

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"G" BENCH, MUMBAI**

**BEFORE NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER AND**  
**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.2459/Mum./2024**  
**(Assessment Year : 2015-2016)**

**Income Tax Officer,**

Room No.854, Kautilya Bhavan, BKC,  
Bandra East,  
Mumbai - 400051.

..... Appellant

v/s

**Sumitra Rajeshbhai Jain,**

B/31, 3<sup>rd</sup> Floor Trimurti Park,  
Mamletdar Wadi Malad West,  
Mumbai - 400064.  
PAN- AAIPJ0476F

..... Respondent

**CO No.286/Mum./2024**  
**(Arising Out of ITA 2459/Mum./2024)**  
**(Assessment Year : 2015-2016)**

**Sumitra Rajeshbhai Jain,**

B/31, 3<sup>rd</sup> Floor Trimurti Park,  
Mamletdar Wadi Malad West,  
Mumbai - 400064.  
PAN- AAIPJ0476F

..... Cross Objector  
(Original Respondent)

v/s

**Income Tax Officer,**

Room No.854, Kautilya Bhavan, BKC,  
Bandra East,  
Mumbai - 400051

..... Respondent  
(Original Appellant)

Assessee by : Shri Prakash Jhunjunwala  
Revenue by : Shri Pushkaraj Bhangapatil Sr. DR

Date of Hearing - 01/01/2025

Date of Order - 06/03/2025

## **ORDER**

### **PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal by the Revenue and Cross Objection by the assessee have been filed challenging the impugned order dated 12.03.2024, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2015-16.

2. In its appeal, the Revenue has raised the following grounds: –

*"i. Whether on the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) has erred in overlooking the explicit finding of the directorate of Investigation, Kolkata that the share price of scrip M/s. JRI Industries and Infrastructure Ltd was manipulated for tax evasion and entry of entire sale proceeds was taken while incurring expenses in nature of commission."*

*"ii. Whether on the facts and circumstances of case and in law, the Hon'ble CIT(A) has erred in not appreciating the fact that the entire sale proceeds which was credited in the books of account, on account of transaction in scrip M/s. JRI Industries and Infrastructure Ltd was manipulated for tax evasion and said transaction itself was not genuine and hence entire proceeds were needed to be brought to tax u/s.68 of the I.T. Act."*

*iii. Whether on the facts and in the circumstances of the case and in law, the Id. CIT(S) has erred in treating the commission expenses as mere assumption ignoring the fact that the transactions in penny stock are shown to be very complex, as the meeting of minds of the "players" can never be established by direct evidence and therefore the surrounding circumstances were required to be taken note of in such transactions?"*

3. While in its Cross Objection, the assessee has raised the following grounds: –

*"The assessee prefers a Cross objection appeal against an order dated 12/03/2024 passed by Ld. Commissioner of Income Tax (Appeal), National Faceless Appeal Centre, Delhi on following amongst other grounds each of which are without prejudice to any other:-*

*1.0 On facts and circumstances of the case and in law, the order passed u/s. 148A(d) and notice u/s.148 issued beyond 3 years from end of the assessment year are bad-in-law, since the sanction had not been obtained by current specified authority prescribed u/s. 151(ii) of the Act;*

*2.0 On facts and circumstances of the case and in law, the order passed u/s. 148A(d) and notice issued u/s.148 are bad-in-law, since had been issued in violation to Sec.151A by Jurisdictional Assessing Officer (JAO) and had not been issued by the Faceless Assessing Officer (FAO), thereby consequential reassessment order passed u/s. 147 is void-ab-initio."*

4. The assessee has also raised the following additional ground in its

Cross Objection: -

*"The assessee prefers an additional ground in the Cross Objection filed against the Order dated 12/03/2024 passed by Ld. Commissioner of Income Tax (Appeal), National Faceless Appeal Centre, Delhi on following ground:-*

*1.0 On facts and circumstances of the case and in law, the notice issued u/s.148 dated 29/07/2022 is bad-in-law, since had been issued beyond the limitation period specified u/s.149(1), thereby consequential re-assessment order passed u/s.147 is void ab-initio."*

5. Since the issue raised by way of additional ground in the Cross Objection is a legal issue, which can be decided on the basis of the material available on record, therefore, the same is admitted in view of the ratio laid down by the Hon'ble Supreme Court in NTPC vs. CIT, reported in (1989) 229 ITR 383 (SC).

6. In its appeal, the Revenue has raised the grounds challenging the relief granted by the learned CIT(A) on merits. On the other hand, the assessee has filed the Cross Objection challenging the initiation of re-assessment proceedings under section 147 of the Act. As the issues raised by the assessee vide its Cross Objection are jurisdictional issues, which go to the root of the matter, therefore, we are considering the same at the

outset. During the hearing, the learned Authorized Representative ("*learned AR*"), by pressing the additional ground raised in the Cross Objection submitted that the notice issued under section 148 of the Act in the present case is beyond the limitation period specified under section 149(1) of the Act, and thus, the re-assessment order passed under section 147 r.w. section 144B of the Act is *void ab initio*.

7. The brief facts of the case pertaining to this issue as emanating from the record are: The assessee is an individual. For the year under consideration, the assessee filed her return of income on 31.08.2015, declaring a total income of Rs.7,96,485/-. In the return of income, the assessee disclosed Long Term Capital Gains of Rs.89,65,705/- earned on the sale of listed shares of M/s. JRI Industries and Infrastructure Ltd., and claimed the same as exempt under section 10(38) of the Act. On the basis of the information received from DDIT (Inv.), Unit-8(2), Mumbai that the assessee is a beneficiary of bogus capital gains from transaction in penny stocks, notice under section 148 of the Act was issued on 16.06.2021.

8. Subsequently, in view of the decision of the Hon'ble Supreme Court in Union of India vs. Ashish Agrawal, reported in [2022] 444 ITR 1 (SC), original notice issued under section 148 on 16.06.2021 was deemed to be issued under section 148A(b) of the Act. Vide show cause notice dated 30.05.2022, the information and material relied upon by the Revenue was provided to the assessee and time was granted to the assessee to respond within two weeks in terms of the provisions of section 148A(b) of the Act.

9. After rejecting the objections filed by the assessee, an order under section 148A(d) of the Act was passed on 29.07.2022 declaring that it is a fit case for issuance of notice under section 148 of the Act. Thereafter, on 29.07.2022, notice under section 148 of the Act was issued by the Jurisdictional Assessing Officer. The assessment order was passed under section 147 r.w. section 144B of the Act, assessing the total income of the assessee at Rs.99,19,531/-, after making an addition of Rs.92,77,751/- under sections 69A and 69C of the Act. The learned CIT(A), vide impugned order, allowed the appeal filed by the assessee on merits and deleted the additions made by the AO.

10. During the hearing, the learned AR submitted that the year under consideration is assessment year 2015-16, and therefore, the limitation period available with the Assessing Officer under section 149 of the Act for issuance of notice under section 148 of the Act is till 31.03.2022, and therefore, the notice issued under section 148 of the Act on 29.07.2022 is barred by limitation. Hence, it was submitted that the entire re-assessment proceedings culminating in the order passed under section 147 r.w. section 144B of the Act is *void ab initio*. The learned AR by placing reliance upon various judicial pronouncements, copy of which forms part of the legal paper book, submitted that a similar challenge in respect of the assessment year 2015-16 has been considered by the Hon'ble Delhi High Court and the Coordinate Bench of the Tribunal, and the issue was decided in favour of the taxpayer, *inter alia*, by considering the submission of the Revenue before the

Hon'ble Supreme Court in Union of India vs. Rajeev Bansal, reported in (2024) 469 ITR 46 (SC).

11. On the other hand, learned Departmental Representative ("*learned DR*") filed a written submission dated 06.01.2025, wherein it is submitted in para-4.6.1 that the Revenue's concession before the Hon'ble Supreme Court in Rajeev Bansal (*supra*) cannot be countenanced as the decision of the Hon'ble Supreme Court. The learned DR further submitted that in the light of the decisions of the Hon'ble Supreme Court in Ashish Agrawal (*supra*) and Rajeev Bansal (*supra*), the notice issued under section 148 of the Act on 29.07.2022 falls within the limitation period as extended by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 ("*the TOLA*"). Accordingly, the learned DR submitted that the limitation period for issuance of notice under section 148 of the Act shall be governed by the provisions of the Act, as amended by Finance Act, 2021, read with the TOLA, in the light of the decisions of the Hon'ble Supreme Court in Ashish Agarwal (*supra*) and Rajeev Bansal (*supra*).

12. We have considered the submissions of both sides and perused the material as well as written submissions and rebuttal thereto as are available on record. We, at the outset, find that similar issue pertaining to the challenge against notices issued under section 148 of the Act for the assessment year 2015-16 on the basis that same are beyond the limitation period prescribed under section 149 of the Act has been decided in favour of the taxpayers after noting the submission of the Revenue before the Hon'ble

Supreme Court in Rajeev Bansal (supra), wherein it was conceded by the Revenue that for the assessment year 2015-16, all notices issued on or after 1<sup>st</sup> April, 2021 will have to be dropped as they will not fall for completion during the period prescribed under the TOLA. We find that the Hon'ble Delhi High Court in Pratishta Garg vs. ACIT, reported in (2015) 171 taxmann.com 264 (Delhi), allowed the writ petition filed by the taxpayer and set aside the notice issued under section 148 of the Act for the assessment year 2015-16, by observing as follows: -

"2. Learned counsel for the Revenue fairly states that the prayers made by the petitioner are required to be allowed as the same are covered by the concession made by the Revenue before the Supreme Court in Union of India and Others v. Rajeev Bansal: 2024 SCC OnLine SC 2693, 2024 INSC 754, as recorded in paragraph 19 (f) of the said decision. He also submits that the Coordinate Bench of this Court had, after not ing the aforesaid concession, allowed a similar petition - Ibibo Group Pvt. Ltd. v. Assistant Commissioner of Income Tax Circle: W.P.(C) 17639/2022 by order dated 13.12.2024.

3. It is relevant to note paragraph 19 (e) and (f) of the decision of the Supreme Court in Union of India and Others v. Rajeev Bansal; 2024 SCC OnLine SC 2693. The same are set out as under:

"(e) The Finance Act, 2021 (2021) ((2021) 432 ITR (Stat) 52) substituted the fold 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 20152016, 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."*

*4. In view of the aforesaid, the impugned order dated 19.07.2022 issued under Section 148(A)(d) of the Income Tax Act,1961 (hereafter the Act) as well as the notice dated 19.07.2022 issued under Section 148 of the Act in respect of AY 2015-16 are liable to be set aside. It is so directed."*

13. We further find that similar findings were rendered by the Hon'ble Delhi High Court in IBIBO Group Pvt. Ltd. vs. ACIT, in W.P.(C) No.17639 of 2022, vide order dated 13.12.2024. During the hearing, the learned AR placed on record the copy of the following decisions of the Co-ordinate Bench of the Tribunal, wherein on similar lines re-assessment notices issued under section 148 of the Act for the assessment year 2015-16 were quashed: -

- *ACIT vs. Manish Financials, ITA No.5050 and 5055/Mum/2024 order dated 02.12.2024.*
- *ITO vs. Pushpak Realities Pvt. Ltd., ITA No.4812/mum/2024, order dated 07.09.2024.*

14. However, in the present case, the Revenue has raised contention completely contrary to its submission made before the Hon'ble Supreme Court in Rajeev Bansal (supra). As is evident from paragraph 19(f) of the judgment of the Hon'ble Supreme Court, the Revenue conceded that for the assessment year 2015-16 all the notices issued on or after 1<sup>st</sup> April, 2021 will have to be dropped as they will not fall for completion during the extended period prescribed under the TOLA. Therefore, though the issue under consideration has been settled in favour of the assessee by the

decisions of higher judicial forums, however, since, in the present case, the Revenue has taken stand contrary to the one taken before the Hon'ble Supreme Court, we have tested the submissions of the learned DR, made vide its written submission dated 06.01.2025, in the subsequent paragraphs of this order, in the light of the decisions of the Hon'ble Supreme Court cited (supra).

15. In the present case, it is the plea of the Revenue that the notice issued under section 148 of the Act cannot be assailed as time barred given the extended period under the TOLA. By referring to the notifications issued under the TOLA, the learned DR submitted that extended timeline was available up to 30.06.2021 with the Revenue for issuing re-assessment notice that would have otherwise lapsed between 20.03.2020 and 31.03.2021. It is further submitted that since the time period between 20.03.2020 and 31.03.2021 was frozen/extended, the AO lawfully relying upon the TOLA issued notice on 16.06.2021 in the present case. The learned DR further by referring to paragraphs 106 and 107 of the judgment of Hon'ble Supreme Court in *Rajeev Bansal* (supra), which has analysed the provisions of third proviso to section 149 of the Act, as amended by Finance Act, 2021, submitted that the time period during which the show cause notice was stayed till the supply of relevant information or material to the assessee in terms of the directions of the Hon'ble Supreme Court in *Ashish Agarwal* (supra) and two weeks allowed to the assessee to respond to the show cause notice, shall be excluded for computation of time limit for issuance of notice under section 148 of the Act. Accordingly, it is the plea of

the Revenue that the notice dated 29.07.2022 issued under section 148 is not barred by limitation period provided under the amended provisions of section 149 of the Act.

16. Before proceeding further, it is relevant to note that the provisions of section 149 of the Act, as amended by the Finance Act, 2021, which provides the time limit for issuance of notice under section 148 of the Act, and the same reads as follows: -

*"Time limit for notice.*

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

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

*(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year:*

*Provided that no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section, as they stood immediately before the commencement of the Finance Act, 2021:*

*Provided further that the provisions of this sub-section shall not apply in a case, where a notice under section 153A, or section 153C read with section 153A, is required to be issued in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or before the 31st day of March, 2021:*

*Provided also that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show cause notice issued under clause (b) of section 148A or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded:*

*Provided also that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of section 148A is less than seven days, such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly.*

*Explanation — For the purposes of clause (b) of this 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."*

17. Therefore, from the plain reading of the provisions of Section 149 of the Act, it is evident that no notice under section 148 of the Act shall be issued after the expiry of 3 years from the end of the relevant assessment year, unless the case falls under clause (b) to section 149(1) of the Act. Further, clause (b) to section 149(1) of the Act provides the time period of 10 years to issue notice under section 148 of the Act, if the conditions laid down therein are satisfied. We find that the first proviso to section 149(1) of the Act specifically provides that no notice under section 148 of the Act, as per the amended provisions, can be issued at any time for assessment year beginning on or before 1<sup>st</sup> 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 section 149(1)(b), as it stood immediately before the commencement of the Finance Act, 2021. Section 149 of the Act, prior to its amendment by the Finance Act, 2021, reads as follows: -

*"Time limit for notice.*

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

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

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

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

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

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

(3) If the person on whom a notice under section 148 is to be served is a person treated as the agent of a non-resident under section 163 and the assessment, reassessment or recomputation to be made in pursuance of the notice is to be made on him as the agent of such non-resident, the notice shall not be issued after the expiry of a period of six years from the end of the relevant assessment year.

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

18. From the plain reading of Section 149 of the Act, prior to its amendment by the Finance Act, 2021, it is evident that the same provides period of 4 years, up to 6 years, and up to 16 years for issuance of notice under section 148 of the Act, provided the conditions laid down therein are satisfied. In the present case, it cannot be disputed that the time limit of 4 years from the end of the relevant assessment year, i.e., assessment year 2015-16, expired on 31.03.2020, and the period of 6 years from the end of the relevant assessment year expired on 31.03.2022. Therefore, even if the submissions of the learned DR that the extended time period provided under

