

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 4859 of 2023****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR. JUSTICE N.V.ANJARIA****and****HONOURABLE MR. JUSTICE NIRAL R. MEHTA**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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SHREE DURGASYNTEX PRIVATE LIMITED**Versus****THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 2(1)(1),
SURAT**

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Appearance:**MR TUSHAR HEMANI SENIOR ADVOCATE WITH MS VAIBHAVI K
PARIKH(3238) for the Petitioner(s) No. 1****MRS KALPANA K RAVAL ADVOCATE for the Respondent(s) No. 1**

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CORAM: HONOURABLE MR. JUSTICE N.V.ANJARIA**and****HONOURABLE MR. JUSTICE NIRAL R. MEHTA****Date : 27/03/2023****ORAL JUDGMENT****(PER : HONOURABLE MR. JUSTICE N.V.ANJARIA)**

In the facts and circumstances of the case, having regard to the issue involved and with consent and request of learned advocates for the parties, this Special Civil Application was taken up for final consideration today.

2. Rule returnable forthwith. Learned advocate Mrs. Kalpana Raval for the respondent Revenue waives service of Rule.

2.1 Heard learned senior advocate Mr. Tushar Hemani assisted by Ms. Vaibhavi Parikh for the petitioner and learned advocate for the respondent.

3. In the present petition filed under Article 226 of the Constitution, the petitioner has called in question the notice dated 31.07.2022 issued by respondent-assessing officer under Section 148 of the Income Tax Act, 1961 seeking to reopen the assessment in respect of assessment year 2013-14. Also challenged is the order dated 31.07.2022 passed under Section 148A(d) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

3.1 While in the impugned order under section 148A(d) of the Act mentioned are the factual details and the reasons on the basis of which the assessing officer has found that the case is fit to be reopened for the assessment in respect of the year under consideration, it is inter alia stated that the notice under section 148 of the Act was originally issued on 29.06.21 for the assessment year 2013-14. The said notice was treated as show-cause notice under section 148A(b) of the Act in light of the decision of the Supreme Court in **Union of India vs.**

Ashish Agarwal[(2023) 1 SCC 617 : (2022) 444 ITR 1 (SC)], and that thereupon, the order under section 148A(d) was passed.

4. At the outset, learned senior advocate for the petitioner submitted that the notice issued under section 148 of the Act and the consequential order under section 148A(d) of the Act issued by the department for assessment year 2013-14 is barred on the ground of limitation, the notice having been issued after passage of six years from the end of the relevant assessment year.

4.1 It was submitted that in view of the decision of the Division Bench of this Court in **Keenara Industries Pvt Ltd. vs. The Income Tax Officer being Special Civil Application No. 17321 of 2021 and allied petitions, decided on 07.02.2023**, the question of legality of the notice issued in respect of Assessment Year 2013-14 and Assessment Year 2014-15 is covered and the impugned notice is without jurisdiction as it is beyond the time limit prescribed.

5. In order to properly understand the controversy and the applicable provisions in particular, prior to coming into force of Finance Act, 2021 called old regime as well as the provisions introduced in the Finance Act, 2021 described as new regime, the development of the law emanating from **Keenara Industries Pvt. Ltd. (supra)** in that regard may be revisited with, by noticing the aspects considered and decided in the said decision.

5.1 Section 147 of the Act empowers the assessing officer to

reassess the income of the assessee subject to the provisions of Sections 148 to 151 of the Act in case any income chargeable to tax has escaped assessment.

5.1.1 Prior to the applicability of Finance Act, 2021 with effect from 01.04.2021, for the provisions of section 149 then existed, notice under section 148 could be issued for the relevant assessment year within four/six years from the end of the relevant assessment year concerned. Section 149 as operated in the old regime prior to the Finance Act, 2021, reads as under,

"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;

(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."

5.1.2 The above section deals with time limit for issuance of notice for reopening of the assessment. The assessing officer thereunder could reopen the case of the assessee beyond four years, but within six years from the end of the relevant assessment year in case the amount escaped the assessment is likely to exceed rupees one lakh.

5.2 In the Finance Act, 2021, passed on 28.03.2021, and made applicable with effect from 01.04.2021, Section 148A came to be brought into force under section 42 of the Finance Act. It relates to conducting of inquiry and providing opportunity to the assessee before notice under section 148 of the Act could be issued. Along with substitution of new section 148A, section 149 of the Act was also recast by the legislature.

5.2.1 Section 149 of the Act, as inducted by the Finance Act, 2021 in the statute book and made applicable with effect from 01.04.2021 is as under,

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

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

(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of 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 subsection 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 subsection shall be deemed to be extended accordingly.

Explanation.—For the purposes of clause (b) of this subsection, “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.’ Sanction for issue of notice “151.”

5.2.2 As per the aforesaid amended section 149, notice under section 148 of the Act could be issued within three years from the end of the relevant assessment year. What is contemplated is that the assessing officer could reopen the case of the assessee beyond three years, but within 10 years from the end of the relevant assessment year. This could be done by the assessing officer within 10 years provided he is in possession of the books of accounts or documents or evidence revealing that income escaped assessment represented in form of asset was likely to exceed Rs. 50 lakhs. Further condition needed to be satisfied is the approval of the competent authority of the Income Tax under section 151 of the Act, which enable the assessing officer to assume the jurisdiction.

5.2.3 What is to be noticed with relevance is that the First Proviso to section 149 of the Act as introduced in Finance Act, 2021, inter alia stipulated 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 provision as it stood immediately before the commencement of the Finance Act, 2021.

5.2.4 In other words, in respect of the notice under section 148 of the Act relating to the assessment year beginning on or before 01.04.2021, the operational conditions in the provision as they stood before 01.04.2021 were maintained. It thus included the factor of prescription of time limit-the limitation.

5.3 It may be mentioned that in wake of spread of pandemic of Covid-19 around March 2020 and onwards, leading to the lockdown resulting into societal affairs coming to a standstill, Ordinance No. 2/20 dated 31.03.2020 was promulgated by the Central Government, titled as the Taxation and Other Laws (Relaxation and Amendment Of Certain Provisions) Ordinance, 2020, which became the Act subsequently, to be applied retrospectively from 31.03.2020, being the date of ordinance. Under section 3 of the Taxation and Other Laws (Relaxation and Amendment Of Certain Provisions) Act, 2020, (hereinafter referred to as 'the Taxation and other Laws Act, 2020') various notifications were issued from time to time extending the time line prescribed under section 149 of the Act for issuance of reassessment notice under Section 148 of the Act. The latest amongst the notification was the Notification No.38 of 2021 dated 27.04.2021 whereby the time limit was extended till 30.06.2021.

5.3.1 Notwithstanding that the amended sections 147 to 151 in the Act came into force with effect from 01.04.2021 under

the Finance Act, 2021, the Income Tax Department issued innumerable notices during the period from 01.04.2021 to 30.06.2021 for reopening the assessment under the provisions of the old regime. The Department for issuing such notices, relied on explanation to the aforesaid notification whereby the time limit was extended as stated above. These notices became subject matter of challenge before different High Courts. The Notifications issued for extension of time were prayed to be declared ultra vires.

5.4 The Supreme Court had an occasion to consider such cases arrived before it from different High Courts, wherein the notices issued during the period from 01.04.2021 to 30.06.2021 in relation to the earlier assessment years were challenged. The provisions post-Finance Act, 2021, under the new regime had come into force. This controversy before the Apex Court culminated into decision in **Ashish Agarwal (supra)**.

5.4.1 The Supreme Court striking balance between the notices issued by the Department under the old regime and the provisions brought into force under the new regime held that all notices issued under Section 148 of the Act between 01.04.2021 to 30.06.2021 shall be deemed to have been issued under section 148A of the Act to be treated as show-cause notices under section 148A(b) of the Act. The Supreme Court observed that new provisions substituted by the Finance Act, 2021 were remedial and benevolent in nature, came to be inserted with an object to protect the right and interests of the

assessee as well to sub-serve the public interest.

5.4.2 While allowing various appeals in part, the Supreme Court in **Ashish Agarwal (supra)**, modified the judgment and orders passed by the different High Courts from where the matters had travelled by issuing the following directions, extracting from SCC,

"The impugned section 148 notices issued to the respective assesseees which were issued under unamended section 148 of the IT Act, which were the subject matter of writ petitions before the various respective High Courts shall be deemed to have been issued under section 148A of the IT Act as substituted by the Finance Act, 2021 and construed or treated to be showcause notices in terms of section 148A(b). The assessing officer shall, within thirty days from today provide to the respective assesseees information and material relied upon by the Revenue, so that the assesseees can reply to the showcause notices within two weeks thereafter;

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 onetime measure visàvis those notices which have been issued under section 148 of the unamended Act from 01.04.2021 till date, including those which have been quashed by the High Courts.

Even otherwise as observed hereinabove holding any enquiry with the prior approval of specified authority is not mandatory but it is for the concerned Assessing Officers to hold any enquiry, if required;

The assessing officers shall thereafter pass orders in terms of section 148A(d) in respect of each of the concerned assesseees; Thereafter after following the procedure as required under section 148A may issue notice under section 148 (as substituted).

(paras 28.1 to 28.5)

5.4.3 The following direction is material to assume significance in the controversy on hand,

28.5 All defences which may be available to the assesses including those available under [section 149](#) of the IT Act and all rights and contentions which may be available to the concerned assessee and Revenue under the Finance Act, 2021 and in law shall continue to be available.

(para 28.5)

5.4.4 Thus, one of the direction and clarification in **Ashish Agarwal (supra)**, is that all the defences that were available to the assessee under section 149 under the Finance Act, 2021 and in law whatever rights are available to the assessing officer under the Finance Act, 2021 are kept open to be continued to be available.

5.4.5 In light of above direction of the Supreme Court in para 28.5 of **Ashish Agarwal (supra)**, the First Proviso to Section 149 after 01.04.2021 in the new regime may deservedly recapitulated,

"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"

5.4.6 In simple words, the notice which could not have been issued in the old regime period due to becoming time barred as per then operating provision, would also not be permissible to be issued post-01.04.2021.

5.4.7 As already noticed, Section 149 as it stood immediately before commencement of Finance Act, 2021, that is before 01.04.2021 in the old regime inter alia provided for time limit for notice. It stated inter alia that no notice under section 148 shall be issued for the relevant assessment year, as per clause (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.

5.4.8 In other words, limitation of six years from the end of relevant assessment year operated as timeline in the old regime for issuance of notice under section 148 beyond which period, it was not competent for the assessing officer to issue notice for reassessment. This embargo is made to continue in the new regime also.

5.5 Now the reopening notices which related to the period prior to 01.04.2021, but issued between 01.04.2021 to 30.06.2021 came to be challenged before the Division Bench of this Court in **Keenara Industries Pvt. Ltd. (supra)**, by placing reliance on directions in paragraph 28.5 of **Ashish Agarwal (supra:SCC)**, and thus by contending that since they were issued after six years from the end of the relevant assessment year, they were barred and were without jurisdiction.

5.6 In **Keenara Industries Pvt. Ltd. (supra)**, the Division

Bench noticed the crux of the contents on that count raised by the petitioners in the following paragraphs,

"2.14 According to the petitioner, the impugned notice is barred by limitation where attention of this Court has been drawn to the legal provision. As per first proviso to sub-section (1) of section 149(1), no notice under section 148 of the Act shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of 2021, is such notice could not have been issued at that time on account of being beyond the time limit specified under clause (b) of sub-section (1) of section 149, as they stood immediately before the commencement of the Finance Act, 2021.

2.15 As per clause (b) of sub-section (1) of section 149 of the Act, as they stood immediately before the commencement of the Finance Act, 2021, no notice under section 148 of the Act shall be issued for the relevant assessment year 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 Rs.1 lakh or more for that assessment year.

2.16 It is, therefore, urged that the notice under Section 148 of the Act can be issued on or after 01.04.2021 only if the limitation for issuing such notice under old regime of reopening had not expired prior to Finance Act, 2021 coming into force. It is clarified that the new provisions relating to reopening introduced by the Finance Act, 2021 came into force with effect from 01.04.2021."

