



IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.315 OF 2023

Gurpreet Singh, 51 years of age,]
 Resident of B-22, Malcha Marg,]
 New Delhi-110021, Through his Power of Attorney,]
 Mr. Vipin Kumar,]
 59 years of age, Resident of B-158,]
 Ganesh Nagar, New Delhi-110018.] **... Petitioner**

V e r s u s

1. Deputy Commissioner of Income Tax, (earlier]
 Assistant Commissioner of Income Tax, Circle]
 (1), Panaji, Goa),]
 Circle-1 (1), Panaji,]
 Aayakar Bhawan, Plot No.5,]
 EDC Complex, Patto Plaza,]
 Panaji, Goa-403001]
]
2. Central Board of Direct Taxes, Through its]
 Chairman,]
 Ministry of Finance, North Block, New Delhi-]
 110002]
]
3. National Faceless Assessment Centre, Through]
 Principal Chief Commissioner of Income tax,]
 (NaFAC), Delhi Assessment Unit, Income Tax]
 Department, Ministry of Finance, Government]
 of India, Delhi.] **... Respondents**

Mr. Gauravvardhan A. S. Nadkarni, Advocate for the Petitioner.

Ms. Amira Razaq, Standing Counsel for the Respondents.

CORAM : A.S. CHANDURKAR & NIVEDITA P. MEHTA, JJ

The date on which the arguments were concluded : **21st MARCH, 2025.**

The date on which the Judgment is pronounced : **8th MAY, 2025.**

JUDGMENT : (*Per Nivedita P. Mehta , J.*)

1. The principal issue involved in this Writ Petition is the legality of the re-opening of proceedings initiated against the Petitioner, which are to be construed as proceedings initiated under the substituted Sections 147 to 151 of the Income Tax Act, 1961 (*as amended by the Finance Act with effect from 01/04/2021*).

2. The brief facts entailing the filing of the present petition are enumerated hereunder :

- a. The Petitioner filed his return of income for the Assessment Year ("AY") 2013-14 on 31/03/2014 declaring an income of Rs.37,17,840/- (Rupees Thirty Seven Lakh Seventeen Thousand Eight Hundred Forty Only).
- b. Thereafter, the case of the Petitioner was selected for scrutiny by issuance of notice under Section 143(2) of the Income Tax Act, 1961 (*for short, "the IT Act"*). After detailed inquiries through notices under Section 142(1) of the Act, the assessment was completed by an order dated 23/02/2016 passed under Section 143(3) of the IT Act by the Assistant Commissioner of Income Tax, Circle 53(1) New Delhi, at the assessed income of Rs.60,60,370/- (Rupees Sixty Lakh Sixty Thousand Three Hundred Seventy Only).

- c. On 31/03/2020 the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (*for short, "the TOLA"*) was enacted. As a result, the time limit for completion or compliance of actions under the IT Act that were due for completion or compliance during the period from 20/03/2020 and 31/12/2020 was extended to 31/03/2021.
- d. Respondent No.2 vide Notification dated 31/03/2021 further extended the aforesaid time limit beyond 31/03/2021 till 30/04/2021.
- e. Finance Act, 2021, as passed by the Parliament, came into force on 01/04/2021. That vide the Finance Act, 2021, Sections 148 to 151 were substituted, in a manner so as to streamline the process for reassessment, as also to provide benefit to the assesses.
- f. Respondent No.2 issued Notification dated 27/04/2021 whereby the time line under the earlier Sections 148 and 149 was extended till 30/06/2021.
- g. A Notice dated 29/06/2021 for reassessment under earlier Section 148 of the IT Act for A.Y. 2013-14 was issued to the Petitioner.
- h. That many such notices issued by the Revenue were quashed by various High Courts on the principle that once the Finance Act, 2021 had come into existence, the pre-substituted Section 148 was

inapplicable and could not even be presumed to be in force by virtue of the Impugned Notifications.

- i. Revenue preferred Civil appeals against the orders of quashing passed by various High Courts in the Hon'ble Supreme Court of India. In *Union of India Vs. Ashish Agarwal (2022 SCC Online 543)*, the Hon'ble Supreme Court upheld the judgments passed by the High Courts whilst holding that the notices issued under the earlier Section 148 were illegal on account of the Finance Act, 2021 coming into force on 01/04/2021.
- j. On account of numerous cases, as well as finding the actions of the Revenue to be a genuine mistake, the Hon'ble Supreme Court while exercising its powers under Article 142 of the Constitution of India passed various directions, which included that the notices issued under the pre-substituted Section 148 from 01/04/2022 would be deemed to be notices under Section 148A(b). The Hon'ble Supreme Court however expressly kept open, protected and reserved the defences, rights and contentions available to the assesses including those under Section 149 of the Said Act.
- k. Subsequent to the judgment in *Ashish Agarwal (supra)*, the Respondent No.2 issued Instruction No. 1/2022 dated 11/05/2022 where under at Clause 6.2 it instructed that fresh reassessment

notice under Section 148 for the Assessment year 2013-14 could be given as it would not be time barred.

- l. Letter dated 20/05/2022 was sent to the Petitioner, where under, in terms of the directions issued by the Hon'ble Supreme Court, the reasons for re-opening were provided to the Petitioner. Respondent No.1 issued the notice under pre-substituted Section 148 of the IT Act, as deemed to be notice under Section 148A(b) of the IT Act.
- m. Petitioner, through his Chartered Accountant filed objections and reply to the notice vide reply letter dated 03/06/2022 on the ground that the necessary material was not supplied to the Petitioner by the Assessing Officer, that the inquiry contemplated under Section 148A(a) was not undertaken and that the reasons given for re-opening were unjustified.
- n. Subsequently, the Petitioner filed an additional reply vide Reply Letter dated 28/06/2022 and categorically raised the objections to material document not being supplied, jurisdiction and limitation and an express objection was taken that no intimation of change of incumbent in office was communicated to the Petitioner as required under Section 129 of the IT Act. An additional ground was taken that in view of the decision of the Hon'ble Supreme Court in *Ashish Agarwal (supra)*, the re-opening of proceedings was time barred

under Section 149 of the IT Act as amended by the Finance Act of 2021.

- o. Respondent No.1 issued a Letter dated 14/07/2022 with reference to Section 148A(b) of the IT Act, as also intimating change of incumbent of office. The said letter also indicated the analysis of information received and the basis of forming reason to believe and escape of income. In the said notice, it was stated that there were reasons to believe that there was escapement of Rs.6,13,76,555/- which attracted the provisions of explanation of Section 147(1) of the Act.
- p. The Petitioner was also provided further time of one week to file reply, despite the Petitioner having already filed two substantive replies.
- q. The Respondent No.1, passed the Order dated 29/07/2022 under Section 148A(d) of the IT Act.
- r. Consequent to the Impugned Order, the Petitioner was served with a Notice dated 29/07/2022 under Section 148 of the IT Act.
- s. Notice dated 16/01/2023, under Section 142(1) of the IT Act was issued to the Petitioner by the Assessment Unit, Income Tax Department requesting the assessee to provide documents relating

to his financial activities carried out during the Financial Year 2012-2013 and to prove the transactions.

- t. Show Cause Notice dated 07/05/2023 under Section 147 of the IT Act was issued against the Petitioner by the Assessment Unit, Income Tax Department since no documents were produced or explanation provided by the assesee and only adjournments were sought.
- u. When the Chartered Accountant of the Petitioner checked the online portal on 30/05/2023 to check the next date of hearing in terms of the extension sought on 23/05/2023 on account of the medical ground of the Petitioner, he saw the Assessment Order dated 29/05/2023.

3. The Petitioner has in this factual backdrop challenged the Notice dated 29/07/2022 issued by the Respondent No.1 under Section 148 of the IT Act for AY 2013-14, the Assessment Order dated 29/05/2023 passed by the Respondent No.3 along with other ancillary challenges.

4. Respondent no 1 filed an Affidavit in Reply stating as under :

- (i) That the Assessment Order was passed within jurisdiction and within the scope of the law.

- (ii) That Petitioner filed return of income for 2013-2014 on 21/03/2014, declaring the total income of Rs.37,17,840/-.
- (iii) That inquiry conducted by ITO of Director of Investigation revealed that assessee had floated several shell companies and transactions for the AY 2013-2014 were to the tune of Rs.7,14,74,863/- as against the receipt of Rs.1,00,19,308/-.
- (iv) That the Petitioner was called for examination under Section 131 of the IT Act by the Investigating Officer and the officer obtained bank statements from the concerned branches and made a study to come to the conclusion that there is a gap of Rs.6,13,76,555/-.
- (v) Petitioner acted in contravention of the IT Act by not explaining the sources of money and that the case of the Petitioner was re-opened in view of the provisions under Section 147 of IT Act with prior approval of Principal CIT under Section 151 of the IT Act.
- (vi) That in terms of the judgment in *Ashish Agarwal (supra)*, the procedure and time lines contemplated were complied with.
- (vii) That assessment was re-opened in terms of Section 147 of the IT Act.
- (viii) That notice was issued and proceedings conducted within the timeline notified under the TOLA.

- (ix) Reliance was placed on the decision in *UOI vs Rajeev Bansal*, (2024) 469 ITR 46 to contend that the time limit to re-open the proceedings in the present case was extended to 30/06/2021 and that after following the entire procedure including the approval, order under Section 148A(d) dated 29/07/2022 was passed and notice under Section 148 was issued on 29/07/2022.
- (x) That the Order dated 29/07/2022 was passed as per the mandate of the law and the reassessment proceedings were within the statutory time limit. It were not time barred on account of the first proviso of Section 149 (1).
- (xi) That although a contrary view was expressed in the case of *Hexaware Technologies vs. Asst. CIT [(2024) 464 ITR 430 Bom]*, the Revenue did not concur with the interpretation of the Bombay High Court and challenge to the same was pending in the Hon'ble Supreme Court.

5. The grounds raised by the Petitioner in respect of challenge to the impugned notice and impugned order are broadly categorised as under :

- (i) Notice under section 148 of the IT Act seeking reassessment for the AY 2013-14 is time barred as per proviso of Section 149 of the IT Act. In support of the said ground, it is contended that in

Ashish Agarwal (supra), the Supreme Court only brought notices issued under Section 148 of the IT Act from 01/04/2021 to 30/06/2021 within the ambit of reassessment but the same could not be construed to mean that the notices issued after 01/04/2021 in respect of AY 2013-14 which became time barred after 31/03/2021 could come out of the rigour of first proviso of substituted Section 149.

- (ii) The impugned order dated 29/07/2022 under Section 148A(d) was without application of mind, consideration of objections and in violations of principles of natural justice. The issue of time bar under substituted Section 149 was not considered. The assessment order under Section 143 was already passed wherein the material as regards assessment was considered.
- (iii) The Impugned Assessment Order was premised on proceedings that were time barred and hence without jurisdiction. It was passed without affording an opportunity to the Petitioner.
- (iv) No prior approval was taken by the specified authority before passing of the order under Section 148A(d) of the IT Act.
- (v) No approval under the IT Act had been obtained after the impugned order dated 29/07/2022 under Section 148A(d) of the Act for issue of Impugned Notice under Section 148 of the IT Act.

(vi) Without prejudice, additional grounds were taken with regard to failure of the Respondents to grant copy of approval/sanction under Section 151.

(vii) Non-grant of personal hearing under Section 148A(d) of the IT Act despite a specific request made by the petitioner.

(viii) Non-supply of documents/material under Section 148A(b).

(ix) Impugned notice was in contravention of Section 151A of the said Act and the e-assessment of Income Escaping Assessment Scheme, 2022.

6. Although multiple grounds as mentioned above have been raised in the writ petition, the learned Advocate for Petitioner has limited his challenge to the point that the order under Section 148A(d) and the notice under Section 148 dated 29/07/2022 was time barred in view of the first proviso to substituted Section 149 as interpreted by the Hon'ble Supreme Court in *Ashish Agarwal and Rajeev Bansal (supra)*. Reliance is also placed on the Delhi High Court judgement in ***Ram Balram Buildhome vs ITO [2025 SCC OnLine Del 481]*** to contend that on identical facts and consistent with the interpretation of the Petitioner in the instant case, order under Section 148A(d) and notice under Section 148 were quashed. It is urged that the remainder period as per the ratio of the decision in *Rajeev Bansal (supra)* was only 2 days and that the period of 2 days expired on 23/07/2022. This conclusion could be drawn after considering all the exclusions contemplated under 3rd proviso to substituted

Section 149 and the exclusions directed by the Hon'ble Supreme Court in the case of *Ashish Agarwal (supra)* as interpreted in case of *Rajeev Bansal (supra)*. The notice dated 29/07/2022 was thus liable to be quashed.

7. The respondents have canvassed oral arguments and have filed a synopsis of arguments based on the petitioner's submissions. According to the Respondents and as indicated in the written synopsis :

(i) The assessment re-opened is valid within the meaning of the provisions of Section 147 of the IT Act. Hence, the further proceedings are valid as the same are initiated within the time limitation as notified under the TOLA extending the time limit till 30/06/2021 for re-opening the assessment vide Notification No.38/2021/ F.No.370142/35/2020-TPL.

(ii) That the Government of India notified the TOLA on 29/09/2020. That in view of the TOLA, any notices and orders or compliances for which the due date falls until 31/12/2020 were extended to 31/03/2021, and further thereafter again the same was extended till 30.6.2021.

(iii) That the Central Board of Direct Taxes – CBDT Notification under the TOLA dated 31/12/2020 extended the time limit from 31/12/2020 to 31/03/2021. The CBDT's Notification dated

31/03/2021 extended the date from 31/03/2021 to 30/04/2021. Subsequently, again, CBDT's Notification dated 27/4/2021 extended the time barred period from 30/04/2021 to 30/06/2021.

(iv) That the time limit to re-open the proceedings in the present case within the meaning of Section 147 had been extended to 30/06/2021 and that the first notice under Section 148 of the IT Act dated 29/06/2021 was issued within the extended statutory time limit. The notice under Section 148A(b) of the IT Act was issued to the petitioner on 20/05/2022, the objections raised by the petitioner were also disposed of by passing the order under Section 148A(d) of the IT Act on 29/07/2022 which was within the permissible time limit.

(v) That accordingly, the notice under Section 148 of the IT Act was issued after getting prior approval from the Competent Authority. There was no violation of any legal or fundamental rights of the petitioner. Reassessment proceedings were well within the statutory time limit and were not time-barred in view of the first proviso to Section 149(1) of the IT Act, which was made applicable from 01/04/2021.

(vi) That the time limit to re-open the proceedings in the present case within the meaning of Section 147 had been extended to

30/06/2021. The first notice under Section 148 of the IT Act was dated 29/06/2021 and that the assessment order passed under Section 147 read with 144B of the IT Act was passed under the e-Assessment of Income Escaping Assessment Scheme, 2022 where the assessment was done on automated allocation. Hence, the aspect of absence of jurisdiction was without substance.

(vii) The order dated 29/07/2022 was passed within the time stipulated under Section 148A(d) in as much as the first reply was uploaded on 03/06/2022 and the additional reply was uploaded on 28/06/2022. Going by the mandate of Section 148A(d) which contemplates that an order under Section 148A(d) was to be passed within one month from date of compliance from notice under Section 148A(b), the limitation would be till 31/07/2022. It is contended that the end of the month for compliance in respect of notice under Section 148A(b) of the IT Act would be 30/06/2022 as the replies were dated 03/06/2022 and 28/06/2022. The period of one month had to be counted from 30/06/2022, which would fall on 30/07/2022.

