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

% **Judgment reserved on: 07 January 2025**
Judgment pronounced on: 15 January 2025

\+ W.P.(C) 2830/2022

ROHIT KUMAR .....Petitioner

Through: Mr. Salil Aggarwal, Sr. Adv. with Mr. Mahir Aggarwal, Mr. Uma Shankar and Mr. Madhur Aggarwal, Advs.

versus

INCOME TAX OFFICER WARD 54 (1), DELHI .....Respondent

Through: Mr. Debesh Panda, SSC with Ms. Zehra Khan, JSC, Mr. Vikramaditya Singh, Mr. Kanishk Aggarwal, Ms. Anauntta Shankar and Mr. Ruchir Joshi, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

YASHWANT VARMA, J.

1. The writ petitioner seeks to question the invocation of Section 148 of the **Income Tax Act, 1961**[1] by the respondents in relation to **Assessment Year**[2] 2015-16. The challenge appears to have been originally mounted basis the digital signing of the notice under Section 148 on 09 April 2021 although it bore a date of 31 March 2021. The petitioner appears to have originally contended that since the notice

[1] Act
[2] AY

would be deemed to have been issued on 09 April 2021, it would be the reassessment regime as introduced by virtue of Finance Act, 2021 which would have been applicable. This according to the writ petitioner would have required the respondents to follow the procedure as prescribed by Section 148A of the Act which had come to be introduced by virtue of Finance Act, 2021. It is these aspects which came to be noticed by the Court originally when it entertained the writ petition on 15 February 2022 and led to the passing of an interim order providing that while it would be open for the **Assessing Officer**[3] to frame an order of assessment, the same would not be given effect to.

2. When the matter was heard finally by us, Mr. Aggarwal, learned senior counsel appearing for the writ petitioner, had contended that since the notice had been digitally signed on 09 April 2021, it would be that date which would be liable to be viewed as the date of issuance of notice. It was his contention that this issue in any case stands conclusively settled in light of the judgment of the Court in **Suman Jeet Agarwal vs. Income Tax Officer and Ors**[4] and where the Court had held as follows:-

> "**25.24.** With respect to impugned notices falling in category "A", there is an additional factor which evidence that the said notices were admittedly not issued on March 31, 2021. The said notices were digitally signed on April 1, 2021, or thereafter. The note appearing at the foot of each notice clearly declares that the date of the affixation of digital signature shall be treated as the date of the notice. The note reads "if digitally signed, the date of signature may be taken as date of document". In these notices therefore, the date of the notice itself is determined by the date of affixation of digital signature and not the date of generation. The contention of the Department that, the said note appearing at the footer of the notice has no basis in law and should be ignored by this court, cannot be

[3] AO
[4] 2022 SCC OnLine Del 3141

accepted. The Department cannot deny the contents of its own notice and it is bound by the said contents.

25.25. In this regard it will also be useful to refer to para 2.10.6 of the Income Tax Business Application, User Assessment Manual, Version 1.9, August 2020, as referred to by the Department in its counter-affidavit in W. P. (C) No. 13814 of 2021. The said instruction draws the attention of the Income-tax Officer to the consequence of the date of digital signature and date of generation of document being different, if the digital signatures are affixed subsequently. Para 2.10.6 reads as under :

> "ii. Generate and Digitally sign later (Applicable for single as well as bulk generation) :
>
> Click generate and digitally sign later. In this case, document will be generated successfully immediately.
>
> To sign the document later, go to 'view/edit despatch register' screen. Select the status as 'pending for signing' and search.
>
> Select the document and click sign documents. Ensure digital signature certificate is attached to the system.
>
> Select the digital signature certificate of the user.
>
> Click sign. Document will be signed successfully. However, this option is required to be very carefully exercised in the case of orders as the date of generation of document and date of digital sign may be different as these will be actual date of generation and digital signing."

Finding for notices falling under category "A"

We therefore hold that the impugned notices falling under category "A" shall be held to be dated as on the date digital signature certificate was affixed. Since the date of affixation of digital signature certificate on the impugned notices is April 1, 2021 and thereafter they were sent and delivered through the Income Tax Business Application portal on or after April 1, 2021, the impugned notices falling under category "A" can only be said to have been issued on or after April 1, 2021"

xxxx xxxx xxxx

31. For the reasons and principles that we have laid down, we dispose of these writ petitions with the following directions :

31.1. Category "A" : The notices falling under category "A", which were digitally signed on or after April 1, 2021, are held to bear the date on which the said notices were digitally signed and not March 31, 2021. The said petitions are disposed of with the direction that

> the said notices are to be considered as show-cause notices under section 148A(b) of the Act as per the directions of the apex court in the Ashish Agarwal, (supra) judgment"

3. It was further submitted that from the reasons which had been supplied it is apparent that the income which is alleged to have escaped assessment was spelt out as INR 46,17,000/- and thus falling below the threshold of INR 50 lakhs which forms part of the amended Section 149(1)(b) as that provision came to exist in the statute post 01 April 2021. According to Mr. Aggarwal, the reassessment action is thus liable to be additionally struck down on this score.

4. Learned senior counsel then submitted that the challenge raised in the present petition would in any event be liable to be answered in favour of the writ petitioner in light of the concession made on behalf of the respondent before the Supreme Court in **Union of India and Ors. vs. Rajeev Bansal**[5] and when it had been categorically stated that reassessment notices issued for AY 2015-16 would not sustain.

5. Mr. Agarwal also assailed the reassessment action on the ground of the proposed reassessment having been approved by the Joint Commissioner and who, according to learned senior counsel, cannot be recognised to be the authority competent in law as per Section 151 of the Act.

6. Appearing for the respondents, Mr. Panda, learned counsel has firstly submitted that although the reassessment action pertains to AY 2015-16, the time within which a notice could have been issued for reopening would be 31 March 2022. This, according to learned counsel, would be the position which would obtain bearing in mind the First

[5] 2024 SCC OnLine SC 2693

Proviso to Section 149 and which bids one to examine whether a notice for reassessment pertaining to any AY prior to 01 April 2021 would be compliant with the time limits as forming part of Section 149 as it existed prior to Finance Act, 2021. It was further Mr. Panda's contention that the concession of the Additional Solicitor General as appearing in the judgment of the Supreme Court in *Rajeev Bansal* is liable to be appreciated bearing in mind the context in which that submission was addressed and the same being whether the period for reopening pertaining to AY 2015-16 would be impacted and regulated by the provisions of the **Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020**[6] According to Mr. Panda, even though the provisions of TOLA may not have been applicable for reopening an assessment pertaining to AY 2015-16, however, since the respondents in any case had the jurisdiction to reopen right upto 31 March 2022, the proceedings as initiated cannot be faulted.

