

**IN THE INCOME-TAX APPELLATE TRIBUNAL “D” BENCH,
MUMBAI**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
&
SMT.RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.5532/MUM/2025
(A.Y.2017-18)**

Ratan N. Motwani (HUF) 202, Hira Villa, Pali Road, Near Hong Kong Bank, Bandra west, Mumbai-400050.	Vs.	ITO, Ward 23(3)(1) Piramal Chambers, Lalbaug, Parel, Mumbai-400012.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AAAHR2664H		
Appellant	..	Respondent

Appellant by :	Shri. Bhadresh Doshi, CA
Respondent by :	Shri Uma Shankar Prasad- CIT DR

Date of Hearing	11.11.2025
Date of Pronouncement	17.11.2025

आदेश / ORDER

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as “CIT(A)”] dated 29.08.2025 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2017-18.

2. The grounds of appeal are as follows:

“1. On the facts and circumstances of the case and in law, the CIT (A) ought to have considered the notice issued under Section 148 on 27-7-2022 as invalid and bad in law in view of the fact that it was issued after the expiry of the time period as extended by the provisions of Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 after

excluding the period referred to in third proviso to Section 149 as explained by the Supreme Court in the case of *UOI v. Rajeev Bansal* [2024] 167 taxmann.com 70 (SC). As a result, the said notice as well as the entire assessment proceeding ought to have been declared as null and void.

2. On the facts and circumstances of the case and in law, the learned Assessing Officer has erred in issuing the order under Section 148A(d) and the notice under Section 148 after obtaining the approval of the approval of PCIT-19, Mumbai which was not the correct 'specified authority' as per Section 151 who should have approved it when three years have already elapsed from the end of the relevant assessment year.

3. On the facts and circumstances of the case and in law, the ITO, Ward 23(3)(1). Mumbai has erred in passing the order u/s. 148A(d) and also issuing the notice u/s. 148 without appreciating that he was not having the jurisdiction for the same in view of Section 151A and the notification issued thereunder notifying e-Assessment of Income Escaping Assessment Scheme, 2022 and, thereby, rendering the said order and the notice as well as the entire assessment proceeding as null and void.

4. On the facts and circumstances of the case and in law, the CIT(A) has erred in confirming the addition of an amount of 51,90,400 under section 68 of the Act to the total income of the appellant alleging the sale of diamonds to Abhinandan Diamond Pvt. Ltd. to be an accommodation entry sought by the appellant.

5. On the facts and circumstances of the case and in law, the CIT(A) has erred in confirming the addition made by the Assessing Officer without providing the copy of the statement recorded of Mr. Deepak Jain on which he had relied upon and also without providing the opportunity to cross examine him.

6. On the facts and circumstances of the case and in law, the CIT(A) has erred in confirming the additions made by the Assessing Officer by relying upon various evidences without confronting them to the appellant and thus violating principle of natural justice.

7. On the facts and circumstances of the case and in law the CIT(A) has erred in confirming the addition of amount received on account of sale of diamonds to Ashtapad Gems and Gravit Diamonds Pvt. Ltd. aggregating to 51,89,440.

8. On the facts and circumstances of the case and in law, the CIT(A) has erred in confirming the addition an amount of 22,00,000, being receipt on account of part repayment of a loan given by the appellant in the earlier year, under section 68 of the Act.”

The Appellant craves leave to add, alter, amend, vary and/or withdraw any or all the above grounds of appeal.

3. Brief facts of the case are that the assessee HUF had filed return for A.Y. 2017-18 declaring income of Rs. 4,02,660/-. Subsequently, information was received by the ld. AO from Investigation Wing regarding accommodation entries taken by the assessee from M/s. Abhinandan

Diamond Pvt. Ltd. amounting to Rs. 1,06,00,420/- which were discovered during the course of a search u/s. 132 of the Act in the case of one Shri. Deepak Jain. Accordingly, a notice u/s. 148 was issued on 24.06.2021 to the assessee.

Subsequently, following the judgment of the Hon'ble Supreme Court in the case of *UOI & Ors. Vs. Ashish Agarwal* (Civil Appeal No. 3005/2022 dated 04.05.2022), prescribed procedure was followed by the ld. AO and an order u/s. 148A(d) was passed on 27.07.2022 with the approval of PCIT-19 Mumbai. Accordingly, a notice u/s. 148 was issued and the assessment u/s. 147 r.w.s 144B was completed after making additions of Rs. 51,90,400/- and Rs. 51,89,440/- u/s. 68 on account of bogus entries of sales shown to M/s. Abhinandan Diamond Pvt. Ltd. and M/s. Aishpra Gems Gravit Diamonds Pvt Ltd. respectively. Further, an addition of Rs. 22,00,000/- was also made u/s. 68 on account of repayment of loan received by the assessee which was advanced to Shivanjali Co-operative Housing Society Ltd. as no confirmed was filed by the assessee, the amount of Rs. 22,00,000/- earlier was treated as unexplained cash credit.

