

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

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1506/Chny/2023
निर्धारण वर्ष/Assessment Year: 2013-14

Shri Krishnamoorthy Haribhaskar, 35/11, Poochakkadu, 2 nd Street, Mangalam Road, Tirupur-641 604.	v.	The Income Tax Officer, Ward-2(1), Tirupur.
[PAN: ABKPH 9735 L]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri T.S.Lakshmi Venkatraman, FCA
प्रत्यर्थी की ओर से /Respondent by	:	Shri Praveen, JCIT
सुनवाईकीतारीख/Date of Hearing	:	14.05.2024
घोषणाकीतारीख /Date of Pronouncement	:	31.05.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter 'the Ld.CIT(A)'), Delhi, dated 25.10.2023 for the Assessment Year (hereinafter 'AY') 2013-14.

2. At the outset, the Ld.AR of the assessee drawing out attention to Ground No.2 pointed out that the assessee is challenging the action of the AO to have re-opened the assessment by issuing notice u/s.148 of the



:: 2 ::

Income Tax Act, 1961 (hereinafter "the Act") dated 27.03.2021 which according to him is bad in law since the time barring for issuance of such a notice was on or before 31.03.2020 for AY 2013-14.

3. Brief facts relevant to the legal issue are that the assessee is an individual who did not file his return of income for the year under consideration (AY 2013-14). Based on information available with the Department that assessee was maintaining bank account with IndusInd Bank, wherein, cash deposits and other credits were made to the tune of Rs.60,83,117/-, the AO recorded his reasons for re-opening and after taking prior approval of the competent authority, accordingly, issued notice u/s.148 of the Act, to the assessee on 27.03.2021 directing him to furnish the return of income within 30 days of receipt of that notice. According to the AO, assessee failed to comply with the notices and finally responded on 27.02.2022 declaring total income of Rs.1,50,267/- and answered the queries raised by the AO. The AO noted that assessee has claimed that he was engaged in the purchase and sale of yarn/dyes, chemicals and cloth. Thereafter, the AO noted that the assessee has not maintained any books of accounts and has shown loss in the business activity and has offered the profit @ 0.5% of the total receipts and has not filed the return of income u/s.139 of the Act. The AO was of the view that the transactions made in his bank account as well as cash deposits



:: 3 ::

through RTGS/NEFT/Cheque remained unexplained. And the AO concluded that the transactions made in the bank account of IndusInd Bank, Federal Bank and Tamil Nadu Mercantile Bank, are relating to the trading/business activities of the assessee. He did not accept the claim of loss since according to him, the assessee failed to file any documentary evidences of sales, purchases and related expenses. And in the absence of books of accounts, AO wondered 'as to how' the assessee calculated profit @0.5% of the total receipt, so, he estimated the profit @6% of the total credits i.e. Rs.3,00,53,471/- appearing in the bank accounts of the assessee which was computed at Rs.18,03,208/- and giving credit to the return filed to the tune of Rs.1,50,267/-. AO added Rs.16,52,941/-.

4. Aggrieved, the assessee preferred an appeal before the Ld.CIT(A) who was pleased to dismiss it.

5. Assailing the action of the Ld.CIT(A), the assessee has raised the legal issue challenging the jurisdiction of the AO to have issued notice dated 27.03.2021 u/s.148 of the Act (as it stood prior to its amendment by Finance Act, 2021). Further, according to the assessee, even after the Hon'ble Supreme Court direction in the case of Ashish Agarwal dated 04.05.2022 reported in (2022 SCC online SC 543), to treat/deem the notices issued u/s.148 of the Act under the erstwhile sec.148 of the Act (i.e. prior to Finance Act, 2021) as issued u/s.148A of the Act (substituted



:: 4 ::

by the Finance Act, 2021) and continued or treated to be show cause notice in terms of Sec.148A(b) of the Act. Thereby, notice dated 27.03.2021 issued to the assessee for AY 2013-14 need to be treated as show cause notice u/s.148A(b) of the Act. However, according to him, the Hon'ble Supreme Court had given specific direction in the case of Ashish Agarwal (supra) 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 assessee and Revenue under the Finance Act, 2021 and in law shall continue to be available". Therefore, according to Ld.AR, the assessee is exercising this right given by the Hon'ble Supreme Court and accordingly, 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:

6. 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 01.04.2020, because, such notice, AO could not have issued on or after 01.04.2020 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



:: 5 ::

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 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 01.04.2020, 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.

7. Per contra, the Ld.DR submitted the following contentions:

- a) In this case, the assessee did not file any return of income for assessment year 2013-14. The AO received information that assessee had deposited huge cash deposits in 3 of his bank accounts; so he received reasons of escapement of income and accordingly issued notice u/s.148 on



:: 6 ::

27.03.2021 considering the extension of time by Taxation and Other Laws (Relaxation of Certain Provisions) Act, 2020 (TOLA).

- b) And the AO passed the re-assessment order dated 30.03.2022. And 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 and directed those notices to be deemed to be notices under the substituted Finance Act, 2021 i.e. notice u/s.148A of the Act. 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.
- c) 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.
- d) 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 notice issued by AO u/s.148 of the Act dated 27.03.2021 was valid.
- e) 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.
- f) 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.

8. 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 the Act (erstwhile Act prior to Finance Act, 2021) ought not to have been issued after six years from the end of the AY 2013-14, 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



:: 7 ::

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 2013-14, assessee had a vested right as on 31.03.2020 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 27.03.2021 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 decision 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 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:



:: 8 ::

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:

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.'



:: 9 ::

9. 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 2013-14 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 31.03.2020; And in the present case, since, notice u/s.148 dated 27.03.2021, even if presumed to be notice u/s.148 of the Substituted Finance Act, 2021, then also notice issued by AO dated 27.03.2021 would be time-barred as per first proviso to substituted section 149 of the Act. And for such a proposition, we gainfully relies on 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



:: 10 ::

amended Act in detail and considered 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 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



:: 11 ::

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.



:: 12 ::

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 imitation 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



:: 13 ::

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 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



ITA No.1506/Chny/2023 (AY 2013-14)
Krishnamoorthy Haribhaskar

:: 14 ::

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.

10. In the light of the discussion; and the judicial precedents cited (supra) the impugned notice dated 27.03.2021 issued to re-open the assessment for AY 2013-14 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 dismissed.

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

Order pronounced on the 31st day of May, 2024, in Chennai.

Sd/-
(मनोज कुमार अग्रवाल)
(MANOJ KUMAR AGGARWAL)
लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-
(एबी टी. वर्की)
(ABY T. VARKEY)
न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,
दिनांक/Dated: 31st 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



ITA No.1506/Chny/2023 (AY 2013-14)
Krishnamoorthy Haribhaskar

:: 15 ::

5. विभागीयप्रतिनिधि/DR

6. गार्डफाईल/GF