IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
[Conducted through E-Court at Ahmedabad]

BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

Sl. Nos.	ITA No(s)	Assessment Year (s)	Appeal(s) by Appellant vs. Respondent	
			Appellant	Respondent
1.	409/RJT/2017	1996-97	Ravichandra V.Mehta 7th Floor,Mansarovar Apartments Royal Park-6 Kalawad Road Rajkot-360 001 PAN:ALOPM4962A	DCIT/ACIT Central Circle2 Rajkot
2.	450/RJT/2017	1996-97	by Revenue	by Assessee
3.	410/RJT/2017	1997-98	by Assessee	by Revenue
4.	451/RJT/2017	1997-98	by Revenue	by Assessee

Assessee by :	Shri Deepak R. Shah
Revenue by :	Shri Jitendrakumar, CIT-DR

सुनवाई की तारीख/ **Date of Hearing**	29/01/2019
घोषणा की तारीख /**Date of Pronouncement**	25/02/2019

आदेश / O R D E R

PER MAHAVIR PRSAD, JUDICIAL MEMBER:

These captioned cross-appeals have been filed by the Assessee and the Revenue against each other against the separate orders of the Commissioner of Income Tax (Appeals)–Ahmedabad-13, [CIT(A) in short] vide appeal no.CIT(A)-13/Int.Taxn./Ahd/414 & 415/2016-17, dated 29/09/2017 arising in the assessment order passed under s.143(3) of the Income Tax Act, 1961(hereinafter referred to as "the Act") and assessment order u/s.143(3) r.w.s.147 of the Act both dated 27.2.2015 relevant to Assessment Years (AYs) 1996-97 & 1997-98 respectively.

2. The issue involved in both these cross-appeals raised by the assessee and the revenue are common, therefore both have been clubbed together for the purpose of brevity, convenience and adjudication.

3. The assessee (in ITA Nos.409 & 410/RJT/2017) for AYs 1996-97 and 1997-98 has raised the following common additional ground of appeal:

> *The notice issued u/s.148, pursuant to which the impugned assessment order is framed, is barred by limitation prescribed u/s.149 of the Act and therefore assessment framed pursuant to such invalid notice is void ab initio.*

3.1. The Revenue (in ITA Nos.450 & 451/RJT/2017) for AYs 1996-97 and 1997-98 has raised the following common ground of appeal:

> *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in law and/or on facts in virtually setting aside the order of the A.O. passed u/s.143(3) r.w.s.147 of the Income Tax Act, 1961 dated 27.02.2015, whereas no such power rests with him under the Act.*

3.2. The Revenue has also raised the following additional ground of appeals in both the assessment years:

> *"On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in holding that as per the provisions of section 5 of the Income Tax Act, 1961 the 'funds' of the assessee outside India would not be taxable in the hands of the appellant if his status was Resident but not Ordinarily Resident, even though the section excludes only 'income' accruing or arising outside India to such assessee from the ambit of taxation."*

4. Since the grounds raised by the assessee are legal in nature challenging the reopening of assessment of ground of limitation, we first dispose of the appeals of the assessee.

5. The facts in brief are that assessee is an individual whose status is 'not ordinarily resident'. Though status of assessee was subject matter of limitation, however, by the impugned order, the status is adopted as non-ordinarily resident which is now dispute before us. In this case, a search was conducted at the business premises of the assessee on 20/03/2013, wherein it was found that assessee has bank accounts overseas. The reasons recorded read as under:

"Re-opening of assessment:-

5. The First ground of Appeal is against challenging the re-opening of Assessment u/s.147 of the Act. The Assessing Officer while re-opening the case recorded identical reasons for all these orders. For the sake of brevity, the reasons recorded for AY 1996-97 are extracted herein

> *"The assessee has not filed the return of income for A1996-97*
>
> *On perusal of documents/records forwarded by the DDIT (Inv.)-I, Rajkot, it is noticed that the assessee has opened a bank account No.130756 on 3rd June, 1970 in the joint name of himself and Shri Balkrishna Ravichandra Mehta and Jawahar Ravichandra Mehta with HSBC Republic Bank, (Suisse), A.A. Geneva. The said account number was changed into account No.432541 on 04.07.2000. Therefore, it is clear that the assessee was holding*

the said bank account during the period F.Y. 1995-96 relevant to AY 1996-97.

3. During the course of statement recorded u/s.132(4) of the I.T.Act during the course of search from Shri Ravichandra V.Mehta in reply to question No.13 he has submitted that the return of income has not been filed by him from 1994 to 1997. In his statement Shri Ravichandra Mehta in reply to question No.12 has submitted that there was a balance of Rs.1 crore dollar in the said account in the year 1997.

4. As per second proviso to section 147 of the I.T.Act which has been inserted by the Finance Act, 2012 w.e.f.01.07.2012 nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India chargeable to tax has escaped assessment in any assessment year.

5. Since the assessee is having a bank account in HSBC Republic Bank, (Suisse), S.A. Geneva and having substantial amount deposited in the said account during the F.Y. 1995-96 relevant to A.Y. 1996-97, the same is asset located outside India with the meaning of explanation 2(d) to section 147 of the I.T.Act. Since these asset has not been disclosed to the Department, the income chargeable to tax has escaped assessment within the meaning of section 147 of the I.T. Act. Issue notice u/s.148 of the I.T.Act."

The Learned Counsel for the appellant in this regard has contended that the re-opening is on the basis of borrowed satisfaction or on the basis of finding of other authorities and not on the satisfaction of the AO initiating reassessment and hence bad in law. For this proposition various case laws are cited."

5.1. Accordingly, notice was issued on 25/03/2013 for the year under appeal as also subsequent years. The assessee by way of additional

ground challenged the re-opening on the ground that notice is issue beyond jurisdiction. For this proposition, the Ld.AR cited a judgement of Hon'ble Gujarat High Court in the case of Induprasad Bhatt vs. J.P. Jani (58 ITR 559) as approved by the Hon'ble Supreme Court in the case of J.P.Jani vs. Induprasad Devshankerr Bhatt (72 ITR 595). The Ld.CIT(A) in the impugned order disposed of the ground by observing as under:

" I have carefully considered the contentions raised as also the case law cited. As per second proviso to section 147 of the I.T. Act. inserted by the Finance Act 2012 w.e.f.1.7.2012, nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India chargeable to tax has escaped assessment in any assessment year. Explanation 2(d) to section 147 reads as under:

> *Explanation 2- For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:-*

Therefore, as the assessee is having a bank account with HSBC Republic Bank (Suisse) S.A., Geneva and having substantial amount deposited in the said account during the relevant previous financial year, the same represents asset located outside India, within the meaning of explanation 2(d) to section 147 of the I.T. Act. Since these asset has not been disclosed to the Department, the income chargeable to tax had escaped assessment within the meaning of section 147 of the I.T. Act. Again as per section 149(1)(c) of the I.T. Act, no notice shall be issued if more than 16 years have elapsed, as can be seen from the language of the Act, which is reproduced herein below:

"149(1) No notice under section 148 shall be issued for the relevant assessment year.-
(c) If your years, but not more than sixteen years, have elapsed from the end of the relevant assessment years unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment."

In the present case it is seen that provision of Section 147 has been amended by insertion of 2nd proviso to Section 147 and amending explanation 2 by inserting clause (b) to explanation 2 by Finance Act 2012 with effect from 1.7.2012. Clause (c) to Section 149(1) is also simultaneously inserted, which provides a time limit of 16 years for re-opening an assessment. There is no challenge to the vires of the aforesaid provision. It is not the contention of the appellant that the aforesaid amendments are beyond the law making powers of the government or that the same are contrary to the constitutional right granted to the appellant. Therefore the case law relied by the appellant in this regard are distinguishable on facts. Since the re-opening is within the statutory provision amended with effect from 1.7.2012 and since the Notice for re-opening has been issued on 25.3.2013, the same is valid in eye of law. Therefore, challenge to the validity of assumption of jurisdiction u/s.147 on both the counts fails and accordingly the grounds raised in this regard are dismissed.