7. Mr. Panda then argued that since pursuant to the liberty accorded by this Court when the writ petition was originally entertained a final assessment order has come to be passed, there was no obligation upon the respondents to either follow the Section 148A route or undertake a course correction pursuant to the judgment rendered by the Supreme Court in **Union of India and Ors. vs. Ashish Agarwal**[7]. Learned counsel sought to draw sustenance and support for the aforenoted

[6] TOLA
[7] (2023) 1 SCC 617

submission from the judgment handed down by this Court in **Anindita Sengupta vs. Assistant Commissioner of Income Tax and Ors**[8].

8. Having broadly noticed the rival submissions which were addressed, we proceed to examine the challenge on merits hereinafter.

9. From the case as set up in the writ petition as well as the various decisions which were cited for our consideration, it becomes apparent that the challenge originally appears to have been addressed on grounds which ultimately found favour with this Court in **Mon Mohan Kohli vs. Assistant Commissioner of Income Tax and Anr.**[9]. *Mon Mohan Kohli* was a decision which was concerned with the validity of reassessment notices issued after the promulgation of Finance Act, 2021 and thus at a time when section 148A had come to exist on the statute and yet the respondents having chosen to commence proceedings based on the erstwhile regime of reassessment which had prevailed. The Court in *Mon Mohan Kohli* ultimately held that any notice issued after 01 April 2021 would have to be in accordance with the procedure prescribed under Section 148A.

10. The decision of this Court as well as similar judgments rendered by different High Courts ultimately travelled upto the Supreme Court and where those appeals ultimately came to be decided in terms of a judgment handed down in *Ashish Agarwal*. In *Ashish Agarwal*, the Supreme Court ultimately passed the following directions: -

> "**28.** In view of the above and for the reasons stated above, the present appeals are allowed in part. The impugned common judgments and orders [*Ashok Kumar Agarwal* v. *Union of India*, 2021 SCC OnLine All 799] passed by the High Court of Judicature

[8] 2024 SCC OnLine Del 2296
[9] 2021 SCC OnLine Del 5250

at Allahabad in WT No. 524 of 2021 and other allied tax appeals/petitions, is/are hereby modified and substituted as under:

28.1. The impugned Section 148 notices issued to the respective assessees which were issued under unamended Section 148 of the IT Act, which were the subject-matter of writ petitions before the various respective High Courts shall be deemed to have been issued under Section 148-A of the IT Act as substituted by the Finance Act, 2021 and construed or treated to be show-cause notices in terms of Section 148-A(*b*). The assessing officer shall, within thirty days from today provide to the respective assessees information and material relied upon by the Revenue, so that the assessees can reply to the show-cause notices within two weeks thereafter.

28.2. The requirement of conducting any enquiry, if required, with the prior approval of specified authority under Section 148-A(*a*) is hereby dispensed with as a one-time measure vis-à-vis those notices which have been issued under Section 148 of the unamended Act from 1-4-2021 till date, including those which have been quashed by the High Courts.

28.3. Even otherwise as observed hereinabove holding any enquiry with the prior approval of specified authority is not mandatory but it is for the assessing officers concerned to hold any enquiry, if required.

28.4. The assessing officers shall thereafter pass orders in terms of Section 148-A(*d*) in respect of each of the assessees concerned; Thereafter after following the procedure as required under Section 148-A may issue notice under Section 148 (as substituted).

28.5. All defences which may be available to the assessees including those available under Section 149 of the IT Act and all rights and contentions which may be available to the assessees concerned and Revenue under the Finance Act, 2021 and in law shall continue to be available."

11. As is manifest from the above, the Supreme Court in order to strike a just balance between the interest of the assessee and the Revenue, provided that all notices issued pan India after 01 April 2021, albeit in accordance with the procedure contemplated under the earlier regime of reassessment, would be deemed to be notices referable to Section 148A(b) and the procedure as prescribed in that provision being thereafter liable to be followed.

12. It would be relevant to note that the judgment of the Supreme Court in *Ashish Agarwal* came to be pronounced in May 2022 and by which time the reassessment proceedings drawn against the writ petitioner pursuant to liberty accorded by us came to be completed and an order of assessment passed on 31 March 2022 making additions of INR 49,98,000/- on account of unexplained cash credits under Section 69 of the Act as well as INR 3,68,750/- on account of income from other sources.

13. It was perhaps in the aforesaid backdrop that Mr. Panda had contended that since an order of assessment had already come to be passed prior to judgment being pronounced in *Ashish Agarwal*, the respondents were clearly not obliged to retrace their steps and commence proceedings on the basis that the notice of 09 April 2021 was liable to be treated as one referable to Section 148A(b) of the Act. It is in the aforesaid context that Mr. Panda had referred to the following conclusions that we had come to render in *Anindita Sengupta:-*

> "**22.** As is manifest from a reading of the aforesaid passages forming part of the decision in *Union of India*v. *Ashish Agarwal* [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] , the Supreme Court was essentially concerned with the imperatives of striking a just balance between the right of the respondents to undertake and conclude a reassessment that may have been initiated while at the same time according due protection to the interest of the assessees. The Supreme Court held that although the High Courts were correct in taking the view that after the amendments in the Act, coming to be enforced with effect from April 1, 2021, notices could have been issued only in terms of the substituted provisions, the Department appeared to have proceeded under the mistaken yet bona fide belief that those amendments were yet to be enforced. It was in the aforesaid background that it found that the ends of justice would warrant the notices issued with reference to the erstwhile provisions being saved and being read as referable to section 148A(b). It was to subserve

the aforesaid primary objective that *Union of India* v. *Ashish Agarwal* [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] proceeded to hold that the impugned section 148 notices would be deemed to have been issued under section 148A and treated to be show-cause notices referable to clause (b) thereof.

23. As we read the penultimate directions which came to be framed, the procedure laid out in *Union of India* v. *Ashish Agarwal* [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] clearly stood confined to matters where although notices may have been issued, proceedings were yet to have attained finality. This clearly flows from the impugned notices being ordained to be treated as show-cause notices under section 148A(b) and the concomitant liberty being accorded to Assessing Officers to proceed further in accordance with section 148A(d). As we read that decision, we find ourselves unable to construe those directions as either warranting or mandating a reopening of proceedings which had come to be rendered a quietus in the meanwhile. The judgment was primarily concerned with the validity of various notices which had been promulgated and proceedings drawn in accordance with the statutory procedure which stood in place prior to April 1, 2021. It also becomes pertinent to note that the decision rendered by our court in *Mon Mohan Kohli* v. *Asst. CIT* [(2022) 441 ITR 207 (Delhi); 2021 SCC OnLine Del 5250.] perhaps constituted the solitary exception in the sense of having left a window open to the respondents to draw proceedings afresh. A majority of the High Courts, however, do not appear to have made such a provision or provide the Revenue with a right of recourse. The Supreme Court was thus faced with a peculiar and an unprecedented situation where the Revenue was rendered remediless to assess escaped income even though material may have merited such an action being pursued solely on account of a misinterpretation of the correct legal position. It was these factors which clearly appear to have weighed upon the Supreme Court to mould and sculpt a procedure which would strike a just balance between competing interests.

