| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |

IN THE INCOME TAX APPELLATE TRIBUNAL
"I" BENCH, MUMBAI

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

I.T.A. No. 2290/Mum/2024
Assessment Year: 2017-18

Pankaj Suresh Rach Palm Court Complex "H" Wingh Flat No. 1102, Link Road Malad (W) Mumbai - 400064 **[PAN: AJBPR9313B]**	Vs	**Income Tax Officer, Int Tax Ward, 4(1)(1), Mumbai**

अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

Assessee by :	Ms. Kinjal Bhuta, A/R
Revenue by :	Shri Anil Sant, Addl. CIT D/R

सुनवाई की तारीख/**Date of Hearing : 30/07/2024**
घोषणा की तारीख /**Date of Pronouncement: 20/08/2024**

आदेश/O R D E R

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order dt. 13/03/2024 framed u/s 147 r.w.s. 144C(13) of the Act, pertaining to Assessment Year 2017-18.

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

"1. The Ld. Assessing Officer erred in re-opening the assessment u/s. 147 of the Income Tax Act, 1961, that the order is illegal, void and bad in law and ought to be quashed.

2. The Ld. Assessing Officer erred in passing the final and draft assessment order without giving sufficient opportunity to the assessee of being heard, that the order passed without giving adequate opportunity is against the principles of natural justice and ought to be quashed.

3. The Ld. Assessing Officer erred in not allowing cost of improvement on sale of properties and computing the capital gains from the flats at Rs.1,08,76,618/- instead of Rs.8,69,539/- as declared by the appellant in the return of income by not appreciating the facts of the case.

4. The Ld. Assessing Officer erred in not referring the matter to the Department Valuation Officer for determining the fair value of the property, ignoring the specific request of the appellant during the assessment proceedings.

5. The Ld. Assessing Officer erred in not allowing the deductions claimed under Chapter- VIA amounting to the Rs.1,82,619/- and Advance Tax amounting to Rs.94,807/-, the same ought to be claimed as in the returned income.

6. All of the above grounds are without prejudice to each other. The appellant craves leave to add, amend, alter, or delete any of the above grounds of appeal."

3. Representatives were heard at length, case records carefully perused and the relevant documentary evidences considered in light of Rule 18(6) of the ITAT Rules, 1963.

4. Briefly stated, the facts of the case are that on the basis of specific information received from the office of Pr. CCIT, Mumbai with reference of DIT (I&CI), Mumbai, letter date 25/03/2019, that assessee had, during the year under consideration sold the immovable property at a consideration of Rs.48,00,000/- below the stamp duty value of Rs. 57,01,500/- in violation of Section 50C of the Act. After recording the reasons for re-opening and after obtaining necessary approval from appropriate authorities, assessment was re-opened vide issuance of notice u/s 148 of the Act on 01/05/2021.

5. Honoring the decision of Hon'ble Supreme Court in the case of *Ashish Agarwal vs. UOI* in *Civil Appeal No. 3005/2022 vide order dt. 04/05/2022,* the AO issued notice u/s 148A(b) of the Act. In compliance to the decision of the Hon'ble Supreme Court *(supra)*, the underlying

material and the documents on which the show-cause notice is based, were provided to the assessee on 28/05/2022. The entire quarrel revolves around this notice.

6. The bone of contention is the sanction accorded u/s 151 of the Act. As the assessment was reopened beyond three years, sanction is required from Pr. CCIT whereas in the case of assessee, sanction has been obtained from Pr. CIT. this issue has been considered by the Hon'ble Bombay High Court in the case of *Siemens Financial Services (P.) Ltd. vs. DCIT [2023] 154 taxmann.com 159 (Bom.)*. The relevant findings of the Hon'ble High Court reads as under:-