6. The assessee is therefore by way of second appeal is before us.

7. The Ld.AR for the assessee reiterated the submissions made before the Ld.CIT(A) and also relied upon the decisions cited therein which are at page numbers 1 to 13 of the paper-book. He vehemently relied upon recent decision of Hon'ble Delhi High Court in the case of Brahm Datt vs. ACIT 100 taxmann.com 324 (Delhi). It was contended that identical issue arose before Hon'ble Delhi High Court in the case of Brahm Datt,

wherein Court was quashed the notice issued u/s.148 of the Act for AY 1998-99 where the notice u/s.148 was issued on 24/03/2015 by applying amended provision of section 147, section 148 r.w.s. 149. The ratio laid down in the case relied upon by the assessee is that if before amendment in law, if the time limit for re-opening a case has expired, then by way of subsequent amendment from a prospective date the time limit has been expired will not revive. Relevant portion of the said judgment is reproduced hereunder:

> *"Section 149, read with section 148, of the Income-tax Act, 1961 – Income escaping assessment – Time-limit for issuance of notice (General) – Assessment year 1998-99 – Assessee was a senior citizen who was non-resident for assessment year 1998-99 – Relying on assessee's statement during search that he had settled an offshore trust, Assessing Officer issued notice under section 148 in March, 2015 thereby proposing to tax amount of US $ 2-3 million contributed by assessee for settling a trust in foreign country – Whether assessment for subject assessment year could not have been reopened beyond 31-3-2005 in terms of provisions of section 149 as applicable at relevant time - Held, yes – Whether subsequent amendment to section 149, by Finance Act, 2012, which extended limitation for initiation of reassessment proceedings to sixteen years, could not be resorted for reopening concluded proceedings in respect of which limitation had already expired/lapsed before amendment became effective – Held, yes – Whether thus, impugned reassessment notice and all consequent proceedings were to be quashed and set aside – Held, year [Paras 14, 15, 16 an 19] [In favour of assessee]"*

8. On the other hand, Ld.DR relied upon the finding of Ld.CIT(A) extracted hereinabove.

9. We have considered rival submissions and gone through the impugned order and the case-laws relied upon by the Ld.AR. The assessee has not challenged the vires of the amendment but has raised legal contention that for a concluded assessment, the subsequent amendment will not revive the time limit for issue of notice u/s.148. Therefore, Ld.CIT(A) misread the provisions to hold that since the time limit prescribed in law has been extended the notice is within the time. We are inclined to differ with the view of Ld.CIT(A). The issue is no more *res integra.* The issue has first came up before the Hon'ble Supreme Court in the case of S.S. Gadgil vs.Lal & Co. reported in 53 ITR 231(SC). Taking note of the said case, Hon'ble Gujarat High Court in the case of Induprasad Bhatt(supra) held as under:

"We are, therefore, of the view that on a true construction of s. 297(2)(d)(ii), the ITO cannot issue a notice under s. 148 in order to reopen the assessment of an assessee in cases where the right to reopen the assessment was barred under the old Act at the date when the new Act came into force. The right of the ITO to reopen the assessment of the petitioner in the present case was admittedly barred under s. 34(1)(a) at the commencement of the new Act and it was, therefore, not competent to the ITO to issue a notice under s. 148 in order to reopen the assessment of the petitioner and to reassess the income of the petitioner by relying on the provision enacted in s. 297(2)(d)(ii). The notice dt. 13th Nov., 1963, was, therefore, beyond jurisdiction and must be set aside. Along with that notice, the subsequent notice dt. 9th Jan., 1964, must also fail."