(viii) The Learned counsel for the Respondents has referred to judgments in :-

(a) Union of India Vs. Ashish Agarwal, [2022] 138 taxmann.com 64(SC);

(b) Rajeev Bansal Vs. Union of India, [2023] 147 taxmann.com 549 (Allahabad);

(c) Virendra Ship Recyclers LLP Vs. Assistant Commissioner of Income-tax, [2025] 170 taxmann.com 588 (Bombay);

(d) Income-tax Officer Vs. Ashish Ac Haratlal Varaiya, [2024] 168 taxmann.com 588 (SC);

(e) Assistant Commissioner of Income-tax Vs. Sanman Trade Impex Ltd., [2025] 170 taxmann.com 589(SC);

(f) Ashish Acharatlal Varaiya Vs. Income-tax Officer, [2023] 152 taxmann.com 656 (Gujarat);

(g) Keenara Industries (P.) Ltd. Vs. Income-tax Officer; [2023] 147 taxmann.com 585 (Gujarat);

(h) New India Assurance Company Ltd. Vs. Assistant Commissioner of Income-tax, [2024] 158 taxmann.com 367 (Bombay);

(i) Godrej Industries Ltd. Vs. Assistant Commissioner of Income-tax, [2024] 160 taxmann.com 13 (Bombay).

8. At the outset, it needs to be clarified that although reference is made to the above judgments at para 17 of the written synopsis, the following is stated:

- i. The Hon'ble Supreme Court in the case of *Rajeev Bansal (supra)* has set aside the decision of the Allahabad High Court which had quashed the re-opening notices for the AYs 2013-14 and other years as time barred under the Amended provisions of the IT Act (as amended from 1-4-2021).

- ii. The decision of this Court in *New India Assurance Company Ltd (supra)* for AY 2013-14 which was followed in *Virendra Ship Recyclers* and *Sanman Impex Ltd. (supra)* were set aside by the Hon'ble Supreme Court based on *Rajeev Bansal (supra)*.
- iii. The decision of the Gujarat High Court in *Ashish Acharatlal Varaiya (supra)* for AY 2013-14 was also set aside by the Hon'ble Supreme Court based on *Rajeev Bansal's (supra)*.
- iv. The decision of this Court in *New India Assurance Co. Ltd. (supra)* which was followed in *Hexaware Technologies (supra)* for the same AYs 2013-14 by this Court quashing the re-opening notices on this and other grounds were now subject matter of challenge before the Hon'ble Supreme Court in SLP no. 21188/2024.

9. In view of the controversy involved, it is necessary to refer to the decisions in *Ashish Agarwal* and *Rajeev Bansal (supra)*. Since the decision in *Ashish Agarwal (supra)* has been considered in *Rajeev Bansal (supra)*, it would be advantageous to refer to its observations in this regard in paragraphs 106 and 107. It held as under :-

“106. To summarize, the combined effect of the legal fiction and the directions issued by this Court in *Union of India Vs. Ashish Agarwal, (2023) 1 SCC 617* is that the show-cause notices that were deemed to have been issued during

the period between April 1, 2021 and June 30, 2021 were stayed till the date of supply of the relevant information and material by the Assessing Officer to the assessee. After the supply of the relevant material and information to the assessee, time begins to run for the assessee to respond to the show-cause notices.

107. *The third proviso to Section 149 allows the exclusion of time allowed for the assessee to respond to the show-cause notice under Section 149A(b) to compute the period of limitation. The third proviso excludes “the time or extended time allowed to the assessee”. Resultantly, the entire time allowed to the assessee to respond to the show-cause notice has to be excluded for computing the period of limitation. In Union of India Vs. Ashish Agarwal, this Court provided two weeks to the assessee to reply to the show-cause notices. This period of two weeks is also liable to be excluded from the computation of limitation given the third proviso to Section 149. Hence, the total time that is excluded for computation of limitation for the deemed notices is : (i) the time during which the show-cause notices were effectively stayed, that is, from the date of issuance of the deemed notice between April 1, 2021 and June 30, 2021 till the supply of relevant information or material by the Assessing Offices to the assessee in terms of the directions in Union of India Vs. Ashish Agarwal; and (ii) two weeks allowed to the assessee to respond to the show-cause notices.”*

10. It further held in paragraphs 108, 111 and 113 as under :-

“108. Therefore, the logical effect of the creation of the legal fiction by Union of India Vs. Ashish Agarwal is that the time surviving under the Income-tax Act read with Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 will be available to the Revenue to complete the remaining proceedings in furtherance of the deemed notices, including issuance of reassessment notices under Section 148 of the new regime. The surviving or balance time limit can be calculated by computing the number of days between the date of issuance of the deemed notice and June 30, 2021.