24. In order to carve out an equitable solution which would redress the deadlock, the Supreme Court invoked its powers conferred by article 142 of the Constitution and ordained that all such notices would be treated as being under section 148A(b) and for proceedings to be taken forward in accordance with law thereafter. The direction so framed thus enabled the assessee to question the assumption of jurisdiction under section 148 and take advantage of the beneficial measures embodied in section 148A. The assessee thus derived a right to assail the initiation of reassessment proceedings on jurisdictional grounds by preferring objections which the Assessing Officer was statutorily obliged to take into consideration before issuing notices under section 148 of the Act. The Revenue on the

other hand, and notwithstanding its folly of having erroneously proceeded under the erstwhile regime, was enabled to continue proceedings in accordance with the amended procedure as introduced by virtue of the Finance Act, 2021 ((2021) 432 ITR (Stat) 52) and thus avoid the specter of a fait accompli which it faced on account of some of the High Court decisions. This is apparent from the Supreme Court observing that the judgments rendered by some of the High Courts had left the Revenue remediless and resulting in "no reassessment proceedings at all, even if the same are permissible under the Finance Act, 2021 and as per substituted section 147."

25. However, we are of the firm opinion that *Union of India* v. *Ashish Agarwal* [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] neither intended nor mandated concluded assessments being reopened. The respondent clearly appears to have erred in proceedings along lines contrary to the above as would be evident from the reasons which follow. Firstly, *Union of India* v. *Ashish Agarwal* [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] was principally concerned with judgments rendered by various High Courts striking down section 148 notices holding that the respondents had erred in proceeding on the basis of the unamended family of provisions relating to reassessment. They had essentially held that it was the procedure constructed in terms of the amendments introduced by the Finance Act, 2021 which would apply. None of those judgments were primarily concerned with concluded assessments. It is this indubitable position which constrained the Supreme Court to frame directions requiring those notices to be treated as being under section 148A(b) and for the Assessing Officer proceeding thereafter to frame an order as contemplated by section 148A(d) of the Act. The Supreme Court significantly observed that the High Courts instead of quashing the impugned notices should have framed directions for those notices being construed and deemed to have been issued under section 148A. *Union of India* v. *Ashish Agarwal* [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] proceeded further to observe that the Revenue should have been "permitted to proceed further with the reassessment proceedings as per the substituted provisions…." Our view of the judgement being confined to proceedings at the stage of notice is further fortified from the Supreme Court providing in paragraph 8 of the report that "The respective impugned section 148 notices issued to the respective assessees shall be deemed to have been issued under section 148A of the Income-tax Act as substituted by the Finance Act, 2021 ((2021) 432 ITR (Stat) 52) and treated to be show-cause notices in terms of section 148A(b)". As would be manifest from the aforesaid extract, the emphasis clearly was on the notices which formed the subject matter of challenge before various High Courts and the aim of the Supreme Court being to salvage the

process of reassessment. This is further evident from the Supreme Court observing that the Assessing Officer would thereafter proceed to pass orders referable to section 148A(d). We consequently find ourselves unable to construe *Union of India* v. *Ashish Agarwal* [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] as an edict which required completed assessments to be invalidated and reopened. *Union of India* v. *Ashish Agarwal* [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] cannot possibly be read as mandating the hands of the clock being rewound and reversing final decisions which may have come to be rendered in the interregnum.

26. Regard must also be had to the undisputed fact that the petitioner never questioned the validity of the original notices on grounds which were urged before the various High Courts and where assessees had questioned the invocation of the unamended provisions. The petitioner chose to contest the reassessment proceedings on merits. It is also admitted before us that the petitioner was also not a party to the *Mon Mohan Kohli* v. *Asst. CIT* [(2022) 441 ITR 207 (Delhi); 2021 SCC OnLine Del 5250.] batch of matters. There was therefore, no justification for the respondent to have issued notices afresh seeking to reopen proceedings which had been rendered a closure prior to the judgment rendered in *Union of India* v. *Ashish Agarwal* [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] . At the cost of being repetitive we deem it appropriate to observe that the *Union of India* v. *Ashish Agarwal* [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] judgment neither spoke of completed assessments nor did it embody any direction that could be legitimately or justifiably construed as mandating completed assessments being reopened and more so where the assessee had raised no objection to the initiation of proceedings.

27. We are also of the firm opinion that even paragraph 25.5 of *Union of India* v. *Ashish Agarwal* [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] would not sustain the stand taken by the respondent since the same clearly confines itself to decisions or judgments rendered by a High Court invalidating a notice under section 148 and the manifest intent of the Supreme Court being that its judgment would apply and govern irrespective of whether an appeal had been laid before it.

28. It is in the aforesaid context that we also bear in mind the pertinent observations rendered by the Constitution Bench in *High Court Bar Association* v. *Uttar Pradesh* [(2024) 6 SCC 267.] when it held that a direction under article 142 of the Constitution should not impact the substantive rights of those litigants who are not even parties to the lis. The Constitution Bench while acknowledging the amplitude of the article 142 power placed a significant caveat when it observed that benefits derived by a litigant based on a judicial

> order validly passed cannot be annulled especially when they may not even have been parties to the cause. This too convinces us to hold in favour of the petitioner and come to the inevitable conclusion that the writ petition must succeed."

14. The disputation on the aforenoted issues again arose for the consideration of the Supreme Court in *Rajeev Bansal*. The petitioner seeks to draw support from the recordal of submissions advanced by the Additional Solicitor General of India as appearing in paragraph 19 of the report and where it appears to have been contended that notices issued for AY 2015-16 on or after 01 April 2021 would have to be dropped as they would not fall within the protective umbrella of TOLA.

15. It becomes pertinent to note that the provisions of TOLA had saved the time limit for effecting compliance with statutory obligations which fell for completion within the period 20 March 2020 upto 31 March 2021. The date of 31 March 2021 was thereafter further extended upto 30 June 2021. In order to appreciate the submissions which were addressed on this score, it would be beneficial to reproduce paragraph 19 of the report hereinbelow: -

> "**19.** Mr. N. Venkataraman, learned Additional Solicitor General of India, made the following submissions on behalf of the Revenue:
> (a) Parliament enacted Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 as a free-standing legislation to provide relief and relaxation to both the assessees and the Revenue during the time of covid-19. Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 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 assessees : (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 the previous assessment years;