9.1. On further appeal by the Revenue against in quashing the notice u/s.148 of the Act, the Hon'ble Supreme Court approving the judgement

of Hon'ble Gujarat High Court in the case of J.P. Jani vs. Induprasad Devshankar Bhatt (72 ITR 595) held as under:

"We considered that the language of the new section must be read as applicable only to those cases where the right of the ITO to reopen the assessment was not barred under the repealed section. In our view the new statute does not disclose in express terms or by necessary implication that there was a revival of the right of the ITO to reopen an assessment which was already barred under the old Act. This view is borne out by the decision of this Court in S.S. Gadgil vs. Lal & Co. (1964) 53 ITR 231 (SC). In that case, a notice was issued against the assessee as an agent of a non-resident on 27th March, 1957, and that notice related to the asst. yr. 1954-55. Under cl. (iii) of the proviso to s. 34(1), as it stood prior to its amendment by the Finance Act, 1956, a notice of assessment or reassessment could not be issued against a person deemed to be an agent of a non-resident after the expiry of one year from the end of the year of assessment. The right to commence a proceeding for assessment against the assessee as agent of a non-resident for the asst. yr. 1954-55, therefore, ended on 31st March, 1956, under the new Act before its amendment in 1956. This provision was, however, amended by the Finance Act, 1956, and under the amended provision the period of limitation was extended to two years from the end of the assessment year. The amendment was made on 8th Sept., 1958, but was given effect to from 1st April, 1956. Since the time within which notice could be issued against a person deemed to be an agent of a non-resident was extended to two years from the end of the assessment year, it was contended on behalf of the ITO that the notice issued by him was within the terms of the amended provision and was, therefore, a valid notice. Now the notice issued on 27th March, 1957, was clearly within a period of two years from the end of the assessment year 1954-55 and if the amended provision applied, the notice would be a valid notice. It was, however, held by this Court that the notice was not a valid notice inasmuch as the right of the ITO to reopen the assessment of the assessee under the unamended provision became barred on 31st March, 1956, and the amended provision did not operate against him so as to authorise the ITO to commence proceedings for reopening the assessment of the assessee in a case where, before the amended provision came into force, the proceedings had become barred under the unamended provision. At page 240 of the report, Shah, J., speaking for the Court, observed as follows :

"As we have already pointed out, the right to commence a proceeding for assessment against the assessee as an agent of a non-resident party under the IT Act before it was amended, ended on 31st March, 1956. It is true that, under the amending Act, by s. 18 of the Finance Act, 1956, authority was conferred upon the ITO to assess a person as an agent of a foreign party under s. 43 within two years from the end of the year of assessment. But the authority of the ITO under the Act before it was amended by the Finance Act of 1956, having already come to an end, the amending provision

will not assist him to commence a proceeding even though at the date when he issued the notice it is within the period provided by that amending Act. This will be so, notwithstanding the fact that there has been no determinable point of time between the expiry of the time provided under the old Act and the commencement of the amending Act. The legislature has given to s. 18 of the Finance Act, 1956, only a limited retrospective operation, i.e., up to 1st April, 1956, only. That provision must be read subject to the rule that in the absence of an express provision or clear implication, the legislature does not intend to attribute to the amending provision a greater retrospectivity than is expressly mentioned, nor to authorise the ITO to commence proceedings which before the new Act came into force had by the expiry of the period provided become barred."

4. *In our opinion, the principle of this decision applies in the present case and it must be held that, on a proper construction of s. 297(2)(d)(ii) of the new Act, the ITO cannot issue a notice under s. 148 in order to reopen the assessment of an assessee in a case where the right to reopen the assessment was barred under the old Act at the date when the new Act came into force. It follows, therefore, that the notice dt. 13th Nov., 1963, and 9th Jan., 1964, issued by the ITO, Ahmedabad, were illegal and ultra vires and were rightly quashed by the Gujarat High Court by the grant of a writ.*

For the reasons expressed, we hold that the judgment of the High Court of Gujarat dt. 14/15th Dec., 1964, is correct and this appeal must be dismissed with costs."

