLA as a free-standing legislation to provide relief and relaxation to both the assesses and the Revenue during the time of COVID- 19. TOLA seeks to relax actions and proceedings that could not be completed or complied with within the original time limits specified under the Income Tax Act;*
- b. Section 149 of the new regime provides three crucial benefits to the assesses:*
 - (i) the four- year time limit for all situations has been reduced to three years;*
 - (ii) the first proviso to Section 149 ensures that re-assessment for previous assessment years cannot be undertaken beyond six years; and*

(iii) the monetary threshold of Rupees fifty lakhs will apply to the reassessment for previous assessment years;

c. The relaxations provided under Section 3(1) of TOLA apply "notwithstanding anything contained in the specified Act." Section 3(1), therefore, overrides the time limits for issuing a notice under Section 148 read with section 149 of the Income Tax Act;

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

e. The Finance Act 2021 substituted the old regime for re-assessment with a new regime. The first proviso to Section 149 does not expressly bar the application of TOLA. Section 3 of TOLA applies to the entire Income Tax Act, including Sections 149 and 151 of the new regime. Once the first proviso to Section 149(1)(b) is read with TOLA, then all the notices issued between 1 April 2021 and 30 June 2021 pertaining to assessment years 2013-2014, 2014-2015, 2015-2016, 2016-2017, and 2017-2018 will be within the period of limitation as explained in the tabulation below:

Assessment Year	Within 3 years	Expiry of Limitation read with TOLA for	Within six Years	Expiry of Limitation read with TOLA for (4) (5)
2013-2014	31.03.2017	T O L A not	31.03.2020	30.06.2021

		applicable		
2014-2015	31.03.2018	T O L A not applicable	31.03.2021	30.06.2021
2015-2016	31.03.2019	T O L A not applicable	31.03.2022	T O L A not applicable
2016-2017	31.03.2020	30.06.2021	31.03.2023	T O L A not applicable
2017-2018	31.03.2021	30.06.2021	31.03.2024	T O L A not applicable

f. The Revenue concedes that for the assessment year 2015-16, all notices issued on or after 1 April 2021 will have to be dropped as they will not fall for completion during the period prescribed under TOLA;

g. Section 2 of TOLA defines "specified Act" to mean and include the Income Tax Act. The new regime, which came into effect on 1 April 2021, is now part of the Income Tax Act. Therefore, TOLA continues to apply to the Income Tax Act even after 1 April 2021; and

h. Ashish Agarwal (supra) treated Section 148 notices issued by the Revenue between 1 April 2021 and 30 June 2021 as show-cause notices in terms of Section 148A(b). Thereafter, the Revenue issued notices under Section 148 of the new regime between July and August 2022. Invalidation of the Section 148 notices issued under the new regime on the ground that they were issued beyond the time limit specified under the Income Tax Act read with TOLA will completely frustrate the judicial exercise



undertaken by this Court in Ashish Agarwal (supra).

20. Mr Percy Pardiwalla, Mr V Sridharan, Mr Tushar Hemani, Mr Saurabh Soparkar, and Mr K Shivram, learned senior counsel, Mr Manish Shah, Mr Darshan Patel, Mr Suhrith Parthasarthy, Mr Dharan Gandhi, and Mr Ved Jain, learned counsel, made the following submissions on behalf of the respondents:

a. TOLA applies only when the period of limitation expires between 20 March 2020 and 31 March 2021. Finance Act 2021 was enacted after TOLA. Consequently, TOLA only held the field till the new regime came into effect from 1 April 2021. The Revenue had to issue Section 148 notices in terms of the new regime without recourse to the extended timelines under TOLA;

b. TOLA did not amend the erstwhile Section 149 but merely extended the specified time limits. The first proviso to Section 149(1)(b) only refers to the period of limitation under the erstwhile Section 149(1)(b);

c. Notification No. 38 of 2021 was issued on 27 April 2021 to extend the time limits expiring under Section 149(1)(b) of the old regime till 30 June 2021. The notification was issued after 1 April 2021, when the old regime was repealed and substituted by a new regime. Therefore, this notification cannot be read into the new



regime;

d. The notices can be categorized into the following four categories:

i. First category: for assessment years 2013-2014 and 2014-2015, the six-year time limit in terms of Section 149 expired on 31 March 2020 and 31 March 2021 respectively. However, the reassessment notices were issued after 1 April 2021 and would be barred by limitation;

ii. Second category: for the assessment year 2015-2016, the issue pertains to whether the sanction of the appropriate authority was obtained by the assessing officers before issuing reassessment notices under Section 148 of the old regime. For this category of cases, the four-year period expired on 31 March 2020. However, notices were issued after 31 March 2020 by obtaining sanction under Section 151(2) instead of Section 151(1) of the old regime;

iii. Third category: for assessment years 2016-2017 and 2017-2018, the three-year period in terms of the amended regime expired on 31 March 2020 and 31 March 2021, respectively. The notices under Section 148 were issued after the expiry of three years, that is, after 1 April 2021. However, the sanctions were obtained under Section 151(i) instead of Section 151(ii) of the



new regime; and

iv. The directions issued by this Court in Ashish Agarwal (supra) were not intended to apply to assesses who did not challenge the reassessment notices before the High Courts or this Court. Therefore, reassessment proceedings could not have been initiated for such assesses.

e. The applicability of the first proviso to Section 149(1) (b) of the new regime has to be tested on the date of issuance of notice under Section 148 of the new regime. Even if TOLA is read into the Income Tax Act, the time limits for completion or compliance of actions can be extended till 30 June 2021. However, the notices under Section 148 of the new regime were issued by the Revenue from July to September 2022. The period of July to September 2022 is beyond the extended time limits stipulated under the Income Tax Act read with TOLA;

f. Ashish Agarwal (supra) cannot be interpreted in a manner to exclude the entire period from April 2021 to September 2022. The directions issued by this Court under Article 142 of the Constitution cannot contravene the substantive provisions contained in the Income Tax Act. Moreover, this Court in Ashish Agarwal (supra) expressly left open all the defences available to the



assesses under the new regime, including the defence of limitation available under Section 149; and

g. TOLA is only applicable to the provisions that specify time limits. Section 151 does not prescribe any time limit for the issuance of sanctions by the specified authorities.

Therefore, TOLA does not apply to Section 151.

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44. We now proceed to analyse the issues given the broad legislative and judicial background discussed above.

E. Reading TOLA into the Income Tax Act

i. First proviso to Section 149(1) of the new regime

45. The first proviso to Section 149(1)(b) provides thus:

"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 possession of books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year:



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 such notice could not have been issued at that time on account of being immediately beyond the time limit specified under the provisions of clause (b) of subsection (1) of this section, as they stood immediately before the commencement of the Finance Act, 2021:"

(emphasis supplied)

46. *The ingredients of the proviso could be broken down for analysis as follows:*

(i) no notice under Section 148 of the new regime can be issued at any time for an assessment year beginning on or before 1 April 2021; (ii) if it is barred at the time when the notice is sought to be issued because of the "time limits specified under the provisions of" 149(1)(b) of the old regime. Thus, a notice could be issued under Section 148 of the new regime for assessment year 2021-2022 and before only if the time limit for issuance of such notice continued to exist under Section 149(1)(b) of the old regime.

47. *In CTO v. Biswanath Jhunhunwalla, (1996) 5 SCC 626 the Bengal Sales Tax Rules 1941 empowered the Commissioner to revise any assessment within four years from*



*the date of assessment. Subsequently, the State Government issued a notification following the law to extend the time limit from four years to six years from the date of assessment. The extension of the time limit was challenged by the respondents on the ground that the assessments which had attained finality because of the expiry of the period of four years could not be reassessed. This Court observed that it was the clear intention of the notification to permit the Commissioner to revise any assessment made or order passed, provided the assessment had not been made before six years. It was held that if the legislative intention is clear and the language is unambiguous, full effect must be given to the legislative intention by reading the notification as applying not only to the incomplete assessments but also to assessments that had reached finality because of lapse of the earlier prescribed period. The principle that emanates from *Biswanath Jhunhunwalla (supra)* is that the courts should give full effect to the legislative intention of granting reassessment powers to assessing officers unless the legislature, by express provision, states otherwise.*

48. *Notices have to be judged according to the law existing on the date the notice is issued. Section 149 of the old regime primarily provided two time limits: (i) four years for all situations and (ii) beyond four years and within six years if the income chargeable to tax which escaped assessment amounted to Rupees one lakh or more. After 1 April 2021, the time limits*



prescribed under the new regime came into force. The ordinary time limit of four years was reduced to three years. Therefore, in all situations, reassessment notices could be issued under the new regime if not more than three years have elapsed from the end of the relevant assessment year. For example, for assessment year 2018-2019, the four year period would have expired on 31 March 2023 under the old regime. However, if the notice is issued after 1 April 2021, the three year time limit prescribed under the new regime will be applicable. The three year time limit will expire on 31 March 2022.

49. *The first proviso to Section 149(1)(b) requires the determination of whether the time limit prescribed under Section 149(1)(b) of the old regime continues to exist for the assessment year 2021- 2022 and before. Resultantly, a notice under Section 148 of the new regime cannot be issued if the period of six years from the end of the relevant assessment year has expired at the time of issuance of the notice. This also ensures that the new time limit of ten years prescribed under Section 149(1) (b) of the new regime applies prospectively. For example, for the assessment year 2012-2013, the ten year period would have expired on 31 March 2023, while the six year period expired on 31 March 2019. Without the proviso to Section 149(1)(b) of the new regime, the Revenue could have had the power to reopen assessments for the year 2012- 2013 if the escaped assessment amounted to Rupees fifty lakhs or*

more. The proviso limits the retrospective operation of Section 149(1)(b) to protect the interests of the assesses.

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

<i>Regime</i>	<i>Time Limit</i>	<i>Income chargeable to tax which has escaped assessment</i>
<i>Old regime</i>	<i>Four years but not more than six years</i>	<i>Rupees one lakh or more</i>
<i>New regime</i>	<i>Three years but not more than ten years</i>	<i>Rupees fifty lakhs or more</i>

51. Given Section 149(1)(b) of the new regime, reassessment notices could be issued after three years only if the income chargeable to tax which escaped assessment is more than Rupees fifty lakhs. The proviso to Section 149(1)(b) limits the retrospectivity of that provision with respect to the time limits specified under Section 149(1)(b) of the old regime.

52. In Ashish Agarwal (supra), this Court held that the benefit of the new regime must be provided for the reassessment conducted for the past periods. The increase of the monetary threshold from Rupees one lakh to Rupees fifty lakh is



beneficial for the assesses. Mr Venkataraman has also conceded on behalf of the Revenue that all notices issued under the new regime by invoking the six year time limit prescribed 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.

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.

ii. TOLA can extend the time limit till 31 June 2021

54. The proviso to Section 149(1)(b) of the new regime uses the expression "beyond the time limit specified under the



provisions of clause (b) of subsection (1) of this section, as they stood immediately before the commencement of the Finance Act, 2021." Thus, the proviso specifically refers to the time limits specified under Section 149(1)(b) of the old regime. The Revenue accepts that without application of TOLA, the time limit for issuance of reassessment notices after 1 April 2021 expires for assessment years 2013-2014, 2014-2015, 2015-2016, 2016-2017, and 2017-2018 in the following manner:

(i) for the assessment years 2013-2014 and 2014-2015, the six year period expires on 31 March 2020 and 31 March 2021 respectively; and

(ii) for the assessment years 2016-2017 and 2017-2018, the three year period expires on 31 March 2020 and 31 March 2021 respectively.

a. Finance Act 2021 substituted the old regime

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62. *The purpose of Section 3(1) of TOLA is to provide relaxation of time limits prescribed under the specified Acts, which fell for completion or compliance from 20 March 2020 to 31 March 2021. TOLA was enacted in the backdrop of the COVID-19 pandemic, which impeded the functioning of the government at all levels. The imposition of national and local lockdowns created difficulties for the common people, including litigants and assesses, to comply with their legal*



obligations. The COVID19 pandemic and the ensuing lockdowns required legislatures across the world to dynamically adapt their laws and policies to redress the difficulties faced by persons, entities, and governmental authorities. (122) The World Bank identified that persons and business entities faced severe financial situations characterised by a lack of cash or easily convertible-to-cash assets. It suggested that this would impact revenue collection because individuals and entities would not be in a position to pay the assessed taxes. Therefore, the World Bank advised deferral of tax filings and payment deadlines to allow individuals and business entities to cope with the crisis. (123) Many countries across the world have extended deadlines for filing tax returns.

63. TOLA extended the time limits for completion or compliance of certain actions under the specified Act, which fell for completion during the COVID-19 outbreak. The use of the expression "any" in Section 3(1) indicates that the relaxation applies to "all" or "every" action whose time limit falls for completion from 20 March 2020 to 31 March 2021. Section 3(1) is only concerned with the performance of actions contemplated under the provisions of the specified Acts. Consequently, the amendment or substitution of a provision under the specified Acts will not affect the application of TOLA, so long as the action contemplated under the provision



falls for completion during the period specified by TOLA, that is, 20 March 2020 to 31 March 2021.

64. *When enacting a statute, the legislature often endeavours to ensure that the provisions of one legislation do not conflict with provisions of another legislation. (125) The purpose of the Income Tax Act is to levy tax on income and raise revenues for the functioning of the Government. On the other hand, the purpose of TOLA is to provide relaxation of the time for completion of any actions or proceedings falling for completion within a particular period. Thus, the two enactments operate in separate and distinct fields. This Court must ensure that the provisions of the two enactments are interpreted harmoniously unless there is an irreconcilable conflict between them.*

b. Reading TOLA into Section 149

65. *Section 3(1) of TOLA applies to the action of "issuance of any notice" under the Income Tax Act. The relaxation provided under Section 3(1) of TOLA will apply to the issuance of a reassessment notice under section 148 of the Income Tax Act. TOLA did not amend the time limits of four years and six years from the end of the relevant assessment years as specified under the Income Tax Act. It merely provided a relaxation of the time period for issuance of a reassessment notice under Section 148. TOLA has no application in situations where the time limit specified under Section 149 expired before 20 March*



2020. The effect of TOLA is that at the time of issuance of a reassessment notice under Section 148, the Revenue has to determine two things: (i) the time limit specified under Section 149; and (ii) the extent of relaxation provided by TOLA and its notifications for issuance of notices. Thus, although TOLA did not amend section 149 of the Income Tax Act, it has to be read with Section 149 to determine the time limit for issuance of a notice. This was the legislative intent behind the enactment of TOLA. For instance, the six year time limit for assessment year 2013- 2014 under Section 149(1)(b) of the old regime expired on 31 March 2020. TOLA extended the period for issuing notice until 30 June 2021, given the difficulties that arose because of the COVID-19 pandemic.

66. *Section 3(1) of TOLA allowed the Central Government to specify by notification "such other date after the 31st day of March, 2021" as the time limit for completion or compliance of any action under the specified Acts. The provision also empowered the Central Government to specify different dates for completion or compliance of different actions. The notifications dated 31 March 2021 and 27 April 2021 extend the operation of TOLA by providing an extended time limit for completing actions under the Income Tax Act till 30 June 2021.*

67. *Section 2(1)(b)(ii) of TOLA defines 'specified Act' to include the Income Tax Act. After 1 April 2021, Section 2(1)(b)(ii) must be read to mean the Income Tax Act as amended by*



the Finance Act 2021. The substitution of Sections 147 to 151 will not affect the purpose of TOLA, which is, to provide relaxation of the time limit for completion or compliance of any actions falling for completion between 20 March 2020 and 31 March 2021. TOLA will continue to apply to the Income Tax Act after 1 April 2021 if any action or proceeding specified under the substituted provisions of the Income Tax Act falls for completion between 20 March 2020 and 31 March 2021.

68. After 1 April 2021, the Income Tax Act has to be read along with the substituted provisions. The substituted provisions apply retrospectively for past assessment years as well. On 1 April 2021, TOLA was still in existence, and the Revenue could not have ignored the application of TOLA and its notifications. Therefore, for issuing a reassessment notice under Section 148 after 1 April 2021, the Revenue would still have to look at: (i) the time limit specified under Section 149 of the new regime; and (ii) the time limit for issuance of notice as extended by TOLA and its notifications. The Revenue cannot extend the operation of the old law under TOLA, but it can certainly benefit from the extended time limit for completion of actions falling for completion between 20 March 2020 and 31 March 2021.

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G. Conclusions

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

- a. After 1 April 2021, the Income Tax Act has to be read along with the substituted provisions;*
- b. TOLA will continue to apply to the Income Tax Act after 1 April 2021 if any action or proceeding specified under the substituted provisions of the Income Tax Act falls for completion between 20 March 2020 and 31 March 2021;*
- c. Section 3(1) of TOLA overrides section 149 of the Income Tax Act only to the extent of relaxing the time limit for issuance of a reassessment notice under Section 148;*
- d. TOLA will extend the time limit for the grant of sanction by the authority specified under Section 151. The test to determine whether TOLA will apply to Section 151 of the new regime is this: if the time limit of three years from the end of an assessment year falls between 20 March 2020 and 31 March 2021, then the specified authority under Section 151(i) has extended time till 30 June 2021 to grant approval;*
- e. 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 March 2020 and 31 March 2021, then the specified authority under Section*



151(2) has extended time till 31 March 2021 to grant approval;

f. The directions in Ashish Agarwal (supra) will extend to all the ninety thousand reassessment notices issued under the old regime during the period 1 April 2021 and 30 June 2021;

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

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

CONCLUSION

14. The present case pertains to the year 2014-2015. A perusal of table referred to in Para 19(e) of the judgment of Hon'ble the Supreme Court in **Union of India Vs. Rajeev Bansal** (Supra), as referred to above, shows that the time limit for notice, as prescribed under Section 149 of the Income Tax Act, 1961, which is substituted by the Finance Act, 2021 w.e.f.



01.04.2021 for the assessment year 2014-2015 would expire on 31.03.2018 if it is to be issued within three years and would expire on 31.03.2021 if it is to be issued within six years. Further, if expiry of limitation read with TOLA is taken, then the period would expire on 30.06.2021. If the period of three years is taken, that would expire on 31.03.2018. And till 31.03.2018, TOLA was not applicable since TOLA came into force w.e.f. 31.03.2020. Section 2 (1) (b) defines “Specified Act” to mean and include Income Tax Act. Section 3 (1) of TOLA extended the time limit for completion or compliance of action under the “Specified Act”, which fell for completion or compliance during the period from 20.03.2020 and 31.12.2020 to 31.03.2021. Section 3 (1) empowered the Central Government to extend the time limit beyond 31.03.2021 and the same was extended up to 30.06.2021.

15. In view of the judgment passed by Hon’ble the Supreme Court in **Union of India Vs. Rajeev Bansal** (Supra), even if the notices for the assessment year 2014-2015 were to be issued within six years, the same expired on 31.03.2021 and if after the expiry of 31.03.2021, TOLA is to be applied, it extended the time limit till 30.06.2021. Admittedly, in the present case, notice under Section 148 of the Income Tax Act, 1961 was issued on 29.07.2022, which is beyond the extended period. Therefore, the notice dated 29.07.2022 under Section 148 and subsequent assessment order dated 30.05.2023 under Section 147 read with Sections 144 and 144B of the Income Tax Act, 1961 would be barred by limitation in view of the judgment dated 03.10.2024 passed by Hon’ble the Supreme Court in **Union of India vs. Rajeev Bansal** (Supra).

16. In view of the above, the present writ petition is allowed and

assessment order dated 30.05.2023, notice of demand notice dated 30.05.2023, notice initiating penalty proceedings under Section 271(1)(b) of the Act dated 30.05.2023, show cause notice under Section 271(1)(b) of the Act dated 15.03.2024, order concluding penalty proceedings under Section 271(1)(c) dated 05.02.2025 and notice of demand dated 05.02.2025 under Section 147 of the Income Tax Act, 1961 for the assessment year 2014-2015 are, hereby, set aside.

17. Pending application(s), if any, also stand disposed of.

(LISA GILL)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

21.05.2025
Yogesh

Whether speaking/reasoned:-	Yes/No
Whether reportable:-	Yes/No