5.6.1 In other words, it was the contention that as per the provisions of Section 149 of the Act in the old regime, a notice under Section 148 could have been issued to the assessee, if four years had elapsed from the end of the Assessment Year, but not six years. After six years from the end of the Assessment Year, notice under section 148 was barred.

5.6.2 Stating differently, as per the old regime, for issuance of notice under section 148, in relation to Assessment Year 2013-14, the outer time limit would expire on 31.03.2020 and for issuing such notice in relation with Assessment Year 2014-15, the time period would conclude on 31.03.2021.

5.7 As already noted, the department took shelter of the time limit extended by Notifications of the Central Board of Direct Taxes to treat the above class of notices to be within time.

5.8 In **Keenara Industries Pvt. Ltd. (supra)**, this Court proceeded to hold that enacting the provisions in Taxation and Other Laws (Relaxation & Amendment of Certain Provisions) Act, 2020, was not the permissible device whereby the time limit could be legitimately extended for the purpose of issuing Notices under Section 148, which were otherwise barred in terms of Section 149, as it exists in the old regime.

5.8.1 The Taxation and Other Laws Act, 2020 was rightly viewed to be a secondary legislation. It was therefore held that secondary legislation would not override the principal legislation-the Finance Act, 2021. Also negated by the Division Bench in **Keenara Industries Pvt. Ltd. (supra)** as per observations in paragraph 36 of the judgment, the concept of freezing the time limit. It was held that it was not permissible in law for the Revenue to travel back in time. Nor does the Taxation and Other Laws Act endorse to such concept. It was held as per paragraphs 38 and 39 of the **Keenara Industries Pvt. Ltd. (supra)** that Notifications

extending the due dates under the old provisions could not breath any more after the repeal of the old provisions.

5.8.2 In paragraph 21, it was observed that the Taxation Laws Relaxation Act, 2020, did not elongate the erstwhile scheme,

21. It is to be noted that while enacting the Finance Act, 2021, Parliament was aware of the existing statutory laws both under the Act as amended by the Finance Act, 2021 as also the ordinance and the TLA Act and Notification issued there under. However, the new scheme for reassessment which was made effective from 01.04.2021 does not have any saving clause. This brings an end to the possibility of any fresh proceedings being initiated under the unamended reassessment provisions after 01.04.2021. Finance Act, 2021 also did not contain savings clause and since the legislature through Finance Act, 2021 and TLA Act did not include any intention to protect and extend the erstwhile scheme of section 148 of the Act. The life of erstwhile scheme of 148 cannot be elongated. The principle that would also employ is that the substitution for omit and obliterate the pre-existing provision and in absence of any saving clause either under the ordinance or the TLA Act the Finance Act, 2021 the presumption is available for the old provision to continue beyond 31.03.2021."

6. In **Keenara Industries Pvt. Ltd. (supra)**, this Court laid down the proposition of law thus,

"20. Thus, the notice under section 148 of the Act can be issued on or after 01.04.2021 only if the limitation for issuing such notice under old regime of reopening had not expired prior to Finance Act, 2021 coming into force, which means w.e.f. 01.04.2021. As per the old regime of reopening, the reopening notice under section 148 of the Act could have been issued before the expiry of six years from the end of relevant assessment year. In other words, no notice could have been issued after expiry of period of six years from the end of the relevant

assessment year.

20.1. In other words, if the period of six years from the end of relevant assessment year expired on 31.03.2021, then notice under section 148 of the Act could not have been issued under the new regime for the said assessment year.

20.2 The example given in para 2.18 has already been given for appreciating these legal provisions for the assessment year 2013-14 and 14-15. In case of assessment year 2013-14, the date of expiry of the assessment year is 31.03.2014 and therefore, six years from the end of assessment year would expire on 31.03.2020. Whereas for the assessment year 2014-15, the date of expiry of assessment year is 31.03.2015 and the six years would expire on 31.03.2021. The new provision introduced by Finance Act, 2021 came into force on 01.04.2021 therefore, the limitation for issuance of notice under section 148 of the Act prescribed under the old regime of reopening expired on 01.04.2021 for assessment year 2013-14 and 2014-15.