7. In view of the above decision, since the assessment could not have been reopened for Assessment Years 1996-97 to 2005-06, which has become barred by limitation on 31st March 2012, the Amending Act being Finance Act, 2012 inserting sub clause (c) Section 149 (1) w.e.f. 01-07-2012 cannot give a fresh lease of life for reopening the same which has already become barred by limitation on 31.12.2012.

In view of the above, the Notice issued u/s.148 being beyond the limitation prescribed u/s.149 is bad in law and hence consequential assessment framed pursuant to such invalid notice is also required to be quashed and set aside."

9.2. Once against that issue arose before the Hon'ble Supreme Court in the matter of K.M. Sharma vs. ITO 254 ITR 772 (SC), wherein the Hon'ble Court held as under:-

"13. In KM Sharma's case (supra) the assessee"s land was acquired under the Land Acquisition Act, 1894 and an award was passed in 1967 granting compensation in favour of the assessee. Thereafter, the Additional District Judge by judgment dated 20.05.1980 held the assessee to be entitled to 1/32th share of the compensation and the assessee was granted total compensation of Rs.1,18,810 in the year 1981. Subsequently, by another judgment dated 31.07.1991, the assessee was awarded sum of Rs.1,10,20,624, which was received by it between 15.10.1992 and 25.05.1993. The said amount comprised of principal compensation as well as interest up to 18.05.1992. As land acquired was agricultural land, principal amount was not chargeable to tax; however, interest amounting to Rs.76,84,829 was chargeable on year to year basis. The assessee claimed that proceedings till assessment year 1982-83 had already attained finality and therefore, filed letter requesting the assessing officer to initiate proceedings for subsequent assessment years for bringing to tax interest component relatable to the said assessment years. The assessee was, however, issued notices under section148 of the Act for fifteen assessment years, viz., assessment years 1968-69 to 1971-72 and assessment years 1981-82 to 1992-93 which were challenged on the ground of limitation. This court declined to exercise jurisdiction; on appeal, the Supreme Court held that the provision regulating period of limitation ought to receive strict construction. The Supreme Court held that the law of limitation was intended to give certainty and finality to legal proceedings and therefore, proceedings, which had attained finality under the existing law due to bar of limitation, could not be held to be open for revival unless the amended provision was clearly given retrospective operation so as to allow upsetting of proceedings, which had already been completed and attained finality. The observations of the Supreme Court are reproduced hereunder:

"10. The main question that has been raised on behalf of the learned counsels appearing for the parties is whether the provisions of sub-section (1) of section 150 as amended can be availed for reopening assessments, which have attained finality and could not be reopened due to bar of limitation, that was attracted at the relevant time to the proposed reassessment proceedings under the provisions of section149.
11. The submission made on behalf of the appellant is that neither the provisions of sub-section (1) nor sub-section (2) can be read as giving more than intended operation to the said provision. The provisions, it is argued, do not permit the authorities to reopen assessments, which have become final and reassessment of which had become barred by time before 1.4.1989 when section 150(1) was amended Reliance is placed on the decision in S.S. Gadgil v. Lal & Co. [1964] 53 ITR 231.

12. The learned counsel appearing on behalf of the department has made an effort to persuade this Court to accept his construction of the provisions of section 150(1)and (2). It is argued that it is for the specific purpose of assessing income, which might accrue on the basis of any decision of any Court in any proceeding in any other law, that the provision has been amended to lift bar of limitation for reassessment.