Aggrieved, the assessee preferred an appeal before ld. CIT(A) who dismissed the appeal vide order dated 29.08.2025. Further aggrieved, the assessee has filed an appeal before the Tribunal. The assessee has raised as many as eight grounds in his appeal. Besides contesting the additions on merits, he has challenged the reopening on various legal

grounds viz, improper approval, incorrect jurisdiction and also the issue of notice beyond limitation. Out of these, we first take up the issue relating to the mandatory approval by the ‘specified authority’.

4. Brief facts relating to the issue are that the ld. AO obtained approval of PCIT-19 Mumbai as specified authority u/s. 151 of the Act. Before us, ld. AR has argued that the specified authority in this case would be the Pr. Chief Commissioner/ Chief Commissioner and not PCIT as per section 151(ii) of the Act as more than 3 years had elapsed from the end of the relevant assessment year. Ld. AR further placed reliance on the decisions of the Hon’ble Supreme Court as well as the jurisdictional High Court on this issue. Specifically, ld. AR cited the decision of Hon’ble Bombay High Court in *Ramesh Bachulal Mehta V. ITO [2025]* 177 taxmann.com 606 wherein under similar facts it was held that order dated 13.07.2022 passed u/s. 148A(d) and consequential notice u/s. 148 were violative of the provisions of section 151(ii) as sanction could only be accorded by the higher specified authority for notices issued beyond three years from the end of the relevant assessment year.
5. On the other hand, ld. DR has strongly relied on the orders of lower authorities and has made a detailed written submission on 11.11.2025. Relevant portion of the submission pertaining to the validity of sanctioning authority u/s. 151 is reproduced below wherein ld. DR has discussed the relevant judgments:

“1. Summary of Ramesh Bachulal Mehta case (Supra)-

1.1 *Vide the aforementioned Writs the assessee challenged the validity of the notice issued under section 148 of the Act on the ground that the AO did not obtain an appropriate prior sanction/approval as mandated under section 151 of the Act.*

1.2 *In para 4 of the order Hon'ble Court noted that the impugned notice was initially issued in May 2021 and subsequent to the judgment of Hon'ble Apex Court in UOI vs Ashish Agarwal (supra), the notice was treated as show-cause notice issued under section 148A(b) of the 'New Regime'. Subsequently an order under section 148A(d) was passed in July 2022.*

1.3 *The assessee argued that the said notice was for AY 2016-17, the order u/s 148A(d) has been passed beyond the 3-year period. It was argued that according to the provisions of section 151(ii), when more than three years have elapsed from the end of the relevant assessment year, the specified authority for obtaining the approval was either the Principal Chief Commissioner (Pr. CIT) or Principal Director General (Pr. DGIT), or where there is no Pr. CCIT or Pr. DGIT, the Chief Commissioner (CCIT) or the Director General (DGIT). It was further pointed out that in the given case the prior sanction/approval had been obtained from Pr. CIT.*

1.4 *Accordingly, Hon'ble High Court framed the dispute to be examined in para 6 as under-*

"In these facts, the limited point to be examined is whether the order dated 13.07.2022 passed under section 148A(d) for the Assessment Year 2016-17 after obtaining approval of Respondent No.2 [i.e. the PCIT-27, Mumbai], was in accordance with the provisions of section 151."

1.5 *The relevant part of the judgment in Rajeev Bansal Case that Hon'ble Bombay High Court relied upon in Ramesh Bachulala Mehta case (supra), from para 78 (of Rajeev Bansal) is reproduced below-*

"For example, the three-year time limit for assessment year 2017-2018 falls for completion on 31 March 2021. It falls during the time period of 20 March 2020 and 31 March 2021, contemplated under Section 3(1) of TOLA. Resultantly, the authority specified under Section 151(i) of the new regime can grant sanction till 30 June 2021."

1.6 *The assessee relied on the judgment of Hon'ble Supreme Court in case of Rajeev Bansal (supra) and Hon'ble High Court after going through para 73 to 81 of the same judgment, observed the following in para 9-*

"In the present case the period of three years from the end of the Assessment Year 2016-17 fell for completion on 31st March 2020. Since the expiry date fell during the time period of 20th March 2020 and 31st March 2021 contemplated under Section 3(1) of Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (for short "TOLA"), the authority specified under Section 151(i) of the new regime could have granted sanction till 30th June 2021. On perusal of the order, dated 13.07.2022, passed under Section 148A(d) of the Act, we find that the aforesaid order was passed after taking approval from Principal Commissioner of Income Tax (Respondent No.2). Since the aforesaid order was passed after

the expiry of three years from the end of the Assessment Year 2016-17, as per the substituted provisions of re-assessment, the authority specified under Section 151 (ii) of the Act (i.e. Principal Chief Commissioner or Chief Commissioner) was required to grant approval. Accordingly, we conclude that in the present case the approval has been obtained from the authority specified under Section 151(i) of the new regime instead of the authority specified under Section 151(ii) of the new regime."

Thus, despite observing that as per the directions of Hon'ble Apex Court in Ashish Agarwal case and subsequently in Rajeev Bansal case application of TOLA extended the limitation date to 30-06-2021, Hon'ble Court went on to hold that the sanction had not been obtained from appropriate authority.

1.7 Subsequently Hon'ble High Court referred to Para 78 of Rajeev Bansal case and held that time limit for sanction expired on 30-06-2021 and no sanction could have been awarded after that time.

2. Comments on the order of Hon'ble High Court-

2.1 On a careful perusal of the para 78 of the Rajeev Bansal Judgment it appears that the said para starts with expression "For example" which clearly indicates that therein, Hon'ble Apex Court has illustrated their immediately preceding observation with the help of an example. The immediately preceding observation would be there in para 77 and for the sake of reference para 77 is reproduced below-

"Parliament enacted TOLA to ensure that the interests of the Revenue are not defeated because the assessing officer could not comply with the preconditions due to the difficulties that arose during the COVID-19 pandemic. Section 3(1) of TOLA relaxes the time limit for compliance with actions that fall for completion from 20 March 2020 to 31 March 2021. TOLA will accordingly extend the time limit for the grant of sanction by the authority specified under Section 151. The test to determine whether 10LA will apply to Section 151 of the new regime is this: if the time limit of three years from the end of an assessment year falls between 20 March 2020 and 31 March 2021, then the specified authority under Section 151(i) has an extended time till 30 June 2021 to grant approval. In the case of Section 151 of the old regime, the test is: if the time limit of four years from the end of an assessment year falls between 20 March 2020 and 31 March 2021, then the specified authority under Section 151(ii) has time till 31 March 2021 to grant approval. The time limit for Section 151 of the old regime expires on 31 March 2021 because the new regime comes into effect on 1 April 2021."

2.2 It is obvious that the immediately preceding observation of Hon'ble Apex Court is about applicability of TOLA on new regime and specifically in respect of time limit for sanction of Specified Authority provided under Section 151, and the same was pointed out to be expiring on 30-06-2021 on application of TOLA. In this respect it is again emphasised that the said conclusion was only the half of the order of Hon'ble Apex Court, and it was not the final conclusion. The said conclusion only formed the basis for the final and most important conclusion which was the deeming of the legal fiction under Article 142 and the effects of the legal fiction so deemed.

3. A summary of the Rajeev Bansal Judgment-

3.1 In order to bring out the complete meaning of the judgment of Hon'ble Apex Court, first the disputes raised therein have been brought out as below and in this respect para 18 is reproduced below-

"18. The present batch of appeals gives rise to the following issues:

a. Whether TOLA and notifications issued under it will also apply to reassessment notices issued after 1 April 2021; and

b. Whether the reassessment notices issued under Section 148 of the new regime between July and September 2022 are valid."

3.2 The question of validity of the impugned notices arose above even when Hon'ble Apex Court had decided in Ashish Agarwal (supra) case that the original notices issued under old regime were to be treated as show-causes under section 148A of the new regime because in Rajeev Bansal it was specifically argued that the power of Hon'ble court cannot override the provisions of the Income Tax Act. The relevant part from clauses 'f' and 'g' of para 20 of the order wherein Hon'ble Court summarised the arguments made on behalf of the assesses is reproduced below-

"(f) Ashish Agarwal (supra) cannot be interpreted in a manner to exclude the entire period from April 2021 to September 2022. The directions issued by this Court under Article 142 of the constitution cannot contravene the substantive provisions contained in the Income Tax Act. Moreover, this Court in Ashish Agarwal (supra) expressly left open all the defences available to the assesses under the new regime, including the defence of limitation available under Section 149; and

(g). TOLA is only applicable to the provisions that specify time limits. Section 151 does not prescribe any time limit for the issuance of sanctions by the specified authorities. Therefore, TOLA does not apply to Section 151."