20.3 Therefore, in plain words, a notice which had become time barred prior to 01.04.2021 as per the then provisions cannot be revived under new regime by applying section 149 (1)(b) of the Act which came into effect from 01.04.2021."

6.1 Keenara Industries Pvt. Ltd. (supra) thus considered the question of limitation vis-a-vis notices for reopening of the assessment issued for the Assessment Year 2013-14 and Assessment Year 2014-15. The final statement of law could be said to be contained in para 52 of **Keenara Industries Pvt. Ltd. (supra)**,

"A conjoint reading of section 149(1) proviso w.e.f. 01.04.2021 along with section 149(1)(b) prior to 01.04.2021. The case of the petitioner for assessment years 2013-14 and 2014-15 cannot be reopened. The

assessment year is 2013-14 (01.04.2012 to 31.03.2013) and assessment year 2014-15 (01.04.2013 to 31.03.2014). The end of assessment year is 31.03.2014 and 31.03.2015 respectively. Therefore, the last date for issuance of notice under section 148 of the Act would be 31.03.2020 or 31.03.2021 (being six years from the end of relevant assessment year) whereas the impugned notices under section 148 is issued beyond that period and hence, the same are clearly time barred."

6.2 It may also be mentioned that the Allahabad High Court also dealt with similar issues in **Rajeev Bansal vs. Union of India [Writ Tax No. 1086 of 2022]** and held to answer the questions posed before it thus,

"(i) The reassessment proceedings initiated with the notice under Section 148 (deemed to be a notice under Section 148-A), issued between 01.04.2021 and 30.06.2021, cannot be conducted by giving the benefit of relaxation/extension under the Taxation and Other Laws (Relaxation And Amendment of Certain Provisions) Act' (TOLA) 2020 up to 30.03.2021, and the time limit prescribed in Section 149 (1)(b) (as substituted w.e.f. 01.04.2021) cannot be counted by giving such relaxation from 30.03.2020 onwards to the revenue.

(ii) In respect of the proceedings where the first proviso to Section 149(1)(b) is attracted, the benefit of TOLA 2020 will not be available to the revenue, or in other words, the relaxation law under TOLA 2020 would not govern the time frame prescribed under the first proviso to Section 149 as inserted by the Finance Act' 2021, in such cases."

6.3 This Court is in agreement with the decision in **Keenara Industries Pvt. Ltd. (supra)**, of this Court as well with Allahabad High Court decision in **Rajeev Bansal (supra)**.

6.4 Therefore, the point is no more *res integra* that all

original notices under section 148 of the Act referable to the old regime and issued between 01.04.2021 to 30.06.2021 would stand beyond the prescribed permissible timeline of six years from the end of Assessment Year 2013-14 and Assessment Year 2014-15. Therefore, all such notices when they would relate to Assessment Year 2013-14 or Assessment Year 2014-15 would be time barred as per the provisions of the Act as applicable in the old regime prior to 01.04.2021. Furthermore, these notices cannot be issued as per the amended provision of the Act.

6.5 Learned advocate for the Revenue was entirely at his receiving end, unable to dispute the position of law holding the field as above.

7. In view of the above, the impugned notice in this petition under section 148 of the Act relatable to Assessment year 2013-14 is beyond the permissible time limit, therefore, liable to be treated illegal and without jurisdiction.

8. Since the petition deserves to be allowed on the aforesaid crisp legal ground alone, learned advocates for the parties submitted to agree that facts and other legal issues may not be gone into by the Court. Accordingly, they are neither delineated, nor are gone into.

9. All other questions on facts and of law involved in the reasons weighed with Assessing Officer seeking to reopen the assessment are kept open.

10. As a result, Notice dated 31.07.2022 issued by Respondent-Assessing Officer under Section 148 of the Income Tax Act, 1961, seeking to reopen the assessment in respect of Assessment Year 2013-14, Order dated 31.07.2022 passed by the Respondent under Section 148A(d) of the Act, and all consequential actions, as may have been taken, are hereby quashed and set aside.

11. The petition stands allowed. Rule is made absolute.

(N.V.ANJARIA, J)

(NIRAL R. MEHTA, J)

CHANDRESH