13. Fiscal statute, more particularly a provision such as the present one regulating period of limitation must receive strict construction. The law of limitation is intended to give certainty and finality to legal proceedings and to avoid exposure to risk of litigation to litigant for indefinite period on future unforeseen events. Proceedings, which have attained finality under existing law due to bar of limitation cannot be held to be open for revival unless the amended provision is clearly given retrospective operation so as to allow upsetting of proceedings, which had already been concluded and attained finality. The amendment to subsection (1) of section 150 is not expressed to be retrospective and, therefore, has to be held as only prospective. The amendment made to sub-section (1) of section 150 which intends to lift embargo of period of limitation under section 149 to enable authorities to reopen assessments not only on the basis of orders passed in proceedings under the Act but also on order of a Court in any proceedings under any law, has to be applied prospectively on or after 1.4.1989 when the said amendment was introduced to sub-section (1). The provision in sub-section (1), therefore, can have only prospective operation to assessments, which have not become final due to expiry of period of limitation prescribed for assessment under section 149.

14. To hold that the amendment to sub-section (1) would enable the authorities to reopen assessments, which had already attained finality due to bar of limitation prescribed under section 149 as applicable prior to 1.4. 1989, would amount to give sub section (1) a retrospective operation which is neither expressly nor impliedly intended by the amended sub-section.

15. On behalf of the assessee before the High Court and in this Court reliance has been placed on the provisions contained in sub-section (2) of section 150. It is submitted that the provision contained in sub-section (2) of section150 is in the nature of clarification or Explanation to sub section(1).Sub-section (2) makes it clear that the embargo of period of limitation lifted under sub section (1) for proposed reassessments based on order in proceedings under appeal, reference or revision, as the case may be, would not apply to assessments which have attained finality due to bar of limitation applicable at the relevant time.

6. The High Court rejected the above contention of the assessee on the ground that on the amendment introduced with effect from 1.4.1989 in sub-section (1), which enables reopening of assessment based on any Order of 'Court in any proceedings in any law', there is no corresponding amendment made in sub-section (2) of Section 150 to bar reassessment based on Order of Court passed in

any proceedings in any law in cases where prescribed period of litigation for reassessment had already expired.

17. We do not find the above reasoning of the High Court is sound. The plain language of sub-section (2) of Section 150 clearly restricts application of sub-section (1) to enable the Authority to reopen assessments which have not already become final on the expiry of prescribed period of limitation under Section 149. As is sought to be done by the High Court, sub-section (2) of Section 150 cannot be held applicable only to reassessments based on Orders 'in proceedings under the Act' and not to Orders of Court 'in proceedings under any other law'. Such an interpretation would make the whole provision under Section 150 discriminatory in its application to assessments sought to be reopened on the basis of Orders under the IT Act and other assessments proposed to be reopened on the basis of Orders under any other law. Interpretation, which creates such unjust and discriminatory situation, has to be avoided. We do not find that sub-section (2) of section 150 has that result. Sub-section (2) intends to insulate all proceedings of assessments, which have attained finality due to the then existing bar of limitation. To achieve the desired result it was not necessary to make any amendment in sub-section (2) corresponding to sub-section (1), as is the reasoning adopted by the High Court.

18. Sub-section (2) aims at putting embargo on reopening assessments, which have attained finality on expiry of prescribed period of limitation. Sub-section (2) in putting such embargo refers to whole of sub-section (1) meaning thereby to insulate all assessments, which have become final and may have been found liable to reassessments or re-computation either on the basis of Orders in proceedings under the Act or Orders of Courts passed under any other law. The High Court, therefore, was in error in not reading whole of amended sub-section (1) into sub-section (2) and coming to the conclusion that reassessment proposed on the basis of order of Court in proceedings under Land Acquisition Act could be commenced even though the original assessments for the relevant years in question have attained finality on expiry of period of limitation under Section 149of the Act. On a combined reading of sub-section (1) as amended with effect from 1.4.1989 and sub-section (2) of Section 150 as it stands, in our view, a fair and just interpretation would be that the Authority under the Act has been empowered only to reopen assessments, which have not already been closed and attained finality due to the operation of the bar of limitation under Section 149.