(c) The relaxations provided under section 3(1) of the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 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) Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 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 ((2021) 432 ITR (Stat) 52) substituted the old regime for reassessment with a new regime. The first proviso to section 149 does not expressly bar the application of Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. Section 3 of the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 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 Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, then all the notices issued between April 1, 2021 and June 30, 2021 pertaining to the 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 Years	Expiry of Limitation read with TOLA for (2) (3)	Within Six Years (4)	Expiry of Limitation read with TOLA for (4) (5)
2013-2014	31.03.2017	TOLA not applicable	31.03.2020	30.06.2021
2014-2015	31.03.2018	TOLA not applicable	31.03.2021	30.06.2021
2015-2016	31.03.2019	TOLA not applicable	31.03.2022	TOLA not applicable
2016-2017	31.03.2020	TOLA not applicable	31.03.2023	TOLA not applicable
2017-2018	31.03.2021	TOLA not applicable	31.03.2024	TOLA not applicable

(f) The Revenue concedes that for the assessment year 2015-2016, all notices issued on or after April 1, 2021 will have to be dropped as they will not fall for completion during the period prescribed under the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020;

(g) Section 2 of the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 defines "specified Act" to mean and include the Income-tax Act. The new regime, which came into effect on April 1, 2021, is now part of the Income-tax Act. Therefore, Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 continues to apply to the Income-tax Act even after April 1, 2021; and

(h) *Union of India* v. *Ashish Agarwal* [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] treated section 148 notices issued by the Revenue between April 1, 2021 and June 30, 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 the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 will completely frustrate the judicial exercise undertaken by this court in *Union of India* v. *Ashish Agarwal* [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] ."

16. As is manifest from the above, the Additional Solicitor General appears to have made that submission bearing in mind the time limits ordinarily applicable to AY 2015-16 conditioned by the prescription of time as applicable in light of Section 149 as well as the Proviso thereto. The argument of the learned Additional Solicitor General which stands recorded specifically in Para 19(f) of *Rajeev Bansal* is liable to be appreciated bearing in mind the completion of the three and six year period for AY 2015-16 which would have come to an end on 31 March 2019 and 31 March 2022, respectively. Since both those terminal dates did not fall within the period 20 March 2020 to 30 June 2021 (the period contemplated under Section 3 of TOLA), it appears to have been urged that the provisions of that statute would not apply.

17. The question which, however, still survives is whether the impugned notice issued on 09 April 2021 can be said to be barred by time or lacking in jurisdiction. Undisputedly, AY 2015-16 pertains to a period prior to 01 April 2021 and would thus be governed by the First Proviso to Section 149. Section 149 as amended by Finance Act, 2021 reads as under: -

> "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 accounts 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 sub-section, "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. ”

18. The validity of the impugned notice would thus have to be evaluated on the anvil of whether the respondents could have validly initiated reassessment on 09 April 2021. Since the reassessment notice pertained to AY 2015-16 and thus prior to 01 April 2021 as per the unamended Section 149, the notice could have been issued within a maximum period of six years from the end of the relevant AY. Tested on that basis, it is apparent that the terminal date for issuance of notice would be 31 March 2022.

19. As was noticed in the preceding parts of this decision, the decision of the Supreme Court in *Ashish Agarwal* which came to be pronounced in May 2022 had introduced a legal fiction in terms of which all notices under Section 148 were liable to be viewed and treated as being referable to Section 148A(b) of the Act. The formulation of this legal fiction in *Ashish Agarwal* stands lucidly explained by the Supreme Court in *Rajeev Bansal* the relevant extracts whereof are reproduced hereinbelow: -

> “**94.** Before we proceed, we need to bear in mind three important periods:
>
> (i) The period up to June 30, 2021 - this period is covered by the provisions of the Income-tax Act read with Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020;

(ii) The period from July 1, 2021 to May 3, 2022 - the period before the decision of this court in Union of India v. Ashish Agarwal [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] ; and

(iii) The period after May 4, 2022 - the period after the decision of this court in Union of India v. Ashish Agarwal [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] . This period is covered by the directions issued by this court in Union of India v. Ashish Agarwal [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] and the provisions of the Income-tax Act read with Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020.

95. The third proviso to section 149 reads thus:

"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."

96. The third proviso excludes the following periods to calculate the period of limitation : (i) the time allowed to the assessee under section 148A(b); and (ii) the period during which the proceedings under section 148A are "stayed by an order or injunction of any court".

97. A legal fiction is a supposition of law that a thing or event exists even though, in reality, it does not exist. (Gajraj Singh v. State Transport Appellate Tribunal [(1997) 1 SCC 650.]) The word "deemed" is used to treat a thing or event as something, which otherwise it may not have been, with all the attendant consequences. (CIT v. Calcutta Stock Exchange Association Ltd. [(1959) 36 ITR 222 (SC); 1959 SCC OnLine SC 126.] ; Smt. Sudha Rani Garg v. Jagdish Kumar [(2004) 8 SCC 329.]) The effect of a legal fiction is that "a position which otherwise would not obtain is deemed to obtain under the circumstances".(Gajraj Singh v. State Transport Appellate Tribunal [(1997) 1 SCC 650.]) In K. Prabhakaran v. P. Jayarajan [(2005) 1 SCC 754; 2005 SCC (Cri) 451.] , Chief Justice R.C. Lahoti, speaking for the majority, observed that:

"39…. While pressing into service a legal fiction it should not be forgotten that legal fictions are created only for some definite purpose and the fiction is to be limited to the purpose for which it was created and should not be extended beyond that legitimate field. A legal fiction presupposes the existence of the state of facts which may not exist and then works out the consequences which flow from that state of facts. Such consequences have got to be worked out only to

> their logical extent having due regard to the purpose for which the legal fiction has been created. Stretching the consequences beyond what logically flows amounts to an illegitimate extension of the purpose of the legal fiction."

98. A legal fiction is created for a definite purpose and it should be limited to the purpose for which it is enacted or applied. It is a well-established principle of interpretation that the courts must give full effect to a legal fiction by having due regard to the purpose for which the legal fiction is created. (State of Maharashtra v. Laljit Rajshi Shah [(2000) 2 SCC 699; 2000 SCC (Cri) 533.]) The consequences that follow the creation of the legal fiction "have got to be worked out to their logical extent". (Bengal Immunity Comany Ltd. v. State of Bihar [(1955) 6 STC 446 (SC); 1955 SCC OnLine SC 2.]) The court has to assume all the facts and consequences that are incidental or inevitable corollaries to giving effect to the fiction. (Industrial Supplies Pvt. Ltd. v. Union of India [(1980) 4 SCC 341.])

99. In Union of India v. Ashish Agarwal [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] , this court created a legal fiction by deeming the section 148 notices issued under the old regime as show-cause notices under section 148A(b) of the new regime. The purpose of the legal fiction was to enable the Revenue "to proceed further with the reassessment proceedings as per the substituted provisions" of the Income-tax Act. Accordingly, all the reassessment notices issued under the old regime were deemed to always have been show-cause notices issued under section 148A(b) of the new regime. The fiction replaced section 148 notices with section 148A(b) notices with effect from the date when the notices under section 148 of the old regime were issued between April 1, 2021 and June 30, 2021, as the case may be. This ensured the continuance of the reassessment process initiated by the Revenue from April 1, 2021 to June 30, 2021 under the old regime.

