

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"K" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER  
&  
SHRI RAHUL CHAUDHARY, HON'BLE JUDICIAL MEMBER

**I.T.A. No. 2751/Mum/2024**  
**Assessment Year: 2014-15**

<b>Australia and New Zealand Banking Group Limited</b> Atlimus, 2101 21 <sup>st</sup> Floor Pandurang Budhkar Marg Worli Mumbai - 400018 <b>[PAN: AAICA3008P]</b>	Vs	<b>Deputy Commissioner of Income Tax (International Taxation) - Circle 2(1)(2)</b>
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<b>अपीलार्थी/ (Appellant)</b>	<b>प्रत्यर्थी/ (Respondent)</b>
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Assessee by :	Shri Anish Thacker & Shri Nishit Shah, A/R
Revenue by :	Shri Nihar Ranjan Samal, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 03/07/2024  
घोषणा की तारीख /Date of Pronouncement: 22/07/2024

**आदेश/ORDER**

**PER NARENDRA KUMAR BILLAIYA, AM:**

This appeal by the assessee is preferred against the order dt. 28/03/2024, framed u/s 147 r.w.s. 144C(13) of the Income Tax Act, 1961 ('the Act'), pertaining to Assessment Year 2014-15.

2. The grievance of the assessee reads as under:-

**"Ground of Appeal No. 1: General**

1. erred in assessing the Appellant's total income at Rs. 337,44,96,176 by making addition of Rs. 3,35,17,724 to the income of Rs. 3,34,09,78,452 assessed under section 143(3) read with section 144C(13) of the Act, as against the returned income of Rs. 3,26,88,17,417;

**Ground of Appeal Nos. 2 to 5: Invalidity of impugned proceedings under section 147 of the Act**

2. failed to appreciate that the impugned proceedings have been initiated beyond the time limit prescribed under provisions of section 149 of the Act and thereby, vitiating the impugned proceedings and making it liable to be quashed;

3. failed to appreciate that notice under section 148 of the Act dated 29 July 2022 issued manually without mentioning the mandatory Document Identification Number and in contravention to the Circular No. 19/2019 dated 14 August 2019

*shall be deemed never to have existed and therefore, the impugned proceedings based on such jurisdictionally defective notice is bad in law and liable to be quashed;*

*4. failed to specify the nature of information which suggests income chargeable to tax has escaped assessment and instead indicating that the proceedings have been initiated on account of "information which requires action in consequence of the judgement of the Hon'ble Supreme Court in the case of Union of India Vs. Ashish Agarwal, Civil Appeal 3005;/2022, dated 4<sup>th</sup> May 2022" and such jurisdictional error goes to the root of the matter, vitiating the impugned proceedings and making it liable to be quashed;*

*5. erred in initiating the impugned proceedings under the unamended re-assessment provisions 148 of the Act dated 29 June 1 without appreciating that under the provisions, proceedings could not have been initiated based on information received from a third party and therefore, in view of the first proviso to section 149 of the Act, impugned proceedings under the amended provisions cannot survive and ought to be quashed;*

**Ground of Appeal Nos. 6 to 8: Arguments on merits**

*6. erred in holding that interest earned by the foreign branch of the Appellant (foreign company) on Foreign Currency External Commercial Borrowing Loans (ECB loans) granted to Indian borrowers was taxable in India under section 5(2) of the Act merely because the borrowers are resident in India; even though loan agreements were entered into outside India, loan proceeds were utilized by the borrower outside India for the purpose of making investments in subsidiaries outside India and interest income was received by the Appellant outside India;*

*7. failed to appreciate that chargeability of interest incomes of non-residents is specifically governed by section 9(1)(v) of the Act and therefore, provisions of section 5(2) of the Act ought not to have been invoked;*

*8. failed to appreciate that the interest income is not chargeable to tax in India in view of the exception provided under section 9(1)(v)(b) of the Act;*

**Ground of Appeal No. 9: Erroneous computation of total income**

*9. erred in making double addition of INR 2,44,08,767 pertaining to interest income received from Ranbaxy Ltd as the said interest income was already considered in the assessed income as per the original assessment order passed under section 143(3) of the Act dated 3 October 2018.*

**Ground of Appeal No. 10: Short grant of TDS credit**

*10. erred in granting credit of tax deducted at source amounting to only Rs. 32,05,04,420 as against Rs. 32,24,39,133 and thereby resulting in short credit amounting to Rs. 19,34,713;*