the TOLA is applicable to the present case is accepted, it is pertinent to note that in the present case, the time period covered under the provisions of the TOLA only includes 30.03.2020, i.e., 4 years from the end of the relevant assessment year, as the period of 6 year from the end of the relevant assessment year expired on 30.03.2022, which is beyond the period from 20.03.2020 to 31.03.2021. It is evident from the record that the original notice under section 148 of the Act, which was deemed to be a notice issued under section 148A(b) of the Act pursuant to the decision of the Hon'ble Supreme Court in Ashish Agarwal (supra), was issued on 16.06.2021. We find that the Hon'ble Supreme Court in Rajeev Bansal (supra) in paragraph-114(b) held that the TOLA will continue to apply to the Act after 1<sup>st</sup> April, 2021 if any action or proceeding specified under the substituted provisions of the Act falls for completion between 20.03.2020 and 31.03.2021. Therefore, applying the aforesaid ratio of the Hon'ble Supreme Court to the facts of the present case, we are of the considered view that as the period of 4 years from the end of the relevant assessment year expires on 30.04.2020, which fell within the period from 20.03.2020 to 31.03.2021, therefore, the notice issued on 16.06.2021, which was deemed to be noticed under section 148A(b) of the Act, is covered under the extended time limit till 30.06.2021 provided under the TOLA.

19. The learned DR further submitted that the date of issuance of deemed show cause notice (old notice) till the date of filing of response by the assessee shall be extended under third proviso to section 149 of the Act. In this regard, the learned DR placed reliance upon paragraphs 106 and 107 of

the decision of the Hon'ble Supreme Court in Rajeev Bansal (supra). The relevant portion of the submissions of the learned DR are reproduced as follows for ready reference: -

**"Exclusion of Time for Compliance with Section 148A  
Legal Basis for Excluding Show-Cause and Reply Period**

*\* Both Ashish Agarwal and Rajeev Bansal clarify that the period between the date of "deemed show-cause notice" (the old notice) and the actual issuance of notice under Section 148A(b), plus the time granted to the assessee for filing a response, shall be excluded from any limitation computation. The relevant extracts of the decision of the Hon'ble SC in the case of Rajeev Bansal is reproduced below:*

*106.... To summarize, the combined effect of the legal fiction and the directions issued by this Court in Ashish Agarwal (supra) is that the show cause notices that were deemed to have been issued during the period between 1 April 2021 and 30 June 2021 were stayed till the date of supply of the relevant information and material by the assessing officer to the assessee. After the supply of the relevant material and information to the assessee, time begins to run for the assesses to respond to the show cause notices.*

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

20. From the perusal of the aforesaid findings of the Hon'ble Supreme Court in Rajeev Bansal (supra), it is evident that the Hon'ble Supreme Court directed that while computing the time limit for issuance of notice under section 148, the time during which the show cause notice was stayed till the supply of relevant information or material by the AO and further period of

two weeks allowed to the assessee to respond to the show cause notice should be excluded. We find that while examining the validity of notices issued from 01.04.2021 to 30.06.2021 under the old regime, the Hon'ble Supreme Court in Rajeev Bansal (supra), analysing the interplay of Ashish Agarwal (supra) with the TOLA, in paragraph 108 of its judgment observed as follows: -

*"108. The Income Tax Act read with TOLA extended the time limit for issuing reassessment notices under Section 148, which fell for completion from 20 March 2020 to 31 March 2021, till 30 June 2021. All the reassessment notices under challenge in the present appeals were issued from 1 April 2021 to 30 June 2021 under the old regime. Ashish Agarwal (supra) deemed these reassessment notices under the old regime as show cause notices under the new regime with effect from the date of issuance of the reassessment notices. The effect of creating the legal fiction is that this Court has to imagine as real all the consequences and incidents that will inevitably flow from the fiction. 163 Therefore, the logical effect of the creation of the legal fiction by Ashish Agarwal (supra) is that the time surviving under the Income Tax Act read with TOLA will be available to the Revenue to complete the remaining proceedings in furtherance of the deemed notices, including issuance of reassessment notices under Section 148 of the new regime. The surviving or balance time limit can be calculated by computing the number of days between the date of issuance of the deemed notice and 30 June 2021."*

21. Thus, the Hon'ble Supreme Court held that the surviving time under the Act read with the TOLA will be available to the Revenue to complete the remaining proceedings in furtherance of the deemed notice, including issuance of re-assessment notice under section 148 of the Act under the new regime. While explaining the methodology for computation of the surviving or balance time limit, the Hon'ble Supreme Court in paragraph 112 of Rajeev Bansal (supra) observed as follows: -

