IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 17321 of 2022

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R/SPECIAL CIVIL APPLICATION NO. 26348 of 2022
With
R/SPECIAL CRIMINAL APPLICATION NO. 5059 of 2021

FOR APPROVAL AND SIGNATURE:
HONOURABLE MS. JUSTICE SONIA GOKANI
and
HONOURABLE MRS. JUSTICE MAUNA M. BHATT

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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KEENARA INDUSTRIES PRIVATE LIMITED
Versus
THE INCOME TAX OFFICER, WARD 1(1)(3), SURAT

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Appearance:
LD.SENIOR ADVOCATE MR TUSHAR HEMANI, WITH MS VAIBHAVI K PARIKH(3238) for the Petitioner(s)
LD.SR.ADV.MR SOPARKAR ASSISTED BY LD.ADV.MR.B.S.SOPARKAR for the Petitioner(s)
LD.SR.ADV.MR.R.K.PATEL ASSISTED BY LD.ADV.D.R.PATEL
LD.ADV.MR.DHARAN GANDHI for the Petitioner(s)
LD.ADV.NISHIT GANDHI ASSISTED BY LD.ADV.MS.NIDHI VYAS for the petitioner (s)
LD.ADV.MR.MANISH J SHAH for the Petitioner(s)
LD.ADV.MR.SUDHIR MEHTA for the Petitioner(s)
LD.ADV. MR.DHINAL SHAH for the Petitioner(s)
LD.ADV.MR.JIMI S PATEL for thePetitioner(s)
LD.ADV.MR.S.N.DIVATIA for the Petitioner

LD.SR.STANDING COUNSEL, MR NIKUNT RAVAL FOR MRS KALPANAK RAVAL(1046) for the Respondent(s)

LD.SR. STANDING COUNSEL, MR.VARUN PATEL for the Respondent(s)

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CORAM:**HONOURABLE MS. JUSTICE SONIA GOKANI**
and
HONOURABLE MRS. JUSTICE MAUNA M. BHATT

Date : 07/02/2023

COMMON CAV JUDGMENT
(PER : HONOURABLE MS. JUSTICE SONIA GOKANI)

1. Group of petitions since involve identical questions of facts and law, they are being decided by this common judgment. The facts are drawn for the purpose of adjudication from Special Civil Application No.17321 of 2022.

2. The petitioner by way of the present petition under Article 226 of the Constitution of India challenges notice dated 26.07.2022 issued under Section 148 of the Income Tax Act, 1961 (referred to as 'the Act') as well as the order dated 26.07.2022 passed under Section 148A(d) of the Act seeking to reopen the income tax assessment of the petitioner for assessment year 2014-15 terming the said notice and order as bad, illegal and contrary to law and without jurisdiction.

2.1 The petitioner is a company

incorporated under the Companies Act, 1956 of which majority shareholders are citizens of India. The department had issued the notice of reopening under Section 148 of the Act for the year under consideration during the period between 01.04.2021 to 30.06.2021 after following the erstwhile procedure prescribed for reopening (the law applicable till 31.03.2021) despite the fact that w.e.f 01.04.2021, new regime of reopening provisions had come into force. This was challenged and the matter eventually from various High Courts had travelled to the Apex Court, which vide its judgment dated 04.05.2022 in case of ***Union of India vs. Ashish Agarwal,*** reported in ***(2022) 444 ITR 1 (SC)*** adjudicated the issue as to the validity of such reopening notices issued across the Nation and gave certain directions to the department.

2.2 Consequent to the aforesaid decision, the reassessment proceedings for the year under consideration have been initiated and

the respondent issued a show cause notice dated 28.05.2022 under clause (b) of section 148A of the Act, whereby the petitioner was supplied the relevant material, on the basis of which the case for the year under consideration is sought to be reopened. The petitioner was called upon to show cause as to why, in view of such material, notice under section 148 of the Act should not be issued for the year under consideration.

2.3 The information has been received from the Investigation Wing, Kolkata, to the effect that during the course of search action carried out in the case of Maji Group (i.e. third party) on 05.11.2020, it was found that Anup Majee alias Lala has acquired certain paper companies including Starlight Devcon Pvt. Ltd.

2.4 On analysis of Bank statements of these companies, it was found that the petitioner has received unsecured loans

from these companies. As per the finding of the search actions, Starlight is a shell company and has no financial capability to provide such loans and therefore, credits in the books of accounts of the petitioner are to be treated as unexplained cash credit under section 68 of the Act.

2.5 The petitioner was called upon to show cause as to why a notice under section 148 of the Act should not be issued on the basis of such information, which suggests income to the tune of Rs.1,25,00,000/- chargeable to tax has escaped the assessment for the year under consideration.

2.6 The petitioner furnished a detailed reply to the said show cause notice vide letter dated 09.06.2022 and in view of such submissions contained therein, the request was made to the respondent to drop the reassessment proceedings.

2.7 The petitioner raised the following contentions:

(i) The petitioner was supplied a copy of insight portal uploaded on 20.03.2021 wherein it was stated that the petitioner has received unexplained cash credit of Rs.1,25,00,000/- from Starlight Devcon Pvt. Ltd. during the year under consideration.

(ii) A copy of the so called report supplied along with the show cause notice did not contain any stamp or sign of any official.

The petitioner requested to provide the copy of statements recorded of Mr.Anup Majee, wherein he stated that Starlight Devcon Pvt. Ltd. is a shell company having no financial capabilities to provide such loans and he also stated that the loan rendered to the petitioner is bogus and not genuine. Again, this contains his version that has position or interest in the Starlight Devcon Pvt.Ltd. and is being the

director/chairperson in the said company had been called for.

2.8 It is the say of the petitioner that action of reopening the assessment for the year under consideration is barred by limitation. There is no escapement of income chargeable to tax represented in the form of asset, as defined in the Explanation to section 149(1)(b) of the Act.

2.9 It is also the case of the petitioner that it received unsecured loans from Starlight Devcon Pvt.Ltd. during the year under consideration and all the transactions were carried out through Banking channels. Confirmation, Bank Statements, Balance Sheet and Profit and Loss Account of Starlight Devcon Pvt.Ltd. were attached. Various notices were issued during the original assessment stage and reply furnished in response thereto were tabulated. Details of unexplained loans

received during the year under consideration were duly furnished at the original assessment stage, as is evident from the details and at the time of original assessment stage in support of genuineness of the loans (i) audited Balance Sheet of the petitioner, (ii) confirmation of lender, (iii) audited Balance Sheet of lender and (iv) Bank statement of lender have been furnished and after threadbare examination of all such details and evidences, the then Assessing Officer consciously chose not to make any addition in respect of the unsecured loans received from Starlight Devcon Pvt. Ltd. while framing the assessment under Section 143(3) of the Act vide order dated 06.12.2017.

2.10 It is further averred that the issue on hand was threadbare examined at the original assessment stage, as is evident from the peculiar facts of the case narrated. Hence, action of reopening is

nothing, but, an outcome of mere change of opinion which is not permissible in the eyes of law.

2.11 Again, it is the say of the petitioner that transaction as to the acceptance of unsecured loans in question was an absolutely genuine transaction, as evident from various documentary evidences furnished in support of the same. Hence, there is no escapement of income chargeable to tax in the hands of the petitioner for the year under consideration.

2.12 The respondent vide order dated 26.07.2022 passed under clause (d) of Section 148A of the Act, concluded that there is escapement of income chargeable to tax to the tune of Rs.1,25,00,000/- and hence, the respondent is of the view that it is a fit case for issuance of notice under section 148 of the Act. The notice also came to be issued on the selfsame date of 26.07.2022 under section 148 of the Act

seeking to reopen the case of the petitioner for the year under consideration.

2.13 According to the petitioner, the impugned notice issued under section 148 of the Act as well as the impugned order under clause (d) of section 148A of the Act are patently bad, illegal and contrary to law.

2.14 According to the petitioner, the impugned notice is barred by limitation where attention of this Court has been drawn to the legal provision. As per first proviso to sub-section (1) of section 149(1), no notice under section 148 of the Act shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of 2021, is such notice could not have been issued at that time on account of being beyond the time limit specified under clause (b) of sub-section (1) of section 149, as they stood immediately before the commencement of the

Finance Act, 2021.

2.15 As per clause (b) of sub-section (1) of section 149 of the Act, as they stood immediately before the commencement of the Finance Act, 2021, no notice under section 148 of the Act shall be issued for the relevant assessment year 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 Rs.1 lakh or more for that assessment year.

2.16 It is, therefore, urged that the notice under Section 148 of the Act can be issued on or after 01.04.2021 only if the limitation for issuing such notice under old regime of reopening had not expired prior to Finance Act, 2021 coming into force. It is clarified that the new provisions relating to reopening introduced by the Finance Act, 2021 came into force

with effect from 01.04.2021.

2.17 It is also the say of the petitioner that as per the old regime of reopening, reopening notice under Section 148 of the Act could have been issued before the expiry of six years from the end of the relevant assessment year i.e. no notice could have been issued after the expiry of the period of six years from the end of the relevant assessment year and if the period of six years from the end of the relevant assessment year expired on or before 31.03.2021, then notice under section 148 of the Act could not have been issued under the new regime for the said assessment years.

2.18 Following are the example given for appreciation of the above referred legal provisions pertaining to reopening under the new regime:

Particulars	Assessment Year 2013-14	Assessment Year 2014-15
Date of expiry of the Assessment Year	31.03.2014	30.03.2015

Date of expiry of six years from the end of the Assessment year	31.03.2020	31.03.2021
Date of new provisions introduced by Finance Act, 2021 coming into force	01.04.2021	01.04.2021
Whether limitation for issuing notice under section 148 prescribed under old regime of reopening expired?	Yes	Yes
Whether notice under section 148 of the Act can be issued under new regime in view of first proviso to sub-section (1) of section 149 of the Act?	No	No

It is therefore, urged that reopening notice issued earlier under section 148 of the Act between 01.04.2021 to 30.06.2021 is clearly barred by limitation in view of the above discussed provisions as well as the example given.

2.19 It is further averred that there is no income chargeable to tax represented in the form of asset which has escaped assessment. As per clause (a) of sub-section(1) of section 149, no notice under section 148 of the Act shall be issued for the relevant assessment year, if three years have elapsed from the end of the relevant assessment year unless the case

falls under clause (b). As per clause (b) of sub-section (1) of section 149 of the Act, no notice under Section 148 of the Act shall be issued for the relevant assessment year, 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 the 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 Rs.50 Lakh for that year.

2.20 As per Explanation to sub-section (1) of section 149, for the purpose of clause (b) of sub-section (1) of section 149 of the Act, asset shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in the Bank account.

2.21 These legal provisions are

summarized this wise: If three years from the end of the relevant assessment year have not expired, reopening notice can be issued whenever there is an escapement of income chargeable to tax for the year in question. If three years from the end of the relevant assessment year have expired, then reopening notice can be issued in case there is an escapement of income chargeable to tax subject to fulfillment of following conditions:

> *1. 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; and*
>
> *2. Income which has escaped assessment amounts to or is likely to amount to Rs.50 Lakh or more for that years.*

2.22 The asset shall include for the purpose of clause (b) of sub-section (1) of

section 149 of the Act the immovable property, being land or building or both, shares and securities, loans and advances, deposits in Bank account.

2.23 The impugned notice, since, has been issued by the respondent after expiry of three years from the end of the relevant assessment year, according to the petitioner, there is no income chargeable to tax represented in the form of asset which has escaped assessment. The case has been reopened on the count that certain unsecured loans taken by the petitioner are fictitious. The issue in question would fall within the ambit of asset. Thus, requirement of clause (b) of sub-section (1) of section 149 of the Act have not been satisfied.

2.24 According to the petitioner, there is no information, as prescribed under the Act, which suggests that any income chargeable to tax has escaped assessment.

The petitioner invited the attention of this Court to the first proviso to section 148 of the Act, no notice under section 148 of the Act shall be issued unless there is an information with the Assessing Officer which suggests that income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice. Explanation 1 to section 148 of the Act defines the term "information" for the purpose of sections 148 and 148A of the Act which suggest that the income chargeable to tax has escaped assessment. The scope of the term "information" has been widened w.e.f. 01.04.2022.

2.25 It is further the say of the petitioner that the respondent has acted illegally and without jurisdiction in issuing notice under Section 148 of the Act and only if an Assessing Officer has reason

to believe that any income chargeable to tax has escaped assessment, the notice can be issued. The reopening is merely based on the change of opinion. The belief must be that of assessing officer, the belief should be of a reasonable and honest person based upon reasonable ground, not a mere change of opinion, suspicion, gossip or rumour and it must be live link or close nexus between the material before the Assessing Officer and the belief he has formed regarding escapement of income.

2.26 The petitioner submits that the case was selected for scrutiny and the issue on hand was threadbare examined at the original assessment stage by the then Assessing Officer.

2.27 It is further urged that the sanction of the competent authority has not been obtained in the correct perspective. The jurisdictional Assessing Officer does not have power to issue notice under

section 148 of the Act since such notice has to be issued by National Faceless Assessment Centre only.

3. The petitioner submitted that pending the hearing and final disposal of the petition, following prayers are sought:

> *"7...*
>
> *(a) quash and set aside the impugned notice as well as the impugned order at ANNEXURE "A (Colly.)" to this petition;*
>
> *(b) pending the admission, hearing and final disposal of this petition, stay the implementation and operation of the impugned notice as well as impugned order at ANNEXURE "A (Colly.) to this petition and stay further proceedings for Assessment Year 2014-15;*
>
> *(c) any other and further relief deemed just and proper be granted in the interest of justice;*
>
> *(d) provide for the cost of this petition."*

4. This Court issued the notice and the affidavit-in-reply has been filed on behalf of the respondent denying all allegations

made and the contentions raised in the memo of the petition.

4.1 According to the respondent, the petitioner's challenge to the issue of notice under section 148 of the Act is on the ground that it is barred by limitation. The case has been reopened on the basis and directions of the Apex Court in its judgment dated 04.05.2022 in case of ***Union of India vs. Ashish Agarwal (supra)*** therefore, the question of the case being barred by limitation does not arise. The assessee has referred to the Explanation to section 149(1)(b) of the Act to say that no income chargeable to tax in the form of asset had escaped assessment. Section 149(1)(b) of the Act gives an explanation as under:

"Explanation-For the purpose 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."

The very reading of Explanation makes it clear that it is inclusive in nature and not exclusive.

4.2 The assessee has received an amount of Rs.1,25,00,000/- which is proved to be a shell company and the same is received from Starlight Devcon Pvt. Ltd., which is represented in the form of asset. Therefore, this contention of petitioner cannot be considered.

4.3 The petitioner also contended that there is no information which suggests that any income chargeable to tax has escaped assessment. The information received from ADIT (Inv.), Unit 2(4), Kolkata that during the search operation in the case of Maji Group on 05.11.2020, it was found that Anup Majee had acquired certain paper companies including Starlight Devcon Pvt. Ltd. which is proved to be shell company and that the assessee has received unsecured loans from

such company. Therefore, there is an information in the hands of the Assessing Officer which suggests that income chargeable to tax has escaped assessment.

4.4 The petitioner further contended that the re-opening is merely based on change of opinion. The assessment has been completed on 06.12.2017, wherein the petitioner had stated that the unsecured loans have been verified by the then officer and accepted the same. The reopening of assessment is just change of opinion. The search operation in this case has been conducted on 05.11.2020. The information has been received by the office on 24.03.2021. During the time of original assessment proceedings, the Assessing Officer would not be aware of the company giving loan to the assessee, was a shell company. It was ascertained during the course of search proceedings.

4.5 With regard to the prior approval

of passing of the order under section 148A(d) of the Act for reopening was accorded by Principal CCIT, Gujarat, therefore, sanction of the competent authority has been correctly obtained.

4.6 With regard to the contention that Jurisdictional Assessing Officer not having power to issue the notice under section 148 of the Act since such notice has to be issued by National Faceless Assessment Centrel. It is stated that, subsequent to the Notification No.18 of 2022, the CBDT has issued instruction No.1/2022 dated 11.05.2022 for implementation of the judgment dated 04.05.2022 in case of ***Union of India vs. Ashish Agarwal (supra)*** has been quoted and according to such instruction, the Jurisdictional Assessing Officer has power to issue notice under section 148 of the Act. The ground of alternative efficacious remedy also has been seriously raised.

4.7 It is mentioned that the case has been reopened by issuance of notices under new provision of section 148A of the Act and the notices were issued under section 148A(b) of the Act providing assessee an opportunity of furnishing relevant evidences and explanation. The order under section1 48A(d) of the Act has been passed and the notice under section 148 has been issued after obtaining the approval of specified authority.

4.8 Reliance is placed on the decision of the Delhi High Court in WPC No.13102 of 2022 in case of Touchstone Holdings Pvt. Ltd. dated 02.09.2022, where the Court has held thus:

> *"The time period for assessment stood extended till 30.06.2021. The initial re-assessment notice for A.Y.2013-14 was issued to the petitioner within the said extended period of limitation. The Supreme Court has declared that the said re-assessment notice be deemed as a notice issued under section 148A of the Act and permitted Revenue tocomplete the said proceedings. In this case the income alleged to have escaped assessment is more than 50 Lakhs and therefore, the*

rigor of section 149(1)(b) of the Act (as amended by the finance act, 2021) has been satisfied. Accordingly, the present petition alongwith the pending application is dismissed."

4.9 Affidavit-in-rejoinder is filed, which may not be necessary to be dilated at this stage.

5. With regard to the decision of the Delhi High court it has been contended by the petitioner that the Delhi High Court has not appreciated the fact that old law has not continued. It has observed that the notices were issued between 01.04.2021 and 30.06.2021 and therefore, the said notices were treated as having been issued validly for the reason that had the old Act continued, the issuance of such notices could not have been questioned. Therefore, the Delhi High Court decided the issue on hand in favour of the revenue.

5.1 It has also not appreciated that the provision of the Taxation and Other Laws (Relaxation and Amendment of Certain

Provision) Act, 2022 (hereinafter referred to as 'the TLA Act' for the sake of brevity) did not extend any time limit prescribed under the new Act coming into force with effect from 01.04.2021.

5.2 It also did not appreciate the distinction between notices issued under section 148 of the old Act and notices issued under section 148 read with order under section 148A(d) of the new Act.

5.3 According to the petitioner, the revenue has extensively relied upon the provisions of TLA Act for contending that the impugned notices has been issued within the limitation prescribed under the statute and so also in accordance with law.

6. It is urged that the extension mentioned by the respondent is only *vis-a-vis* the unamended Act prior to the insertions of amendment made by the Finance Act, 2021. The extension of time limit is

upto 30.06.2021. It was only applicable to the unamended provisions of the Act. The respondent is not clear in its approach when it states that extension provided under TLA Act would enable the revenue to travel back in time to the original date of notice under section 148 of the Act. The respondent has lost sight of the decision of the ***Union of India vs. Ashish Agarwal (supra)*** categorically held that notices originally issued under section 148 of the Act are to be treated as notices having been issued under section 148A(b) of the Act. Under the new scheme, show cause notices under section 148A(d) are not the jurisdictional notices, therefore, issuance of such notices would make the notices under section 148A(b) notices as jurisdictional notices, even assuming without admitting that the revenue is correct in its submission that the extension provided under the TLA Act would enable the revenue to travel back in time to the original date. Under the new scheme,

notices under section 148A(b) only for the period of initiation of the proceedings and such notices by themselves do not confer jurisdiction to reopen.

7. It is reiteratively emphasized that the first proviso to section 149(1) of the Act would not enable the revenue to issue notices beyond the period of six years, which was the limitation period under the old regime. More than six years have elapsed from the end of the assessment year in the present case and therefore, the action is barred by limitation. The extension provided under the TLA Act read with notifications would cease to operate the moment the underlying provisions are deleted from the statute book. Extension of the provision cannot operate in vacuum without the main provision. In view of the same, the first proviso would limit the rights of the revenue to issue reopening notices beyond the period of six years to be counted without any extension. The TLA

Act and subsequent notifications did not extend any limitation provided under the new Act, which came into force with effect from 01.04.2021.

8. This Court extensively heard the learned senior counsels, Mr.Tushar Hemani assisted by the learned advocate, Ms.Vaibhavi Parikh, learned senior advocate, Mr.Soparkar assisted by the learned advocate, Mr.B.S.Soparkar, learned senior advocate, Mr.R.K.Patel assisted by the learned advocate, Mr.D.R.Patel, learned advocate, Mr.Dharan Gandhi, learned advocate, Mr.Nishit Gandhi assisted by learned advocate, Mr.Nidhi Vyas, learned advocate, Mr.Sudhir Mehta, learned advocate, Mr.Manish J. Shah, learned advocate, Mr.Jimi Patel, learned advocate, Mr.Dhinal Shah, learned advocate, Mr.S.N.Divatia for the petitioners and learned senior standing counsel, Mr.Varun Patel for revenue and learned senior standing counsel, Mr.Nikunt Raval for the

respondent-department.

