IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT

BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

ITA No. 130/Rjt/2020
निर्धारणवर्ष/Assessment Year: 2004-05

Assistant Commissioner of Income-Tax, Central Circle-2, Rajkot	Vs.	Shri Vicky Balkrishna Mehta, 7th Floor, Mansrovar Apartment, Royal Park, Kalawad Road, Rajkot PAN : AGQPM 6495 B
अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

Assessee by :	Shri D.M. Rindani, AR
Revenue by :	Shri Shramdeep Sinha, CIT-DR

सुनवाई की तारीख/Date of Hearing : 28.11.2022
घोषणा की तारीख /Date of Pronouncement: 22.02.2023

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER:

This appeal is preferred by the Revenue against the order of the learned Commissioner of Income-tax (Appeals)-13, Ahmedabad (hereinafter referred to as "CIT(A)") dated 22.01.2020 passed u/s 250(6) of the Income-tax Act, 1961, (hereinafter referred to as "the Act") for Assessment Year (AY) 2004-05.

2. The grounds of appeal raised by the Revenue read as under:

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in quashing the proceedings u/s 147 of the Act in the case of the assessee.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in holding that the notice u/s 148 being issued beyond the period of four years from the end of the relevant assessment year was barred by limitation without appreciating that the Explanation below sec.149(3), introduced w.e.f. 1.4.2012, clearly gave retrospective operation to section 149(1)(c) and therefore, the Assessing Officer was justified in issuing notice u/s 148 for A.Y.2004-05.

3. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in quashing the notice u/s 148 of the Act without appreciating that the facts found during the course of search proceedings showed that the members of the assessee

group were holding undisclosed foreign bank account in various foreign banks including HSBC Geneva and ABN AMRO Bank, Zurich and, therefore, the ingredients of section 147 were clearly attracted.

4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) ought to have upheld the order of the A.O., considering the merits of this case, which has not been discussed.

5. It is, therefore, prayed that the order of the Ld. CIT(A) be set aside and that of the A.O, be restored to the above extent."

3. As is evident from the above, the grievance of the Revenue is against the findings of the learned CIT(A) on the legal ground holding the assessment order passed to be invalid, finding the ingredients for reopening the case of the assessee under Section 147 of the Act to be not fulfilled.

4. As it transpires from the orders of the authorities below, reassessment proceedings were initiated on the assessee by issuing notice under Section 148 of the Act on 27.02.2015. The impugned year before us is AY 2004-05. The Revenue reopened the case as per the limitation prescribed for issuing notice under Section 148, as per the provision of Section 149(1)(c)of the Act, which prescribed limit for reopening cases up to 16 years till the impugned assessment year, where the income escaped pertained to assets located outside India. In the case of the assessee, the assets found to be located outside India were bank accounts i.e. undisclosed foreign accounts in various foreign banks. This limitation of 16 years was brought on the Statute by Finance Act, 2012 with effect from 01.07.2012; prior to that the maximum limit prescribed for reopening the case under Section 149 of the Act was 6 years upto to the relevant assessment year. It was brought to the notice of the learned CIT(A), that in the case of father and grandfather of the assessee, identical reassessment resorted to was held to be invalid finding the notice to be issued beyond the limit prescribed as per Section 149 of the Act, noting that the extended period of limitation of 16 years would not apply in the present case. The reasoning being

that when the extended limit of 16 years was brought on the Statute by the Finance Act, 2012 with effect from 01.07.2012, the original limitation for reopening the case of the assessee i.e. upto 6 years already stood expired and, therefore, this extended limitation could not be applied retrospectively in cases where the original limitation already stood expired. The learned CIT(A) noted that, while holding so in the case of father and grandfather of the assessee, the decision of the Hon'ble Delhi High Court in the case of Braham Dutt vs. ACIT, reported in 100 Taxmann.com 324 and the decision of Hon'ble Apex Court in the case of K.M. Sharma vs. ITO, reported in (2002) 254 ITR 772 (SC), had been followed. The learned CIT(A) thereafter noted that the facts in the present case were identical; and the assessment year being AY 2004-05, the limitation prescribed by the pre-amended provision of Section 149 of the Act being 6 years expired on 31.03.2011; that it was only subsequently that sub-clause (c) to Section 149(1) was brought on the Statute by Finance Act, 2012 with effect from 01.07.2012 extending the limitation to 16 years in cases where the escaped income was on account of foreign assets. The learned CIT(A) noted that the proposition laid down by the Hon'ble Delhi High Court in the case of Braham Dutt (supra) and the decision of Hon'ble Supreme Court in the case of K.M. Sharma (supra), followed by the ITAT in the case of father and grandfather of the assessee, applied squarely to the facts of the present case and accordingly he held that the notice in the present case had been also issued beyond the limit prescribed under the Act. He accordingly quashed the reassessment proceedings and subsequently the order passed to be held as invalid. It is aggrieved by this order of the learned CIT(A) that the Department has come up in appeal before us.

5. During the course of hearing before us, the learned Counsel for the assessee drew our attention to the fact that in the case of father and grandfather of the assessee, the reassessment proceedings initiated for the same assessment year as in the present case, i.e. AY 2004-05, were also quashed by the ITAT for

identical reasons noting that the notice issued was beyond the period prescribed under law, i.e. it was beyond limitation. The order of the ITAT holding so in the case of father and the grandfather of the assessee, i.e. Shri Balkrishna R. Mehta and Shri Ravichandra V. Mehta respectively for AY 2004-05 in ITA Nos.112 to 119/Rjt/2020 & 122 to 129/Rjt/2020 dated 27.12.2021 was placed before us. Our attention was drawn to the relevant portion of the order at paragraph Nos. 38 to 45 as under:-

> *"ITA Nos. 122 to 128/Rjt/2020- A.Ys. 1998-99 to 2004-05- Revenue's appeal (in case of Shri Ravichandra V. Mehta)*
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> *38. All these appeals filed by the revenue are directed against the combined order of learned CIT(A) dated 13-01- 2020.*
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> *39. At the outset the learned consul submitted that the issue common to all the appeal are covered in favour of the assessee by the decision of ITAT Rajkot in assessee's case dated 25-02-2019 in the case of Shri Ravichandra V. Mehta for A.Y. 1996-97 and assessment year 1997- 1998 (in ITA No. 409/ RJT 201,450/ RJT/ 2017, 410/ RJT/ 2017 and 451 RJT/ 2017 and also the subsequent order of ITAT Rajkot dated 25th June, 2019 in the case of the assessee.*
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> *40. On the other hand, learned departmental representative is fair enough to not controvert this undisputed fact that impugned issues in the appeal are covered by the decision of ITAT as referred in the decision of learned CIT appeal*
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> *41. With the assistance of learned representatives who have gone through the decision of learned CIT(A). The learned CIT(A) has held that issues under section 148 in respect all the above-mentioned years a being beyond the limitation prescribed under the pre-amended section 149 of the Act are bad in law and hence consequential assessment framed pursuant to such invalid notices are also required to be quashed and set aside. The learned CIT(A) has also placed reliance on the decision of on the Hon'ble Gujarat High Court in the case of Induprasad Bhatt Vs J.P. Jani (ITO) (58 ITR 559) wherein the Hon'ble High Court of Gujarat held that on proper construction of section 297(2)(d)(ii) of the act the ITO cannot issue notice under section 148 to reopen the assessment of an assessee in the case where the right to reopen the assessment was barred under the old (pre- amended) act and the date when new act (new amendment) came into force. The learned CIT(A) has also placed reliance on the decision of ITAT Rajkot in assessee's case dated 25-02-2019 in the case of Shri Ravichandra V. Mehta for assessment year 1996-97 and assessment year 1997- 1998 (in ITA No. 409/ RJT/ 2017, 450/ RJT/ 2017, 410/ RJT/ 2017 and 451/RJT/ 2017 and also*

the subsequent order of ITAT Rajkot dated 25th June, 2019 in the case of the assessee.

42. The relevant Part of the decision of learned CIT appeal is reproduced as under:-

> *"5.2 It has already been mentioned before that during the appeal proceedings, the appellant has taken two additional grounds separately - one related to the residential status of the appellant and other related to the legality of the notices u/s.148 which led to the assessment order(s) impugned in these appeals under consideration and has made submission praying for admission of these grounds and also submission for admission of additional evidences (related to the appellant's case that the funds were earned outside India and were of 1970s). They were sent to the AO for comments & verification. It may be mentioned that in the remand reports the AO has stated that the additional grounds and additional evidences should not be admitted and on merits it has been contended that the additional evidences cannot be considered for few defects pointed out by him.*
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> *It may also be mentioned that the predecessor Ld.CIT(A) in the appeal for AY 1995-96 and AY 1996-97 held the appellant to be R but NOR and accordingly that the amounts added by the AO couldn't have been treated taxable in India. The said appellate orders were challenged by the Department before the ITAT and the Tribunal also has quashed the assessment orders on the ground of legality of the notices u/s. 148.*
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> *I find that the remand reports of the AO demonstrate the adamancy and non- application of mind as to the well-established principles of law and that the additional grounds and the additional evidences have to be admitted for fairness and justice in view of the related decisions of the Hon'ble Courts in favour of tax payers.*
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> *5.3 In relation to the legality of the notice(s) u/s.148 it has been contented by the appellant that the above referred additional ground is purely legal in nature and therefore, requires admission and adjudication. It is case of the appellant that a search was conducted in his case on 20.3.2012, that Notice u/s 148 was issued for the captioned years on 27.02.2015 and that the same has been issued in view of Section 149(1)(c) of the Income Tax Act which was inserted by the Finance Act, 2012 with effect from 1.7.2012. As per provision of Section 149 as prevalent before the insertion of sub clause (c) to Sub section (1) of Section 149, it was provided that no Notice u/s 148 shall be issued for the relevant assessment year if not more than 4 or 6 years on the case may be, have elapsed from the end of the relevant Assessment Year. Therefore, prior to insertion of sub clause (c) to Section 149(1), the limitation period for issuance of Notice u/s 148 for the captioned years expired on 31.3.2005 for Assessment Year 1998-99*

and on 31.03.2011 for Assessment Year 2004-05. Though sub-clause (c) to Section 149(1) provides that Notice u/s 148 can be issued if not more than 16 years have elapsed from the end of the relevant Assessment Year if the income in relation to any asset located outside India chargeable to tax has escaped assessment, however, said sub clause (c) of Section 149(1) cannot help to extend the time limit which has already expired before the insertion of sub clause (c) to Section 149(1) which is inserted with effect from 1.7.2012 only. The time limit for all the captioned years (Assessment Year 1998-99 to 2004-05) had already expired on 31.3.2011 which cannot be further extended in view of the amendment as carried out with effect from 1.7.2012. For the purpose reliance has been placed on the decision of Hon'ble Gujarat High Court in the case of Induprasad Bhatt Vs. J.P. Jani (ITO) (58 ITR 559) where the Hon'ble High Court of Gujarat held that on proper construction of section 297(2)(d)(ii) of the Act the ITO cannot issue notice u/s. 148 to reopen the assessment of an assessee in the case where the right to reopen the assessment was barred under the old (pre-amended) Act at the date when new Act (new amendment) came into force. The said decision was confirmed by the Supreme Court in the case of J.P. Jani Vs. Induprasad Devshankar Bhatt (72 ITR 595). Similar decisions were made by the Hon'ble High Court of Bombay in S.C. Prashar Vs. VasantsenDwarkadas [1956] 29 ITR 857, and by the Supreme Court in S.S. Gadgil v. Lal & Company [1964].

5.4 It is the argument of the Learned.AR that in view of these the reopening of cases for Assessment Years 1996-97 to 2004-05, which had become barred by limitation on 31st March 2011 (for Assessment Year 2004-05) and the Amending Act being Finance Act, 2012 inserting sub clause (c) to Section 149 (1) w.e.f. 01.07.2012 only cannot give a fresh lease of life for reopening the same which has already become barred by limitation on 31.03.2011 under the pre-amended provisions of the Act. Thus, the Notices issued u/s. 148 being beyond the limitation prescribed under the pre-amended section149 are bad in law and hence consequential assessments framed pursuant to such invalid notices are also required to be quashed and set aside.

5.5 In addition to above the appellant has enclosed and brought to attention the judgement of ITAT Rajkot Dated 25-02-2019 in the case of Shri Ravichandra V Mehta for AY 1996-97 and AY 1997-98 (in ITA No.(s) 409/RJT/2017, 450/RJT/2017, 410/RJT/2017 and 451/RJT/2017) and also the subsequent order of ITAT Rajkot dated 25-06-2019 in the case of the assessee, Shri Balkrishna R Mehta himself for AY 1996- 97 and AY 1997-98 (in ITA No.(s) 407/RJT/2017, and 408/RJT/2017) were the order dated 25-02-2019 in the case of Shri Ravichandra V Mehta has been followed.

5.6 In the case of Shri Ravichandra V Mehta the additional ground of the appellant was that notice u/s. 148, pursuant to which impound assessment order is framed is barred by limitation u/s. 149 of the act and therefore assessment framed pursuant to such a valid notice is void ab initio. The ground of the Revenue was that the Ld. CIT(A) has erred in law and/or on facts virtually setting aside the order of AO passed u/s. 143 rws 147 of the Act dated 27-02-2015, whereas no such power rests with him under the Act and the additional ground was that the Ld. C1T(A) had erred in holding that as per the provision section 5 of the Act the funds of the assesses outside India could not be taxable in the hands of appellant if his status was Resident but Not Ordinarily Resident, even though the section excludes only income accruing or rising outside India to such assesses from ambit of taxation.

5.7 In the judgement dated 25-02-2019 in the case of Shri Ravichandra V Mehta, the Hon'ble ITAT has relied upon the decision of Hon'ble Delhi High Court in the case of Braham Dutt Vs. ACIT 100 taxmann.com 324, the decision of Hon'ble Supreme Court in the case of S.S Gadgil Vs. Lal & Co. 53 ITR 231, and in the matter of K M Sharma v/s ITO 254 ITR 772 where in it has been 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 decision of the Hon'ble ITAT in the case of Shri Ravichandra V Mehta is as under

> *"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 had held the 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 issued of notice under section 148 for Ay 1996-97 expired on 31-03-2003 and date for 1997-98 expired on 31-03-2004. The amendment of section 149 is with effect from 01-07-2012 and its not retrospective in nature. Thus the time limit which has already in expired could not have been revived by subsequent amendment. For all these reasons and complying the ratio laid down 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 notice as are also quashed and set aside.*
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> *11. In the result appeals of the assessee are allowed. Since we have quashed the assessment for the both the years, appeals of the Revenue have become infructuous and hence Revenue's appeals are dismissed."*

5.8 These orders of jurisdictional ITAT are binding and the appeals for AY 1998-99 to AY 2004-05 under consideration are covered by the earlier decisions of the Hon'ble ITAT Rajkot as the notices u/s. 148 were issued for these years on 27.02.2015 on the strength of the amended provisions w.e.f. 01.07.2012 whereas as per the pre-amended provision those notices could not have been issued after 31.03.2005 for AY 1998-99, 31.03.2006 for AY 1999-2000, 31.03.2007 for AY 2000-01, 31.03.2008 for AY 2001-02, 31.03.2009 for AY 2002-03, 3103.2010 for AY 2003-04 and 31.03.2011 for AY 2004-05.Following there from the assessment orders u/s. 143(3) rws 147 made on 31.03.2015 for AY 1998-99 to AY 2004-05 on the strength of the notices u/s. 148 dated 27.02.2015 for respective AYs, under consideration in the present appeals, are required to be quashed as notices u/s. 148 issued on 27.02.2015 for those years are void ab initio. Under the circumstances the submissions made on the merits of additions in the impugned assessment orders and the additional evidences related to funds are not required to be adjudicated upon.

6. The appeals for AY 1998-99 to AY 2004-05 are allowed."

43. The relevant part of the decision of ITAT Rajkot vide ITA Nos. 409, 410, 450 & 451/ RJT/ 2017 for A.Ys. 1996 -1997 and 1997- 1998 dated 25th February, 2019 is reproduced as under:-

"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. Gadgilvs.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 retrospectively 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 section 149.

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 Section150 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(1) 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(1) 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."

44. We find that issues raised before the tribunal in these years are similar to proceeding assessment years. It would not be appropriate for us to deviate from the view taken in earlier years without pointing out any material change in the facts and circumstances in subsequent years. The learned departmental representative has not disputed about the decision of the tribunal in the earlier years on the similar nor able to state how the facts in the earlier assessment years are different from the year under consideration. Since identical issues were dealt by the tribunal in earlier years as cited (supra) in the assessee own cases, following the principle of consistency we don't find any force in the appeal of the revenue, therefore all the appeal of the Revenue vide ITA Nos. 112 to 128 /Rjt/2020 for assessment year 1998-99 to 2004-05 are dismissed.

45. In the result appeals of the Revenue vide ITA Nos. 112 to 128 /Rjt/2020 are dismissed."

6. He, therefore, stated that the order of the learned CIT(A) needed no interference.

7. The learned DR before us was unable to distinguish the decision of the ITAT in the case of father and grandfather of the assessee which was relied upon by the learned CIT(A), though he vehemently supported the order of the Assessing Officer pointing out that foreign assets had been admitted by the

assessee. At this juncture, learned Counsel for the assessee pointed out that in the case of the assessee the addition had been made only on protective basis. He pointed out that on account of the admitted undisclosed foreign bank accounts held by the family of the assessee including his father and grandfather, the Assessing Officer had taxed interest earned thereon and substantive addition had been made in the hands of the father of the assessee since documents revealing communication with the concerned bank accounts were noted to be relating to his father. The protective addition of the interest, however, was made in the hands of the assessee in the absence of any clear cut information as to whom the interest actually pertained to. The learned Counsel for the assessee stated that since the assessment order passed in the case of the father of the assessee, where the substantive addition had been made, no longer survived, though having been set aside on a legal ground ,clearly the substantive addition did not survive. He contended, therefore, that there was no case at all for validating the protective addition made in the hands of the assessee.

8. We have heard the rival contentions. The issue before us is whether the learned CIT(A) was right in holding that the notice issued in the present case under Section 148 of the Act for reopening the case of the assessee was well beyond the prescribed period of limitation as prescribed under Section 149 of the Act. Before proceeding to adjudicate on this issue, it is relevant to bring out the facts of the case. The learned CIT(A) has brought out the facts at paragraph Nos. 4.1 to 4.3 of his order as under:-

> *"4.1 From the perusal of the assessment order dated 31.03.2015 for AY 2004-05 u/s 144 rws 147 of the Act impugned in the present appeal under consideration, it is seen that the residential status of the assessee is Resident, that a search U/s 132 of the Act was carried out on 20.03.2012 in the Mehta Group of cases which covered the assessee and his family members, that they were found to be holding undisclosed foreign accounts in various foreign banks outside India which were not disclosed for the purpose of the Act, that he along with his father Shri Balkrishna Mehta and grandfather Shri Ravichandra Mehta had admitted that*

there was balance of Rs.1 crore, that the bank account with ABN AMRO Bank, Geneva represented assets located outside India within the meaning of Explanation 2(d) to section 147 of the Act and accordingly as per provisions of section 149(1)(c) notice u/s. 148 could be issued up to 16 years which have lapsed during which the income chargeable to tax in India had escaped the assessment.

4.2 Accordingly notice u/s. 148 was issued on 27.02.2015. No return of income was filed. Vide letter dated 27.03.2015 the AO show caused as to whyhis case should not be finalized ex-parte and why the interest income earned from foreign bank accounts should not be treated as his income. No reply was furnished by the assessee. The AO presumed that the assessee has nothing to state in the matter. The key issues in all the assessments of the family members of the group are the foreign bank accounts belonging to the family and their list is at pages 3 and 4 of the assessment order. On the basis of transaction in the bank accounts the father and grandfather of the assessee, in their statements recorded u/s.134(2) on 21.03.2012, had admitted that the foreign bank accounts were not disclosed to the Department and that bank deposits to the tune of Rs.39.60 crores were unaccounted and they had agreed to pay tax on the same. However during the assessment proceedings for AY 2005-06 to AY 2012-13 u/s. 153A, no clear details were furnished. However a chart of working of interest income was submitted as per which interest came to Rs.22,57,875/- as under:

SN	*Name of the bank and account No.*	*Amount in INR*
1	*ABN AMRO 208695A*	*Rs. 2,34,260/-*
2	*ABN AMRO (USD) 208154*	*Rs. 20,23,615/-*
	Total	*Rs. 22,57,875/-*

4.3 Accordingly the assessee was show caused as to why an addition of Rs.22,57,875/- should not be made to his total income. However, no response was received from the assessee. From various documents seized from assessee Group's premises, A-601, Kailash Tower, Ghatkopar (East), Mumbai various correspondences of the foreign banks addressed to Shri Ravichandra Mehta were found and scanned images of two such documents are at pages 7, 8 and10 of the assessment order. The issues are dealt at para 4 to 4.6 on pages 5 to11 of the assessment order. The AO held that the assessees were fully aware about the Income Tax evasion and that Shri Ravichandra Mehta was the original owner of the funds and that interest was to be taxed on substantive basis in the hands of Shri Ravichandra Mehta. Accordingly the addition of Rs.22,57,875/- was made to the total income of the assessee Shri Vicky Mehta on protective basis. The assessment was completed determining total income at Rs.22,57,875/- and penalty proceedings u/s 271(1)(c) was initiated."

9. As is evident from the above, on account of search action undertaken on the Mehta Group on 20.03.2012 which covered the assessee and his family, it

was found that they held undisclosed foreign accounts in various foreign banks outside India. The assessee along with his father Shri Balakrishna Mehta and grandfather Shri Ravichandra Mehta admitted to a balance of Rs.1 crore in the bank accounts with ABN AMRO Bank, Geneva. Accordingly, notice under Section 148 of the Act was issued for reopening the case of the assessee before us, i.e. pertaining to AY 2004-05, and the notice was issued on 27.02.2015 as per the limitation prescribed under Section 149(1)(c) of the Act which provided a limitation of 16 years prior to the relevant assessment year to be reopened in cases where income were on account of foreign undisclosed assets. During assessment proceedings, no information was forthcoming from the assessee except for a chart of interest income submitted; as per which the interest income earned from the foreign bank account during the impugned year was Rs.22,57,875/-. Since the documents seized during search revealed correspondences of the foreign banks with the grandfather of the assessee Shri Ravichandra V. Mehta, the substantive addition of the interest was made in his hands; and, in the hands of the assessee the protective addition was made.

10. Having stated the facts as above, we have noted that the learned CIT(A) allowed the assessee's appeal holding the notices issued to be beyond the prescribed period of limitation. The learned CIT(A) held that the amended provisions prescribing extending limitation under Section 149(1)(c) of the Act would not apply in the present cases since the limitation for reopening the case of the assessee already stood expired prior to the amendment coming on the Statute. The learned CIT(A) relied on the decision of the ITAT in the case of the assessee's father and grandfather for AYs 1996-97 and 1997-98 wherein following the decision of the Hon'ble Delhi High Court in the case of Braham Dutt (supra) and the decision of Hon'ble Apex Court in the case of K. M. Sharma (supra), the ITAT had held so in the said two cases. The relevant findings of the learned CIT(A) at paragraph Nos. 6 to 6.9 of is as under:-

"6.1 From the perusal of impugned assessment order, it is seen that the residential status of the appellant is Resident. Accordingly as per the provisions of section 5(1) of the Act, the appellant is liable for tax in India on his global income which includes income which has accrued / arisen outside India. It follows that there is presumption in favour of Revenue that all the receipts of the assessee are income liable to be taxed in India unless it is proved otherwise by the assessee which is his primary onus, and the onus cannot be held to have shifted to the Income Tax Authority to prove that such income / funds were taxable in India.

6.2 It is also seen that as per the passport No. 9619172 issued on 17.08.2006 by the Regional Passport Office, Mumbai, the Date of Birth of Shri Vicky Mehta is 25.01.1983 and that accordingly for the purpose of taxation in the Income Tax Act, the appellant became major only in February 2004 that is financial year 2003-04 related to assessment year 2004-05. As the appellant is no more a minor for the AY 2004-05 under consideration, the appellant's contention as to he being minor and his income to be clubbed under the provisions of section 64 are no more applicable.

6.3 During the appeal proceedings the Ld. AR has also contended thatfollowing the decision of the Hon'ble ITAT, Ahmedabad(Rajkot Bench) in thecases of appellant's father Shri Balkrishna R Mehta and appellant's grandfather Shri Ravichandra V Mehta for AY 1996-97 and AY 1997-98, the impugned assessment could not have been made by the AO because as per the pre amended provisions then applicable the notice u/s. 148 could not have been issued after 31.03.2011 and this time barring date does not get enhanced by virtue of amendment in section 147(explanation 2(d)), 148 and specially insertion of clause (c) to section 149(1) by virtue of Finance Act, 2012 with effect from 01.07.2012.

6.4 Further from the records it is seen that the ld. AR of the appellant had taken an additional ground that 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.

6.5 In this regard it has been contented by the appellant that the above referred additional ground is purely legal in nature and therefore, requires admission and adjudication. It is case of the appellant that a search was conducted in his case on 20.3.2012, that Notice u/s 148 was issued for the captioned years on 27.02.2015 and the same has been issued in view of Section 149 (1) (c) of the Income Tax Act which was inserted by Finance Act, 2012 with effect from 1.7.2012, that as per provision of Section 149 as prevalent before the insertion of sub clause (c) to Sub section (1) of Section 149 provided that no Notice u/s .148 shall be issued for the relevant Assessment Year if not more than 4 or 6 years have elapsed from the end of the relevant Assessment Year, that therefore, prior to insertion of sub

clause (c) to Section 149 (1) the limitation period for issuance of Notice u/s 148 for the captioned year expired on 31.3.2011,that though sub-clause (c) to Section 149 (1) provides that Notice u/s 148 can be issued if not more than 16 years have elapsed from the end of the relevant Assessment Year (where the income in relation to any asset located outside India chargeable to tax has escaped assessment) said sub clause (c) ofSection 149 (1) cannot help to extend the time limit which has already expired before the insertion of sub clause (c) to Section 149 (1J which is inserted with effect from 01.07.2012 only. Thus the time limit for the captioned year had already expired on 31.03.2011 which cannot be further extended in view of the amendment as carried out with effect from 01.07.2012. For the purpose reliance has been placed on the decision of Hon'ble Gujarat High Court in the case of Induprasad Bhatt Vs. J.P. Jani (ITO) (58 ITR 559) which was confirmed by the Supreme Court in J.P. Jani v/s Induprasad Devshankar Bhatt (72 ITR 595). The Hon'ble High Court of Gujarat held that on proper construction of section 297 (2) (d) (ii) of the Act the ITO cannot issue notice u/s. 148 to reopen the assessment of an assessee in the case were the right to reopen the assessment was barred under the old (pre amended) Act at the date when new Act came into force. The set decision was confirmed by the Supreme Court in the case of J.P. Jani v/s Induprasad Devshankar Bhatt (72 JTR 595). Similar decisions were held by the Hon'ble High Court of Bombay in S.C. Prashar v. Vasantsen Dwarkadas [1956] 29 ITR 857, and decision of the Supreme Court in S.S. Gadgil v. Lal 8s Company [1964]. In view of these have been reopened for Assessment Years 1996-97 to AY 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 re-opening 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."

6.6 The submission of the appellant also contained the copy of various foreign bank accounts.

6.7 The appellant has enclosed and brought to attention the judgment of ITAT Rajkot dated 25.02.2019 in the case of Shri Ravichandra V Mehta for AY1996-97 and 1997-98 (ITA No.(s) 409/RJT/2017, 450/RJT/2017, 410/RJT/2017 and 415/RJT/2017). and also the subsequent order of ITAT Rajkot dated 25.06.2019 in the case of Shri Baikrishna R Mehta for AY 1996-97 and 1997-98 (ITA No.(s) 407/RJT/2017, and 408/RJT/2017) were the order dated 25-02-2019 in the case of Shri Ravichandra V Mehta has been followed.

In the case of Shri Ravichandra V Mehta the additional ground of the appellant was that notice u/s. 148, pursuant to which impound assessment order is framed is barred by limitation u/s. 149 of the act and therefore assessment framed pursuant to such a valid notice is void ab initio. The ground of the Revenue was

that the Ld. CIT(A) has erred in law and/or on facts virtually setting aside the order of AO passed u/s. 143 rws 147 of the Act dated 27-02-2015, whereas no such power rests with him under the Act and the additional ground that the Ld. CTT(A) had erred in holding that as per the provision section 5 of the Act the funds of the assesses outside India could not be taxable in the hands of appellant if his status was Resident but Not Ordinarily Resident, even though the section excludes only income accruing or rising outside India to such assesses from ambit of taxation.

In the judgment dated 25.02.2019 in the case of Shri Ravichandra V Mehta, the Hon'ble ITAT has relied upon the decision of Hon'ble Delhi high Court in the case of Braham Dutt v/s ACIT 100 taxmann.com 324, the decision of Hon'ble Supreme Court in the case of SS Gadgil v/s Lal & Co. 53 ITR 231, and in the matter of K M Sharma v/s ITO 254 ITR 772 where in it has been 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 decision of the Hon'ble ITAT in the case of Shri Ravichandra V Mehta is as under

> *"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 had held the u/s. 148is beyond limitation period, In the present case in our hand, prior to amendment in section 149 and the time limit for issued of notice under section 148 for Ay 1996-97 expired on 31-03-2003 and date for 1997-98 expired on 31-03-2004. The amendment of section 149 is with effect from 01-07-2012 and its not retroprospective in nature, Thus the time limit which have already in expired could not have been revived by subsequent amendment For all these reasons and complying the ratio laid down 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 notice as are also quashed and set aside.*
>
> *11. In the result appeals of the assesses are allowed. Since we have quashed the assessment for the both the years, appeals of the Revenue have become infructuous and hence Revenue's appeals are dismissed."*

Similarly in the decision dated 25.06.2019 in the case of Shri Balkrishna R Mehta for AY 1996-97 and AY. 1997-98 the grounds of the appellant were that the learned C1T (A) had erred in holding that notice of reopening u/s.148 of the Act is barred by limitation and that the learned CTP (A) erred in not distinguishing the Judgements put forth by the appellant The Hon'ble ITAT has followed its decision dated 25.02.2019 in the case of Shri Ravichandra V Mehta and has held that proceedings initiated u/s.147 of the Act are not sustainable and

accordingly the assessment orders were quashed and appeal of the assessee were allowed.

6.8 The orders of jurisdictional ITAT are binding and the appellant is found to be covered in his favour by the cited decisions of the Hon'ble ITAT Rajkot because the notice u/s.148 was issued on 27.02.2015 and served upon the assessee which was beyond the time limit of 31.03.2011 as per the pre amended provisions of sections 147, 148 and 149. Under the circumstances the submissions made on the merits are not required to be adjudicated upon as per the related provisions of the Act.

6.9 Under the circumstances, I am of consider view that the addition made by the AO and the treatment given by the AO in the assessment order is not sustainable and the assessment order impugned in appeal has to be quashed. This would be without necessary and concomitant bearing on and prejudice to the assessments made in the case of Shri Ravichandra Mehta which are matter of separate appeals proceedings and to be adjudicated separately."

11. Before us, the learned Counsel for the assessee has pointed out that in the case of the father and grandfather of the assessee, even for the impugned year i.e. AY 2004-05, the notice issued under Section 148 in the said case was held to be beyond the prescribed limitation by the ITAT in its order dated 27.12.2021 passed in ITA Nos.122 to 129/Rjt/2020& ITA Nos. 112 to 119/Rjt/2020.

12. Since the learned DR has been unable to distinguish either on facts or on law the case before us, we see no reason to interfere in the order of the learned CIT(A) holding the notice in the present case also to be issued beyond the prescribed limitation. In the impugned assessment year pertaining to AY 2004-05, the limitation prescribed under the unamended Section 149 of the Act expired on 31.03.2011. The amended provision under sub-clause (c) to Section 149(1) of the Act extending the limitation to 16 years was brought on the Statute on the 1st of July, 2012 by the Finance Act, 2012 and the notice under Section 148 in the present case was issued on 27.03.2015; therefore, as per the facts of the present case also when the amendment extending limitation for issuing notice under Section 148 of the Act was brought on the Statute, the limitation for issuing notice in the present case already stood expired. Therefore, the

proposition laid down by the Hon'ble Delhi High Court in the case of Braham Dutt (supra) that in such cases the retrospectivity of the amended provision would not apply to empower the Assessing Officer to extend limitation, which limitation already stood exhausted in his hands, would apply.

13. In view of the above, the grounds of appeal raised by the Revenue are dismissed.

14. In effect, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 22/02/2023 at Ahmedabad.

Sd/-	**Sd/-**
(SIDDHARTHA NAUTIYAL) **JUDICIAL MEMBER**	**(ANNAPURNA GUPTA)** **ACCOUNTANT MEMBER**

Ahmedabad; Dated 22/02/2023

*%

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)-
5. विभागीय प्रतिनिधिआयकर अपीलीय अधिकरण ,/DR,ITAT, Rajkot,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

TRUE COPY

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Rajkot