111. *The clock started ticking for the Revenue only after it received the response of the assessee to the show-causes notices. After the receipt of the reply, the Assessing Officer had to perform the following responsibilities : (i) consider the reply of the assessee under Section 149A(c); (ii) take a decision under*

Section 149A(d) based on the available material and the reply of the assessee; and (iii) issue a notice under Section 148 if it was a fit case for reassessment. Once the clock started ticking, the Assessing Officer was required to complete these procedures within the surviving time limit. The surviving time limit, as prescribed under the Income-tax Act read with Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, was available to the Assessing Officers to issue the reassessment notices under Section 148 of the new regime.

113. Therefore, the reassessment notices issued under Section 148 of the new regime, which are in pursuance of the deemed notices, ought to be issued within the time limit surviving under the Income-tax Act read with Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. A reassessment notice issued beyond the surviving time limit will be time-barred.”

11. Thus, the effect of the judgment in *Ashish Agarwal (supra)* was that whilst upholding the contention of the assesses that from 01/04/2021, the new regime applied and the issuance of notices under the old regime were contrary to law, the Hon’ble Supreme Court in exercise of powers under Article 142 of the Constitution of India directed that notices issued under Section 148 of the old regime be construed as notices under Section 148A(b) of the new regime and the enquiry contemplated under Section 148A(a) was done away with as a one-time measure. The Assessing Officers were directed to provide the information and material relied upon by the Revenue to the assesses within a period of thirty days to enable the assesses to respond to the notice within a period of two weeks after which Assessing Officer had to pass an order under Section 148A (d) of the IT Act. The Hon’ble Supreme Court expressly observed that all defences available under Section 149(a) of the IT Act would

continue to be available to all the assesseees. However, in the said judgment, the Hon'ble Supreme Court did not delve into the aspect whether reassessment notices were within the time stipulated under the IT Act read with TOLA and the Notifications issued thereunder.

12. The decision in *Ashish Agarwal (supra)* was extensively considered by the Supreme Court in *Rajeev Bansal (supra)*. The ratio laid down in the said judgment is pivotal to the issues involved in the present case and both parties have been extensively heard on the implications of the said judgment on the case in hand. In fact, the Petitioner has conceded his case stands or falls on the basis of the interpretation on the issue whether the reassessment notices issued are time barred under the applicable provisions of the IT Act.

13. The Hon'ble Supreme Court in the case of *Rajeev Bansal (supra)* concluded as under :

- a. After 01/04/2021, the IT Act has to be read along with substituted provisions,
- b. TOLA would continue to apply to the IT Act after 01/04/2021 if any action or proceeding specified under the substituted provisions of the IT Act falls for completion between 20/03/2020 and 31/03/2021;

- c. Section 3(1) of the TOLA overrides Section 149 of the IT Act only to the extent of relaxing the time limit for issuance of a reassessment notice under Section 148;
- d. The TOLA would extend the time limit for the grant of sanction by the authority specified under Section 151. The test to determine whether the TOLA would apply to Section 151 of the new regime is that: if the time limit of three years from the end of an assessment year falls between 20/3/2020 and 31/03/2021, then the specified authority under Section 151(1) has extended time till 30/06/2021 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 20/03/2020 and 31/03/2021, then the specified authority under Section 151(2) has extended time till 31/03/2021 to grant approval;
- f. The directions in *Ashish Agarwal (supra)* would extend to all the reassessment notices issued under the old regime during the period 1/4/2021 and 30/06/2021;
- g. The time during which the show-cause notices were deemed to be stayed would be from the date of issuance of the deemed notice between 01/04/2021 and 30/06/2021 till the supply of relevant information and material by the Assessing Officers to

the assesseees in terms of the directions issued in *Ashish Agarwal* (*supra*), and the period of two weeks allowed to the assesseees to respond to the show-cause notices, and

- h. The Assessing Officer was required to issue the reassessment notice under Section 148 of the new regime within the time limit surviving under the IT Act read with TOLA. All notices issued beyond the surviving period would be time barred and liable to be set aside.