3.3 A summary of the disputes considered and settled by Hon'ble Court is as in the table below-

SN	Argument	Time limit if argument of assessee accepted	Time limit if argument of assessee rejected
1	TOLA will not apply to new regime	31.03.2020 and 31.03.2021	30.06.2021
2	Even if the extension provided by TOLA would apply it would apply only on time limit under section 149 and not in respect of sanction by specified authority under section 151	31.03.2020 and 31.03.2021	30.06.2021
3	TOLA would apply but Hon'ble Court can not override the time limit already provided under TOLA read with Income Tax Act by using discretionary	30.06.2021	June-September 2022

	<i>jurisdiction under Article 142</i>		
4	<i>What would be the effect of legal fiction deemed under Article 142</i>	<i>Exclusion period will not apply</i>	<i>Exclusion period will apply</i>

3.4 All these questions are to be considered in a series, and Revenue's notices could have been valid only if in respect of all three, Hon'ble Court gave a judgment in favour of Revenue. In respect of the first question i.e. whether TOLA would apply to new regime or not Hon'ble Apex Court concluded the following in para 68-

"After 1 April 2021, the Income Tax Act has to be read along with the substituted provisions. The substituted provisions apply retrospectively for past assessment years as well. On 1 April 2021, TOLA was still in existence, and the Revenue could not have ignored the application of TOLA and its notifications. Therefore, for issuing a reassessment notice under Section 148 after 1 April 2021, the Revenue would still have to look at: (i) the time limit specified under Section 149 of the new regime; and (ii) the time limit for issuance of notice as extended by TOLA and its notifications. The Revenue cannot extend the operation of the old law under TOLA, but it can certainly benefit from the extended time limit for completion of actions falling for completion between 20 March 2020 and 31 March 2021.

3.5 In para 69 Hon'ble Court explained the above example with the help of an illustration further affirming that TOLA would be applicable in respect of new regime also.

Accordingly, the first question was answered in favour of Revenue apropos of para 68 and 69 of the judgment

3.6 In respect of the second question that whether extension would apply in respect of the sanction of specified authority also. In this respect after a long discussion Hon'ble Court noted the following in para 77

"Parliament enacted TOLA to ensure that the interests of the Revenue are not defeated because the assessing officer could not comply with the preconditions due to the difficulties that arose during the COVID-19 pandemic. Section 3(1) of TOLA relaxes the time limit for compliance with actions that fall for completion from 20 March 2020 to 31 March 2021. TOLA will accordingly extend the time limit for the grant of sanction by the authority specified under Section 151. The test to determine whether TOLA will apply to Section 151 of the new regime is this: if the time limit of three years from the end of an assessment year falls between 20 March 2020 and 31 March 2021, then the specified authority under Section 151(i) has an extended time till 30 June 2021 to grant approval. In the case of Section 151 of the old regime, the test is: if the time limit of four years from the end of an assessment year falls between 20 March 2020 and 31 March 2021, then the specified authority under Section 151(ii) has time till 31 March 2021 to grant approval. The time limit for Section 151 of the old regime expires on 31 March 2021 because the new regime comes into effect on 1 April 2021."

3.7 Hon'ble Court again illustrated the above observation with the help of an example in para 78 and the same is reproduced below-

"For example, the three year time limit for assessment year 2017-2018 falls for completion on 31 March 2021. It falls during the time period of 20 March 2020 and 31 March 2021, contemplated under Section 3(1) of TOLA. Resultantly, the authority specified under Section 151(i) of the new regime can grant sanction till 30 June 2021."

3.8 Thus, Hon'ble Court answered second question also in favour of revenue that extension provided under TOLA will cover not only time limit under section 149 but also the time limit for sanction of specified authority under section 152 of the Act.

3.9 It is very important to point out here that the above part of Rajeev Bansal judgment forms only the basis for the subsequent and most important part of the judgment. Any reliance on the judgment considering only the observations made up till this part would be incorrect because, as pointed out above, out of the four issues under consideration only two have been decided. The most important question from Revenue's perspective of the deeming of legal fiction and its effect had not been decided till that part of the order of Hon'ble Apex Court.

