Asha Vishnukumar Patel vs Assistant Commissioner Of Income Tax, ... — R/Special Civil Application No. 21373 of 2022

NEUTRAL CITATION C/SCA/21373/2022 JUDGMENT DATED: 03/03/2026 IN THE HIGH COURT OF GUJARAT AT AHMEDABAD R/SPECIAL CIVIL APPLICATION NO. 21373 of 2022 FOR APPROVAL AND SIGNATURE: HONOURABLE MR. JUSTICE A.S. SUPEHIA and HONOURABLE MR. JUSTICE PRANAV TRIVEDI == Approved for Reporting NoYes ✔ == ASHA VISHNUKUMAR PATEL Versus ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE 3, SURAT == Appearance: MR DHINAL A SHAH(12077) for the Petitioner(s) No. 1 KARAN G SANGHANI(7945) for the Respondent(s) No. 1 == CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA and HONOURABLE MR. JUSTICE PRANAV TRIVEDI Date : 03/03/2026 ORAL JUDGMENT (PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. Heard learned advocate Mr. Dhinal Shah for the petitioner and learned Senior Standing Counsel Mr. Karan Sanghani for the respondent.

2. This petition is filed under Article 226 of the Constitution of India challenging the notice under section 148 of the Income Tax Act, 1961 (For short "the Act") dated 30.07.2022 on the ground that the notice would be invalid and time barred.

3. Brief facts of the case are that the respondent Assessing Officer issued notice dated 30.06.2021 under section 148 of the Act for the Assessment Year 2016-2017 during the extended time period as per Page 1 of 5 Uploaded by PHALGUNI PATEL(HC00175) on Wed Mar 11 2026 Downloaded on : Sat Mar 14 08:28:12 IST 2026 NEUTRAL CITATION C/SCA/21373/2022 JUDGMENT DATED: 03/03/2026 undefined Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 [(2020) 422 ITR (St.) 116] (For short "TOLA").

4. In view of the decision of Hon'ble Apex Court in case of Union of India and others v. Ashish Agarwal reported in (2022) 444 ITR 1 (SC), the aforesaid notice was to be treated as notice under section 148A(b) of the Act which has come into statute with effect from 01.04.2021.

5. The Hon'ble Apex Court in case of Union of India v. Rajeev Bansal reported in (2024) 469 ITR 46 (SC) has laid down the law to consider such notice as valid notice or invalid notice depending upon the surviving time left between the date of issuance of notice under section 148 of the Act read with section 3(1) of TOLA upto 30.06.2021 and the issuance of notice under section 148 pursuant to the directions issued by the Hon'ble Apex Court in case of Ashish Agarwal (supra).

6. This Court in case of Dhanraj Govindram Kella v. Income Tax Officer, Ward(2), Surendranagar (Judgment dated 08.07.2025 rendered in Special Civil Application No.6387 of 2023 and allied matters) has considered in detail the submissions made by both the sides and has held as under: "65. The alternative contention of the petitioner as to whether notices would be valid notice or invalid notice considering 'surviving time' between the date of the issuance of notices under TOLA and 30 th June, 2021 or not is required to be considered and for that each matter has to be considered separately on the basis of the facts of case considering the date of issuance of notices under section 148 under TOLA by the Revenue and thereafter date of supplying information to the assessee and date of passing of order under section 148A(d) and date of issuance of notice under section 148 of the Act so as to consider whether issuance of notice under section 148 of the Act is within 'surviving time' as per the direction of Hon'ble Apex Court in case of Rajeev Bansal (supra) or not.

66. So far as Assessment Years 2013-2014 and 2014-2015 are concerned, the period of three years from the end of the assessment year would be over prior to 20.03.2020 and the period of six years would be over between 20.03.2020 and 30.06.2021. Therefore, the notices issued under section 148 of the Act under old regime between 01.04.2021 and 30.06.2021 as per TOLA, will be a valid notice if the notice under section Page 2 of 5 Uploaded by PHALGUNI PATEL(HC00175) on Wed Mar 11 2026 Downloaded on : Sat Mar 14 08:28:12 IST 2026 NEUTRAL CITATION C/SCA/21373/2022 JUDGMENT DATED: 03/03/2026 undefined 148 of the Act under new regime is issued within the period of 'surviving time' as per the directions issued by Hon'ble Apex Court in case of Rajeev Bansal (supra). For the Assessment Years 2016-2017 and 2017-2018 are concerned, the notice issued under section 148 of the Act under old regime between 01.04.2021 and 30.06.2021 under TOLA would be considered to be issued within three years from the end of the relevant assessment year as three years would complete within the period of 20.03.2020 and 30.06.2021.