19. This Court took similar view in the case of S.S. Gadgil (supra) in somewhat comparable situation arising from the retrospective operation given to Section 34(I) of Income Tax Act, 1922 as amended with retrospective effect from 1.4.1956 by the Finance Act of 1956. In the case of S.S. Gadgil (supra) admittedly under clause (iii) of the proviso to Section 34(I) of the Indian Income Tax Act, 1922, as it then stood, a notice of assessment or reassessment could not be issued against a

person deemed to be an agent of a non-resident under Section 43, after the expiry of one year from the end of the year of assessment. The Section was amended by Section 18 of the Finance Act, 1956, extending this period of limitation to two years from the end of the assessment year. The amended was given retrospective effect from April 1, 1956. On March 12, 1957, the Income Tax Officer issued a notice calling upon the assessee to show cause why, in respect of the assessment year 1954-55, the assessee should not be treated as an agent under Section 43 in respect of certain non- residents. The case of the assessee, inter alia, was that the proposed action was barred by limitation as right to commence proceedings of assessment against the assessee as an agent of non-resident for the assessment year 1954-55 ended on 31.3.1956, under the Act before it was amended in 1956. This Court in the case of S.S. Gadgil (supra) accepted the contention of the assessee and held as under:

". The legislature has given to section 18 of the Finance Act, 1956, only a limited retrospective operation, i.e., up to April 1, 1956, only. That provision must be read subject to the rule that in the absence of an express provision or clear implication, the legislature does not intend to attribute to the amending provision a greater retrospectivity than is expressly mentioned, nor to authorise the Income-tax Officer to commence proceedings which before the new Act came into force had by the expiry of the period provided become barred."

20. On a proper construction of the provisions of Section 150 (1) and the effect of its operation from 1.4.1989, we are clearly of the opinion that the provisions cannot be given retrospective effect prior to 1.4.1989 for assessments which have already become final due to bar of limitation prior to 1.4.1989. Taxing provision imposing a liability is governed by normal presumption that it is not retrospective and settled principle of law is that the law to be applied is that which is in force in the assessment year unless otherwise provided expressly or by necessary implication. Even a procedural provision cannot in the absence of clear contrary intendment expressed therein be given greater retrospectivity than is expressly mentioned so as to enable the Authorities to affect finality of tax assessments or to open up liabilities, which have become barred by lapse of time. Our conclusion, therefore, is that sub-section (1) of Section 150, as amended with effect from 1.4.1989, does not enable the Authorities to reopen assessments, which have become final due to bar of limitation prior to 1.4.1989 and this position is applicable equally to reassessments proposed on the basis of Orders passed under the Act or under any other law."

14. The ratio of K.M Sharma and S.S. Gadgil, in the opinion of this court covers the facts of this case. Reassessment for 1998-99 could not be reopened beyond 31.03.2005 in terms of provisions of Section 149 of the Act as applicable at the relevant time. The petitioner"s return for assessment year 1998-99 became barred by limitation on 31.03.2005. The question of revival of the period of limitation for reopening assessment for AY 1998-99 by taking recourse to the

subsequent amendment made in Section 149 of the Act in the year 2012, i.e., more than 8 years after expiration of limitation on 31.03.2005, has been dealt with by the Supreme Court in K.M. Sharma (supra).

15. The AO has conceded in the order rejecting the petitioner's objection that "It is also found that the assessee was a non-resident as contended by him, in the AY 1998-99." In the circumstances, there can be no question about the applicability of the then existing provision- Section 149 (b), which stated that the normal time limit for reopening assessment was 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."

16. It has been said that "the government in all its actions is bound by rules fixed and announced beforehand--rules which make it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances, and to plan one's affairs on the basis of this knowledge" (Ref. FA Hayek, "Road to Serfdom", 1944). In this case, the interpretation proposed by the revenue has the potential of arming its authorities to re-open settled matters, in respect of issues where the citizen could genuinely be sanguine and had no obligation of the kind which the Revenue seeks to impose by the present amendment. All the more significant, is the fact that absent a clear indication, every statute is presumed to be prospective. The revenue had sought to contend that the amendment (to Section 149) is merely procedural and no one has a vested right to procedure; and that procedural amendments can be given effect any time, even in ongoing proceedings.

17. This court is of the opinion that there is no merit in the revenue"s contention. In Sri Prithvi Cotton Mills Vs Broach Borough Municipality, AIR 1970 SC 192, examined the validity of the retrospective amendment of a statute in light of Article 19(1)(g) of the Constitution of India, i.e. a fundamental right to practice any profession, or to carry on any occupation, trade or business. The court said:

"In testing whether a retrospective imposition of a tax operates so harshly as to violate fundamental rights under article 19(1)(g), the factors considered relevant include the context in which retroactivity was contemplated such as whether the law is one of validation of taxing statute struck-down by courts for certain defects; the period of such retroactivity, and the decree and extent of any unforeseen or unforeseeable financial burden imposed for the past period etc."

18. In Govinddas v Income Tax Officer AIR 1977 SC 552the Supreme Court held that Section 171 (6) of the Income Tax Act was prospective and inapplicable for

any assessment year prior to 1st April, 1962, the date on which the Act came into force and observed that:

"11. Now it is a well settled rule of interpretation hallowed by time and sanctified by judicial decisions that, unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general rule as stated by Halsbury in Vol. 36 of the Laws of England (3rd Edn.) and reiterated in several decisions of this Court as well as English courts is that all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospectively and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only."

In Commissioner of Income Tax v Scindia Steam Navigation Co. Ltd AIR 1961 SC 1633, it was held that as the liability to pay tax is computed according to the law in force at the beginning of the assessment year, i.e., the first day of April, any change in law upsetting the position and imposing tax liability after that date, even if made during the currency of the assessment year, unless specifically made retrospective, does not apply to the assessment for that year. These principles were reiterated in Commissioner of Income Tax v Vatika Township (P) Ltd [2014] 49 taxmann.com 249/227 Taxman 121/367 ITR 466(SC).

19. In view of the above discussion, it is held that the petition has to succeed; the impugned reassessment notice and all consequent proceedings are hereby quashed and set aside. The writ petition is allowed; however without order on costs."

10. Thus, in all above cases Courts have held that when the time limit for issuing notice u/s.148 has expired before any amendment in law from a prospective date will not revive. The time limit for those years for which limitation has already expired on the date of amendment. There was no challenge to vires of the amendment but still the Courts have held

that notice issued u/s.148 is beyond limitation period. In the present case in our hand, prior to amendment in section 149 and the time limit for issuance of notice u/s.148 for AY 1996-97 expired on 31/03/2003 and that for 1997-98 expired on 31/03/2004. The amendment of section 149 is with effect from 01/07/2012 and is not retrospective in nature. Thus, the time limit which have already been expired could not have been revived by subsequent amendment. For all these reasons and complying the ratio laid down by above cited cases, we hold that notice issued u/s.148 on 25/03/2013 for both the above years is beyond jurisdiction and accordingly quashed. Since the notice is held to be invalid, subsequent assessment order pursuant to the said notices are also quashed and set aside.

11. In the result, appeals of the assessee are allowed. Since we have quashed the assessment for both the years, appeals of the Revenue have become infructuous and hence Revenue's appeals are dismissed.

This Order pronounced in Open Court on	**25 /02/2019**

Sd/-	Sd/-
(WASEEM AHMED)	**(MAHAVIR PRASAD)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad; Dated 25 /02/2019

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-13, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,राजोकट/DR,ITAT, Rajkot
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, राजोकट / **ITAT, Rajkot**