100. Importantly, this court in Union of India v. Ashish Agarwal [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] did not quash the reassessment notices issued under section 148 of the old regime. In Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association [(1992) 75 Comp Cas 440 (SC); (1992) 3 SCC 1.] , a three-judge Bench of this court explained the distinction between quashing an order and staying the operation of an order thus (page 448 of 75 Comp Cas):

> "10…. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not

> mean that the said order has been wiped out from existence."

The reassessment proceedings erroneously initiated by the Revenue under the old regime were not wiped out from existence. Consequently, the Revenue was not required to start the procedure of reassessment afresh after the decision of this court in Union of India v. Ashish Agarwal [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.]

101. Under section 148A(b), the Assessing Officer has to comply with two requirements : (i) issuance of a show-cause notice; and (ii) supply of all the relevant information which forms the basis of the show-cause notice. The supply of the relevant material and information allows the assessee to respond to the show-cause notice. The deemed notices were effectively incomplete because the other requirement of supplying the relevant material or information to the assessees was not fulfilled. The second requirement could only have been fulfilled by the Revenue by an actual supply of the relevant material or information that formed the basis of the deemed notice.

102. While creating the legal fiction in Union of India v. Ashish Agarwal [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] , this court was cognizant of the fact that the Assessing Officers were effectively inhibited from performing their responsibility under section 148A until the requirement of supply of relevant material and information to the assessees was fulfilled. This court lifted the inhibition by directing the Assessing Officers to supply the assessees with the relevant material and information relied upon by the Revenue within thirty days from the date of the judgment. Thus, during the period between the issuance of the deemed notices and the date of judgment in Union of India v. Ashish Agarwal [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] , the Assessing Officers were deemed to have been prohibited from proceeding with the reassessment proceedings.

103. In VLS Finance Ltd. v. CIT [(2016) 384 ITR 1 (SC); (2016) 12 SCC 32.] a two-judge Bench of this court was called upon to interpret Explanation 1 to section 158BE of the Income-tax Act. Section 158BE provides the time limit for completion of block assessments. Explanation 1 to the provision excludes "period during which the assessment proceedings is stayed by an order or injunction of any court" from the period of limitation. This court held that the exclusion of the period of limitation has to be computed "rationally and practically" in the following terms (page 9 of 384 ITR):

> "As a general rule, therefore, when there is no stay of the assessment proceedings passed by the court, Explanation 1 to section 158BE of the Act may not be attracted. However, this general statement of legal principle has to be read subject to an exception in order to interpret it rationally and practically. In those cases where stay of some other nature

> is granted than the stay of the assessment proceedings but the effect of such stay is to prevent the Assessing Officer from effectively passing assessment order, even that kind of stay order may be treated as stay of the assessment proceedings because of the reason that such stay order becomes an obstacle for the Assessing Officer to pass an assessment order thereby preventing the Assessing Officer to proceed with the assessment proceedings and carry out appropriate assessment."
>
> (emphasis supplied)

104. Section 11A of the Land Acquisition Act, 1894 mandated the Collector to make an award under section 11 within two years from the date of publication of the declaration. The Explanation to the provision allowed exclusion of "the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a court". This court has consistently interpreted the phrase "stay of action or proceedings" to mean any type of order passed by a court, which, in one way or another, prohibits or prevents the authorities from passing an award. (*Abhey Ram* v. *Union of India* [(1997) 5 SCC 421.] ; *Indore Development Authority* v. *Manoharlal* [(2020) 8 SCC 129; (2020) 4 SCC (Civ) 496.] ; *Executive Engineer, Gosikhurd Project Ambadi, Bhandara, Maharashtra Vidarbha Irrigation Development Corporation* v. *Mahesh* [(2022) 2 SCC 772.]) Therefore, any order of a court that prevents or prohibits an authority from passing an order can be treated as a stay order.

105. A direction issued by this court in exercise of its jurisdiction under article 142 is an order of a court. The third proviso to section 149 of the new regime provides that the period during which the proceedings under section 148A are stayed by an order or injunction of any court shall be excluded for computation of limitation. During the period from the date of issuance of the deemed notice under section 148A(b) and the date of the decision of this court in *Union of India* v. *Ashish Agarwal* [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] , the Assessing Officers were deemed to have been prohibited from passing a reassessment order. Resultantly, the show-cause notices were deemed to have been stayed by order of this court from the date of their issuance (somewhere from April 1, 2021 till June 30, 2021) till the date of decision in *Union of India* v. *Ashish Agarwal* [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] , that is, May 4, 2022.

106. In *Union of India* v. *Ashish Agarwal* [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] , this court directed the Assessing Officers to provide relevant information and materials relied upon by the Revenue to the assessees within thirty days from the date of the

judgment. A show-cause notice is effectively issued in terms of section 148A(b) only if it is supplied along with the relevant information and material by the Assessing Officer. Due to the legal fiction, the Assessing Officers were deemed to have been inhibited from acting in pursuance of the section 148A(b) notice till the relevant material was supplied to the assessees. Therefore, the show-cause notices were deemed to have been stayed until the Assessing Officers provided the relevant information or material to the assessees in terms of the direction issued in *Union of India* v. *Ashish Agarwal*[(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] . To summarize, the combined effect of the legal fiction and the directions issued by this court in *Union of India* v. *Ashish Agarwal* [(2022) 444 ITR 1 (SC); (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 assessees to respond to the show-cause notices.

107. The third proviso to section 149 allows the exclusion of time allowed for the assessees 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*v. *Ashish Agarwal* [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] , this court provided two weeks to the assessees 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 Officers to the assessees in terms of the directions in *Union of India* v. *Ashish Agarwal* [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] ; and (ii) two weeks allowed to the assessees to respond to the show-cause notices.

(b) Interplay of *Union of India* v. *Ashish Agarwal* [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] with Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020

108. The Income-tax Act read with Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 extended the time limit for issuing reassessment notices under section 148, which fell for completion from March 20, 2020 to

March 31, 2021, till June 30, 2021. All the reassessment notices under challenge in the present appeals were issued from April 1, 2021 to June 30, 2021 under the old regime. *Union of India* v. *Ashish Agarwal* [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] deemed these reassessment notices under the old regime as show-cause notices under the new regime with effect from the date of issuance of the reassessment notices. The effect of creating the legal fiction is that this court has to imagine as real all the consequences and incidents that will inevitably flow from the fiction. (*East End Dwellings Co. Ltd.* v. *Finsbury Borough Council* [[1952] A.C. 109. (Lord Asquith, in his concurring opinion, observed:"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it.")]) Therefore, the logical effect of the creation of the legal fiction by *Union of India* v. *Ashish Agarwal* [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] 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.

109. If this court had not created the legal fiction and the original reassessment notices were validly issued according to the provisions of the new regime, the notices under section 148 of the new regime would have to be issued within the time limits extended by Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. As a corollary, the reassessment notices to be issued in pursuance of the deemed notices must also be within the time limit surviving under the Income-tax Act read with Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. This construction gives full effect to the legal fiction created in *Union of India* v. *Ashish Agarwal* [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] and enables both the assessees and the Revenue to obtain the benefit of all consequences flowing from the fiction. (See *State of A.P.* v. *A.P. Pensioners' Association* [(2005) 13 SCC 161; 2006 SCC (L&S) 666. (This court observed that the "legal fiction undoubtedly is to be construed in such a manner so as to enable a person, for whose benefit such legal fiction has been created, to obtain all consequences flowing therefrom".)])

110. The effect of the creation of the legal fiction in *Union of India* v. *Ashish Agarwal* [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] was that it stopped the clock of limitation with effect from the

date of issuance of section 148 notices under the old regime [which is also the date of issuance of the deemed notices]. As discussed in the preceding segments of this judgment, the period from the date of the issuance of the deemed notices till the supply of relevant information and material by the Assessing Officers to the assessees in terms of the directions issued by this court in *Union of India* v. *Ashish Agarwal* [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] has to be excluded from the computation of the period of limitation. Moreover, the period of two weeks granted to the assessees to reply to the show-cause notices must also be excluded in terms of the third proviso to section 149.

111. The clock started ticking for the Revenue only after it received the response of the assessees to the show-causes notices. After the receipt of the reply, the Assessing Officer had to perform the following responsibilities : (i) consider the reply of the assessee under section 149A(c); (ii) take a decision under section 149A(d) based on the available material and the reply of the assessee; and (iii) issue a notice under section 148 if it was a fit case for reassessment. Once the clock started ticking, the Assessing Officer was required to complete these procedures within the surviving time limit. The surviving time limit, as prescribed under the Income-tax Act read with Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, was available to the Assessing Officers to issue the reassessment notices under section 148 of the new regime.

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

113. In *Union of India* v. *Ashish Agarwal* [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] , this court allowed the assessees to avail of all the defences, including the defence of expiry of the time limit specified under section 149(1). In the instant appeals, the reassessment notices pertain to the assessment years 2013-2014, 2014-2015, 2015-2016, 2016-2017, and 2017-2018. To assume jurisdiction to issue notices under section 148 with respect to the

> relevant assessment years, an Assessing Officer has to : (i) issue the notices within the period prescribed under section 149(1) of the new regime read with Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020; and (ii) obtain the previous approval of the authority specified under section 151. A notice issued without complying with the preconditions is invalid as it affects the jurisdiction of the Assessing Officer. Therefore, the reassessment notices issued under section 148 of the new regime, which are in pursuance of the deemed notices, ought to be issued within the time limit surviving under the Income-tax Act read with Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. A reassessment notice issued beyond the surviving time limit will be time-barred."

20. Although in the facts of the present case, the respondents failed to clarify that the notice originally issued on 09 April 2021 should be treated as being one referable to Section 148A(b) of the Act, admittedly they did adhere to the procedure which had been formulated by the Supreme Court in **GKN Driveshafts (India) Ltd. v. Income Tax Officer and Ors.**[10]. In *GKN Driveshafts*, the Supreme Court had made the following pertinent observations: -

> "**5.** We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under Section 148 of the Income Tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the abovesaid five assessment years."

21. As is manifest from the above, by virtue of *GKN Driveshafts*, the respondents were placed under an obligation to communicate the reasons for formation of opinion of income having allegedly escaped

[10] (2003) 1 SCC 72

assessment to the assessee and providing him an opportunity to object to the commencement of a reassessment action on jurisdictional grounds. It was this procedural safeguard, as formulated in *GKN Driveshafts*, which finds resonance in clauses (b) and (d) of Section 148A of the Act.

22. Viewed in light of the above, and in our considered opinion the respondents had substantially complied with the principles underlying Section 148A(b) and (d) by providing an opportunity to the petitioner to question the assumption of jurisdiction under Section 148. We are thus of the firm opinion that, notwithstanding a formal communication having not been addressed to the petitioner of the 09 April 2021 notice being liable to be treated as one under Section 148A(b), the impugned notice and the consequential proceedings are not liable to be faulted on this score.

23. Of equal significance are the following observations rendered by the Supreme Court in *Rajeev Bansal* and when their Lordships dealt with the amended pecuniary limitations which came to be introduced in Section 149 by virtue of Finance Act, 2021. This becomes evident from a reading of the following passages forming part of that decision: -

> "**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:

Regime	Time limit	Income chargeable to tax which has escaped assessment

Old regime	Four years but not more than six years	Rupees one lakh or more
New regime	Three years but not more than ten years	Rupees fifty lakhs or more

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 *Union of India* v. *Ashish Agarwal* [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] , 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 lakhs is beneficial for the assessees. 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."

24. The Supreme Court thus essentially held that the pecuniary quantification of income which had allegedly escaped assessment and its revision from INR 1 lakh or more to INR 50 lakhs or more being beneficial to the assessee would additionally apply. It was perhaps in

that light that Mr. Aggarwal had sought to urge that the reassessment action is additionally liable to be struck down on this ground.

25. It would be pertinent to recall that the *"reasons to believe"* which were provided to the writ petitioner had pegged the escaped assessment at INR 46,17,000/- and thus ex facie falling below the threshold prescribed by Section 149(1)(b). The Supreme Court in *Rajeev Bansal* has categorically held that an action of reassessment commenced post 01 April 2021 would have to be compliant with the pecuniary threshold which now applies. Tested on that basis it becomes apparent that the impugned action would not sustain on this score.

26. We may and while closing this issue additionally note that the respondent has while passing an order of assessment pursuant to the liberty accorded by us made additions of INR 49,98,000/- as unexplained cash credits under Section 69 of the Act as well as a further addition of INR 3,68,750/- on account of income from other sources. While this would cross the qualifying benchmark of INR 50 lakhs which applies, what needs to be fundamentally borne in mind is the initial formation of opinion and the quantum of income which was alleged to have escaped assessment. Additions ultimately made in the course of reassessment would not validate the initiation of proceedings if founded on income of INR 46,17,000/- having escaped assessment and thus evidently below the threshold of INR 50 lakhs.

27. Insofar as the submission of Mr. Panda resting on *Anindita Sengupta* is concerned, we find ourselves unable to sustain the same bearing in mind the undisputed position which emerges from the record, namely, of the assessment order having been framed pursuant to

the liberty granted by this Court in the interim, as distinct from what prevailed in *Anindita Sengupta*. The present is thus not a case where an order of assessment had come to be independently framed and thus obviating the requirement of issuance of a Section 148A(b) notice but being one made solely on the basis of the liberty accorded by this Court in the interim. The distinction that thus needs to be acknowledged, and one which we seek to underline, is *Anindita Sengupta* being a case where a final order of assessment had already come to be framed even before the Supreme Court had pronounced its verdict in *Ashish Agarwal*. It was in that backdrop that we had held that a final order of assessment which came to be drawn upon culmination of reassessment proceedings was not liable to be reversed consequent to what was held in *Ashish Agarwal*. An order framed pursuant to the interim liberty accorded by this Court while initially entertaining the writ petition would clearly not fall in the same genre. It would in any case, and as would be true for all interim orders, be subject to the outcome of the writ petition. Such an order of assessment remains inchoate and vulnerable since it would come into being only if the challenge of the writ petitioner were to ultimately fail. We thus find ourselves unable to uphold the submissions of Mr. Panda based on *Anindita Sengupta*.