8.1 Extensive oral as well as written submissions on rival sides make very enlightening reading, however, so as not to swell this judgment they are not being reproduced in their original text.

Notice whether barred by time limit.

9. The essential challenge presently is time barring issue with an emphasis that if a notice cannot be issued under the unamended provision of section 149 as they stood before the commencement of the Finance Act, 2021, then the notice cannot be issued under the amended provisions of section 149 of the Act also. So the reference to unamended provisions of section 149 as they stood before 01.04.2021 if made, the said provisions provide for the maximum time limit for the reopening of an assessment as six years from the end of the relevant assessment year.

9.1 For assessment year 2013-14, six years' time limit ends on 31.03.2020 and hence, the notice under section 148 issued on 26.07.2022 is time barred. However, the time limit for issuance of the notice under section 148 of the Act has expired on 31.03.2021 in terms of the pre-amended provisions, the notice cannot be issued under the new reassessment scheme.

10. The detailed hearing has also taken place on the ground of limitation i.e. whether fresh notices notices issued under section 148 of Act for the "Assessment Years 2013-14 & 2014-15" after decision of the Apex Court in case of "Union of India vs. Ashish Agarwal (supra) are barred by limitation in view of the "first proviso to section 149(1) of the Act" in the context of developments which took place after the notices having been issued under section 148 of the old Act in the context of developments which took place after the

notices having been issued under section1 48 of the old Act.

11. From the material on the record, at the outset, it is required to be noted that the Assessing Officer had issued the reassessment notices on or after 01.04.2021 under the erstwhile sections 148 to 151 of the Act by relying on Notification No.20/2021 dated 31.03.2021 and Notification No.38/2021 dated 27.04.2021, which extended the applicability of those provisions as they stood on 31.03.2021 before the commencement of Finance Act, 2021 beyond the period of 31.03.2021.

12. These reassessment notices under section 148 of the Act were challenged before various High Courts and some of the High Courts set aside the reassessment notices, on the ground that they were issued after 01.04.2021 and they cannot be governed by the provisions of sections 148 to 151 of erstwhile provisions as they

stood on 31.03.2021 and would be instead governed by substituted sections 148 to 151 which came into effect vide Finance Act, 2021.

13. Profitably it would be to refer to some of the decisions of the High Courts of Allahbad, Rajasthan, Delhi and Bombay.

13.1 We can notice that High Court of Allahbad in case of ***Ashok Kumar Agarwal vs. Union of India,*** reported in ***(2021) 131 taxmann.com 22 (Allahabad)*** considered the challenge to the validity of the reassessment notices issued under section 148 of the Act after 01.04.2021 under pre-existing provisions of sections 147 and 148 of the Act, the TLA Act with its Notification had been enforced prior to enforcement of Finance Act, 2021 which provided a general relaxation of limitation on account of general hardship existing upon the spread of pandemic of COVID-19. The Court held that no presumption exists

that by Notification issued under the Enabling Act, the operations of the pre-existing provision of the Act had been extended and thereby provisions of Section 148A of the Act and other provisions introduced by Finance Act 2021 had been deferred.

13.1.2 By an elaborate discussion of various provisions and authorities, it held that after enforcement of Finance Act, 2021, the TLA Act, 2020 would apply to substituted provisions and not pre-existing provisions and since by virtue of Finance Act, 2021 provision of sections 147 and 148 of the Act as has existed upto 31.03.2021, stood substituted along with new provisions enacted by way of section 148A of the IT Act and in absence of any saving clause, to save pre-existing provisions, revenue could only initiate reassessment proceedings on or after 01.04.2021 in accordance with substituted law. And therefore, the reassessment notices issued

under section 148 of the Act on or after 01.04.2021 without complying with substituted provision of Finance Act, 2021, were quashed.

13.3 The Rajasthan High Court in case of ***Sudesh Taneja vs. Income-tax Officer, Ward-1(3), Jaipur,*** reported in ***(2022) 135 taxmann.com 5 (Rajasthan)*** addressed the challenge to the validity of reassessment notices issued under section 148 of the Act after 01.04.2021 complying with pre-existing sections 147 and 148 of the Act which otherwise stood replaced from 01.04.2021. The Court held that since no indications were found in scheme of statutory provisions of reassessment containing Finance Act, 2021, which would suggest that past provisions would continue to apply even after substitution for assessment period prior to substitution, issuance of notice under section 148 of the Act on or after 01.04.2021 shall need to be in accordance with newly introduced

provisions under Finance Act, 2021. Therefore, reassessment notices issued on or after 01.04.2021 without complying with substituted provision of section 148A was held to be illegal and was quashed.

13.3.1 The Rajasthan High Court also held that section 3(1) of the TLA Act vested power to Central Government to extend time limits for taking actions and making compliances in specified Acts upto 31.12.2020 by issuing notification, however any Explanation touching provisions of Income-tax Act was not part of the delegation. Therefore, Explanation to Notifications dated 31.03.2021 and 27.04.2021 issued by the CBDT which extended applicability of provisions of sections 148, 149 and 151 of the Act as they stood as on 31.03.2021 before commencement of Finance Act, 2021 beyond the period of 31.03.2021 were unconstitutional and were to be declared invalid.

13.4 The Delhi High Court in case of ***Mon Mohan Kohli vs. Assistant Commissioner of Income-tax,*** reported in ***2021 133 taxmann.com 166 (Delhi)*** also considered section 3(1) of the TLA Act, which enable the Central Government to issue Notification for extending time limit for completion or compliance of the action laid down in specified act, but did not empower the government to postpone the applicability of any provision which has been enacted from a particular date. There is a difference between extension of time of an action which is getting time barred and applicability of a provision which has been enacted and notified by the Legislature.

13.4.1 Therefore, it held that the Explanation A(a)(ii)/A(b) to Notification No.20/2021 dated 31.03.2021 and Notification No.38/2021 dated 27.04.2021 were beyond power to extend erstwhile

sections 147 to 151 of the Act beyond 31.03.2021, which deferred operation of substituted provision enacted by Finance Act, 2021 till 30.06.2021. Therefore, the notices issued under section 148 of the Act or after 01.04.2021 as per Delhi High Court were needed to comply the provisions as specifically substituted by Finance Act, 2021 w.e.f. 01.04.2021 and impugned assessment notices under section 148 of the Act were quashed. These were held to have been issued in violation of mandatory provision prescribed under section 148 A of the Act, which came into force on 01.04.2021 as per Amended Finance Act, 2021.The revenue's contention that section 3(1) of the TLA Act created a legal fiction by virtue of which section 148 of the Act could be invoked as it existed prior to 31.03.2021 during extended period between 01.04.2021 and 30.06.2021 was not accepted.

13.4.2 Relevant findings and observation of the Delhi High Court are as under:

“79.It is also necessary to appreciate that the Relaxation Act, 2020 was enacted long before the Finance Act, 2021. Consequently, it cannot possibly Digitally Signed By:JASWANT SINGH RAWAT Signing Date:15.12.2021 14:05:36 be contended that any provision of Relaxation Act, much less of any Notification issued thereunder, can be so construed as amending or modifying or excluding the applicability of the yet to be enacted Finance Act, 2021. Further, as the Petitioners are not questioning any of the time extensions made by or under Relaxation Act, 2020, the said non-obstante clause is totally irrelevant to controversy at hand.

THE REVENUE'S CHOOSING AND PICKING OF TWO TERMS VIZ. "SUCH ACTION" & "EXTENSION/EXTENDED" IS CONTRARY TO BASIC PRINCIPLES OF INTERPRETATIONS WHICH PROHIBITS SELECTIVELY CHOOSING/IGNORING WORDS FROM THE STATUTORY LANGUAGE AS WELL AS THE FACT THAT THE RELAXATION ACT, 2020 WAS ENACTED LONG BEFORE FINANCE ACT, 2021.

80. To substantiate its stand that the impugned notices are not barred by limitation, the Revenue without even considering the pre-condition prescribed by Section 3 of Relaxation Act, 2020 has selectively chosen and picked up two terms viz. "such action" & "stand extended" to put forward an interpretation which could not have been contemplated by the Legislature at the time of enactment of

the said provision, namely, that notices under Section 148 will relate back and be governed by old law. In the opinion of this Court, the submission of the Revenue is completely flawed, as the same is contrary to basic principles of interpretations, which prohibits selectively choosing/ignoring words from the statutory language.

81. It is settled law that when the words of a statute are clear and unambiguous, it is not permissible for the Court to read words into the Digitally Signed By:JASWANT SINGH RAWAT Signing Date:15.12.2021 14:05:36 statute15. In fact, the principle of interpretation of taxing statutes was best enunciated by Rowlatt J. in his classic statement in Cape Brandy Syndicate v I.R.C. (1 KB 64, 71), "In a taxing statute one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can look fairly at the language used."

82. The Judiciary cannot transgress into the domain of policy making by re-writing a statute, however strong the temptations maybe16. The Supreme Court in A.V Fernandez vs. State of Kerala (AIR 1957 SC 657) has held, "In construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of law. If the revenue satisfies the court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four

corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter".

83. Further, the Relaxation Act, 2020 received the President's assent on 29th September, 2020, whereas the Finance Act, 2021 received the assent on 31st March, 2021. Consequently, it cannot be contended that any provision of the Relaxation Act, 2020, much less of any Notification issued A Constitution Bench of the Supreme Court in Padma Sundara Rao and Others v State of Tamil Nadu and Others (2002) 3 SCC 533 has observed: "12.....the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in the statute is determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said.....14.While interpreting a provision the court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary....." 16 Saregama India Ltd. vs. Next Radio Limited & Ors., 2021 SCC OnLine SC 817 Digitally Signed By:JASWANT SINGH RAWAT Signing Date:15.12.2021 14:05:36 there under, should be so construed as amending or modifying or excluding the applicability of the yet to be

enacted Finance Act, 2021. THE CONSEQUENCE OF NOT MENTIONING SUBSTITUTED SECTION 147 OF THE INCOME TAX ACT, 1961 IN THE IMPUGNED EXPLANATIONS.

84. Even if it is assumed that the impugned Explanations in the two Notifications are valid, still the impugned notices are bad in law, as the impugned Explanations only seek to effectuate the erstwhile Sections 148, 149 and 151 and they do not cover Section 147. However, the conditions provided for in the substituted Section 147 were not considered while issuing notices by the Assessing Officer. In fact, the said Section 147 is itself subject to Sections 148 to 153, which would include Section 148A.

THE "LEGAL FICTION" ARGUMENT IS WITHOUT ANY FOUNDATION. THERE IS NO PROVISION IN RELAXATION ACT STATING THAT IF THE "ACTION" IS TAKEN WITHIN THE EXTENDED TIME LIMIT, IT WOULD BE DEEMED TO HAVE BEEN TAKEN BEFORE THE EXPIRY OF THE ORIGINAL (UN-EXTENDED) TIME LIMIT.

85. The "legal fiction" argument is without any foundation. A statute can be said to enact a legal fiction when it assumes the existence of something which is known not to exist. The extension of time for completing an assessment or issuing a Section 148 notice has no element of legal fiction in it. The only effect and consequence of this extension of the time limit is that if the act in question is performed within the

extended time limit, it will be considered to be legally compliant. However, there is no assumption that the act in question is deemed to have been performed within the original time limit, as wrongly contended by the learned counsel for the Respondents. For achieving that result, clear and unequivocal language was required in the Digitally Signed By:JASWANT SINGH RAWAT Signing Date:15.12.2021 14:05:36 Relaxation Act, 2020 - which is missing. In fact, there is no provision in Relaxation Act, 2020 laying down that if the "action" is taken within the extended time limit, it would be deemed to have been taken before the expiry of the original (un-extended) time limit. THE ESSENTIAL CONDITION FOR A PROVISION TO BE TERMED AS STOP THE CLOCK PROVISION IS ABSENT INASMUCH AS THE TIME DURING WHICH SUCH CLOCK IS STOPPED HAS NOT BEEN STIPULATED TO BE EXCLUDED."

13.5 The Bombay High Court in case of ***Tata Communications Transformation Services Ltd. Vs. Assistant Commissioner of Income-tax,*** reported in ***(2022) 137 taxmann.com 2 (Bombay)*** considered the challenge to the authority of reassessment proceedings initiated against the petitioners on the ground that the notices under section 148 of the Act were issued

after 01.04.2021 as per pre-existing provision to replace upon the enforcement of Finance Act, 2021 from 01.04.2021. Since no savings clause has been provided in the Act for saving the erstwhile provisions of Sections 147 to 151 of the Act, an intention of the legislature is clear that substituted provisions would be applicable on reassessment notices w.e.f. 01.04.2021. Impugned reassessment notices were issued under section 148 of the Act on or after 01.04.2021 without complying with mandatory procedure as laid down by substituted provisions of section 148A of the Act were quashed.

13.5.1 Section 3(1) of the TLA Act has held the Central Government to issue the Notification for extending the limitation period as provided in a Specified Act and not to postpone applicability of Amended Provisions of the Specified Act. Therefore, the impugned Explanation to Notifications No.20/21 and 30/2021 which sought to extend

the applicability of erstwhile sections 148, 149 and 151 as they stood as on 31.03.2021 before commencement of Finance Act, 2021 beyond the period of 31.03.2021 were declared ultra vires TLA Act, 2020.

12.5.2 The Bombay High Court in case of Tata Communications Transformation Ltd. (supra) in paragraphs 36,37,38,39,40,41 and 42 has held thus:

> *"36. In order to uphold the arguments of the Revenue in this regard, either a savings clause, or a specific legislative enactment deferring applicability of the amended provisions and the repeal of the old provisions of the Act, would be required. Plainly no such savings clause or enactment is available.*
>
> *37 Section 3(1) of Relaxation Act does not provide that any notice issued under Section 148 of the Act, after 31 st March 2021 will relate back to the original date or that the clock is stopped on 31 st March, 2021 such that the provision as existing on such date will be applicable to notices issued relying on the provision of Relaxation Act. A plain reading of Relaxation Act, as Mr. Mistri rightly submitted, makes it clear that Section 3(1) of Relaxation Act merely extends the limitation provided in the specified Acts (including Income-tax Act) for doing certain Acts but such Acts must be performed in*

accordance with the provisions of the specified Acts. Therefore, if there is an amendment in the specified Act, the amended provision of the specified Act would apply to such actions of the Revenue. The Delhi High Court has considered and rejected the contention of the Revenue that the notice issued after 1st April 2021 relates back to an earlier period.

38 The Delhi High Court has considered and rejected this argument of the Revenue that Relaxation Act creates a legal fiction such that the notices issued under Section 148 of the Act are deemed to be issued on 31st March, 2021. The so-called legal fiction is directly contrary to the Revenue's own Circular No.549 of 1989, which is binding on them as well as the well settled principle that the validity of a notice is to be judged on the basis of the law that prevails at the time of its issue.

39 Even though Relaxation Act was in existence when the Finance Act, 2021 was passed, the parliament has specifically made the amended provisions of Sections 147 to 151 of the Act as being applicable with effect from 1st April, 2021. Therefore, the intention of the legislature is clear that substituted provisions must apply to notices issued with effect from 1st April, 2021. No savings clause has been provided in the Act for saving the erstwhile provisions of Sections 147 to 151 of the Act, like in Section 297 of the Act where, the Parliament when it intended, has specifically provided the savings clause.

40. On a plain reading of Relaxation Act it is clear that the only powers granted to the Central Government by Relaxation Act is the power to Gauri Gaekwad 64/71 1377.WP-1334-2021 AND ORS.doc notify the period during which actions are required to be taken that can fall within the ambit of Relaxation Act, and the power to extend the time limit within which those actions are to be taken. A plain reading of the impugned Explanations in Notification Nos.20 of 2021 and 38 of 2021 shows that it purports to "clarify" that the unamended provisions of Sections 147 to 151 of the Act will apply for the purposes of issue of notices under Section 148 of the Act, which is clearly ultra vires Relaxation Act.

41. In our view, the reopening notices issued after 1 st April, 2021 are unsustainable and bad in law even if one was to apply the Explanations to the Notification Nos.20 of 2021 and 38 of 2021. The Explanation seeks to extend the applicability of erstwhile Sections 148, 149 and 151. The impugned Explanation does not cover Section 147, which (as amended) empowers the revenue to reopen an assessment subject to Sections 148 to 153, which includes Section 148A. Thus, even if Explanations are valid, the mandatory procedure laid down by Section 148A has not been followed and hence, without anything further, the notices under Section 148 of the Act are invalid and must be struck down for this reason as well. This proposition has also been upheld by the Delhi High Court.

42. As regards Revenue's arguments that Relaxation Act being a beneficial legislation must be given purposive interpretation',

the purpose of Section 3(1) of Relaxation Act is to extend limitation periods as provided in Gauri Gaekwad 65/71 1377.WP-1334-2021 AND ORS.doc a specified Act (including the Income-tax Act). The purpose of Section 3(1) of Relaxation Act is not to postpone the applicability of amended provisions of a Specified Act. Though Relaxation Act was in existence when the Finance Act, 2021 was passed, the Parliament has specifically enacted the new, (amended) provisions of Section 147 to 151 of the Act and made them applicable with effect form 1st April, 2021. Therefore, it is clear that amendment is to be applied from 1 st April, 2021. Further, when there is no ambiguity on the applicability of the provision, there is no question of resorting to purpose test."

13. This had been challenged before the Apex Court in case of **Ashish Agarwal (supra)** questioning the very issuance of notice. The Apex Court held that the reassessment notice if issued on or after 01.04.2021 under unamemded section 148 of the Act needs to be set aside. However, considering that to be a *bona fide* mistake of revenue, it had held to have been issued under substituted section 148 A of the Act. While appreciating the controversy, the Apex Court considered the provisions

applicable in pre 01.04.2021 and post 01.04.2021 period.

13.1. It appears that the Parliament introduced reformative changes to sections 147 to 151 of the Act governing reassessment proceedings by way of Finance Act, 2021, which was passed on 28.03.2020. The substituted provisions of sections 147 to 159 were applicable w.e.f. 01.04.2021, however, the revenue issued approximately 90,000 reassessment notices to the respective assesses under the erstwhile provision of section 148 to 151 of the Act by relying on the explanation in the Notifications dated 31.03.2021 and 27.03.2027. Various High Courts held that respective reassessment notices issued under the erstwhile sections 148 to 151 of the Act were bad in law as the assessment notices issued after 01.04.2021 were to be governed by the substituted sections 147 to 151 of the Act substituted by Finance Act, 2021. Therefore, wherever assailed these

notices under section 148 were set aside.

13.2. The Apex Court, after detailed consideration of provisions of law and extensive submissions made by both the sides, held that the new provision substituted by Finance Act, 2021 being remedial and benevolent in nature and substituted with specific aim and protect the right and interest of the assessee as well as being in public interest, respective High Courts have rightly held that the benefit of new provisions shall be made available even in respect of the proceedings relating to the past assessment year provided under section 148 of the Act notice has been issued on or after 01.04.2021.

13.3. The Apex Court was in complete agreement with the view taken by the various High Courts in holding so. At the same time, being concerned about the revenue being remediless as this judgment

would result into absence of reassessment proceedings. The Apex Court permitted the respective notices under section 148 of the Act to be deemed to have been issued under section 148 A of the Act as substituted by the Finance Act, 2021 and to be treated as the show cause notice in terms of section 148 A (b) of the Act in the following manner:

> *"8.However, at the same time, the judgments of the several High Courts would result in no reassessment proceedings at all, even if the same are permissible under the Finance Act, 2021 and as per substituted sections 147 to 151 of the IT Act. The Revenue cannot be made remediless and the object and purpose of reassessment proceedings cannot be frustrated. It is true that due to a bonafide mistake and in view of subsequent extension of time vide various notifications, the Revenue issued the impugned notices under section 148 after the amendment was enforced w.e.f. 01.04.2021, under the unamended section 148. In our view the same ought not to have been issued under the unamended Act and ought to have been issued under the substituted provisions of sections 147 to 151 of the IT Act as per the Finance Act, 2021. There appears to be genuine non−application of the amendments as the officers of the Revenue may have been under a bonafide belief that the amendments may not yet have been enforced. Therefore, we*

are of the opinion that some leeway must be shown in that regard which the High Courts could have done so. Therefore, instead of quashing and setting aside the reassessment notices issued under the unamended provision of IT Act, the High Courts ought to have passed an order construing the notices issued under unamended Act/unamended provision of the IT Act as those deemed to have been issued under section 148A of the IT Act as per the new provision section 148A and the Revenue ought to have been permitted to proceed further with the reassessment proceedings as per the substituted provisions of sections 147 to 151 of the IT Act as per the Finance Act, 2021, subject to compliance of all the procedural requirements and the defences, which may be available to the assessee under the substituted provisions of sections 147 to 151 of the IT Act and which may be available under the Finance Act, 2021 and in law. Therefore, we propose to modify the judgments and orders passed by the respective High Courts as under:

(i) The respective impugned section 148 notices issued to the respective assessees shall be deemed to have been issued under section 148A of the IT Act as substituted by the Finance Act, 2021 and treated to be show−cause notices in terms of section 148A(b). The respective assessing officers shall within thirty days from today provide to the assessees the information and material relied upon by the Revenue so that the assessees can reply to the notices within two weeks thereafter;

(ii) The requirement of conducting any enquiry with the prior

approval of the specified authority under section 148A(a) be dispensed with as a one−time measure vis−à−vis those notices which have been issued under Section 148 of the unamended Act from 01.04.2021 till date, including those which have been quashed by the High Courts;

(iii) The assessing officers shall thereafter pass an order in terms of section 148A(d) after following the due procedure as required under section 148A(b) in respect of each of the concerned assessees;

(iv) All the defences which may be available to the assessee under section 149 and/or which may be available under the Finance Act, 2021 and in law and whatever rights are available to the Assessing Officer under the Finance Act, 2021 are kept open and/or shall continue to be available and;

(v) The present order shall substitute/modify respective judgments and orders passed by the respective High Courts quashing the similar notices issued under unamended section 148 of the IT Act irrespective of whether they have been assailed before this Court or not.

9. There is a broad consensus on the aforesaid aspects amongst the learned ASG appearing on behalf of the Revenue and the learned Senior Advocates/learned counsel appearing on behalf of the respective assessees. We are also of the opinion that if the aforesaid order is passed, it will strike a balance between the rights of the Revenue as well as the respective

assesses as because of a bonafide belief of the officers of the Revenue in issuing approximately 90000 such notices, the Revenue may not suffer as ultimately it is the public exchequer which would suffer.

Therefore, we have proposed to pass the present order with a view avoiding filing of further appeals before this Court and burden this Court with approximately 9000 appeals against the similar judgments and orders passed by the various High Courts, the particulars of some of which are referred to hereinabove. We have also proposed to pass the aforesaid order in exercise of our powers under Article 142 of the Constitution of India by holding that the present order shall govern, not only the impugned judgments and orders passed by the High Court of Judicature at Allahabad, but shall also be made applicable in respect of the similar judgments and orders passed by various High Courts across the country and therefore the present order shall be applicable to PAN INDIA.

10. In view of the above and for the reasons stated above, the present Appeals are ALLOWED IN PART. The impugned common judgments and orders passed by the High Court of Judicature at Allahabad in W.T. No. 524/2021 and other allied tax appeals/petitions, is/are hereby modified and substituted as under:

(i) 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 148A of the IT Act as substituted by the Finance Act, 2021 and construed or treated to be show−cause notices in terms of section 148A(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 assesees can reply to the show−cause notices within two weeks thereafter;

(ii) The requirement of conducting any enquiry, if required, with the prior approval of specified authority under section 148A(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 01.04.2021 till date, including those which have been quashed by the High Courts. Even otherwise as observed hereinabove holding any enquiry with the prior approval of specified authority is not mandatory but it is for the concerned Assessing Officers to hold any enquiry, if required;

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

(iv) All defences which may be available to the assesses

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

11. The present order shall be applicable PAN INDIA and all judgments and orders passed by different High Courts on the issue and under which similar notices which were issued after 01.04.2021 issued under section 148 of the Act are set aside and shall be governed by the present order and shall stand modified to the aforesaid extent. The present order is passed in exercise of powers under Article 142 of the Constitution of India so as to avoid any further appeals by the Revenue on the very issue by challenging similar judgments and orders, with a view not to burden this Court with approximately 9000 appeals. We also observe that present order shall also govern the pending writ petitions, pending before various High Courts in which similar notices under Section 148 of the Act issued after 01.04.2021 are under challenge."

13.4 It is to be noted here that the Apex Court has get all defences, which were available to the assesses including those available under section 149 of the Act kept open for both assess and the revenue. In this background, the respondent issued show

cause notice under clause (b) of section 148A of the Act and the petitioner was supplied the relevant material on the basis of which, for the assessment year 2014-15, the petitioner was called upon to show cause as to why the notice under section 148(b) not issued for the year under consideration.

13.5 A detailed reply to the said show cause notice was filed by the petitioner and the request was made to drop the proceedings, essentially on the ground that the action of reopening of the assessment for the year under consideration is barred by limitation. Other challenges also in respect of non-escapement of the income chargeable to tax represented in the form of “asset” as defined in Explanation to section 149(1) (b) of the Act has been raised. The petitioner made certain further submissions when the respondent vide notice dated 17.06.2022 to supply more information.

13.6 The order came to be passed on 26.07.2022 under clause (d) of section 148A holding that there is an income chargeable to tax and hence, this is a feet case for issuance of notice under section 148 of the Act.

13.7 Apt would be to reproduce, at this stage, the procedure governed initially of reassessment proceedings prior to coming into force the Finance Act, 2021.

> *"3.While appreciating the controversy, a few facts and the relevant statutory provisions applicable pre 01.04.2021 and post 01.04.2021 are required to be referred to.*
>
> *The procedure governing initiation of reassessment proceedings prior to coming into force of the Finance Act, 2021 was governed by the following provisions:- "Income escaping assessment-*
>
> *147. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and*

which comes to his notice subsequently in the course of the proceedings under this section, or recomputed the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year):

Provided that where an assessment under sub−section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub−section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:

Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year:

Provided also that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped

assessment.

Explanation 1.—Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

Explanation 2.—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely :—

(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income−tax;

(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

(ba) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E;

(i) where an assessment has been made, but— income chargeable to tax has been underassessed; or

(ii) such income has been assessed at too low a rate; or

(iii) such income has been made the subject of excessive relief under this Act; or

(iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed;

(ca) where a return of income has not been furnished by the assessee or a return of income has been furnished by him and on the basis of information or document received from the prescribed income−tax authority, under sub−section (2) of section 133C, it is noticed by the Assessing Officer that the income of the assessee exceeds the maximum amount not chargeable to tax, or as the case may be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

(d) where a person is found to have any asset (including financial interest in any entity) located outside India.

Explanation 3.—For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub− section (2) of section 148.

Explanation 4.—For the removal of doubts, it is hereby clarified that the provisions of this section, 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.

Issue of notice where income has escaped assessment-

148.(1) Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139: Provided that in a case—

(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005 in response to a notice served under this section, and

(b). subsequently a notice has been served under sub−section (2) of section 143 after the expiry of twelve months specified in the proviso to subsection (2) of section 143, as it stood

immediately before the amendment of said sub−section by the Finance Act, 2002 (20 of 2002) but before the expiry of the time limit for making the assessment, re−assessment or recomputation as specified in sub−section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice:

Provided further that in a case—

(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005, in response to a notice served under this section, and
(b) subsequently a notice has been served under clause (ii) of sub−section (2) of section 143 after the expiry of twelve months specified in the proviso to clause (ii) of sub−section (2) of section 143, but before the expiry of the time limit for making the assessment, reassessment or recomputation as specified in sub−section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice.

Explanation.—For the removal of doubts, it is hereby declared that nothing contained in the first proviso or the second proviso shall apply to any return which has been furnished on or after the 1st day of October, 2005 in response to a notice served under this section.

(2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so.

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 nonresident 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.

Sanction for issue of notice-
151. (1) No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice.

(2) In a case other than a case falling under sub−section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.

(3) For the purposes of sub−section (1) and sub−section (2), the

Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or the Joint Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue such notice himself."

14. On 29.09.2020, the TLA Act came into being provide for relaxation and amendment of provision of certain acts and for matters connected therewith or incidental therein.

14.1 Section 3 of the said Act provided for relaxation of certain provisions of specified Act is as follow:

"3. (1) Where, any time-limit has been specified in, or prescribed or notified under, the specified Act which falls during the period from the 20th day of March, 2020 to the 31st day of December, 2020, or such other date after the 31st day of December, 2020, as the Central Government may, by notification, specify in this behalf, for the completion or compliance of such action as—

(a) completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval, or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called,

under the provisions of the specified Act; or

(b) filing of any appeal, reply or application or furnishing of any report, document, return or statement or such other record, by whatever name called, under the provisions of the specified Act; or

(c) in case where the specified Act is the Income-tax Act, 1961, —

(i) making of investment, deposit, payment, acquisition, purchase, construction or such other action, by whatever name called, for the purposes of claiming any deduction, exemption or allowance under the provisions contained in—

(I) sections 54 to 54GB, or under any provisions of Chapter VI-A under the heading "B.—Deductions in respect of certain payments" thereof; or

(II) such other provisions of that Act, subject to fulfilment of such conditions, as the Central Government may, by notification, specify; or

(ii) beginning of manufacture or production of articles or things or providing any services referred to in section 10AA of that Act, in a case where the letter of approval, required to be issued in accordance with the provisions of the Special Economic Zones Act, 2005, has been issued on or before the 31st day of March, 2020, and where completion or compliance of such action has not been made within such time, then, the time-limit for completion or compliance of such action shall, notwithstanding anything contained

in the specified Act, stand extended to the 31st day of March, 2021, or such other date after the 31st day of March, 2021, as the Central Government may, by notification, specify in this behalf:

Provided that the Central Government may specify different dates for completion or compliance of different actions: Provided further that such action shall not include payment of any amount as is referred to in sub-section (2):

Provided also that where the specified Act is the Income-tax Act, 1961 and the compliance relates to—

(i) furnishing of return under section 139 thereof, for the assessment year commencing on the—

(a) 1st day of April, 2019, the provision of this sub-section shall have the effect as if for the figures, letters and words "31st day of March, 2021", the figures, letters and words "30th day of September, 2020" had been substituted;

(b) 1st day of April, 2020, the provision of this sub-section shall have the effect as if for the figures, letters and words "31st day of March, 2021", the figures, letters and words "30th day of November, 2020" had been substituted;

(ii) delivering of statement of deduction of tax at source under sub-section (2A) of section 200 of that Act or statement of collection of tax at source under sub-section (3A) of section 206C thereof for the month of February or March, 2020, or for the quarter ending on the 31st day of March, 2020, as the case may be, the provision of this sub-section shall have the effect as if for the figures, letters and words "31st day of March, 2021", the figures, letters and words "15th day of July, 2020" had been substituted;

(iii) delivering of statement of deduction of tax at source under sub-section (3) of section 200 of that Act or statement of collection of tax at source under proviso to sub-section (3) of section 206C thereof for the month of February or March, 2020, or for the quarter ending on the 31st day of March, 2020, as the case may be, the provision of this sub-section shall have the effect as if for the figures, letters and words "31st day of March, 2021", the figures, letters and words "31st day of July, 2020" had been substituted;

(iv) furnishing of certificate under section 203 of that Act in respect of deduction or payment of tax under section 192 thereof for the financial year commencing on the 1st day of April, 2019, the provision of this sub-section shall have the effect as if for the figures, letters and words "31st day of March, 2021", the figures, letters and words "15th day of August, 2020" had been substituted;

(v) sections 54 to 54GB of that Act, referred to in item (I) of sub-clause (i) of clause (c), or sub-clause (ii) of the said clause, the provision of this subsection shall have the effect as if—

(a) for the figures, letters and words "31st day of December, 2020", the figures, letters and words "29th day of September, 2020" had been substituted for the time-limit for the completion or compliance; and

(b) for the figures, letters and words "31st day of March, 2021", the figures, letters and words "30th day of September, 2020" had been substituted for making such completion or compliance;

(vi) any provisions of Chapter VI-A under the heading "B.—Deductions in respect of certain payments" of that Act, referred to in item (I) of sub-clause (i) of clause (c), the provision of this sub-section

shall have the effect as if—

(a) for the figures, letters and words "31st day of December, 2020", the figures, letters and words "30th day of July, 2020" had been substituted for the time-limit for the completion or compliance; and

(b) for the figures, letters and words "31st day of March, 2021", the figures, letters and words "31st day of July, 2020" had been substituted for making such completion or compliance;

(vii) furnishing of report of audit under any provision thereof for the assessment year commencing on the 1st day of April, 2020, the provision of this sub-section shall have the effect as if for the figures, letters and words "31st day of March, 2021", the figures, letters and words "31st day of October, 2020" had been substituted:

Provided also that the extension of the date as referred to in sub-clause (b) of clause (i) of the third proviso shall not apply to Explanation 1 to section 234A of the Income-tax Act, 1961 in cases where the amount of tax on the total income as reduced by the amount as specified in clauses (i) to (vi) of sub-section (1) of the said section exceeds one lakh rupees:

Provided also that for the purposes of the fourth proviso, in case of an individual resident in India referred to in sub-section (2) of section 207 of the Income-tax Act, 1961, the tax paid by him under section 140A of that Act within the due date (before extension) provided in that Act, shall be deemed to be the advance tax:

Provided also that where the specified Act is the Direct Tax Vivad Se Vishwas Act, 2020, the provision of this sub-section shall have the effect as if—

(a) for the figures, letters and words "31st day of December, 2020", the figures, letters and words "30th day of December, 2020" had been substituted for the time limit for the completion or compliance of the action; and

(b) for the figures, letters and words "31st day of March, 2021", the figures, letters and words "31st day of December, 2020" had been substituted for making such completion or compliance.

(2) Where any due date has been specified in, or prescribed or notified under the specified Act for payment of any amount towards tax or levy, by whatever name called, which falls during the period from the 20th day of March, 2020 to the 29th day of June, 2020 or such other date after the 29th day of June, 2020 as the Central Government may, by notification, specify in this behalf, and if such amount has not been paid within such date, but has been paid on or before the 30th day of June, 2020, or such other date after the 30th day of June, 2020, as the Central Government may, by notification, specify in this behalf, then, notwithstanding anything contained in the specified Act,—

(a) the rate of interest payable, if any, in respect of such amount for the period of delay shall not exceed three-fourth per cent. for every month or part thereof;

(b) no penalty shall be levied and no prosecution shall be sanctioned in respect of such amount for the period of delay.

Explanation.—For the purposes of this sub-section, "the period of delay" means the period between the due date and the date on which the amount has been paid."

14.2 The Central Government issued the Notifications extending the timelines prescribed under section 149 of the Act for issuance of reassessment notice under section 148 of the Act pursuant to the powers vested under section 3 of the TLA Act Act.

14.3 The Apex Court has tabulated these Notifications and extension of time in case of Ashish Agarwal (supra) in the following manner:

Date of Notification	Original limitation for issuance of notice under section 148 of the Act	Extended Limitation
31.03.2020	20.03.2020 to 29.06.2020	30.06.2020
24.06.2020	20.03.2020 to 31.12.2020	31.03.2021
31.03.2021	31.03.2021	30.04.2021
27.04.2021	30.04.2021	30.06.2021

15. By way of Finance Act, 2021 which was passed on 28.03.2021, the Parliament introduced the reformatting changes to sections 147 to 151 of the Act w.e.f. 01.04.2021, which are as under:

"3.2 The Parliament introduced reformative changes to Sections 147 to 151 of the Income Tax Act, 1961 governing reassessment proceedings by way of the Finance Act, 2021, which was passed on 28 th March, 2021. The substituted sections 147 to 149 and section 151 applicable w.e.f. 01.04.2021, passed in the Finance Act, 2021, are as under: −

Income escaping assessment−

"147. If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).

Explanation.—For the purposes of assessment or reassessment or recomputation under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of section 148A have not been complied with."

Issue of notice where income has escaped assessment−

148. Before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148A, requiring him to furnish within such period, as may be specified in such notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:

Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice.

Explanation 1.—For the purposes of this section and section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,—

(i) any information flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to

time;

(ii) any final objection raised by the Comptroller and Auditor−General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act.

Explanation 2.—For the purposes of this section, where,—

(i) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 1st day of April, 2021, in the case of the assessee; or
(ii) a survey is conducted under section 133A, other than under sub−section (2A) or sub−section (5) of that section, on or after the 1st day of April, 2021, in the case of the assessee; or

(iii) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under section 132 or under section 132A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

(iv) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under section 132 or section 132A in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee, the Assessing Officer

shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.

Explanation 3.—For the purposes of this section, specified authority means the specified authority referred to in section 151."

Conducting inquiry, providing opportunity before issue of notice under section 148 –

"148A. The Assessing Officer shall, before issuing any notice under section 148,—

(a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;

(b) provide an opportunity of being heard to the assessee, with the prior approval of specified authority, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not

exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);

(c) consider the reply of assessee furnished, if any, in response to the show−cause notice referred to in clause (b);

(d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:

Provided that the provisions of this section shall not apply in a case where,—
(a) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of the assessee on or after the 1st day of April, 2021; or

(b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a

search under section 132 or requisitioned under section 132A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

(c) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under section 132 or requisitioned under section 132A, in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee.

Explanation.—For the purposes of this section, specified authority means the specified authority referred to in section 151."

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 subsection, "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.'

Sanction for issue of notice− "151. Specified authority for the purposes of section 148 and section 148A shall be—
(i) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year;

(ii) Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year."

The Explanations in the Notifications dated 31.03.2021 and 27.04.2021 were the reasons for the revenue to issue the notices under the erstwhile provisions, although sections 147 to 151 of the Act by the Finance Act, 2021 had already come into force on

01.04.2021. Those reassessment notices after 01.04.2021 would naturally be governed by the substituted provisions of sections 147 to 151 of the Act as substituted by Finance Act, 2021.

16. In erstwhile brief Finance Act, 2021 the reopening of assessment was permissible for a maximum period upto six years and beyond six years in many other cases the Parliament amended the Income Tax Act as held by the Apex Court *"simplify the tax administration, ease compliances and reduce litigation. Therefore, with a view to achieve the said object, by the Finance Act, 2021, sections 147 to 149 and section 151 have been substituted."*

17. The Apex Court in case of **Ashish Agarwal (supra)** though has directed the impugned notice under section 148 of the Act issued to the respective assesses to be deemed to have been issued under section 148A of the Act as substituted by Finance Act, 2021 and be treated to be the show

cause notices in terms of section 148A(b) of the Act, where the respective Assessing Officers were also directed within 30 days from the date of order to provide assessee the information and material relied upon by the revenue to enable the assessee to reply to the notice within two weeks thereafter, it had dispensed with the requirement of conducting any inquiry with the prior approval of the specified authority under section 148A(a) as a onetime major.

17.1 It also further directed the officers to pass an order in terms of section 148A(d) after following the due procedure as required under section 148A(b) in respect of each of the assesses. While so doing, the Court has kept all the defence available to the assessee under section 149 of the Act and which may be availed under the Finance Act, 2021 open. The Court has also kept the right of Assessing Officer under the Finance Act, 2021 open and to continue to be available.

This judgment of the Apex Court substituted and modified the respective judgments and orders passed by the respective High Courts quashing the similar notices issued under the unamended section 148 of the Act regardless of whether they have been assailed before the Court or not. This was done on a broad consensus expressed by the learned ASG appearing on behalf of the revenue and learned senior advocates/counsels appearing on behalf of the assesses. The Court struck a balance between the rights of the revenue and of the respective assesses on the ground that it was a *bona fide* belief of the Assessing Officers of revenue in issuing approximately these 90,000 notices and the revenue may not suffer ultimately as it is a public exchequer which would suffer. All the judgments and orders passed by the different High Courts on this issue and under similar notices issued after 01.04.2021 under section 148 of the Act have been set aside as the order was made

applicable PAN INDIA by holding that the same shall be governed by this order and shall stand modify to that extent.

17.2. As the rights of both the sides have been kept open by the Apex Court while striking a balance between rights of the revenue and those of the respective assesses, the challenge on the part of the assessee with regard to the issue of limitation and other challenge as permissible under the Finance Act, 2021 cannot go away. It is by virtue of the Apex Court's decision and direction that such a challenge lies and therefore, the arguments of the respondents-revenue cannot be countenance that in wake of the decision of the ***Ashish Agarwal (supra)*** and the notice issued under section 148 of the Act earlier as was deemed to have been issued under section 148A of the IT Act and substituted by the Finance Act, 2021, this challenge would not lie. In fact, the Court was all along conscious that its act should not in

any manner prejudice the rights of the parties and hence, kept all contentions open for both the sides to agitate under the Finance Act, 2021 in appropriate proceedings after once the procedure finalized by the Court has been followed.

18. The new scheme of reassessment as contained in Finance Act, 2021 when is noticed the time limit for issuance of notice for reassessment appear to have been changed. Time limit for issuance of notices under section 148 of the Act under the substituted provision of section 149 of the Act have been substantially modified. Clause (a) of sub-section(1) of section 149 of the Act makes the period to three years of originally prevailing four years, whereas clause (b) has extended the limit of six years, which prevailed previously to ten years in cases where income chargeable to tax has escaped assessment amounting to Rs.50 Lakh or more.

18.1 It is thus clear that sub-section (1) of section 149 provides both the reduction as well as the expansion of the time limit for issuance of notice under section 148 of the Act whether the case false under clause (a) or clause (b). In that context, if the first proviso to section 149(1) of the Finance Act, 2021 is examined, it clearly provides that no notice under section 148 of the Act shall be issued at any time in a case for the relevant assessment year beginning on or before 01.04.2021, if such notice could not have been issued at that time on account of being beyond the time limit specified under the provision of clause (b) of sub-section(1) of section 149 of the Act as they stood immediately before the commencement of the Finance Act, 2022. This proviso, thus, does not permit the issuance of notice under section 148 of the Act for the past assessment years by taking a recourse of larger period of limitation prescribed in newly substituted clause (b) of section 149(1) of the Act. Therefore,

the notice issued after 01.04.2021 shall need to confirm to the requirement of section 149(1) of the Act where the upper time limit provided in the substituted provision shall need to be adhered to.

19. It is quite clear from the memorandum explaining the proposed provision in the financement as well as the provisions as contained in the Finance Act, 2021 that the action of issuance of notice under section 148 of the Act after 01.04.2021 shall need to essentially as provided under the Amended Act. As per first proviso to sub-section(1) of section 149(1) of the Act, plain meaning when given to the said provision, no notice under section 148 of the Act shall be issued at any time in a case for the relevant assessment year beginning on or before 01.04.2021. If such notice could not have been issued at that time on account of being beyond the time limits specified under clause (b) of sub-section (1) of

section 149 of the Act as they stood immediately before the commencement of Finance Act, 2021.

20. Thus, the notice under section 148 of the Act can be issued on or after 01.04.2021 only if the limitation for issuing such notice under old regime of reopening had not expired prior to Finance Act, 2021 coming into force, which means w.e.f. 01.04.2021. As per the old regime of reopening, the reopening notice under section 148 of the Act could have been issued before the expiry of six years from the end of relevant assessment year. In other words, no notice could have been issued after expiry of period of six years from the end of the relevant assessment year.

20.1. In other words, if the period of six years from the end of relevant assessment year expired on 31.03.2021, then notice under section 148 of the Act could

not have been issued under the new regime for the said assessment year.

20.2 The example given in para 2.18 has already been given for appreciating these legal provisions for the assessment year 2013-14 and 14-15. In case of assessment year 2013-14, the date of expiry of the assessment year is 31.03.2014 and therefore, six years from the end of assessment year would expire on 31.03.2020. Whereas for the assessment year 2014-15, the date of expiry of assessment year is 31.03.2015 and the six years would expire on 31.03.2021. The new provision introduce by Finance Act, 2021 came into force on 01.04.2021 therefore, the limitation for issuance of notice under section 148 of the Act prescribed under the old regime of reopening expired on 01.04.2021 for assessment year 2013-14 and 2014-15.

20.3 Therefore, in plain words, a notice which had become time barred prior to

01.04.2021 as per the then provisions cannot be revived under new regime by applying section 149 (1)(b) of the Act which came into effect from 01.04.2021.

21. It is to be noted that while enacting the Finance Act, 2021, Parliament was aware of the existing statutory laws both under the Act as amended by the Finance Act, 2021 as also the ordinance and the TLA Act and Notification issued there under. However, the new scheme for reassessment which was made effective from 01.04.2021 does not have any saving clause. This brings an end to the possibility of any fresh proceedings being initiated under the unamended reassessment provisions after 01.04.2021. Finance Act, 2021 also did not contain savings clause and since the legislature through Finance Act, 2021 and TLA Act did not include any intention to protect and extend the erstwhile scheme of section 148 of the Act. The life of erstwhile scheme of 148 cannot be elongated. The principle that

would also employ is that the substitution for omit and obliterate the pre-existing provision and in absence of any saving clause either under the ordinance or the TLA Act the Finance Act, 2021 the presumption is available for the old provision to continue beyond 31.03.2021.

22. The real interpretation of statute provides that later statute would prevail in case of conflict with provision of the existing statute. The Apex Court in case of ***State of Madhya Pradesh vs. Kedia Leather and Liquor Ltd.(supra)*** had held and observed that the repeal is inferred by necessary implication, if the provisions of the later Act are so repugnant to the provisons of the earlier Act that the two cannot stand together.

23. Again, the Notification under the law can surely overriding the enactment particularly when the Finance Act, 2021 was passed after the TLA Act under which the

Notifications were issued. Various High Courts had already held the TLA Act ultra vires. The Apex Court has, of course, modified these judgments to the extent that it directed the issuance of notice under section 148 under the new regime. The TLA Act extended the limitation upto 31.03.2021 for doing certain things, however, in post 31.03.2021 period it would be the Finance Act, 2021 which would be applicable and therefore, the law made by the Parliament by way of Finance Act, 2021 shall need to be impleaded. Even otherwise, the Notifications being an outcome of delegation power, they cannot overreach the principal legislature.

24. The Apex Court has up held the decisions and judgments of various High Courts by applying the benefits furthered by Finance Act, 2021 to the assessee by holding that *"we are in complete agreement with the view taken by various High Courts in holding so."*

24.1 While so holding, the Apex Court

held that *"extension of notification under the old regime by the Assessing Officer was a bona fide mistake"* and thus the application of Notification issued under the TLA Act is held to be a mistake of law. The Court, therefore, had permitted the substitution of provision of sections 147 to 151 of the Act for balancing the interest of revenue the court applied new law to all the notices issued after 31.03.2021 and therefore, the only law that can be applied to these notices be the amended provision of section 148 of the Act and unamended law surely cannot apply. The CBDT and its Instructions bearing No.1 of 2022 dated 11.05.2022 attempted to clarify the position of law as per its own interpretation of the decision of the Apex Court in case of Ashish Agarwal (supra). In para 6.1 of the circular it clarified thus:

> *"…Decision of the Hon'ble Supreme Court read with the time extension provided by TLA Act will allow extended reassessment notices to travel back in time to their original date when such notices were to be issued and then new section 149 of the Act is to be applied at that point."*

25. On the basis of the Apex Court's decisions, if these notices to be treated as show cause notice under section 148A(d) of the Act, the fresh information if is supplied by the department as per the direction of the Apex Court and a fresh notice under section 148 of the Act is issued after the order under section 148A(d) of the Amended Act. The Board Circular if is applied, the fresh notice would travel back to the date on which the original notice was to be issued. It would result into the following aspects:

(i) as per Amended Law, notice under section 148 of the Act is required to be issued along with the order under section 148A(d) of the Act therefore, the notice earlier issued in pre Ashish Agarwal period, could be issued before 148A(d) order;

(ii) section 153(2) of the Amended Act

provides that the reassessment proceedings needs to be completed within 12 months from the end of financial year in which the notice under section 148 is issued.

26. In the CBDT Circular, travelled back theory is applied, the due date for completion of the reassessment proceeding would be 31.03.2023. However, in all cases for the assessment year 2013-14 and 2014-15 where the original notices are issued between 01.04.2021 and 30.06.2021 and the fresh notices under section 148 are issued in post Ashish Agarwal's judgment, the due date for completing the reassessment would be 31.03.2024. The department itself has accepted that the due date for passing of the reassessment order is 12 month from the end of financial year 2022-23 i.e. the fresh notice under section 148 dated 15.08.2022 is 31.03.2024 which is a contradiction of the Board Circular proposing the travel back theory and the actual application of amended law.

26.1 The theory of time travell in the Notification is not tenable as discussed hereinabove. The notices originally issued under section 148 of the Act would be converted into show cause notice under section 148A(b) and thereafter, while issuing the fresh notice under section 148 read with order under section 148A(d) of the Act would relate back to the date of original notice issued under section 148 A of the Act. The new law would apply retrospectively to the notices from such original date. The amendement is not retrospective and therefore, the time travell would not be permissible.

27. The decision of the Apex Court makes it quite clear that the law which will be applicable shall be the financial year 2021 and since all the defences available under the Finance Act, 2021 to the assesses and have been kept open. The test to determine the validity of notice

issued after 31.03.2021 is that they should be permissible under the Finance Act, 2021. The CBDT's Instructions No.1 of 2022 dated 11.05.2022 if permits the Jurisdictional Assessing Officer to act beyond the jurisdiction prescribed under the statute, the same is ultra vires the provision of Finance Act, 2021. Therefore, the notices issued after 31.03.2021 for proceedings pertaining to assessment year 2013-14 and 2014-15. Since as per the scheme prescribed under the first proviso to amended section 149 of the Act, six years had already passed from the end of relevant assessment year to render all the proceedings to be time barred.

27.1 The department's claim for relying on CBDT Instructions No.1 of 2022 in F. No.279/Misc./M-51/2022-ITJ, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, ITJ Section New Delhi dated 11.05.2022 surely cannot override the provisions of law or the

decision of the Apex Court.

28. This Court needs to firstly take note of the budget speech of the Finance Minister for 2021-2022, which noted that at the time the assessment could be reopened upto six and ten years and therefore, the tax payers have to remain under uncertainty for a long time. Hence, the time limit is reduced to 3 years from 6 years.

29. Likewise, the memorandum explaining the provision, the Finance Bill 2021 under the head *"rationalization of various provisions provides for a completely reforms system of assessment/reassessment and re-competition"*. A new procedure of assessment of cases has been proposed by the bill, which would result in less litigation and the same would provide the ease of doing business to tax payers due to reduction in time limit for notice. Therefore, despite the Act having come into force at the time of issuance of notice, if

the revenue is allowed to choose and apply the repealed and substituted provisions, the entire objective of the legislature would be defeated. The Apex Court applying mischief rule of interpretation of statute and ascertained from the Budget Speech as to what was the mischief sought to be remedied by the legislation. Reference of the decision of "***KP Varghese vs. ITO***, reported in ***[1981] 131 ITR 597 (SC)*** would need a reference here.

> *"8 But the scope of sub-section (1) of section 52 is extremely restricted because it applies only where the transferee is a person directly or indirectly connected with the assessee and the object of the under-statement is to avoid or reduce the income-tax liability of the assessee to tax on capital gains. There may be cases where the consideration for the transfer is shown at a lesser figure than that actually received by the assessee but the transferee is not a person directly or indirectly connected with the assessee or the object of under-statement of the consideration is unconnected with tax on capital gains. Such cases would not be within the reach of sub section (1) and the assessee, though*

dishonest, would escape the rigour of the provision enacted in that sub-section. Parliament therefore enacted sub-section (2) with a view to extending the coverage of the provision in sub-section (I) to other cases of under statement of consideration. This becomes clear if we have regard to the object and purpose of the introduction of sub-section (2) as appearing from travaux preparatoire relating to the enactment of that provision. It is a sound rule of construction of a statute firmly established in England as far back as 1584 when Heydon's case(1) was decided that"... for the sure and true interpretation of all statutes in general-four things are to be discerned and considered: (1) What was the common law before the making of the Act, (2) What was the mischief and defect for which the common law did not provide, (3) What remedy the Parliament hath resolved and appointed to cure the disease of the Commonwealth, and (4) The true reason of the remedy, and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy". In in re Mayfair Property Company(2) Lindley. M.R. in 1898 found the rule "as necessary now as it was when Lord Coke reported Heydon's case". The rule was reaffirmed by Earl of Halsbury in Eastman Photographic Material Company v. Comptroller General of Patents, Designs and Trade Marks(3) in the following words.

"My Lords, it appears to me that to construe the Statute in question, it is not only legitimate but highly convenient to refer both to the former Act and to the ascertained evils to which the former Act had given rise, and to the later Act which provided the remedy. These three being A compared I cannot doubt the conclusion."

This Rule being a Rule of construction has been repeatedly applied in India in interpreting statutory provisions. It would therefore be legitimate in interpreting sub-section (2) to consider that was the mischief and defect for which section 52 as it then stood did not provide and which was sought to be remedied by the enactment of sub-section (2) or in other words, what was the object and purpose of enacting that sub-section. Now in this connection the speech made by the Finance Minister while moving the amendment introducing sub-section (2) is extremely relevant, as it throws considerable light on the object and purpose of the enactment or sub-section (2). The Finance Minister explained the reason for introducing sub-section (2) in the following words:

"Today, particularly every transaction of the sale of property is for a much lower figure than what

is actually received. The deed of registration mentions a particular amount; the actual money that passes is considerably more. It is to deal with these classes of sales that this amendment has been drafted-It does not aim at perfectly bona fide transactions.. but essentially relates to the day-to-day occurrences that are happening before our eyes in regard to the transfer of property. I think, this is one of the key sections that should help us to defeat the free play of unaccounted money and cheating of the Government."

Now it is true that the speeches made by the Members of the Legislature on the floor of the House when a Bill for enacting a statutory provision is being debated are inadmissible for the purpose of interpreting the statutory provision but the speech made by the Mover of the Bill explaining the reason for the introduction of the Bill can certainly be referred t o for the purpose of ascertaining the mischief sought to be remedied by the legislation and the object and purpose for which the legislation is enacted. This is in accord with the recent trend in juristic thought not only in Western countries but also in India that interpretation of a statute being an exercise in the ascertainment of meaning, everything which is logically relevant should be admissible. In fact there are at least three decisions of this Court, one in

Loka Shikshana Trust v. Commissioner of Income-Tax(1) the other in Indian Chamber of Commerce v. Commissioner of Income-tax(2) and the third in Additional Commissioner of Income-tax v. Surat Art Silk Cloth Manufacturers Association(3) where the speech made by the Finance Minister while introducing the exclusionary clause in section 2 clause (15) of the Act was relied upon by the Court for the purpose of ascertaining what was the reason for introducing that clause. The speech made by the Finance Minister while moving the amendment introducing sub- section (2) clearly states what were the circumstances in which sub-section (2) came to be passed, what was the mischief for which section 52 as it then stood did not provide and which was sought to be remedied by the enactment of sub-section (2) and why the enactment of sub-section (2) was found necessary. It is apparent from the speech of the Finance Minister that sub-section(2) was enacted for the purpose of reaching those cases where there was understatement of consideration in respect of the transfer or to put it differently, the actual consideration received for the transfer was 'considerably more' than that declared or shown by the assessee, but which were not covered by sub- section (1) because the transferee was not directly or indirectly connected with the assessee. The object and purpose of sub-section (2), as explicated from the speech of the

Finance Minister, was not to strike at honest and bonafide transactions where the consideration for the transfer was correctly 13: disclosed by the assessee but to bring within the net of taxation those transactions where the consideration in respect of the transfer was shown at a lesser figure than that actually received by the assessee, so that they do not escape the charge of tax on capital gains by under-statement of the consideration. This was real object and purpose of the enactment of sub-section (2) and the interpretation of this sub-section must fall in line with the advancement of that object and purpose. We must therefore accept as the underlying assumption of sub-section (2) that there is under-statement of consideration in respect of the transfer and sub-section (2) applies only where the actual consideration received by the assessee is not disclosed and the consideration declared in respect of the transfer is shown at a lesser figure than that actually received."

30. It would not be out of place to make a reference at the stage that while exercising the powers under Article 142 of the Constitution of India. In case of ***Union of India vs. Ashish Agarwal(supra)*** the erstwhile notices under section 148 of

the Act could have been straightway converted into notices under section 148 of the Act (issued under the amended provision) however, the Apex Court converted the notices under section 148 of the Act into the show cause notice under section 148A(b) of the Act with a rider that all defences under section 149 of the Act would be available to the assessee as well as the revenue. This is also a very strong indication and the reasonings given by this Court can be further validated that the notice under section 148 of the Act could not have been issued on or after 01.04.2021 without following the procedure prescribed under section 148A of the Act as applicable w.e.f. 01.04.2021.

31. We had demonstrated applying first proviso to section 149(1) of the Act as applicable w.e.f. 01.04.2021 that no notice under section 148 of the Act shall be issued at any time in a case for the relevant assessment year beginning on or

before 01.04.2021, such notices could not have been issued at that time on account of being beyond the time limit specified under the provision of Clause (b) of section 1 of this section, as they stood immediately before the commencement of Finance Act, 2021.

32. Therefore, as per the unamended provision applicable till 31.03.2021, notice under section 148 of the Act cannot be issued beyond the period of six years from the end of relevant assessment year and such six years' period for the assessment years 2013-14 and 2014-15 will get over by 31.03.2020 and 31.03.2021 respectively. Thus, before the amended provisions of reopening were enforced w.e.f. 01.04.2021, time limit for issuing the notice under section 148 for assessment years 2013-14 and 2014-15 expired. Therefore, also, in view of the first proviso to section 149(1), the notices issued under section 148 for the assessment

years 2013-14 and 2014-15 shall need to be held to be barred by limitation.

33. Relevant would be here to refer to section 1(ii) of the TLA Act, which came into force on 31.03.2020. In section 2(1)(b) of this Act, the specified Act includes the Income Tax Act. As per section 3(1)(b) of the TLA, the time limit for issuance of notice under section 148 of the Act falls during the period from 20.03.2020 to 31.12.2020 or such other date after 31.12.2020 as the Central Government made by Notification specified in this behalf and such notice has not been issued within time limit, this time limit for issuance of such notices shall stand extended to 31.03.2021 or such other date after 31.03.2021 as the Central Government made by Notification specified in this behalf.

34. Chapter III of the TLA Act provides for various amendement to the IT Act by virtue of such provisions, some of the

provisions of the Income Tax Act, 1961 has been amended.

35. The overall consideration of the TLA Act would provide that time limit for issuance of notice under section 148 of the Act would be governed by Chapter II of the TLA Act, which provides for relaxation of certain provisions of the specified Act. It provided for certain extension for issuance of such notice without corresponding the amendment in section 149 of the Act as applicable upto 31.03.2021. The TLA Act cannot rewrite the time limit for issuance of notice under section 148 of the Act.

36. The concept of freezing of time limit or permitting the revenue to travell back in time, the TLA Act does not endorse the said concept nor is it available in the case of ***Union of India vs. Ashish Agarwal (supra).*** The first proviso of TLA Act provides that the extension of date as referred to in sub-clause (b) of clause (i)

of the 3rd proviso shall not apply to Explanation 1 to section 234 A of the Act in cases where the amount of tax of the total income has reduced by the amount and specified in clause (i) to (vi) of sub-section (1) of said section exceeds Rs.1 Lakh.

37. The petitioner has rightly submitted that had it been a case that time had frozen and even liability to discharge any financial burden would have shifted to any later date, the question of charging any interest for discharging financial burden would not arise the freezing of time and payment of interest as rightly and emphatically urged by the petitioner do not go together. The very fact that the revenue has charged the interest for belated discharge on financial burden would go to prove that time had not frozen. When the Finance Act, 2021 was enacted, the TLA Act was very much in existence and Parliament could have taken the cognizance of the same

while prescribing the limitation under sections 147 to 151. However, the legislature had followed the due process and amended the provision of reopening w.e.f. 01.04.2021. TLA Act would have no applicability in so far as the amended provisions of reopening enforced on 01.04.2021 are concerned and such provisions were not there on the statute book when TLA Act came into force. What was extended was only the time limit under the TLA Act and there was no amendment under the TLA Act of erstwhile provision of section 149 as applicable till 31.03.2021. The TLA surely cannot be read into amended section 149 of the Act as made applicable from 01.04.2021.

38. The Notifications dated 31.03.2021 and 27.04.2021 whereby the time limit for issuance of notice under section 148 of the Act was extended in exercise of powers conferred under section 3(i) of the TLA Act. It appears that by these two

Notifications, the department had exercise the powers under section 3(i) of the TLA Act. In Notification dated 31.03.2021 the time limit for issuing notice under section 148 of the Act was extended from 31.03.2021 to 30.04.2021 and by virtue of 27.04.2021 Notification, the time limit for issuance of notice under section 148 of the Act was extended from 30.04.2021 to 30.06.2021. Therefore, what can be seen is that the Notification dated 31.03.2021 came to be issued before the amended provision of reopening came into force and thus, the Notification was applicable to the unamended provision of reopening. The unamended provisions of reopening since ceased to exist from 01.04.2021, the extension of Notification could have no applicability. The Notification dated 27.04.2021 was in continuity of earlier Notification dated 31.03.2021 as the unamended provisions of reopening itself ceased to exist on 01.04.2021. The Notifications cannot extend the time limit.

39. It is a trite law that no Notification can extend the limitation of the repealed Act. The Apex Court in case of Union of India vs.Ashish Agarwal (supra) had not disturbed the findings of various High Courts to the effect that Notifications in question were ultra vires. Therefore, once the act had been repealed, there cannot be extension of the time limit prescribed under the repealed act by virtue of Notification issued. The issuance of the Notifications by the executive in exercise of delegated powers can never go beyond the principal act.

40. The Apex Court had laid down the ratio in case of ***Vasu Dev Singh and Ors.vs. Union of India and Ors.,*** reported in ***(2006) 12 SCC 753*** is as follow:

> *"19.The nature of delegated legislation can be broadly classified as:*
> *(i) the rule-making power;*
> *(ii) grant of exemption from the operation of a statute.*

20. In the latter category, the scope of judicial review would be wider as the statutory authority while exercising its statutory power must show that the same had not only been done within the four-corners thereof but otherwise fulfils the criteria laid down therefor as was held by this Court, inter alia, in P.J. Irani vs. State of Madras & Anr.

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26.The law, which, therefore, has been laid down is that if by a notification, the Act itself stands effaced; the notification may be struck down. But that may not be the only factor.

31.In Indian Express Newspapers (Bombay) Pvt. Ltd. & Ors. etc. vs. Union of India & Ors. etc. [(1985) 1 SCC 641], the question which arose for consideration therein was as to whether the exemption notification issued under Section 25 of the Customs Act, 1962 was beyond the reach of the Administrative Law. Venkataramiah, J. speaking for the Bench, held that the Court exercising power of judicial review of a piece of subordinate legislation can exercise its jurisdiction, apart from the grounds on which a plenary legislation can be challenged, but if it is contrary to other statute or if it is so unreasonable so as to attract the wrath of Article 14 of the Constitution of India opined that the arbitrariness is not treated as a separate ground in India as it is a part of Article 14 of the Constitution stating:

".A distinction must be made between delegation of a legislative function in the case of which the question of reasonableness cannot be enquired into and the investment by statute to exercise particular discretionary powers. In the latter case the question may be considered on all grounds on which administrative action may be questioned, such as, non-application of mind, taking irrelevant matters into consideration, failure to take relevant matters into consideration, etc., etc. On the facts and circumstances of a case, a subordinate legislation may be struck down as arbitrary or contrary to statute if it fails to take into account very vital facts which either expressly or by necessary implication are required to be taken into consideration by the statue or, say, the Constitution. This can only be done on the ground that it does not conform to the statutory or constitutional requirements or that it offends Article 14 or Article 19(1)(a) of the Constitution. It cannot, no doubt, be done merely on the ground that it is not reasonable or that it has not taken into account relevant circumstances which the Court considers relevant."

It was categorically held that a subordinate legislation would not enjoy the same degree of immunity as a legislative act would.

The Apex Court held that delegate must act within limit of authority and cannot go beyond the Act. If a rule was beyond the power delegated under the Act, it becomes the ultra vires.

41. In case of ***Assam Co. Ltd. and Anr vs. State of Assam and ors,*** reported in (2001) 248 ITR 567 (SC), the Apex Court held thus:

> *"10.We see force in the above contention. A perusal of Section 50 of the Act shows that the State Government has been empowered to make such Rules as are necessary for the purpose of carrying out the purposes of the Act. We have already noticed that the object and the scheme of the Act do not contemplate the State authorities being empowered to recompute the agricultural income contrary to the computation made by the Central Officers, nor do the subjects specified in sub-sections 2(a) to (m) of Section 50 provide for making such rules empowering the State Officers to make computation of agricultural income contrary to what is computed by the Central Officers under the Central Act. We have noticed that by virtue of the provisions made by the legislature in explanation to Section 2(a)(2), proviso to Section 8 and Section 20D, it is clear that the State Legislature intended to adopt the computation of agricultural income made under the provisions of the Central Act. Having*

specifically said so in the above Sections of the Act, if the Legislature wanted to deviate from that scheme of the Act, it could have in clear terms provided for a power being vested with its officers in any given case to recompute the income keeping in mind the revenue of the State but the Legislature has not thought it necessary to do so. Even under Section 50, we do not see any provision which specifically authorises the State Government to make any such rules in the nature of the proviso to Rule 5 of the State Rules. It is an established principle that the power to make rules under an Act is derived from the enabling provision found in such Act. Therefore, it is fundamental that a delegate on whom such power is conferred has to act within the limits of the authority conferred by the Act and it cannot enlarge the scope of the Act. A delegate cannot override the Act either by exceeding the authority or by making provision which is inconsistent with the Act. Any Rule made in exercise of such delegated power has to be in consonance with the provisions of the Act, and if the Rule goes beyond what the Act contemplates, the Rule becomes in excess of the power delegated under the Act, and if it does any of the above, the Rule becomes ultra vires of the Act. We have already noticed that none of the provisions of the Act has contemplated any power to be vested in the State officers to recompute the agricultural income from tea while proviso to Rule 5 of the Rules in specific terms empowers the State officers to recompute the agricultural income from tea different from

that which is computed by the Central officers under the Central Act. Thus, it is seen that this Rule is not only made beyond the rule-making power of the State under Section 50 of the Act but also runs counter to the object of the Act itself, and enlarges the scope of the Act. The same also suffers from the other vices pointed out by us hereinabove, hence such a Rule, in our opinion, is ultra vires of the Act. Therefore, proviso to Rule 5 of the State Rules to the extent it empowers the State Officers to recompute the agricultural income already computed by the Central Officers is ultra vires of the State Act."

The Apex Court has held that a delegate must act within the limit of authority conferred by act and cannot go beyond what the Act contemplates.

42. The Notification that imposed condition for deduction not arising from the section was held to be impermissible. In case of ***CIT vs. Sirpur Paper Mills,*** reported in ***(1988) 172 ITR 762*** the Apex Court held that the asset it is a settled position of law that when it conflict the rule must give way to the act. In case of ***CIT vs. S.***

Chennaippa Mudaliar, reported in ***(1969) 74 ITR 41*** essential legislative functions also cannot be delegated nor can the delegation extend repealing or altering in essential particulars of laws, which are already enforced. The relegated power cannot be exercised to nullify the commencement of the act. The legislature, therefore, could not under the TLA Act revived the specified act, which had been repealed or substituted. Therefore, extension of the life of the repealed provisions also would amount to a repealed of the amended provisions therefore, by virtue of Notification, if the act though repealed continuous in operation for extending the limitation from 01.04.2021 to 30.06.2021, it is impermissible under the law.

43. In relation to the Instruction No.1 of 2022 dated 11.05.2022 issued by the CBDT after the decision of the Union of India vs. Ashish Agarwal (supra), it is decided by the Apex Court in case of ***Navnit Singh***

Lal Jhaveri vs. CCIT that the Instructions issued by the CBDT are binding on the officer of the department. They are not binding on the Court nor to the assesses, these instructions would have persuasive value.

44. All the notices issued between 01.04.2021 to 30.06.2021 shall need to pass the test of new law including the limitation test as laid down in the first proviso to section 149 of the Act. The Apex Court had permitted all issues to be kept open therefore, the question of limitation also cannot be ignored.

45. This bring this Court to the decision of the Delhi High Court in case of ***Touchstone Holdings Pvt. Ltd. vs. ITO – WPC 13102/2022 (Delhi High Court) dated 09.09.2022.***

45.1 The judgment proceeds on the footing that the notice dated 29.06.2021

issued under section 148 of the Act at the original stage was issued within the permissible extended time by virtue of operation of TLA Act and Notifications issued thereunder.

46. This appears to have been given on the premise that the notice dated 29.06.2021 was legal and valid notice issued within the permissible time limits. The notices in question, if would not have been issued on 29.06.2021 and if that base is lacking and as the notices issued under section 148 as held by the Apex Court between 01.04.2021 to 30.06.2021 could not have been issued and as the new scope of opening inserted by the Finance Act, 2021 would come into effect from 01.04.2021, there had been no question of extension of period of issuance of notice under the old scheme. Therefore, we respectfully do not endorse to the view of the Delhi High Court, which goes on a premise that earlier notice was legal, valid and within the time frame.

47. Once the act itself is repealed and operation of the said act is not extended by any savings clause, the Notification could not extend the operation of such a repealed act. The Delhi High Court has gone on a premise that by virtue of Notification in case of ***Mon Mohan Kohli (supra)*** the extension to time limit would survive.

48. Resultantly, it could be held that the time limit for issuance of the notice under the old regime for assessment years 2013-14 and 2014-15 since distinguished on 31.03.2021, no extension of such time period when the act itself was repealed would arise. The alter contention raised by the petitioner in relation to the limitation tabulated for ready reference this wise:

Date of Notification	Original limitation for issuance of notice under section 148 of the Act	Extended Limitation
31.03.2020	20.03.2020 to 29.06.2020	30.06.2020
24.06.2020	20.03.2020 to 31.12.2020	31.03.2021
31.03.2021	31.03.2021	30.04.2021
27.04.2021	30.04.2021	30.06.2021

49. It is thus clear that the Apex Court had converted the original notice issued on 24.06.2021 under section 148 of the Act into show cause notice under section 148A(b). Thus, the assessee was allowed time till 10.06.2022 to furnish the reply in response to the show cause notice in response to the show cause notice under section 148A(b) dated 27.05.2022 and assessee furnished the reply on 01.06.2022.

50. 3rd proviso to section 149(1) of the Act provides that for the purpose of computing the period of limitation, the time or extended time allowed to the assessee as per show cause notice issued under clause (d) of section 148 A. The period during which the proceedings under section 148A of the Act is stayed by an order or injunction of any Court shall be excluded. Since the assessee was granted the time till 10.06.2022 and to furnish the reply to show cause notice dated 27.05.2022

issued under section 148A(b) of the Act therefore, the following time period had to be excluded for the purpose of limitation. In view of the 3rd proviso to section 149 of the Act, it is from 27.05.2022 for the notice under section 148A(b) and till 10.06.2022 time granted to furnish the reply.

51. The notice under section 148 of the Act had been issued on 27.07.2022, the department took about 47 days for issuing the notice under section 148 of the Act when these period is added to the original notice under section 148 of the Act of 24.06.2021, the notice would be considered as having been issued beyond 30.06.2021 which, according to the petitioner, is not permissible. Even without going into this alternate contention in relation to the cases, where the notices under section 148 of the Act have been issued, it is to be held that assessment for the assessment years 2013-14 and 2014-15 are time barred.

Thus, it can be summarized this wise:

51.1 Section 149 (1)(a) of the Finance Act, 2021 does not permit the issuance of notice under section 148 of the Act for the relevant assessment years if three years elapsed from the end of the relevant assessment year unless of course the case was under clause(b). Section 149(1)(b) of the Act would permit to open the case if, three years, but, not more than 10 years have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession the books of accounts or other documents or evidence which reveal that income chargeable to tax represented in form of assets which is escaped the assessment amounts to or is likely to amount of Rs.50 Lakh or more for that year. Thus, as per first proviso to section 149 of the Act, no notice under section 148 of the Act shall be issued at any time in a case for the relevant assessment year beginning on or before 1st

day of April 2021. Such notice could not have been issued at that time on account of being beyond the time limit specified under the provision of clause(b) of sub-section 1 of this section as they stood immediately before the commencement of Finance Act, 2021.

51.2 Therefore, as per the first proviso if a notice could not have been issued under the old provision of section 149 prior to its substitution w.e.f. 01.04.2021, notice could not have been issued under the new provisions. Prior to substitution w.e.f. 01.04.2021, the time limit as per section 149 of the Act was six years from the end of relevant assessment year if, the income chargeable to tax has escaped amounts to or is likely to amount to Rs.1 Lakh or more for that year. As per section 149(1)(b) of the Act prior to its substitution a case could not be reopened beyond the period of six years from the end of relevant assessment year unless the

income chargeable to tax has escaped the assessment amounts to or is likely to amount to Rs.1 Lakh or more for that year.

52. A conjoint reading of section 149(1) proviso w.e.f. 01.04.2021 along with section 149(1)(b) prior to 01.04.2021. The case of the petitioner for assessment years 2013-14 and 2014-15 cannot be reopened. The assessment year is 2013-14 (01.04.2012 to 31.03.2013) and assessment year 2014-15 (01.04.2013 to 31.03.2014). The end of assessment year is 31.03.2014 and 31.03.2015 respectively. Therefore, the last date for issuance of notice under section 148 of the Act would be 31.03.2020 or 31.03.2021 (being six years from the end of relevant assessment year) whereas the impugned notices under section 148 is issued beyond that period and hence, the same are clearly time barred.

53. Along with this, it is necessary to also once again referred to the

Instructions No.1 of 2022 issued by the CBDT wherein the Assessing Officers have been instructed to issue notices under section 148A(b) of the Act in pursuance of directions of the Apex Court for the assessment years 2013-14 to 2014-15, wherein income likely to escape assessment is Rs.50 Lakh or more. This view of CBDT is based on interpretation of the judgment of the Apex Court and the provisions of TLA Act, 2020. Instructions of the CBDT read the decision of the Apex Court with the extension of time provided under the TLA Act and the same would allow extended reassessment notices to travel back in time to their original date where such notices were to be issued and then new section 149 of the Act would be applied.

53.1 This is an erroneous interpretation of the Apex Court's decision which did not say that the extension provided by TLA Act would get extended for issuance of reassessment notices to travel back in time

to the original date when such notices were to be issued. While so interpreting, the CBDT overlooked the fact that in para 10(iv) in case of ***Union of India vs. Ashish Agarwal (supra)*** the Apex Court kept all the defences available to the petitioner including those available under section 149 of the Act open. Accordingly, the petitioner has raised the defence under the first proviso to section 149 of the Act before issuance of notice under section 148 of the Act.

54. We also cannot be oblivious of the fact that the Apex Court had in no uncertain terms expressed that it is in compete agreement with the view taken by various High Courts and thus had affirmed the views of the High Courts which held that after enactment of Finance Act, 2021, no notice under section 148 of the Act can be issued on the basis of provisions contained in TLA Act. Therefore, the CBDT's interpretation for issuance of directions to the Assessing

Officers by relying on the TLA Act is contrary to the ratio of the Apex Court. The legal effect of enactment of Finance Act, 2021 and substitution of provisions contained in sections 147 to 151 of Finance Act, 2021 when regarded, it is to be appreciated that the TLA Act has extended the last date under unamended section for initiating the actions under sections 147/148 of the Act which is prescribed under unamended section 149. TLA Act is a subsidiary legislation, whereas the unamended sections 147 to 151 being the principal legislation, substitution of sections 147 to 151 by Finance Act with the entire new set of provision having different conditions and procedures on which the existence of subsidiary legislation TLA Act depends itself and ceased to excess, the provision contained in TLA can not have any effect after the enactment of Finance Act, 2021. The CBDT failed to appreciate such legal effect of enactment of Finance Act, 2021 before

relying on provisions contained in TLA Act.

55. Again, as mentioned hereinabove the extension under the TLA Act would not mean that it can extend the time limit provided under section 149(1)(b) of the Act as it stood immediately before the commencement of Finance Act, 2021, which remained six years from the end of assessment year. It is apposite to take notice of the language used by the legislature while drafting first proviso to section 149 which contains reference to the time limit specified under clause (b) of the unamended section 149 of the Act being six years from the end of relevant assessment years. This time limit is since not being altered by TLA therefore, extension of time limit for taking the action cannot be said to have been altered.

56. Extension of Limitation from time to time in relation to all the proceedings by the Apex Court led to the enactment of TOLA

Act, 2020, which extends time period for various enactments. Circular of CBDT extending time limit for the issuance of notice under section 148 of the IT Act upto 30.06.2021 met with a serious challenge. In wake of coming into effect the new Act of 2021 w.e.f. 01.04.2021 to give an overriding effect over legislation by issuance of notification for issuance of notice under the old provisions was not sustained by various High Courts and eventually the Apex Court intervened to give a balanced solution. It permitted the procedure under the new Act for those proceedings initiated before 01.04.2021 to 30.06.2021 and at the same time all contentions were kept open for the litigating parties to raise. Again, it is an unquestionable proposition that notifications which are the creation of the executives, issued under section 3 of TOLA Act, 2020 cannot override the legislation no matter how grave the situation may be and pandemic due to COVID-19 virus would

also not be potent enough to dilute this principle.

56.1 Resultantly, even though CBDT issued both the notifications of 31.03.2021 and 27.04.2021, they could have no power to extend the time period under the first proviso to section 149(1) of the Act. Resultant outcome would be to negate the submissions of Revenue that these two notifications would extend time period provided under the proviso to section 149(1) of the IT Act.

56.2 The time limit as per unamended section 149(1)(b) rendered six years from the end of assessment year. TOLA has not altered time limit provided in clause (b) of unamended section 149 of the IT Act.

57. It is needed to be clarified that we have since held the notices to be barred by the ground of limitation, other legal and factual aspects are not deal with in

any of the petitions and all these petitions are allowed on the issue of limitation.

58. Resultantly, these petitions are allowed. Notices under section 148 of the IT Act and impugned orders under section 148A(d) of the IT Act are quashed and set aside on the ground of limitation.

59. All these petitions are accordingly disposed of.

(SONIA GOKANI, J)

(MAUNA M. BHATT,J)

M.M.MIRZA

Supplementing View:

1. I'ye had the benefit of reading the scholarly judgment authored by my esteemed sister Hon'ble Ms. Justice Sonia Gokani. With great respect, I find myself in complete agreement with the reasoning and the eventual conclusion arrived at by sister Hon'ble Justice Gokani. Even though the judgment delivered by sister Hon'ble Justice Gokani. encapsulates many aspects, I however, looking at the issue involved and the very able arguments of all the learned counsel, I wish to record my own reasons, in addition to what has already been laid down.

2. This group of writ petitions are filed challenging the order disposing of objections under Section 148A(d) of the Income Tax Act, 1961 (the 'Act' for short) as also notice for reassessment issued under Section 148 of the Act. In all these petitions, the notice under Section 148 of the Act is issued for assessment year 2013-2014 or for assessment year 2014-2015. For the sake of convenience and for the purposes of this judgment, the reassessment notices issued under Section 148 for A.Y.2013-2014, shall be treated as batch I petitions and the reassessment notices issued under Section 148, for A.Y.2014-2015 shall be treated as batch II petitions.

3. The relevant dates and events of the reassessment notices issued under Section 148 for A.Y.2013-2014 (Batch I petitions), are taken from Special Civil Application No.23234 of 2022.

Date	Event
24.6.2021	Original notice was issued under section 148 of the Act.
04.05.2022	Decision rendered by Hon'ble Apex Court in the case of ***UOI v/s Ashish Agarwal*** reported in ***[2022] 444 ITR 1] (SC)*** treating such notices as having been issued under Section 148A(b).
27.05.2022	Show cause notice under section 148A(b) was issued in accordance with the decision in case of ***Ashish Agarwal (supra)*** & assessee was granted time "till 10.06.2022" for furnishing reply to such notice.
01.06.2022	Assessee furnished reply to the show-cause notice issued under section 148A(b) of the Act
27.07.2022	Order under section 148A(d) of the Act was passed
27.07.2022	Fresh notice under section 148 of the Act was issued

4. The relevant dates and events for the reassessment notices issued under Section 148 for A.Y.2014-15 (Batch II petitions), are taken from Special Civil Application No. 17321 of 2022.

Date	Event
2014-2015	Assessment year under consideration
21.04.2021	Notice under Section 148 (old provision) issued upon the petitioner.
14.09.2021	Special Civil Application No.13433 of 2021 filed by the petitioner
17.09.2021	Stay order granted by this Court in Special Civil Application No.13433 of 2021 and allied matters
04.05.2022	Order of the Hon'ble Supreme Court in the case of ***Union of India vs. Ashish Agarwal***
06.05.2022	Special Civil Application No.13433 of 2021 and allied matters disposed of by this Court following the judgment of the Hon'ble Supreme Court in the case of ***Ashish Agarwal (supra)***
28.05.2022	Show cause notice under Section 148A(b) was issued in accordance with the decision in case of ***Ashish Agarwal (Supra)*** on 28.05.2022 and assessee was granted time of two weeks for furnishing reply to such notice.
9.6.2022	Assessee responded to the notice issued under Section 148A(b) on 9.6.2022
26.7.2022	Order under Section 148A(d), passed by the respondent department
26.7.2022	Fresh notice under Section 148 issued.

5. **Factual background**:

Section 148 of the Income Tax Act refers to notice where income has escaped assessment. With the introduction of Finance Act 2021, with effect from 01.04.2021, Section 148 of the Act has been amended drastically substituting the old provision. With the introduction of Finance Act 2021, old provisions of sections 147 to 151 have been substituted by introduction of new provisions. One of the significant amendments is insertion of section 148A and section 148B w.e.f. 1.4.2021. Thus, machinery provisions of Sections 148A and 148B w.e.f 1.4.2021, have been introduced vide Finance Act 2021. In the above referred petitions, the issue pertains to notice issued under Section 148 after 31.03.2021. In all these petitions the notices were issued between the period 1.4.2021 to 30.06.2021, [the period extended by Taxation and Other Laws (Regulation and Amendment of Certain Provisions) Act, 2020 [hereinafter referred to as "TOLA"], and the same were issued under old provisions i.e the provision prevalent prior to 1.4.2021.

6. Aggrieved by the notices issued under Section 148 of the Act (between the period from 1.4.2021 to 30.6.2021), the assessee challenged the said notices before various High Courts. It was case of the assessees in the said petitions that by virtue

of amendments in the Finance Act 2021, new provisions of Section 147 to Section 151 are introduced w.e.f. 1.4.2021, despite which notices came to be issued under old provisions (the provisions prevalent prior to 1.4.2021) and therefore, they are illegal and deserved to be quashed and set aside. In the decisions rendered, majority High Courts had held that no such notices could have been issued because when the notices were issued, substituted provisions of sections 147 to 151 had come into existence. Such decisions of various high courts were subject matter of challenge before the Hon'ble Supreme Court in the case of ***Union of India vs. Ashish Agarwal*** reported in ***(2022) 444 ITR 1 (SC)***, wherein the Hon'ble Supreme Court in relation to decisions of various High Courts in para 7 has held that,

> **"7.** Thus, the new provisions substituted by the Finance Act,2021, being remedial and benevolent in nature and substituted with a specific aim and object to protect the rights and interest of assessee as well as and the same being in public interest, the respective High Courts have rightly held that the benefits of new provisions shall be made available even in respect of the proceedings relating to past assessment years, provided section 148 notice has been issued on or after 1.4.2021. We are in complete agreement with the view taken by the various High Courts in holding so."

7. However, considering the object and purpose of reassessment and treating the notices issued under section 148,

as bonafide mistake, the Hon'ble Supreme Court modified the judgements and orders passed by the respective High Courts as under: -

> "*(i) The respective impugned section 148 notices issued to the respective assessees shall be deemed to have been issued under section 148A of the IT Act as substituted by the Finance Act, 2021 and treated to be show-cause notices in terms of section 148A(b). The respective assessing officers shall within thirty days from today provide to the assessees the information and material relied upon by the Revenue so that the assessees can reply to the notices within two weeks thereafter;*
>
> *(ii) The requirement of conducting any enquiry with the prior approval of the specified authority under section 148A(a) be dispensed with as a one-time measure vis-a-vis those notices which have been issued under Section 148 of the unamended Act from 01.04.2021 till date, including those which have been quashed by the High Courts;*
>
> *(iii) The assessing officers shall thereafter pass an order in terms of section 148A(d) after following the due procedure as required under section 148A(b) in respect of each of the concerned assessees;*
>
> *(iv) All the defenses which may be available to the assessee under section 149 and/or which may be available under the Finance Act, 2021 and in law and whatever rights are available to the Assessing Officer under the Finance Act, 2021 are kept open and/or shall continue to be available and;*
>
> *(v) The present order shall substitute/modify respective judgments and orders passed by the respective High Courts quashing the similar notices issued under unamended section 148 of the IT Act irrespective of whether they have been assailed before this Court or not."*

8. Thereafter, to implement the decision of Hon'ble Supreme Court in the case of ***Ashish Agarwal (supra)***, the CBDT issued instructions **No.1/2022 (F.No. 279/Misc./M.-51/2022(ITJ DATED 11.5.2022)** and consequently, reassessment notices issued (between the period 01.04.2021 to 30.06.2021) under Section 148 of the Act, were treated as deemed to be show cause notices under Section 148A(b) of the Act. The decision in case of ***Ashish Agarwal (Supra)*** was delivered on 4.5.2022, and therefore the respective Assessing Officers were directed to provide information relied upon by the revenue within 30 days from 4.5.2022, so as to get response from the assessee. **For e.g** In SCA 23234 of 2022, the reassessment notices under Section 148, for A.Y. 2013-14 was issued on 24.06.2021. Vide order dated 27.05.2022, the said notice was treated as show-cause notice under Section 148A(b) of the Act, calling for reply of the assessee. After considering the reply of the assessee, an order under Section 148A(d) was passed on 27.07.2022 and notice under Section 148 of the Act was also issued on 27.07.2022. Thus, in all these petitions of Batch-I, the date of show-cause under Section 148A(b) and the date of notice under Section 148 would be after 4.5.2022. Similar is the situation in relation to notice issued under Section 148 for Assessment Year 2014-15. For Batch -II petitions also, the date of show-cause under Section 148A(b) and the date of notice

under Section 148 would be after 04.05.2022.

9. The challenge in both (Batch-I petitions for A.Y. 2013-14 and Batch-II petitions for A.Y.2014-15), thus is in relation to the notices issued under Section 148 of the Act, for A.Y.2013-2014 and for A.Y.2014-15. Along with the ground of limitation, several other grounds like change of opinion, no fresh information available to the revenue, escapement is not represented in the form of asset etc. are raised. However, these petitions are heard only on the ground of limitation i.e. whether fresh notice issued under Section 148 of the Act for A.Y.2013-2014 and for A.Y. 2014-15, after decision of Supreme Court in the case of ***Ashish Agarwal (supra)*** are barred by limitations or not?

10. The arguments on behalf of the petitioners were opened by Mr. Tushar Hemani, Learned Senior Advocate assisted by Ms. Vaibhavi Parikh, learned Advocate. His arguments were as follows:

10.1. **Purpose of enactment**:

(a) Referring to the budget speech of the Finance Minister for the year 2021-22, he submitted that the intention of the legislature behind substituting erstwhile provisions of reopening with new provisions of reopening w.e.f. 1.4.2021 is expressly

clear from para 153 and 154 of the said speech. In the said paras it is expressed that earlier the taxpayers had to remain under uncertainty for a longer time, therefore, the new provisions are introduced with an intent to reduce the time limit. Similarly, the memorandum explaining the provisions of Finance Bill 2021 proposes that the new system would result in less litigation and with the reduction in time limit for issuance of notice, it would provide ease of doing business to the taxpayers. Relying upon the decision of Hon'ble Supreme Court in case of **K P Varghese v/s ITO (1981)131 ITR 597 (SC),** he submitted that the object and purpose of the enactment of provision should be the paramount consideration. If the impugned notices are upheld it would defeat the very objective of the amendment and hence such notices are liable to be quashed. He relied upon the findings of Hon'ble S C in the case of **K.P.Varghese (Supra),** in para 11 that *"It is well-settled principle of interpretation that courts is construing a statute will give much weight to the interpretation put upon it, at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it"*

10.2 **Application of decision of Hon'ble Supreme Court in case of Ashish Agarwal:**

Referring to decision of Hon'ble Supreme Court in the

case of ***Union of India vs. Ashish Agarwal (2022) 444 ITR 1 (SC),*** he submitted that:

(a) Hon'ble Supreme Court in exercise of powers under Article 142 of Constitution of India has passed an order governing judgments and orders of various High Courts on similar issues and therefore, the said decision would not be applicable in the cases where no such notice under Section 148 has been issued.

(b) As held by Hon'ble Supreme Court, by way of substitution of sections 147 to 151 of the Act, by Finance Act 2021, radical and reformative changes are made governing the procedure for reassessment proceedings. Further, under substituted provisions, no notice under section 148 can be issued without following the procedure and therefore any notice without following procedure is void.

(c) The Hon'ble Supreme Court taking note of insertion of new provisions w.e.f 01.04.2021, treated the notice issued by A.O. under old provision as bonafide mistake and considering the case of revenue, it held that the impugned notices under Section 148 shall be deemed to be notice issued under Section 148 A of the act as substituted by Finance Act 2021, and treated to be show cause notice under Section 148A(b) of the Act.

(d) Most importantly the Hon'ble Supreme Court had merely converted the notice issued under Section 148 of the Act into Show-Cause notice under Section 148A(b) of the Act with the rider that all the defenses available under Section 149 of the Act shall be available to the assessee as well as revenue. Therefore, first proviso to section 149(1), applicable w.e.f. 1.4.2021 cannot be ignored. As per first proviso to section 149(1) of the Act, applicable w.e.f. 1.4.2021, no notice under Section 148 of the Act can be issued at any time in a case for the relevant assessment year, if the time limit specified under unamended provision had expired. As per the unamended provision (applicable till 31.03.2021), notice under Section 148 of the Act could not be issued beyond a period of six years from the end of the relevant Assessment Year. Such a time limit of six years for the assessment years in question ended on the following dates: -

> For the Assessment Year 2013-14 six years ended on 31.03.2020 and

> For Assessment Year 2014-15 six years ended on 31.03.2021.

Thus, the notices issued under Section 148 of the Act for the Assessment Years 2013-14 and 2014-15 could not have been issued after 31.03.2020 and 31.03.2021 respectively,

because before the substituted provision came into force w.e.f. 01.04.2021, time limit for issuance of notice under Section 148 of the Act for A.Y. 2013-14 and A.Y. 2014-15 had expired. Hence, the notices issued under Section 148 of the Act in all these petitions for A.Y.2013-14 and A.Y. 2014-15, between 1.4.2021 to 30.6.2021, are barred by limitation.

10.3. **Provisions of "TOLA- 2020":**

(a) Referring to The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (for short "TOLA"), Mr. Hemani, learned Senior Counsel submitted that the said Act came into force w.e.f. 31.3.2020, under which, certain provisions of Act were amended. Amendment was such that if the language thereof is to be seen, certain sections were practically re-written. One such example is Section 3(1)(a) of TOLA which prescribes a time limit for issuance of notice under section 148 of the Act. Section 3 (1)(a) of TOLA states that, if the time limit for issuance of notice falls during the period from 20.03.2020 to 31.12.2020 or such other date after 31.12.2020, as the Central Government may, by notification, specify in this behalf, and such notice has not been issued within such time then the time limit for issuance of such notice shall stand extended to 31.03.2021 or such other date after 31.03.2021 as the Central Government may by

notification specify in this behalf. Chapter-II of TOLA, provides for extension of time limit for issuance of such notices (notices under Section 148 of the Act). However, there was no corresponding amendment in Section 149 of the Act and therefore, something which is not expressly provided, cannot be considered.

(b) Referring to certain other time limits prescribed under TOLA, he submitted that the same is governed by Chapter-III of TOLA and there is no reference to the time limit expressly provided under section 149 of the Act in Chapter-III of TOLA.

(c) Referring to the affidavit of the revenue as also Notifications issued by the Government pursuant to TOLA dated 31.03.2021 and 27.04.2021, he submitted that there is no concept of "freezing of time" or permitting the revenue to "travel back in time" as sought to be canvassed. TOLA does not provide the concept of "freezing of time limit". By giving an example of section 234A of the act, he submitted that if the freezing of time concept is made applicable, then interest payable under section 234A of the act, shall have no harmonious application and thus, the scheme of the Act will fail. He thus, submitted that the time limit extended by TOLA does not read into amendment of Section 149 of the Act, particularly when the erstwhile Section 149, to which the

TOLA was made applicable ceases to exist. He thus submitted that TOLA has no role to play in so far as reopening provisions are concerned on or after 01.04.2021 and, therefore, reference made of TOLA in the affidavit of the revenue is misconceived.

10.4. **Notification dated 31.03.2021 and 27.04.2021, whereby time limit for issuance of Notice under section 148 of the Act was extended in exercise of powers conferred under section 3(1) of TOLA:**

(a) Referring to Notification dated 31.03.2021, Mr. Hemani, learned senior counsel submitted that by the said notification, time limit for issuance of notice under section 148 of the Act was extended from 31.03.2021 to 30.04.2021. By another Notification dated 27.04.2021, the said time limit was extended from 30.04.2021 to 30.06.2021. Thus, in exercise of power conferred under section 3(1) of TOLA, time limit for issuance of notice under section 148 of the Act was extended from 31.03.2021 to 30.06.2021. Admittedly, these two Notifications were issued prior to the amended provisions of sections 147 to 151 of the Act, which came into force w.e.f. 01.04.2021 and therefore, the said notification can only be made applicable to "unamended provisions" of the Act, which were made applicable till 31.03.2021. Once the "unamended provisions" ceases to exist w.e.f. 01.04.2021, above two Notifications,

extending time limit shall have no application to the amended provisions, which came into force w.e.f. 01.04.2021.

(b) Notification dated 27.04.2021 was issued in continuation of earlier notification dated 31.03.2021 and therefore, even Notification dated 27.04.2021 (issued after 01.04.2021) cannot be made applicable after 01.04.2021. Presuming for a moment that the Notification dated 27.04.2021 is applicable to the "amended provisions of reopening", then also no time limit was expiring on 30.04.2021, which ought to have been extended to 30.06.2021 and therefore also, extension of time limit pursuant to the Notifications, has no application with regard to time limit prescribed under section 149 of the Act.

(c) Most importantly, "Delegate" does not have the power to rewrite the law, which has been enacted by parliament. Even the Hon'ble Supreme Court in the case of ***Ashish Agarwal (supra)*** has not disturbed the findings of various High Courts holding the Notification in question as ultra vires. Thus, time limit prescribed under such repealed Act cannot be permitted to be extended through notification.

10.5. **Executives in exercise of delegated powers, cannot go beyond the Principal Acts i.e. Income Tax Act, 1961 and TOLA, nor can the excutives exercise legislative power:**

(a) Mr.Tushar Hemani, learned senior counsel submitted that two Notifications dated 31.03.2021 and 27.04.2021 pursuant to TOLA, has extended the operation of a repealed statute. Since the said notification has extended the powers given under TOLA, the Notifications are ultra vires. In support of his submission, he has relied upon the following decisions:

(i) In the case of ***Vasu Dev Singh and others vs. Union of India and others*** reported in ***(2006)12 SCC 753;***

(ii) In the case of ***Assam Co vs. State of Assam*** reported in ***(2001)248 ITR 567 (SC);***

(iii) In the case of ***The Chamber of Tax Consultants & Anr. vs. Union of India*** reported in ***(2018)400 ITR 178 (Delhi);***

(iv) In the case of ***CIT vs. Sirpur Paper Mills*** reported in ***(1999)237 ITR 41 (SC);***

(v) In the case of ***Union of India vs. S.Srinivasan*** reported in ***(2012)7 SCC 683;***

(vi) In the case of ***Kunj Behari Lal Butail vs. State of H.P.*** reported in ***(2000)3 SCC 40;***

Therefore, the executives, in exercise of delegated powers, cannot go beyond the principal Acts i.e. Income Tax

Act,1961 and TOLA.

(b) Alternatively, he submitted that assuming that TOLA has powers to extend the time limit prescribed under the provisions of the Act, in view of the settled legal position, such powers are unconstitutional and ultra vires. In support of his submissions, he relied upon decision in the case of ***State of Tamil Nadu and others vs. K. Shyam Sunder and others*** reported in ***(2011)8 SCC 737*** and in the case of ***The Chamber of Tax Consultants and another vs. Union of India*** reported in ***(2018)400 ITR 178 (Delhi)***. Extending his submissions on the same line, he further submitted that executives while exercising delegated powers, cannot, by issuing Notification, revive or extend Repealed Act.

10.6. **Application of Instruction No. 1/2022 Dated 11.5.2022:**

(a) Mr. Hemani, learned senior counsel submitted that, CBDT pursuant to the decision in the case of ***Ashish Agarwal (supra),*** issued Instruction No.1/2022, broadly interpreting the said decision. "Instructions" issued by CBDT are "binding" on "Officers of Department" and not binding to the Court of law and Assessee. It has only "persuasive value". In support of his submission, he relied upon decision in the case of ***Navnit C. Lal Javeri vs. ACIT*** reported in ***(1965)56 ITR 198(SC).***

Therefore, "interpretation" adopted by the "revenue", pursuant to the decision of Hon'ble Supreme Court in the case of ***Ashish Agarwal (supra)*** is "erroneous" on face of it. The theory of "time travel" propounded in the said Notification is not legally tenable. Interpretation of the Revenue that notices originally issued under section 148 of the Act would be converted into show cause notice under section 148A(b) of the Act and thereafter, while issuing fresh notice under section 148 of the Act read with order under section 148A(d) of the Act would relate back to date of the original notice issued under 148 of the Act, is bad in law.

(b) The new law, according to the Revenue, would apply retrospectively to the notices from such original date. The amendment is admittedly not retrospective, therefore, "time travel" is not permissible. Assuming while denying that such an action is permissible, the notices would relate back to dates between 01.04.2021 to 30.06.2021, when the new law was in operation. Therefore, all those notices would have to pass the tests of new law including limitation test, as laid down in 1st proviso to section 149 of the Act. Hon'ble the Apex Court has never exempted such a scrutiny of the notices from the point of view of limitation. It is, therefore, submitted that even if notice relates back to the earlier date, the hurdle of limitation cannot be given a go-by. Hon'ble the Apex Court has merely

converted notices under section 148 into show-cause notices issued under section 148A(b) and kept all defenses open to the assessee. Hence, the Instruction No.1/2022 deserves to be ignored.

10.7. **Decision Of Hon'ble Delhi High Court in the case of *"TOUCHSTONE HOLDINGS P. LTD. vs. ITO":***

(a) Referring to the decision of Delhi High Court in the case of Touchstone Holdings Private Limited vs. ITO reported in WPC 13102 of 2022 dated 09.09.2022, he submitted that the said judgment does not lay down the correct law for the following reasons:

(i) The said judgment proceeds on the footing that the original notice issued between time period 01.04.2021 to 30.06.2021 was issued within the permissible extended time by virtue of operation of TOLA and Notifications issued thereunder.

(ii) This fundamental premise of issuance of notices under section 148 of the Act between 01.04.2021 to 30.06.2021 being illegal, reliance placed on the said decision is of no consequence. Referring to the decision of ***Ashish Agarwal (supra),*** he submitted that even the Supreme Court has noted that notices were issued due to bonafide mistakes.

Decision refers to genuine application of amendment as the officers of the revenue were under bonafide belief that amendment may not have been enforced. In other words, despite substitution of provisions, an old provision cannot be made applicable.

(iii) Delhi High Court committed an error in not appreciating that after deletion of explanations, extension provided under the notifications was only applicable to the repealed Act. The said Notification cannot be made applicable beyond 31.03.2021. When an act itself is repealed, the same cannot be extended by Notification.

(iv) Delhi High Court erroneously has observed that notices issued between 01.04.2021 to 30.06.2021 shall be deemed as Notices under section 148A of the Act. Consequently, the first proviso to section 149 shall not be applicable. This has no application as in the case of ***Ashish Agarwal (supra)***, Hon'ble Apex Court has observed that all defenses, which may be available to the assessee including those available under section 149 of the Act, are kept open. Therefore, the finding given by the Delhi High Court that the time limit for initiating the assessment proceedings for AY 2013-14 stood extended till 30.06.2021, is erroneous and the said decision has no

application.

He thus submitted that the notices under section 148 of the Act for A.Y. 2013-14 and 2014-15 are without jurisdiction and barred by limitation and therefore, the same deserves to be quashed and set aside. Thus, he submitted to allow the petition accordingly.

11. Further submissions on behalf of the petitioners, in addition to the aforesaid, were advanced by Mr. Saurabh Soparkar, learned Senior Advocate assisted by Mr. B.S. Soparkar, learned Advocate. His submissions were as under:

11.1 **Decision of Hon'ble Supreme Court in case of *Ashish Agarwal:***

(a) In all the petitions the notices under section 148, for A.Y.2013-14 and A.Y. 2014-15 were issued between the period 1.4.2021 to 30.6.2021. Pursuant to the decision of the Hon'ble Supreme Court, the said notices were treated as notices under Section 148 A (b) of the Act, wherein in all cases the notice under Section 148A(b) was after 4.5.2022. Thus, the process for reassessment started after the 4th May, 2022, and the orders under Section 148A (d) of the Act were passed somewhere in the month of June to August 2022, and immediately the notices

under Section 148 of the Act came to be issued under new provision. If the contention of the revenue of "travel back in time" is taken into consideration then the notice under Section 148 issued between June to August 2022, have to be treated as notices issued as original notice under Section 148 of the Act, and permitting that would amount to order under Section 148A (d) of the Act being subsequent to the date of original notice under Section 148 of the Act. Therefore, under no circumstances the original notices issued under Section 148 of the Act for A.Y. 2013-2014 and 2014-2015 can be treated as notices issued under section 148 of the Act under new provision.

(b) On merits, he submitted that High Courts of Bombay, Delhi, Allahabad and Rajasthan (among others) had held that explanation in the Notifications dated 31.03.2021 and 27.04.2021 is illegal. Consequently, notices issued between 01.04.2021 to 30.06.2021 under section 148 of the Act were struck down. The Supreme Court has held that the High Courts were correct in holding that only the new provisions would apply after 01.04.2021 and explanation in notifications cannot be made applicable after 01.04.2021. Therefore, the natural corollary would be that all the notices issued under Section 148 between 01.04.2021 and 30.06.2021 under old provisions be

rendered illegal. However, considering the same as bonafide mistake, the Hon'ble Suprem Court substituted the original notices issued under Section.148 of the Act, under old provisions as the notices under section 148A(b) of the Act under new provisions, keeping everything else remaining the same. In support of his submission, he relied upon Para- 7 & 8 of Hon'ble Supreme Court in the case of ***Ashish Agarwal (supra).***

(c) He further submitted that the observation of the Supreme Court that the revenue should not be left remediless is not blanket but contextual. In the context that the revenue, if advised correctly would not have issued notice under Section.148 under old provisions after 01.04.2021, but would have followed the new provisions which were available to it after 01.04.2021 and therefore, to correct the defects, the said old section 148 notices were converted into new section 148A(b) notices.

(d) Validity of such notice is to be tested on various grounds such as time barring, change of opinion, no failure to disclose, borrowed satisfaction, revenue audit information etc. and therefore, validity of notice under Section 148 has to be tested on individual basis and cannot be construed as blanket proposition as to validate

all notices issued between 01.04.2021 to 30.06.2021 on all counts. The Supreme Court has not stated that the notices issued under Section 148 once converted into 148A(b) notices could not be challenged on the ground of not having become time barred. Now, it is not open for the revenue to contend that the said notices are issued pursuant to the decision of the Hon'ble Supreme Court. Hon'ble Supreme Court has consciously not held the notices issued under Section.148 after 01.04.2021 under old provisions as valid notices nor have stated that they are not time barred but has kept all the legal requirements to test the validity of subsequent notice under Section 148 open. Therefore, the time limit prescribed under section 149 cannot be ignored and only the requirement of section 148A(a) is dispensed with.

(e) Further, under the provisions of TOLA, legislature has never extended time limit prescribed under section 149 of the Act because it never intended the application of old provisions for notices to be issued after 01.04.2021 and that is the precise reason for which, various courts have not validated the "explanation" given by various notifications for extension of time.

Reiterating the arguments canvassed by learned senior counsel Mr.Hemani, he submitted that the decision of the

Hon'ble Supreme Court is applicable to those notices, which were challenged before different High Courts having similar issue and therefore, it has no applications where notices under Section.148 was not subject matter of challenge. Therefore, in the cases where notice under Section 148 of the Act was not subject matter of challenge, no show cause u/ 148A(b) could be issued.

11.2. **Notice issued under Section 148 is time barred under Proviso to Section 149:**

(a) Learned Senior Counsel Mr.Soparkar submitted that law applicable on the date of issuance of notice under Section 148 is to be seen and therefore, when notice under Section 148 was issued in the month of July-August,2022, the substituted provisions were applicable and therefore, the same is barred by limitation. Even as per first proviso to section 149 of the Act, the notices for AY 2013-14 got time barred on 31.03.2020 and therefore also, they are barred by limitation particularly when no extension was permitted under section 149 of the Act. Section 148 notices are substituted by Hon'ble Supreme Court as show cause notices under Section 148A(b) of the Act. Notices issued between 01.04.2021 to 30.06.2021 are not in existence and the notices issued in July-

August,2022 are the only notices. Relying upon para – 6.2, 6.4 and 6.5 of decision in the case of ***Ashish Agarwal (supra)***, he submitted that it is expressly stated in the said decision that all the defences are kept open and therefore, time limit prescribed under first proviso to section 149 cannot be ignored.

11.3. Notices issued under Section.148 of old Act for AY 2013-14 and 2013-14 are barred by limitation unless stay was granted by the respective_High Courts.

In response to the revenues contention that had the aspect of limitation been so apparent, the Hon'ble Supreme Court while passing the judgment in the case of ***Ashish Agarwal (supra)*** would have dismissed the appeals for AY 2013-14, he submitted that validity of notice in relation to a particular year was not a matter of controversy before the Hon'ble Supreme Court. The controversy was in relation to whether the old Act would prevail or the new substituted Act would prevail. In many cases, the assessee had approached the respective High Courts challenging the notices under Section 148 after 01.04.2021 to 30.06.2021 and stay against proceedings were granted by the respective High Courts. Because of the stay granted the limitation gets extended and the

revenue would be in a position to take out fresh proceedings by issuing a fresh Notice under Section 148 of the new regime (after complying with section 148A requirements) and that might be the reason that the Hon'ble Supreme Court had not deliberated for these 2 years.

He therefore submitted that the notices for A.Y.2013-14 and A.Y. 2014-15, being barred by limitation, deserve to be quashed.

12. Learned Senior Advocate Mr. R.K. Patel assisted by learned advocate Mr. Darshan Patel submitted the following:

(a) TOLA only sought to extend the limitation period for the existing provisions. The Finance Act, 2021 does not contain any saving clause to give effect to the applicability of the provisions prior to 01.04.2021 beyond 31.03.2021. Further at no point of time, the new scheme of reopening of assessment effective from 01.04.2021 was kept in abeyance so as to avoid overlapping of old provision viz-a-viz new provision w.e.f. 01.04.2021.

(b) As Finance Act, 2021 and TOLA operate in different time periods, there is no conflict because TOLA governs the

provision up to 31.03.2021, where Finance Act, 2021 governs the provisions w.e.f. 01.04.2021. Therefore, they cannot coexist as canvased by the revenue.

(c) The non-obstante clause provided in TOLA only seeks to protect the completion or compliance of proceedings initiated prior to 31.03.2021, and therefore, it would not apply after enactment of the Finance Act, 2021.

(d) The notifications issued by CBDT dated 31.03.2020 and 27.05.2021 were only operative till 30.06.2021.

(e) The decision of Delhi High Court in the case of **Touchstone Holdings (supra)** is erroneous because it upheld the notice on the wrong premise that the original notice issued under Section. 148 stands revived.

He, thus, submitted that by no stretch of imagination, the notice issued under Section. 148 for A.Y. 2013-14 and for A.Y. 2014-2015 is stated to be within the time limit prescribed under the Act and since they are issued beyond the period of limitation prescribed under the Act, the same are barred by limitation and without jurisdiction.

(f) He has also raised other grounds challenging the validity of notice but as observed earlier since at present, the petitions

are heard only on the ground of limitation the other grounds are not referred hereunder at this stage.

13. Learned advocate Mr. Dharan Gandhi, submitted the following:

(a) The judgment of the Hon'ble Supreme Court in the case of ***Union of India Vs. Ashish Agarwal*** reported in ***444 ITR (1)*** has held that they are in complete agreement with the view taken by various high courts, and therefore, it is not open for the revenue to take the very same ground which has been adjudicated by various high courts in the writ petitions challenging the notice issued under Section. 148 for the period 01.04.2021 to 30.06.2021.

(b) As per the settled legal position, the validity of notice issued under Section 148 must be judged on the basis of law existing on the date of issuance of such notice. In the present case, as the impugned notices are issued between 01.04.2021 to 30.06.2021 and therefore the defence available under proviso to Section 149(1) cannot be ignored. In support of his submissions, he relied upon following decisions:

(i) Hon'ble Allahabad High Court in case of Ashok Agarwal vs. UOI (439 ITR 1); [para 65]

(ii) Hon'ble Delhi High Court in case of Mon Mohan Kohli vs. ACIT (441 ITR 1); [para 42]

(iii) Hon'ble Rajasthan High Court in case of Sudesh Taneja vs. ITO (442 ITR 289); [para 37]

(iv) Hon'ble Bombay High Court in case of Tata Communications Transformation Services Ltd. vs. ITO (443 ITR 49); [para 34 and 35]

(c) Reiterating the provisions of TOLA, he submitted that the said provisions cannot be applied to interpret Finance Act, 2021. Further, the subordinate legislation cannot override any statute enacted by the Parliament. The notification extending the dates from 31.03.2021 to 30.06.2021 runs contrary to express provision contained in the first proviso to Section 149(1) of the Act, and therefore, the same cannot be made applicable.

(d) Even if the TOLA and notifications apply, still the notice issued under Section 148 for A.Y. 2013-14 is barred by limitation because assuming that TOLA applies then the last date to issue notice under Section 148 was 30.06.2021, and in all the petitions the first notice under Section 148 of the Act was issued between 01.04.2021 to 30.06.2021. By virtue of the Hon'ble Supreme Court decision they have been treated as notice under Section. 148A(b) of the Act however, the final notice under Section 148 were issued in the month of

July/August, 2022, and therefore, also the same are time barred.

(e) The instructions No.1 of 2022 dated 11.05.2022 is of no consequence because the same would not apply after 31.03.2021. He, thus, submitted that by any stretch of imagination the impugned notice issued under Section. 148 cannot be stated to be within the limitation prescribed under the provisions of the Act including TOLA.

(f) Moreover, without withdrawal of the first notice under Section. 148 of the Act, the second notice cannot be issued. In support of his submissions, he replied upon the decision of this Court in the case of **Aditya Medisales Limited Vs. Deputy Commissioner of Income Tax, Circle-1** reported in **2016 (242) taxmann 228**. Further in all the petitions, the notice issued under Section 148 and the notice pursuant to Hon'ble Supreme Court's decision issued under Section 148A(b) of the Act are by different authorities, and therefore, also they cannot be stated to be valid notice. In support of his submissions, he relied upon the decision rendered by this Court in the case of ***Hynoup Food & Oil Industry Limited Vs. Assistant Commissioner of Income Tax*** reported in ***2008 (307) ITR (115)***.

14. Learned Advocate Mr. S.N.Divetia submitted the

following:-

(a) Section 147 w.e.f. 01.04.2021 empowers the Assessing Officer to assess or reassess the income, subject to the provisions of Sections 148 to 153, therefore, Section 149 which came into play before such powers are exercised by the A O and the same cannot be ignored. The conditions of Section 149 need to be satisfied for valid reopening.

(b) In the decision of Delhi High Court in the case of ***Touchstone Holdings (Supra)***, the Court has gone on the aspect that since the escapement is more than Rs.50,00,000/- the notices are held to be valid. The quantum of escapement is not the sole criteria to be looked into and therefore, the decision is erroneous.

15. Learned advocate Mr. Manish Shah adopted the arguments canvassed byall counses. Additionally, he submitted that in the decision of Hon'ble Supreme Court in the case of ***Ashish Agarwal (Supra)***, to protect the interest of revenue, it has been directed to treat the notice under Section 148 as a show-cause notice under Section 148A(b) and thereafter the powers are given to the Assessing Officer to initiate the proceedings. The show-cause notice therefore cannot be treated as notice under Section 148 of the Act. Further the Finance

Act, 2021 came into force w.e.f. 01.04.2021 and at that time, TOLA, 2020 was very much available however, no reference has been made to the extension of time limit under Section 149. Moreover, when the definition of asset was enlarged w.e.f. 01.04.2022, at that time also, nothing was done for extension of time limit beyond six years and therefore, the notice under Section 148 issued is only to be taken as show-cause notice and cannot be stated to be within the limitation.

16. Learned counsel Mr.Nishith Gandhi for the petitioner further submitted that in SCA 24777 of 2022, the directions given by the Hon'ble Supreme Court in case of ***Ashish Agarwal (Supra)***, would not apply as in this case the notice issued under Section 148 of the Act was not challenged before any High Court and was not sub-judice. The directions contained in the said decision would be applicable to the proceedings which were subject matter of challenge before High Courts. He also submitted that provisions of TOLA would not apply in the cases where the notices under section 148, have been issued between 01.04.2021 to 30.06.2021. The instructions issued by the CBDT, being beyond the scope of Hon'ble Supreme Court decision, is not binding. Therefore, the present proceedings for A.Y. 2013-14, being time barred, the notices issued under section 148 of the Act are without jurisdiction and deserve to be quashed and set aside.

17. Learned advocate Mr. Dhinal Shah, in addition, submitted the following:

(a) No notice under Section. 148 of the Act can be issued beyond the first proviso to Section 149 of the Act.

(b) The Finance Act, 2021 which came into force w.e.f. 01.04.2021, wherein provisions of Sections 147 to 151 were amended/substituted after enactment of TOLA. Despite that no corresponding amendment is made in Section 149 of the Act, and therefore, the notices issued under Section. 148 for A.Y. 2013-14 and 2014-15 are beyond the limitation prescribed and therefore, without jurisdiction.

(c) The Parliament, while enacting Finance Act, 2021 was very much alive of TOLA and the notifications issued pursuant thereto. Despite that it chose to enforce the new scheme w.e.f. 01.04.2021 which itself endorses the intent and object of the insertion of new provision after 01.04.2021. As per settled position of law substitution omits and thus obliterates the pre-existing provision and therefore, old provision would not operate beyond 31.03.2021.

(d) The rule of interpretation of statutes clearly determines that the latest statute shall prevail in case of any conflict with

the provisions of existing statutes. In support of his submission, he relied upon the decision of Hon'ble Supreme Court in the case of ***State of Madhya Pradesh Vs. Cadila Leather and Liquor Limited*** reported in ***2003 (7) SCC 389,*** wherein it is observed that the repeal is inferred by necessary implication, if the provision of later Act are so repugnant to the provisions of earlier Act that the two cannot stand together. Even otherwise, TOLA can only extend the limitation up to 31.03.2021, and therefore, also any notice issued after 31.03.2021, TOLA has no application.

18. Learned Advocate Mr. Sudhir Mehta and learned advocate Mr. Jimi Patel have also argued on the same lines, referred herein-above. To avoid repetition the same are not referred to here. Broadly, they have adopted the arguments canvased by learned Senior Counsels Mr. S.N. Soparkar and Mr. Hemani and submitted to allow the petitions.

19. **Submissions on behalf of respondents:**

Appearing for the revenue, learned Senior Standing Counsel Mr. Varun Patel for the Department submitted the following:

(a) Recapitulating the facts, he submitted that in all the writ

petitions of Batch-I and Batch-II, the notices under Section 148 of the Act for A.Y. 2013-14 and 2014-15, were issued by the department between the period 01.04.2021 to 30.06.2021. The notices were issued under the pre-amended provision and pursuant to the decision of Hon'ble Supreme Court in the case of ***Union of India Vs. Ashish Agarwal (Supra)***, all the notices issued under Section 148 have been treated as notices issued under Section 148A(b) of the Act (substituted provision). Referring to para-3.1 of the decision in the case of ***Ashish Agarwal (Supra)***, he submitted that as observed by the Hon'ble Supreme Court "in pursuance to the power vested under Section 2 of the Relaxation Act, 2020, the Central Government issued notifications *inter alia* extending the timelines prescribed under Section 149 for issuance of reassessment notices under Section 148 of the Act." Thus, the Hon'ble Supreme Court was aware about the TOLA and subsequent notifications issued by the Central Government pursuant to TOLA extending the timelines prescribed under Section. 149 of the Act and therefore, now it is not open for the petitioners – assessee to submit that there is no extension of time under Section 149, which will not permit issuance of notice.

(b) The Hon'ble Supreme Court in case of ***Ashish Agarwal (Supra),*** in exercise of its power under Article 142, has directed to treat the notices issued under section 148 of the

act, to be treated as notices issued under Section.148A(b) of the Act. As the said decision was made applicable to PAN India, it is applicable to the proceedings where notices under Section 148 were issued between the period 01.04.2021 to 30 .06. 2021. The submission of the petitioners that the Decision of Hon'ble Supreme Court will be applicable to the proceedings where notices were subject matter of challenge before various High Courts is not correct.

(c) He further submitted that the decision of Hon'ble Supreme Court in case of ***Ashish Agarwal (Supra)*** arose out of the order of High Court of Allahabad in case of ***Ashok Kumar Agarwal Vs. Union of India*** reported in ***(2021) 131 taxmann.com – 2022 (Allahabad)*** wherein, in para-3, Allahabad High Court had noted that several petitions were filed challenging the notices issued under Section. 148 between 01.04.2021 to 30.06.2021 for A.Y. 2013-14 to 2017-18. The said notices were directed to be treated by the Hon'ble Supreme Court as notices issued under Section 148A(b) (substituted provision), in exercise of powers under Article 142 of the Constitution of India, and therefore, now it is not open for the petitioners to challenge the said notices, particularly, when the advocates appearing for the assessee have consented. The counsel appearing before the Hon'ble Supreme Court were conscious about the fact that by their consent, the notices

issued under Section 148 (unamended provision) for A.Y. 2013-14 and 2014-15 are going to be treated as notices under Section. 148A(b) (substituted provision) by virtue of the decision of ***Ashish Agarwal (Supra).*** In other words, it was open for the assessee's counsel to submit before the Hon'ble Supreme Court that according to them, the notices under Section 148 for A.Y. 2013-14 and 2014-15 are barred by limitation after such conversion into notices under Section 148A(b) of the Act which they did not do. The consent given by the assessee's counsel therefore cannot be ignored and the same cannot be subject matter of challenge on the ground that the same are barred by limitation. Learned Senior Standing Counsel Mr. Patel, therefore, submitted that the said challenge would be contrary to the decision in the case of ***Ashish Agarwal (Supra)*** and it would also be inconsistent with the intention of the Hon'ble Supreme Court while exercising powers under Article 142 of the Constitution of India.

(d) He further submitted that, in view of the decision of Hon'ble Supreme Court in the case ***Ashish Agarwal (Supra)***, if the original notice under Section 148 was issued within the time limit, now, it is not open for the assessee to contend that the new notice post Hon'ble Supreme Court's decision after following due procedure contemplated under Section 148A of the Act is barred by limitation. Further, the limitation

prescribed for issuance of aforesaid notices under Section 148 (unamended law) was extended by provisions of TOLA and notification issued thereunder from time to time. The Hon'ble Supreme Court in para-3.1 of the order has recorded the details of the said extension and therefore, pursuant to TOLA and notifications, the limitation for issuance of notice under Section 148 for A.Y. 2013-14 to 2017-18 which was expiring on 31.03.2020 as per Section 148 of the unamended Act was extended up to 30.06.2021. Moreover, Section 3 of TOLA starts with a non-obstante clause which gives overriding effect over limitation prescribed under Section 149 of the unamended Act. In all the cases, admittedly, the notices were issued for A.Y. 2013-14 to 2017-18 between 01.04.2021 to 30.06.2021 which were within the limitation as per extension provided under TOLA, 2020 and therefore, now it is not open for the assessee to rely on first proviso to Section 149 of the Act to submit that the notices under Section 148A are barred by limitation.

(e) Alternatively, Learned Senior Standing Counsel Mr. Patel submitted that, without prejudice to the above submissions, in any case the first proviso to Section 149(1) (substituted provision applicable w.e.f. 01.04.2021) would not be applicable in the present case. The first proviso to Section 149(1) (amended provision) restrains the department from issuing notice under Section. 149 after 01.04.2021, if such notices

could not have been issued at the relevant time on account of expiry of time limit specified in Section 149A(b) of the amended Act prior to Finance Act, 2021. In the present case, the time limit for issuance of notice under Section. 148 was extended up to 30.06.2021, and by that time the limitation was not over and therefore, proviso to Section 149(1) would not be applicable in the present case.

(f) Placing reliance on the decision of Delhi High Court in the case of ***Touchstone Holdings (Supra)*** he submitted that Hon'ble Delhi High Court has rightly rejected the contentions raised by the assessee regarding similar notice for A.Y. 2013-14 being barred by limitation and upheld the action of the revenue relying upon the directions of the Hon'ble Supreme Court in case of ***Ashish Agarwal (Supra)*** and the decision of Delhi High Court is applicable for the notice under Section. 148 for A.Y. 2014-15 also.

(g) He submitted that the Hon'ble Supreme Court has created a fiction by directing to treat the notice under Section 148 as notice under Section 148A(b) with the clear intention to save about 90,000 reassessment proceedings which includes the proceedings for A.Y. 2013-14 and 2014-15. Therefore, no other fiction or interpretation contrary to the intention of saving 90,000 reassessment proceedings could be read into the

directions of Hon'ble Supreme Court. Learned counsel placed reliance on the decision of Hon'ble Supreme Court in the case of ***Rajkumar Agarwal Vs. State of Madhya Pradesh*** reported in ***2002 (3) SCC 732*** to submit that nothing could be read contrary to the intention of the decision of the Hon'ble Supreme Court.

In response to the contention of petitioners that the decision of Hon'ble Supreme Court would be applicable only in the cases, where the assessee has challenged the notices issued under Section. 148 of unamended provisions, referring to para-2 of the decision of ***Ashish Agarwal (Supra)***, he submitted that the Hon'ble Supreme Court has categorically noted about 90,000 reassessment notices being issued and thereby giving a clear direction to make the aforesaid decision applicable PAN India.

(h) The CBDT's instruction No.1 of 2022 particularly para-6.1 and 6.2 provides for guidelines with respect to application of new section of 149 pursuant to decision in case of ***Ashish Agarwal (Supra).*** Referring to para-6.1, he submitted that the last sentence reads as *"Decision of Hon'ble Supreme Court read with time extension provided by TOLA will allow extended reassessment notices to travel back in time to their original date when such notices were to be issued and then*

new section 149 of the Act is to be applied at that point." The aforesaid sentence provides for mechanism for deciding the number of assessment years i.e. whether first, second, third, fourth or fifth for end of the relevant assessment year for the purpose of applying new Section 149 therefore, the theory of travel back in time as canvased is not contrary to the provisions of the Act. By giving illustrations, he has submitted the following:

In simple terms, it provides the mechanism for deciding applicability of Clause (a) or (b) of section 149 (amended provision) to the reassessment proceedings pursuant to the decision of ***Ashish Agarwal (supra)***. For the purpose of deciding applicability of clause (a) or (b) of the new Section 149, one has to decide the relevant number of assessment years for which the reassessment notice under Section 148 was originally issued under the unamended law after applying the TOLA. For example, if the original notice under Section. 148 of the unamended law was issued for the sixth year after applying TOLA, the reassessment proceedings post ***Ashish Agarwal's*** decision would be treated as reassessment proceedings for the sixth year and accordingly clause (b) of new Section 149 would be applicable. Following table explains the aforesaid contention:

A.Y.	Number of AY for which original notice under Section 148 (unamended law) was issued with TOLA extension	Number of AY for the purpose of reassessment proceedings (under amended law) pursuant to Ashish Agarwal's decision	Whether clause (a) or (b) of the new Section 149 would be applicable?
2013-14	6th	6th	(b)
2014-15	5th	5th	(b)
2015-16	4th	4th	(b)
2016-17	3rd	3rd	(a)
2017-18	2nd	2nd	(a)

It is further submitted that the relevant number of the assessment year is to be decided as on 31.03.2020 i.e. the date when the limitation for issuing notice under Section 148 was extended under the TOLA and the notification thereunder. It is submitted that it is not in dispute that limitation for issuing reassessment notice was extended from 31.03.2020 to 30.06.2021 under the TOLA [Ref. para 3.1 of ***Ashish Agarwal (supra)'s decision).***

(i) He, thus, submitted that the notices were issued under Section. 148 for A.Y. 2013-14 and 2014-15 cannot be termed as time barred as canvased by the assessee, and therefore, the Assessing Officer has correctly exercised his jurisdiction, and

the petitions may be dismissed.

(j) Mr. Patel, further submitted that the re-assessment notice issued pursuant to the decision of ***Ashish Agarwal (supra)*** would fall within the period of 6 years in the following manner, under the new provisions.

	End of Relevant A.Y.	**Nos. of A.Y.**	**A.Y.**	**Remarks**
2013-14	31.03.2014	1st	2014-15	
		2nd	2015-16	
		3rd	2016-17	
		4th	2017-18	
		5th	2018-19	
		6th	**2019-20**	**Limitation expired on 31.03.2020, which was extended upto 30.06.2021 under TOLA.**

	End of Relevant A.Y.	Nos. Of A.Y.	A.Y.	Remarks
2014-15	31.03.2015	1st	2015-16	
		2nd	2016-17	
		3rd	2017-18	
		4th	2018-19	
		5th	2019-20	Limitation expired on 31.03.2020, which was extended upto 30.06.2021 under TOLA.
		6th	2020-21	

20. Mr. Nikunt Raval, learned senior standing counsel for the department adopted the arguments made by Mr. Patel. In addition, he submitted the following:

(a) One cannot ignore the unprecedented situation that happened in the year 2020 on account of Corona Virus Pandemic which affected the normal functioning of the entire

world. The Hon'ble Supreme Court, therefore, recognizing the plight of the ordinary citizen was pleased to extend the limitation from time to time for filing various proceedings, requests and other administrative requisites. The legislature on recognizing similar difficulty on part of the administrative and various functionaries, enacted TOLA Act, 2020, so as to notify and extend the time limits under various legislations.

(b) Pursuant to TOLA, the CBDT issued notifications extending time limit for issuance of notice under Section 148 up to 30.6.2021. The said notices were challenged before various High Courts on the ground that the notification could not have an overriding effect over legislation which introduced a specific manner of functioning from 1.4.2021. Such action was set aside in case of similarly placed assessees by the High Court of Uttar Pradesh and High Court of Allahabad in the case of ***Ashish Agarwal (supra)***. The Allahabad High Court had not permitted extension of time limit for issuance of notice under the pre-existing provisions up to 30.6.2021 as was sought to be done by the CBDT.

(c) The Union of India challenged the said decision before the Hon'ble Supreme Court which vide its judgment dated 4.5.2022 drew a balance by permitting the proceeding under the impugned notice to go ahead with the directions to the

department to follow the procedure laid down under the amended provisions of Income-Tax Act as introduced w.e.f. 1.4.2021. Thus, while the procedure was required to be adopted as per the new provisions, the proceedings as initiated admittedly between the period 1.4.2021 to 30.6.2021 were not quashed and were in fact allowed to be proceeded further. Therefore, once the Hon'ble Supreme Court was pleased to recognize the streamlining of process carried out under the amended provisions and the said notices were not specifically quashed and permitted to continue now it is not open for the assessee to once again raise the point of limitation on the spacious ground of Hon'ble Supreme Court not barring the assessee from raising such grounds. It is open for the assessee to contest claims on merits in a given case, but seeking reinterpretation of the judgment of the Hon'ble Supreme Court in the case of ***Ashish Agarwal (supra)*** is not permissible. He further submitted that it would be highly improper to seek an interpretation once again of the decision of the Hon'ble Supreme Court on the issue of limitation particularly when the Hon'ble Supreme Court has already provided clarification/judgment on the issue. He thus submitted that therefore, the preliminary ground of the notice being barred by limitation may not be entertained.

21. Concurring View:

21.1. Having heard learned Advocates for the respective parties, I deem it appropriate to first consider the issues, which are common and argued by Counsel for the petitioners:

(a) It was contended that decision in the case of ***Ashish Agarwal (supra)*** shall apply only to those notices, which were challenged before different high courts:

The Hon'ble Supreme Court in the case of ***Ashish Agarwal (supra)*** has adjudicated on the validity of reassessment notices issued by the Assessing Officers during the period **01.04.2021** to **30.06.2021** i.e.; the time extended by TOLA and various notifications issued thereunder. As new law came in to force w.e.f **01.04.2021**, it has held that these notices issued under Section **148** (between **01.04.2021** to **30.06.2021**) shall be deemed to be the show cause notices issued under Section **148A(b)** of section **148A** of the Act of new provision and further directed Assessing Officer to follow the procedure with respect to such notices. Thus, it has created a fiction by directing to treat the notices issued under Section **148** (unamended law) of the Act, as notices issued under Section **148A(b)** (substituted provision) with a clear intention to save about **90,000/-** proceedings, being conscious of the fact that there were approximately **90,000** such notices, which have

been issued on a bonafide belief that old provisions would be applicable. Therefore, to strike a balance between rights of the revenue as well as respective assessees, keeping in mind that the revenue may not suffer as ultimately it is a public exchequer, the Hon'ble Supreme Court in exercise of its power under Article 142 of the Constitution of India, has made the order, which shall be applicable PAN India. Therefore, I am not in agreement with submissions of petitioners that the decision in the case of ***Ashish Agarwal (supra)*** would be applicable to the cases, where such notices have been challenged before different High Courts. In view of the fact recorded by Hon'ble Supreme Court that about 90,000 re-assessment notices were issued after 01.04.2021, which were subject matter of more than 9,000 petitions/ appeals and further permitting the revenue to deal with about 90,000 notices, with clear direction to make the said decision applicable PAN India, in my opinion, the decision of Hon'ble Supreme Court in the case of ***Ashish Agarwal (supra)*** would apply to all the cases, where notices were issued between 01.04.2021 to 30.06.2021.

21.2. (a) It was contended that there cannot be any Notification when the provision itself was repealed. Further, by issuing notification, the executive cannot expand legislative power because it would amount to re-writing the law. By

Notification, the subordinate legislation cannot override any statute enacted by Parliament.

On the aforesaid issue it is submitted by all counsel that by virtue of notification Nos. 20 of 2021 and 38 of 2021 dated 31.03.2021 and 27.04.2021 respectively, the time limit for issuing notice under Section 148 has been extended up to 30.6.2021. By Notification No. 20 of 2021 dated 31.03.2021, the time limit to issue notice was extended up to 31.04.2021. When the Notification No 20 of 2021, was issued on 31.03.2021, the old law was in existence, and it ceases to exist w.e.f 01.04.2021. When the law itself ceases to exist w.e.f.01.04.2021, the Notification will die a natural death and therefore there cannot be any Notification in respect of the repealed Act. Moreover, as the Notification No 38 of 2021 dated 27.04.2021, was in continuation of the earlier Notification dated 31.03.2021 and once earlier notification ceases to apply, the consequential second Notification also ceases to apply. Various High Courts for the precise reason have held the said Notifications to be bad in Law and these findings have been upheld by the Hon'ble Supreme Court. It was further submitted that the two Notifications issued by the CBDT, dated 31.03.2021 and 27.04.2021, respectively amounts to extension of legislation or rewriting of legislation, not permitted under Law. Learned counsel have relied upon a

series of decisions referred in their submissions.

In the case of ***Vasu Dev Singh and Ors. vs. Union of India and Ors. reported in (2006) 12 SCC 753,*** the Hon'ble Supreme Court while examining the powers vested unto administrator of Chandigarh by virtue of notification dated 7.11.2002 under Section 3 of East Punjab Urban Rent Restriction Act, 1949 has held as under:

> "118. A statute can be amended, partially repealed or wholly repealed by the legislature only. The philosophy underlying a statute or the legislative policy, with the passage of time, may be altered but therefore only the legislature has the requisite power and not the executive. The delegated legislation must be exercised, it is trite, within the parameters of essential legislative policy. The question must be considered from another angle. Delegation of essential legislative function is impermissible. It is essential for the legislature to declare its legislative policy which can be gathered from the express words used in the statute or by necessary implication, having regard to the attending circumstances. It is impermissible for the legislature to abdicate its essential legislative functions. The legislature cannot delegate its power to repeal the law or modify its essential features."
>
> Xxxxxxxxx
>
> "147. The legislative objection and policy indisputably must be considered having regard to the Preamble and other core provisions of the Act. Section 3 although is a part of the Act, but the same cannot be said to contain

an inbuilt policy so as to empower the Administrator to do all such things which can be done by the legislature itself.”

In one another decision in the case of ***Assam Co. Ltd. and another Vs. State of Assam and others*** reported in ***(2001)4 SCC 202*** the Hon’ble Supreme Court, while examining the powers of State Officers under The Assam Agricultural Income Tax Act, 1939, for the purpose to ascertain agricultural income with regard to tea, to call for any papers before the authority administering the Central Act has held as under :

> “10. We see force in the above contention. A perusal of Section 50 of the Act shows that the State Government has been empowered to make such Rules as are necessary for the purpose of carrying out the purposes of the Act. We have already noticed that the object and the scheme of the Act do not contemplate the State authorities being empowered to recompute the agricultural income contrary to the computation made by the Central Officers, nor do the subjects specified in sub-sections 2(a) to (m) of Section 50 provide for making such rules empowering the State Officers to make computation of agricultural income contrary to what is computed by the Central Officers under the Central Act. We have noticed that by virtue of the provisions made by the legislature in explanation to Section 2(a)(2), proviso to Section 8 and Section 20D, it is clear that the State Legislature intended to adopt the computation of agricultural income made under the provisions of the Central Act. Having specifically said so in the

above Sections of the Act, if the Legislature wanted to deviate from that scheme of the Act, it could have in clear terms provided for a power being vested with its officers in any given case to recompute the income keeping in mind the revenue of the State but the Legislature has not thought it necessary to do so. Even under Section 50, we do not see any provision which specifically authorises the State Government to make any such rules in the nature of the proviso to Rule 5 of the State Rules. It is an established principle that the power to make rules under an Act is derived from the enabling provision found in such Act. Therefore, it is fundamental that a delegate on whom such power is conferred has to act within the limits of the authority conferred by the Act and it cannot enlarge the scope of the Act. A delegate cannot override the Act either by exceeding the authority or by making provision which is inconsistent with the Act. Any Rule made in exercise of such delegated power has to be in consonance with the provisions of the Act, and if the Rule goes beyond what the Act contemplates, the Rule becomes in excess of the power delegated under the Act, and if it does any of the above, the Rule becomes ultra vires of the Act. We have already noticed that none of the provisions of the Act has contemplated any power to be vested in the State officers to recompute the agricultural income from tea while proviso to Rule 5 of the Rules in specific terms empowers the State officers to recompute the agricultural income from tea different from that which is computed by the Central officers under the Central Act. Thus, it is seen that this Rule is not only made beyond the rule-making power of the State under Section 50 of the Act but also runs counter to the object of the Act itself, and enlarges the scope of the Act. The

> same also suffers from the other vices pointed out by us hereinabove, hence such a Rule, in our opinion, is ultra vires of the Act. Therefore, proviso to Rule 5 of the State Rules to the extent it empowers the State Officers to recompute the agricultural income already computed by the Central Officers is ultra vires of the State Act."

(b) It is true that the executives / delegates cannot go beyond the Law enacted by the Parliament. However, one cannot be ignorant about the world wide pandemic situation on account of Covid-19 virus, and enactment of TOLA-2020, which came in to force on 31.03.2020. Under section 3(1) of TOLA -2020, the Legislature has permitted the Government to issue notification extending the time limit for issuance of notice under section 148. Hence, the power of the CBDT to issue the two notifications dated 31.03.2021 and 27.04.2021 pursuant to TOLA-2020 cannot be questioned. However, in my opinion the said two notifications extending the time limit prescribed under first proviso to section 149(1), cannot be read so as to enlarge the scope of the amended first proviso to section 149(1). Therefore, I am not in agreement with the submission of the revenue that as time limit to issue notice under Section 148 was extended by TOLA up to 30.06.2021, the proviso to amended section 149(1) would not be applicable. Therefore, though two Notifications dated 31.03.2021 and 27.04.2021 came to be issued by the CBDT, in

pursuance to the power vested under section 3 of TOLA 2020, which came into force on 31.03.2020, they cannot be treated to have extended the time limit provided under the amended first proviso to section 149(1).

21.3. (a) In relation to the CBDT instruction No 1 of 2022, which was issued to implement the decision of Hon'ble Supreme Court in case of ***Ashish Agarwal (surpa)***, it is submitted that the Board circular issued is binding to the departmental authority and not to the assessee. In support of above submissions, learned counsel relied upon the decision of Hon'ble Supreme Court in the case of ***Keshavji Ravji and Co. and others Vs. Commissioner of Income Tax*** reported in ***1990(2) SCC 231***, in which, Hon'ble Supreme Court has held as under:

> "32. This contention and the proposition on which it rests, namely, that all circulars issued by the Board have a binding legal quality incurs, quite obviously, the criticism of being too broadly stated. The Board cannot pre-empt a judicial interpretation of the scope and ambit of a provision of the 'Act' by issuing circulars on the subject. This is too obvious a proposition to require any argument for it. A circular cannot even impose on the tax prayer a burden higher than what the Act itself on a true interpretation envisages. The task of interpretation of the laws is the exclusive domain of the courts. However, - this is what Sri Ramachandran really

> has in mind- circulars beneficial to the assessees and which tone down the rigour of the law issued in exercise of the statutory power under Section 119 of the Act or under corresponding provisions of the predecessor Act are binding on the authorities in the administration of the Act. The Tribunal, much less the High Court, is an authority under the Act. The circulars do not bind them. But the benefits of such circulars to the assessees have been held to be permissible even though the circulars might have departed from the strict tenor of the statutory provision and mitigated the rigour of the law. But that is not the same thing as saying that such circulars would either have a binding effect in the interpretation of the provision itself or that the Tribunal and the High Court are supposed to interpret the law in the light of the circular. There is, however, support of certain judicial observations for the view that such circulars constitute external aids to construction."

In the decision of the Hon'ble Supreme Court in the case of ***State Bank of Travancore Vs. Commissioner of Income Tax, Kerala*** reported in ***1982(6) SCC 11***, Hon'ble Supreme Court held as under:

> "43. Several financial institutions sought to intervene as the question involved herein is of some importance to them. We have allowed them to make their submissions and taken them into consideration. It was urged that the instructions contained in these circulars noted before were in consonance with the accepted principles of accountancy and these instructions have held the

> field for over 53 years. It was also submitted that as such claims have been allowed to be exempted for more than half a century, and the practice had transformed itself into law, this position should not have been deviated from. This submission, of course, cannot be accepted. The question of how far the concept or real income enters into the question of taxability in the facts and circumstances of this case and how far and to what extent the concept of real income should intermingle with the accrual of income will have to be judged in the light of the provisions of the Act, the principles of accountancy recognised and followed and the feasibility. The earlier circulars being executive in character cannot alter the provisions of the Act. These were in the nature of concessions and could always be prospectively withdrawn. However, on what lines the rights of the parties should be adjusted in consonance with justice in view of these circulars is not a subject matter to be adjudicated by us and as rightly contended by counsel for the revenue, the circulars cannot detract from the Act."

(b) The settled legal position is to the effect that board circular/ instructions are binding to the departmental authorities and not to the court or to the assessee.

21.4. (a) To consider the submission that in view of express language of proviso to section 149(1), the Notices issued between 01.04.2021 to 30.06.2021 under section 148 of the Act, are barred by limitation, following aspects are to be noticed.

(i) The substituted provisions of Sections 147 to 151 of the Act introduced w.e.f. 01.04.2021, have been elaborately discussed by Hon'ble Supreme Court in paragraphs 6.2 to 6.6 of the decision in case of ***Ashish Agarwal (supra)***, and therefore, do not dilate on the same.

(ii) The Hon'ble Supreme Court, for the reasons stated, passed an order construing notices issued under section 148, as those deemed to have been issued under Section 148A as substituted by the Finance Act 2021 and treated to be show-cause notices in terms of section 148A(b) of the Act. The requirement of conducting any inquiry, if any, with the prior approval of specified authority under section 148A(a) has been dispensed with as a one- time measure. The assessing officer has been directed thereafter to pass an order under section 148A(d) in respect of each of the concerned assessee and the revenue is also permitted to proceed further with the reassessment proceedings as per the provisions of Section 148A, subject to compliance of all the procedural requirements. The defenses, which may be available to the assessee including those available under section 149 of the Act and all rights and contentions available to concerned assessee and Revenue under Finance Act 2021 and law shall continue to be available.

(iii) Section 149 of the Act, substituted by Finance Act 2021

w.e.f 01.04.2021, provides for a time limit for issuance of notice. Section 149 of the Act reads as under:

> ***"149. Time limit for notice***
> *(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-*
> *(i) an asset;*
> *(ii) expenditure in respect of a transaction or in relation to an event or occasions; or*
> *(iii) an entry or entries in the books of account,*
> *Which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more:]"*
>
> ***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 [a notice under section 148 or section 153A or section 153C 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 or section 153A or section 153C, as the case may be], as they stood immediately before the commencement of the Finance Act, 2021.***

xxxx
xxxx
xxxx

(b) Therefore, substituted provisions of sections 147 to 151 shall be applicable w.e.f. 01.04.2021, and as per First Proviso to Section 149, limitation as specified under unamended provision as it stood prior to 01.04.2021, shall be applicable. As per unamended provision prescribing limitation, no notice can be issued under section 148, if six years have elapsed from the end of the relevant assessment year. For assessment year 2013-14, six years had ended on 31.03.2020 and for assessment year 2014-15, six years had ended on 31.03.2021. Had there been no amendment in Section 149, TOLA and through its delegated legislation by way of Notifications could have extended the time for 'issuance of notice'. However in view of express language of 1st proviso to Section 149(1), legislative mandate required that no notice could be issued under the new provision, if such notice could not be issued at that time on account of being beyond the time specified under the said section as it stood before the commencement of the Finance Act 2021, i.e a period of six years. Moreover, in view of decision of Hon'ble Supreme Court in case of ***Ashish Agarwal (Supra),*** the notices issued to the respective assessees under section 148 shall be deemed to be notices under section 148A(b) of the Act as substituted by Finance Act 2021. In all

the petitions of batch I and batch II, the notices under Section 148A (by deeming fiction) was issued, between the period 01.04.2021 to 30.06.2021 (i.e after 31.03.2021), wherein six years had elapsed from end of the relevant assessment year and therefore they are time barred and the petitions of Batch I- for A.Y. 2013-2014 and Batch-II for A.Y.2014-2015 deserves to be allowed.

22. It is made clear that other grounds raised in the petition are not gone into since subject petitions are decided only on the ground of limitation.

(MAUNA M. BHATT,J)

Smita Nair