

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 827 of 2025****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE BHARGAV D. KARIA****and****HONOURABLE MR. JUSTICE PRANAV TRIVEDI**

Approved for Reporting	Yes	No

SHEETAL DHAMRESHBHAI PATEL**Versus****THE INCOME TAX OFFICER WARD 2 SURENDRANAGAR****Appearance:****MR. TUSHAR HEMANI, SENIOR COUNSEL WITH MS VAIBHAVI K
PARIKH(3238) for the Petitioner(s) No. 1****MS MAITHILI D MEHTA, SENIOR STANDING COUNSEL for the
Respondent(s) No. 1****CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA****and****HONOURABLE MR. JUSTICE PRANAV TRIVEDI****Date : 24/06/2025****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE PRANAV TRIVEDI)**

1. Heard learned Senior Counsel Mr.Tushar Hemani with Ms.Vaibhavi Parikh, advocate for the petitioner and learned Senior Standing Counsel Ms.Maithili Mehta for the respondent.

2. Having regard to the controversy involved



which is in narrow compass, with the consent of the learned advocates for the respective parties, the matter is taken up for hearing.

3. Rule returnable forthwith. Learned Senior Standing Counsel Ms.Maithili Mehta waives service of notice of rule.

4. By this petition under Article 226/227 of the Constitution of India, the petitioner has challenged assessment order dated 29.07.2022 passed by Respondent No.1 under Section 148A(d) of the Income Tax Act, 1961 (For short "the Act") which inter alia propose to re-open the assessment.

5. The brief facts are as under:

6. The petitioner filed return of income for the Assessment Year 2013-14 on 08.07.2014.

7. A notice dated 17.06.2021 was issued under



Section 148 of the Act under the provisions of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (For short "TOLA").

8. Pursuant to the decision of the Hon'ble Supreme Court in case of *Union of India vs. Ashish Agarwal* reported in [2022] 138 *taxmann.com* 64, the respondent issued notice dated 26.5.2022 under Section 148A(b) of the Act. The respondent thereafter passed an order dated 29.07.2022 under Section 148A(d) of the Act alleging that income to the extent of Rs.74,97,625/- had escaped assessment. Pursuant to the order dated 29.07.2022, notice u/s. 148 came to be issued on 29.07.2022. This order u/s.148A(d) as well as notice u/s.148 are challenged in the present petition.

9. Learned Senior Advocate Mr.Tushar Hemani, at the outset, submitted that during the



pendency of this petition, the Apex Court in case of *Union of India v. Rajeev Bansal*, reported in **469 ITR 46 (SC)** has reversed the decision tendered by this Court in *Keenara Industries Pvt. Ltd. v. Income Tax Officer (Supra)* and has prescribed the modalities to consider validity of the notice issued under TOLA between 31.3.2021 and 30.6.2021.

10. It was submitted that as held by the Hon'ble Apex Court in case of **Union of India v. Rajeev Bansal (Supra)**, as the notice issued under TOLA is dated 30.6.2021, only one day was available for issuance of notice, after giving opportunity of filing reply to the assessee. From the date of passing of the order by the Apex Court in case of **Union of India v. Ashish Agarwal (Supra)** i.e. 21.5.2022, 14 days time was provided to the assessee to reply to the above notice.



Therefore, the last date for filing the reply by the assessee was 19.06.2022 and last date to issue notice, as per the judgment of the Apex Court in case of **Union of India v. Rajeev Bansal (Supra)** would be 17.6.2022, whereas the impugned notice under Section 148 is issued on 29.7.2022. It was therefore, submitted that the notice dated 30.6.2021 which will relate to the notice dated 29.7.2022 as per order passed by the Apex Court in the case of Union of India v. Rajeev Bansal (Supra), would be invalid notice. Reliance was placed on following paragraphs of the Hon'ble Apex Court wherein the situation is explained in detail in paragraph Nos.92, 93 and paragraph Nos. 110 to 114:

"92. This Court specifically mentioned that its directions would also apply to three categories: (i) the judgment and order passed by the High Court of Judicature at Allahabad; (ii) all judgments and orders passed by the



different High Court on the issue where notices issued under Section 148 of the old regime after 1 April 2021 were set aside; and (iii) writ petitions pending before various High Courts in which notices under Section 148 of the old regime issued after 1 April 2021 are under challenge Ashish Agarwal (supra). The Court mentioned the above three categories to clarify that the general nature of its directions will also give a quietus to the matters that have already been adjudicated or are pending adjudication before judicial forums. The operation of the directions cannot be limited to the above three categories, especially when this Court has specifically held that "the present order shall be applicable PAN INDIA."

93. In Ashish Agarwal (supra), this Court was aware of the fact that it could not have used its jurisdiction under Article 142 to affect the vested rights of the assesses by deeming Section 148 notices under the old regime as Section 148 notices under the new regime. Hence, it deemed the reassessment notices issued under the old regime as show cause notices under Section 148A(b) of the new regime. Further, the Court directed the Revenue to provide all the relevant material or information to the assesses and thereafter allowed the assesses to respond to the show cause notice by availing all the defences, including those available under Section 149. Thus, the Court balanced the equities between the Revenue and the assesses by giving effect to the



legislative scheme of reassessment as contained under the new regime. It supplemented the existing legal framework of the procedure of reassessment under the Income Tax Act with a remedy grounded in equitable standards. iii. Effect of the legal fiction "

110. The effect of the creation of the legal fiction in 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 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 TOLA, was available to the assessing officers to issue the reassessment notices under Section 148 of the new regime.

112. Let us take the instance of a notice issued on 1 May 2021 under the old regime for a relevant assessment year. Because of the legal fiction, the deemed show cause notices will also come into effect from 1 May 2021. After accounting for all the exclusions, the assessing officer will have sixty-one days [days between 1 May 2021 and 30 June 2021] to issue a notice under Section 148 of the new regime. This time starts ticking for the assessing officer after receiving the response of the assessee. In this instance, if the assessee submits the response on 18 June 2022, the assessing officer will have sixty-one days from 18 June 2022 to issue a reassessment notice under Section 148 of the new regime. Thus, in this illustration, the time limit for issuance of a notice under Section 148 of the new regime will end on 18 August 2022.

113. In Ashish Agarwal (supra), this Court allowed the assessee to avail all the defences, including the defence of expiry of the time limit specified under Section



149(1). In the instant appeals, the reassessment notices pertain to the assessment years 2013-2014, 2014-2015, 2015-2016, 2016-2017, and 2017-2018. To assume jurisdiction to issue notices under Section 148 with respect to the relevant assessment years, an assessing officer has to: (i) issue the notices within the period prescribed under Section 149(1) of the new regime read with TOLA; and (ii) obtain the previous approval of the authority specified under Section 151. A notice issued without complying with the preconditions is invalid as it affects the jurisdiction of the assessing officer. Therefore, the reassessment notices issued under Section 148 of the new regime, which are in pursuance of the deemed notices, ought to be issued within the time limit surviving under the Income Tax Act read with TOLA. A reassessment notice issued beyond the surviving time limit will be time-barred.

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 PART G 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;"

11. Learned Senior Standing Counsel Ms.Maithili Mehta could not controvert the facts that as per the decision of the Hon'ble Apex Court in case of **Union of India v. Rajeev Bansal (Supra)**, the notice dated 29.7.2022 would be a time barred notice and in turn the notice dated 30.6.2021 would be an invalid notice, as per aforesaid observations made by the Apex Court.

12. Considering the above facts, there is a notice dated 30.6.2021, only one day time was left for the issuance of the notice under Section 148 after granting 14 days time to the



assessee from the decision of Union of India v. Ashish Agarwal, the date of issuance of the notice under Section 148 would be 17.6.2022, whereas in the facts of the case the notice under Section 148 is issued on 29.7.2022 and as such the notice dated 30.6.2021 would be an invalid notice.

13. In the result, the petition succeeds only on this ground.

14. The impugned notice dated 29.7.2022 as well as notice dated 30.6.2021 are hereby quashed and set-aside. Rule is made absolute to the aforesaid extent. No order as to costs.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI,J)

BIMAL