14. As stated earlier, the instant case is premised on ratio laid down in the case of *Rajeev Bansal* (*supra*) and the applicability of the principles laid down to the facts of the present case. The sequence of events in the case in hand is as under :

Sr.No.	Date	Event
1	29/06/2021	Notice under erstwhile Section 148 (deemed to be under new Section 148(b))
2	04/05/2022	Judgment of the Hon'ble Supreme Court in <i>Ashish Agarwal</i> (<i>supra</i>)
3	20/05/2022	Notice conveying reasons for reopening and relied-upon material
4	03/06/2022	Reply filed by Petitioner to notice under Section 148A(b)
5	04/06/2022	Two weeks elapsed from issuance of Notice under Section 148A(b)
6	28/06/2022	Second reply filed by Petitioner to Notice under Section 148A(b)
7	14/07/2022	Notice of change of incumbent and grant of additional one week time to file reply
8	21/07/2022	Additional one-week time elapsed
9	29/07/2022	Order passed under Section 148A(d)
10	29/07/2022	Notice issued under Section 148

11	07/05/2023	SCN Notice under Section 147
12	29/05/2023	Order under Section 147

15. In terms of the decisions in *Ashish Agrawal* and *Rajeev Bansal (supra)*, the following position emerges in the context of the present case :-

- (i) The period for subject reassessment in terms of Section 149 of the old regime is deemed to be extended till 30/06/2021 under the TOLA.
- (ii) The notice dated 29/06/2021 would be deemed to be notice under Section 148A(b).
- (iii) The surviving period by excluding the date of re-issuance of notice on 29/06/2021 would be the remainder days in the month of June 2021 (30/06/2021 – 28/06/2021), namely, two days.
- (iv) On 30/06/2021, the extension in terms of the TOLA would come to an end.
- (v) The period that stands excluded is :
 - (a) The period up to 30/06/2021, which is covered by the provisions of the IT Act read with the TOLA.
 - (b) The period from 01/07/2021 to 03/05/2022 being the period before the decision of the Hon'ble Supreme Court in *Ashish Agarwal (supra)*.

(c) The Period from 04/05/2022 till 20/05/2022, which is the date when the material was furnished and the reasons for re-opening were given to the Petitioner.

(d) The period of two weeks time for reply to be filed by the Petitioner, which ended on 04/06/2022 and the extended time to file reply (additional reply was filed by the Petitioner on 28/06/2022). Further extension was given to the Petitioner in pursuance to notice dated 14/07/2021 giving additional time of one week in view of change in the incumbent to the Office, which period ended on 21/07/2022.

16. By considering all the exclusions, the remainder days for conclusion of the procedure for passing of an order in terms of Section 148A(d) and issuance of notice under Section 148 would be two days from 21/07/2022 and the same would expire of 23/07/2022. Applying the ratio of the decisions in *Ashish Agarwal* and *Rajeev Bansal (supra)* in the context of the 1st proviso to Section 149 we are therefore of the opinion that the notice under Section 148 dated 29/07/2022 is time barred. The order under Section 148A(d) as well as the notice issued under Section 148 are dated 29/07/2022 which is much after the surviving period which expired on 21/07/2022.

17. In light of the above, the contentions raised by the Revenue lack foundation in terms of law. Although the Revenue has contended that the order

dated 29/07/2022 passed under Section 148A(d) and the notice issued under Section 148 were within the timelines contemplated by the decisions in *Ashish Agarwal* and *Rajeev Bansal (supra)*, the same lacks substance. In the written synopsis, an attempt was made to justify the timelines by contending that in terms of Section 148A(d), the period mandated for passing of the order was within one month from the end of the month in which the reply referred to is received or where no such reply is furnished within one month from the end of the time by which the extended time allowed to furnish reply as per clause (b) expired. Relying on the said provision it was contended that the replies are dated 03/06/2022 and 28/06/2022 and going by the same, the end of the month would be 30/06/2022. Hence the expiry of time would be on 31/07/2022. It is therefore contended that the order is passed within the one month time contemplated under Section 148A(d).

18. The said contention is fundamentally misconceived. A notice under Section 148 of the IT Act accompanied by an order under Section 148A(d) is required to be issued within the time stipulated under Section 149 of the IT Act. Section 148A(d) does not govern the computation of time as contemplated in terms of Section 149 of the IT Act. The entire process under Section 148A(a) to (d) and the issuance of notice under Section 148 has to be completed within the total time available in terms of Section 149(1) of the IT Act for issuance of notice under Section 148. A notice issued under Section

148 of the IT Act which is beyond the time line stipulated under Section 149(1) is non-complaint and invalid. The timeline under Section 148A(d) is for the Assessing Officer to comply with the stipulations and the streamlining contemplated under Section 148A. This is primarily to bring in transparency and accountability into the system and is intended for the benefit of the assesseees. However to suggest that Section 148A(d) extends the time limit under Section 149(1) and/or has a bearing on the time under Section 149(1) is a submission which is misconceived and lacks legal sanctity.

19. It was urged by the Revenue that the decision of this Court in *Hexaware Technologies Limited (supra)* was under challenge before the Hon'ble Supreme Court and hence the Court could consider awaiting its outcome. The decision in *Hexaware Technologies Limited* has not been stayed. Since we have proceeded on the basis of the law laid down in *Ashish Agarwal* and *Rajeev Bansal (supra)*, this contention cannot be accepted. Reference to various decisions has been made. In fact, the decisions referred to are inconsistent with the case set up by the Respondents. Except for the decision in *Ashish Acharatlal Varaiya (supra)*, other judgments are rendered prior to the decision in *Rajeev Bansal (supra)* and /or do not consider the said decision. Hence the said judgments do not in any manner assist us in deciding the controversy in issue especially in the context to the limited issue that is raised by the Petitioner herein.

20. At this point we deem it appropriate to note that the Delhi High Court in the case of ***Ram Balram Buildhome Pvt. Ltd. vs. Income Tax Officer & Anr. [2025 SCC OnLine Del 481]*** dealt with an identical issue. It considered the principles laid down in *Ashish Agarwal* and *Rajeev Bansal (supra)* and concluded that the notice issued under Section 148 under the IT Act was time barred. In the facts of that case as well, the AY was 2013-2014 and the notice under Section 148 issued to the assessee was dated 01/06/2021. The date of furnishing material to the Petitioner in that case was 30/05/2022. The said Petitioner furnished its response to the notice under Section 148A(b) of the IT Act on 13/06/2022. In this factual backdrop, the Delhi High Court applying the ratio of the decisions in *Ashish Agarwal* and *Rajeev Bansal (supra)* came to the conclusion that the remainder period with the Assessment Officer was twenty-nine days from 01/06/2021 when the reassessment proceedings commenced for issuing notice under Section 148 of the IT Act. The limitation for passing of the order under Section 148A(d) expired on 12/07/2022. Accordingly, the notice under Section 148A of the IT Act issued on 30/07/2022 was held to be beyond limitation and the same was quashed. The Delhi High Court also relied on the observations made in the case of ***Raminder Singh V/s. Asst. Commissioner of IT(Circle) reported in 2023 DHC 6672-DB*** wherein it was held that one month from the end of the month in which the time available to the assessee to respond to the notice under clause (b) of Section 148A expires is available to the Assessment Officer to

pass an order under Section 148A(d) of the IT Act. It was further held that notice under Section 148 of the IT Act that is not accompanied by an order under Section 148A(d) of the Act would be non-compliant with the IT Act and no such notice could be issued beyond the period as specified under Section 149(1) of the IT Act. This decision of the Delhi High Court is consistent with our view based on the interpretation of the decisions in *Ashish Agarwal* and *Rajeev Bansal (supra)*.

21. For all these reasons, we hold that the notice dated 29/07/2022, issued by Respondent no.1 under Section 148 of the IT Act is beyond the time period specified under Section 149(1) of the IT Act. It is therefore quashed. Consequently, the impugned assessment order dated 29/05/2023 passed on the basis of the impugned notice also stands quashed and set aside. Rule is made absolute in aforesaid terms with no order as to costs.

NIVEDITA P. MEHTA, J.

A. S. CHANDURKAR, J.