67. Therefore, in facts of these petitions, following data is required to be considered to find out 'surviving time' to decide as to whether the impugned notices under section 148 of the Act issued under the new regime as per the decision of Hon'ble Apex Court in case of Ashish Agarwal (supra) would be valid notice or not in view of the decision of the Hon'ble Apex Court in case of Rajeev Bansal (supra): SCA NO AY Date of notice No of days of Date of providing under section 148 surviving time information under under TOLA available till section 148A(b) 30.06.2021 6387/2023 2013-2014 17.06.2021 13 26.05.2022 5688/2023 2014-2015 09.06.2021 21 23.05.2022 22260/2022 2016-2017 30.06.2021 1 23.05.2022 996/2023 2017-2018 30.06.2021 1 24.05.2022 SCA NO Due date of filing Date of reply:- Date of order Last date for issuance reply under section of notice under section 148A(d) and 148 as per surviving notice under time:- section 148:- 6387/2023 09.06.2022 04.06.2022 29.07.2022 22.06.2022 5688/2023 06.06.2022 - 27.07.2022 27.06.2022 22260/2022 07.06.2022 06.07.2022 30.07.2022 14.06.2022 996/2023 11.06.2022 10.06.2022 19.07.2022 18.06.2022

68. It is apparent from the above details that impugned notice under section 148 of the Act is issued beyond the period of 'surviving time' as per the direction of Hon'ble Apex Court in case of Rajeev Bansal (supra)and therefore, such notices would be invalid notices. 69.The impugned notices issued under section 148 of the Act are accordingly quashed and set aside being invalid having been issued beyond the 'surviving time'. Accordingly, impugned orders passed under section 148A(d) of the Act would also not survive and are accordingly, quashed and set aside. Subsequent proceedings, if any, undertaken by the respondent would not survive and are also quashed and set aside.

70. Rule is made absolute to the aforesaid extent. No order as to costs."

7. In the facts of the case, the respondent Assessing Officer has provided information pursuant to the directions issued by the Hon'ble Apex Court in case of Ashish Agarwal (supra) on 26.05.2022 and therefore, considering 15 days' time to file reply by the assessee, the due date would be 09.06.2022. The petitioner filed reply on 08.06.2022. The order under section 148A(d) of the Act was issued on 30.07.2022. However, considering the period of limitation from the date of issuance of notice under section 148 read with TOLA upto 30.06.2021, the limitation for issuance of notice under section 148 of the Act applying the decision of Hon'ble Apex Court in case of Ashish Agarwal (supra) as well as Rajeev Bansal (supra), would be 16.06.2022.

8. Learned Senior Standing Counsel Mr. Karan Sanghani has verified the above dates and could not controvert the same.

9. In view of above, the impugned order dated 30.07.2022 issued under section 148A(d) of the Act would be invalid notice as the said notice is issued after 16.06.2022 as per the decision of Hon'ble Apex Court in case of Ashish Agarwal (supra). Therefore, the impugned notice having been issued beyond the 'surviving time' would be invalid notice as held by the Hon'ble Apex Court in case of Rajeev Bansal (supra) in the following paragraph no. 114 (g) and (h) of the judgment: "114. In view of the above discussion, we conclude that: xxx (g) The time during which the show-cause notices were deemed to be stayed is from the date of issuance of the deemed notice between April 1, 2021 and June 30, 2021 till the supply of relevant information and material by the Assessing Officers to the assessees in terms of the directions issued by this court in Union of India v. Ashish Agarwal [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617.] , and the period of two weeks allowed to the assessees to respond to the show-cause notices; and (h) The Assessing Officers were required to issue the reassessment notice under section 148 of the new regime within the time limit surviving under the Income-tax Act read with the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. All notices issued beyond the surviving period are time barred and liable to be set aside."

10. In view of foregoing reasons, impugned order dated 30.07.2022 and notice dated 30.07.2022 are hereby quashed and set aside and all consequential proceedings are also quashed and set aside. Rule is made absolute. (A. S. SUPEHIA, J) (PRANAV TRIVEDI,J) phalguni/4(Board-III)