> *"**28.** The interpretation placed by the CBDT in paragraph 6.1 of Instruction No. 1/2022 dated 11th May 2022 cannot be countenanced as it is not open to them to clarify that the law laid down by the Apex Court means that the extended reassessment notices will travel back in time to their original date when such notices were to be issued and, then, the new section 149 of the Act is to be applied as this is contrary to the judgment of this court in Tata Communications Transformation Services (P.) Ltd. (supra) wherein it is held that TOLA does not envisage traveling back of any notice. However, even assuming that it is held that these notices travel back to the date of the original notice issued on 25th June 2021, even then the approval of the Principal Chief Commissioner of Income-tax should be obtained in terms of section 151(ii) of the Act as a period of three years from the end of the relevant assessment year ended on 31st March 2020 for AY 2016-17.*
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> ***29**. Further, the CBDT in Instruction no. 1/2022 at paragraph 6.2(ii) has wrongly stated that the notices issued under section 148 of the Act for AY 2016-17 are to be considered as having been issued within a period of three years from the end of the relevant assessment year and, on that basis, has wrongly mentioned that the approval of the specified authority under section 151(i) should be taken. This conclusion is premised on the basis that these notices travel back to 31 March 2020 which premise is completely erroneous as explained hereinbefore. The notice under section 148 of the Act is issued on 31 July 2022 and, hence, is issued beyond period of three years from the end of the relevant assessment year and, accordingly, the approval of the specified authority under section 151(ii) of the Act should be taken.*
>
> ***30.** This court in Tata Communications Transformation Services (P.) Ltd. (supra), has rejected that argument of the Revenue on the issue of travel back. This court in paragraph 37 of Tata Communications Transformation Services (P.) Ltd. (supra) has held that section 3(1) of TOLA does not provide that any notice issued under section 148 of the Act, after 31st March 2021 will relate back to the original date or*

that the clock is stopped on 31st March, 2021 such that the provision as existing on such date will be applicable to notices issued relying on the provision of TOLA. The court held that section 3(1) of TOLA merely extends the limitation provided in the specified Acts including Income-tax Act for doing certain Acts but such Acts must be performed in accordance with the provisions of the specified Acts. The court had also recorded that the Delhi High Court had considered and rejected the contention of the Revenue that the notice issued after 1st April 2021 relates back to an earlier period. The Delhi High Court had considered and rejected the argument of the Revenue that TOLA creates a legal fiction such that the notices issued under section 148 of the Act are deemed to be issued on 31st March, 2021. TOLA only granted power to the Central Government to notify the period during which actions are required to be taken that can fall within the ambit of TOLA, and the power to extend the time limit within which those actions are to be taken. There was no amendment to the provisions of sections 147 to 151 of the Act. The court also observed that amendments to the substantive provisions of the Act were envisaged under section 3 of TOLA, which was only a relaxation provision dealing with time limits under various enactments. The Assessing Officer could have assumed jurisdiction while issuing the impugned notices only after complying with the amended section 147 which has not been done. In Tata Communications (supra), this court also held that TOLA was not applicable for A.Y.-2015-2016 or any subsequent years. Hence question of applicability of notification issued under TOLA also would not arise. Paragraphs 34 to 49 of Tata Communications Transformation Services (P.) Ltd. (supra) read as under:

34. It is well settled 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. Even the Revenue accepts this well settled position. Further, the provisions of sections 147 to 151 are procedural laws and accordingly, the provisions as existing on the date of the notice would be applicable. Even the revenue accepts this legal position and the CBDT Circular No. 549 of 1989, that Mr. Mistri relied upon, explaining the provisions of the Finance Act, 1989 specifically sets out that any notices issued by Revenue after the amendment made by the Finance Act, 1989 must comply with the amended provision of the law. Therefore, any notice issued after 1st April, 2021 must comply with the amended provisions of the Act which was amended with effect from 1st April, 2021. This contention has also been considered and upheld by the Delhi High Court and the Allahabad High Court.

35. We have to also note the well settled proposition that when the Act specifies that something is to be done in a particular manner, then, that thing must be done in that specified manner alone, and any other method/(s) of performance cannot be upheld. Hence, notices issued under section 148 of the Act after 1st April, 2021 must comply with the amended provisions of law and cannot be sustained on the basis of the erstwhile provision.

36. In order to uphold the arguments of the Revenue in this regard, either a savings clause, or a specific legislative enactment deferring applicability of the amended provisions and the repeal of the old provisions of the Act, would be required. Plainly no such savings clause or enactment is available.

37. Section 3(1) of Relaxation Act does not provide that any notice issued under section 148 of the Act, after 31st March 2021 will relate back to the original date or that the clock is stopped on 31st March, 2021 such that the provision as existing on such date will be applicable to notices issued relying on the provision of Relaxation Act. A plain reading of Relaxation Act, as Mr. Mistri rightly submitted, makes it clear that Section 3(1) of Relaxation Act merely extends the limitation provided in the specified Acts (including Income-tax Act) for doing certain Acts but such Acts must be performed in accordance with the provisions of the specified Acts. Therefore, if there is an amendment in the specified Act, the amended provision of the specified Act would apply to such actions of the Revenue. The Delhi High Court has considered and rejected the contention of the Revenue that the notice issued after 1st April 2021 relates back to an earlier period.

38. The Delhi High Court has considered and rejected this argument of the Revenue that Relaxation Act creates a legal fiction such that the notices issued under section 148 of the Act are deemed to be issued on 31st March, 2021. The so-called legal fiction is directly contrary to the Revenue's own Circular No. 549 of 1989, which is binding on them as well as the well settled principle that the validity of a notice is to be judged on the basis of the law that prevails at the time of its issue.

39. Even though Relaxation Act was in existence when the Finance Act, 2021 was passed, the parliament has specifically made the amended provisions of sections 147 to 151 of the Act as being applicable with effect from 1st April, 2021. Therefore, the intention of the legislature is clear that substituted provisions must apply to notices issued with effect from 1st April, 2021. No savings clause has been provided in the Act for saving the erstwhile provisions of sections 147 to 151 of the Act, like in section 297 of the Act where, the Parliament when it intended, has specifically provided the savings clause.

40. On a plain reading of Relaxation Act it is clear that the only powers granted to the Central Government by Relaxation Act is the power to notify the period during which actions are required to be taken that can fall within the ambit of Relaxation Act, and the power to extend the time limit within which those actions are to be taken. A plain reading of the impugned Explanations in Notification Nos.20 of 2021 and 38 of 2021 shows that it purports to "clarify" that the unamended provisions of sections 147 to 151 of the Act will apply for the purposes of issue of notices under section 148 of the Act, which is clearly ultra vires Relaxation Act.

41. In our view, the reopening notices issued after 1st April, 2021 are unsustainable and bad in law even if one was to apply the Explanations to the Notification Nos.20 of 2021 and 38 of 2021. The Explanation seeks to extend the applicability of erstwhile sections 148, 149 and 151. The impugned Explanation does not cover section 147, which (as amended) empowers the revenue to reopen an assessment subject to sections 148 to 153, which includes section 148A. Thus, even if Explanations are valid, the mandatory procedure laid down by section 148A has not been followed and hence, without anything further, the notices under section 148 of the Act are invalid and must be struck down for this reason as well. This proposition has also been upheld by the Delhi High Court.

42. As regards Revenue's arguments that Relaxation Act being a beneficial legislation must be given purposive interpretation', the purpose of section 3(1) of Relaxation Act is to extend limitation periods as provided in a specified Act (including the Income-tax Act). The purpose of section 3(1) of Relaxation Act is not to postpone the applicability of amended provisions of a Specified Act. Though Relaxation Act was in existence when the Finance Act, 2021 was passed, the Parliament has specifically enacted the new, (amended) provisions of section 147 to 151 of the Act and made them applicable with effect form 1st April, 2021. Therefore, it is clear that amendment is to be applied from 1st April, 2021. Further, when there is no ambiguity on the applicability of the provision, there is no question of resorting to purpose test.

43. As regards liberty granted by the Allahabad High Court, certainly, if the law permits issuance of notices under section 148 of the Act (as amended), afresh, then no liberty is required to be granted by the Court, and it would be within the Assessing Officer's powers to initiate proceedings as per the amended law. The Madras High Court has considered this very plea and granted liberty to initiate reassessment proceedings in accordance with the provisions of the amended Act, "if limitation for it survives".

44. As submitted by Mr. Mistri, with whom we agree, Chapter II of Relaxation Act provide for - "Relaxation of Certain Provisions of Specified Act" and section 3 forms part of this Chapter. Further Chapter III provides for amendment to Income-tax Act, 1961 and various sections of the Act have been amended in Chapter III. From this the following propositions emerge :

(a) Wherever the Parliament thought fit, the Parliament has itself amended the provision of the Income-tax Act, 1961 and not left it for the CBDT to make the amendment. Therefore, it is clear that no power is given under Relaxation Act to postpone the applicability of provisions of the Income-tax Act.

(b) Chapter II of Relaxation Act is only for 'Relaxation of Certain Provisions of Specified Act' and, therefore, there is no question of the Revenue relying on this Chapter and section 3 to justify the postponement of applicability of certain provisions of the Income-tax Act. If the Parliament wanted to give some right to the CBDT, it would have formed part of Chapter III, however, there is no such provision in Chapter III of the Act.

45. As submitted by Mr. Pardiwalla there are other Sections in the Finance Act, 2021 which have amended other provisions of the Income-tax Act from dates other than 1st April, 2021. Like for example Section 12 of the Finance Act inserted a proviso in section 43CA. Had the intention of the legislature, while amending sections 147 to 153, been to give it effect from 1stJuly, 2021, a similar savings clause could have been inserted, which has not been done. We agree with Mr. Pardiwalla because as per section 1(2)(a) of the Finance Act, 2021, the amendments to sections 147 to 153 of the Act shall come into force on 1st April, 2021. Similarly, the Memorandum explaining the provisions of the Finance Bill, 2021 clarifies that these amendments will take effect from 1st April, 2021. Section 12 of the Finance Act inserted a proviso in section 43CA which inter alia provides that the words 'one hundred and ten percent' in the first proviso will be substituted by the words

'one hundred and twenty percent' if the transfer of residential units takes place during the period beginning from 12th day of November, 2020 and ending on the 30th day of June, 2021. Therefore, had the intention of the legislature, while amending sections 147 to 153, was to give it effect from 1stJuly, 2021, a similar savings clause could have been inserted, which has not been done.

46. Mr. Pardiwalla submitted that only Section 4 of Relaxation Act which amended the Act and no such amendments to the substantive provisions of the Act were envisaged under section 3 of Relaxation Act, which was only a relaxation provision dealing with time limits under various enactments.

47. As noted earlier, it is Revenue's case that section 3 of Relaxation Act enabled the Central Government to issue notifications which would permit the Assessing Officers to issue notices under section 148 of the Act after 1st April, 2021 in terms of the erstwhile provisions of sections 147 to section 151, even though the said provisions were repealed with effect from 1st April, 2021 by the Finance Act, 2021. It is, however, pertinent to note that section 3 of Relaxation Act falls in Chapter II of the said Act, which is titled 'Relaxation of Certain Provisions of Specified Act'. In contradistinction, section 4 of Relaxation Act which does amend several provisions of the Act falls in Chapter III, which is titled 'Amendments to the Income-tax Act, 1961'. It will be apposite to notice that the amendments provided for in section 4 were made by the Legislature itself in terms of the said Section and no such power to amend the Act was delegated to the Central Government. Therefore, we would agree with Mr. Pardiwalla that it is only section 4 of Relaxation Act which amended the Act and no such amendments to the substantive provisions of the Act were envisaged under section 3 of Relaxation Act, which was only a relaxation provision dealing with time limits under various enactments.

48. Mr. Pardiwalla submitted that even assuming for a moment that the primary contention of petitioners that the Explanations in the notifications are invalid is not accepted, still the impugned notices will be bad in law as the Explanation only seeks to effectuate the provisions of the erstwhile sections 148, 149 and 151 of the Act. It does not cover the erstwhile section 147 of the Act. As rightly submitted by Mr. Pardiwalla, the Assessing Officer could have assumed jurisdiction while issuing the impugned notices only after complying with the amended section 147. The same has not been done by the Assessing Officers as (a) his assumption of jurisdiction is on the basis of his 'reason to believe' that income chargeable to tax has escaped assessment, a concept, which is no longer recognised in the amended section 147; and (b) the amended section 147 is in any event subject to sections 148 to 153, which would also include the procedure contained in section 148A, which has not been followed. Therefore, the impugned notices do not even comply with the relevant statutory provisions, even if we do not find fault with the Explanations in the two notifications. Infact the Delhi High Court in paragraph 84 of Mon Mohan Kohli (supra) has also considered and accepted this aspect of the matter.

49. Some more reasons why the reopening notices must go are :

(a) Section 297 of the Act provides a saving clause for applicability of various provisions of the 1922 Act, even though the Act itself had been repealed. In the

absence of such a saving clause for applicability of erstwhile sections 147 to 151 of the Act, the amended provision of the Act would apply from 1st April, 2021.

(b) Moreover, the reopening notices issued after 1st April, 2021 are bad in law even if one was to apply the Explanations to the Notification Nos.20 and 38. The Explanations seek to extend the applicability of erstwhile sections 148, 149 and 151. They do not cover section 147, which empowers revenue to reopen subject to section 148 to 153, which includes section 148A. Thus, even if Explanation are valid, procedure of section 148A is not followed and hence, notices are invalid.

(c) In any case, Relaxation Act is not applicable for Assessment Years 2015-2016 or any subsequent year and, hence, the question of applicability of the Notification Nos.20 and 38 of 2021 does not arise. The time limit to issue notice under section 148 of the Act for the Assessment Years 2015-2016 onwards was not expiring within the period for which section 3(1) of Relaxation Act was applicable and, hence, Relaxation Act could never apply for these assessment years. As a consequence, there can be no question of extending the period of limitation for such assessment years.

These findings of the Bombay High Court have not been disturbed by the Apex Court in Ashish Agarwal (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 assessees. Thereafter, after following the procedure as required under section 148A may issue notice under section 148 (as substituted). The Apex Court also expressly kept open 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.

31. *Notwithstanding this, the CBDT has issued instruction No. 1 of 2022 contary to what the courts have held. Even by the finding of the Apex Court in Ashish Agarwal (supra), only the original notice issued under section 148 of the Act was converted into a notice deemed to have been issued under section 148A(b) of the Act. The Apex Court held that the Assessing Officer shall thereafter pass orders in terms of Section 148A(b) in respect of each of the assessee and after following the procedure as required under section 148 of the Act. Even judgment in Ashish Agarwal (supra) does not anywhere indicate the notices that could be issued for eternity like in this case, on 31st July 2022, would be sanctioned by the authority other than sanctioning authority defined under the Act.*

32*. We have to also note that the instructions dated 11th May 2022, on which respondents have relied upon, has no applicability to the facts of this case. These instructions expressly provides that it applies only to the issue of reassessment notice issued by the Assessing Officer during the period beginning 1st April 2020*

and ending with 30th June 2021 within the time extended under TOLA and various notifications issued thereunder. Since the impugned notice in this case is dated 31st July 2022, certainly the instructions no. 1 of 2022 dated 11th May 2022 shall have no applicability at all. Even for a moment, if we accept Mr. Suresh Kumar's arguments that Apex Court's findings in Ashish Agarwal (supra) read with time extension provided by TOLA will allow extended reassessment notices to travel back to their original date when such notices were issued and then new section 149 of the Act is to be applied at that time, the extended reassessment notices are defined under the instructions to be notice issued between 1st April 2021 and ending with 30th June 2021. Therefore, the instructions would not help respondents' case at all."

7. Further on perusal of the reasons recorded for re-opening the assessment, the escapement of income is only Rs. 9,00,000/- and for which alleged escapement is less than Rs.50,00,000/-, notice issued u/s 148 of the Act is barred by limitation considering Section 149(1)(b) of the Act. This issue has been duly considered by the Hon'ble Delhi High Court in the case of *Ganesh Dass Khanna vs. ITO [2023] 156 taxmann.com 417 (Delhi HC)*. The relevant findings reads as under:-

"***52.*** *A careful perusal of the judgment of the Supreme Court rendered in Ashish Agrawal's case and the provisions of TOLA would show that neither the said judgment nor TOLA allowed for any such modality to be taken recourse to by the revenue, i.e., that extended reassessment notice would "travel back in time" to their original date when such notices were to be issued and thereupon the provisions of amended Section 149 would apply.*

52.1 *Apart from anything else, the aforesaid provisions contained in the Instruction dated 11-5-2022 are beyond the powers conferred on the CBDT under section 119 of the 1961 Act. The paragraphs mentioned above are clearly ultra vires the provisions of Section 149(1) of the amended 1961 Act.*

52.2 *Furthermore, a perusal of the judgment of the Supreme Court rendered in Ashish Agrawal's case would show that it did not rule on the provisions contained in TOLA or the impact they could have on the reassessment proceedings. In any event, TOLA conferred no such power on the CBDT.*

52.3 *Besides this, as correctly argued on behalf of the assessees, there is no clarity in the aforementioned Instruction regarding the "original date when such notices were to be issued". The impugned provisions of the Instruction dated 11-5-2022 are also unsustainable in law because they are vague. "Certainty" in taxing statutes is one of the grund norms, as ordinarily, they are agnostic to equitable principles.*

53. *Apart from what we have stated above on the language and scheme of the relevant provisions introduced with the enactment of FA 21, one has to bear in mind, in our opinion, the raison d'etre for forging the new regime. A clue about the same is provided in the Finance Minister's budget speech delivered on 1-2-2021 and the relevant parts of the Memorandum explaining the provisions*

of the Finance Bill 2021 [hereafter referred to as "Memorandum"] which morphed into FA 2021. For convenience, the relevant parts are extracted below:

Speech of the Finance Minister

"…Reduction in Time for Income-tax Proceedings

153. Honourable Speaker, presently, an assessment can be re-opened up to 6 years and in serious tax fraud cases for up to 10 years. As a result, taxpayers have to remain under uncertainty for a long time.

154. I therefore propose to reduce this time-limit for re-opening of [the]assessment to 3 years from the present 6 years. In serious tax evasion cases too, only where there is evidence of concealment of income of Rs. 50 lakh or more in a year, can the assessment be re-opened up to 10 years. Even this reopening can be done only after the approval of the Principal Chief Commissioner, the highest level of the Income-tax Department…"

Memorandum

"…Income escaping assessment and search assessments

Under the Act, the provisions related to income escaping assessment provide that if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may assess or reassess or recompute the total income for such year under section 147 of the Act by issuing a notice under section 148 of the Act. However, such reopening is subject to the time limits prescribed in section 149 of the Act.

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The Bill proposes a completely new procedure of [for] assessment of such cases. It is expected that the new system would result in less litigation and would provide ease of doing business to taxpayers as there is a reduction in [the] time limit by which a notice for assessment or reassessment or re-computation can be issued. The salient features of [the] new procedure are as under:-

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(iii) Section 147 proposes to allow the Assessing Officer to assess or reassess or re-compute any income escaping assessment for any assessment year (called relevant assessment year).

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(vii) New Section 148A of the Act proposes that before issuance of notice the Assessing Officer shall conduct enquiries, if required, and provide an opportunity of being heard to the assessee. After considering his reply, the Assessing Office shall decide, by passing an order, whether it is a fit case for issue of notice under section 148 and serve a copy of such order along with such notice on the assessee. The Assessing Officer shall before conducting any such enquiries or providing opportunity to the assessee or passing such order obtain the approval of specified authority. However, this procedure of enquiry, providing opportunity and passing order, before issuing notice under section 148 of the Act, shall not be applicable in search or requisition cases.

in normal cases, no notice shall be issued if three years have elapsed from the end of the relevant assessment year. Notice beyond the period of three years from the end of the relevant assessment year can be taken only in a few specific cases.

In specific cases where the Assessing Officer has in his possession evidence which reveal that the income escaping assessment, represented in the form of asset, amounts to or is

likely to amount to fifty lakh rupees or more, notice can be issued beyond the period of three year but not beyond the period of ten years from the end of the relevant assessment year;

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 1st 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.

Since the assessment or reassessment or re-computation in search or requisition cases (where such search or requisition is initiated or made on or before 31st March 2021) are to be carried out as per the provision of section 153A, 153B, 153Cand 153D of the Act, the aforesaid time limitation shall not apply to such cases.

It is also proposed that for the purposes of computing the period of limitation for issue of section 148 notice, the time or extended time allowed to the assessee in providing opportunity of being heard or period during which such proceedings before issuance of notice under section 148 are stayed by an order or injunction of any court, shall be excluded. If after excluding such period, time available to the Assessing Officer for passing order, about fitness of a case for issue of 148 notice, is less than seven days, the remaining time shall be extended to seven days...."

(viii) The time limitation for issuance of notice under section 148 of the Act is proposed to be provided in section 149 of the Act and is as below:

[Emphasis is ours]

53.1 *As would be evident from the extracts set forth above, both from the Finance Minister's speech and the Memorandum, the time limit for reopening under the new regime was reduced from six (06) years to three (03) years and only in respect of "serious tax evasion cases", that too, where evidence of concealment of income of Rs. 50 lakhs or more in a given period was found, the period for reopening the assessment was extended to ten (10) years. In order to ensure that utmost care was taken before invoking the extended period of limitation, the proposal was that approval should be obtained from the Principal Chief Commissioner of Income Tax, at the highest hierarchical level of the department. Likewise, the Memorandum emphasized that the new regime was forged with the hope that it would result in less litigation and would provide ease of doing business to tax payers, as there was a reduction in the time limit by which notice for assessment, reassessment and re-computation could be issued.*

53.2 *Thus, as per the Memorandum, in "normal cases", no notice was intended to be issued if three (03) years had elapsed from the end of the relevant AY. Notice, beyond the prescribed three (03) years from the end of the relevant AY, could be issued only in a few specific cases; one such example which is given in the Bill is where the AO was in possession of evidence that escaped income amounted to Rs. 50 lakhs or more.*

53.3 *In sum, the sense that one gets upon a holistic reading of the backdrop in which the new regime for reopening assessments was enacted is that where escapement of income was below Rs. 50 lakhs, the normal period of limitation, i.e., three (03) years was to apply. In comparison, the extended period of ten (10) years would apply in serious tax evasion cases where there was evidence of concealment of income of Rs. 50 lakhs or more in the given period.*

53.4 *The State, perhaps, did not deem it worthwhile to chase assessees beyond three (03) years, where the alleged escaped income was less than Rs. 50 lakhs. These aspects concerning legislative policy come through if one were to read the relevant provisions of the statute referred to above in the background of the speech of the Finance Minister and the Memorandum.*

Conclusion:

54. *Therefore, having regard to the foregoing discussion, we are of the opinion that the impugned actions, which include orders passed under section 148A(d) and the consequent notices issued under*

section 148 of the amended 1961 Act, concerning AY 2016-17 and AY 2017-18 cannot be sustained. It is ordered accordingly."

8. Considering the facts of the case in hand and in light of the two judicial decisions discussed hereinabove, we are of the considered view that the impugned notice issued u/s 148 of the Act is without jurisdiction and hence set aside making the resultant re-assessment order null and void. Since we have quashed the re-assessment order, we do not find it necessary to delve into the merits of the case. Accordingly, the ground argued before us by the assessee is allowed.

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

Order pronounced in the Court on 20th August, 2024 at Mumbai.

Sd/-	*Sd/-*
(RAHUL CHAUDHARY)	**(NARENDRA KUMAR BILLAIYA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai, Dated 20/08/2024
SC SrPs

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय 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