3.10 It is also important to note that Hon'ble High Court in Bachulal Mehta Case (as relied upon by the assessee) relied on para 78 of the order and on the basis of Hon'ble Apex Court's conclusion that TOLA extended the time limit in respect of sanction of specified authority till 30-06-2021 only, concluded that the last date for sanction by specified authority was 30-06-2021 only. Such a stand considers only half of the judgment in Rajeev Bansal case and did not consider the most important part of the legal fiction deemed under Article 142 and its effects.

3.11 Further in part F of the Rajeev Bansal order, from para 80 onwards Hon'ble Court is specifically dealing with validity of notices issued in June-September 2022 i.e. the 3rd question. Hon'ble Court first discussed the scope of powers under Article 142 and stated that the directions issued under the same did not make a ratio. In sub-part ii of Part F Hon'ble Court observed that directions contained in Ashish Agarwal case would apply to all notices issued between 1" April 2021 to 30th June 2021 under old regime whether challenged in appeal/writ or not (the pan India application was clearly brought out in para 92). In answering the third question Hon'ble Court referred to the legal fiction that was deemed in Ashish Agarwal and relevant part from para 89 is reproduced below-

"In Ashish Agarwal (supra), this Court: (i) upheld the judgments of the High Courts; and (ii) deemed the notices issued under Section 148 of the old regime as show cause notices issued under Section 148A(b) of the new regime. By agreeing with the judgments of the High Courts, this Court laid down the law that the provisions of the new regime will be applicable for all the reassessment notices issued under Section 148 after 1 April 2021. As a result of this holding, all the reassessment notices issued in terms of Section 148 of the old regime would have been declared invalid. Therefore, this Court deemed the reassessment notices issued under the old regime after 1 April 2021 as show cause notices issued under Section 148A(b) of the new regime."

3.12 Hon'ble Court noted that the discretionary jurisdiction under Article 142 had been exercised in order to balance the interests of the Revenue and the assesses directed that the reassessment notices issued under the old regime shall be deemed to have been issued under Section 148A(b) of the new regime. The same observation was again repeated in para 93 reproduced below-

"In Ashish Agarwal (supra), this Court was aware of the fact that it could not have used its jurisdiction under Article 142 to affect the vested rights of the assesses by deeming Section 148 notices under the old regime as Section 148 notices under the new regime. Hence, it deemed the reassessment notices issued under the old regime as show cause notices under Section 148A(b) of the new regime. Further, the Court directed the Revenue to provide all the relevant material or information to the assesses and thereafter allowed the assesses to respond to the show cause notice by availing all the defences, including those available under Section 149. Thus, the Court balanced the equities between the Revenue and the assesses by giving effect to the legislative scheme of reassessment as contained under the new regime. It supplemented the existing legal framework of the procedure of reassessment under the Income Tax Act with a remedy grounded in equitable standards."

3.13 Hon'ble Court clearly brought out that the purpose of exercising the discretionary jurisdiction under Article 142 was to balance the interests of both the parties and provide a remedy on equitable standards. Thus, any interpretation of the order that does not balance the interest of both parties would be inconsistent with intended objective of Hon'ble Court.

3.14 In sub-part iii of part F Hon'ble Apex Court discusses the 4th and last part of the dispute that is what are the effects of the above legal fiction and in para 99 Hon'ble Court clearly noted that the purpose of the said legal fiction was to enable revenue to proceed with re-assessment proceedings as per substituted provisions and in para 100 continued that these notices were never quashed (in spite of not being legally invalid). Hon'ble Court noticed that some of the mandatory actions under new section 148A can not be done by revenue now and in order to enable revenue to proceed with re-assessment proceedings the following was pointed out in para 102, in context of Ashish Agarwal judgment-

"While creating the legal fiction in Ashish Agarwal (supra), this Court was cognizant of the fact that the assessing officers were effectively inhibited from performing their responsibility under Section 148A until the requirement of supply of relevant material and information to the assesses was fulfilled. This Court lifted the inhibition by directing the assessing officers to supply the assesses with the relevant material and information relied upon by the Revenue within thirty days from the date of the judgment. Thus, during the period between the issuance of the deemed notices and the date of judgment in Ashish Agarwal (supra), the assessing officers were deemed to have been prohibited from proceeding with the reassessment proceedings."

3.15 Subsequently Hon'ble Court further elaborated on period of exclusion and in para 105 Hon'ble Court referred to the 3rd proviso to Section 149 and pointed out the following-

"A direction issued by this Court in the exercise of its jurisdiction under Article 142 is an order of a court. The third proviso to Section 149 of the new regime provides that the period during which the proceedings under Section 148A are stayed by an order or injunction of any court shall be excluded for computation of limitation. During the period from the date of issuance of the deemed notice under Section 148A(b) and the date of the decision of this Court in Ashish Agarwal (supra), the assessing officers were deemed to have been prohibited from passing a reassessment order. Resultantly, the show cause notices were deemed to have been stayed by order of this Court from the date of their issuance (somewhere from 1 April 2021 till 30 June 2021) till the date of decision in Ashish Agarwal (supra), that is, 4 May 2022."

3.16 In para 106 Hon'ble pointed out the second time period that is to be excluded-

"In Ashish Agarwal (supra), this Court directed the assessing officers to provide relevant information and materials relied upon by the Revenue to the assesses within thirty days from the date of the judgment. A show cause notice is effectively issued in terms of Section 148A(b) only if it is supplied along with the relevant information and material by the assessing officer. Due to the legal fiction, the assessing officers were deemed to have been inhibited from acting in pursuance of the Section 148A(b) notice till the relevant material was supplied to the assesses. Therefore, the show cause notices were deemed to have been stayed until the assessing officers provided the relevant information or material to the assesses in terms of the direction issued in Ashish Agarwal (supra). To summarize, the combined effect of the legal fiction and the directions issued by this Court in Ashish Agarwal (supra) is that the show cause notices that were deemed to have been issued during the period between 1 April 2021 and 30 June 2021 were stayed till the date of supply of the relevant information and material by the assessing officer to the assessee. After the supply of the relevant material and information to the assessee, time begins to run for the assesses to respond to the show cause notices."

3.17 Thus, the thirty days period after judgment in Ashish Agarwal case (supra) was declared is also to be excluded. In para 107 Hon'ble Court pointed out the 3 time period that is to be excluded-

"The third proviso to Section 149 allows the exclusion of time allowed for the assesses to respond to the show cause notice under Section 149A(b) to compute the period of limitation. The third proviso excludes "the time or extended time allowed to the assessee." Resultantly, the entire time allowed to the assessee to respond to the show cause notice has to be excluded for computing the period of limitation. In Ashish Agarwal (supra), this Court provided two weeks to the assesses to reply to the show cause notices. This period of two weeks is also liable to be excluded from the computation of limitation given the third proviso to Section 149. Hence, the total time that is excluded for computation of limitation for the deemed notices is: (i) the time during which the show cause notices were effectively stayed, that is, from the date of issuance of the deemed notice between 1 April

2021 and 30 June 2021 till the supply of relevant information or material by the assessing officers to the assessee in terms of the directions in Ashish Agarwal (supra); and (ii) two weeks allowed to the assessee to respond to the show cause notices."

3.18 Hon'ble Court clearly pointed out that two weeks' time allowed to the assessee is also to be excluded, thereby delineating all of the time that is to be excluded in calculating the time barring date which otherwise would have arrived at on 30-06-2021

3.19 In para 110 Hon'ble Court again summarised the position-

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

3.20 Thus, as a first step Hon'ble Court decided that TOLA would be applicable and both the issuance of notices and sanctions of specified authority will get time barred on 30-06-2021. Thus, while the time barring date was fixed, in second part of Rajeev Bansal judgment Hon'ble Court laid down that as an effect of the legal fiction deemed under Article 142, certain period was to be excluded in arriving at the time limit as decided in the first part. Hon'ble Mumbai High Court in Bachulal Mehta case (supra) stopped at the first part only i.e, the extension of time limit by application of TOLA but the exclusion period arising out of the deemed fictions has not been considered.

3.21 Hon'ble Apex Court in Rajeev Bansal is clearly pointing to surviving time and that the "procedures are to be completed within that time. In para 113 Hon'ble Court is again referring to the surviving period and directed the following-

"In Ashish Agarwal (supra), this Court allowed the assessee to avail all the defences, including the defence of expiry of the time limit specified under Section 149(1). In the instant appeals, the reassessment notices pertain to the assessment years 2013-2014, 2014-2015, 2015-2016, 2016-2017, and 2017-2018. To assume jurisdiction to issue notices under Section 148 with respect to the relevant assessment years, an assessing officer has to: (i) issue the notices within the period prescribed under Section 149(1) of the new regime read with TOLA; and (ii) obtain the previous approval of the authority specified under Section 151. A notice issued without complying with the preconditions is invalid as it affects the jurisdiction of the assessing officer. Therefore, the reassessment notices issued under Section 148 of the new regime, which are in pursuance of the deemed notices, ought to be issued within the time limit surviving under the Income Tax Act read with TOLA. A

reassessment notice issued beyond the surviving time limit will be timebarred."