28. That only leaves us to deal with the last limb of the challenge which stood mounted by the petitioner and which was founded on the provisions comprised in Section 151 of the Act and the issue of approval by the competent authority. Undisputedly in the present case, the approval was granted by the Joint Commissioner of Income Tax, Range-52, Delhi. The issue which consequently arises is whether the Joint Commissioner could be considered to be the competent authority

for the purposes of granting approval as contemplated under Section 151 of the Act.

29. We had in **Abhinav Jindal HUF v. Commissioner of Income Tax and Ors**[11] dealt with a similar issue and where the respondents had sought to contend that the provisions of TOLA would salvage approvals that may have been granted by Joint Commissioners and notwithstanding the hierarchical change which had come to be incorporated in Section 151 post Finance Act, 2021. Negating the argument of the Joint Commissioner being entitled to be viewed as the competent authority for purposes of approval, we had in *Abhinav Jindal* held:-

> **"30.** Tested on the principles which were enunciated in *Suman Jeet Agarwal* v. *ITO* [(2022) 449 ITR 517 (Delhi); 2022 SCC OnLine Del 3141.], the petitioners would appear to be correct in their submission of the date liable to be ascribed to the impugned notices and those being viewed as having been issued and dispatched after April 1, 2021. However, and in our considered opinion, the same would be of little relevance or significance when one bears in mind the indubitable fact that all the notices were approved by the Joint Commissioner of Income-tax and which was an authority recognised under the unamended section 151. The answer to the argument based on the provisions of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act would also largely remain unimpacted by our finding on this score as would become evident from the discussion which ensues.
>
> **xxxx xxxx xxxx**
>
> **33.** A plain reading of section 3 establishes that where the time limit for the completion or compliance of any action under a specified Act were to fall between March 20, 2020 to December 31, 2020, the period for completion and compliance would stand extended up to March 31, 2021 or such other date thereafter as may be specified by the Union Government by way of a notification. Undisputedly, the date of March 31, 2021 came to be extended thereafter up to April 30, 2021 and lastly up to June 30, 2021.

[11] CIT, (2024) 468 ITR 787

34. Concededly, the Finance Act, 2021 was enacted thereafter and came into effect from April 1, 2021. It is admitted by the respondents that the terminal point for initiation of reassessment for the assessment year 2015-2016 in ordinary circumstances would have been March 31, 2020 and that date clearly fell within the period spoken of in section 3 of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act. The period for issuance of notice for the assessment year 2015-2016, thus and principally speaking, stood extended up to June 30, 2021.

35. However, the key to answering the argument which was canvassed on behalf of the respondents is contained in section 3 itself and which purported to extend the period for completion of proceedings, passing of an order, issuance of a notice, intimation, notification, sanction or approval. The provision extended the time limit for such action, notwithstanding anything contained in the specified Act, initially up to March 31, 2021 and which date was extended subsequently to April 30, 2021 and lastly up to June 31, 2021.

36. Section 3 thus essentially extended the time period statutorily prescribed for initiation and compliance up to the dates notified by the Union Government from time to time. The extension of these timelines was intended to apply to all statutes which were included in the expression "specified Act" as defined in section 2(b) of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act.

37. The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act was thus concerned with overcoming the statutory closure and eclipse which would have otherwise descended upon the authority to act and take action under the specified statutes. It was essentially concerned with tiding over the insurmountable hurdles which arose due to the pandemic and the disruption that followed in its wake. The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, viewed in that light, was neither aimed at nor designed or intended to confer a new jurisdiction or authority upon an officer under a specified enactment. On a fundamental plane, it was a remedial measure aimed at overcoming a position of irretrievable and irreversible consequences which were likely to befall during the nationwide lockdown. It was principally aimed at enabling authorities to take and commence action within the extended timelines that the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act introduced. However, it neither altered nor modified or amended the distribution of functions, the command structure or the distribution of powers under a specified Act. It was in that light that we had spoken of the carving or conferral of a new or altered jurisdiction.

38. It would therefore be wholly incorrect to read the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act as intending to amend the distribution of power or the categorisation envisaged and prescribed by section 151. The additional time that the said statute provided to an authority cannot possibly be construed as altering or modifying the hierarchy or the structure set up by section 151 of the Act. The issue of approval would still be liable to be answered based on whether the reassessment was commenced after or within a period of four years from the end of the relevant assessment year or as per the amended regime dependent upon whether action was being proposed within three years of the end of the relevant assessment year or thereafter. The bifurcation of those powers would continue unaltered and unaffected by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act.

39. The fallacy of the submission addressed by the respondents becomes even more evident when we weigh in consideration the fact that even if the reassessment action were initiated, as per the extended Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act timelines, and thus after the period of four years, section 151 incorporated adequate measures to deal with such a contingency and in unambiguous terms identified the authority which was to be moved for the purposes of sanction and approval. Section 151 distributed the powers of approval amongst a set of specified authorities based upon the lapse of time between the end of the relevant assessment year and the date when reassessment was proposed. Thus even if the reassessment was proposed to be initiated with the aid of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act after the expiry of four years from the end of the relevant assessment year, the authority statutorily empowered to confer approval would be the Principal Chief Commissioner/Chief Commissioner/Principal Commissioner/Commissioner. It would only be in a case where the reassessment was proposed to be initiated before the expiry of four years from the end of the relevant assessment year that approval could have been accorded by the Joint Commissioner of Income-tax. Similar would be the position which would emerge if the actions were tested on the basis of the amended section 151 and which divides the power of sanction amongst two sets of authorities based on whether reassessment is commenced within three years or thereafter.