*"112. Let us take the instance of a notice issued on 1 May 2021 under the old regime for a relevant assessment year. Because of the legal fiction, the deemed show cause notices will also come into effect from 1 May 2021. After*

*accounting for all the exclusions, the assessing officer will have sixty-one days [days between 1 May 2021 and 30 June 2021] to issue a notice under Section 148 of the new regime. This time starts ticking for the assessing officer after receiving the response of the assessee. In this instance, if the assessee submits the response on 18 June 2022, the assessing officer will have sixty-one days from 18 June 2022 to issue a reassessment notice under Section 148 of the new regime. Thus, in this illustration, the time limit for issuance of a notice under Section 148 of the new regime will end on 18 August 2022."*

22. Therefore, the surviving/balance time limit can be calculated by computing the number of days between the date of issuance of deemed notice and 30.06.2021. Since, in the present case, we find that the period of 4 years from the end of the relevant assessment year expires on 30.04.2020, which falls within the time period from 20.03.2020 to 31.03.2021, in order to compute the surviving/balance time as per the decision of the Hon'ble Supreme Court in paragraph 108, it is relevant to note the following dates: -

<i>S. No.</i>	<i>Particulars</i>	<i>Page No.</i>
<i>a)</i>	<i>1<sup>st</sup> Notice u/s.148</i>	<i>16/06/2021</i>
<i>b)</i>	<i>Notice u/s.148A(b)</i>	<i>30/05/2022</i>
<i>c)</i>	<i>Reply of the assessee</i>	<i>10/06/2022</i>
<i>d)</i>	<i>Order passed u/s.148A(d)</i>	<i>29/07/2022</i>
<i>e)</i>	<i>Notice u/s.148</i>	<i>29/07/2022</i>

23. Therefore, computing the surviving/balance time limit, as per the decision of the Hon'ble Supreme Court in Rajeev Bansal (supra), we find that the Revenue had only 15 days (i.e., between 16.06.2021 to 30.06.2021) to issue notice under section 148 of the Act of the new regime in the present case, i.e. till 25.06.2022, after receipt of the response from the assessee to the show cause notice under section 148A(b) of the Act on 10.06.2022. However, undisputedly, in the present case, the notice under

section 148 of the Act was issued on 29.07.2022, i.e., 34 days after the surviving/balance time period as per the directions of the Hon'ble Supreme Court in Rajeev Bansal (supra). Therefore, having considered the provisions of the Act, pre as well as post the amendment by the Finance Act, 2021, and the TOLA, in the light of the decision of the Hon'ble Supreme Court in Ashish Agarwal (supra) and Rajeev Bansal (supra), we are of the considered view that the notice under section 148 of the Act in the present case was issued beyond the time period provided under the Act. Thus, *de hors* the concession of the Revenue before the Hon'ble Supreme Court in Rajeev Bansal (supra), which has been objected to by the learned DR in the present case, we are of the considered view that in the facts and circumstances of the present case, as considered in-detail in the foregoing paragraphs, the notice issued under section 148 of the Act on 29.07.2022 is barred by limitation period specified under section 149 of the Act. Accordingly, we are of the considered view that notice issued under section 148 of the Act on 29.07.2022 is *void ab initio* and bad in law. Therefore, the same is quashed. Consequently, the entire re-assessment proceedings and assessment order passed under section 147 r.w. section 144B of the Act are also quashed.

24. Since the relief has been granted to the assessee on the afore-noted judicial aspect, the other grounds raised by the assessee in its Cross objection on jurisdiction are rendered academic, and therefore, are left open.

25. Accordingly, the appeal by the Revenue on merits has been rendered academic, and therefore, is dismissed as infructuous.

26. In the result, the Cross Objection by the assessee is allowed, while the Revenue's appeal is dismissed.

Order pronounced in the open Court on 06/03/2025

**Sd/  
NARENDRA KUMAR BILLAIYA  
ACCOUNTANT MEMBER**

**Sd/-  
SANDEEP SINGH KARHAIL  
JUDICIAL MEMBER**

**MUMBAI, DATED: 06/03/2025**

*Prabhat*

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar  
ITAT, Mumbai