2024 INSC 754

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE/ORIGINAL JURISDICTION

Civil Appeal No 8629 of 2024

Union of India & Ors. **… Appellants**

Versus

Rajeev Bansal **…Respondent**

WITH

C.A. No. 8631/2024

C.A. No. 9270/2024

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C.A. No. 10238/2024

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C.A. No. 8933/2024

C.A. No. 9554/2024

C.A. No. 8812/2024

C.A. No. 9525/2024

C.A. No. 8815/2024

C.A. No. 9320/2024

C.A. No. 9442/2024

C.A. No. 9466/2024

C.A. No. 9526/2024

C.A. No. 9439/2024

C.A. No. 9926/2024

C.A. No. 9555/2024

C.A. No. 9527/2024

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C.A. No. 9385/2024

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C.A. No. 8816/2024

C.A. No. 8936/2024

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C.A. No. 10293/2024

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C.A. No. 9382/2024

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C.A. No. 9318/2024

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C.A. No. 9315/2024

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C.A. No. 9593/2024

C.A. No. 9582/2024

C.A. No. 9587/2024

C.A. No. 9594/2024

C.A. No. 9054/2024

C.A. No. 10985 /2024

(Arising out of SLP(C) No. 17283/2024)

C.A. No. 9402/2024

C.A. No. 9047/2024

C.A. No. 9588/2024

C.A. No. 8934/2024

C.A. No. 9595/2024

C.A. No. 9404/2024

C.A. No. 9409/2024

C.A. No. 9589/2024

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C.A. No. 9249/2024

C.A. No. 9426/2024

C.A. No. 9045/2024

C.A. No. 9281/2024

C.A. No. 10036/2024

C.A. No. 9600/2024

C.A. No. 8937/2024

C.A. No. 9278/2024

C.A. No. 9590/2024

C.A. No. 9601/2024

C.A. No. 9169/2024

C.A. No. 10986 /2024

(Arising out of SLP(C) No. 17284/2024)

C.A. No. 9274/2024

C.A. No. 9276/2024

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C.A. No. 9286/2024

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C.A. No. 9283/2024

C.A. No. 9174/2024

C.A. No. 10987 /2024

(Arising out of SLP(C) No. 17286/2024)

C.A. No. 9176/2024

C.A. No. 10988 /2024

(Arising out of SLP(C) No. 17287/2024)

C.A. No. 9418/2024

C.A. No. 9284/2024

C.A. No. 9419/2024

C.A. No. 8829/2024

C.A. No. 9214/2024

C.A. No. 9420/2024

C.A. No. 9193/2024

C.A. No. 8831/2024

C.A. No. 9185/2024

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C.A. No. 9425/2024

J U D G M E N T

Dr Dhananjaya Y Chandrachud, CJI

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1. The present batch of appeals involves the interplay of three Parliamentary statutes: the Income Tax Act 1961[1], the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act 2020,[2] and the Finance Act 2021. The Income Tax Act was enacted to levy and collect tax on the income of assesses.[3] Sections 147 to 151 of the Income Tax Act deal with the procedure of reassessment of income chargeable to tax which has escaped assessment. The TOLA was enacted in the backdrop of the COVID-19 pandemic to provide relaxation of time limits specified under the provisions of the Income Tax Act and certain other legislations as defined under Section 2(1)(b) of TOLA. The Finance Act 2021 amended the provisions dealing with the reassessment procedure under the Income Tax Act with effect from 1 April 2021.

A. Background

i. Income Tax Act

2. Sections 147 to 151 deal with the procedure of reassessment. The scheme of reassessment under Sections 147 to 151 was substantially overhauled by the Finance Act 2021 with effect from 1 April 2021. Under the old regime, Section 147 empowered the assessing officer[4] to reopen assessment

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[1] "Income Tax Act"
[2] "TOLA"
[3] Section 2(7), Income Tax Act. [It defines an "assessee" to mean "a person by whom any tax or any other sum of money is payable under this Act, and includes –
(a) every person in respect of whom any proceeding under this Act has been taken for the assessment of his income or assessment of fringe benefits or of the income of any other person in respect of which he is assessable, or of the loss sustained by him or by such other person, or of the amount of refund due to him or to such other person;
(b) every person who is deemed to be an assessee under any provisions of this Act;
(c) every person who is deemed to be an assessee in default under any provision of this Act;"]
[4] Section 2(7A), Income Tax Act. [It defines an "assessing officer" to mean "the Assistant Commissioner or Deputy Commissioner or Assistant Director or Deputy Director or the Income-tax Officer who is vested with

proceedings if they had "reason to believe" that any income chargeable to tax has escaped assessment for the relevant assessment year.[5] Section 148 mandated the assessing officer to serve a notice on the assessee requiring them to submit a return of their income.[6]

3. Section 149[7] prescribed the following time limits for issuing a notice under Section 148 for an assessment year:

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the relevant jurisdiction by virtue of directions or orders issued under sub-section (1) or sub-section (2) of section 120 or any other provision of this Act, and the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director who is directed under clause (b) of sub-section (4) of that section to exercise or perform all or any of the powers or functions conferred on, or assigned to, an Assessing Officer under this Act."]

[5] Section 147, Income Tax Act

[6] Section 148, Income Tax Act. [It read:
"148.(1) Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:
Provided that in a case –
(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005 in response to a notice served under this section, and
(b) subsequently a notice has been served under sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to sub-section (2) of section 143, as it stood immediately before the amendment of said sub-section by the Finance Act, 2002 (20 of 2002) but before the expiry of the time limit for making the assessment, re-assessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice:
Provided further that in a case –
(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005 in response to a notice served under this section, and
(b) subsequently a notice has been served under clause (ii) of sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to sub-section (2) of section 143, as it stood immediately before the amendment of said sub-section by the Finance Act, 2002 (20 of 2002) but before the expiry of the time limit for making the assessment, re-assessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice.
Explanation – For the removal of doubts, it is hereby declared that nothing contained in the first proviso or the second proviso shall apply to any return which has been furnished on or after the 1st day of October 2005 in response to a notice served under this section.
(2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so."]

[7] Section 149, Income Tax Act. [It reads:
"149. Time limit for notice - (1) No notice under section 148 shall be issued for the relevant assessment year,—
(a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b) or clause (c);
(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year;

(i) four years from the end of the relevant assessment year;

(ii) four years but not more than six years from the end of the relevant assessment year if the income chargeable to tax which has escaped assessment amounted to or was likely to amount to Rupees one lakh or more for that year; and

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

4. Section 151 required the assessing officer to obtain the sanction of the specified authority before issuing a notice under Section 148.[8] In case the notice was issued within four years, the sanctioning authority was the Joint

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(c) if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.
Explanation.—In determining income chargeable to tax which has escaped assessment for the purposes of this sub-section, the provisions of Explanation 2 of section 147 shall apply as they apply for the purposes of that section.
(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.
(3) If the person on whom a notice under section 148 is to be served is a person treated as the agent of a non-resident under section 163 and the assessment, reassessment or recomputation to be made in pursuance of the notice is to be made on him as the agent of such non-resident, the notice shall not be issued after the expiry of a period of six years from the end of the relevant assessment year.
Explanation.—For the removal of doubts, it is hereby clarified that the provisions of sub-sections (1) and (3), as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012."]

[8] Section 151, Income Tax Act. [It read:
151.(1) No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice.
(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.
(3) For the purposes of sub-section (1) and sub-section (2), the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or the Joint Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue such notice himself.]

Commissioner.[9] In case the notice was issued after the expiry of four years, the sanctioning authority was the Principal Chief Commissioner,[10] Chief Commissioner,[11] Principal Commissioner or Commissioner.[12] The authorities have a distinct meaning under the Income Tax Act. Following a decision of this Court in **GKN Driveshafts (India) Ltd** v. **Income Tax Officer,**[13] the assessing officer was also required to furnish reasons for reopening assessments and give an opportunity of hearing to the assessee.

5. The Revenue had to follow the following procedure for reopening assessment under the old regime:

(i) Section 147 allowed the assessing officer to reassess any income chargeable to tax if the officer had "reasons to believe" that such income escaped assessment;

(ii) The assessing officer had to ensure that the notice under Section 148 was issued within the time limits prescribed under Section 149;

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[9] Section 2(28C) of the Income Tax Act defines Joint Commissioner to mean "a person appointed to be a Joint Commissioner of Income-tax or an Additional Commissioner of Income-tax under sub-section (1) of section 117."
[10] Section 2(34-A) of the Income Tax Act defines Principal Chief Commissioner of Income tax to mean "a person appointed to be a Principal Chief Commissioner of Income-tax under sub-section (1) of section 117."
[11] Section 2(15A) of the Income Tax Act defines a Chief Commissioner to mean "a person appointed to a Chief Commissioner of Income tax or a Director General of Income tax or a Principal Chief Commissioner of Income tax or a Principal Director General of Income-tax under sub-section (1) of Section 117."
[12] Section 2(16) defines Principal Commissioner or Commissioner to mean "a person appointed to be a Principal Commissioner or Commissioner of Income tax or a Principal Director or Director of Income tax or a Principal Commissioner of Income tax or a Principal Director of Income tax under sub-section (1) of section 117."
[13] (2003) 1 SCC 72 [5]. It reads:
"5. […] However, we clarify that when a notice under Section 148 of the Income Tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the abovesaid five assessment years."]

(iii) The assessing officer had to obtain the sanction of the specified authority under Section 151 before issuing a reassessment notice;

(iv) The assessing officer had to grant an opportunity of hearing to the assessee in terms of **GKN Driveshafts** (supra); and

(v) The assessing officer was thereafter empowered to issue a notice of reassessment under Section 148.

ii. TOLA

6. On 24 March 2020, the Central Government announced "a complete lockdown for the entire nation" for twenty-one days to contain the spread of the COVID-19 pandemic.[14] Following this, the Central Government sought to implement various relief measures to redress the challenges faced by the taxpayers in meeting the statutory requirements due to the pandemic.[15] On 31 March 2020, the President of India promulgated the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance 2020[16] to extend time limits for completion or compliance of actions under the specified Acts falling for completion or compliance between 20 March 2020 and 29 June 2020 till 30 June 2020. On 24 June 2020, the Central Government issued a notification under Section 3(1) of the TOLA Ordinance to extend the time limit for completion or compliance of actions under the specified Acts till 31 March 2021.[17]

[14] Press Information Bureau, PM calls for complete lockdown of entire nation for 21 days (24 March 2020) https://pib.gov.in/Pressreleaseshare.aspx?PRID=1608009
[15] Press Information Bureau, 'Finance Minister announces several relief measures relating to Statutory and Regulatory compliance matters across Sectors in view of COVID-19 outbreak' (24 March 2020) available at: https://pib.gov.in/PressReleseDetail.aspx?PRID=1607942
[16] "TOLA Ordinance"
[17] CBDT, Notification No. 35 of 2020, dated 24 June 2020.

7. On 29 September 2020, Parliament enacted TOLA, which came into force with retrospective effect from 31 March 2020.[18] Section 2(1)(b) defines "specified Act" to mean and include the Income Tax Act. Section 3(1) of TOLA extended the time limit for completion or compliance of actions under the "specified Act", which fell for completion or compliance during the period from 20 March 2020 and 31 December 2020, to 31 March 2021. The relevant part of Section 3 reads thus:

> "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 proceedings 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;
>
> […]
>
> And where completion of 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 31st day of March, 2021, as the Central Government may, by notification, specify in this behalf:"

[18] Section 1(2), TOLA. [It reads: "(2) Save as otherwise provided, it shall be deemed to have come into force on the 31st day of March, 2020."]

8. Section 3(1) empowered the Central Government to extend the time limit beyond 31 March 2021 by a notification. In pursuance of its powers, the Central Government issued the following notifications to extend the period of relaxation till 30 June 2021:

   a. Notification No. 93 of 2020 dated 31 December 2020 extended the end date to 30 March 2021. Resultantly, TOLA covered the period between 20 March 2020 to 30 March 2021;

   b. Notification No. 20 of 2021 dated 31 March 2021 specified that 31 April 2021 shall be the end date of the time period covered by TOLA. It extended the time limit for completion or compliance of actions under the Income Tax Act till 30 April 2021; and

   c. Notification No. 38 of 2021 dated 27 April 2021 extended the time limit for completion or compliance of actions till 30 June 2021.

9. The effect of TOLA and the notifications issued under the legislation was that: (i) if the time prescribed for passing of any order or issuance of any notice, sanction, or approval fell for completion or compliance from 20 March 2020 to 31 March 2021; and (ii) if the completion or compliance of such action could not be made during the stipulated period, then the time limit for completion or compliance of such action was extended to 30 June 2021.

iii. Finance Act 2021

10. The Finance Act 2021 substituted the entire scheme of reassessment under Sections 147 to 151 of the Income Tax Act with effect from 1 April 2021.