40. What we seek to emphasise is that the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act authorisation merely enables the competent authority to take action within the extended time period and irrespective of the closure which would have ordinarily come about by virtue of the provisions

> contained in the Act. It does not alter or amend the structure for approval and sanction which stands erected by virtue of section 151. The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act merely extended the period within which action could have been initiated and which would have otherwise and ordinarily been governed and regulated by sections 148 and 149 of the Act. If the contention of the respondents were to be accepted it would amount to us virtually ignoring the date when reassessment is proposed to be initiated and the same being indelibly tied to the end of the relevant assessment year. Once it is conceded that the notice came to be issued four or three years after the end of the relevant assessment year, the approval granted by the Joint Commissioner of Income-tax would not be compliant with the scheme of section 151. We thus find ourselves unable to sustain the grant of approval by the Joint Commissioner of Income-tax.
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> **41.** It is pertinent to note that the respondents had feebly sought to urge that the use of the expression "sanction" in section 3 of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act also merits due consideration and is liable to be read as supportive of the contentions that were addressed on their behalf. The argument is however clearly meritless when one bears in consideration the indisputable fact that the set of provisions with which we are concerned nowhere prescribe a timeframe within which sanction is liable to be accorded. "Sanction" when used in section 3 of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act caters to those contingencies where a specified Act may have prescribed a particular time limit within which an action may be approved. That is clearly not the position which obtains here. We thus find ourselves unable to sustain the impugned action of reassessment. The impugned notices which rest on a sanction obtained from the Joint Commissioner of Income-tax would thus be liable to be quashed."

30. Mr. Panda, learned counsel appearing for the respondents, however contended that the view expressed by us in *Abhinav Jindal* would no longer sustain in light of the judgment in *Rajeev Bansal*. According to learned counsel, the Supreme Court in *Rajeev Bansal* has ultimately held that the grant of approval under Section 151 would have to be in consonance with the extended time limits which came to be introduced by TOLA. We deem it apposite to extract the following passages from *Rajeev Bansal*: -

"73. Section 151 imposes a check upon the power of the Revenue to reopen assessments. The provision imposes a responsibility on the Revenue to ensure that it obtains the sanction of the specified authority before issuing a notice under section 148. The purpose behind this procedural check is to save the assessees from harassment resulting from the mechanical reopening of assessments. (*Sri Krishna Pvt. Ltd* v. *ITO* [(1996) 221 ITR 538 (SC); (1996) 9 SCC 534.]) A table representing the prescription under the old and new regime is set out below:

Regime	Time limits	Specified authority
Section 151(2) of the old regime	Before expiry of four years from the end of the relevant assessment year	Joint Commissioner
Section 151(1) of the old regime	After expiry of four years from the end of the relevant assessment year	Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner
Section 151(i) of the new regime	Three years or less than three years from the end of the relevant assessment year	Principal Commissioner or Principal Director or Commissioner or Director
Section 151(ii) of the new regime	More than three years have elapsed from the end of the relevant assessment year	Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General

74. The above table indicates that the specified authority is directly co-related to the time when the notice is issued. This plays out as follows under the old regime:

(i) If income escaping assessment was less than rupees one lakh : (a) a reassessment notice could be issued under section 148 within four years after obtaining the approval of the Joint Commissioner; and (b) no notice could be issued after the expiry of four years; and

(ii) If income escaping was more than rupees one lakh : (a) a reassessment notice could be issued within four years after obtaining the approval of the Joint Commissioner; and (b) after four years but within six years after obtaining the approval of the Principal Chief

Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

75. After April 1, 2021, the new regime has specified different authorities for granting sanctions under section 151. The new regime is beneficial to the assessee because it specifies a higher level of authority for the grant of sanctions in comparison to the old regime. Therefore, in terms of *Union of India* v. *Ashish Agarwal* [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] , after April 1, 2021, the prior approval must be obtained from the appropriate authorities specified under section 151 of the new regime. The effect of section 151 of the new regime is thus:

(i) If income escaping assessment is less than rupees fifty lakhs : (a) a reassessment notice could be issued within three years after obtaining the prior approval of the Principal Commissioner, or Principal Director or Commissioner or Director; and (b) no notice could be issued after the expiry of three years; and

(ii) If income escaping assessment is more than rupees fifty lakhs : (a) a reassessment notice could be issued within three years after obtaining the prior approval of the Principal Commissioner, or Principal Director or Commissioner or Director; and (b) after three years after obtaining the prior approval of the Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General.

76. Grant of sanction by the appropriate authority is a precondition for the Assessing Officer to assume jurisdiction under section 148 to issue a reassessment notice. Section 151 of the new regime does not prescribe a time limit within which a specified authority has to grant sanction. Rather, it links up the time limits with the jurisdiction of the authority to grant sanction. Section 151(ii) of the new regime prescribes a higher level of authority if more than three years have elapsed from the end of the relevant assessment year. Thus, non-compliance by the Assessing Officer with the strict time limits prescribed under section 151 affects their jurisdiction to issue a notice under section 148.

77. Parliament enacted Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 to ensure that the interests of the Revenue are not defeated because the Assessing Officer could not comply with the preconditions due to the difficulties that arose during the covid-19 pandemic. Section 3(1) of the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 relaxes the time limit for compliance with actions that fall for completion from March 20, 2020 to March 31, 2021. The Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 will accordingly extend the time limit for the grant of sanction by the authority specified under section 151.

> The test to determine whether Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 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 March 20, 2020 and March 31, 2021, then the specified authority under section 151(i) has an extended time till June 30, 2021 to grant approval. 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 March 20, 2020 and March 31, 2021, then the specified authority under section 151(2) has time till March 31, 2021 to grant approval. The time limit for section 151 of the old regime expires on March 31, 2021 because the new regime comes into effect on April 1, 2021.
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> **xxxx xxxx xxxx**
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> **81.** This court in *Union of India* v. *Ashish Agarwal* [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] directed the Assessing Officers to "pass orders in terms of section 148A(d) in respect of each of the assessees concerned". Further, it directed the Assessing Officers to issue a notice under section 148 of the new regime "after following the procedure as required under section 148A". Although this court waived off the requirement of obtaining prior approval under section 148A(a) and section 148A(b), it did not waive the requirement for section 148A(d) and section 148. Therefore, the Assessing Officer was required to obtain prior approval of the specified authority according to section 151 of the new regime before passing an order under section 148A(d) or issuing a notice under section 148. These notices ought to have been issued following the time limits specified under section 151 of the new regime read with the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, where applicable."

31. As is evident from a reading of the aforenoted passages, the Supreme Court in *Rajeev Bansal* had merely alluded to the time frames within which approval could be sought and obtained and that being regulated by the extended timelines which TOLA had introduced. However, *Rajeev Bansal* cannot possibly be construed or read as affirming the authority of a Joint Commissioner to accord approval or the said authority being viewed as the competent authority for the purposes of grant of approval post 01 April 2021.

32. We thus come to conclude that the reassessment action impugned before us in this petition cannot be sustained basis the pecuniary threshold as comprised in Section 149(1)(b) as well as on the action having not been approved by the competent authority under Section 151.

33. Accordingly, and for the aforesaid reasons, we allow the instant writ petition and quash the impugned notice dated 31 March 2021 digitally signed on 09 April 2021 referrable to Section 148 and the order dated 17 January 2022.

34. We further observe that the final order of assessment was, in terms of our initial interim order, subject to the outcome of the present petition. Since we have come to hold that the Section 148 notice itself is unsustainable, the said order dated 31 March 2022 also would not survive. It too, shall consequently, stand set aside.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

JANUARY 15, 2025/RW