

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट।
**IN THE INCOME TAX APPELLATE TRIBUNAL, “SMC”
RAJKOT BENCH, RAJKOT**

**BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND
DR. DINESH MOHAN SINHA, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 542/RJT/2025
(Assessment Year: 2014-15)
(Hybrid Hearing)

M/s. Shreedhar Construction, 211, Divyam Complex Airodrome Road, Jamnagar-361006 (Gujarat)	Vs.	The ITO, Ward-1(3), Jamnagar
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ACLFS0395R		
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)

निर्धारितकीओरसे/Assessee by : Shri Kalpesh Doshi, Ld. AR
राजस्वकीओरसे/Revenue by : Shri Ahimanyu Singh Yadav, Sr. DR
सुनवाईकीतारीख/ Date of Hearing : 10/12/2025
घोषणाकीतारीख/ Date of Pronouncement : 09/02/2026

आदेश/ORDER

Per, Dr. Arjun Lal Saini, AM:

The present appeal has been filed by the assessee, against the order passed by the Learned Commissioner of Income Tax (Appeal), National Faceless Appeal, Centre (NFAC), Delhi [hereinafter referred to as “CIT(A)”] dated 25.06.2025, arising in the matter of assessment order

passed u/s 147 r.w.s. 144 of the Income Tax Act, 1961 (here-in-after referred to as “the Act”) relevant to the Assessment Year 2014-15.

2. Grievances, raised by the assessee are as follows:

“1. That, the notice issued u/s 148 of the I.T. Act, 1961, is beyond surviving period as per Hon'ble Supreme Court decision in the case of UOI v. Rajeev Bansal (167 taxmann.com 70).

2. That, the order u/s 147 rws 144 of the I.T. Act, 1961 is without issuing the notice u/s 143(2) of the I.T. Act, 1961.

3. That, the order passed u/s 147 r.w.s. 144 of the I.T. Act, 1961 is bad-in-law.

a. The notice issued u/s 148 of the Act is barred by limitation.

b. The notice issued u/s 148 of the Act by Jurisdictional Assessing Officer (Jassessing officer) instead of Faceless Assessing Officer (Fassessing officer) lacks of jurisdiction.

c. The order u/s 148A(d) of the Act fails to state whether an item represents an asset or an expenditure and such asset or expenditure exceeds the threshold of Rs. 50 lakhs.

d. The approval accorded Designated Authority u/s 151 of the Act is mechanical in nature.

4. That, the Ld. CIT(A) has wrongly confirmed the addition amounting to Rs. 2,55,05,699/- on account of rent received on plant & machinery.

5. That, the Ld. CIT(A) has wrongly confirmed initiation of penalty proceedings u/s 271(1)(b) and 271(1)(c) of the I.T. Act, 1961.

6. That, the Ld. CIT(A) wrongly confirmed levy of interest u/s 234A and 234B of the I.T. Act, 1961.”

3. The relevant material facts, as culled out from the material on record, are as follows. The assessee, is a partnership- firm and has not filed return of income for assessment year (AY) 2014-15. In this case notice u/s 148 of the

Act, for the AY 2014-15 was issued on 24.06.2021, first -time on the basis of information in possession of the assessing officer after following the provisions of Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (hereinafter referred to as 'TOLA') and as per the CBDT Notification No. 20 dated 31.03.2021 and subsequent Notification No. 38 dated 27.04.2021, according to which the time limit for issue of notice u/s 148 was extended to 30.04.2021 and 30.06.2021 respectively. The above notice was issued after obtaining the approval of competent authority. Later on, Hon'ble Supreme Court in the case of "Union of India and others Vs. Ashish Agarwal (Civil Appeal no. 3005/2022 dated 04.05.2022, in which the Hon'ble Supreme Court stated that the notice issued u/s 148 of the Income-tax Act, 1961 between 01.04.2021 to 30.06.2021 shall be deemed to have been issued u/s 148A of the Act, as mandated by the Finance Act 2021 and shall be treated as show cause notice, as per section 148A(b) of the Act. Respectfully, following the direction issued by the Hon'ble Supreme Court, copy of the reasons was provided to the assessee, along with relevant information relied upon which suggests that income chargeable to tax has escaped assessment in the hands of the assessee. The assessing officer has passed order u/s 148A(d) of the IT Act, 1961 on 26.07.2022. The notice u/s 148 of the Income-tax Act, 1961, was issued to the assessee, on 27.07.2022.