**Ground of Appeal No. 11: Non-grant of advance tax credit**

11. failed to grant credit of advance-tax paid amounting to Rs. 33,40,78,758;

**Ground of Appeal No. 12: Non-grant of credit for regular assessment tax paid**

12. failed to grant credit of tax paid during regular assessment amounting to Rs. 1,59,91,956;

**Ground of Appeal No. 13: Levy of interest under section 234A of the Act**

13. erred in levying interest under section 234A of the Act amounting to Rs. 32,53,03,275 without appreciating the Appellant's return of income has been filed within the due date of filing the return of income;

**Ground of Appeal No. 14; Levy of Interest under section 234B of the Act.**

14. erred in levying interest under section 234B of the Act amounting to Rs.41,09,09,400;

*Each of the grounds of appeal referred above is separate and may kindly be considered independent of each other.*

*The Appellant craves leave to add, alter, vary, omit, substitute, amend or withdraw any or all of the above grounds of appeal and to submit such statements, documents and papers as may be considered necessary either at or before the hearing of this appeal so as to enable the Hon'ble Income-tax Appellate Tribunal to decide this appeal acceding to law."*

3. Ground No. 1 is general in nature and needs no separate adjudication.

4. Vide Ground No. 2, assessee has challenged the validity of the assessment order, strongly contending that the proceedings have been initiate beyond the time limit prescribed under provision of Section 149 of the Act.

5. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidences brought on record duly considered. Judicial decisions relied upon, carefully perused.

6. The assessee is a banking company and is resident of Australia. It has a PE in India in the form of branches in India. The Assessing Officer (AO) received information from ITO (IT), Surat that, Hubergroup India Pvt. Ltd. (earlier known as Micro Inks Ltd.), has paid total amount of Rs.91,08,957/- as interest to Singapore branch of the assessee without TDS. In the order u/s 201(1)/201(1A), in case of Hubergroup India Pvt. Ltd., ITO (IT), Surat held that such interest income is accrued and taxable in India and Hubergroup India Pvt. Ltd., had failed to deduct TDS on the said remittances. Taking a leaf out of this information, the AO was of the opinion that the assessee has not shown this income in its return of income as taxable and formed a belief that income of Rs.91,08,957/-, had escaped assessment and issued notice u/s 148 of the Act on 29/06/2021. Drawing support from the decision of the Hon'ble Supreme Court in the case of *Union of India vs. Ashish Agarwal* [2022] 138 taxmann.com 64 (SC), and direction of the Hon'ble Bombay High Court in the case of *Emcure Pharmaceuticals Limited vs. Assistant Commissioner of Income Tax Central Circle 2(1), Pune and Ors. in Writ Petition No.5293 OF 2022*, the assessee's case was brought under the new re-assessment regime. Before us, the assessee strongly challenged the re-assessment proceedings on the ground that assessment for AY 2014-15 cannot be validly reopened in view of the limitation prescribed u/s 149 of the Act.

7. We have given a thoughtful consideration to the provisions of Section 149 of the Act which prescribed time limit for notice. The relevant provisions read as under:-

*“[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);

<sup>73</sup>(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 –

(i) an asset;

(ii) expenditure in respect of a transaction or in relation to an event or occasion; or

(iii) an entry or entries in the books of account, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more:]

**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 <sup>74</sup>[a notice under section 148 or section 153A or section 153C 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 or section 153A or section 153C, as the case may be], as they stood immediately before the commencement of the Finance Act, 2021:”

7.1. In the memorandum explaining the provisions in the Finance Bill, 2021, it has been *interalia* explained that another restriction has been provided that the notice under section 148 of the Act cannot be issued at any time in a case for the relevant assessment year beginning on or before 1<sup>st</sup> day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit prescribed under the provisions of clause (b), as they stood immediately before the proposed amendment.

8. In our understanding of the law, for the relevant provisions of Section 149 of the Act read with the memorandum explaining the provisions, what could not be done earlier, cannot be done even after

the amendment. Meaning thereby that if in the erstwhile provisions, the notice is barred by limitation then, in the amended provision also, the said notice is barred by limitation.

9. The Hon'ble Bombay High Court in the case of *Godrej Industries Ltd. vs. ACIT [2024] 160 taxmann.com 13 (Bombay)*, had the occasion to consider an identical grievance and the Hon'ble Court held as under:-

*"8. In view of our findings in The New India Assurance Company Ltd. (supra) for AY 2013-14 where we have held that the notice issued under section 148 of the Act was barred by limitation and all the submissions other than the two submissions noted above of Mr. Suresh Kumar have been dealt with, we see no reason to deal with those submissions again. We have to now only consider whether the submissions made by Mr. Suresh Kumar, as noted above, make any difference. In our view, it does not, and the notice issued for AY 2014-15 is barred by limitation.*

*9. Before we proceed further with the submissions made by Mr. Suresh Kumar, it will be useful to reproduce our findings in The New India Assurance Company Ltd. (supra) which read as under:*

*19. Section 148 of the Act reads as under :*

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*Section 148A of the Act reads as under :*

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*Section 149 of the Act read as under :*

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*20. The validity of a notice issued under section 148 of the Act must be judged on the basis of the law existing on the date on which such notice is issued. A Division Bench of this Court in Siemens Financial (supra) followed what was held in Tata Communications (supra) to hold that the validity of a notice issued under section 148 of the Act must be judged on the basis of the law existing on the date on which such notice is issued. Paragraphs 34 and 35 of Tata Communications (supra) read as under:*

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*21. The Apex Court in Ashish Agarwal (supra) did not disturb the findings of this Court in Tata Communications (supra). The Apex Court only modified the orders*

*passed by the respective High Courts to the effect that the notices issued under section 148 of the Act, which were subject matter of writ petitions before various High Courts, shall be deemed to have been issued under section 148A(b) of the Act and the Assessing Officer was directed to provide within 30 days to the respective assessee the information and material relied upon by the Revenue so that the assessee could reply to the show cause notices within two weeks thereafter. The Apex Court held that the Assessing Officer shall thereafter, pass orders in terms of Section 148A(d) in respect of each of the concerned assessee and having followed the procedure as required under section 148A of the Act may issue notice under section 148 of the Act. The Apex Court also kept open expressly all contentions which may be available to the assessee including those available under section 149 of the 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 be continued to be available. This was done by the Apex Court to strike a balance between the rights of both the parties. Therefore, the validity of the reopening notice to petitioner must be decided on the basis of law which exists at the time when such a notice was issued, i.e., 28th July 2022.*

*22. As per the unamended Section 149(1)(b) of the Act, the outer time limit to issue a notice under section 148 was 6 years from the end of the relevant assessment year and thus, for AY 2013-14, the time limit expired on 31st March 2020. Under the amended provision, a notice under section 148 can be issued within a period of 3 years or 10 years, the latter available only after fulfilling certain stipulated additional conditions, including the limitation provided for by the first proviso to Section 149(1) of the Act. The first proviso to Section 149(1) stipulates that no notice under section 148 can be issued at any time in a case for any assessment year, 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 unamended Section 149(1)(b), i.e., as it stood prior to the Finance Act, 2021. Applicability of Section 149 to be seen qua the notice under section 148 and not with respect to the notice issued under section 148A(b) or the order passed under section 148A(d) of the Act.*

*23. In the present case, as for AY 2013-14, the 6 years period expired on 31st March 2021, extended under section 3(1) of TOLA. Therefore, the impugned notice dated 28th July 2022, which is under challenge in the petition, is barred by limitation. The Hon'ble Calcutta High Court in Ved Prakash (supra) held "By this writ petition, petitioner has challenged the impugned order under section 148 A(d) of the Income-tax Act, 1961 dated 29th July, 2022, relating to the assessment year 2014-2015 on the ground that the same being without jurisdiction and being barred by limitation since the initiation of re-opening of the assessment has been made admittedly after six years from the end of the expiry of the period of relevant assessment year. Mr. Roy chowdhury, learned Counsel appearing for the respondent is not in a position to contradict the aforesaid factual and legal position. Accordingly, this writ petition being WPO No. 2450 of 2022 is disposed of by quashing the aforesaid impugned order dated 29th July, 2022." Prior thereto, the Rajasthan High Court in Sudesh Taneja (supra), which was followed by this Court in Tata Communications (supra), in paragraph 37 held as under :*

*In Sudesh Taneja (supra), the Court held that for any action of issuance of notice under section 148 after 1st April 2021 the newly introduced provisions under the Finance Act, 2021 would apply. Mere extension of time limits for issuing notice under section 148 would not change this position that obtains in law. The Court held that a notice, which had become time barred prior to 1st April 2021 as per the then prevailing provisions, would not be revived by virtue of application of Section 149(1)(b) effective from 1st April 2021. We respectfully agree with this view. As noted earlier in Ashish Agarwal (supra), the Hon'ble Supreme Court categorically confirmed the view taken by various High Courts including the Hon'ble Rajasthan High Court. Therefore, the impugned notices pertaining to AY 2013-14 pursuant to Ashish Agarwal (supra) are barred by limitation.*

24. We could also note that the provisions of TOLA have no application relating to AY 2013-14. Section 3(1) of TOLA reads as under:

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25. The limitation for AY 2013-14 expired on 31st March 2020, which by virtue of Section 3(1) of TOLA, got extended to 31st March 2021. This was followed by a Notification dated 31st March 2021 being Notification S.O. 1432(E) [No. 20/2021/F. No. 370142/35/2020-TPL], which read as under:

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*This Notification, therefore, says that where the specified Act is the Income-tax Act, 1961 and the completion of any action referred to in clause (a) of sub-section (1) of Section 3 of TOLA relates to issuance of notice under section 148 as per time limit specified in Section 149 and 31st day of March 2021 is the end date of the period during which the time limit, specified in, or prescribed or notified under the Income-tax Act falls for the completion of such action, then, 30th day of April 2021 shall be the extended end date for the completion of such action. Therefore, this would apply only for AY 2014-15 because it says completion of any action when it relates to issuance of notice under section 148 'as per time limit specified in Section 149' is 31st March 2021 it shall be extended to 30th April 2021. It does not say "as per time limit specified under section 149 as extended by TOLA". For AY 2014-15, the 6 years period will end on 31st March 2021, whereas the time limit prescribed under section 149 for AY 2013-14 is 31st March 2020. This is reiterated by the Explanation in the Notification which says for the removal of doubts, it is hereby clarified that for the purposes of issuance of notice under section 148 as per time limit specified in Section 149 under this sub-clause, the provisions of Section 149, as they stood as on the 31st March 2021, before the commencement of the Finance Act, 2021, shall apply. The date of the Notification is also relevant and it is 31st March 2021.*

26. Another Notification dated 27th April 2021 being Notification S.O. 1703(E) [No. 38/2021/F. No. 370142/35/2020-TPL] came to be issued where a specific reference is made to Notification S.O. 1432(E) dated 31st March 2021 and it also says - the Central Government hereby specifies for the purpose of sub-section (1) of Section 3 of TOLA.' It is stated, where the specified Act is the Income-tax Act,

1961, the completion of any action, referred to in clause (a) of sub-section (1) of Section 3 of TOLA, relates to issuance of notice under section 148 as per time limit specified in Section 149 and 'the time limit for such action expires on 30th April 2021 due to its extension by the said Notifications', such time limit shall further stand extended to 30th June 2021. The Notification dated 27th April 2021 reads as under:

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Therefore, it only extends the time limit prescribed in Notification S.O. 1432(E) to 30th June 2021. When the Notification S.O. 1432(E) was not applicable to AY 2013-14, the question of time limit for AY 2013-14 being extended beyond 31st March 2021 does not arise.

27. Therefore, under the Income-tax Act, when the completion of any action relates to issuance of notice under section 148 as per time limit specified in Section 149 was 31st March 2021, it shall stand extended to 30th April 2021. The time limit under section 149 expired on 31st March 2021 only for AY 2014-15 (and not for AY 2013-14, which expired on 31st March 2020) and has got extended by virtue of clause (a) of sub-section (1) of Section 3 of TOLA. The Notification does not say "issuance of notice under section 148 as per time limit specified in Section 149 as extended under sub-section (1) of Section 3 of TOLA". Therefore, the provisions of TOLA cannot apply. Also the Notifications thereunder do not apply to the case at hand for AY 2013-14.

28. It is required to be noted that the Apex Court, while enabling the Revenue to restart the reassessment proceedings in Ashish Agarwal (supra), categorically held that the old Section 148 notices were to be treated as show cause notices in terms of Section 148A(b) and not a notice under section 148 of the Act and, therefore, the mandatory procedure stipulated in Section 148A was to be followed. Thereafter, the Assessing Officers were authorised to issue the notice under the amended Section 148 of the Act. The first proviso to Section 149(1) of the Act puts a fetter on issuing of a notice under section 148 and not Section 148A(b) of the Act beyond the stipulated period. The impugned notice under section 148 of the Act is issued on 28th July 2022. Hence, TOLA has no application.

29. This Court in Siemens Financial (supra), in paragraph 26, has held as under :

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30. The Allahabad High Court in Ashok Kumar Agarwal v. Union of India held that TOLA is an enactment to extend timelines only. Consequently, all references to issuance of notice contained in TOLA from 1st April 2021 must be read as reference to the substituted provisions only. Paragraph 66 of Ashok Kumar Agarwal (supra) reads as under :

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*In our view, TOLA has no role to play and it cannot salvage the notice under challenge.*

*31. Reliance by respondents on Instruction No. 1 of 2022 issued by CBDT is also grossly misplaced. Neither the provisions of TOLA nor the judgment in Ashish Agarwal (supra) provide that any notice issued under section 148 of the Act after 31st March 2021 will travel back to the original date. This very argument was urged in the challenge to the initial reassessment and was categorically rejected by this Court in Tata Communications (supra) as well as the Delhi High Court in Mon Mohan Kohli (supra). Paragraphs 37 and 38 of Tata Communications (supra) read as under :*

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*Both these judgments, i.e., Tata Communications (supra) and Mon Mohan Kohli (supra), have been affirmed in Ashish Agarwal (supra).*

*32. Further, in Siemens Financial (supra), this Court has held that the Instruction is erroneous in this regard, i.e., travel back to the original date. Paragraphs 28 to 31 of the said judgment read as under :*

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*33. In Ganesh Dass Khanna (supra), the Delhi High Court has already declared paragraph 6.1 and 6.2(ii) of the Instructions as bad in law. Further, this Court in Group M Media India P. Ltd. (supra) has held that a declaration of a Board's instruction as ultra vires by a competent Court would be binding on all authorities administering the Act all over the country and accordingly, the officers implementing the Act were bound by the decision of the Delhi High Court. Paragraphs 44.4, 49, 51, 52 and 55 of Ganesh Dass Khanna (supra) read as under :*

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*Paragraphs 6 and 8 of Group M Media India P. Ltd. (supra) read as under :*

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*34. It will be also useful to note that even in Hindustan Aeronautics Ltd. (supra) the Apex Court has held that circulars/instructions are only binding on the Revenue and not on the assesseees and certainly not on the Hon'ble Courts.*

*35. The Revenue's contention that the reopening notice was to relate back to an earlier date is entirely flawed and unacceptable. Thus, the reassessment notices issued for AY 2013-14 are patently barred by limitation as the six years limitation period under the Act (as extended by Section 3 of TOLA) expired by 31st March 2021. However, even on the Revenue's demurrer and assuming that such reopening notices could travel back in time and that the provisions of TOLA protected such reopening notices (we do not agree), even then, in so far as the*

notices issued for AY 2013-14 is concerned, would in any case be barred by limitation. As stated earlier, under the erstwhile Section 149, a notice under section 148 could have been issued within a period of six years from the end of the relevant assessment year. The Notifications issued under TOLA, viz., Notification No. 20/2021, which is relied upon by the Revenue, only cover those cases where 31st March, 2021 was the end date of the period during which the time limit, specified in, or prescribed or notified under the Income-tax Act falls for completion. The limitation under the Income-tax Act, 1961 (erstwhile Section 149) for reopening the assessment for the AY 2013-14 expired on 31st March 2020. Hence, Notification No. 20/2021 did not apply to the facts of the present case, viz., reopening notice for the AY 2013-14. Therefore, the Revenue could not issue any notice under section 148 beyond 31st March 2021 and hence, even the relate back theory of the Revenue could not safeguard the reassessment proceedings initiated after 1st April 2021 for AY 2013-14.

36. Therefore, in the present case, as the foundation of the entire reassessment proceeding, viz., the notice issued in June 2021 itself was barred by limitation in view of non-applicability of Notification No. 20/2021, the superstructure sitting thereon, viz., the reassessment proceedings initiated pursuant to judgment in *Ashish Agarwal* will also be regarded as beyond time limit. Therefore, on this ground as well, the impugned reopening notice dated 28th July 2022 issued for AY 2013-14 in petitioner's case is barred by limitation and deserves to be quashed and set aside. Alternatively, it is well settled that a notice under section 148 of the Act cannot be issued in order to reopen the assessment of an assessee in a case where the right to reopen the assessment was already barred under the pre-amended Act on the date when the new legislation came into force. In *CIT v. Onkarmal Meghraj (HUF)* the Hon'ble Apex Court held :.....”

10. The Hon'ble Bombay High Court in the case of *Hexaware Technologies Ltd. v. Assistant Commissioner of Income-tax [2024]* 162 *taxmann.com* 225 (Bombay), had the occasion to consider a similar issue and held as under:-

“27. The interpretation as canvassed by the Revenue would render the first proviso to Section 149 of the Act redundant and otiose. The time limit to issue notice under section 148 of the Act had already expired on 1st April 2021 for Assessment Year 2013-2014 and 2014-2015, when Section 149 of the Act was amended. Therefore, reopening for Assessment Years 2013-2014 and 2014-2015 had already been barred by limitation on 1st April 2021. Accordingly, the extended period of ten years as provided in Section 149(1)(b) of the Act would not have been applicable to Assessment Years 2013-2014 and 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 upto 2021-2022. In *CIT v. Onkarmal Meghraj (H.U.F.) [1974]* 93 ITR 233 (SC), 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 CIT v. Sham L. Chellaram [2015] 54 taxmann.com 348/373 ITR 292 (Bom.).

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

Section 149 of the Act sets out, inter alia, the time limit for issuing notice under section 148 of the Act. Apart from the period of limitation set out in the said Section, the first proviso lays down a further restriction on the issue of a notice

*under section 148 of the Act. The period of limitation as well as the said further restriction is framed/provided in respect of a notice under 148 of the Act, and not for a notice under section 148A of the Act. The notice dated 8th April 2021, which though originally issued as a notice under section 148 of the Act, (under the provisions of the Act prior to the amendments made by the Finance Act, 2021), has now been treated as a notice issued under section 148A(b) of the Act in accordance with the decision of the Hon'ble Apex Court in Ashish Agarwal (supra). Once the notice dated 8th April 2021 has been treated as having been issued under section 148A(b) of the Act, the said notice is no longer relevant for the purpose of determining the period of limitation prescribed under section 149 or the restriction as per the first proviso below Section 149 of the Act. Therefore, for considering the restriction on issue of a notice under section 148 of the Act prescribed in the first proviso to Section 149 of the Act, the fresh/presently impugned notice dated 27th August 2022 issued under section 148 of the Act is required to be considered. The said notice is admittedly beyond the erstwhile period of limitation of six years prescribed by the Act prior to its amendment by the Finance Act, 2021. For the Assessment Year 2015-2016, the erstwhile time limit of six years expired on 31st March 2022 and, the impugned notice under section 148 of the Act has been issued on 27th August 2022 and, therefore, the impugned notice dated 27th August 2022 is barred by the restriction of the first proviso to Section 149 of the Act.*

**30.** *With respect to applicability of the fifth proviso and the sixth proviso to Section 149(1)(b) of the Act for extension of limitation for issuing the notice under section 148 of the Act, fifth and sixth provisos are only applicable with respect to the period of limitation prescribed in Section 149(1) of the Act, i.e., three years or ten years, as the case may be. Fifth proviso or sixth proviso extend limitation for issuing notice under section 149 of the Act, however, the first proviso is an exception to the period of limitation and provides for a restriction on the notices under section 148 being issued for Assessment Years upto 2021-22 beyond a certain date. Therefore, the way the Section would operate, is first to decide whether a notice issued under section 148 of the Act is within the period of limitation in terms of Section 149(1)(a) or (b) of the Act. To decide whether the notice is within the period of limitation under section 149(1)(a) or (b) of the Act, the extension of time as per the fifth and/or sixth proviso would be considered. Once, the notice is otherwise within the period of limitation, thereafter one has to see whether the said time limit is within the restriction provided in the first proviso or not. If the notice is beyond the restriction period, the notice is invalid. The fifth and/or the sixth proviso cannot apply at this stage to extend the period of restriction as per the first proviso. Hence, if a notice is not within the time prescribed under the first proviso to Section 149(1) of the Act, then such period cannot be extended by fifth proviso and sixth proviso. In Godrej Industries Ltd. (supra) paragraph 15 reads as under :*

*15. Based on petitioner's facts, the show cause notice under section 148A(b) of the Act was issued on 24th May 2022 asking petitioner to furnish a reply by 8th June 2022. Petitioner filed a detailed reply in response to the show cause notice on 8th June 2022 and, therefore, only the period from 24th May 2022 to 8th June 2022 could be excluded by virtue of the first limb of the fifth proviso to Section 149 of the Act. Subsequently, petitioner received another letter dated 28th June 2022 which annexed certain details and provided further time for making detailed submissions upto 8th July 2022. Petitioner replied to the*

letter and made detailed submissions on 2nd July 2022. Therefore, even assuming this period is to be excluded, the period which could be excluded is only from 24th May 2022 to 8th June 2022. Even after considering the letter dated 28th June 2022 and the reply dated 2nd July 2022, at the highest a further period from 28th June 2022 to 8th July 2022 could be excluded but the period of time from 8th June 2022 to 28th June 2022 cannot be excluded as per the fifth proviso. This is because petitioner on 8th June 2022 did not request for any further time and furnished its response to the show cause notice under section 148A(b) of the Act. It is the Assessing Officer who has suo moto issued another letter on 28th June 2022 asking petitioner to furnish further details by 8th July 2022. Therefore, even assuming a period of 27 days (i.e., 16 days from 24th May to 8th June and 11 days from 28th June to 8th July) are excluded from the date of the impugned notice under section 148 of the Act issued on 31st July 2022, the impugned notice would yet be barred by limitation and could not have been issued by virtue of the first proviso to Section 149 of the Act.

Even if the fifth and sixth provisos are held to be applicable, the impugned notice would still be beyond the period of limitation. The fifth proviso extends limitation with respect to the time or extended time allowed to an assessee as per the show cause notice issued under section 148A(b) of the Act or the period, during which the proceeding under section 148A of the Act are stayed by an order of injunction by any Court. Hence, in the present case, in view of the fifth proviso, the period to be excluded would be counted from 25th May 2022, i.e., the date on which the show cause notice was issued under section 148A(b) of the Act by respondent no. 1 subsequent to the decision of the Hon'ble Apex Court in the case of Ashish Agarwal (supra) and upto 10th June 2022, which is a period of 16 days. Further, the time period from 29th June 2022 upto 4th July 2022 cannot be excluded as the same was not based on any extension sought by petitioner, but at the behest of respondent no. 1. Even if the same was to be excluded, still it will mean further exclusion of 5 days. Considering the said excluded period as well, the impugned notice dated 27th August 2022 is still beyond limitation. The fact that the original notice dated 8th April, 2021 issued under section 148 of the Act, was stayed by this Court on 3rd August 2021, and its stay came to an end on 29th March 2022 on account of the decision of this Court, will not be relevant for providing extension as per the fifth proviso. The fifth proviso provides for extension for the period during which the proceeding under section 148A of the Act is stayed. The original stay granted by this Court was not with respect to the proceeding under section 148A of the Act, but with respect to the proceeding initiated as per the erstwhile provision of Section 148 of the Act and, hence, such stay would not extend the period of limitation as per the fifth proviso to Section 149 of the Act. The question of applicability of the sixth proviso does not arise on the facts of the present case. We find support for this in Godrej Industries Ltd. (supra).

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

11. Considering facts of the case in totality in the light of the judicial decisions discussed hereinabove, we hold that the impugned notice and the proceedings have been initiated beyond the time limit prescribed under the provisions of Section 149 of the Act making the impugned proceedings vitiated and liable to be quashed. Since we have quashed the impugned assessment order, we do not find it necessary to dwell into the merits of the case.

12. In the result, appeal of the assessee is allowed.

**Order pronounced on 22<sup>nd</sup> July, 2024 at Mumbai.**

**Sd/-**  
**(RAHUL CHAUDHARY)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(NARENDRA KUMAR BILLAIYA)**  
**ACCOUNTANT MEMBER**

Kolkata, Dated 22/07/2024

*SR SRP*

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. □ पीलाडर्री / The Appellant
2. प्रत्यर्री / The Respondent
3. संबंघित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (□ पील) / The CIT(A)-
5. विभरणीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Mumbai