

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.3118/Mum/2025
(Assessment Year :2016-17)**

Arkay Logistics Limited Essar House 11 KK Marg Mumbai – 400 034	Vs.	Assistant Commissioner of Income Tax, Mumbai
PAN/GIR No.AABCE4028N		
(Appellant)	..	(Respondent)

Assessee by	Shri Satish Mody
Revenue by	Shri Aditya M Rai, Sr.DR
Date of Hearing	18/06/2025
Date of Pronouncement	26/06/2025

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 31/01/2025 passed by ld. CIT(A), Mumbai for the quantum of assessment passed u/s.147 r.w.s. 144 for the A.Y.2016-17.

2. Before us it has been stated that the reopening of assessment u/s.148 r.w.s. 147 is bad in law on the ground that approval has been given by PCIT instead of PCCIT or CCIT as the notice has been issued beyond the period of three years from the end of the relevant assessment year.

3. At the outset, appeal of the assessee is time barred by 31 days. In the petition of condonation of delay duly supported by Affidavit, it has been stated that order of the Id. CIT(A) was issued by NFAC which was uploaded on ITBA portal on 21/01/2025. The person looking after the matters of the company and the management of taxation matters was not able to attend his official duties due to medical emergency and he himself underwent major surgery for goiter condition. Further, he also consulted his relevant team that the order was not served on the official e-mail of the applicant company. Copy of medical reports in the case of operation of the concerned person has also been filed. Since there was a reasonable cause that the person looking after the taxation matters was not available due to his medical contingency, therefore, order uploaded on the ITBA portal skipped the attention and therefore, the delay of 31 days is condoned.

4. Coming to the facts relating to the validity of notice u/s.148 are that assessee has filed its return of income for A.Y.2016-17 on 28/03/2017 declaring total income of Rs.58,14,31,060/-. The assessee's case was reopened u/s.147 on the ground that assessee company has taken bogus billing amounting to Rs.1,60,00,000/- from Kamal Jain in whose case enquiry report was received that he was providing accommodation bogus bills to various companies including the assessee. Accordingly, notice u/s.148 was issued on 28/06/2021. Later on in view of the judgment of Hon'ble Supreme Court in the case of Ashish Agarwal reported in 138 taxman.com 64 (SC), notice u/s.148A(b) was

issued on 27/05/2022 and order u/s. 148A(d) was passed on 28/07/2022 by the approval of Pr. CIT. The copies of notices as well as order u/s.148A(d) has been filed before us which clearly shows that the same has been approved by Pr. Commissioner of Income Tax on 28/07/2022. Finally, notice has been issued on 29/07/2022 after getting prior approval of Pr. CIT-6, Mumbai.

5. After considering the rival submissions and on perusal of the relevant facts on record we find that this issue is squarely covered in series of judgments of this Tribunal wherein the ratio of the Hon'ble Supreme Court in the case of Rajeev Bansal has been followed. For the sake of ready reference, the decision of DCIT vs. Prasad Sherry is reproduced hereunder:-

"7. We have heard both the parties and also perused the relevant facts and dates for adjudicating the issue of limitation. The Hon'ble Supreme Court in the case of Rajeev Bansal explaining the ratio laid down in similar judgment of Ashish Bansal wherein the Hon'ble Supreme Court had exercised its discretionary jurisdiction under Article 142 of the Constitution of India while explaining the old law and new law u/s 148, has created a legal fiction and balancing act on the existing legal framework of procedure of re-assessment. Wherever the notice u/s.148 were issued under the old regime for which time limit was extended up to 30/06/2021, the Hon'ble Apex Court held that it would be deemed that re-assessment notice issued under the old regime shall be treated as show-cause notice issued u/s.148A(b) of the new regime. Further the Court directed the Revenue to provide all the relevant material / information to the assessee and thereafter, allowed the assessee to respond to the show-cause notice and raised its objection or availing any kind of defenses including available u/s.149. Thus, the Hon'ble Supreme Court balanced the equities between the Revenue and the assessee by giving effect

to the legislative scheme of re-assessment as contained under the new regime. The Court thus supplemented the existing legal framework of the procedure of re-assessment under the Income Tax Act with the principles grounded in equitable standards. For the sake of ready reference para 108 & 109 of the judgment in the case of Rajeev Bansal is reproduced hereunder:-

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. *East End Dwellings Co. Ltd. v. Finsbury Borough Council* [1952] AC 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 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.**

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 TOLA. 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 TOLA. This construction gives full effect to the legal fiction created in Ashish Agarwal (supra) and enables both the assesses 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. [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 there from."

8. Thus, the Hon'ble Supreme Court had explained the concept of surviving or balance time limit which is to be calculated by computing number of days between dates of issuance of deemed notice and 30/06/2021. Thereafter, the Hon'ble Supreme Court has elaborated the effect of the legal fiction propounded in the case of UOI vs. Ashish Agarwal which has been explained in para 110 to 112 which is reproduced hereunder:-

110. The effect of the creation of the legal fiction in Ashish Agarwal (supra) was that it stopped the clock of limitation with effect from the date of issuance of Section 148 notices under the old regime [which is also the date of issuance of the deemed notices]. As discussed in the preceding segments of this judgment, the period from the date of the issuance of the deemed notices till the supply of relevant information and material by the assessing officers to the assesses in terms of the directions issued by this Court in Ashish Agarwal (supra) has to be excluded from the computation of the period of limitation. Moreover, the period of two weeks granted to the assesses to reply to the show cause notices must also be excluded in terms of the third proviso to Section 149.

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

149A(d) based on the available material and the reply of the assessee; and (iii) issue a notice under section 148 if it was a fit case for reassessment. Once the clock started ticking, the assessing officer was required to complete these procedures within the surviving time limit. The surviving time limit, as prescribed under the Income-tax Act read with TOLA, was available to the assessing officers to issue the reassessment notices under section 148 of the new regime.

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

9. The sequitor of the aforesaid observation and the judgment of the Hon'ble Supreme Court are that-

- **Firstly**, exclusion of the period has been explained;
 - a) the date of issuance notice u/s 148 under the old regime reckoned to be the date of issuance of the deemed notices u/s 148A(b);
 - b) 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 assessee is to be excluded from the computation of the period of limitation;
 - c) further, period of two weeks granted to the assessee to reply to the show-cause notice is also to be excluded in terms of third proviso to Section 149;
- **Secondly**, once the response of the assessee to the show-cause notice has been received, then **“the clock starts**

ticking for the Revenue”, that is, after the receipt of reply, ld. AO has to;

- (a) consider the reply of the assessee u/s.148A(c);
- (b) take a decision u/s.148A(d) based on the available material and the reply of the assessee; and
- (c) issue a notice u/s.148 if it was a fit case for re-assessment.

Once it is found to be a fit case for re-assessment, the limitation clock starts ticking and it is mandatory for the ld. AO to comply with these procedures within the surviving time limit which was available to the ld. AO to issue re-assessment notice u/s.148 of the new regime; and

➤ **Lastly,** the Hon’ble Supreme Court has given an example as how to calculate the surviving time. Calculation of surviving time has been laid down from the period when the first notice u/s.148 was issued under old regime till the last date of limitation for issuance of notice u/s.148 of the old regime; and that period has been reckoned as the surviving time period left for the ld. AO while issuing notice u/s.148 under the new regime. So whatever surviving time is left the AO has to issue notice within that surviving time.

10. If the surviving time like here in this case is only two days, because original notice u/s.148 under the old regime was issued on 28/06/2021 and the last date on which notice could have been issued under old regime was up till 30/06/2021; and therefore, the surviving time left was only two days for issuing a notice under the new regime u/s.148 after completion of the procedure laid down u/s. 148A (b) to 148(d). This principle has been summarized in para 114G & H of the Judgment which for the sake of ready reference is reproduced hereunder:-

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

- (a)
- (b).....
- (c).....
- (d).....
- (e).....
- (f).....

(g) The time during which the show-cause notices were deemed to be stayed is from the date of issuance of the deemed notice between April 1, 2021 and June 30, 2021 till the supply of relevant information and material by the Assessing Officers to the assesseees in terms of the directions issued by this court in Union of India v. Ashish Agarwal, and the period of two weeks allowed to the assesseees to respond to the show-cause notices; and

(h) The Assessing Officers were required to issue the reassessment notice under section 148 of the new regime within the time limit surviving under the Income-tax Act read with the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. All notices issued beyond the surviving period are time barred and liable to be set aside;”

Ergo, ld. AO was required to issue notice u/s.148 of the new regime within the time surviving under the Income Tax Act read with TOLA and any notices issued beyond the surviving period was declared to be time barred by the Hon'ble Supreme Court.

11. Now here in this case, the chronology of date and issuance of notices for the purpose of calculation of limitation and surviving days as per the decision of the Hon'ble Supreme Court in the case of Rajeev Bansal can be illustrated in the following manner:-

Sr. No.	Particulars	Date of Notice	Surviving days
1.	Notice issued u/s. 148 of the Act under old regime.	28.06.2021	
2.	Due date for issuance of notice under old regime	30.06.2021	2
3.	Notice issued by Ld. A.O. in compliance of the decision of Hon'ble Supreme Court in the case of UOI v. Ashish Agarwal [444 ITR ±1 supplying the information.	24.05.2022	
4.	Time limit granted under above notice to file reply	07.06.2022	2

5.	<i>Date by which order u/s 148A(d) and notice u/s 148 of the Act was required to be issued (para no of the decision)</i>	09.06.2022	
6.	<i>Date of order u/s 148A(d) of the Act issued by Ld. A.O.</i>	28.07.2022	
7.	<i>Date of notice u/s 148 of the Act issued by Ld. A.O.</i>	28.07.2022	

12. Here in this case no reply was filed by the assessee in response to show-cause notice u/s. 148A(b) which was fixed by the ld. AO to be furnished on or before 07/06/2022. Once the time limit for reply to the show-cause notice had expired then the Hon'ble Supreme Court in para 111 (supra) have categorically held that ld. AO had to complete the procedure laid down u/s.148A(c), passed u/s.148(d) and issued notice u/s.148 within the surviving time limit which was originally available to the ld. AO. Here in this case the surviving time was only two days which is to be calculated from 28/06/2021 to 30/06/2021 and therefore, only two days shall be available to the ld.AO from the time granted to the assessee to give reply to the notice. Here in this case also the clock started ticking for the ld. AO on the expiry of permissible limit i.e. that is between 07-06-2022 to 09/06/2022. Thus, only 2 days were the surviving time available to the AO and he was required to pass order u/s. 148A (d) and issue notice u/s.148 on or before 09/06/2022. Accordingly, the impugned notice u/s.148 dated 28/07/2022 does not fit in the "surviving time limit" as laid down by the Hon'ble Supreme Court in the case of Rajeev Bansal. Accordingly, we hold that notice u/s.148 dated 28/07/2022 is barred by limitation, therefore, the entire notice is quashed. Consequently, the entire re-assessment proceedings as well as re-assessment order is non-est. Thus, on this ground, entire re-assessment order is quashed and consequently, the Revenue's appeal is dismissed.

6. Accordingly, notice u/s.148 dated 29/07/2022 issued by Pc. CIT-6, Mumbai is invalid as the approval should have been obtained from Pr. Chief Commissioner and Chief Commissioner of Income Tax who are the prescribed

authorities under the provisions of the Act. Accordingly, on this ground, notice u/s.148 is quashed; consequently, the entire assessment order is quashed.

7. In the result, appeal of the assessee is allowed.

Order pronounced on 26th June, 2025.

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Mumbai; Dated 26/06/2025
KARUNA, *sr.ps*

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai