# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
# ORDINARY ORIGINAL CIVIL JURISDICTION

## WRIT PETITION NO. 1945 OF 2023

The New India Assurance Company Limited )
87, New India Building, M. G. Road, Fort, )
Mumbai 400 001 ) ..Petitioner

V/s.

1. Assistant Commissioner of Income Tax )
Circle-3(2)(1), Mumbai, Room No.673, 6th Floor )
Aayakar Bhavan, Maharshi Karve Road, )
Mumbai 400 020 )

2. The Principal Chief Commissioner of )
Income Tax, Mumbai, Room No.321, 3rd Floor, )
Aayakar Bhavan, Maharshi Karve Road, )
Churchgate, Mumbai 400 020 )

3. Union of India )
Through Joint Secretary & Legal Adviser, )
Branch Secretariat, Department of Legal Affairs )
Ministry of Law and Justice, 2nd floor, Aayakar )
Bhavan, M. K. Road, New Marine Lines, )
Mumbai 400 020 ) ..Respondents

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Mr. P.J. Pardiwalla, Senior Advocate a/w. Mr. Harsh Kapadia i/b. Mr. Atul K. Jasani for petitioner.
Mr. Akhileshwar Sharma for respondents – Revenue.

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CORAM : K. R. SHRIRAM &
DR. NEELA GOKHALE, JJ.
RESERVED ON : 12th DECEMBER 2023
PRONOUNCED ON : 15th JANUARY 2024

JUDGMENT (PER K.R. SHRIRAM, J.) :

1 This petition challenges (i) the notice dated 28th July 2022 issued under Section 148 of the Income Tax Act, 1961 (the Act) seeking to reopen petitioner's assessment for AY 2013-14, (ii) the order dated

27th July 2022 passed under Section 148A(d) of the Act, and (iii) Central Board of Direct Taxes (CBDT) Instruction No.1 of 2022 dated 11th May 2022. According to petitioner, the said reopening notice, the order dated 27th July 2022 and the said Instruction are illegal, without jurisdiction, arbitrary, in violation of principles of natural justice, ultra vires the provisions of the Act and hence deserve to be set aside.

2 Petitioner is a Public Sector Undertaking operating under the control of Ministry of Finance, Government of India, viz., respondent no.3. Petitioner is engaged in the business of General Insurance in India and outside India. It is also a 'Public Finance Institution' under Section 4A of the erstwhile Companies Act, 1956.

For AY 2013-14, petitioner filed on 28th November 2013 its original return of income under Section 139(1) of the Act declaring total income of Rs.NIL. On 9th June 2014, petitioner filed revised return of income for the said assessment year, declaring a total loss of Rs.94,06,18,248/-. Petitioner's return of income was picked up for scrutiny by respondent no.1 by issuing notice under Section 143(2) of the Act. During the assessment proceedings, various details/information/documents were sought, which petitioner furnished from time to time. After considering all submissions, details and evidences furnished by petitioner, respondent no.1 completed the assessment and passed the assessment order

dated 29th February 2016 under Section 143(3) of the Act, assessing petitioner's total income at Rs.8,70,72,56,878/-. Several additions aggregating to Rs.9,64,78,75,129/- were made by respondent no.1 in the assessment order.

3 Aggrieved by this order, petitioner filed an appeal under Section 246A of the Act before the Commissioner of Income Tax (Appeals), [CIT(A)]. The said appeal was disposed by CIT(A) vide order dated 19th March 2018, wherein petitioner got substantial relief. Against the said order of CIT(A), respondent no.1 preferred an appeal before the Income Tax Appellate Tribunal (ITAT) under Section 253 of the Act, which came to be dismissed by order dated 11th August 2020.

4 Petitioner's assessment was reopened by notice dated 30th March 2017, issued under Section 148 of the Act (first reopening notice). Various details/information/documents were sought by respondent no.1 during the first reassessment proceedings, in compliance of which petitioner furnished all requisite submissions/details/information.

5 Reassessment proceedings under Section 147 of the Act for AY 2013-14 came to be repeated by an order dated 29th December 2017. In the said order, an addition of Rs.85,65,42,069/- was made by respondent no.1 and as a result, the total income of petitioner was reassessed at Rs.9,56,37,98,947/-. Against the said reassessment order, petitioner, on

29th January 2018, filed an appeal under Section 246A of the Act before the CIT(A). At the time of filing this petition, the said Appeal was still pending disposal before CIT(A).

6 With enactment of Finance Act, 2021 and the resulting substitution of Sections 147, 148, 149 and 151 of the Act and insertion of Section 148A, from 1st April 2021, the Assessing Officer, before assuming jurisdiction validly and before issuing any notice under Section 148 of the Act, was duty-bound to follow the stipulated mandatory procedure. As stated in the petition, respondent no.1 without following the statutory procedure stipulated under Sections148, 148A, 149 and 151 of the Act, issued the notice dated 29th June 2021 under Section 148 of the Act, seeking to reopen petitioner's assessment for AY 2013-14. This notice has been issued after a period of three years from the end of the relevant assessment year, i.e., AY 2013-14. In the said notice, respondent no.1 alleged that there were reasons to believe that income for the said year had escaped assessment and proposed to reassess the income of petitioner. According to petitioner's respondent no.1 had sought to reopen the assessment of petitioner by following the unamended provisions of Sections 147 and 148 of the Act that existed prior to 1st April 2021. By a communication dated 26th July 2021, petitioner filed its objections to the reopening notice dated 29th June 2021. Petitioner also requested for a copy

of the reasons recorded with necessary documents/evidence. Respondent no.1 did not respond and in view thereof, petitioner filed a Writ Petition in this Court being Writ Petition No.3119 of 2021 on the ground that reopening notice dated 29th June 2021 issued by respondent no.1 was illegal and without jurisdiction.

7 The said writ petition came to be finally disposed by a common judgment dated 29th March 2022 passed by this Court in ***Tata Communications Transformation Services Ltd. V/s. Assistant Commissioner of Income Tax***[1] wherein the reopening notice dated 29th June 2021 was also quashed and set aside. Similar judgments *inter alia* quashing reopening notices issued after 1st April 2021 under the unamended provision of Section 147 of the Act were passed by several High Court across the country including Hon'ble Allahabad High Court, Hon'ble Delhi High Court, Hon'ble Rajasthan High Court, Hon'ble Calcutta High Court and Hon'ble Madras High Court. Respondent no.3 preferred a Special Leave Petition (SLP) – ***Union of India V/s. Ashish Agarwal***[2] before the Hon'ble Supreme Court of India. The SLP came to be disposed by judgment dated 4th May 2022, whereby the Apex Court held that the view taken by the various High Courts that Revenue ought to have issued notice under the substituted provisions of Sections 147 to 151 as per the Finance Act, 2021 was correct. The Apex Court, however, exercising its power under Article 142 of the

1 (2022) 443 ITR 49 (Bombay)
2 (2022) 138 taxmann.com 64(SC)

Constitution of India, modified and substituted the judgments of all the High Courts including of this High Court as under :

> *"10. ...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 assessees can reply to the show-cause notices within two weeks thereafter;*
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> *(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 1-4-2021 till date, including those which have been quashed by the High Courts.*
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> *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."*

The Apex Court held that the modifications/substitution would apply to all judgments and orders passed by different High Courts where similar notices issued after 1st April 2021 under Section 148 of the Act are

set aside.

8 Subsequently, respondent no.3, through CBDT, on 11th May 2022 issued Instruction No.1 of 2022 titled Implementation of Judgment of Hon'ble Supreme Court, dated 4th May 2022 *Union of India V/s. Ashish Agarwal*, Instructions Regarding. Pursuant to the judgment in *Ashish Agarwal* (Supra) respondent no.1, in petitioner's case, re-initiated the assessment proceedings by issuing a notice on 30th May 2022. In the said notice the allegations were made regarding petitioner's transaction entered into with one Renuka Mata State Urban Co-operative Credit Society Limited (Renuka Mata Co-op. Society) and alleged tax evasion with respect to some tax exemption claimed by petitioner. In the said notice, it was stated that the information and material relied upon are "embedded in the reasons recorded" to reopen petitioner's case by issuing notice on 29th June 2021, which petitioner stated was never communicated to petitioner. According to petitioner, even the so called material was vague and incomplete.

9 Petitioner, by its letter dated 6th June 2022 responded to the notice dated 30th May 2022. This was followed by another letter dated 14th June 2022 wherein petitioner raised objections to the proposed reopening of assessment.

10 Respondent no.1, by a letter dated 14th June 2022, furnished copy of the reasons for reopening which is purported to have been recorded

prior to issuance of notice dated 29th February 2021 under Section 148. Respondent no.1 provided two sets of reasons dated 8th February 2021 and 29th June 2021. Respondent no.1 stated that the reasons dated 8th February 2021 were formed after the perusal of the financial statement of petitioner and hence the underlying information was not shared. In the reasons dated 8th February 2021, respondent no.1 seeks to reopen petitioner's assessment in order to disallow the following deductions :

(i) Provisions for claims incurred but not reported (IBNR) and claims incurred which were enough reported (IBNER) were in the nature of unascertained liability and hence, not allowable.

(ii) Reinsurance premium ceded to foreign insurers without deduction of tax at source under Section 195 and hence, to be disallowed under Section 40(a)(i) of the Act.

(iii) Reserve for unexpired risk (URR) of Rs.30,75,00,000/- ought to be added back to the book profits as per Explanation 1(b) of Section 115JB of the Act.

11 Respondent no.1, vide letter dated 16th June 2022, supplied additional information stipulated in his recorded reasons dated 29th June 2021. In response to these letters dated 14th and 16th June 2022 petitioner, vide its letter dated 30th June 2022, raised its objections against the proposed reopening of AY 2013-14 where, *inter alia*, petitioner furnished

detailed submissions as regard to the transaction with Renuka Mata Co-op. Society and the alleged tax evasion by claiming tax exemption as to why the reopening proceedings in respect of both the issues was incorrect and that no income had escaped assessment as contemplated under Section 147 of the Act. These objections were disposed by respondent no.1 by order dated 27th July 2022 passed under Section 148A(d) of the Act. Respondent no.1 accepted petitioner's explanation with regard to Renuka Mata Co-op. Society and the issue of tax evasion due to tax exemption alleged and has dropped the proceedings/proposed not to issue any reopening notice under Section 148 of the Act in that regard.

12 In so far as purported recorded reasoned dated 8th February 2021, that were communicated to petitioner for the first time on 14th June 2022, respondent no.1 held that petitioner had not raised any objections and hence he would presume that petitioner had nothing to argue in respect of all the three issues raised therein. Respondent no.1, therefore, concluded that the income had escaped assessment warranting a notice under Section 148 of the Act for AY 2013-14 and issued the impugned notice dated 27th July 2022.

13 Therefore, petitioner has approached this Court, on, *inter alia*, the following grounds :

(i) The said reopening notice is barred by limitation and, thus,

bad in law.

(ii) The binding directives of the Apex Court have not been complied with.

(iii) Admittedly, there is no information in existence which suggests that income has escaped assessment, which is a jurisdictional condition.

(iv) The assessment is sought to be reopened to disallow certain expenses. Therefore, the so-called income claimed to have escaped assessment is not represented in the form of asset.

(v) In view of the Section 151A of the Act read with the E-Assessment of Income Escaping Assessment Scheme, 2022, the issuance of notice under Section 148 ought to have been in a faceless manner and not by respondent no.1.

(vi) Complete non-application of mind by respondent no.1 and he has proceeded in the matter in a mechanical and casual manner.

(vii) Classic case of borrowed satisfaction, as, admittedly, reopening is a consequence of audit objections.

(viii) Undeniably, no tangible material has come to his possession as respondent no.1 admits that reopening is initiated based on a perusal of petitioner's financial statements.

(ix) No income chargeable to tax has escaped assessment.

(x) The impugned order under Section 148A(d) of the Act is cryptic, non-speaking and passed without considering petitioner's submissions.

(xi) CBDT's Instruction is beyond jurisdiction, illegal, contrary to directions of the Apex Court and ultra vires.

14 With the consent of the parties, it was decided to first discuss the preliminary issue, i.e., whether the notice is issued beyond the period of limitation. It was felt, if petitioner would succeed on this aspect of limitation, the other grounds of challenge need not be gone into. Therefore, the Court instructed the counsels to restrict their submissions on the preliminary issue of limitation.

15 Apart from this petition, there are many other pending petitions pertaining to AY 2013-14, where, the validity of the notice issued under Section 148 of the Act pursuant to *Ashish Agarwal* (Supra) is challenged on the ground of being barred by limitation.

16 **Mr. Pardiwalla submitted as under :**

(a) The Apex Court to strike a balance between the rights of both parties permitted the Revenue to re-initiate the reassessment proceedings by following the new procedure for reassessment. At the same time also specifically granted liberty to the assessees to raise all defences available to them including the defence under Section 149 of the Act;

(b) It is now a settled position in law that the validity of a notice issued under Section 148 of the Act must be judged on the basis of the law existing on the date on which such notice is issued. This principle has been confirmed by this Court in ***Siemens Financial Services Private Limited V/s. Deputy Commissioner of Income Tax & Ors.***[3] and in *Tata Communications* (Supra), where at paragraph 34 the Court has held that "*it is well settled that the validity of a notice issued under section 148 of the Act must be judged on the basis of the law existing on the date on which such notice is issued. Even the Revenue accepts this well settled position. Further, the provisions of sections 147 to 151 are procedural laws and accordingly, the provisions as existing on the date of the notice would be applicable. Even the revenue accepts this legal position and the CBDT Circular No.549 of 1989, that Mr. Mistri relied upon, explaining the provisions of the Finance Act, 1989 specifically sets out that any notices issued by Revenue after the amendment made by the Finance Act, 1989 must comply with the amended provision of the law. ……. This contention has also been considered and upheld by the Delhi High Court and the Allahabad High Court.*"

In paragraph 35 of *Tata Communications* (Supra) the Court has stated that "*We have to also note the well settled proposition that when the Act specifies that something is to be done in a particular manner, then, that*

3 (2023) 457 ITR 647 (BOM)

*thing must be done in that specified manner alone, and any other method/(s) of performance cannot be upheld……..".* Therefore, the validity of the reopening notice must be tested on the basis of the law that exists at the time when such a notice was issued, i.e., 28th July 2022;

(c) As per the unamended Section 149(1)(b), the outer time limit to issue a notice under Section 148 was 6 years from the end of the relevant assessment year and thus, for the AY 2013-14, the time limit expired on 31st March 2020. Under the amended provision, notice under Section 148 of the Act can be issued within a period of 3 years or 10 years, the latter available only after fulfilling certain stipulated additional conditions, including the limitation provided for by the first proviso to Section 149(1) of the Act;

(d) The first proviso to Section 149(1) stipulates that no notice under Section 148 can be issued at any time in a case for any assessment year, if a notice under Section 148 could not have been issued at that time on account of being beyond the time limit specified under the unamended Section 149(1)(b), i.e., as it stood prior to the Finance Act, 2021. Applicability of Section 149 to be seen qua the notice under Section 148, and not with respect to the notice issued under Section 148A(b) or the order passed under Section 148A(d) of the Act;

(e) Thus, for the AY 2013-14 the 6 years period expired on 31st March 2020, the impugned notice dated 28th July 2022, is barred by

limitation;

(f) The Calcutta High Court in ***Ved Prakash Mittal V/s. UOI & Ors***[4] applied the first proviso to Section 149(1) of the Act and held that the notice issued under Section 148 of the Act for the AY 2014-15 in the month of July 2022 was barred. This was also endorsed by the Rajasthan High Court in ***Sudesh Taneja V/s. Income Tax Officer, Ward 1(3), Jaipur***[5], and by this Court in *Tata Communications* (Supra). In *Ashish Agarwal* (Supra), the Apex Court categorically affirmed the view taken by various High Courts including the Rajasthan High Court and in *Tata Communications* (Supra) by this Court;

(g) Taxation and other laws (Relaxation and Amendment of certain provisions) Act, 2020 (TOLA) has no application in the present case which pertains to AY 2013-14.

(h) The Apex Court in *Ashish Agarwal* (Supra) while enabling the Revenue to restart the reassessment proceedings held that the old Section 148 notices were to be treated as show cause notices in terms of Section 148A(b) and not notice under Section 148 of the Act and, therefore, the mandatory procedure stipulated in Section 148A was to be followed. Thereafter, the Assessing Officers were authorised to issue the notice under the amended Section 148 of the Act;

4 Writ Petition No.2450 of 2022 dated 26th August 2022
5 (2022) 442 ITR 289

(i) The first proviso to Section 149(1) of the Act puts a fetter on issuing of a notice under Section 148 and not Section 148A(b) of the Act beyond the stipulated period. The impugned notice under Section 148 of the Act is issued on 28th July 2022, therefore, TOLA has no application. The provisions of TOLA works itself out on 31st March 2021. The amended reassessment provisions are applicable after 1st April 2021 as confirmed in *Siemens Financial* (Supra). Therefore, TOLA has no role to play and it cannot salvage the notice under challenge;

(j) Even reliance on Instruction No.1 of 2022 issued by CBDT is misplaced because neither the provisions of TOLA nor the judgment in *Ashish Agarwal* (Supra) provide that any notice issued under Section 148 of the Act after 31st March 2021 will travel back to the original date. This very argument of travel back to the original date was urged in the challenge to the initial reassessment and was categorically rejected by this Court in *Tata Communications* (Supra) as well as the Delhi High Court in ***Mon Mohan Kohli V/s. ACIT***[6], and both these judgments have been affirmed in *Ashish Agarwal* (Supra). In *Siemens Financial* (Supra) the Court has held that the Instruction is erroneous in this regard;

(k) It is well settled that instructions/circulars cannot be inconsistent with the provision of the parent act when they seek to tone down the rigours of the Act. In any event, circulars/instructions are only

6 (2022) 441 ITR 207

binding on the Revenue, not on the assessees and certainly not on the Hon'ble Courts as held in ***Hindustan Aeronautics Ltd. V/s. CIT***[7];

(l) The Delhi High Court in ***Ganesh Dass Khanna V/s. Income Tax Officer and Anr.***[8] has already declared paragraph 6.1 and 6.2(ii) of the Instructions as bad in law. Further, this Court in ***Group M Media India P. Ltd. V/s. Union of India and Ors.***[9] has held that a declaration of a Board's instruction as ultra vires by a competent Court would be binding on all authorities administering the Act all over the country and accordingly, the officers implementing the Act were bound by the decision of the Delhi High Court.

17 **Mr. Sharma submitted as under :**

(a) Under the Limitation Act, certain days are excluded. While following the methodology of computation of limitation, even if the period of limitation gets extended beyond limitation, are deemed as within limitation. This so even where the actual date is beyond the date of limitation so prescribed if no days are excluded from the limitation period;

(b) Section 3 of TOLA merely provides exclusion of Covid period while computing the 4 years or the 6 years, as the case may be, under Section 149 of the Act. Hence, after excluding the Covid period, if the notice under Section 148 of the Act is within 6 years, it has to be

7 (2000) 243 ITR 808 (SC)
8 WP(c)No.11527 of 2022 & CM Appl. No.34097 of 2022 dated 10th November 2023
9 (2016) 388 ITR 594

deemed as within limitation period of 6 years. The relaxation has to be deemed to be an integral part of Section 149 in so far as days are excluded under Section 149 of the Act for computing 4 years and 6 years;

(c) After exclusion of the Covid period, the notice under Section 148 of the Act for AY 2013-14 will be deemed as within limitation of 6 years. The expression in the TOLA Act and Notification issued thereunder that the end date to which the time limit for the completion of such action shall stand extended refers to the extension so arrived at after excluding the number of days/Covid period. The Notification No.20 of 2021 dated 31st March 2021 seeks to extend the limitation which expires on 31st March 2021 under the Act. Petitioner's argument that Notification No.20 of 2021 dated 31st March 2021 has to be construed as extending the limitation which expires on 31st March 2021 under the Act will necessarily exclude what is expiring on 31st March 2021 by virtue of methodology prescribed in TOLA is complete misreading of the TOLA and the Notification issued thereunder;

(d) The limitation is prescribed under Section 149 of the Act and limitation extends/expires under the Act and not under TOLA which merely prescribes the methodology of computation of limitation under the Act. Further, the Notification No.20 of 2021 dated 31st March 2021 itself derives power from TOLA. It was obvious to the Apex Court that as on 31st March 2021, the limitation of 6 years under the pre-amendment provisions

expired on 31st March 2021 in respect of two Assessment Years AY 2013-14 and AY 2014-15, if the Covid period was not excluded. It was also obvious that, despite setting aside notices under Section 148 issued during 1st April 2021 to 30th June 2021, the Revenue as on 1st April 2021 could have lawfully issued notices under Section 148A of the amended Act and, therefore, was not remediless for the AY 2015-16, AY 2016-17 and AY 2017-18;

(e) After setting aside the notices by the High Court and subject to the limitation under Section 149 of the unamended Act [without excluding Covid period], the Revenue was remediless in respect of AY 2013-14 and AY 2014-15. The Apex Court was conscious that the Revenue should not be rendered remediless and, therefore, it exercised power under Article 142 of the Constitution. The Explanation attached to TOLA Notification was set aside by the High Court and declared ultra vires but the notices were issued within the time stipulated in TOLA which is on or before 30th June 2021 and, therefore, within time. The intervention under Article 142 of the Constitution was required only for AY 2013-14 and AY 2014-15. Petitioner's contention, if accepted, would mean that Apex Court has dismissed the Revenue Civil Appeal in *Ashish Agrawal* (Supra) and entire direction of the Apex Court in *Ashish Agrawal* (Supra) order is unnecessary and totally avoidable for the reasons that : (a) Where Revenue is remediless no relief is required to be granted by the Apex Court and (b) Where

Revenue is not remediless, no intervention is required by the Apex Court;

(f) Petitioner's contention, if accepted, would also mean that the Apex Court was totally blind to the facts of the lead case *Ashish Agrawal* (Supra) which pertain to AY 2013-14. It is preposterous to say that Apex Court order in *Ashish Agrawal* (Supra) does not assist *Ashish Agrawal* (Supra) as an assessee. The meaning of the Apex Court order in *Ashish Agrawal* (Supra) has to be found in respect of its observation :

> *(i) 'strike a balance between the rights of the Revenue as well as the respective assessees as because of a bonafide belief of the officers of the Revenue in issuing approximately 90000 such notices'; and,*
>
> *(ii) Appeals are ALLOWED IN PART [Emphasis by upper case in Original]."*

(g) The true meaning of Apex Court order in *Ashish Agrawal* (Supra) passed in exercise of power under Article 142 of the Constitution are as under :

> *(i) The Notices u/s 148 irrespective of the Assessment Year, of the unamended Act issued during 01-04-2021 to 30-06-2021 are to be treated as Show-Cause Notice under the amended Income-tax Act 1961 without being hit by limitation, if issued on or before 30-06-2021.*
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> *(ii) There is no necessity to issue fresh notice u/s 148A of the Act in lieu of / in substitution of old notice u/s 148 issued during 01-04-2021 to 30- 06-2021 even where the Revenue could have issued fresh notice u/s 148A of the amended Act without being hit by limitation.*
>
> *(iii) The defence u/s 149 of the Act available to the assessee would mean that if Revenue had issued any notice u/s 148 under the unamended Act during the period 01-04-2021 to 30-06-2021 but pertain to an Assessment Year prior to the Assessment Year 2013-14, where the relaxation under TOLA is*

*not available, the same would be barred by limitation u/s 149 of the Act. Any other meaning ascribed to reference to defence u/s 149 would mean that the effect of Ashish Agrawal is as if the Civil Appeal of Revenue was dismissed.*

(h) The Apex Court, in exercise of power under Article 142 of the Constitution, has deemed the notices under Section 148 of the amended Act issued between 1st April 2021 to 30th June 2021 to be a notice under Section 148A(b) of the Act issued within limitation. By following the manner of computation of limitation provided in TOLA, the days from 1st April 2021 to 30th June 2021 would stand excluded and, therefore, the notices under Section 148 of the unamended Act could be deemed to be issued on 31st March 2021. However, if notices under Section 148 of the unamended Act were deemed to have been issued on 31st March 2021, the assessee would not get the benefit of radical and reformative changes inserted by the Finance Act, 2021. As against this, if such notices under Section 148 issued between 1st April 2021 to 30th June 2021 of the unamended Act were deemed to be barred by limitation under Section 149 of the unamended Act or the first proviso to the amended Section 149 of the Act, the Revenue would be rendered remediless;

(i) If notice under Section 148A(b) of the Act is valid then can notice under Section 148 of the Act be deemed invalid on the ground that it was not issued prior to notice under Section 148A(b) of the Act. The argument of petitioner, if accepted, would require the Assessing Officer to

do the impossible that is to complete the proceedings consequent to show cause notice under Section 148A(b) of the Act before the issue of the show cause notice. If the notice dated 30th May 2022 under Section 148A(b) of the Act is valid in terms of Apex Court order in *Ashish Agrawal* (Supra), then the notice under Section 148 of the Act cannot be issued on 31st March 2021. Respondent cannot be expected to do impossible.

18 **In rejoinder, Mr. Pardiwalla submitted as under :**

(a) The issue of limitation raised under the Limitation Act, 1963 would not apply to the provisions of the Income Tax Act and in particular to the case at hand in view of the specific period provided under the TOLA. Further this defence has not been raised either in the order passed under Section 148A(d) of the Act nor in the affidavit in reply;

(b) Exclusion of Covid period while computing the 4 years or the 6 years, as the case may be, is in effect, nothing but the theory of travel back in time which has been rejected by this Court in *Tata Communications* (Supra). So also in *Siemens Financials* (Supra). In *Ganesh Dass Khanna* (Supra) the Delhi High Court has declared paragraph 6.1 of the Instructions as bad in law;

(c) As regards the Notification No.20 of 2021 dated 31st March 2021, which extends the limitation expiring on 31st March 2021 to 30th April 2021, the Notification itself says “where the time limit specified in

or prescribed or notified under the Income Tax Act falls for completion on 31st March 2021". Since the limitation under the erstwhile Section 149 of the Act for reopening the assessment for the AY 2013-14 expired on 31st March 2020, Notification No.20 of 2021 did not apply. Notification No.38 of 2021 dated 27th April 2021 categorically uses the expression "the time limit for completion of such action expires on the 30th day of April 2021 due to its extension by the said Notifications, such time limit shall further stand extended to the 30th day of June 2021". Hence, it is incorrect to say that 31st March 2021 under the Act would mean under the Act, plus, extension by TOLA;

(d) The submission of Revenue that the Apex Court, while hearing *Ashish Agrawal* (Supra), was aware on 31st March 2021 the limitation of 6 years under the pre-amendment provisions expired on 31st March 2021 in respect of AY 2013-14 and AY 2014-15 if the Covid period was not excluded but still the Apex Court stated that all notices issued should be treated as notice issued under Section 148A of the amended Act because the Court was conscious that the Revenue should not be rendered remediless, this argument has to fail because this would mean that despite the substantive defence available to the assessee under Section 149 of the amended Act, as well as the express directions of the Hon'ble Supreme Court allowing the assessee to take all defences available under the Act, the judgment of *Ashish Agarwal* (Supra) would permit them to reopen the

assessment of AY 2013-14. That would not only make the defence expressly available to the assessees useless and unusable, but would also be contrary to well-established principles of law. As held in ***Supreme Court Bar Association V/s. Union of India & Anr.***[10], by the Apex Court, its powers conferred under Article 142 of the Constitution of India, being curative in nature, even with the width of its amplitude cannot be construed as powers which authorise the Court to ignore the substantive rights of a litigant while dealing with a cause pending before it. Article 142 cannot be used to supplant substantive law applicable to a case or cause. It cannot be used to build a new edifice where none existed earlier by ignoring express statutory provisions. The contention of Revenue that notices issued under Section 148 between 1st April 2021 and 30th June 2021 are deemed to be issued on 31st March 2021 defies sense because the provisions of the new reassessment law introduced by the Finance Act, 2021 cannot apply as they came into force, w.e.f., 1st April 2021;

(e) ***Touchstone Holdings (P.) Ltd. V/s. Income Tax Officer***[11] relied upon by Mr. Sharma can be distinguished in as much as in that case, without going into other details, petitioner accepted that the notice issued on 29th June 2021 under Section 148 of the Act was within limitation. In the case at hand it is petitioner's case that any notice issued after 31st March 2021 for AY 2013-14 was barred by limitation. As regards ***Salil Gulati V/s.***

10 (1998) 4 SCC 409
11 (2022) 142 taxmann.com 336 (Delhi)

***Assistant Commissioner of Income Tax***[12] it only followed *Touchstone Holdings* (Supra).

**FINDINGS :**

19 Section 148 of the Act reads as under :

> *148.* ***Issue of notice where income has escaped assessment.****— 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,—*

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*(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 preceeding 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.*

Section 148A of the Act reads as under :

*148A.* ***Conducting inquiry, providing opportunity before issue of notice under section 148.****—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.*

Section 149 of the Act read 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 an 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 specified under the provisions of clause (b) of sub-section (1) of this section, as they stood immediately before the commencement of the Finance Act, 2021:*

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

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

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

*Explanation.—For the purposes of clause (b) of this sub-section, "asset" shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.*

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

20 The validity of a notice issued under Section 148 of the Act must be judged on the basis of the law existing on the date on which such notice is issued. A Division Bench of this Court in *Siemens Financial* (Supra) followed what was held in *Tata Communications* (Supra) to hold that the validity of a notice issued under Section 148 of the Act must be judged on the basis of the law existing on the date on which such notice is issued. Paragraphs 34 and 35 of *Tata Communications* (Supra) read as under :

> *34. It is well settled that the validity of a notice issued under Section 148 of the Act must be judged on the basis of the law existing on the date on which such notice is issued. Even the Revenue accepts this well settled position. Further, the provisions of Sections 147 to 151 are procedural laws and accordingly, the provisions as existing on the date of the notice would be applicable. Even the revenue accepts this legal position and the CBDT Circular No.549 of 1989, that Mr. Mistri relied upon, explaining the provisions of the Finance Act, 1989 specifically sets out that any notices issued by Revenue after the amendment made by the Finance Act, 1989 must comply with the amended provision of the law. Therefore, any notice issued after 1st April, 2021 must comply with the amended provisions of the Act which was amended with effect from 1st April, 2021. This contention has also been considered and upheld by the Delhi High Court and the Allahabad High Court.*
>
> *35. We have to also note the well settled proposition that when the Act specifies that something is to be done in a particular manner, then, that thing must be done in that specified manner alone, and any other method/(s) of performance cannot be upheld. Hence, notices issued under Section 148 of the Act after 1st April, 2021 must comply with the amended provisions of law and cannot be sustained on the basis of the erstwhile provision.*

21 The Apex Court in *Ashish Agarwal* (Supra) did not disturb the findings of this Court in *Tata Communications* (Supra). The Apex Court only modified the orders passed by the respective High Courts to the effect that the notices issued under Section 148 of the Act, which were subject matter of writ petitions before various High Courts, shall be deemed to have been issued under Section 148A(b) of the Act and the Assessing Officer was directed to provide within 30 days to the respective assessee the information and material relied upon by the Revenue so that the assessee could reply to the show cause notices within two weeks thereafter. The Apex Court held that the Assessing Officer shall thereafter, pass orders in terms of Section 148A(d) in respect of each of the concerned assessees and having followed the procedure as required under Section 148A of the Act may issue notice under Section 148 of the Act. The Apex Court also kept open expressly all contentions which may be available to the assessee including those available under Section 149 of the Act and all rights and contentions, which may be available to the concerned assessee and Revenue under the Finance Act, 2021 and in law, shall be continued to be available. This was done by the Apex Court to strike a balance between the rights of both the parties. Therefore, the validity of the reopening notice to petitioner must be decided on the basis of law which exists at the time when such a notice was issued, i.e., 28th July 2022.