Substantial changes were brought about by the new regime. Broadly speaking, they are summarized thus:

(i) Section 148[19] mandates the assessing officer to initiate proceedings only based on prior information and with the prior approval of the specified authority;

[19] Section 148, Income Tax Act [It reads:
["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,—
(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 section 132A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or

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

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

(ii) Section 148A[20] requires the assessing officer to provide an opportunity of being heard to the assessee before deciding to issue a reassessment notice under Section 148. Section 148A requires the assessing officer to:

(a) conduct any enquiry, if required, with the prior approval of the specified authority;

(b) provide an opportunity of hearing to the assessee by serving a show cause notice with the prior approval of the specified authority;

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

[20] Section 148A, Income Tax Act [It reads:
"Section 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 Ct 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."]

(c) consider the reply furnished by the assessee in response to the show cause notice; and

(d) decide on the basis of available material, including the reply of the assessee, whether or not it is a fit case to issue a notice under Section 148 by passing an order.

(iii) The time limit under Section 149 has been reduced from four years to three years from the end of the relevant assessment year for all situations.[21] Assessments can be reopened beyond three years but within ten years from the end of the relevant assessment year if the income chargeable to tax which has escaped assessment amounts to or is likely to amount to Rupees fifty lakhs or more. However, the first

[21] Section 149, Income Tax Act. [It reads:
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 asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year:

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

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

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

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

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

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

proviso to Section 149 prohibits the issuance of a reassessment notice under the new regime if such notices have become time-barred under the old regime; and

(iv) The sanctioning authorities specified under Section 151 of the new regime are different from those specified under the old regime.[22] Section 151 of the new regime specifies the following authorities for Section 148 and 148A: (i) Principal Commissioner or Principal Director[23] or Commissioner or Director if three years or less have elapsed from the end of the relevant assessment year; and (ii) Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General if more than three years have elapsed from the end of the relevant assessment year.

11. The notifications dated 31 March 2021 and 27 April 2021 issued by the Central Government under Section 3(1) of TOLA contained an explanation declaring that the provisions under the old regime shall apply to the reassessment proceedings initiated under them.[24] Thus, the notifications

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[22] Section 151, Income Tax Act. [It reads:
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."]

[23] Section 2(21) of the Income Tax Act defines Principal Director General or Director General or Principal Director or Director to mean "a person appointed to be a Principal Director General or Director General of Income tax or a Principal Director General or Director General of Income tax or, as the case may be, a Principal Director or Director of Income tax or Principal Director of Income tax, under sub-section (1) of Section 117, and includes a person appointed under that sub-section to be an Additional Director of Income tax or a Joint Director of Income tax or as Assistant Director or Deputy Director of Income tax."

[24] Notification No. 20 of 2021 dt. 31 March 2021; Notification No. 38 of 2021 dt. 27 April 2021. [The explanation reads:
"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,

directed the assessing officers to apply the provisions of the old regime for reassessment notices issued after 1 April 2021. The assessing officers accordingly issued reassessment notices between 1 April 2021 and 30 June 2021 by relying on the provisions under Section 148 of the old regime. These reassessment notices were challenged by the assesses before various High Courts.[25]

12. The High Courts allowed the writ petitions and quashed all the reassessment notices issued between 1 April 2021 and 30 June 2021 under the old regime on the ground that: (i) Sections 147 to 151 stood substituted by Finance Act 2021 from 1 April 2021;[26] (ii) In the absence of any saving clause, the Revenue could initiate reassessment proceedings after 1 April 2021 only in accordance with the provisions of the new regime since they were remedial, beneficial, and meant to protect the rights and interests of the assesses;[27] and (iii) the Central Government could not exercise its delegated authority to "re-activate the pre-existing law."[28]

13. In **Union of India** v. **Ashish Agarwal**,[29] this Court held that it was "in complete agreement with the view taken by various High Courts in holding" that "the benefit of the new provisions shall be made available even in respect

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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."]

[25] *See*: Ashok Kumar Agarwal v. Union of India, 2021 SCC OnLine All 799; Vellore Institute of Technology v. CBDT, 2022 SCC OnLine Mad 2213; Tata Communications Transformation Services Ltd v. ACIT, 2022 SCC OnLine Bom 664; Bagaria Properties and Investment Pvt Ltd v. Union of India, 2022 SCC OnLine Cal 1093; Mon Mohan Kohli v. ACIT, 2021 SCC OnLine Del 5250; Sudesh Taneja v. ITO, 2022 SCC OnLine Raj 937; Manoj Jain v. Union of India, 2022 SCC OnLine Cal 1369.

[26] Sudhesh Taneja (supra) [36]

[27] Ashok Kumar Agarwal (supra) [66]; Mon Mohan Kohli (supra) [66]; Tata Communications Transformation Services (supra) [34]

[28] Ashok Kumar Agarwal (supra) [80]; Sudesh Taneja (supra) [40]; Mon Mohan Kohli [49]; Tata Communications Transformation Services [49]

[29] (2023) 1 SCC 617

of the proceedings relating to past assessment years, provided Section 148 notice has been issued on or after 1-4-2021." However, the Court observed that the Revenue issued the reassessment notices under a "bona fide belief that the amendments may not yet have been enforced." This Court exercised its discretionary jurisdiction under Article 142 in order to balance the interests of the Revenue and the assesses and directed that the reassessment notices issued under the old regime shall be deemed to have been issued under Section 148-A(b) of the new regime. This Court issued the following directions:

> "**28**. In view of the above and for the reasons stated above, the present appeals are allowed in part. The impugned common judgments and orders passed by the High Court of Judicature at Allahabad in WT No. 524 of 2021 and other allied tax appeals/petitions, is/are hereby modified and substituted as under:
>
> **28.1.** 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 148-A of the IT Act as substituted by the Finance Act, 2021 and construed or treated to be show-cause notices in terms of Section 148-A(*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.
>
> **28.2.** The requirement of conducting any enquiry, if required, with the prior approval of specified authority under Section 148-A(*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.

> **28.3.** Even otherwise as observed hereinabove holding any enquiry with the prior approval of specified authority is not mandatory but it is for the assessing officers concerned to hold any enquiry, if required.
>
> **28.4.** The assessing officers shall thereafter pass orders in terms of Section 148-A(*d*) in respect of each of the assessees concerned; Thereafter after following the procedure as required under Section 148-A may issue notice under Section 148 (as substituted).
>
> **28.5.** All defences which may be available to the assessees including those available under Section 149 of the IT Act and all rights and contentions which may be available to the assessees concerned and Revenue under the Finance Act, 2021 and in law shall continue to be available."

14. On 11 May 2022, the Central Board of Direct Taxes issued an Instruction[30] for the 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 based on the presumption that the notices issued under Section 148 of the new regime will travel back in time to their original dates, that is, the date when the Section 148 notice under the old regime was issued.

[30] Instruction No. 01/2022 dt. 11 May 2022

15. Paragraph 6.2 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:
>
> 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.
>
> 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."

16. The assessing officers accordingly considered the replies furnished by the assesses and passed orders under Section 148A(d). Subsequently, notices under Section 148 of the new regime were issued to the assesses by the assessing officers between July and September 2022 for the assessment years 2013-2014, 2014-2015, 2015-2016, 2016-2017, and 2017-2018. These notices were challenged before several High Courts. The High Courts declared the notices to be invalid on the ground that they were: (i) time-barred; and (ii) issued without the appropriate sanction of the specified authority.

17. In **Ashish Agarwal** (supra), this Court was called upon to decide whether the Revenue was correct in issuing the reassessment notices under the old regime when the new regime, which was beneficial to the assesses, was already in force. This Court resolved the issue by holding that all reassessment notices issued after 1 April 2021 should have been issued in accordance with the new regime. However, the Court construed the notices issued under Section 148 of the old regime by deeming them to be notices issued under Section 148A(b) of the new regime. In **Ashish Agarwal** (supra), this Court did not deal with the issue of whether or not the reassessment notices were issued within the time limits prescribed under the provisions of the Income Tax Act read with the relaxations provided under TOLA. This is the primary issue that comes up for our consideration in the present batch of appeals.

B. Issues

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.

C. Submissions

19. Mr N Venkataraman, learned Additional Solicitor General of India, made the following submissions on behalf of the Revenue:

a. Parliament enacted TOLA as a free-standing legislation to provide relief and relaxation to both the assesses and the Revenue during the time of COVID-19. TOLA seeks to relax actions and proceedings that could not be completed or complied with within the original time limits specified under the Income Tax Act;

b. Section 149 of the new regime provides three crucial benefits to the assesses: (i) the four-year time limit for all situations has been reduced to three years; (ii) the first proviso to Section 149 ensures that re-assessment for previous assessment years cannot be undertaken beyond six years; and (iii) the monetary threshold of Rupees fifty lakhs will apply to the re-assessment for previous assessment years;

c. The relaxations provided under Section 3(1) of TOLA apply "notwithstanding anything contained in the specified Act." Section 3(1), therefore, overrides the time limits for issuing a notice under Section 148 read with Section 149 of the Income Tax Act;

d. TOLA does not extend the life of the old regime. It merely provides a relaxation for the completion or compliance of actions following the procedure laid down under the new regime;

e. The Finance Act 2021 substituted the old regime for re-assessment with a new regime. The first proviso to Section 149 does not expressly bar the application of TOLA. Section 3 of TOLA applies to the entire Income Tax Act,

including Sections 149 and 151 of the new regime. Once the first proviso to Section 149(1)(b) is read with TOLA, then all the notices issued between 1 April 2021 and 30 June 2021 pertaining to assessment years 2013-2014, 2014-2015, 2015-2016, 2016-2017, and 2017-2018 will be within the period of limitation as explained in the tabulation below:

Assessment Year **(1)**	**Within 3 Years** **(2)**	**Expiry of Limitation read with TOLA for (2)** **(3)**	**Within six Years** **(4)**	**Expiry of Limitation read with TOLA for (4)** **(5)**
2013-2014	31.03.2017	TOLA not applicable	31.03.2020	30.06.2021
2014-2015	31.03.2018	TOLA not applicable	31.03.2021	30.06.2021
2015-2016	31.03.2019	TOLA not applicable	31.03.2022	TOLA not applicable
2016-2017	31.03.2020	30.06.2021	31.03.2023	TOLA not applicable
2017-2018	31.03.2021	30.06.2021	31.03.2024	TOLA not applicable

f. The Revenue concedes that for the assessment year 2015-16, all notices issued on or after 1 April 2021 will have to be dropped as they will not fall for completion during the period prescribed under TOLA;

g. Section 2 of TOLA defines “specified Act” to mean and include the Income Tax Act. The new regime, which came into effect on 1 April 2021, is now part of the Income Tax Act. Therefore, TOLA continues to apply to the Income Tax Act even after 1 April 2021; and

h. **Ashish Agarwal** (supra) treated Section 148 notices issued by the Revenue between 1 April 2021 and 30 June 2021 as show-cause notices in terms of Section 148A(b). Thereafter, the Revenue issued notices under Section 148

of the new regime between July and August 2022. Invalidation of the Section 148 notices issued under the new regime on the ground that they were issued beyond the time limit specified under the Income Tax Act read with TOLA will completely frustrate the judicial exercise undertaken by this Court in **Ashish Agarwal** (supra).

20. Mr Percy Pardiwalla, Mr V Sridharan, Mr Tushar Hemani, Mr Saurabh Soparkar, and Mr K Shivram, learned senior counsel, Mr Manish Shah, Mr Darshan Patel, Mr Suhrith Parthasarthy, Mr Dharan Gandhi, and Mr Ved Jain, learned counsel, made the following submissions on behalf of the respondents:

a. TOLA applies only when the period of limitation expires between 20 March 2020 and 31 March 2021. Finance Act 2021 was enacted after TOLA. Consequently, TOLA only held the field till the new regime came into effect from 1 April 2021. The Revenue had to issue Section 148 notices in terms of the new regime without recourse to the extended timelines under TOLA;

b. TOLA did not amend the erstwhile Section 149 but merely extended the specified time limits. The first proviso to Section 149(1)(b) only refers to the period of limitation under the erstwhile Section 149(1)(b);

c. Notification No. 38 of 2021 was issued on 27 April 2021 to extend the time limits expiring under Section 149(1)(b) of the old regime till 30 June 2021. The notification was issued after 1 April 2021, when the old regime was repealed and substituted by a new regime. Therefore, this notification cannot be read into the new regime;

d. The notices can be categorized into the following four categories:

i. First category: for assessment years 2013-2014 and 2014-2015, the six-year time limit in terms of Section 149 expired on 31 March 2020 and 31 March 2021 respectively. However, the reassessment notices were issued after 1 April 2021 and would be barred by limitation;

ii. Second category: for the assessment year 2015-2016, the issue pertains to whether the sanction of the appropriate authority was obtained by the assessing officers before issuing re-assessment notices under Section 148 of the old regime. For this category of cases, the four-year period expired on 31 March 2020. However, notices were issued after 31 March 2020 by obtaining sanction under Section 151(2) instead of Section 151(1) of the old regime;

iii. Third category: for assessment years 2016-2017 and 2017-2018, the three-year period in terms of the amended regime expired on 31 March 2020 and 31 March 2021, respectively. The notices under Section 148 were issued after the expiry of three years, that is, after 1 April 2021. However, the sanctions were obtained under Section 151(i) instead of Section 151(ii) of the new regime; and

iv. The directions issued by this Court in **Ashish Agarwal** (supra) were not intended to apply to assesses who did not challenge the reassessment notices before the High Courts or this Court. Therefore, reassessment proceedings could not have been initiated for such assesses.

e. The applicability of the first proviso to Section 149(1)(b) of the new regime has to be tested on the date of issuance of notice under Section 148 of the

new regime. Even if TOLA is read into the Income Tax Act, the time limits for completion or compliance of actions can be extended till 30 June 2021. However, the notices under Section 148 of the new regime were issued by the Revenue from July to September 2022. The period of July to September 2022 is beyond the extended time limits stipulated under the Income Tax Act read with TOLA;

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.

D. Legal Background

i. Assessment as a quasi-judicial function

21. The power to levy tax is an essential and inherent attribute of sovereignty.[31] It is an inherent attribute because the government requires funds to discharge its governmental functions.[32] Taxation is also a recognised fiscal tool to

[31] Jindal Stainless Ltd v. State of Haryana, (2017) 12 SCC 1 [17]; [310]
[32] Amrit Banaspati Co. Ltd. v. State of Punjab, (1992) 2 SCC 411 [10]; Dena Bank v. Bhikhabhai Prabhudas Parekh & Co., (2000) 5 SCC 694 [8]

achieve fiscal and social objectives.[33] Although the power to levy taxes is plenary, it is subject to certain well-defined limitations. Article 265 of the Constitution provides that no tax shall be levied or collected except by authority of law. A taxing statute must be valid and conform to other provisions of the Constitution.[34]

22. Article 265 makes a distinction between "levy" and "collection." The expression "levy" has a wider connotation. It includes both the imposition of a tax as well as assessment.[35] The quantum of tax levied by a taxing statute, the conditions subject to which it is levied, and how it is sought to be recovered are all matters within the competence of the legislature.[36] In a taxing statute, the charging provisions are generally accompanied by a set of provisions for computing or assessing the levy. The character of assessment provisions bears a relationship to the nature of the charge.[37]

23. Thomas Cooley describes assessment as the most important of all the proceedings in taxation. He further describes the necessity of assessment thus:

> "An assessment, when taxes are to be levied upon a valuation, is obviously indispensable. It is required as the first step in the proceedings against individual subjects of taxation, and is the foundation of all which follow it. Without an assessment they have no support, and are nullities. The assessment is, therefore, the most important of all the proceedings in taxation, and the provisions to insure its accomplishing its office are commonly very full and particular. If there is no valid assessment, a tax on

[33] Elel Hotels & Investments Ltd v. Union of India, (1989) 3 SCC 698 [20]
[34] Mafatlal Industries Ltd v. Union of India, (1997) 5 SCC 536 [25]
[35] CCE v. National Tobacco Co. of India Ltd., (1972) 2 SCC 560 [19]
[36] Rai Ramkrishna v. State of Bihar, (1963) SCC OnLine SC 31 [12]
[37] CIT v. B C Srinivasa Setty, (1981) 2 SCC 460 [10]

> sale of lands is a nullity. A want of assessment is not a mere irregularity remedied by a curative statute.
>
> On the other hand, no assessment is necessary where the statute itself prescribes the amount to be paid, and this can be recovered by suit. For instance, where a statute imposes a tax at a specified rate upon bank deposits, no other assessment other than that made by the statute itself is necessary."[38]

24. The expression "assessment" comprehends the entire procedure for ascertaining and imposing liability upon taxpayers.[39] The process of assessment involves computation of the income of the assessees, determination of tax payable by them, and the procedure for collecting or recovering tax.[40] An assessing officer is concerned with the assessment and collection of revenue. An assessing officer must administer the provisions of the Income Tax Act in the interests of the public revenue and to prevent evasion or escapement of tax legitimately due to the State.[41]

25. In **Province of Bombay** v. **Khushaldas S Advani**,[42] Justice S R Das (as the learned Chief Justice then was), in his concurring opinion observed that if a statutory authority has the power to perform any act that will prejudicially affect the subject, then although there are no two parties apart from the authority and the contest is between the authority proposing to do the act and

[38] Thomas Cooley, The Law of Taxation (4th edn, 1924) 2116
[39] Kalawati Devi Harlalka v. CIT, 1967 SCC OnLine SC 44; Addl ITO v. E Alfred, 1961 SCC OnLine SC 243 [7]; S Sankappa v. ITO, 1967 SCC OnLine SC 25 [3]; CCE v. National Tobacco Co. of India, (1972) 2 SCC 560 [19] ["19. […] The term "assessment", on the other hand, is generally used in this country for the actual procedure adopted in fixing liability to pay a tax on account of particular goods of property or whatever may be the object of the tax in a particular case and determining its amount."]
[40] Bhopal Sugar Industries Ltd v. State of Madhya Pradesh, (1979) 3 SCC 792 [12]
[41] M M Ipoh v. CIT, 1967 SCC OnLine SC 40 [14]
[42] 1950 SCC OnLine SC 26 [80]; Also *see* Express Newspaper (P) Ltd. v. Union of India, 1958 SCC OnLine SC 23 [111]

the subject opposing it, the final determination of the authority will be quasi-judicial provided the authority is required by the statute to act judicially. A quasi-judicial authority is under an obligation to act judicially.[43]

26. An assessment acquires finality on the making of an assessment order by the assessing officer.[44] It creates a vested right in favour of the assessee.[45] Section 2(8) of the Income Tax Act defines "assessment" to include reassessment. Reassessment is nothing but a fresh assessment.[46] The effect of reopening the assessment is to vacate or set aside the order of assessment and to substitute in its place the order of reassessment.[47] The procedure of reassessment of tax is quasi-judicial because it prejudicially affects the vested rights[48] of the assessee. In **CIT** v. **Simon Carves Ltd**.,[49] Justice H R Khanna, speaking for a Bench of three Judges, explained the quasi-judicial function performed by the assessing officers during the process of assessment and reassessment thus:

> "10. […] The taxing authorities exercise quasi-judicial powers and in doing so they must act in a fair and not a partisan manner. Although it is part of their duty to ensure that no tax which is legitimately due from an assessee should remain unrecovered they must also at the same time not act in a manner as might indicate that scales are weighted against the assessee. We are wholly unable to subscribe to the view that unless those authorities exercise the power in a manner most beneficial to the revenue and consequently most adverse to the assessee, they

[43] Gullapalli Nageswara Rao v. State of A P, 1959 SCC OnLine SC 53 [6]
[44] Indian & Eastern Newspaper Society v. CIT, (1979) 4 SCC 248 [5]; K T Moopil Nair v. State of Kerala, 1960 SCC OnLine SC 7 [9]
[45] CED v. M A Merchant, 1989 Supp (1) SCC 499 [8]
[46] CST v. H M Esufali, H M Abdali, (1973) 2 SCC 137 [17]
[47] Deputy Commissioner of Commercial Taxes v. H R Sri Ramulu, (1977) 1 SCC 703 [7]
[48] *See* Income Tax Officer v. S K Habibullah, 1962 SCC OnLine SC 58 [7]
[49] (1976) 4 SCC 435

> should be deemed not to have exercised it in a proper and judicious manner."

27. Since the assessing officers perform a quasi-judicial function during reassessment, the powers vested in them are regulated by law.[50] The process of reassessment is generally preceded by administrative proceedings, which require the assessing officer to obtain the sanction of the specified authorities.[51] The taxing statutes generally lay down the procedure for issuance of notice to the proposed assessee in respect of income or property proposed to be taxed. It also prescribes the authority and procedure for hearing any objections to the liability for taxation.[52]

ii. Assessment as an issue of jurisdiction

28. Jurisdiction is defined as the power of a court, tribunal, or authority to hear and determine a cause or exercise any judicial power concerning such cause.[53] The Revenue officers must have requisite jurisdiction to perform their functions and responsibilities following the provisions of the Income Tax Act. Under the Income Tax Act 1922,[54] Section 34 allowed an Income Tax Officer to reassess income that escaped assessment for a relevant assessment year. Section 34 provided that a reassessment notice could not be issued beyond the prescribed time limit (which was generally within eight years from the end

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[50] Supdt. of Taxes v. Onkarmal Nathmal Trust, (1976) 1 SCC 766 [37];
[51] S Narayanappa v. CIT, 1966 SCC OnLine SC 173 [4] ["4. […] The proceedings for assessment or re-assessment under Section 34(1)(a) of the Income Tax Act start with the issue of a notice and it is only after the service of the notice that the assessee, whose income in sought to be assessed or re-assessed, becomes a party to those proceedings. The earlier stage of the proceeding for recording the reasons of the Income Tax Officer and for obtaining the sanction of the Commissioner are administrative in character and are not quasi-judicial.]
[52] K T Moopil Nair v. State of Kerala, 1960 SCC OnLine SC 7 [9]
[53] In Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act 1899, 2023 INSC 1066 [125]
[54] "Income Tax Act 1922"

of the relevant assessment year). Thus, Section 34 conferred jurisdiction on Income Tax Officers to reopen an assessment subject to the issuance of notice within the prescribed time limits.[55] In **Ahmedabad Manufacturing and Calico Printing Co. Ltd**. v. **S G Mehta, ITO**,[56] Justice M Hidayatullah (as the learned Chief Justice then was), writing for himself and Justice Raghubar Dayal, observed:

> "It must be remembered that if the Income-tax Act prescribes a period during which the tax due in any particular assessment year may be assessed, then on the expiry of that period the department cannot make an assessment. Where no period is prescribed that assessment can be completed at any time but once completed it is final. **Once a final assessment has been made, it can only be reopened to rectify a mistake apparent from the record (section 35) or to reassess where there has been an escapement of assessment of income for one reason or another (section 34). Both these sections which enable reopening of back assessments provide their own periods of time for action but all these periods of time, whether for the first assessment or for rectification, or for reassessment, merely create a bar when that time passed against the machinery set up by the Income-tax Act for the assessment and levy of the tax. They do not create an exemption in favour of the assessee or grant an absolution on the expiry of the period. The liability is not enforceable but the tax may again become exigible if the bar is removed and the taxpayer is brought within the jurisdiction of the said machinery by reasons of a new power. This is, of course, subject to the condition that the law must say that such is the jurisdiction, either expressly or by clear implication.** If the language of the law has that clear meaning, it must be given that effect and where the language expressly so declares or clearly implies it, the retrospective

[55] R K Upadhyaya v. Shanabhai Patel, (1987) 3 SCC 96 [2]
[56] 1962 SCC OnLine SC 73

operation is not controlled by the commencement clause."

29. In **S S Gadgil** v. **Lal & Co**., a three-Judge Bench of this Court held that the period prescribed under Section 34 of the Income Tax Act 1922 "is not a period of limitation."[57] It was further observed that Section 34 "imposes a fetter upon the power of the Income Tax Officer to bring to tax escaped income" by prescribing "different periods in different classes of cases for enforcement of the right of the States to recover tax."[58] Under Section 34, Income Tax Officers were statutorily barred from issuing a notice of assessment or reassessment after the expiry of the statutory time limit prescribed under the Income Tax Act. Consequently, reassessment notices issued by the Revenue beyond the prescribed time limits were declared invalid for being time-barred.[59] Assessment proceedings that have attained finality under existing law due to a time bar cannot be held to be open for revival unless the amended provision is given retrospective effect to allow upsetting the legal proceedings.[60]

30. If a statute expressly confers a power or imposes a duty on a particular authority, then such power or duty must be exercised or performed by that authority itself.[61] Further, when a statute vests certain power in an authority to be exercised in a particular manner, then that authority has to exercise its power following the prescribed manner.[62] Any exercise of power by statutory

[57] 1964 SCC OnLine SC 112 [10]
[58] S S Gadgil (supra) [10]
[59] CIT v. Robert J Sas, (1963) 48 ITR 177; CIT v. Thayaballii Mulla Jeevaji Kapasi, 1967 SCC OnLine SC 352.
[60] CIT v. Onkarmal Meghraj, (1974) 3 SCC 349 [11]; K M Sharma v. ITO, (2002) 4 SCC 339 [14]; M A Merchant (supra) [8]
[61] Dr Premchandran Keezhoth v. Chancellor, Kannur University, 2023 SCC OnLine SC 1592 [73]
[62] CIT v. Anjum M.H. Ghaswala, (2002) 1 SCC 633 [27]; State of U P v. Singhara Singh, 1963 SCC OnLine SC 23 [8]

authorities inconsistent with the statutory prescription is invalid.[63] Section 34 of the Income Tax Act 1922 prescribed a duty on Income Tax Officers to seek prior approval of the Commissioner before issuing a reassessment notice. In **CIT** v. **Maharaja Pratapsingh Bahadur of Gidhaur**,[64] a three-Judge Bench of this Court held that a notice issued under Section 34 without prior approval of the Commissioner was invalid.

31. The Income Tax Act 1961 also mandates assessing officers to fulfil certain pre-conditions before issuing a notice of reassessment. Section 149 requires assessing officers to issue a notice of reassessment under Section 148 within the prescribed time limits. Further, Section 151 requires assessing officers to obtain sanction of the specified authority before issuing notice under Section 148. In **Chhugamal Rajpal** v. **S P Chaliha**, a three-Judge Bench of this Court held that Section 151 must be strictly adhered to because it contains "important safeguards."[65]

32. A statutory authority may lack jurisdiction if it does not fulfil the preliminary conditions laid down under the statute, which are necessary to the exercise of its jurisdiction.[66] There cannot be any waiver of a statutory requirement or provision that goes to the root of the jurisdiction of assessment.[67] An order passed without jurisdiction is a nullity. Any consequential order passed or action taken will also be invalid and without jurisdiction.[68] Thus, the power of

[63] Tata Chemicals Ltd. v. Commissioner of Customs, (2015) 11 SCC 628 [18]
[64] 1960 SCC OnLine SC 55 [6]
[65] (1971) 1 SCC 453 [5]
[66] Chhotobhai Jethabhai Patel v. Industrial Court, Maharashtra, (1972) 2 SCC 46 [16]
[67] Superintendent of Taxes v. Onkarmal Nathmal Trust, (1976) 1 SCC 766 [28]
[68] Dwarka Prasad Agarwal v. B D Agarwal, (2003) 6 SCC 230 [37]

assessing officers to reassess is limited and based on the fulfilment of certain preconditions.[69]

iii. Principles of strict interpretation and workability

33. The dominant purpose in interpreting a taxing statute is to ascertain the intention of the legislature to impose a charge.[70] A literal rule of construction requires the language of a statute to be construed according to its literal and grammatical meaning, whatever the result may be.[71] In comparison, a strict interpretation of a statute does not encompass strict literalism, which leads to absurdity or goes against the express legislative intent.[72] The principle of strict interpretation requires the courts to interpret and decipher the meaning of the words of the statute in their usual sense.[73]

34. Taxing statutes are interpreted by following the principles of strict interpretation.[74] While interpreting a taxing statute, there is no room for any intendment.[75] A taxing statute must be construed by having regard to the strict letter of the law.[76] In a taxing statute, it is not possible to assume any intention or governing purpose more than what is stated in the plain language. A taxing statute can successfully impose liability on persons or property only if it frames appropriate provisions to that end. The courts cannot plug in a loophole in a taxing statute "by a strained construction in reference to the

[69] CIT v. Kelvinator of India Ltd, (2010) 2 SCC 723 [6]. ["6. […] Reassessment has to be based on the fulfilment of certain precondition […]"]
[70] Banarsi Debi v. ITO, 1964 SCC OnLine SC 48 [6]
[71] Punjab Land Development and Reclamation Corporation Ltd. v. Presiding Officer, Labour Court (1990) 3 SCC 682 [67]
[72] Commissioner of Customs v. Dilip Kumar & Co., (2018) 9 SCC 1 [28]
[73] State of Gujarat v. Mansukhbhai Kanjibhai Shah, (2020) 20 SCC 360 [24]
[74] G P Singh, Principles of Statutory Interpretation (15th edn, 2023) 616.
[75] Cape Brandy Syndicate v. Inland Revenue Commissioners, (1921) KB 64, 71
[76] A V Fernandes v. State of Kerala, 1957 SCC OnLine SC 23

supposed intention of the Legislature."[77] Further, the considerations of equity or justice are not relevant in interpreting a taxing statute.[78]

35. It is a well-accepted rule of construction that in situations where the interpretation of taxing legislation is ambiguous or leads to two possible interpretations, the interpretation most beneficial to the subject of the tax should be adopted.[79] It would not be an unjust result if a taxpayer escapes the tax net on account of the legislature's failure to express itself clearly.[80]

36. In a taxing statute, the charging section has to be construed strictly, but the machinery provisions must be interpreted in accordance with the ordinary rules of statutory interpretation.[81] The purpose is to give effect to the clear intention of the legislature. In **Murarilal Mahabir Prasad** v. **B R Vad**,[82] this Court held that:

> "29. […] There is no equity about a tax in the sense that a provision by which a tax is imposed has to be construed strictly, regardless of the hardship that such a construction may cause either to the treasury or to the taxpayer. If the subject falls squarely within the letter of law he must be taxed, howsoever inequitable the consequences may appear to the judicial mind. If the Revenue seeking to tax cannot bring the subject within the letter of law, the subject is free no matter that such a construction may cause serious prejudice to the Revenue. In other words, though what is called equitable construction may be admissible in relation to other statutes or other provisions of a taxing statute, such a construction is

[77] Muralilal Mahabir Prasad v. B R Vad, (1975) 2 SCC 736 [28]
[78] ITO v. T S Devinatha Nadar, 1967 SCC OnLine SC 52 [30]
[79] Central India Spinning and Waving Co. Ltd. v. Municipal Committee, 1957 SCC OnLine SC 18 [5]; CIT v. Shahzada Nand & Sons, 1966 SCC OnLine SC 24 [10]; T S Devinatha Nadar (supra) [25]; Voltas Ltd. v. State of Gujarat, (2015) 7 SCC 527 [24]
[80] CIT v. Jargaon Electric Supply Co. Ltd., 1960 SCC OnLine SC 105 [7]; State of W B v. Kesoram Industries Ltd., (2004) 10 SCC 201 [106]
[81] Mahim Patram (P) Ltd. v. Union of India, (2007) 3 SCC 668 [25]
[82] (1975) 2 SCC 736 [29]

> not admissible in the interpretation of a charging or taxing provision of a taxing statute."

37. A statute is designed to be workable. A statutory provision must be construed in a manner to make it workable to achieve the purpose of the legislation.[83] A construction that fails to achieve the manifest purpose of legislation or reduces the statutory provisions to futility should be avoided.[84] The machinery provisions must be construed to effectuate the object and purpose of a statute and not defeat them. In **J K Synthetics Ltd**. v. **CTO**,[85] a Constitution Bench of this Court observed:

> **"16.** It is well-known that when a statute levies a tax it does so by inserting a charging section by which a liability is created or fixed and then proceeds to provide the machinery to make the liability effective. It, therefore, provides the machinery for the assessment of the liability already fixed by the charging section, and then provides the mode for the recovery and collection of tax, including penal provisions meant to deal with defaulters. Provision is also made for charging interest on delayed payments, etc. **Ordinarily the charging section which fixes the liability is strictly construed but that rule of strict construction is not extended to the machinery provisions which are construed like any other statute. The machinery provisions must, no doubt, be so construed as would effectuate the object and purpose of the statute and not defeat the same."**
>
> (emphasis supplied)

[83] K P Mohammed Salim v. CIT, (2008) 11 SCC 573 [14];
[84] Mohan Kumar Singhania v. Union of India, 1992 Supp (1) SCC 594 [52]; CIT v. Hindustan Bulk Carriers, (2003) 3 SCC 57 [17]
[85] (1994) 4 SCC 276

38. The provisions in a taxing statute dealing with machinery for assessment have to be construed in accordance with the intention of the legislature to make the charge levied effective.[86] While interpreting provisions that set up the machinery of assessment, the rule is that construction should be preferred which makes the machinery workable[87] and furthers the intention of the legislature.[88] In **CIT** v. **Sun Engineering Works (P) Ltd.**,[89] a two-Judge Bench of this Court observed that the provision dealing with reassessment contained in Section 147 of the Income Tax Act was for the benefit of the Revenue:

> **"40.** Although, Section 147 is part of a taxing statute, it imposes no charge on the subject but deals merely with the machinery of assessment and in interpreting a provision of that kind, the rule is that construction should be preferred which makes the machinery workable. Since the proceedings under Section 147 of the Act are for the benefit of the Revenue and not an assessee and are aimed at gathering the 'escaped income' of an assessee, the same cannot be allowed to be converted as 'revisional' or 'review' proceedings at the instance of the assessee, thereby making the machinery unworkable."

iv. Principle of harmonious construction

39. The legislature is presumed to enact a consistent and harmonious body of laws in deference to the rule of law.[90] In case of any apparent conflict within a provision or between two provisions of the same statute, the courts must read the provisions harmoniously.[91] The principle of harmonious construction

[86] Gursahai Saigal v. CIT, (1963) 48 ITR (SC) 1 [9]
[87] CIT v. Mahaliram Ramjidas, AIR 1940 PC 124;
[88] Gursahai Saigal (supra) [13]
[89] (1992) 4 SCC 363 [40]
[90] MCD v. Shiv Shanker, (1971) 1 SCC 442 [5]
[91] Sultana Begum v. Prem Chand Jain, (1997) 1 SCC 373 [15]

requires courts to bring about a reconciliation between seemingly conflicting provisions to give effect to both. An interpretation which reduces one of the provisions to a "dead letter" is not a harmonious construction. The principle of harmonious construction also applies to reconcile two seemingly conflicting provisions of different statutes.[92]

40. A legislature often appends a non obstante clause to a provision to give it an overriding effect over provisions contained in the same statute or a separate statute.[93] The purpose of incorporating a non obstante clause in a provision is to prohibit the operation and effect of all contrary provisions.[94] In **Chadavarkar Sita Ratna Rao** v. **Ashalata S Guram**,[95] Justice Sabyasachi Mukharji (as the learned Chief Justice then was) explained the purpose of a non obstante clause thus:

> **"67.** A clause beginning with the expression "notwithstanding anything contained in this Act or in some particular provision in the Act or in some particular Act or in any law for the time being in force, or in any contract" is more often than not appended to a section in the beginning with a view to give the enacting part of the section in case of conflict an overriding effect over the provision of the Act or the contract mentioned in the non obstante clause. It is equivalent to saying that in spite of the provision of the Act or any other Act mentioned in the non obstante clause or any contract or document mentioned the enactment following it will have its full operation or that the provisions embraced in the non obstante clause would not be an impediment for an operation of the enactment."

[92] In re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act 1899, 2023 INSC 1066 [165]
[93] State of Bihar v. Bihar Rajya MSESKK Mahasangh, (2005) 9 SCC 129 [45]
[94] Union of India v. G M Kokil, 1984 Supp SCC 196 [11]
[95] (1986) 4 SCC 447

41. A non-obstante clause must be given effect to the extent Parliament intended and not beyond.[96] In construing a provision containing a non obstante clause, courts must determine the purpose and object for which the provision was enacted.[97] The courts are also required to find out the extent to which the legislature intended to give one provision overriding effect over another provision.[98] In case of a clear inconsistency between two enactments, a provision containing a non obstante clause can be given an overriding effect over a provision contained in another statute.

42. Another principle of interpretation is that when two laws are inconsistent or repugnant, the later legislation is interpreted as having impliedly repealed the earlier legislation. The principle underlying implied repeal is that there is no need for the later enactment to state in express words that the earlier enactment has been repealed if the legislative intent to supersede the earlier law is manifested through the provisions of the later enactment.[99] In **MCD** v. **Shiv Shanker**,[100] this Court culled out the following principles applicable to the implied repeal of legislation:

a. A subsequent legislation may not be too readily presumed to effectuate a repeal of existing statutory laws in the absence of express or at least unambiguous indication to that effect;
b. Courts must lean against implying a repeal unless the two provisions are so plainly repugnant to each other that they cannot stand together and it is not

[96] ICICI Bank Ltd v. SIDCO Leathers Ltd, (2006) 10 SCC 452 [37]
[97] SIDCO Leathers Ltd (supra) [34]; Geeta v. State of U P, (2010) 13 SCC 678 [45]
[98] A G Varadarajulu v. State of Tamil Nadu, (1998) 4 SCC 231 [16]
[99] State of Orissa v. M A Tulloch, 1963 SCC OnLine SC 18 [20]
[100] (1971) 1 SCC 442 [5]

possible on any reasonable hypothesis to give effect to both at the same time;

c. It is necessary to closely scrutinise and consider the true meaning and effect of both the earlier and the later statute; and

d. If the objects of the two statutory provisions are different and the language of each statute is restricted to its objects or subject, then they are generally intended to rule in parallel lines without meeting and there would be no real conflict.

43. The principle on which the rule of implied repeal rests is that if the subject-matter of a later legislation is identical to that of an earlier legislation so that they both cannot stand together, then the earlier legislation is impliedly repealed by the later legislation.[101] The courts have to determine whether the legislature intended the two sets of provisions to be applied simultaneously.[102] The presumption against implied repeal is based on the theory that the legislature knows the existing laws and does not intend to create any confusion by retaining two conflicting provisions or statutes.[103] The test to be applied for the construction of implied repeal is whether the new or subsequent law is inconsistent with or repugnant to the old law. The inconsistency or repugnancy should clearly and manifestly reveal an intention to repeal the existing laws.[104] The inconsistency or repugnancy must be such that the two statutes cannot be reconciled on reasonable construction or

[101] Zaverbhai Amaidas v. State of Bombay, (1954) 2 SCC 345 [16]
[102] Ratan Lal Adukia v. Union of India, (1989) 3 SCC 537 [18]
[103] Pradeep S Wodeyar v. State of Karnataka, (2021) 19 SCC 62 [69]
[104] Municipal Council Palai v. T J Joseph, 1963 SCC OnLine SC 55 [10]

hypothesis. To determine whether a later statute repeals by implication an earlier statute, it is necessary to examine the scope and object of the two enactments by comparison of their provisions.[105] Implied repeal should be avoided, if possible, where both the statutes can stand together.[106]

44. We now proceed to analyse the issues given the broad legislative and judicial background discussed above.

E. Reading TOLA into the Income Tax Act

i. First proviso to Section 149(1) of the new regime

45. The first proviso to Section 149(1)(b) provides thus:

> "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 possession of 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**

[105] State of M P v. Kedia Leather & Liquor Ltd., (2003) 7 SCC 389 [15]
[106] Harshad S Mehta v. State of Maharashtra, (2001) 8 SCC 257 [31]

> **immediately 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:"**
>
> (emphasis supplied)

46. The ingredients of the proviso could be broken down for analysis as follows: (i) no notice under Section 148 of the new regime can be issued at any time for an assessment year beginning on or before 1 April 2021; (ii) if it is barred at the time when the notice is sought to be issued because of the "time limits specified under the provisions of" 149(1)(b) of the old regime. Thus, a notice could be issued under Section 148 of the new regime for assessment year 2021-2022 and before only if the time limit for issuance of such notice continued to exist under Section 149(1)(b) of the old regime.

47. In **CTO** v. **Biswanath Jhunjhunwalla**,[107] the Bengal Sales Tax Rules 1941 empowered the Commissioner to revise any assessment within four years from the date of assessment. Subsequently, the State Government issued a notification following the law to extend the time limit from four years to six years from the date of assessment. The extension of the time limit was challenged by the respondents on the ground that the assessments which had attained finality because of the expiry of the period of four years could not be reassessed. This Court observed that it was the clear intention of the notification to permit the Commissioner to revise any assessment made or order passed, provided the assessment had not been made before six years.

[107] (1996) 5 SCC 626

It was held that if the legislative intention is clear and the language is unambiguous, full effect must be given to the legislative intention by reading the notification as applying not only to the incomplete assessments but also to assessments that had reached finality because of lapse of the earlier prescribed period. The principle that emanates from **Biswanath Jhunjhunwalla** (supra) is that the courts should give full effect to the legislative intention of granting reassessment powers to assessing officers unless the legislature, by express provision, states otherwise.

48. Notices have to be judged according to the law existing on the date the notice is issued. Section 149 of the old regime primarily provided two time limits: (i) four years for all situations and (ii) beyond four years and within six years if the income chargeable to tax which escaped assessment amounted to Rupees one lakh or more. After 1 April 2021, the time limits prescribed under the new regime came into force. The ordinary time limit of four years was reduced to three years. Therefore, in all situations, reassessment notices could be issued under the new regime if not more than three years have elapsed from the end of the relevant assessment year. For example, for assessment year 2018-2019, the four year period would have expired on 31 March 2023 under the old regime. However, if the notice is issued after 1 April 2021, the three year time limit prescribed under the new regime will be applicable. The three year time limit will expire on 31 March 2022.

49. The first proviso to Section 149(1)(b) requires the determination of whether the time limit prescribed under Section 149(1)(b) of the old regime continues to exist for the assessment year 2021-2022 and before. Resultantly, a notice

under Section 148 of the new regime cannot be issued if the period of six years from the end of the relevant assessment year has expired at the time of issuance of the notice. This also ensures that the new time limit of ten years prescribed under Section 149(1)(b) of the new regime applies prospectively. For example, for the assessment year 2012-2013, the ten year period would have expired on 31 March 2023, while the six year period expired on 31 March 2019. Without the proviso to Section 149(1)(b) of the new regime, the Revenue could have had the power to reopen assessments for the year 2012-2013 if the escaped assessment amounted to Rupees fifty lakhs or more. The proviso limits the retrospective operation of Section 149(1)(b) to protect the interests of the assesses.

50. Another important change under Section 149(1)(b) of the new regime is the increase in the monetary threshold from Rupees one lakh to Rupees fifty lakhs. The old regime prescribed a time limit of six years from the end of the relevant assessment year if the income chargeable to tax which escaped assessment was more than Rupees one lakh. In comparison, the new regime increases the time limit to ten years if the escaped assessment amounts to more than Rupees fifty lakhs. This change could be summarized thus:

Regime	Time limit	Income chargeable to tax which has escaped assessment
Old regime	Four years but not more than six years	Rupees one lakh or more
New regime	Three years but not more than ten years	Rupees fifty lakhs or more

51. Given Section 149(1)(b) of the new regime, reassessment notices could be issued after three years only if the income chargeable to tax which escaped assessment is more than Rupees fifty lakhs. The proviso to Section 149(1)(b) limits the retrospectivity of that provision with respect to the time limits specified under Section 149(1)(b) of the old regime.

52. In **Ashish Agarwal** (supra), this Court held that the benefit of the new regime must be provided for the reassessment conducted for the past periods. The increase of the monetary threshold from Rupees one lakh to Rupees fifty lakh is beneficial for the assesses. Mr Venkataraman has also conceded on behalf of the Revenue that all notices issued under the new regime by invoking the six year time limit prescribed under Section 149(1)(b) of the old regime will have to be dropped if the income chargeable to tax which has escaped assessment is less than Rupees fifty lakhs.

53. The position of law which can be derived based on the above discussion may be summarized thus: (i) Section 149(1) of the new regime is not prospective. It also applies to past assessment years; (ii) The time limit of four years is now reduced to three years for all situations. The Revenue can issue notices under Section 148 of the new regime only if three years or less have elapsed from the end of the relevant assessment year; (iii) the proviso to Section 149(1)(b) of the new regime stipulates that the Revenue can issue reassessment notices for past assessment years only if the time limit survives according to Section 149(1)(b) of the old regime, that is, six years from the end of the relevant assessment year; and (iv) all notices issued invoking the time limit under Section 149(1)(b) of the old regime will have to be dropped if

the income chargeable to tax which has escaped assessment is less than Rupees fifty lakhs.

ii. TOLA can extend the time limit till 31 June 2021

54. The proviso to Section 149(1)(b) of the new regime uses the expression "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." Thus, the proviso specifically refers to the time limits specified under Section 149(1)(b) of the old regime. The Revenue accepts that without application of TOLA, the time limit for issuance of reassessment notices after 1 April 2021 expires for assessment years 2013-2014, 2014-2015, 2015-2016, 2016-2017, and 2017-2018 in the following manner:

(i) for the assessment years 2013-2014 and 2014-2015, the six year period expires on 31 March 2020 and 31 March 2021 respectively; and

(ii) for the assessment years 2016-2017 and 2017-2018, the three year period expires on 31 March 2020 and 31 March 2021 respectively.

a. Finance Act 2021 substituted the old regime

55. In **Shamrao V Parulekar** v. **District Magistrate, Thana**,[108] a Constitution Bench of this Court was called upon to decide the validity of the detention of the petitioner under the Preventive Detention Amendment Act 1950.[109] The Detention Act 1950 was due to expire on 1 April 1951, but the legislation was

[108] (1952) 2 SCC 1
[109] "Detention Act 1950"

amended to prolong its life by another year till 1 April 1952. The petitioner was detained on 15 November 1951 and his detention would have expired on 1 April 1952 with the expiration of the enactment. However, the Detention Act 1950 was amended in 1952, further prolonging its application for six months till 1 October 1952. The issue before this Court was whether the prolonging of the Detention Act 1950 also prolonged the detention of the petitioner.

56. Justice Vivian Bose, writing for the Constitution Bench, held that the detention continued until the expiry of the Detention Act 1950 on 1 October 1952. The learned Judge further observed:

> "7. The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed (except where that would lead to a repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all. […] **Bearing this in mind it will be seen that the 1950 Act remains the 1950 Act all the way through even with its subsequent amendments. Therefore, the moment the 1952 Act was passed and Section 2 came into operation, the Act of 1950 meant the 1950 Act as amended by Section 2, that is to say, the 1950 Act now due to expire on 1-10-1952**."
>
> (emphasis supplied)

The principle which emanates from **Shamrao V Parulekar** (supra) is that after an amendment, the legislation has to be read along with the amended provisions.

57. The legislative practice of amendment by substitution is often used by the legislatures. The process of substitution of a statutory provision generally involves two steps: first, the existing rule is deleted; and second, the new rule is brought into existence in its place.[110] The deletion effectively repeals the existing provision.[111] Thus, an amendment by substitution results in the repeal of an earlier provision and its replacement by a new provision.[112] The repealed provision will cease to operate from the date of repeal and the substituted provision will commence operation from the date of its substitution.[113] After the substitution, the legislation must be read and construed as if the altered words have been written into the legislation "with pen and ink and the old words scored out."[114] Therefore, after amendment by substitution any reference to a legislation must be construed as the legislation as amended by substitution.

58. In **Shyam Sunder** v. **Ram Kumar**,[115] a Constitution Bench of this Court was called upon to decide the extent of retrospective operation of an amendment by substitution. In that case, the Haryana Amendment Act 1995 substituted Section 15 of the Punjab Pre-emption Act by taking away the right of a co-sharer to pre-empt a sale during the pendency of an appeal. This Court

[110] Koteswar Vittal Kamath v. K Rangappa Baliga & Co., (1969) 1 SCC 255 [8]
[111] Bhagat Ram Sharma v. Union of India, 1988 Supp SCC 30 [17]
[112] State of Rajasthan v. Mangilal Pindwal, (1996) 5 SCC 60 [9]
[113] Pernod Ricard India (P) Ltd v. State of Madhya Pradesh, 2024 SCC OnLine SC 566 [13]
[114] G V Krishnamraju v. Union of India, (2019) 17 SCC 590 [18]; Ram Narain v. Simla Banking & Industrial Co. Ltd, 1956 SCC OnLine SC 1. [It was observed: 7. […] whenever an amended Act has to be applied subsequent to the date of the amendment the various unamended provisions of the Act have to be read along with the amended provisions as though they are part of it. This is for the purpose of determining what the meaning of any particular provision of the Act as amended is, whether it is in the unamended part or in the amended part. But this is the not the same thing as saying that the amendment itself must be taken to have been in existence as from the date of the earlier Act. That would be imputing to the amendment retrospective operation which could only be done if such retrospective operation is given by the amending Act either expressly or by necessary implication."]
[115] (2001) 8 SCC 24

observed that according to Order 20 Rule 14(1) of the Code of Civil Procedure 1908, the right of pre-emption becomes a vested right and can only be taken away by a known method of law. As regards the retrospective operation of a substituted provision, it was held that "where a repeal of provisions of enactment is followed by fresh legislation by an amending Act, such legislation is prospective in operation and does not affect substantive or vested rights of the parties unless made retrospective either expressly or by necessary intendment."[116] This Court held that the language used by the legislature indicated that it was introduced with prospective effect and could not affect the accrued rights of the co-sharers. The decision of this Court in **Shyam Sunder** (supra) is an authority for the proposition that an amendment by substitution can have a retrospective effect and affect the vested rights of the parties if the provision is made retrospective either expressly or by necessary intendment.

59. Parliament has often used the legislative process of amendment by substitution in the context of reassessment provisions under the Income Tax Act. In **S C Prashar** v. **Vasantsen Dwarkadas**,[117] a Constitution Bench of this Court had to decide on the validity of the notices issued under Section 34 of the Income Tax Act 1922. In 1948, Section 34 of the Income Tax Act 1922 was substituted by a new provision which provided the following time limits: (i) eight years from the end of the year if there was omission or failure on the part of an assessee to make a return or disclose fully and truly all material

[116] Shyam Sunder (supra) [28]
[117] (1964) 1 SCR 29

facts necessary for assessment; and (ii) four years for all other cases. Justice M Hidayatullah (as the learned Chief Justice then was), writing for himself and Justice Raghubar Dayal, observed that the substituted provision was meant to enable the reassessment of income which had escaped assessment for past periods. It was further observed that the substituted provision "meant to operate retrospectively eight years in some cases and four years in others."[118] Justice A K Sarkar (as the learned Chief Justice then was) also observed that no notice could be issued under the 1948 amendment "for a year from the end of which eight years had expired."[119]

60. The above principles can be applied as follows to the factual situation in the present appeals: (i) The Finance Act 2021 substituted Sections 147 to 151 of the Income Tax Act with effect from 1 April 2021; (ii) Sections 147 to 151 of the old law ceased to operate from 1 April 2021; (iii) After 1 April 2021, any reference to the Income Tax Act means the Income Tax Act as amended by the Finance Act 2021; (iv) The time limits prescribed for issuing reassessment notices under Section 149 operate retrospectively for three years for all situations and six years in case the escaped assessment amounts to or is likely to amount to more than Rupees fifty lakhs.

61. TOLA is a legislation enacted by Parliament. The assesses have neither challenged the legislative competence of Parliament to enact TOLA nor have they challenged the vires of the legislation. Section 3(1) of TOLA provides for the relaxation of "**any** time limit" prescribed under the specified Acts for

[118] SC Prashar (supra) 107
[119] SC Prashar (supra) 86

completion or compliance of "**any** proceeding or passing of **any** order or issuance of **any** sanction, intimation, notification, sanction, or approval." The expression "any" has been interpreted by this Court to mean "all" or "every".[120] The context in which the word "any" appears has to be construed after taking into consideration the scheme and the purpose of the enactment.[121]

62. The purpose of Section 3(1) of TOLA is to provide relaxation of time limits prescribed under the specified Acts, which fell for completion or compliance from 20 March 2020 to 31 March 2021. TOLA was enacted in the backdrop of the COVID-19 pandemic, which impeded the functioning of the government at all levels. The imposition of national and local lockdowns created difficulties for the common people, including litigants and assesses, to comply with their legal obligations. The COVID-19 pandemic and the ensuing lockdowns required legislatures across the world to dynamically adapt their laws and policies to redress the difficulties faced by persons, entities, and governmental authorities.[122] The World Bank identified that persons and business entities faced severe financial situations characterised by a lack of cash or easily convertible-to-cash assets. It suggested that this would impact revenue collection because individuals and entities would not be in a position to pay the assessed taxes. Therefore, the World Bank advised deferral of tax filings and payment deadlines to allow individuals and business entities to

[120] LDA v. M K Gupta, (1994) 1 SCC 243 [4]; Raj Kumar Shivhare v. Directorate of Enforcement, (2010) 4 SCC 772 [24];
[121] Vivek Narayan Sharma v. Union of India, (2023) 3 SCC 1 [132]
[122] Cary Coglianese and Neysun Mahboubi, 'Administrative Law in a Time of Crisis: Comparing National Responses to COVID-19' (2021) 73(1) Administrative Law Review 1, 10.

cope with the crisis.[123] Many countries across the world have extended deadlines for filing tax returns.[124]

63. TOLA extended the time limits for completion or compliance of certain actions under the specified Act, which fell for completion during the COVID-19 outbreak. The use of the expression "any" in Section 3(1) indicates that the relaxation applies to "all" or "every" action whose time limit falls for completion from 20 March 2020 to 31 March 2021. Section 3(1) is only concerned with the performance of actions contemplated under the provisions of the specified Acts. Consequently, the amendment or substitution of a provision under the specified Acts will not affect the application of TOLA, so long as the action contemplated under the provision falls for completion during the period specified by TOLA, that is, 20 March 2020 to 31 March 2021.

64. When enacting a statute, the legislature often endeavours to ensure that the provisions of one legislation do not conflict with provisions of another legislation.[125] The purpose of the Income Tax Act is to levy tax on income and raise revenues for the functioning of the Government. On the other hand, the purpose of TOLA is to provide relaxation of the time for completion of any actions or proceedings falling for completion within a particular period. Thus, the two enactments operate in separate and distinct fields. This Court must

[123] Cebreiro Gomez, et al, COVID-19: Revenue Administration Implications – Potential Tax Administration and Customs Measures to Respond to the Crisis, World Bank Group (2022) 19
[124] *See* International Monetary Fund, Policy Responses to COVID-19 *https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19*
[125] In Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act 1899, 2023 INSC 1066 [159]

ensure that the provisions of the two enactments are interpreted harmoniously unless there is an irreconcilable conflict between them.

b. Reading TOLA into Section 149

65. Section 3(1) of TOLA applies to the action of "issuance of any notice" under the Income Tax Act. The relaxation provided under Section 3(1) of TOLA will apply to the issuance of a reassessment notice under Section 148 of the Income Tax Act. TOLA did not amend the time limits of four years and six years from the end of the relevant assessment years as specified under the Income Tax Act. It merely provided a relaxation of the time period for issuance of a reassessment notice under Section 148. TOLA has no application in situations where the time limit specified under Section 149 expired before 20 March 2020. The effect of TOLA is that at the time of issuance of a reassessment notice under Section 148, the Revenue has to determine two things: (i) the time limit specified under Section 149; and (ii) the extent of relaxation provided by TOLA and its notifications for issuance of notices. Thus, although TOLA did not amend Section 149 of the Income Tax Act, it has to be read with Section 149 to determine the time limit for issuance of a notice. This was the legislative intent behind the enactment of TOLA. For instance, the six year time limit for assessment year 2013-2014 under Section 149(1)(b) of the old regime expired on 31 March 2020. TOLA extended the period for issuing notice until 30 June 2021, given the difficulties that arose because of the COVID-19 pandemic.

66. Section 3(1) of TOLA allowed the Central Government to specify by notification "such other date after the 31st day of March, 2021" as the time limit

for completion or compliance of any action under the specified Acts. The provision also empowered the Central Government to specify different dates for completion or compliance of different actions. The notifications dated 31 March 2021 and 27 April 2021 extend the operation of TOLA by providing an extended time limit for completing actions under the Income Tax Act till 30 June 2021.

67. Section 2(1)(b)(ii) of TOLA defines 'specified Act' to include the Income Tax Act. After 1 April 2021, Section 2(1)(b)(ii) must be read to mean the Income Tax Act as amended by the Finance Act 2021. The substitution of Sections 147 to 151 will not affect the purpose of TOLA, which is, to provide relaxation of the time limit for completion or compliance of any actions falling for completion between 20 March 2020 and 31 March 2021. TOLA will continue to apply to the Income Tax Act after 1 April 2021 if any action or proceeding specified under the substituted provisions of the Income Tax Act falls for completion between 20 March 2020 and 31 March 2021.

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.

69. For instance, Section 149(1)(a) of the new regime specified the time limit of three years from the end of the relevant assessment year for reopening of the assessment. For assessment year 2017-2018, the three year period expired on 31 March 2021. The expiry of time fell within the time period contemplated by Section 3 of TOLA read with its notifications. Resultantly, the Revenue had time until 30 June 2021 to issue a reassessment notice for assessment year 2017-2018 under Section 149(1)(a). This harmonious reading gives effect to the legislative intention of both the Income Tax Act and TOLA. Moreover, Sections 147 to 151 are machinery provisions. Therefore, they must be given an interpretation that is consistent with the object and purpose of the Income Tax Act.

70. In **Income-tax Officer** v. **Vikram Sujitkumar Bhatia**,[126] a two-Judge Bench of this Court had to decide whether Section 153C of the Income Tax Act, as amended by the Finance Act 2015, would apply to searches conducted before 1 June 2015 (the date of coming into force of the amendment). This Court observed that since Section 153C is a machinery provision, it should be interpreted in a manner to effectuate the object and purpose of the statute. It was observed that the object and purpose of Section 153C was the assessment of the income of any other person. It was held that if the amended

[126] (2023) 453 ITR 417

provision is made applicable prospectively, it will frustrate the object and purpose of Section 153C.

71. Section 3(1) of TOLA contains a non obstante clause: "notwithstanding anything contained in the specified Act." The legislative intention of including the non obstante clause is to remove any obstacles which may come in the way of the operation of the extension of the time limit till 31 March 2021 or such other date after 31 March 2021 specified by the Central Government. The purpose is to ensure that the full benefit of the relaxation should be provided to both the assesses and the Revenue to tide over the difficulties caused by the COVID-19 pandemic.

72. The non obstante clause in Section 3(1) has to be read as controlling the provisions of the specified Acts, including the provisions of the Income Tax Act.[127] In the context of the issuance of a reassessment notice, the non obstante clause will override the provisions of the Income Tax Act in case of any direct conflict or inconsistency. Section 3(1) overrides Section 149 only to the extent of relaxing the time limit for issuance of reassessment notice under Section 148. The time limit for issuance of a reassessment notices, which fall for completion between 20 March 2020 and 31 March 2021, has been extended till 30 June 2021. However, the non obstante clause under Section 3(1) of TOLA will operate neither to extend the time limit of three years from the end of the relevant assessment year under Section 149(1)(a) of the new regime nor to extend the time limit of six years from the end of the relevant assessment years under Section 149(1)(b) of the old regime. The

[127] M P V Sundararamier v. State of Andhra Pradesh, 1958 SCC OnLine SC 22

non obstante clause ensures that the Revenue has additional time beyond the statutory stipulated time limit to complete or comply with the formalities given the administrative difficulties that arose due to the COVID-19 pandemic.

iii. Sanction of the specified authority

73. Section 151 imposes a check upon the power of the Revenue to reopen assessments. The provision imposes a responsibility on the Revenue to ensure that it obtains the sanction of the specified authority before issuing a notice under Section 148. The purpose behind this procedural check is to save the assesses from harassment resulting from the mechanical reopening of assessments.[128] A table representing the prescription under the old and new regime is set out below:

Regime	Time limits	Specified authority
Section 151(2) of the old regime	Before expiry of four years from the end of the relevant assessment year	Joint Commissioner
Section 151(1) of the old regime	After expiry of four years from the end of the relevant assessment year	Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner
Section 151(i) of the new regime	Three years or less than three years from the end of the relevant assessment year	Principal Commissioner or Principal Director or Commissioner or Director
Section 151(ii) of the new regime	More than three years have elapsed from the end of the relevant assessment year	Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General

[128] Srikrishna Private Ltd v. ITO, (1996) 9 SCC 534 [4]

74. The above table indicates that the specified authority is directly co-related to the time when the notice is issued. This plays out as follows under the old regime:

(i) If income escaping assessment was less than Rupees one lakh: (a) a reassessment notice could be issued under Section 148 within four years after obtaining the approval of the Joint Commissioner; and (b) no notice could be issued after the expiry of four years; and

(ii) If income escaping was more than Rupees one lakh: (a) a reassessment notice could be issued within four years after obtaining the approval of the Joint Commissioner; and (b) after four years but within six years after obtaining the approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

75. After 1 April 2021, the new regime has specified different authorities for granting sanctions under Section 151. The new regime is beneficial to the assesse because it specifies a higher level of authority for the grant of sanctions in comparison to the old regime. Therefore, in terms of **Ashish Agarwal** (supra), after 1 April 2021, the prior approval must be obtained from the appropriate authorities specified under Section 151 of the new regime. The effect of Section 151 of the new regime is thus:

(i) If income escaping assessment is less than Rupees fifty lakhs: (a) a reassessment notice could be issued within three years after obtaining

the prior approval of the Principal Commissioner, or Principal Director or Commissioner or Director; and (b) no notice could be issued after the expiry of three years; and

(ii) If income escaping assessment is more than Rupees fifty lakhs: (a) a reassessment notice could be issued within three years after obtaining the prior approval of the Principal Commissioner, or Principal Director or Commissioner or Director; and (b) after three years after obtaining the prior approval of the Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General.

76. Grant of sanction by the appropriate authority is a precondition for the assessing officer to assume jurisdiction under Section 148 to issue a reassessment notice. Section 151 of the new regime does not prescribe a time limit within which a specified authority has to grant sanction. Rather, it links up the time limits with the jurisdiction of the authority to grant sanction. Section 151(ii) of the new regime prescribes a higher level of authority if more than three years have elapsed from the end of the relevant assessment year. Thus, non-compliance by the assessing officer with the strict time limits prescribed under Section 151 affects their jurisdiction to issue a notice under Section 148.

77. Parliament enacted TOLA to ensure that the interests of the Revenue are not defeated because the assessing officer could not comply with the pre-conditions 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(2) 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.

78. 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.

79. Under Finance Act 2021, the assessing officer was required to obtain prior approval or sanction of the specified authorities at four stages:

a. Section 148A(a) – to conduct any enquiry, if required, with respect to the information which suggests that the income chargeable to tax has escaped assessment;

b. Section 148A(b) – to provide an opportunity of hearing to the assessee by serving upon them a show cause notice as to why a notice under Section 148 should not be issued based on the information that suggests that

income chargeable to tax has escaped assessment. It must be noted that this requirement has been deleted by the Finance Act 2022;[129]

c. Section 148A(d) – to pass an order deciding whether or not it is a fit case for issuing a notice under Section 148; and

d. Section 148 – to issue a reassessment notice.

80. In **Ashish Agarwal** (supra), this Court directed that Section 148 notices which were challenged before various High Courts "shall be deemed to have been issued under Section 148-A of the Income Tax Act as substituted by the Finance Act, 2021 and construed or treated to be show-cause notices in terms of Section 148-A(b)." Further, this Court dispensed with the requirement of conducting any enquiry with the prior approval of the specified authority under Section 148A(a). Under Section 148A(b), an assessing officer was required to obtain prior approval from the specified authority before issuing a show cause notice. When this Court deemed the Section 148 notices under the old regime as Section 148A(b) notices under the new regime, it impliedly waived the requirement of obtaining prior approval from the specified authorities under Section 151 for Section 148A(b). It is well established that this Court while exercising its jurisdiction under Article 142, is not bound by the procedural requirements of law.[130]

81. This Court in **Ashish Agarwal** (supra) directed the assessing officers to "pass orders in terms of Section 148-A(d) in respect of each of the assesses concerned." Further, it directed the assessing officers to issue a notice under

[129] Section 45, Finance Act 2022
[130] Allahabad High Court Bar Association v. State of U P, (2024) 6 SCC 267 [27.3]

Section 148 of the new regime "after following the procedure as required under Section 148-A." Although this Court waived off the requirement of obtaining prior approval under Section 148A(a) and Section 148A(b), it did not waive the requirement for Section 148A(d) and Section 148. Therefore, the assessing officer was required to obtain prior approval of the specified authority according to Section 151 of the new regime before passing an order under Section 148A(d) or issuing a notice under Section 148. These notices ought to have been issued following the time limits specified under Section 151 of the new regime read with TOLA, where applicable.

F. Section 148 notices issued in June-September 2022

i. Scope of Article 142

82. Article 142 empowers this Court to pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it.[131] The discretionary jurisdiction exercised by this Court under Article 142 is of the widest amplitude.[132] The Constitution has left it to the judicial discretion of this Court to decide the scope and limits of its jurisdiction to render substantial justice in matters coming before it.[133] The expression "any cause or matter" mentioned under Article 142 includes every kind of proceeding pending before this Court.[134] Article 142 allows this Court to give precedence

[131] Article 142, Constitution. [It reads:
"142(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as President may by order prescribe."
[132] Jose Da Costa v. Bascora Sadasiva Sinai Narcornim, (1976) 2 SCC 917 [37]
[133] Ganga Bishan v. Jai Narain, (1986) 1 SCC 75 [5]
[134] Delhi Judicial Service Association v. State of Gujarat, (1991) 4 SCC 406 [50]

to equity over law, provided the exercise of the discretion is consistent with constitutional provisions and after due consideration of substantive provisions in statutory law.[135]

83. In **Prem Chand Garg** v. **The Excise Commissioner**,[136] Justice P B Gajendragadkar (as the learned Chief Justice then was), speaking for the majority, observed that the order made by this Court under Article 142 "must not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory laws." However, in **Union Carbide Corpn. Ltd**. v. **Union of India**,[137] Justice Venkatachaliah (as the learned Chief Justice then was), speaking for the majority, clarified **Prem Chand Garg** (supra) by observing that ordinary laws cannot limit the constitutional powers of this Court under Article 142. The learned Judge further observed that in exercising its jurisdiction under Article 142, this Court will "take note of the express prohibitions in any substantive statutory provision based on some fundamental principles of public policy and regulate the exercise of its power and discretion accordingly."

84. In **Supreme Court Bar Association** v. **Union of India**,[138] a Constitution Bench held that the powers under Article 142 cannot be exercised to supplant

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[135] Shilpa Sailesh v. Varun Sreenivasan, 2023 SCC OnLine SC 544 [12]
[136] 1962 SCC OnLine SC 37
[137] (1991) 4 SCC 584 [83]
138 (1998) 4 SCC 409 [**47**. […] It, however, needs to be remembered that the powers conferred on the Court by Article 142 being curative in nature 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. This power cannot be used to "supplant" substantive law applicable to the case or cause under consideration of the Court. Article 142, even with the width of its amplitude, cannot 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.]

substantive law applicable to the matter pending before this Court. In **Allahabad High Court Bar Association** v. **State of Uttar Pradesh**,[139] a Constitution Bench laid down the following parameters for the exercise of the jurisdiction under Article 142:

> **"27.1.** The jurisdiction can be exercised to do complete justice between the parties before the Court. It cannot be exercised to nullify the benefits derived by a large number of litigants based on judicial orders validly passed in their favour who are not parties to the proceedings before this Court;
>
> **27.2.** Article 142 does not empower this Court to ignore the substantive rights of the litigants; and
>
> **27.3.** While exercising the jurisdiction under Article 142 of the Constitution of India, this Court can always issue procedural directions to the courts for streamlining procedural aspects and ironing out the creases in the procedural laws to ensure expeditious and timely disposal of cases. **This is because, while exercising the jurisdiction under Article 142, this Court may not be bound by procedural requirements of law. However, while doing so, this Court cannot affect the substantive rights of those litigants who are not parties to the case before it. The right to be heard before an adverse order is passed is not a matter of procedure but a substantive right."**
>
> (emphasis supplied)

85. In **M Siddiq** v. **Suresh Das**,[140] a Constitution Bench observed that Article 142 embodies the concept of justice, equity, and good conscience. This Court

[139] (2024) 6 SCC 267
[140] (2020) 1 SCC 1 [1023]

further observed that Article 142 empowers the court to pass an order which accords with justice:

> **"1026.** The extraordinary constitutional power to pass any decree or an order which, in the opinion of this Court is necessary for doing complete justice embodies the idea that a court must, by necessity, be empowered to craft outcomes that ensure a just outcome. **When a court is presented before it with *hard cases*, they follow an interpretation of the law that best *fits* and *justifies* the existing legal landscape — the Constitution, statutes, rules, regulations, customs and common law. Where exclusive rule-based theories of law and adjudication are inadequate to explain either the functioning of the system or create a relief that ensures *complete* justice, it is necessary to supplement such a model with principles grounded in equitable standards.** The power under Article 142 however is not limitless. It authorises the Court to pass orders to secure complete justice in the case before it. Article 142 embodies both the notion of justice, equity and good conscience as well as a supplementary power to the Court to effect complete justice."
>
> (emphasis supplied)

86. The exercise of the jurisdiction under Article 142 is meant to supplement the existing legal framework to do complete justice between the parties.[141] In a given circumstance, this Court can supplement a legal framework to craft a just outcome when strict adherence to a source of law and exclusive rule-based theories create inequitable results.[142]

87. The directions issued by this Court under Article 142 cannot be considered as a ratio because they are issued based on the peculiar facts and

[141] Vinay Chandra Mishra, In re, (1995) 2 SCC 584 [46]; Delhi Development Authority v. Skipper Construction Co. (P) Ltd., (1996) 4 SCC 622 [16]
[142] M Siddiq (supra) [1019]; [1026]

circumstances of the cause or matter before this Court.[143] In **State** v. **Kalyan Singh**,[144] this Court observed that a judgment has two components: (a) declaration of law; and (b) directions. In **Bir Singh** v. **Mukesh Kumar**,[145] it was held that what is binding on all courts under Article 141[146] is the declaration of law, and not the directions issued under Article 142.[147]

88. This Court has exercised its jurisdiction under Article 142 in tax matters where the actions of the Revenue are not in accordance with the law.[148] In **Whirlpool of India Ltd**. v. **CIT**,[149] this Court directed the Income Tax Officer to give effect to the order of the Income Tax Appellate Tribunal by disallowing a particular deduction. In **CIT** v. **Greenworld Corporation**,[150] the issue before this Court was whether a Commissioner of Income Tax[151] appropriately issued directions under Section 263 of the Income Tax Act to an assessing officer to reopen assessments. It was held that the facts of the case did not merit the CIT to issue directions to the assessing officer. Consequently, this Court

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[143] J & K Public Service Commission v. Narinder Mohan, (1994) 2 SCC 630 [11].
[144] (2017) 7 SCC 444. [22. […] It is important to notice that Article 142 follows upon Article 141 of the Constitution, in which it is stated that the law declared by the Supreme Court shall be binding on all courts within the territory of India. Thus, every judgment delivered by the Supreme Court has two components — the law declared which binds courts in future litigation between persons, and the doing of complete justice in any cause or matter which is pending before it.]
[145] (2019) 4 SCC 197 [30]
[146] Article 141, Constitution of India. [It reads:
"141. Law declared by Supreme Court to be binding on all courts – The law declared by the Supreme Court shall be binding on all courts within the territory of India."]
[147] Also *see* State of Punjab v. Rafiq Masih, (2014) 8 SCC 883 [12]. [12. […] The Court has compartmentalized and differentiated the relief in the operative portion of the judgment by exercise of powers under Article 142 of the Constitution as against the law declared. The directions of the Court under Article 142 of the Constitution, while moulding the relief, that relax the application of law or exempt the case in hand from the rigour of the law in view of the peculiar facts and circumstances do not comprise the ratio decidendi and therefore lose its basic premise of making it a binding precedent. This Court in the qui vive has expanded the horizons of Article 142 of the Constitution by keeping it outside the purview of Article 141 of the Constitution and declaring it a direction of the Court that changes its complexion with the peculiarity in the facts and circumstances of the case."]
[148] *See* Prashanti Medical Services & Research Foundation v. Union of India, (2020) 14 SCC 785 [30]
[149] (2000) 9 SCC 62
[150] (2009) 7 SCC 69
[151] "CIT"

termed the reassessment notice issued by the assessing officer to be illegal and exercised its jurisdiction under Article 142 to direct the reopening of the assessment by an appropriate assessing authority.

ii. The scope of Ashish Agarwal extended to all the reassessment notices issued between 1 April 2021 and 30 June 2021 under the old regime

89. 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.

90. In **Ashish Agarwal** (supra), this Court rendered its decision on the premise that the Revenue issued approximately ninety thousand notices under the old regime and all of them were the subject matter of writ petitions before the High Courts:

> **"4.** At this stage, it is required to be noted that approximately 90,000 such reassessment notices under Section 148 of the unamended Income Tax Act were issued by the Revenue after 1-4-2021, which were the subject-matter of more than 9000 writ petitions before various High Courts across the country and by different judgments and orders, the particulars of which are as above, the High Courts

> have taken a similar view and have set aside the respective reassessment notices issued under Section 148 on similar grounds."

Further, this Court directed that its directions "shall be applicable **PAN INDIA**":

> **"29.** The present order shall be applicable **PAN INDIA** and all judgments and orders passed by the different High Courts on the issue and under which similar notices which were issued after 1-4-2021 issued under Section 148 of the Act are set aside and shall be governed by the present order and shall stand modified to the aforesaid extent. **The present order is passed in exercise of powers under Article 142 of the Constitution of India so as to avoid any further appeals by the Revenue on the very issue by challenging similar judgments and orders, with a view not to burden this Court with approximately 9000 appeals.** We also observe that the present order shall also govern the pending writ petitions, pending before various the High Courts in which similar notices under Section 148 of the Act issued after 1-4-2021 are under challenge."
>
> (emphasis supplied)

The purpose of this Court in deeming the reassessment notices issued under the old regime as show cause notices under the new regime was two-fold: (i) to strike a balance between the rights of the assesses and the Revenue which issued approximately ninety thousand reassessment notices after 1 April 2021 under the old regime; and (ii) to avoid any further appeals before this Court by the Revenue on the same issue by challenging similar judgments and orders of the High Courts (arising from approximately nine thousand writ petitions).

91. **Ashish Agarwal** (supra) was primarily concerned with the validity of the reassessment notices issued between 1 April 2021 and 30 June 2021 under

the old regime. The scope of the directions in **Ashish Agarwal** (supra) applied **PAN INDIA**, including all the ninety thousand reassessment notices issued under the old regime during the period 1 April 2021 and 30 June 2021, as is evident from the following observation of this Court:

> **"26.** There is a broad consensus on the aforesaid aspects amongst the learned ASG appearing on behalf of the Revenue and the learned Senior Advocates/learned counsel appearing on behalf of the respective assessees. **We are also of the opinion that if the aforesaid order is passed, it will strike a balance between the rights of the Revenue as well as the respective assessees as because of a bona fide belief of the officers of the Revenue in issuing approximately 90,000 such notices, the Revenue may not suffer as ultimately it is the public exchequer which would suffer."**
>
> (emphasis supplied)

92. This Court specifically mentioned that its directions would also apply to three categories: (i) the judgment and order passed by the High Court of Judicature at Allahabad; (ii) all judgments and orders passed by the different High Court on the issue where notices issued under Section 148 of the old regime after 1 April 2021 were set aside; and (iii) writ petitions pending before various High Courts in which notices under Section 148 of the old regime issued after 1 April 2021 are under challenge.[152] The Court mentioned the above three categories to clarify that the general nature of its directions will also give a quietus to the matters that have already been adjudicated or are pending adjudication before judicial forums. The operation of the directions cannot be

[152] Ashish Agarwal (supra) [27] and [29]

limited to the above three categories, especially when this Court has specifically held that "the present order shall be applicable **PAN INDIA**."

93. 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.

iii. Effect of the legal fiction

94. Before we proceed, we need to bear in mind three important periods:

i. The period up to 30 June 2021 – this period is covered by the provisions of the Income Tax Act read with TOLA;

ii. The period from 1 July 2021 to 3 May 2022 – the period before the decision of this Court in **Ashish Agarwal** (supra); and

iii. The period after 4 May 2022 – the period after the decision of this Court in **Ashish Agarwal** (supra). This period is covered by the directions issued by

this Court in **Ashish Agarwal** (supra) and the provisions of the Income Tax Act read with TOLA.

a. Third proviso to Section 149

95. The third proviso to Section 149 reads thus:

> "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."

96. The third proviso excludes the following periods to calculate the period of limitation: (i) the time allowed to the assessee under Section 148A(b); and (ii) the period during which the proceedings under Section 148A are "**stayed** by an **order** or injunction of **any** court."

97. A legal fiction is a supposition of law that a thing or event exists even though, in reality, it does not exist.[153] The word "deemed" is used to treat a thing or event as something, which otherwise it may not have been, with all the attendant consequences.[154] The effect of a legal fiction is that "a position which otherwise would not obtain is deemed to obtain under the circumstances."[155] In **K Prabhakaran** v. **P Jayarajan**,[156] Chief Justice R C Lahoti, speaking for the majority, observed that:

> "39. […] While pressing into service a legal fiction it should not be forgotten that legal fictions are created only for some definite purpose and the fiction is to be

[153] Gajraj Singh v. STAT, (1997) 1 SCC 650 [22]
[154] CIT v. Calcutta Stock Exchange, 1959 SCC OnLine SC 126 [5]; Sudha Rani Garg v. Jagdish Kumar, (2004) 8 SCC 329 [11]
[155] Gajraj Singh (supra) [22]
[156] (2005) 1 SCC 754

> limited to the purpose for which it was created and should not be extended beyond that legitimate field. A legal fiction presupposes the existence of the state of facts which may not exist and then works out the consequences which flow from that state of facts. Such consequences have got to be worked out only to their logical extent having due regard to the purpose for which the legal fiction has been created. Stretching the consequences beyond what logically flows amounts to an illegitimate extension of the purpose of the legal fiction."

98. A legal fiction is created for a definite purpose and it should be limited to the purpose for which it is enacted or applied. It is a well-established principle of interpretation that the courts must give full effect to a legal fiction by having due regard to the purpose for which the legal fiction is created.[157] The consequences that follow the creation of the legal fiction "have got to be worked out to their logical extent."[158] The court has to assume all the facts and consequences that are incidental or inevitable corollaries to giving effect to the fiction.[159]

99. In **Ashish Agarwal** (supra), this Court created a legal fiction by deeming the Section 148 notices issued under the old regime as show cause notices under Section 148A(b) of the new regime. The purpose of the legal fiction was to enable the Revenue "to proceed further with the reassessment proceedings as per the substituted provisions" of the Income Tax Act. Accordingly, all the reassessment notices issued under the old regime were deemed to always have been show cause notices issued under Section 148A(b) of the new regime. The fiction replaced Section 148 notices with Section 148A(b) notices

[157] State of Maharashtra v. Laljit Rajshi Shah, (2000) 2 SCC 699 [6].
[158] Bengal Immunity Company Ltd v. State of Bihar, 1955 SCC OnLine SC 2
[159] Industrial Supplies (P) Ltd. v. Union of India, (1980) 4 SCC 341 [25]

with effect from the date when the notices under Section 148 of the old regime were issued between 1 April 2021 and 30 June 2021, as the case may be. This ensured the continuance of the reassessment process initiated by the Revenue from 1 April 2021 to 30 June 2021 under the old regime.

100. Importantly, this Court in **Ashish Agarwal** (supra) did not quash the reassessment notices issued under Section 148 of the old regime. In **Shree Chamundi Mopeds Ltd**. v. **Church of South India Trust Association**,[160] a three-Judge Bench of this Court explained the distinction between quashing an order and staying the operation of an order thus:

> "10. […] Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence."

The reassessment proceedings erroneously initiated by the Revenue under the old regime were not wiped out from existence. Consequently, the Revenue was not required to start the procedure of reassessment afresh after the decision of this Court in **Ashish Agarwal** (supra).

101. Under Section 148A(b), the assessing officer has to comply with two requirements: (i) issuance of a show cause notice; and (ii) supply of all the relevant information which forms the basis of the show cause notice. The supply of the relevant material and information allows the assessee to

[160] (1992) 3 SCC 1

respond to the show cause notice. The deemed notices were effectively incomplete because the other requirement of supplying the relevant material or information to the assesses was not fulfilled. The second requirement could only have been fulfilled by the Revenue by an actual supply of the relevant material or information that formed the basis of the deemed notice.

102. 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.

103. In **VLS Finance Limited** v. **Commissioner of Income Tax**,[161] a two-Judge Bench of this Court was called upon to interpret Explanation 1 to Section 158BE of the Income Tax Act. Section 158BE provides the time limit for completion of block assessments. Explanation 1 to the provision excludes "period during which the assessment proceedings is stayed by an order or injunction of any court" from the period of limitation. This Court held that the

[161] (2016) 12 SCC 32

exclusion of the period of limitation has to be computed "rationally and practically" in the following terms:

> **"18.** As a general rule, therefore, when there is no stay of the assessment proceedings passed by the court, Explanation 1 to Section 158-BE of the Act may not be attracted. However, this general statement of legal principle has to be read subject to an exception in order to interpret it rationally and practically. **In those cases where stay of some other nature is granted than the stay of the assessment proceedings but the effect of such stay is to prevent the assessing officer from effectively passing assessment order, even that kind of stay order may be treated as stay of the assessment proceedings because of the reason that such stay order becomes an obstacle for the assessing officer to pass an assessment order thereby preventing the assessing officer to proceed with the assessment proceedings and carry out appropriate assessment."**
>
> (emphasis supplied)

104. Section 11-A of the Land Acquisition Act 1894 mandated the Collector to make an award under Section 11 within two years from the date of publication of the declaration. The explanation to the provision allowed exclusion of "the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a court." This Court has consistently interpreted the phrase "stay of action or proceedings" to mean any type of order passed by a court, which, in one way or another, prohibits or prevents the authorities from passing an award.[162] Therefore, any order of a court that

[162] Abhey Ram v. Union of India, (1997) 5 SCC 421 [9]; Indore Development Authority v. Manoharlal, (2020) 4 SCC (Civ) 496 [301]; Maharashtra Vidarbha Irrigation Development Corporation v. Mahesh, (2022) 2 SCC 772 [39].

prevents or prohibits an authority from passing an order can be treated as a stay order.

105. 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.

106. 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.

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

b. Interplay of Ashish Agarwal with TOLA

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

109. If this Court had not created the legal fiction and the original reassessment notices were validly issued according to the provisions of the new regime, the notices under Section 148 of the new regime would have to be issued within the time limits extended by TOLA. As a corollary, the reassessment notices to be issued in pursuance of the deemed notices must also be within the time

[163] East End Dwellings Co. Ltd. v. Finsbury Borough Council, [1952] AC 109. [Lord Asquith, in his concurring opinion, observed: "If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it."]

limit surviving under the Income Tax Act read with TOLA. This construction gives full effect to the legal fiction created in **Ashish Agarwal** (supra) and enables both the assesses and the Revenue to obtain the benefit of all consequences flowing from the fiction.[164]

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

111. The clock started ticking for the Revenue only after it received the response of the assesses to the show causes notices. After the receipt of the reply, the assessing officer had to perform the following responsibilities: (i) consider the reply of the assessee under Section 149A(c); (ii) take a decision under Section 149A(d) based on the available material and the reply of the assessee; and (iii) issue a notice under Section 148 if it was a fit case for reassessment. Once the clock started ticking, the assessing officer was

[164] *See* State of A P v. A P Pensioners Association, (2005) 13 SCC 161 [28]. [This Court observed that the "legal fiction undoubtedly is to be construed in such a manner so as to enable a person, for whose benefit such legal fiction has been created, to obtain all consequences flowing therefrom."]

required to complete these procedures within the surviving time limit. The surviving time limit, as prescribed under the Income Tax Act read with TOLA, was available to the assessing officers to issue the reassessment notices under Section 148 of the new regime.

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

113. In **Ashish Agarwal** (supra), this Court allowed the assesses 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 time-barred.

G. Conclusions

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

a. After 1 April 2021, the Income Tax Act has to be read along with the substituted provisions;

b. TOLA will continue to apply to the Income Tax Act after 1 April 2021 if any action or proceeding specified under the substituted provisions of the Income Tax Act falls for completion between 20 March 2020 and 31 March 2021;

c. Section 3(1) of TOLA overrides Section 149 of the Income Tax Act only to the extent of relaxing the time limit for issuance of a reassessment notice under Section 148;

d. TOLA will 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 extended time till 30 June 2021 to grant approval;

e. 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(2) has extended time till 31 March 2021 to grant approval;

f. The directions in **Ashish Agarwal** (supra) will extend to all the ninety thousand reassessment notices issued under the old regime during the period 1 April 2021 and 30 June 2021;

g. The time during which the show cause notices were deemed to be stayed is from the date of issuance of the deemed notice between 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; and

h. The assessing officers were required to issue the reassessment notice under Section 148 of the new regime within the time limit surviving under the Income Tax Act read with TOLA. All notices issued beyond the surviving period are time barred and liable to be set aside;

115. The judgments of the High Courts rendered in **Union of India** v. **Rajeev Bansal**,[165] **Keenara Industries Pvt. Ltd**. v. **ITO**, **Surat**,[166] **J M Financial and Investment Consultancy Services Pvt. Ltd.** v. **ACIT**,[167] **Siemens Financial**

[165] Writ Tax No. 1086 of 2022 (Allahabad High Court)
[166] R/Special CA No. 17321 of 2022 (High Court of Gujarat)
[167] WP No. 1050 of 2022 (High Court of Judicature at Bombay)

Services Pvt. Ltd. v. **DCIT**,[168] **Geeta Agarwal** v. **ITO**,[169] **Ambika Iron and Steel Pvt Ltd** v. **PCIT**,[170] **Twylight Infrastructure Pvt Ltd** v. **ITO**,[171] **Ganesh Dass Khanna** v. **ITO**,[172] and other judgments of the High Courts which relied on these judgments, are set aside to the extent of the observations made in this judgment.

116. The appeals filed by the Revenue are accordingly allowed. The appeals filed by the assesses will be governed by reasons discussed in this judgment.

117. The transfer petitions are disposed of.

118. Pending application(s), if any, stand disposed of.

.....CJI
[Dr Dhananjaya Y Chandrachud]

.....J
[J B Pardiwala]

.....J
[Manoj Misra]

New Delhi;
October 03, 2024

[168] [2023] 457 ITR 647 (High Court of Judicature at Bombay)
[169] DB Civil Writ Petition No. 14794 of 2022 (High Court of Judicature at Rajasthan)
[170] WP(C) No. 20919 of 2021 (High Court of Orissa)
[171] WP(C) No. 16524/2022 (High Court of Delhi)
[172] [2024] 460 ITR 546 (High Court of Delhi)