3.22 It has clearly been noted that in respect of the impugned notices covering the impugned Assessment Years the AO has to issue the notice under section 148 within the time limit and also obtain the sanction of specified authority. In respect of the re-assessment notices issued in pursuance of the deemed notices the same were to be issued within the surviving time limit and only the notices issued beyond surviving time limit would be invalid. Hon'ble Court clearly pointed to the surviving time limit and that the notices were to be issued within the surviving time limit.

3.23 In para 114 in conclusion Hon'ble Court again reiterated and summarized it and brought out the steps in which the impugned notices are to be dealt with-

- In clause 'a' Hon'ble mentions that new provisions would apply from 1-4-2021*
- In clauses 'c' and 'd' Hon'ble Court pointed out that TOLA would extend the time limit under section 149 for issuance of notice*
- In clauses 'd' and 'e' Hon'ble court mentions that TOLA would extend the time limit for grant of sanction by Specified Authority under section 151*
- Clause 'f' mentions that the directions contained in Ashish Agarwal would apply to all notices issued under old regime between 1-4-2021 to 30-06-2021, whether challenged or not*
- In clause 'g' Hon'ble Court summarised that the time during which the show cause notices were deemed to be stayed is from the date of issuance of the deemed notice between 1 April 2021 and 30 June 2021 till the supply of relevant information and material by the assessing officers to the assesses in terms of the directions issued by this Court in Ashish Agarwal (supra), and the period of two weeks allowed to the assesses to respond to the show cause notices;*
- In clause 'h' Hon'ble Court again reaffirmed that the AOs were required to issue the notices under section 148 as per the new regime within the time limit surviving under the income tax act read with TOLA*

3.24 Hon'ble Bombay High Court did not consider the second part of the judgment on application of the deemed legal fiction and resultant exclusion period. Thus the judgment is in violation of the directions of Hon'ble Supreme Court.

4. The interpretation that has been followed by Hon'ble Mumbai High Court in Ramesh Bachulal Mehta (supra) will render the judgment of Hon'ble Supreme Court unworkable and appears to be in violation of the directions of Hon'ble Apex Court-

4.1 Thus, the judgment of Hon'ble High Court is in violation of the directions of Hon'ble Supreme Court in Rajeev Bansal case (supra) on following points-

- *Hon'ble High Court in Bachulal case Court stopped at half the judgment of Hon'ble Apex Court in Rajeev Bansal case and the most important part of deemed legal fiction and its effects has not been considered*
- *The part about applicability of Article 142 and Legal Fiction deemed was not considered and resultant exclusion periods have not been removed for calculation of time barring limit*
- *The very purpose of invocation of discretionary jurisdiction under Article 142 i.e. to balance the interests of parties has been nullified by interpretation of Hon'ble High Court in Bachulal case.. It has already been brought out above that in para 99 of Rajeev Bansal case Hon'ble Apex Court clearly noted that Hon'ble Court's intention was to balance the interest of parties and allow revenue to proceed with re-assessment proceedings and interpretation of Hon'ble High Court has defeated that purpose*
- *If order of Hon'ble High Court is accepted as correct and it is held that 30-06-2021 was the last date for sanction by specified authority, then because the judgment in Ashish Agarwal case came in May 2022, and Revenue cannot go back in time and obtain sanction of specified authorities before 30-06-2021, it is not possible to proceed with re-assessment proceedings in any notice. Thus, all the notices issued by Revenue will be time-barred and the judgment of Hon'ble Apex Court will be effectively nullified. Thus, the judgment of Hon'ble High Court has rendered the judgment of Hon'ble Apex Court unworkable.*
- *Hon'ble Bombay High Court has followed the same principle in Alag Property Construction Pvt Ltd vs. ACIT-Circle5(1)(1), Mumbai & Ors. WP No. 3938 of 2022 as in Bachulal Mehta case as discussed above.*

4.2 As discussed above, Department is of the view that since 3 years period has not been expired for A.Y. 2017-18 therefore, provisions of 151(i) is applicable in this case. The same has been discussed in length in the order of Hon'ble Gujarat High Court in the case of Dhanraj Govindram Kella Vs. ITO, ward (2), Surendranagar.

The facts of the appellant case and case before Hon'ble Gujarat High Court in the case of Dhanraj Govindram Kella Vs. ITO, ward (2), Surendranagar were exactly the same for A.Y. 2017-18.

4.3 In appellant case notice was issued on 30.06.2021 and the case before Hon'ble Gujarat High Court the notice issued on 30.06.2021 and Hon'ble Gujarat High Court has held that for A.Y. 2017-18 it is within 3 years of limitation therefore approval has to be taken u/s 151(i) of the Act i.e. approval of Pr. CIT not CCIT Or Pr. CCIT Further, CBDT instruction of Para 6.2 provided that approval for A.Y. 2017-18 u/s 151(i) has to be taken. The same has also been discussed by Hon'ble Apex Court in the case of Union of India vs Rajeev Bansal in Civil Appeal No. 8629 of 2024 in Para 14 & 15.

The relevant Para is as under.

14. On 11 May 2022, the Central Board of Direct Taxes issued an instruction for implementation of the decision *Ashish Agarwal (Supra)*. The instruction "clarified" that *Ashish Agarwal (Supra)* will apply "to all cases where extended reassessment notices have been issued [...] irrespective of the fact whether such notices have been challenged or not." Paragraph 6.1 of the Instruction stated that the reassessment notices will "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." Thus, the Instruction is under section 148 based on the presumption that the notices issued of the new regime will travel back in time to their original dates, that is, the date when Section 148 notice regime was issued under the old

15. Paragraph 6. Of the Instruction elaborated on the mechanism for issuing notices under section 148 of the new regime:

"6.2 Based on the above, the extended assessment notices are to be dealt with as under

A.Y. 2013-14, A.Y. 2014-15 and A.Y. 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 the case shall be the authority prescribed under clause (ii) of that section.

issued in A.Y. 16-17, A.Y. 17-18: Fresh notice under section 148 can be in these cases, with the approval of the specified authority, under clause (a) of since they are within the relevant assessment sub section (1) of new section 149 of the Act. period of three years from the end of the year. Specified shall be the

the new law in this case authority under section 151 of authority prescribed under clause (i) of that section."

4.4 The Hon'ble Apex Court has confirmed the same and has not quashed this instruction and nothing adverse has been held by Hon'ble Apex Court in *Rajeev Bansal* case. [Copy of CBDT instruction No. 1/2022 dated 11/05/2022 and order of Hon'ble Gujarat High Court in the case of *Dhanraj Govindram Kella Vs. ITO, ward (2), Surendranagar* are already submitted before Hon'ble bench] These facts were not brought before the Hon'ble High Court in the case of *Ramesh Bachulal Mehta and Alag Property Construction Pvt Ltd*. Therefore, it is humbly submitted that the case of appellant is within 3 years 151(i) is rightly been taken by ITO u/s 148 of the Act."

6. We have heard the rival submissions and carefully considered the material placed before us. We are of the considered view that once a notice u/s. 148 is sought to be issued after 31.03.2021, the amended

provisions regarding reopening, including those relating to the 'specified authority' for approval come into force.

Since first notice in this case was issued on 24.06.2021 and the order u/s. 148A(d) was passed on 27.07.2025, the limited issue for consideration is that since more than 3 years have elapsed from the end of the relevant assessment year i.e A.Y. 2017-18, whether the specified authority to grant sanction for issue of notice in this case is Pr. CIT or PCCIT/CCIT.

In this regard, the relevant provisions of section 151 are as under:

"151. Sanction for issue of notice.

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

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

Thus, in view of the legal provisions, clearly the sanctioning authority in this case is the Pr. CCIT/CCIT and not the Pr. CIT as more than three years have elapsed from the end of the assessment year. Thus we hold that the notice u/s. 148 in this case was issued without the approval of the prescribed specified authority and hence deserves to be quashed on this ground alone.

Since we have quashed the reassessment notice, the other legal grounds as well as the grounds on merit are rendered academic and hence are not being adjudicated upon.

7. In the result, assessee's appeal is allowed.

Order Pronounced in Open Court on 17.11.2025

Sd/-
(BEENA PILLAI)

(JUDICIAL MEMBER)

Sd/-
(RENU JAUHRI)

(ACCOUNTANT MEMBER)

Place: Mumbai

Date 17.11.2025

Anandi.Nambi/STENO

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.