22 As per the unamended Section 149(1)(b) of the Act, the outer time limit to issue a notice under Section 148 was 6 years from the end of the relevant assessment year and thus, for AY 2013-14, the time limit expired on 31st March 2020. Under the amended provision, a notice under Section 148 can be issued within a period of 3 years or 10 years, the latter available only after fulfilling certain stipulated additional conditions, including the limitation provided for by the first proviso to Section 149(1) of the Act. The first proviso to Section 149(1) stipulates that no notice under Section 148 can be issued at any time in a case for any assessment year, if a notice under Section 148 could not have been issued at that time on account of being beyond the time limit specified under the unamended Section 149(1)(b), i.e., as it stood prior to the Finance Act, 2021. Applicability of Section 149 to be seen qua the notice under Section 148 and not with respect to the notice issued under Section 148A(b) or the order passed under Section 148A(d) of the Act.

23 In the present case, as for AY 2013-14, the 6 years period expired on 31st March 2021, extended under Section 3(1) of TOLA. Therefore, the impugned notice dated 28th July 2022, which is under challenge in the petition, is barred by limitation. The Hon'ble Calcutta High Court in *Ved Prakash* (Supra) held "*By this writ petition, petitioner has challenged the impugned order under Section 148 A(d) of the Income Tax*

*Act, 1961 dated 29th July, 2022, relating to the assessment year 2014-2015 on the ground that the same being without jurisdiction and being barred by limitation since the initiation of re-opening of the assessment has been made admittedly after six years from the end of the expiry of the period of relevant assessment year. Mr. Roychowdhury, learned Counsel appearing for the respondent is not in a position to contradict the aforesaid factual and legal position. Accordingly, this writ petition being WPO No.2450 of 2022 is disposed of by quashing the aforesaid impugned order dated 29th July, 2022.*" Prior thereto, the Rajasthan High Court in *Sudesh Taneja* (Supra), which was followed by this Court in *Tata Communications* (Supra), in paragraph 37 held as under :

> *37. In this context we have perused the provisions of reassessment contained in the Finance Act, 2021. We have noticed earlier the major departure that the new scheme of reassessment has made under these provisions. The time limits for issuing notice for reassessment have been changed. The concept of income chargeable to tax escaping assessment on account of failure on the part of the assessee to disclose truly or fully all material facts is no longer relevant. Elaborate provisions are made under Section 148A of the Act enabling the Assessing Officer to make enquiry with respect to material suggesting that income has escaped assessment, issuance of notice to the assessee calling upon why notice under Section 148 should not be issued and passing an order considering the material available on record including response of the assessee if made while deciding whether the case is fit for issuing notice under Section 148. There is absolutely no indication in all these provisions which would suggest that the legislature intended that the new scheme of reopening of assessments would be applicable only to the period post 01.04.2021. In absence of any such indication all notices which were issued after 01.04.2021 had to be in accordance with such provisions. To reiterate, we find no indication whatsoever in the scheme of statutory provisions suggesting that the past provisions would continue to apply even after the substitution for the assessment periods prior*

*to substitution. In fact there are strong indications to the contrary. We may recall, that time limits for issuing notice under Section 148 of the Act have been modified under substituted Section 149. Clause (a) of sub-section (1) of Section 149 reduces such period to three years instead of originally prevailing four years under normal circumstances. Clause (b) extends the upper limit of six years previously prevailing to ten years in cases where income chargeable to tax which has escaped assessment amounts to or is likely to amount to 50 lacs or more. Sub-section (1) of Section 149 thus contracts as well as expands the time limit for issuing notice under Section 148 depending on the question whether the case falls under clause (a) or clause (b). In this context the first proviso to Section 149(1) provides that no notice under Section 148 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 provisions of clause (b) of sub-section (1) of Section 149 as they stood immediately before the commencement of the Finance Act, 2021. As per this proviso thus no notice under Section 148 would be issued for the past assessment years by resorting to the larger period of limitation prescribed in newly substituted clause (b) of Section 149(1). This would indicate that the notice that would be issued after 01.04.2021 would be in terms of the substituted Section 149(1) but without breaching the upper time limit provided in the original Section 149(1) which stood substituted. This aspect has also been highlighted in the memorandum explaining the proposed provisions in the Finance Bill. If according to the revenue for past period provisions of section 149 before amendment were applicable, this first proviso to section 149(1) was wholly unnecessary. Looked from both angles, namely, no indication of surviving the past provisions after the substitution and in fact an active indication to the contrary, inescapable conclusion that we must arrive at is that for any action of issuance of notice under Section 148 after 01.04.2021 the newly introduced provisions under the Finance Act, 2021 would apply. Mere extension of time limits for issuing notice under section 148 would not change this position that obtains in law. Under no circumstances the extended period available in clause (b) of sub-section (1) of Section 149 which we may recall now stands at 10 years instead of 6 years previously available with the revenue, can be pressed in service for reopening assessments for the past period. This flows from the plain meaning of the first proviso to sub-section (1) of Section 149. In plain terms a notice which had become time barred prior to 01.04.2021 as per the then prevailing provisions, would not be revived by virtue of the application of Section 149(1)(b) effective from 01.04.2021. All the notices issued in the present cases are after 01.04.2021 and have been issued without following the procedure contained in Section 148A of*

*the Act and are therefore invalid.*

(emphasis supplied)

In *Sudesh Taneja* (Supra), the Court held that for any action of issuance of notice under Section 148 after 1st April 2021 the newly introduced provisions under the Finance Act, 2021 would apply. Mere extension of time limits for issuing notice under Section 148 would not change this position that obtains in law. The Court held that a notice, which had become time barred prior to 1st April 2021 as per the then prevailing provisions, would not be revived by virtue of application of Section 149(1)(b) effective from 1st April 2021. We respectfully agree with this view. As noted earlier in *Ashish Agarwal* (Supra), the Hon'ble Supreme Court categorically confirmed the view taken by various High Courts including the Hon'ble Rajasthan High Court. Therefore, the impugned notices pertaining to AY 2013-14 pursuant to *Ashish Agarwal* (Supra) are barred by limitation.

24 We could also note that the provisions of TOLA have no application relating to AY 2013-14. Section 3(1) of TOLA reads as under :

> *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 fulfillment 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.*

*xxxxxxxxxxxxxxxxxxx*

25 The limitation for AY 2013-14 expired on 31st March 2020, which by virtue of Section 3(1) of TOLA, got extended to 31st March 2021. This was followed by a Notification dated 31st March 2021 being Notification S.O. 1432(E) [No.20/2021/F.No.370142/35/2020-TPL], which read as under :

*In exercise of the powers conferred by sub-section (1) of section 3 of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (38 of 2020) (hereinafter referred to as the said Act), and in partial modification of the notification of the Government of India in the Ministry of Finance, (Department of Revenue) No. 93/2020 dated the 31st December, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), vide number S.O. 4805(E), dated the 31st December, 2020, the Central Government hereby specifies that,-*

*(A) where the specified Act is the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the Income-tax Act) and, -*

*(a) the completion of any action referred to in clause (a) of sub-section (1) of section 3 of the Act relates to passing of an order under sub-section (13) of section 144C or issuance of notice under section 148 as per time-limit specified in section 149 or sanction under section 151 of the Income-tax Act,-*

*(i) the 31st day of March, 2021 shall be the end date of the period during which the time-limit, specified in, or prescribed or notified under, the Income-tax Act falls for the completion of such action; and*

*(ii) the 30th day of April, 2021 shall be the end date to which the time-limit for the completion of such action shall stand extended.*

*Explanation. - For the removal of doubts, it is hereby clarified that for the purposes of issuance of notice under section 148 as per time-limit specified in section 149 or sanction under section 151 of the Income-tax Act, under this sub-clause, the provisions of section 148, section 149 and section 151 of the Income-tax Act, as the case may be, as they stood as on the 31st day of March 2021, before the commencement of the Finance Act, 2021, shall apply.*

*(b) the compliance of any action referred to in clause (b) of sub-section (1) of section 3 of the said Act relates to intimation of Aadhaar number to the prescribed authority under sub-section (2) of section 139AA of the Income-tax Act, the time-limit for compliance of such action shall stand extended to the 30th day of June, 2021.*

*xxxxxxxxxxxxxxxxxxx*

This Notification, therefore, says that where the specified Act is the Income Tax Act, 1961 and the completion of any action referred to in clause (a) of sub-section (1) of Section 3 of TOLA relates to issuance of notice under Section 148 as per time limit specified in Section 149 and 31st day of March 2021 is the end date of the period during which the time limit, specified in, or prescribed or notified under the Income Tax Act falls for the completion of such action, then, 30th day of April 2021 shall be the extended end date for the completion of such action. Therefore, this would apply only for AY 2014-15 because it says completion of any action when it relates to issuance of notice under Section 148 'as per time limit specified in Section 149' is 31st March 2021 it shall be extended to 30th April 2021. It does not say "as per time limit specified under Section 149 as extended by TOLA". For AY 2014-15, the 6 years period will end on 31st March 2021, whereas the time limit prescribed under Section 149 for AY 2013-14 is 31st March 2020. This is reiterated by the Explanation in the Notification which says for the removal of doubts, it is hereby clarified that for the purposes of issuance of notice under Section 148 as per time limit specified in Section 149 under this sub-clause, the provisions of Section 149, as they stood as on the 31st March 2021, before the commencement of the Finance Act, 2021, shall apply. The date of the Notification is also relevant and it is 31st March 2021.