4. The assessing officer also noted that assessee has filed a writ petition before the Hon'ble Gujrat High Court vide R/Special Civil Application no. 2918 of 2023. The Hon'ble Gujrat High Court has allowed relief to assessee, vide order dated 21.02.2023 by relying on the case of M/s Keenara Industries Private Limited Vs Income Tax Officer, Surat, special civil

application No. 17321 of 2022 and allied matters decided on 07.02.2023, where the Gujarat High Court on the issue of limitation has allowed the plea of petitioner and quashed the notice for the A.Y. 2013-14 and A.Y. 2014-15 issued by the respondent. It is pertinent to mention here that the department has filed SLP before the Hon'ble Supreme Court in the case of Keenara Industries Private Limited, against the order of Gujrat High Court dated 07.02.2023 in SCA No. 17321/2022. In consequence to petition, the Hon'ble Supreme Court vide its order dated 17.05.2023 in SLP No. 9712/2023 has stayed the impugned judgment and order dated 07.02.2023 passed by the High Court in Special civil application No. 17321 of 2022 in the case of Keenara Industries Private Limited. Since the proceedings of Hon'ble Gujrat High Court has been stayed by the Hon'ble Supreme Court in the case on whose basis assessee has got relief from the court, relief allowed in assessee's case was also found considerable as stayed. Therefore, the assessing officer was of the view that assessment proceedings in assessee's case is liable to be completed in due course.

5. The assessing officer observed that as per information available with the Department, it was gathered that the assessee has received amount of Rs. 2,55,05,699/- during the year on account of rent on plant and machinery. Since, the assessee has not filed its income tax return (ITR) for the year under consideration, the amount received by the assessee from rent on Plant and Machinery remains unexplained. Thus, reassessment proceedings were initiated in the assessee's case by issuing notice u/s 148 of the Income-tax Act, 1961, dated 27.07.2022, after obtaining necessary approvals from the

competent authorities. In order to verify issue involved, notices, were issued to the assessee.

6. In response to the notice of the assessing officer, the assessee had not filed the reply, before the assessing officer, therefore, assessing officer, held that the amount of rent received by the assessee has not offered for taxation. Thus, amount received by the assessee, as rent of plant and machinery is liable to be added to the total income of the assessee for the year under consideration. Therefore, an addition of Rs. 2,55,05,699/- was made to the total income of the assessee.

7. Aggrieved by the order of the assessing officer, the assessee carried the matter in appeal before the CIT(A). Before, learned CIT(A), the assessee has raised the technical grounds stating that reassessment proceedings initiated by the assessing officer and notice under section 148 of the Act, issued by the assessing officer, are bad in law. The assessee has also raised the technical ground before the learned CIT(A) that notice under section 148 of the Act is barred by limitation, therefore, assessment proceedings should be quashed. The assessee also raised the ground before the learned CIT(A) that assessment was reopened beyond a period of three years from the end of the relevant assessment year without proper approval. However, learned CIT(A) did not adjudicate the above technical grounds of the assessee, and has remitted the issue back to the file of the assessing officer, for fresh adjudication. Aggrieved by the order of the Ld. CIT(A), the assessee is in further appeal before us.

8. Shri Kalpesh Doshi, Learned Counsel for the assessee, vehemently argued that assessee has raised technical ground no. 1, pertaining to surviving period. That is, the issue, under consideration, is beyond surviving period, as per the judgment of Hon'ble Supreme Court in the case of UOI v. Rajeev Bansal, 167 taxmann.com 70, therefore, the said legal and technical ground should be adjudicated first, as it goes to the root of the matter. The ld. Counsel submitted that in the assessee's case, under consideration, the assessment was reopened u/s 148/147 of the Act and original notice u/s 148 of the Act was issued to the assessee on 24.06.2021, which is under the old regime, wherein the time available before the assessing officer was up to 30.06. 2021. The ld. Counsel further stated that in the assessee's case notice u/s 148A(b) of the Act was issued 24.05.2022. The surviving period, in the assessee's case is 6 (six) days (24.06.2021 to 30.06.2021). The assessing officer issued order under section 148A(d) of the Act on 26.07.2022. The assessing officer issued final notice under section 148 of the Act on 27.07.2022. Therefore, notice should have been issued by the assessing officer under section 148 of the Act up to 14.06.2022. However, in the assessee's case, the actual notice under section 148 of the Act was issued on 27.07.2022, therefore notice issued by the assessing officer on 27.07.2022, is time barred and hence the issue is squarely covered in favour of the assessee, by the judgment of the Hon'ble Supreme Court in the case of UOI v. Rajeev Bansal (supra). Therefore, on this technical issue, the appeal of the assessee may be allowed.

9. On the other hand, the ld. D.R. for the revenue submitted that no doubt the issue under consideration is squarely covered in favour of the assessee by

the judgment of UOI v. Rajeev Bansal (supra), however, the assessee has not replied to the first notice issued by the assessing officer, therefore, the assessee is not entitled to get benefit of the judgment of UOI v. Rajeev Bansal (supra).

10. In rejoinder, the Id. Counsel of the assessee submitted that it is not necessary for the assessee to reply but the notice should have been issued within the time frame prescribed under the Act. Therefore, just because the assessee has not replied to the assessing officer, does not mean that the assessee is not deserve to take the advantage of the judgment of the Hon'ble Supreme Court (supra) and for that the Id. Counsel of the assessee relied on the judgment of Jurisdictional Hon'ble High Court of Gujarat in the case of Dilipbhai Jayantibhai Patel vs. Assessment Unit Income Tax Department 2025 179 taxmann.com 40 Gujarat wherein it was held it is not necessary for the assessee to reply to the assessing officer, however, if the assessee's case falls beyond the surviving period, the assessee is entitled to take the benefit. The findings of the Hon'ble Court, in brief, are as follows:

*“Section 148 of the Income-tax Act, 1961 read with section 3 of the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (TOLA) Income escaping assessment. Issue of notice for (Surviving time) Assessment year 2014-15-Assessing Officer issued notice under section 148 on 22.06.2021 for assessment year 2014-15 during extended period under TOLA-As per Union of India v. Ashish Agarwal [2022] 138 taxmann.com 64/286 Taxman 183/444 ITR 1 (SC), it was treated as notice under section 148A(b). Thereafter, information was provided to assessee on 24.05.2022 **granting 15 days to reply, up to 07.06 2022, but no reply was filed**-Thereafter, order under section 148A(d) and fresh notice under section 148 were issued on 28.07.2022-It was noted that as per law laid down in Union of India v. Rajeev Bansal [2024] 167 taxmann.com 70/301 Taxman 238/469 ITR 46 (SC), reassessment notice under new regime had to be issued within "surviving time" available under Act read with TOLA, which expired on 16.06.2022. Whether in view of above, impugned notice dated 28-7-2022 issued under section 148 would be invalid notice as said notice was issued after 16-6-2022 i.e. beyond 'surviving time' as held by Apex Court in case of*

Rajeev Bansal (supra) - Held yes Whether therefore, all consequential proceedings were to be quashed-Held, yes [Paras 9 and 10] [In favour of assessee].

11. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position. The assessee is a partnership- firm and engaged in the business of construction and renting of plant machineries. During the year under consideration the return of income has been filed by the assessee, declaring total income of Rs. 1,13,040/-. The copy of return of income filed in response to notice u/s 148 of the Act is submitted by the assessee before the Bench. In the assessee's case the notice u/s 148 of the Act has issued on 24/06/2021, and the copy of said notice is submitted before the Bench. Thereafter, as per the Supreme Court Directions, the notice u/s 148A(b) of the Act has been issued on the assessee, on 24/05/2022. The order under section 148A(d) of the Act has been passed on 26/07/2022, by the assessing officer. The final notice u/s 148 of the Act has been issued by the assessing officer, on 27/07/2022. The copies of these notices are submitted by the assessee by way of paper book, which we have verified.

12. We note that the Income-tax Act, read with TOLA, extended the time limit for issuing reassessment notices u/s 148 of the Act, which fell for completion from 20th March 2020 to 31st March 2021 till 30th June 2021. The Hon'ble Apex Court in the case of Ashish Agarwal [2022] 138 taxmann.com 64 (SC) 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. 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 30th June 2021. The reassessment notices issued in pursuance of the deemed notices must be within the time limit surviving under the Income-tax Act read with TOLA. The effect of the creation of the legal fiction in Ashish Agarwal (supra) is 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). The period from the date of the issuance of the deemed notices till the supply of relevant information and material by the assessing officers to the assessee in terms of the directions issued by the Hon'ble Court in Ashish Agarwal (supra), has to be excluded from the computation of the period of limitation. After the receipt of the reply, the assessing officer is required to perform the below within the surviving time limit:

- (i) Consider the reply of the assessee under section 148A(c);
- (ii) Take a decision under section 148A(d) based on the available material and the reply of the assessee; and
- (iii) Issue a notice u/s 148 of the Act, under new regime, if it is a fit case for reassessment.

The surviving time limit, as prescribed under the Income-tax Act read with TOLA, was available to the assessing officer to issue the reassessment notices u/s 148 of the new regime.

13. In the light of the above legal position, we analyze the assessee's facts that assessee's case under consideration pertain to assessment year (AY) 2014-2015, the period of three years from the end of the assessment year will be over prior on 20/03/2020 and the period of six years will be over between 20/03/2020 and 30/06/2021. Therefore, the notices issued u/s 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 u/s 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). In the assessee's case, under consideration, the assessment was reopened u/s 148/147 of the Act and original notice u/s 148 of the Act was issued to the assessee on 24.06.2021, which is under the old regime, wherein the time available before the assessing officer was up to 30.06. 2021. In the assessee's case notice u/s 148A(b) of the Act was issued 24.05.2022. The surviving period, in the assessee's case is 6 (six) days (24.06.2021 to 30.06.2021). The assessing officer issued order under section 148A(d) of the Act on 26.07.2022. The assessing officer issued final notice under section 148 of the Act on 27.07.2022. Therefore, notice should have been issued by the assessing officer under section 148 of the Act up to 14.06.2022, which the assessing officer has failed to do so . However, in the assessee's case, the actual notice under section 148 of the Act was issued on 27.07.2022, therefore notice issued by the assessing officer on 27.07.2022, is time barred and hence the issue is squarely covered in favour of the assessee, by the judgment of the Hon'ble Supreme Court in the case of UOI v. Rajeev Bansal (supra). Hence, in our considered view, it was wholly

erroneous on the part of the assessing officer, to issue notice u/s 148 of the Income Tax Act, 1961, beyond the surviving period, as mentioned in the celebrated judgement of Hon'ble Supreme Court in the case of UOI v. Rajeev Bansal, 167 taxmann.com 70. The important findings of the Hon'ble Court is reproduced below:

“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 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.”

14. Therefore, we find that issue under consideration is a squarely covered in favour of the assessee by the judgement of Hon'ble Supreme Court in the

case of Rajeev Bansal(supra).Even on the similar and identical facts, the Hon'ble jurisdictional High Court of Gujarat in the case of Dhanraj Govindram Kella v. ITO [2025] 177 taxmann.com 194 (Gujarat) held that where three-year period for reopening expired between 20-3-2020 and 31-3-2021, extended time under TOLA Act, 2020 permitted specified authority under section 151(i) of amended regime to grant approval up to 30-6-2021 and where impugned notices under section 148 for Assessment years 2013-14, 2014-15, 2016-17 and 2017-18 were issued beyond period of 'surviving time' as per direction of Supreme Court in Union of India v. Rajeev Bansal [2024] 167 taxmann.com 70/301 Taxman 238/469 ITR 46 (SC), such notices would be invalid. Therefore, respectfully following the binding precedents of Hon'ble Supreme Court (supra)and Hon'ble jurisdictional High Court of Gujarat(supra), we quash the re-assessment order of assessing officer, under section 147 of the Act, dated 27.05.2023, being *void ab-initio*.

15. As the reassessment itself is quashed, all other issues on merits of the additions, in the impugned assessment proceedings, are rendered academic and infructuous.

16. In the result, appeal filed by the assessee, is allowed.

Order is pronounced in the open court on 09/02/2026.

Sd/-
(Dr. Dinesh Mohan Sinha)
Judicial Member

राजकोट/Rajkot

दिनांक/ Date: 09/02/2026

Sd/-
(Dr. Arjun Lal Saini)
Accountant Member

Copy of the order forwarded to :

- The assessee
- The Respondent
- CIT
- The CIT(A)
- DR, ITAT, RAJKOT
- Guard File

By order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot