

IN THE INCOME TAX APPELLATE TRIBUNAL

PUNE "SMC" BENCH : PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

I.T.A.No.610/PUN./2024

Assessment Year 2014-2015

Shri Ritvik Sandeep Kolatkar, Flat No.301, Shreyas Covert, Chaturshrungi, Pune City, Model Colony S.O. Pune Maharashtra. PIN - 411 016 PAN BRCPK6181L	vs.	The Income Tax Officer, Ward - 8 (3), Pratyakshakar Bhavan, Dr. Ambedkar Marg, Nr. Akurdi Rly. Station, Pune - 411 044. Maharashtra.
(Appellant)		(Respondent)

For Assessee :	Shri Kishor B. Phadke
For Revenue :	Shri Kalpesh Kumar Rupavatiya

Date of Hearing :	09.05.2024
Date of Pronouncement :	28.05.2024

ORDER

This assessee's appeal for assessment year 2014-15, arises against the National Faceless Appeal Centre [in short the "NFAC"] Delhi's Din and Order No. ITBA/NFAC/S/250/2023-24/1060161596(1), dated 27.01.2024, in proceedings u/s.147 r.w.s.144 of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. It emerges at the outset that the assessee canvasses his sole substantive grievance challenging validity of the impugned sec.148A/148/147 proceedings itself since initiated in violation of sec.149(1)(b) of the Act.

The few relevant facts may be noticed.

2.1. There is hardly any dispute between the parties that the impugned assessment year herein is assessment year 2014-2015. Learned assessing authority initiated the impugned sec.148(1)/148 proceedings against the assessee vide its corresponding notice issued on 21.07.2022 so as to make the addition of Rs.15,52,462/- u/sec.56(2)(vii)(b) of the Act. This sum represents difference between the assessee's actual purchase price and stamp value of the corresponding capital asset. Sec.149(1)(a), amended w.e.f. 01.04.2021 vide Finance Act, 2021 admittedly prescribes limitation of three to ten years under clause (b) thereof subject to a rider that the "income which has escaped assessment amounts to or is likely to amount to 50 lakhs rupees or more". That being the case, the learned DR could not rebut the foregoing clinching factual position that the assessing authority herein had nowhere recorded the corresponding satisfaction of assessee's alleged taxable income's amount satisfied the said pecuniary limit. I deem it appropriate to take note of the CBDT's circular / instruction no.1/2022 dated 11.05.2022 making it clear in paragraph-7.1 thereof that the above escaped amount's indeed forms a mandatory condition as well. Hon'ble jurisdictional high court's latest decision Hexaware Technologies Ltd. vs. ACIT [2024] 162 taxmann.com 225 (Bombay); for succeeding assessment year 2015-16; involving sec.148 notice dated

08.04.2022; holds the same as time barred u/sec.149(1) of the Act as follows :

“25. Section 149(1)(b) of the erstwhile provisions provided a time limit of six years from the end of the relevant assessment year for issuing notice under Section 148 of the Act. For the relevant assessment year, being Assessment Year 2015-2016, 6th year expired on 31st March 2022. The notice under Section 148 of the Act, in the present case, is issued on 27th August 2022, i.e., clearly beyond the period of limitation prescribed in Section 149 read with the first proviso to the said section. This is squarely covered by paragraphs 36 and 37 of New India Assurance (Supra) which has been reproduced above in paragraph 23.

26. The purpose of the first proviso to Section 149 of the Act is consistent with the stated object of the government to make prospective amendments in the Act. Accordingly, the proviso provides that up to Assessment Year 2021-2022 (period before the amendment), the period of limitation as prescribed in the erstwhile provisions of Section 149(1)(b) of the Act would be applicable and only from Assessment Year 2022-2023, the period of ten years as provided in Section 149(1)(b) of the Act, would be applicable. The submission of the Revenue to interpret the

first proviso to Section 149 of the Act to be applicable only for Assessment Years 2013- 2014 and 2014-2015, i.e., for assessment years where the period of limitation had already expired on 1st April 2021 is not sustainable. The interpretation canvassed by the Revenue is clearly contrary to the plain language of the proviso. When the language in the statute is clear, it has to be so interpreted and there is no scope for interpreting the provision on any other basis. The taxing statute should be strictly construed. [Godrej & Boyce Manufacturing Company Ltd. vs. DCIT].

27. *The interpretation as canvassed by the Revenue would render the first proviso to Section 149 of the Act redundant and otiose. The time limit to issue notice under Section 148 of the Act had already expired on 1st April 2021 for Assessment Year 2013–2014 and 2014–2015, when Section 149 of the Act was amended. Therefore, reopening for Assessment Years 2013-2014 and 2014-2015 had already been barred by limitation on 1st April 2021. Accordingly, the extended period of ten years as provided in Section 149(1)(b) of the Act would not have been applicable to Assessment Years 2013-2014 and 014-2015, de hors the proviso. It is a settled principle of law that when limitation has already expired, it cannot be revived by way of a subsequent amendment and, hence, for Assessment Years 2013-2014 and 2014-2015*

proviso to Section 149 of the Act was not required. Hence, to give meaning to the proviso it has to be interpreted to be applicable for Assessment Years upto 2021-2022. In Commissioner of Income Tax vs. Onkarmal Meghraj (HUF), the Hon'ble Apex Court was dealing with the question whether a proviso could be applied without reference to any period of limitation. It held that "it is a well-settled principle that no action can be commenced where the period within which it can be commenced has expired. It is unnecessary to cite authorities in support of this position. Does the fact that the second proviso says that there is no period of limitation make a difference?"

The interpretation canvassed by the Revenue would render the following parts of the proviso redundant -

- (i) 'at any time' in the first line of the proviso.*
- (ii) 'beginning on or before 1st day of April, 2021,' in the second line of the proviso.*
- (iii) 'at that time' in the fourth line of the proviso.*

If we have to give effect to the interpretation suggested by the Revenue, then the proviso would have read as under :

"Provided that no notice under Section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if a notice under Section 148 or Section 153A or Section 153C

could not have been issued at that time [on 1st day of April, 2021] on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this Section or Section 153A or Section 153C, as the case may be, as they stood immediately before the commencement of the Finance Act, 2021; OR

Provided that no notice under Section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if a notice under Section 148 or Section 153A or Section 153C could not have been issued at that time [on 1st day of April, 2021] on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this Section or Section 153A or Section 153C, as the case may be, as they stood immediately before the commencement of the Finance Act, 2021".

28. *Section has to be interpreted so as to give meaning to all the words/phrases used in the Section and it should not be interpreted in such a way so as to render any part or phrase in the Section otiose. As stated aforesaid, if the interpretation canvassed by the Revenue is to be accepted then, not only various parts of the Section would be rendered otiose, one would have to also substitute one phrase with another phrase in the said Section, which is clearly not permissible in law. Reliance in*

this regard is placed on the decision of the Hon'ble Apex Court in the case of Commissioner of Income Tax vs. Sham L. Chellaram.

29. *It was submitted on behalf of Revenue that the period of limitation for the purposes of Section 149 of the Act has to be seen with respect to the original notice under Section 148 of the Act, which was issued to petitioner on 8th April 2021 and as the said notice was issued within the period of six years from the end of the relevant assessment year, which was expiring on 31st March 2022, the reassessment proceedings are within the period of limitation prescribed in Section 149 of the Act. It is not acceptable.*

Section 149 of the Act sets out, inter alia, the time limit for issuing notice under Section 148 of the Act. Apart from the period of limitation set out in the said Section, the first proviso lays down a further restriction on the issue of a notice under section 148 of the Act. The period of limitation as well as the said further restriction is framed/provided in respect of a notice under 148 of the Act, and not for a notice under section 148A of the Act. The notice dated 8th April 2021, which though originally issued as a notice under section 148 of the Act, (under the provisions of the Act prior to the amendments made by the Finance Act, 2021), has now been treated as a notice

issued under section 148A(b) of the Act in accordance with the decision of the Hon'ble Apex Court in Ashish Agarwal (Supra). Once the notice dated 8th April 2021 has been treated as having been issued under Section 148A(b) of the Act, the said notice is no longer relevant for the purpose of determining the period of limitation prescribed under Section 149 or the restriction as per the first proviso below Section 149 of the Act. Therefore, for considering the restriction on issue of a notice under section 148 of the Act prescribed in the first proviso to Section 149 of the Act, the fresh/presently impugned notice dated 27th August 2022 issued under Section 148 of the Act is required to be considered. The said notice is admittedly beyond the erstwhile period of limitation of six years prescribed by the Act prior to its amendment by the Finance Act, 2021. For the Assessment Year 2015-2016, the erstwhile time limit of six years expired on 31st March 2022 and, the impugned notice under Section 148 of the Act has been issued on 27th August 2022 and, therefore, the impugned notice dated 27th August 2022 is barred by the restriction of the first proviso to Section 149 of the Act.

30. *With respect to applicability of the fifth proviso and the sixth proviso to Section 149(1)(b) of the Act for extension of limitation for issuing the notice under Section 148 of the Act, fifth and sixth provisos are only applicable*

with respect to the period of limitation prescribed in Section 149(1) of the Act, i.e., three years or ten years, as the case may be. Fifth proviso or sixth proviso extend limitation for issuing notice under Section 149 of the Act, however, the first proviso is an exception to the period of limitation and provides for a restriction on the notices under Section 148 being issued for Assessment Years upto 2021-22 beyond a certain date. Therefore, the way the Section would operate, is first to decide whether a notice issued under Section 148 of the Act is within the period of limitation in terms of Section 149(1)(a) or (b) of the Act. To decide whether the notice is within the period of limitation under Section 149(1)(a) or (b) of the Act, the extension of time as per the fifth and/or sixth proviso would be considered. Once, the notice is otherwise within the period of limitation, thereafter one has to see whether the said time limit is within the restriction provided in the first proviso or not. If the notice is beyond the restriction period, the notice is invalid. The fifth and/or the sixth proviso cannot apply at this stage to extend the period of restriction as per the first proviso. Hence, if a notice is not within the time prescribed under the first proviso to Section 149(1) of the Act, then such period cannot be extended by fifth proviso and sixth proviso. In

Godrej Industries Ltd. (Supra) paragraph 15 reads as under :

“15. Based on petitioner’s facts, the show cause notice under Section 148A(b) of the Act was issued on 24th May 2022 asking petitioner to furnish a reply by 8th June 2022. Petitioner filed a detailed reply in response to the show cause notice on 8th June 2022 and, therefore, only the period from 24th May 2022 to 8th June 2022 could be excluded by virtue of the first limb of the fifth proviso to Section 149 of the Act. Subsequently, petitioner received another letter dated 28th June 2022 which annexed certain details and provided further time for making detailed submissions upto 8th July 2022. Petitioner replied to the letter and made detailed submissions on 2nd July 2022. Therefore, even assuming this period is to be excluded, the period which could be excluded is only from 24th May 2022 to 8th June 2022. Even after considering the letter dated 28th June 2022 and the reply dated 2nd July 2022, at the highest a further period from 28th June 2022 to 8th July 2022 could be excluded but the period of time from 8th June 2022 to 28th June 2022 cannot be excluded as per the fifth proviso. This is because petitioner on 8th June 2022 did not request for any

further time and furnished its response to the show cause notice under Section 148A(b) of the Act. It is the Assessing Officer who has suo moto issued another letter on 28th June 2022 asking petitioner to furnish further details by 8th July 2022. Therefore, even assuming a period of 27 days (i.e., 16 days from 24th May to 8th June and 11 days from 28th June to 8th July) are excluded from the date of the impugned notice under Section 148 of the Act issued on 31st July 2022, the impugned notice would yet be barred by limitation and could not have been issued by virtue of the first proviso to Section 149 of the Act.

Even if the fifth and sixth provisos are held to be applicable, the impugned notice would still be beyond the period of limitation. The fifth proviso extends limitation with respect to the time or extended time allowed to an assessee as per the show cause notice issued under Section 148A(b) of the Act or the period, during which the proceeding under Section 148A of the Act are stayed by an order of injunction by any Court. Hence, in the present case, in view of the fifth proviso, the period to be excluded would be counted from 25th May 2022, i.e., the date on which the show cause notice was issued under Section 148A(b) of the Act by respondent

no.1 subsequent to the decision of the Hon'ble Apex Court in the case of Ashish Agarwal (Supra) and upto 10th June 2022, which is a period of 16 days. Further, the time period from 29th June 2022 upto 4th July 2022 cannot be excluded as the same was not based on any extension sought by petitioner, but at the behest of respondent no.1. Even if the same was to be excluded, still it will mean further exclusion of 5 days. Considering the said excluded period as well, the impugned notice dated 27th August 2022 is still beyond limitation. The fact that the original notice dated 8th April, 2021 issued under Section 148 of the Act, was stayed by this Court on 3rd August 2021, and its stay came to an end on 29th March 2022 on account of the decision of this Court, will not be relevant for providing extension as per the fifth proviso. The fifth proviso provides for extension for the period during which the proceeding under Section 148A of the Act is stayed. The original stay granted by this Court was not with respect to the proceeding under Section 148A of the Act, but with respect to the proceeding initiated as per the erstwhile provision of Section 148 of the Act and, hence, such stay would not extend the period of limitation as per the fifth proviso to Section 149 of the Act. The question of applicability of the sixth proviso does not arise on the facts

of the present case. We find support for this in *Godrej Industries Ltd. (Supra)*.

In view of the aforesaid, the impugned notice dated 27th August 2022 is clearly barred by the law of limitation.”

3. I adopt their lordships’ foregoing detailed reasoning *mutatis mutandis* to quash the impugned reopening since the escaped income does not satisfy the pecuniary jurisdiction threshold limit(s) u/sec.149(1)(b) of the Act in very terms. The assessee succeeds in his instant sole substantive grievance. Ordered accordingly.

4. This assessee’s appeal is allowed in above terms.

Order pronounced in the open Court on 28.05.2024.

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 28th May, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Pr. CIT, Pune concerned
4.	D.R. ITAT, “SMC” Bench, Pune.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,
Pune.