26 Another Notification dated 27th April 2021 being Notification S.O. 1703(E) [No.38/2021/F.No.370142/35/2020-TPL] came to be issued where a specific reference is made to Notification S.O.1432(E) dated 31st March 2021 and it also says - ' the Central Government hereby specifies for the purpose of sub-section (1) of Section 3 of TOLA.' It is stated, where the specified Act is the Income Tax Act, 1961, the completion of any action, referred to in clause (a) of sub-section (1) of Section 3 of TOLA, relates to issuance of notice under Section 148 as per time limit specified in Section 149 and 'the time limit for such action expires on 30th April 2021 due to its extension by the said Notifications', such time limit shall further stand extended to 30th June 2021. The Notification dated 27th April 2021 reads as under :

> *In exercise of the powers conferred by sub-section (1) of section 3 of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (38 of 2020) (hereinafter referred to as the said Act), and in partial modification of the notifications of the Government of India in the Ministry of Finance, (Department of Revenue) No. 93/2020 dated the 31st December, 2020, No. 10/2021 dated the 27th February. 2021 and No. 20/2021 dated the 31st March, 2021, published in the Gazette of India, Extraordinary, Part-II, Section 3, Subsection (ii), vide number S.O. 4805(E), dated the 31st December, 2020. vide number S.O. 966(E) dated the 27th February, 2021, and vide number S.O 1432(E) dated the 31st March. 2021, respectively (hereinafter referred to as the said notifications), the Central Government hereby specifies for the purpose of sub-section (1) of section 3 of the said Act that, -*
>
> *(A) where the specified Act is the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the Income-tax Act) and, -*
>
> > *(a) the completion of any action, referred to in clause (a) of sub-section (1) of section 3 of the said Act, relates to passing of any order for assessment or reassessment under*

*the Income-tax Act, and the time limit for completion of such action under section 153 or section 153B thereof, expires on the 30th day of April, 2021 due to its extension by the said notifications, such time limit shall further stand extended to the 30th day of June, 2021;*

*(b) the completion of any action, referred to in clause (a) of sub-section (1) of section 3 of the said Act, relates to passing of an order under sub-section (13) of section 144C of the Income- tax Act or issuance of notice under section 148 as per time-limit specified in section 149 or sanction under section 151 of the Income-tax Act, and the time limit for completion of such action expires on the 30th day of April, 2021 due to its extension by the said notifications, such time limit shall further stand extended to the 30th day of June, 2021.*

*Explanation. For the removal of doubts, it is hereby clarified that for the purposes of issuance of notice under section 148 as per time-limit specified in section 149 or sanction under section 151 of the Income-tax Act, under this sub-clause, the provisions of section 148, section 149 and section 151 of the Income-tax Act, as the case may be, as they stood as on the 31st day of March 2021, before the commencement of the Finance Act, 2021, shall apply.*

Therefore, it only extends the time limit prescribed in Notification S.O. 1432(E) to 30th June 2021. When the Notification S.O. 1432(E) was not applicable to AY 2013-14, the question of time limit for AY 2013-14 being extended beyond 31st March 2021 does not arise.

27 Therefore, under the Income Tax Act, when the completion of any action relates to issuance of notice under Section 148 as per time limit specified in Section 149 was 31st March 2021, it shall stand extended to 30th April 2021. The time limit under Section 149 expired on 31st March 2021 only for AY 2014-15 (and not for AY 2013-14, which expired on 31st March 2020) and has got extended by virtue of clause (a) of

sub-section (1) of Section 3 of TOLA. The Notification does not say "issuance of notice under Section 148 as per time limit specified in Section 149 as extended under sub-section (1) of Section 3 of TOLA". Therefore, the provisions of TOLA cannot apply. Also the Notifications thereunder do not apply to the case at hand for AY 2013-14.

28 It is required to be noted that the Apex Court, while enabling the Revenue to restart the reassessment proceedings in *Ashish Agarwal* (Supra), categorically held that the old Section 148 notices were to be treated as show cause notices in terms of Section 148A(b) and not a notice under Section 148 of the Act and, therefore, the mandatory procedure stipulated in Section 148A was to be followed. Thereafter, the Assessing Officers were authorised to issue the notice under the amended Section 148 of the Act. The first proviso to Section 149(1) of the Act puts a fetter on issuing of a notice under Section 148 and not Section 148A(b) of the Act beyond the stipulated period. The impugned notice under Section 148 of the Act is issued on 28th July 2022. Hence, TOLA has no application.

29 This Court in *Siemens Financial* (Supra), in paragraph 26, has held as under :

> *26. The Assessing Officer cannot rely on the provisions of TOLA and the notifications issued thereunder as section 151 has been amended by Finance Act, 2021 and the provisions of the amended section would have to be complied with by the Assessing Officer, w.e.f., 1st April 2021. Hence, the Assessing Officer cannot seek to take the shelter of TOLA as a subordinate legislation cannot override any statute enacted by the*

> *Parliament. Further, the notification extending the dates from 31st March 2021 till 30th June 2021 cannot apply once the Finance Act, 2021 is in existence. The sanction of the specified authority has to be obtained in accordance with the law existing when the sanction is obtained and, therefore, the sanction is required to be obtained by applying the amended section 151(ii) of the Act and since the sanction has been obtained in terms of section 151(i) of the Act, the impugned order and impugned notice are bad in law and should be quashed and set aside.*

30 The Allahabad High Court in ***Ashok Kumar Agarwal V/s. Union of India***[13] held that TOLA is an enactment to extend timelines only. Consequently, all references to issuance of notice contained in TOLA from 1st April 2021 must be read as reference to the substituted provisions only. Paragraph 66 of *Ashok Kumar Agarwal* (Supra) reads as under :

> *66. It is equally true that the Enabling Act that was pre-existing, had been enforced prior to enforcement of the Finance Act, 2021. It confronted the Act as amended by Finance Act, 2021, as it came into existence on 01.04.2021. In the Enabling Act and the Finance Act, 2021, there is absence, both of any express provision in itself or to delegate the function - to save applicability of the provisions of sections 147, 148, 149 or 151 of the Act, as they existed up to 31.03.2021. Plainly, the Enabling Act is an enactment to extend timelines only. Consequently, it flows from the above – 01.04.2021 onwards, all references to issuance of notice contained in the Enabling Act must be read as reference to the substituted provisions only. Equally there is no difficulty in applying the pre-existing provisions to pending proceedings. Looked in that manner, the laws are harmonized.*

In our view, TOLA has no role to play and it cannot salvage the notice under challenge.

31 Reliance by respondents on Instruction No.1 of 2022 issued by CBDT is also grossly misplaced. Neither the provisions of TOLA nor the

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judgment in *Ashish Agarwal* (Supra) provide that any notice issued under Section 148 of the Act after 31st March 2021 will travel back to the original date. This very argument was urged in the challenge to the initial reassessment and was categorically rejected by this Court in *Tata Communications* (Supra) as well as the Delhi High Court in *Mon Mohan Kohli* (Supra). Paragraphs 37 and 38 of *Tata Communications* (Supra) read as under :

> *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.*
>
> (emphasis supplied)

Both these judgments, i.e., *Tata Communications* (Supra) and *Mon Mohan Kohli* (Supra), have been affirmed in *Ashish Agarwal* (Supra).

32 Further, in *Siemens Financial* (Supra), this Court has held that the Instruction is erroneous in this regard, i.e., travel back to the original date. Paragraphs 28 to 31 of the said judgment read as under :

> *28. The interpretation placed by the CBDT in paragraph 6.1 of Instruction No. 1/2022 dated 11th May 2022 cannot be countenanced as it is not open to them to clarify that the law laid down by the Apex Court means that the extended reassessment notices will travel back in time to their original date when such notices were to be issued and, then, the new section 149 of the Act is to be applied as this is contrary to the judgment of this court in Tata Communications (supra) wherein it is held that TOLA does not envisage traveling back of any notice. However, even assuming that it is held that these notices travel back to the date of the original notice issued on 25th June 2021, even then the approval of the Principal Chief Commissioner of Income Tax should be obtained in terms of section 151(ii) of the Act as a period of three years from the end of the relevant assessment year ended on 31st March 2020 for AY 2016-17.*
>
> *29. Further, the CBDT in Instruction no.1/2022 at paragraph 6.2(ii) has wrongly stated that the notices issued under section 148 of the Act for AY 2016-17 are to be considered as having been issued within a period of three years from the end of the relevant assessment year and, on that basis, has wrongly mentioned that the approval of the specified authority under section 151(i) should be taken. This conclusion is premised on the basis that these notices travel back to 31 March 2020 which premise is completely erroneous as explained hereinbefore. The notice under section 148 of the Act is issued on 31 July 2022 and, hence, is issued beyond period of three years from the end of the relevant assessment year and, accordingly, the approval of the specified authority under section 151(ii) of the Act should be taken.*
>
> *30. This court in Tata Communications (Supra), has rejected that argument of the Revenue on the issue of travel back. This court in paragraph 37 of Tata Communications (Supra) has held that Section 3(1) of TOLA does not provide that any notice issued under Section 148 of the Act, after 31st March 2021 will relate back to the original date or that the clock is stopped on 31st March, 2021 such that the provision as existing on such date will be applicable to notices issued relying on the provision of TOLA. The court held that Section 3(1) of TOLA 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. The court had also recorded that the Delhi High Court had considered and rejected the contention of the Revenue that the notice issued after 1st April 2021 relates back to an earlier period. The Delhi High Court had considered and rejected the argument of the Revenue that TOLA creates a legal fiction such that the notices issued under Section 148 of the Act are deemed to be issued on 31st March, 2021. TOLA only granted power to the Central Government to notify the period during which actions are required to be taken that can fall within the ambit of TOLA, and the power to extend the time limit within which those actions are to be taken. There was no amendment to the provisions of Sections 147 to 151 of the Act. The court also observed that amendments to the substantive provisions of the Act were envisaged under Section 3 of TOLA, which was only a relaxation provision dealing with time limits under various enactments. The Assessing Officer could have assumed jurisdiction while issuing the impugned notices only after complying with the amended Section 147 which has not been done. In Tata Communications (Supra), this court also held that TOLA was not applicable for A.Y.-2015-2016 or any subsequent years. Hence question of applicability of notification issued under TOLA also would not arise. Paragraphs 34 to 49 of Tata Communications (Supra) read as under :*

> *34. It is well settled that the validity of a notice issued under Section 148 of the Act must be judged on the basis of the law existing on the date on which such notice is issued. Even the Revenue accepts this well settled position. Further, the provisions of Sections 147 to 151 are procedural laws and accordingly, the provisions as existing on the date of the notice would be applicable. Even the revenue accepts this legal position and the CBDT Circular No.549 of 1989, that Mr. Mistri relied upon, explaining the provisions of the Finance Act, 1989 specifically sets out that any notices issued by Revenue after the amendment made by the Finance Act, 1989 must comply with the amended provision of the law. Therefore, any notice issued after 1st April, 2021 must comply with the amended provisions of the Act which was amended with effect from 1st April, 2021. This contention has also been considered and upheld by the Delhi High Court and the Allahabad High Court.*
>
> *35. We have to also note the well settled proposition that when the Act specifies that something is to be done in a particular manner, then, that thing must be done in that specified manner alone, and any other method/(s) of performance cannot be upheld. Hence, notices issued under Section 148 of the Act after 1st April, 2021 must*

*comply with the amended provisions of law and cannot be sustained on the basis of the erstwhile provision.*

*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 31st March 2021 will relate back to the original date or that the clock is stopped on 31st 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 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 1st 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 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 1st April, 2021. Further, when there is no ambiguity on the applicability of the provision, there is no question of resorting to purpose test.*

*43. As regards liberty granted by the Allahabad High Court, certainly, if the law permits issuance of notices under Section 148 of the Act (as amended), afresh, then no liberty is required to be granted by the Court, and it would be within the Assessing Officer's powers to initiate proceedings as per the amended law. The Madras High*

*Court has considered this very plea and granted liberty to initiate reassessment proceedings in accordance with the provisions of the amended Act, "if limitation for it survives".*

*44. As submitted by Mr. Mistri, with whom we agree, Chapter II of Relaxation Act provide for – "Relaxation of Certain Provisions of Specified Act"and Section 3 forms part of this Chapter. Further Chapter III provides for amendment to Income Tax Act, 1961 and various Sections of the Act have been amended in Chapter III. From this the following propositions emerge :*

*(a) Wherever the Parliament thought fit, the Parliament has itself amended the provision of the Income Tax Act, 1961 and not left it for the CBDT to make the amendment. Therefore, it is clear that no power is given under Relaxation Act to postpone the applicability of provisions of the Income Tax Act.*

*(b) Chapter II of Relaxation Act is only for 'Relaxation of Certain Provisions of Specified Act' and, therefore, there is no question of the Revenue relying on this Chapter and Section 3 to justify the postponement of applicability of certain provisions of the Income Tax Act. If the Parliament wanted to give some right to the CBDT, it would have formed part of Chapter III, however, there is no such provision in Chapter III of the Act.*

*45. As submitted by Mr. Pardiwalla there are other Sections in the Finance Act, 2021 which have amended other provisions of the Income Tax Act from dates other than 1st April, 2021. Like for example Section 12 of the Finance Act inserted a proviso in Section 43CA. Had the intention of the legislature, while amending Sections 147 to 153, been to give it effect from 1st July, 2021, a similar savings clause could have been inserted, which has not been done. We agree with Mr. Pardiwalla because as per Section 1(2)(a) of the Finance Act, 2021, the amendments to Sections 147 to 153 of the Act shall come into force on 1st April, 2021. Similarly, the Memorandum explaining the provisions of the Finance Bill, 2021 clarifies that these amendments will take effect from 1st April, 2021. Section 12 of the Finance Act inserted a proviso in Section 43CA which inter alia provides that the words 'one hundred and ten percent' in the first proviso will be substituted by the words 'one hundred and twenty percent' if the transfer of residential units takes place during the period beginning from 12th day of November, 2020 and ending on the 30th day of June,*

*2021. Therefore, had the intention of the legislature, while amending Sections 147 to 153, was to give it effect from 1st July, 2021, a similar savings clause could have been inserted, which has not been done.*

*46. Mr. Pardiwalla submitted that only Section 4 of Relaxation Act which amended the Act and no such amendments to the substantive provisions of the Act were envisaged under Section 3 of Relaxation Act, which was only a relaxation provision dealing with time limits under various enactments.*

*47. As noted earlier, it is Revenue's case that Section 3 of Relaxation Act enabled the Central Government to issue notifications which would permit the Assessing Officers to issue notices under Section 148 of the Act after 1st April, 2021 in terms of the erstwhile provisions of Sections 147 to section 151, even though the said provisions were repealed with effect from 1st April, 2021 by the Finance Act, 2021. It is, however, pertinent to note that Section 3 of Relaxation Act falls in Chapter II of the said Act, which is titled 'Relaxation of Certain Provisions of Specified Act'. In contradistinction, Section 4 of Relaxation Act which does amend several provisions of the Act falls in Chapter III, which is titled 'Amendments to the Income Tax Act, 1961'. It will be apposite to notice that the amendments provided for in Section 4 were made by the Legislature itself in terms of the said Section and no such power to amend the Act was delegated to the Central Government. Therefore, we would agree with Mr. Pardiwalla that it is only Section 4 of Relaxation Act which amended the Act and no such amendments to the substantive provisions of the Act were envisaged under Section 3 of Relaxation Act, which was only a relaxation provision dealing with time limits under various enactments.*

*48. Mr. Pardiwalla submitted that even assuming for a moment that the primary contention of petitioners that the Explanations in the notifications are invalid is not accepted, still the impugned notices will be bad in law as the Explanation only seeks to effectuate the provisions of the erstwhile Sections 148, 149 and 151 of the Act. It does not cover the erstwhile Section 147 of the Act. As rightly submitted by Mr. Pardiwalla, the Assessing Officer could have assumed jurisdiction while issuing the impugned notices only after complying with the amended Section 147. The same has not been done by the Assessing Officers as (a) his assumption of jurisdiction is on the basis of his 'reason to believe' that income chargeable to tax has escaped assessment, a concept, which is no longer*

*recognised in the amended Section 147; and (b) the amended Section 147 is in any event subject to Sections 148 to 153, which would also include the procedure contained in Section 148A, which has not been followed. Therefore, the impugned notices do not even comply with the relevant statutory provisions, even if we do not find fault with the Explanations in the two notifications. Infact the Delhi High Court in paragraph 84 of Mon Mohan Kohli (Supra) has also considered and accepted this aspect of the matter.*

*49. Some more reasons why the reopening notices must go are :*

*(a) Section 297 of the Act provides a saving clause for applicability of various provisions of the 1922 Act, even though the Act itself had been repealed. In the absence of such a saving clause for applicability of erstwhile Sections 147 to 151 of the Act, the amended provision of the Act would apply from 1st April, 2021.*

*(b) Moreover, the reopening notices issued after 1st April, 2021 are bad in law even if one was to apply the Explanations to the Notification Nos.20 and 38. The Explanations seek to extend the applicability of erstwhile Sections 148, 149 and 151. They do not cover Section 147, which empowers revenue to reopen subject to Section 148 to 153, which includes Section 148A. Thus, even if Explanation are valid, procedure of Section 148A is not followed and hence, notices are invalid.*

*(c) In any case, Relaxation Act is not applicable for Assessment Years 2015-2016 or any subsequent year and, hence, the question of applicability of the Notification Nos.20 and 38 of 2021 does not arise. The time limit to issue notice under Section 148 of the Act for the Assessment Years 2015-2016 onwards was not expiring within the period for which Section 3(1) of Relaxation Act was applicable and, hence, Relaxation Act could never apply for these assessment years. As a consequence, there can be no question of extending the period of limitation for such assessment years.*

*These findings of the Bombay High Court have not been disturbed by the Apex Court in Ashish Agarwal (Supra). The Apex Court only modified the orders passed by the respective High Courts to the effect that*

> *the notices issued under Section 148 of the Act which were subject matter of writ petitions before various High Courts shall be deemed to have been issued under Section 148A(b) of the Act and the Assessing Officer was directed to provide within 30 days to the respective assessee the information and material relied upon by the Revenue so that the assessee could reply to the show cause notices within two weeks thereafter. The Apex Court held that the Assessing Officer 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). The Apex Court also expressly kept open all contentions which may be available to the assessee including those available under Section 149 of the Act and all rights and contentions which may be available to the concerned assessee and revenue under the Finance Act 2021 and in law, shall be continued to be available.*
>
> *31. Notwithstanding this, the CBDT has issued instruction No.1 of 2022 contrary to what the courts have held. Even by the finding of the Apex Court in Ashish Agarwal (Supra), only the original notice issued under Section 148 of the Act was converted into a notice deemed to have been issued under Section 148A(b) of the Act. The Apex Court held that the Assessing Officer shall thereafter pass orders in terms of Section 148A(b) in respect of each of the assessee and after following the procedure as required under Section 148 of the Act. Even judgment in Ashish Agarwal (supra) does not anywhere indicate the notices that could be issued for eternity like in this case, on 31st July 2022, would be sanctioned by the authority other than sanctioning authority defined under the Act.*
>
> (emphasis supplied)

33 In *Ganesh Dass Khanna* (Supra), the Delhi High Court has already declared paragraph 6.1 and 6.2(ii) of the Instructions as bad in law. Further, this Court in *Group M Media India P. Ltd.* (Supra) has held that a declaration of a Board's instruction as ultra vires by a competent Court would be binding on all authorities administering the Act all over the

country and accordingly, the officers implementing the Act were bound by the decision of the Delhi High Court. Paragraphs 44.4, 49, 51, 52 and 55 of *Ganesh Dass Khanna* (Supra) read as under :

> *44.4. In our opinion, the observations of the coordinate bench make it amply clear that Section 149 of the amended 1961 Act continued to operate despite attempts to the contrary made by the introduction of the aforementioned explanations in Notifications dated 31.03.2021 and 27.04.2021. This is evident upon perusal of the following observations made by the coordinate bench in Mon Mohan Kohli"s case :*
>
> > *"…100. This Court is of the opinion that Section 3(1) of [the] Relaxation Act empowers the Government/Executive to extend only the time limits and it does not delegate the power to legislate on provisions to be followed for initiation of reassessment proceedings. In fact, the Relaxation Act does not give power to [the] Government to extend the erstwhile Sections 147 to 151 beyond 31st March, 2021 and/or defer the operation of substituted provisions enacted by the Finance Act, 2021. Consequently, the impugned Explanations in the Notifications dated 31st March, 2021 and 27th April, 2021 are not conditional legislation and are beyond the power delegated to the Government as well as ultra vires the parent statute i.e. the Relaxation Act. Accordingly, this Court is respectfully not in agreement with the view of the Chhattisgarh High Court in Palak Khatuja (supra), but with the views of the Allahabad High Court and Rajasthan High Court in Ashok Kumar Agarwal (supra) and Bpip Infra Private Limited (supra) respectively.*
> >
> > *101. The submission of the Revenue that Section 6 of the General Clauses Act saves notices issued under Section 148 post 31st March, 2021 is untenable in law, as in the present case, the repeal is followed by a fresh legislation on the same subject and the new Act manifests an intention to destroy the old procedure. Consequently, if the Legislature has permitted reassessment to be made in a particular manner, it can only be in this manner, or not at all.*
> >
> > *102. The argument of the respondents that the substitution made by the Finance Act, 2021 is not applicable to past Assessment Years, as it is substantial in nature is contradicted by[the] Respondents' own Circular 549 of 1989 and its own submission that from 1st July, 2021, the*

*substitution made by the Finance Act, 2021 will be applicable.*

*103. Revenue cannot rely on Covid-19 for contending that the new provisions Sections 147 to 151 of the Income Tax Act, 1961 should not operate during the period 1st April, 2021 to 30th June, 2021 as Parliament was fully aware of [the] Covid-19 Pandemic when it passed the Finance Act, 2021. Also, the arguments of the respondents qua non-obstante clause in Section 3(1) of the Relaxation Act, „legal fiction" and stop the clock provision" are contrary to facts and untenable in law.*

*104. Consequently, this Court is of the view that the Executive/Respondents/Revenue cannot use the administrative power to issue Notifications under Section 3(1) of the Relaxation Act, 2020 to undermine the expression of Parliamentary supremacy in the form of an Act of Parliament, namely, the Finance Act, 2021. This Court is also of the opinion that the Executive/Respondents/Revenue cannot frustrate the purpose of substituted statutory provisions, like Sections 147 to 151 of [the] Income Tax Act, 1961 in the present instance, by emptying it of content or impeding or postponing their effectual operation…"*

*xxxxxxxxxxxxxxxxx*

*49. The arguments advanced on behalf of the revenue that since time limits have been extended by the Central Government by virtue of the Notifications issued under Section 3(1) of TOLA and, therefore, the impugned actions which were taken much before the end date, i.e., 30.06.2021 were valid in the eyes of the law, is misconceived for the following reasons :*

*(i) First, there was no power invested under TOLA, and that too via Notifications, to amend the statute, which had the imprimatur of the Legislature. Since, with effect from 01.04.2021, when FA 2021 came into force, the Notifications dated 31.03.2021 and 27.04.2021, which are sought to be portrayed by the revenue as extending the period of limitation, were contrary to the provisions of Section 149(1)(a) of the Act, in our opinion, they lost their legal efficacy.*

*(ii) Second, the extension of the end date for completion of proceedings and compliances, a power which was conferred on the Central Government under Section 3(1) of TOLA, cannot be construed as one which could extend the period of limitation provided under Section 149(1)(a)*

*of the 1961 Act. As per the ratio enunciated in Ashish Agrawal"s case, Section 149(1)(a) would apply to AY 2016-17 and AY 2017-18.*

*xxxxxxxxxxxxxxxxx*

*51. This brings us to the tenability of the travel back in time theory encapsulated in paragraphs 6.1 and 6.2(ii) of the Instruction dated 11.05.2022. For convenience, the relevant part of the instruction is set forth hereafter :*

*"…6.0 Operation of the new section 149 of the Act to identify cases where fresh notice under section 148 of the Act can be issued :*

*6.1 With respect of [to] operation of new section 149 of the Act, the following may be seen :*

*Hon'ble Supreme Court has held that the new law shall operate and all the defences available to assessees under section 149 of the new law and whatever rights are available to the Assessing Officer under the new law shall continue to be available.*

*Sub-section (1) of new section 149 of the Act as amended by the*
*Finance Act, 2021 (before its amendment by the Finance Act, 2022) reads as under :-*

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

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

*(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of 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.*

*Hon'ble Supreme Court has upheld the views of High Courts that the benefit of new law shall be made available even in respect of proceedings relating to past assessment years. Decision of [the] Hon'ble Supreme Court read with the 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.*

*6.2 Based on [the] above, the extended reassessment notices are to be dealt with as under :*

*(i) AY 2013-14, AY 2014-15 and AY 2015-16: Fresh notice under section 148 of the Act can be issued in these cases, with the approval of the specified authority, only if the case falls under clause (b) of sub-section (1) of section 149 as amended by the Finance Act, 2021 and reproduced in paragraph 6.1 above. Specified authority under section 151 of the new law in this case shall be the authority prescribed under clause (ii) of that section.*

*(ii) AY 16-17, AY 17-18: Fresh notice under section 148 can be issued in these cases, with the approval of the specified authority, under clause (a) of sub-section (1) of new section 149 of the Act, since they are within the period of three years from the end of the relevant assessment year. Specified authority under section 151 of the new law in this case shall be the authority prescribed under clause (i) of that section…"*

*52. A careful perusal of the judgment of the Supreme Court rendered in Ashish Agrawal"s case and the provisions of TOLA would show that neither the said judgment nor TOLA allowed for any such modality to be taken recourse to by the revenue, i.e., that extended reassessment notice would "travel back in time" to their original date when such notices were to be issued and thereupon the provisions of amended Section 149 would apply.*

*xxxxxxxxxxxxxxxxx*

*55. Furthermore, the reference made in paragraphs 6.1 and 6.2(ii) of the Instruction dated 11.05.2022, to the extent it propounds the "travel back in time" theory, is declared bad in*

*law.*

(emphasis supplied)

Paragraphs 6 and 8 of *Group M Media India P. Ltd.* (Supra) read as under :

> *6. Mr. Easwar, learned Senior Counsel appearing for the petitioner points out that Instruction No.1 of 2015 dated 13 th January, 2015 issued by the CBDT has been quashed by the Hon'ble Delhi High Court in Tata Teleservices Ltd. (supra). Therefore, the Assessing Officer cannot now place reliance upon it to disregard the statutory duty cast upon him in terms of Section 143(1) and 143(1D) of the Act. Further attention was drawn to the decisions of this Court in Commissioner of Income Tax Vs. Smt. Godavaridevi Saraf, 113 ITR 589 and Commissioner of Income Tax Vs. Valson Dyeing Bleaching and Printing Works, 259 ELT 33 wherein it is held that where a provision of law was declared ultra virus by the competent Court then the same will be binding on all Authorities administering the Act all over the Country. This so long as there is no contrary decision on that point. The Assessing Officer is, therefore, obliged to ignore Instruction No.1 of 2015 dated 13th January, 2015 and decide the petitioner's application to process the refund under Section 143(1) of the Act and consider the applicability of sub-section 1(D) of Section 143 of the Act to the facts of the present case for the purpose of grant of refund.*
>
> *xxxxxxxxxxxxxxxxx*
>
> *8. Before us, Mr. Mohanty does not dispute the fact that in view of the Delhi High Court decision in Tata Teleservices Ltd. (supra), Instruction No.1 of 2015 dated 13 th January, 2015 of the CBDT would not fetter the Assessing Officer in any manner from exercising his discretion to process the return of income under Section 143(1) of the Act and considering the grant of refund under Section 143(1D) of the Act. The petitioner before the Delhi High Court was not granted refund, pending scrutiny assessment in view of Instruction No.1/2015 dated 13th January, 2015. The Delhi High Court held that the instruction issued is without jurisdiction. This for the reason that although Section 119 of the Act does empower the CBDT to issue instructions for the proper administration of the Act, this power is hedged in by limitations as provided in the proviso to Sections 119(1) and also 119(2) of the Act, i.e. the CBDT cannot direct an Assessing Officer to dispose of a case in a particular manner nor can the instructions be prejudicial to the assessee. Therefore, the circulars / orders / instructions issued by the*

> *CBDT under Section 119 of the Act would be binding upon the Revenue only to the extent they are beneficial to the assessee. Such Instructions, if not beneficial to the assessee, cannot prevail over the Act. In the above view, the Delhi High Court held that Instruction No.1 of 2015 dated 13 th January, 2015 issued by the CBDT is unsustainable in law and, therefore, set it aside. It must also be pointed out that the Revenue is not disputing the decision of the Delhi High Court in Tata Teleservices Ltd. (supra) either on facts or in law. Therefore, in view of the decision of this Court in Godavaridevi Saraf (supra), the officers implementing the Act are bound by the decision of the Delhi High Court and Instruction No.1 of 2015 dated 13th January, 2015 has ceased to exist. Therefore, no reference to the above Instruction can be made by the Assessing Officer while disposing of the petitioner's application in processing its return under Section 143(1) of the Act and consequent refund, if any, under Section 143(1D) of the Act. Needless to state that the Assessing Officer would independently apply his mind and take a decision in terms of Section 143 (1D) of the Act whether or not to grant a refund in the facts and circumstances of the petitioner's case for A.Y. 2015-16.*
>
> (emphasis supplied)

34 It will be also useful to note that even in *Hindustan Aeronautics Ltd.* (Supra) the Apex Court has held that circulars/instructions are only binding on the Revenue and not on the assessees and certainly not on the Hon'ble Courts.

35 The Revenue's contention that the reopening notice was to relate back to an earlier date is entirely flawed and unacceptable. Thus, the reassessment notices issued for AY 2013-14 are patently barred by limitation as the six years limitation period under the Act (as extended by Section 3 of TOLA) expired by 31st March 2021. However, even on the Revenue's demurrer and assuming that such reopening notices could travel back in time and that the provisions of TOLA protected such reopening

notices (we do not agree), even then, in so far as the notices issued for AY 2013-14 is concerned, would in any case be barred by limitation. As stated earlier, under the erstwhile Section 149, a notice under Section 148 could have been issued within a period of six years from the end of the relevant assessment year. The Notifications issued under TOLA, viz., Notification No.20/2021, which is relied upon by the Revenue, only cover those cases where 31st March, 2021 was the end date of the period during which the time limit, specified in, or prescribed or notified under the Income Tax Act falls for completion. The limitation under the Income Tax Act, 1961 (erstwhile Section 149) for reopening the assessment for the AY 2013-14 expired on 31st March 2020. Hence, Notification No.20/2021 did not apply to the facts of the present case, viz., reopening notice for the AY 2013-14. Therefore, the Revenue could not issue any notice under Section 148 beyond 31st March 2021 and hence, even the relate back theory of the Revenue could not safeguard the reassessment proceedings initiated after 1st April 2021 for AY 2013-14

36 Therefore, in the present case, as the foundation of the entire reassessment proceeding, viz., the notice issued in June 2021 itself was barred by limitation in view of non-applicability of Notification No.20/2021, the superstructure sitting thereon, viz., the reassessment proceedings initiated pursuant to judgment in Ashish Agarwal will also be

regarded as beyond time limit. Therefore, on this ground as well, the impugned reopening notice dated 28th July 2022 issued for AY 2013-14 in petitioner's case is barred by limitation and deserves to be quashed and set aside. Alternatively, it is well settled that a notice under Section 148 of the Act cannot be issued in order to reopen the assessment of an assessee in a case where the right to reopen the assessment was already barred under the pre-amended Act on the date when the new legislation came into force. In ***CIT V/s. Onkarmal Meghraj (HUF)***[14] the Hon'ble Apex Court held :

> *"That raises the question whether that proviso could be applied without reference to any period of limitation. It is a well-settled principle that no action can be commenced has expired. It is unnecessary to cite authorities in support of this position. Does the fact that the second proviso says that there is no period of limitation make a difference? xxxxxxxxxx.*
>
> *xxxxxxxxxx In J.P. Jani, Income-tax Officer v. Induprasad Devshanker Bhatt (1969) 72 I.T.R. 595; (1969) 1 S.C.R. 714 (S.C.) this court held that the Income-tax Officer cannot issue a notice under section 148 of the Income Tax Act, 1961, in order to reopen the assessment of an assessee in a case where the right ti reopen the assessment was barred under the 1922 Act at the date when the new Act camne into force. It was held that section 297(2)(d)(ii) of the 1961 Act was applicable only to this cases where the right of the Income-tax Officer to reopen an assessment was not barred under the repealed Act. This decision is broadly in line with the opinion of Das and Kapur JJ. in Prashar's case (1963) 49 I.T.R. (S.C.) 1; (1964) 1 S.C.R. 29 (S.C.) xxxxxxxxxx.*

For AY 2013-14, the time limit to issue a notice under Section 148 of the Act had already expired on 1st April 2021. On the said date, the assessee had a vested right, which *de hors* the 1st proviso to the amended Section 149 of the Act, could not be taken away and thus, based on the well

14 (1974) 93 ITR 233 (SC)

settled principles of law, the reopening of the AY 2013-14 after 31st March 2021 is invalid, without jurisdiction and barred by limitation.

37 We shall deal with Mr. Sharma's submissions as under :

(a) As regards reliance on the provisions of the Limitation Act, 1963, the provisions of the Limitation Act, 1963 do not apply to the provisions of the Income Tax Act, 1961 and especially, not in the present case in view of the specific period provided for in the provisions of the Act as well as TOLA. In any case, this defence of respondents cannot be sustained as they have not taken any such contention in either the order passed under Section 148A(d) or in the affidavit in reply;

(b) As regards applicability of Section 3 of TOLA - exclusion of Covid period, this argument is, in effect, nothing but the theory of travel back in time which was urged by the Revenue to support the reopening notices issued between 1st April 2021 to 30th June 2021 before this Court, as well as other High Courts [and which eventually led to the judgment in *Ashish Agarwal* (Supra)]. As noted earlier, this Court and other Courts have already snubbed the relate back/travel back in time theory and also the Instruction No.1 of 2022;

(c) As regards applicability of Notifications No.20 of 2021 dated 31st March 2021 and No.38 of 2021 dated 27th April 2021 extending

the time limit even for AY 2014-15 and it is extended till 30th June 2021, respondent, in other words, argues that the Notification No.20 of 2021 seeks to extend the time limit *inter alia* for issuing notice under Section 148 which was expiring on 31st March 2021 not only under the provisions of the Act, but would also include the time extension in the Act by virtue of TOLA. To put in another way, the time limit expiring on 31st March 2021 specified in Notification No.20 of 2021, according to respondents, would have to be read to include limitation under the Act read with TOLA. As noted earlier, this contention is flawed inasmuch as it expands the scope of the Notification and violates its plain language, viz., the time limit, specified in, or prescribed or notified under the Income Tax Act falls for completion. The limitation under the Act (erstwhile Section 149) for reopening the assessment for the AY 2013-14 expired on 31st March 2020. Hence, Notification No.20 of 2021 did not apply to the facts of the present case. Notification No.38 of 2021 dated 27th April 2021 categorically uses the expression the time limit for completion of such action expires on the 30th day of April 2021 due to its extension by the said notifications, such time limit shall further stand extended to the 30th day of June 2021. Hence, it is incorrect to say that 31st March 2021 under the Act would mean under the Act, plus, extension by TOLA;

(d) The submission that the Hon'ble Supreme Court, while deciding *Ashish Agarwal* (Supra), was conscious of the limitation of 6 years expiring on 31st March 2021 under the pre-amendment provisions in respect of AY 2013-14 if the Covid period was not excluded, despite which the Apex Court has stated that all notices issued should be read to be issued under Section 148A to prevent the Revenue getting remediless, is unacceptable. This argument clearly fails to appreciate that the effect of Revenue's contention is that despite the substantive defence available to the assessee in Section 149 of the amended Act, as well as the express directions of the Hon'ble Supreme Court allowing the assessee to take all defences available under the Act, the judgment of *Ashish Agarwal* (Supra) would permit them to reopen the assessment of AY 2013-14 would not only make the defence expressly available to the assessees useless and unusable, but would be contrary to well established principles of law. In *Supreme Court Bar Association* (Supra), the Hon'ble Supreme Court espoused that its powers conferred under Article 142 of the Constitution of India, being curative in nature and even with the width of its amplitude, cannot be construed as powers which authorise the Court to ignore the substantive rights of a litigant while dealing with a cause pending before it. Article 142 would not be used to supplant substantive law applicable to a case or cause and it will not be used to build a new edifice where none existed earlier by ignoring express statutory provisions dealing with a subject and thereby to

achieve something indirectly which cannot be achieved directly. In the present case, Revenue's argument, if accepted, would be in conflict with the above law as despite the express language of 1st proviso to Section 149, reopening notice for the AY 2013-14 would be permitted to be issued beyond 6 years on the pretext that the Hon'ble Supreme Court in exercise of its powers under Article 142 permitted them to do so and otherwise, they would be remediless. On the contrary, while permitting the Revenue to re-initiate the reassessment proceedings, the Apex Court also granted liberty to assessees to raise all defences available to the assessee including the defences under Section 149 of the Act. The Apex Court observed that its order will strike a balance between the rights of the Revenue as well as the respective assessees. Moreover, in *Siemens Financial* (Supra), this Court has already considered a similar contention of the Revenue and held that equity has no place in taxation or while interpreting taxing statute such intendment would have any place and that taxation statute has to be interpreted strictly. The Revenue also fails to appreciate that no particular case was considered by the Hon'ble Supreme Court while deciding *Ashish Agarwal* (Supra).

It is apposite to cite here an extract of the judgment of the Hon'ble Supreme Court in ***Parashuram Pottery Works Co. Ltd V/s. Income Tax Officer***[15], which reads as under :

15 (1977) 106 ITR 1 (SC)

> *…….. It has been said that the taxes are the price that we pay for civilization. If so, it is essential that those who are entrusted with the task of calculating and realising that price should familiarise themselves with the relevant provisions and become well-versed with the law on the subject. Any remissness on their part can only be at the cost of the national exchequer and must necessarily result in loss of revenue. At the same time, we have to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity…".*

(e) The contentions that (i) the true meaning of Apex Court order in *Ashish Agrawal* (Supra) is that the notices issued under Section 148, irrespective of the Assessment Year of the unamended Act, between 1st April 2021 to 30th June 2021 are to be treated as show cause notices without being hit by limitation, if issued on or before 30th March 2021 and (ii) the defence under Section 149 available to the assessee would mean that if the Revenue had issued any notice under Section 148 under the unamended Act during the period 1st April 2021 to 30th June 2021 pertaining to AY 2013-14, the same would be barred by limitation under Section 149 in effect means the Civil Appeal of the Revenue in *Ashish Agrawal* (Supra) was dismissed, are completely flawed. It completely fails to appreciate that the limitation period to issuance of reopening notices under Section 148 for all Assessment Years prior to AY 2013-14 had already expired on 31st March 2019 or earlier. The provisions of TOLA obviously could not save such a time limit and the Revenue could not have validly

issued reopening notices for years prior to AY 2013-14 on or after 1st April 2019. Therefore, the defence so expressly allowed to be taken by the Hon'ble Supreme Court would otherwise be unnecessary;

(f) The submission that the Apex Court, in exercise of power under Article 142 of the Constitution, has deemed the notices issued between 1st April 2021 to 30th June 2021 under Section 148A(b) of the Act issued within limitation and by following the manner of computation of limitation provided in TOLA, the days from 1st April 2021 to 30th June 2021 would stand excluded and, therefore, the notices could be deemed to be issued on 31st March 2021, we find it to be rather fallacious. The fallacy of this contention of Revenue is conspicuous inasmuch as if the notices issued under Section 148 between 1st April 2021 and 30th June 2021, which according to them, are deemed to be issued on 31st March 2021, then it is obvious that the provisions of the new reassessment law introduced by the Finance Act, 2021 cannot apply as they came into force w.e.f. 1st April 2021 and onwards. *Ashish Agarwal* (Supra) in no uncertain words stated that the new provisions have to apply to all such notices. Therefore, the argument urged is completely contrary to law as well as the binding directions of the Hon'ble Supreme Court;

(g) As regards reliance on *Touchstone Holdings* (Supra), the Hon’ble Delhi High Court held that the initial notice dated 29th June, 2021

issued under Section 148 is within limitation. No findings on the validity or otherwise of the notice issued after May 2022 pursuant to the judgment in *Ashish Agarwal* (Supra) is given. Moreover, in that case, petitioner did not argue that for AY 2013-14 the time limit would have expired even under TOLA on 31st March 2021;

(h) As regards *Salil Gulati* (Supra), the Delhi High Court, to reach its conclusion, has merely relied upon its earlier decision in *Touchstone Holdings* (Supra). It will be relevant to note that following *Salil Gulati* (Supra), a similar view was taken by the Delhi High Court in ***Yogita Mohan V/s. Income Tax Officer***[16]. Against the judgment, in an SLP preferred by the assessee, the Apex Court has issued notice vide its order dated 20th February 2023. It should also be noted that the Hon'ble Gujarat High Court in ***Keenara Industries (P.) Ltd. V/s. Income Tax Officer***[17] and the Allahabad High Court in ***Rajeev Bansal V/s. Union of India***[18] have taken a view that notices issued for AY 2013-14 were barred by limitation in view of the amended Section 149 of the Act. Subsequently, the Apex Court, in SLPs preferred by the Revenue, has issued notice and stayed both the orders/judgments;

(i) We are unable to comprehend the contention raised that if the notice dated 30th May 2022 under Section 148A(b) of the Act is valid in

16 WP(C) No.15676 of 2022 dated 15.11.2022
17 (2023) 453 ITR 51
18 (2023) 453 ITR 153

terms of Apex Court order in *Ashish Agrawal* (Supra), then the notice under Section 148 of the Act cannot be issued on 31st March 2021 and respondent cannot be expected to do impossible. It has nowhere been urged by petitioner that assessing officer ought to complete the proceedings before the show cause notice under Section 148A(b) of the Act was issued. It is the case of petitioner that the reopening notice under Section 148 ought to have been issued within 6 years from the end of the AY 2013-14. This limitation period, as extended by TOLA, expired on 31st March 2021. However, in the present case, the reopening notice has been issued in July 2022 and, therefore, beyond the statutory time limit. In any case, as stated above, the Hon'ble Supreme Court, while invoking powers under Article 142, consciously and categorically granted liberty to assessees to raise all defences available to the assessee, including the defences under Section 149 of the Act. This specific and express directions cannot be set at naught. Accepting this contention of the Revenue would be a travesty of justice.

38 In the circumstances, in our view, the notice issued under Section 148 of the Act, impugned in this petition, for AY 2013-14 is issued beyond the period of limitation.

39 Having decided in favour of assessee/petitioner on this issue of limitation, we are not discussing the other grounds of challenge raised in the petition. Petitioner may raise all those contentions independently in any

other proceeding.

40 Petition disposed accordingly. No order as to costs.

(DR. NEELA GOKHALE, J.) (K. R. SHRIRAM, J.)