

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष

BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI S.R.RAGHUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.567/Chny/2024
निर्धारण वर्ष/Assessment Year: 2014-15
&
Stay Petition No.24/Chny/2024
निर्धारण वर्ष/Assessment Year: 2014-15

Shri Jesudason Biji, 8, Murphy Square, 1 st Cross Street, St. Thomas Mount, Chennai-600 016.	v.	The Income Tax Officer, International Taxation - Ward-1(1), Chennai.
[PAN: BQQPB 6988 K]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri M.V.Swaroop, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Shri D. Hema Bhupal, JCIT
सुनवाईकीतारीख/Date of Hearing	:	01.05.2024
घोषणाकीतारीख /Date of Pronouncement	:	30.05.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the action of the Assessing Officer (hereinafter 'AO') framing assessment for Assessment Year (hereinafter 'AY') 2014-15 u/s.147 r.w.s.144C(13) of the Income Tax Act, 1961 (hereinafter 'the Act') by order dated 05.01.2024 pursuant to the Dispute Resolution Panel-2 (hereinafter 'DRP'), Bangalore, dated 22.12.2023.



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2. By preferring Ground Nos.17 to 22, *inter alia*, the assessee (an NRI) has challenged in this case, the jurisdiction of the AO to have issued notice dated 30.06.2021 u/s.148 of the Act (as it stood prior to its amendment by Finance Act, 2021). Further, according to the assessee, even as per the first proviso to sec.149 of the Act (as amended by Finance Act, 2021), no notice for re-assessment could have been issued to assessee for AY 2014-15 as the time limit for issuing proceedings had expired on 31.03.2021. In other words, according to the assessee, in this case, the AO had issued notice to him dated 30th June, 2021 u/s.148 of the Act under the erstwhile Sec.148 of the Act (as it stood prior to its amendment by the Finance Act, 2021) which action of the AO was to be deemed to have been issued to assessee u/s.148A of the Act, as substituted by the Finance Act, 2021 (*as ordered by the Hon'ble Supreme Court in the case of UoI v. Ashish Agarwal reported in [2022] 444 ITR 1 (SC) dated 04.05.2022*). The Hon'ble Apex Court in *Ashish Agarwal (supra)* having ordered that all the notices issued by AO under the erstwhile Sec.148 of the Act to be treated as issued u/s.148A of the substituted Finance Act, 2021, also gave liberty to the assessee to raise all defense available to the assessee u/s.149 of the Act, and/or which may be available under the Finance Act, 2021. In this back ground, according to the assessee, it is raising the defense that AO could not have



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issued notice for AY 2014-15, even under new substituted Finance Act, 2021. According to assessee, as per the first proviso to Sec.149 of the Act (substituted by Finance Act, 2021), no notice u/s.148 could have been issued for AY 2014-15 on or after first day of April, 2021, since, such notice could not have been issued at that time (on or after 1st April, 2021) on account of being beyond the time limit specified under the provisions of clause (b) of Sub-sec.(1) of sec.149 (as it stood prior to the amendment by Finance Act, 2021).

3. Brief facts as noted by AO are that assessee had filed his original return of income (ROI) for A.Y. 2014-15 on 24.09.2014 admitting a total income of Rs. 33,64,415/-. Therefore, he filed a revised return on 31.03.2015 on the ground that the claim of deduction u/s.54EC consequent to investment of Rs.50,00,000/- was omitted to be claimed. According to AO, since, the original ROI was filed beyond the time limit prescribed u/s.139(1) of the Act, the revised return was held to be invalid as per sec.139(5) and was not acted upon. Pursuant to that the assessee preferred a petition before the CBDT for condonation of delay in filing the original return u/s.119(2)(b) of the Act and during the process of examining, the correctness of the claim to facilitate the report by the AO, it came to light that while the claim of deduction u/s.54EC was found to be in order, the claim of deduction u/s.54F to the tune of



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Rs..2,79,00,000/- remained uncorroborated. In this regard, the AO noted that the assessee had sold two properties on 13.06.2013 at Korattur Village, Ambattur which are not residential houses and the total consideration received during F.Y. 2013-14 is Rs.3,46,12,700/-. And the assessee had deposited Rs.50,00,000/- in 54EC bonds on 31.12.2013 and hence was eligible for deduction u/s.54EC. However, in respect of the claim of deduction u/s.54F, AO noted that the investment was made in acquisition of a vacant land and construction of a building over it was in a staggered manner over the next three years. In such a situation, according to AO, the sale proceeds had to be deposited by assessee in CGAS-88 Account before the due date u/s.139(1) of the Act. The AO noted that barring Rs.50 lakhs, Rs.2,90,12,824/-was deposited in the CGAS-88 beyond the time limit prescribed u/s.139(1) of the Act. Therefore, according to AO, the claim of deduction u/s.54F of the Act is not entertainable as per the conditions laid down u/s.54F(4) of the Act. Accordingly, the AO was of the opinion that assessee was eligible for claiming deduction of only Rs.39,33,995/- u/s.54 and not beyond. Therefore, the ROI of assessee was re-opened by issue of notice on 30.06.2021 u/s.148 of the Act (as it stood prior to amendment by Finance Act, 2021). At this juncture, it may be noted that Department had issued several re-opening notices u/s.148 of the erstwhile Act (prior to Finance



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Act, 2021), which was challenged before the Hon'ble Supreme Court in the case of Ashis Agarwal (supra); and that the Hon'ble Supreme Court exercising its power under Article 142 of the Constitution of India, passed orders with respect to such notices and *inter alia* held that the notice issued u/s.148 of the Act after 01.04.2021 be treated as notice issued u/s.148A(b) of the Act and provided for time lines to be followed by AO for providing assessee's information & material relied upon by Revenue for initiating re-assessment. The Hon'ble Apex Court also clarified that all the defences available to assessee's under the provisions of the Act would be available to assessee.

4. Coming back to the present case, as per the Hon'ble Supreme Court directions (supra), the notice u/s.148 of the Act issued by the AO dated 30.06.2021 u/s.148 of the Act, (erstwhile Act as it stood before the Finance Act, 2021), is to be treated/deemed to be notice u/s.148A of the Act as per the substituted Finance Act, 2021; and then, in accordance to Hon'ble Supreme Court direction (supra) the AO issued notice dated 02.06.2022 within 30 days of the order of the Hon'ble Supreme Court dated 04.05.2022 which was construed /treated to be show cause notice in terms of sec.148A(b) of the Act (substituted Act, 2021). Thereafter, the AO taking note of the departmental valuation Officers Report dated 15.06.2022 noted that during the course of assessment proceedings, a



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reference was made to the valuation cell to ascertain the exact value of investment and during such an exercise, it surfaced that the investment had been made by 1 in 6 (six) different residential properties or six distinct dwelling units. At this juncture, the AO noted that the re-assessment proceedings were nearing closure and the same had to be abated consequent to the Board's instruction in No. 1 of 2022 in F. No. 279/Misc/M-51/2022-ITJ dated 11.05.2022 consequent to the implementation of the judgment of the Hon'ble Supreme Court in the case of Ashish Agarwal & Ors and an opportunity of being heard was provided to the assessee, vide letter dated: 02.06.2022 through mail and noticing that there had been no response to the said notice, the AO rejected the claim of deduction of Rs.2.79 Crs. u/s.54F in the case of the assessee for the A.Y. 2014-15. Aggrieved the assessee preferred objection before the Ld.DRP, who was pleased to dismiss the objections and ordered enhancement also of Rs.7,11,653/- (interest income). Pursuant to Ld.DRP direction, the AO passed the impugned order dated 05.01.2024 u/s.147 r.w.s.144C(13) of the Act.

5. Before us, the assessee has challenged the action of the AO to have issued notice u/s.148 of the erstwhile Act, even if it is treated to be notice u/s.148A of the substituted Finance Act, 2021. In order to adjudicate the legal issue, it is relevant to take note of the relevant statutory provisions



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applicable pre 01.04.2021 and post 01.04.2021 which are reproduced below:

The procedure governing initiation of reassessment proceedings prior to coming into force of the Finance Act, 2021 was governed by the following provisions: -

"Income escaping assessment-

147. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recomputed the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year):

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:

Provided further that 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 for any assessment year:

Provided also that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.

Explanation 1.—Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

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 :—

(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in



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respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax;

(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

(ba) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E;

(c) where an assessment has been made, but—

(i) income chargeable to tax has been under assessed; or

(ii) such income has been assessed at too low a rate; or (iii) such income has been made the subject of excessive relief under this Act; or

(iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed;

(ca) where a return of income has not been furnished by the assessee or a return of income has been furnished by him and on the basis of information or document received from the prescribed income-tax authority, under sub-section (2) of section 133C, it is noticed by the Assessing Officer that the income of the assessee exceeds the maximum amount not chargeable to tax, or as the case may be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

(d) where a person is found to have any asset (including financial interest in any entity) located outside India.

Explanation 3.—For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under subsection (2) of section 148.

Explanation 4.—For the removal of doubts, it is hereby clarified that the provisions of this section, as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.

Issue of notice where income has escaped assessment-

148.(1) Before making the assessment, reassessment or recomputation under section 147, the Assessing Officer shall serve on the assessee a notice requiring



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him to furnish within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:

Provided that in a case—

(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005 in response to a notice served under this section, and

(b) subsequently a notice has been served under sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to subsection (2) of section 143, as it stood immediately before the amendment of said sub-section by the Finance Act, 2002 (20 of 2002) but before the expiry of the time limit for making the assessment, re-assessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice:

Provided further that in a case—

(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005, in response to a notice served under this section, and

(b) subsequently a notice has been served under clause (ii) of sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to clause (ii) of sub-section (2) of section 143, but before the expiry of the time limit for making the assessment, reassessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice.

Explanation.—For the removal of doubts, it is hereby declared that nothing contained in the first proviso or the second proviso shall apply to any return which has been furnished on or after the 1st day of October, 2005 in response to a notice served under this section.

(2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so.

Time limit for notice-

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

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



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(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year;

(c) if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.

Explanation.—In determining income chargeable to tax which has escaped assessment for the purposes of this subsection, the provisions of Explanation 2 of section 147 shall apply as they apply for the purposes of that section.

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.

(3) If the person on whom a notice under section 148 is to be served is a person treated as the agent of a nonresident under section 163 and the assessment, reassessment or recomputation to be made in pursuance of the notice is to be made on him as the agent of such non-resident, the notice shall not be issued after the expiry of a period of six years from the end of the relevant assessment year.

Explanation.—For the removal of doubts, it is hereby clarified that the provisions of sub-sections (1) and (3), as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.

Sanction for issue of notice-

151. (1) No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice.

(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.

(3) For the purposes of sub-section (1) and sub-section (2), the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner or the Joint Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue such notice himself."



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3.1 Due to pandemic Covid-19, that Taxation and other Laws (Relaxation and Amendment of certain provisions Act) 2020 (hereinafter 'TOLA') was notified. In pursuance to the power vested under section 3 of the Relaxation Act, 2020, the Central Government issued following Notifications inter-alia extending the time lines prescribed under section 149 for issuance of reassessment notices under section 148 of the Income Tax Act, 1961:

Date of Notification	Original limitation for issuance of notice under Section 148 of the Act	Extended Limitation
31.03.2020	20.03.2020 to 29.06.2020	30.06.2020
24.06.2020	20.03.2020 to 31.12.2020	31.03.2021
31.03.2021	31.03.2021	30.04.2021
27.04.2021	30.04.2021	30.06.2021

The Explanations to the Notifications dated 31st March, 2021 and 27th April, 2021 issued under section 3 of the Relaxation Act, 2020 also stipulated that the provisions, as they existed prior to the amendment by the Finance Act, 2021, shall apply to the reassessment proceedings initiated there under.

3.2 The Parliament introduced reformative changes to Sections 147 to 151 of the Income Tax Act, 1961 governing reassessment proceedings by way of the Finance Act, 2021, which was passed on 28th March, 2021. The substituted sections 147 to 149 and section 151 applicable w.e.f. 01.04.2021, passed in the Finance Act, 2021, are as under:-

Income escaping assessment-

"147. If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year).

Explanation.—For the purposes of assessment or reassessment or recomputation under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of section 148A have not been complied with."

Issue of notice where income has escaped assessment-



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148. Before making the assessment, reassessment or recomputation under section 147, and subject to the provisions of section 148A, the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of section 148 A, requiring him to furnish within such period, as may be specified in such notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:

Provided that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice.

Explanation 1.—For the purposes of this section and section 148A, the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,—

- (i) any information flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;
- (ii) any final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act.

Explanation 2.—For the purposes of this section, where,—

- (i) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after the 1st day of April, 2021, in the case of the assessee; or
- (ii) a survey is conducted under section 133A, other than under sub-section (2A) or sub-section (5) of that section, on or after the 1st day of April, 2021, in the case of the assessee; or
- (iii) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under section 132 or under section 132 A in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or
- (iv) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that any books of account or documents, seized or requisitioned under section 132 or section 132A in case of any



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other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee, the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.

Explanation 3.—For the purposes of this section, specified authority means the specified authority referred to in section 151.”

Conducting inquiry, providing opportunity before issue of notice under section 148 –

“148A. The Assessing Officer shall, before issuing any notice under section 148,—

- (a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;
- (b) provide an opportunity of being heard to the assessee, with the prior approval of specified authority, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);
- (c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);
- (d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:

Provided that the provisions of this section shall not apply in a case where,—

- (a) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of the assessee on or after the 1st day of April, 2021; or



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- (b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under section 132 or requisitioned under section 132 A, in the case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or
- (c) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under section 132 or requisitioned under section 132A, in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee.

Explanation.—For the purposes of this section, specified authority means the specified authority referred to in section 151.”

Time limit for notice-

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

- (a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);
- (b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year:

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

Provided further that the provisions of this sub-section shall not apply in a case, where a notice under section 153A, or section 153C read with section 153A, is required to be issued in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or before the 31st day of March, 2021:

Provided also that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (b) of section 148A or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded:



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Provided also that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of section 148A is less than seven days, such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly.

Explanation.—For the purposes of clause (b) of this subsection, “asset” shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.’

Sanction for issue of notice-

“151. Specified authority for the purposes of section 148 and section 148A shall be—

- (i) Principal Commissioner or Principal Director or Commissioner or Director, if three years or less than three years have elapsed from the end of the relevant assessment year;
- (ii) Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year.”

3.3 In sub-section (1) of section 151A of the Income Tax Act, in the opening portion, after the words and figures “issuance of notice under section 148”, the words, figures and letter “or conducting of enquiries or issuance of show-cause notice or passing of order under section 148A” are inserted.

4. Despite the substituted sections 147 to 151 of the Income Tax Act, 1961 by the Finance Act, 2021 coming into force on 1 st April, 2021, according to learned ASG, the Revenue issued approximately 90,000 reassessment notices to the respective assesseees under the erstwhile sections 148 to 151 thereof by relying on explanations in the Notifications dated 31st March, 2021 and 27th April, 2021. The said reassessment notices were the subject matter of writ petitions before the various High Courts. The respective High Courts have held that all the respective reassessment notices issued under the erstwhile sections 148 to 151 of the Income Tax Act, 1961, are bad in law as the reassessment notices issued after 01.04.2021 are governed by the substituted sections 147 to 151 of the Income Tax Act, 1961, substituted by the Finance Act, 2021. Consequently, the respective High Courts have set aside all the reassessment notices issued under section 148 of the Income Tax Act, 1961 wherever assailed. The common judgment and order passed by the High Court of Allahabad is the subject matter of the present appeals. However, the High Court of Delhi in its common judgment and order dated 15.12.2021 while quashing the respective reassessment notices



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has also observed that if the law permits the revenue to take further steps in the matter they shall be at liberty to do so.

6. Having taken note of the substituted sections 147-151 of the Act by the Finance Act, 2021 which came into force from 01.04.2021, we note that the Revenue had issued many notices including that of the assessee for AY 2014-15 on or after 01.04.2021 [(in the present case on 30.06.2021 under the erstwhile sections 148-151 thereof by relying on the explanation in the notification dated 31.03.2021 and 27.04.21) (supra)]. Many assessee's (not this assessee) challenged such notices u/s.148 of the Act before the respective Hon'ble High Courts which were allowed by the Hon'ble High Court holding that the notices to be bad in law as the re-assessment notices issued after 01.04.2021 were governed by the substituted Sections 147-151 of the Act (as substituted by the Finance Act, 2021). The Revenue challenged the same before the Hon'ble Supreme Court in the case of Ashish Agarwal (supra) wherein, the Hon'ble Supreme Court held as under:

10. In view of the above and for the reasons stated above, the present Appeals are ALLOWED IN PART. The impugned common judgments and orders passed by the High Court of Judicature at Allahabad in W.T. No. 524/2021 and other allied tax appeals/petitions, is/are hereby modified and substituted as under: -

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



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so that the assessee can reply to the show-cause notices within two weeks thereafter;

(ii) The requirement of conducting any enquiry, if required, with the prior approval of specified authority under section 148A(a) is hereby dispensed with as a one-time measure vis-à-vis those notices which have been issued under section 148 of the unamended Act from 01.04.2021 till date, including those which have been quashed by the High Courts. Even otherwise as observed hereinabove holding any enquiry with the prior approval of specified authority is not mandatory but it is for the concerned Assessing Officers to hold any enquiry, if required;

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

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

11. The present order shall be applicable PAN INDIA and all judgments and orders passed by different High Courts on the issue and under which similar notices which were issued after 01.04.2021 issued under section 148 of the Act are set aside and shall be governed by the present order and shall stand modified to the aforesaid extent. The present order is passed in exercise of powers under Article 142 of the Constitution of India so as to avoid any further appeals by the Revenue on the very issue by challenging similar judgments and orders, with a view not to burden this Court with approximately 9000 appeals. We also observe that present order shall also govern the pending writ petitions, pending before various High Courts in which similar notices under Section 148 of the Act issued after 01.04.2021 are under challenge.

7. Pursuant to the Hon'ble Supreme Court order in Ashish Agarwal dated 04.05.2022 (supra), in the present case, the AO issued notice dated 02.06.2022 (u/s.148A(b) of the Act) and finding no response from the assessee issued order u/s.148A(d) and proceeded to pass the draft assessment order on 25.03.2023, wherein, the AO computed the taxable income at Rs.3,00,25,063/- as against the returned income of Rs.33,64,415/-. The assessee filed objections before the Ld.DRP who was



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pleased to reject the contentions of the assessee regarding adjustment made by the AO u/s.54F of the Act and on the issue of cost of construction. However, on the issue of interest income not offered to tax, the Ld.DRP gave certain directions by order dated 22.12.2023 u/s.144C (1) of the Act. Pursuant to the DRP directions, the AO has framed the final assessment order on 05.01.2024 computing the total income of the assessee at Rs.3,07,36,646/- in place of assessee's returned income of Rs.33,64,415/-.

8. Assailing the action of the AO to have re-opened the assessment by issuance of notice dated 30.06.2021 u/s.148 of the erstwhile Act, the Ld AR submitted that pursuant to the Hon'ble Supreme Court direction in Ashish Agarwal (supra) the notices issued u/s.148 of the Act under the erstwhile enactment as it stood (prior to Finance Act, 2021) be deemed to be issued u/s.148A of the Act (substituted by the Finance Act, 2021) and construed or treated to be show cause notice in terms of Sec.148A(b) of the Act. Consequently, the notice dated 30.06.2021 issued to the assessee for AY 2014-15 need to be treated as show cause notice u/s.148(b) of the substituted Act of 2021 and the AO can proceed as per the substituted Act of 2021 to re-assess the income of assessee.. However, the Ld.AR pointed out that the Hon'ble Supreme Court in the case of Ashish Agarwal (supra) has given liberty to assessee to avail all



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rights and raise contentions which may be available to the assessee/Revenue under the substituted Finance Act, 2021 by observing that "All defences which may be available to the assesses including those available under section 149 of the Income Tax Act and all rights and contentions which may be available to the concerned assesseees and Revenue under the Finance Act, 2021 and in law shall continue to be available". According to Ld.AR, the assessee is exercising this right given by the Hon'ble Supreme Court and accordingly, has taken the defence available u/s.149 of the Substituted Act, 2021, wherein, the first proviso to sec.149 of the Act reads 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 such notice could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section, as they stood immediately before the commencement of the Finance Act, 2021"

9. Placing his reliance on the aforesaid proviso to sec.149 of the Substituted Finance Act, 2021, he asserted that the AO could not have issued notice on or after 01.04.2021, because, such notice he could not have issued on or after 01.04.2021 on account of being beyond the time limit specified under sub-Clause-(b) of Sub-sec.(1) of this section viz. Sec.149 as they stood immediately before the commencement of the Finance Act, 2021 i.e. of the erstwhile Sec.149(1)(b) of the Act. Meaning sub-clause (b) of sec.149(1) of the Act (as it stood prior to amendment



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by Finance Act, 2021) prohibited the AO to have issued notice u/s.148 of the Act after six years from the end of the relevant assessment year. Therefore, as on 01.04.2021, since the AO could not have issued notices of re-opening u/s.149(1)(b) of the Act (as per the erstwhile Act), the AO could not have issued notice u/s.148A of the substituted Finance Act, 2021. In order to buttress such a proposition he relied on the decision of the Hon'ble Allahabad High Court in the case of Rajiv Bansal v. UoI reported in [2023] 453 ITR 153 (Allahabad) and the Hon'ble Gujarat High Court in the case of Rasikbhai Dhaiyabhai Chauhan v. ACIT reported in [2023] 151 taxmann.com 310 (Gujarat) and he also submitted that similar issue had come up before the Hon'ble jurisdictional Madras High Court, wherein the Hon'ble Madras High Court was pleased to grant stay of further proceedings (re-assessment proceedings) in similar case (WP No.16023 & 16025 of 2022 & WMP No.15349 & 15352 of 2022 dated 28.06.2022). And therefore prayed that the re-opening of assessment is bad in law and needs to be quashed.

10. Per contra, the Ld.DR submitted the following written submission which reads as under:

In this case, the assessee had filed a return of income for assessment year 2014-15 on 20-04-2009 as against due date of 31-07-2014, admitting total income of Rs.33,64,415/ Thereafter, a revised return was filed on 31-03-2015 reducing the income and making a claim of refund. As the original return was not filed in time, the same was treated as invalid u/s 139(5) of the Act. Later, the assessee



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made a condonation petition to the CBDT. During the process of sending a report to CBDT, the AO noticed that the deduction u/s 54F was unresponsive. Therefore, having formed reason to believe that income has escaped assessment a notice u/s 148 of the Act was issued on 30-06-2021 considering the extension of time by Taxation and Other Laws (Relaxation of Certain Provisions) Act, 2020 (TOLA).

2 During the pendency of the reassessment proceedings, the Hon'ble Supreme Court in the case of Ashish Agarwal had rendered a judgment on the validity of notices issued u/s 148 between 1-04-2021 and 30-06-2021 as per unamended provisions. Consequently, the CBDT has issued an Instruction No. 1/2022 dated 11-05-2022 laying the procedure to be followed in compliance to the order of the Hon'ble Supreme Court. Accordingly, the Assessing Officer issued a letter to the assessee on 02-06-2022 providing an opportunity to respond as to why notice u/s 148 should not be issued. Since the assessee has not responded, the AO passed an order u/s 148A(d) and notice u/s 148 of the Act was issued on 28-07-2022 with the prior approval of the Pr. CCIT.

3. During hearing before the Hon'ble Tribunal, the Learned Counsel for the assessee argued that notice issued under Section 148 was time-barred as per the new provisions of section 148. The Counsel also referred to case laws of Rajeev Bansal vs. Union of India of High Court of Allahabad (453 ITR 153) and Rasikbhai Dhaiyabha Chauhan v. ACIT of High Court of Gujarat (151 Taxmann.com 310) in support of his contentions. It is also stated that on a similar issue the jurisdictional High Court in W.P.Nos. 16023 and 16025 of 2022 has granted interim stay on the proceedings initiated u/s 148 for AY 2014-15 and 2015-16.

4. In this background, it is submitted that consequent to the decision of the Hon'ble Supreme Court in the case of Ashish Agarwal(supra), the CBDT, vide Notification No.1 of 2022 dated 11-5-2022 has issued guidelines for uniform implementation of the decision. With reference to Para 6.1 and 6.2 of the said notification the Assessing Officer has shared the information to the assessee vide letter dated 2-6-2022. Since the assessee did not respond the assessing officer went ahead with passing of order u/s 148A(d) of the Act and issued notice u/s 148 on 28-7-2022 with the approval of the competent authority.

5. In view of the above, it is submitted that the notice issued u/s 148 of the Act based on TOLA and the decision of the Hon'ble Supreme Court in the case Ashish Agarwal is perfectly in order and is not time barred. Reliance is also placed on the Hon'ble High Court of Delhi in the case of Touchstone Holdings (P) Ltd. v. Income tax Officer (451 ITR 196) wherein, in similar circumstances, held that the reassessment notice dated 29th June, 2021 which was issued within the extended period of limitation was not time barred.

6. Copies of the Board's Instruction No.1 of 2022 dated 11-5-2022 and Hon'ble High Court of Delhi decision in the case of Touchstone Holdings (P) Ltd. vs. ITO are enclosed herewith for kind consideration.

11. We have heard both the parties and perused the material available on record. It is the case of the assessee that re-opening notice u/s.148 of



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the Act (erstwhile Act prior to Finance Act, 2021) ought not to have been issued after six years from the end of the AY 2014-15, because, the AO was precluded from issuing such a notice to re-open the assessment of an assessee, where the right to re-open the assessment was already barred under the pre-amended Act on the date, when the Parliament came out with the new legislation into force. We find that as per the pre-amended law, the AO could not have issued a notice u/s.148 of the Act, in order to re-open the assessment in a case, where the right to re-open the assessment was barred under the erstwhile Act, on the date when the amended Act came into force i.e. 01.04.2021 [*refer ratio of the Hon'ble Supreme Court decision in CIT v. Onkarmal Meghraj, HUF reported in [1974] 93 ITR 233 (SC) and ITO vs. Induprasad Devshanker Bhatt. reported in [1969] 72 ITR 595 (SC)*]. In the present case, it is noted that for AY 2014-15, assessee had a vested right as on 31.03.2021 not to be disturbed by AO by issuance of notice u/s.148 of erstwhile Act and that right of assessee cannot be taken away, thus, based on the well settled position of law, in this regard, the notice issued on 30.06.2021 u/s.148 of the Act, was without jurisdiction. However, we have to examine the legal issue in the light of the Hon'ble Supreme Court in Ashish Agarwal (supra) and the Ld.AR assailed the legality of the impugned notice u/s.148 of the Act, even if it is treated as notice u/s.148A of the Act (of the amended



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provisions as per Finance Act, 2021) still, according to him, it will be hit by first proviso to Sec.149 of the Substituted Act of Finance Act, 2021.

Section 149(1) of the amended Act, Finance Act, 2021, reads as under:

Time limit for notice-

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

- (c) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);
- (d) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year:

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

Provided further that the provisions of this sub-section shall not apply in a case, where a notice under section 153A, or section 153C read with section 153A, is required to be issued in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or before the 31st day of March, 2021:

Provided also that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (b) of section 148A or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded:

Provided also that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of section 148A is less than seven days, such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly.



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Explanation.—For the purposes of clause (b) of this subsection, “asset” shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.’

12. From a bare reading of the first proviso to Section 149 of the Act provides that no notice under Section 148 shall be issued at any point of time in a case for a relevant assessment year beginning on or before the 1st day of April 2021, if a notice under Section 148 could not have been issued at that time on account of being beyond the time limit specified under the provision of clause (b) of sub-section (1) of this Section, as it stood immediately before the commencement of the Finance Act, 2021. In other words, the AO shall not issue notice u/s.148 (as substituted by Finance Act, 2021) on or after 01.04.2021, if he could not have issued notice under the erstwhile predecessor section 149(1)(b) (as it stood prior to Finance Act, 2021) of the Act. In this case, the relevant assessment year i.e. AY 2014-15 and as per section 149(1)(b) (as it stood prior to Finance Act, 2021) of the Act, the AO was precluded from issuing notice u/s.148 of the Act on or after 31.03.2021; And in the present case, since, notice u/s.148 dated 30.06.2021, even if presumed to be notice u/s.148 of the Substituted Finance Act, 2021, then also notice issued by AO dated 30.06.2021 would be time-barred as per first proviso to substituted section 149 of the Act. And for such a proposition, we gainfully relies on



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the decision of the Hon'ble Bombay High Court in the case of M/s.Hexaware Technologies Ltd. v. ACIT (WP No.1778 of 2023) dated 03rd May, 2024, wherein, their Lordships analyzed substituted sec.149 of the amended Act in detail and all arguments of Revenue and observed as under:

The first proviso to Section 149 of the Act provides that no notice under Section 148 shall be issued at any point of time in a case for a relevant assessment year beginning on or before the 1st day of April 2021, if a notice under Section 148 could not have been issued at that time on account of being beyond the time limit specified under the provision of clause (b) of sub-section (1) of this Section, as it stood immediately before the commencement of the Finance Act, 2021.

The term 'at that time' in the first proviso of section 149 (supra) refers to the date on which notice under Section 148 is to be issued by the Assessing Officer. The term 'at that time' has to refer to the term 'at any time' used earlier in the said proviso. The reference to 'at any time' is to the date of the notice to be issued by the Assessing Officer and, therefore, the term 'at that time' would also refer to the said date. On the said date, if a notice could not have been issued under the erstwhile provision of Section 149(1)(b) of the Act, for any assessment year beginning on or before the 1st day of April 2021, the notice cannot be issued even under the new provisions.

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 2014-2015, 6th year expired on 31st March 2021. The notice under Section 148 of the Act, in the present case, is issued on 30th June, 2021, i.e., clearly beyond the period of limitation prescribed in Section 149 read with the first proviso to the said section.

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 for Assessment Year 2014-15, i.e., for assessment year 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.

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



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Section 148 of the Act had already expired on 1st April 2021 for Assessment Year 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 Year 2014-2015, 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 up to 2021-2022. In Commissioner of Income Tax vs. Onkarmal Meghraj (HUF)11, 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.



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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 30th June, 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 up to 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 :



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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 up to 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 up to 10th June 2022, which is a period of 16 days. Further, the time period from 29th June 2022 up to 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.



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13. In the light of the discussion; and the judicial precedents cited (supra) the impugned notice dated 30.06.2021 issued to re-open the assessment for AY 2014-15 is held to be barred by limitation u/s.149 of the Substituted Act of 2021. Therefore, assessee succeeds on the legal issue. And since, assessee succeeded on the legal issue, other grounds are rendered academic and Stay Petition has become infructuous and dismissed.

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

Order pronounced on the 30th day of May, 2024, in Chennai.

Sd/-

(एस. आर. रघुनाथा)
(S.R.RAGHUNATHA)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(एबी टी. वर्की)
(ABY T. VARKEY)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai,

दिनांक/Dated: 30th May, 2024.

TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF