

**IN THE INCOME TAX APPELLATE TRIBUNAL
"G" BENCH, MUMBAI**

**SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 1407/MUM/2024
(Assessment Year: 2015-16)**

**Assistant Commissioner of
Income Tax- Circle 15(3)(2)**

Room No. 460, 4th floor,
Aaykar Bhavan, Mumbai.

..... **Appellant**

Vs

Surya Ferrous Alloys Pvt Ltd.

117, Skylark Building, Plot No. 63,
Sector 11, CBD Belapur,
Navi Mumbai- 400614.
[PAN : AAHCS8596H]

..... **Respondent**

**CO No. 76/MUM/2024
(Assessment Year: 2015-16)**

Surya Ferrous Alloys Pvt Ltd.

117, Skylark Building, Plot No. 63,
Sector 11, CBD Belapur,
Navi Mumbai- 400614.
[PAN : AAHCS8596H]

..... **Appellant**

Vs

**Assistant Commissioner of
Income Tax - Circle 15(3)(2)**

Room No. 460, 4th floor,
Aaykar Bhavan, Mumbai.

..... **Respondent**

Appearance

For the Assessee : Shri Ajay R. Singh
For the Department : Shri Kishor Dhule

Date

Conclusion of hearing : 24.06.2024
Pronouncement of order : 11.09.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Revenue has challenged the

order dated 25/01/2024, passed by the National Faceless Appeal Centre (NFAC), Delhi, [hereinafter referred to as the '**CIT(A)**']. The Assessee has filed cross objection.

2. Grounds raised by the Revenue in Appeal are as under:

- "1. Whether on the facts and circumstances of the case and in law the order of Ld.CIT(A) is not bad in law in restricting the disallowance of purchases to 4% on account of bogus purchases without considering the fact that during the course of search, the entry provider has himself admitted that assessee company has been provided accommodation entries for claiming bogus expenses to deflate the profit thereby the profit thereby evading income tax.*
- 2. Whether on the facts and circumstances of the cause and in law the order of Ld.CIT(A) is not bad in law in not realizing that the goods purchased by the assessee in cash through grey market invokes provisions of section 40A(3), hence the assessee is not entitled for any relief.*
- 3. Whether on the facts and circumstances of the case and in law the order of the Ed CIT(A) is not bad in law in legalizing the illegal purchase.*
- 4. Whether on the facts and circumstances of the case and in law the order of the Ld.CIT(A) is not bad in law in legalizing the purchases made in grey market.*
- 5. The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.*
- 6. The appellant craves leave to amend, or alter any grounds or add a new ground, which may be necessary."*

3. The Cross objections raised by the Assessee are as under:-

- "1. The Ld CIT(A) erred in upholding the reopening of the assessment for A.Y. 2015-2016 vide notice u/s 148 dated 26/07/2022, without appreciating that reopening was time barred as the last day for issuance of Notice u/s 148 was 31.03.2022 and by virtue of first proviso to Section 149 of the Act, the reopening is time barred.*
- 2. The Id JAO had no jurisdiction to issue show cause notice u/s 148A(b) dated 30/05/2022 pass order u/s 148A(d) dated 26/07/2022 and issue notice u/s 148 dated 26/07/2022 as after 29/03/2022 same can be done in a faceless manner as provided u/s 144B i.e. by Faceless Assessing Officer in view*

of NOTIFICATION S.O. 1466(E) [NO. 18/2022/F. NO. 370142/16/2022- TPL(PART1], DATED 29-03-2022 titled "E-ASSESSMENT OF INCOME ESCAPING ASSESSMENT SCHEME, 2022" passed u/s 151A of the Act. Thus, Notice u/s 148 dated 26/07/2022 is bad in law.

3. *The respondent craves leave to add, amend, alter or vary the grounds of appeal at the time of or before the date of the hearing".*
4. Since the grounds raised in cross-objection go to the root of the matter, we would first take up the cross objection raised by the Assessee.
5. The relevant facts for adjudication of the cross objections are that the Appellant is the company engaged, at the relevant time, in the business of manufacturing of Billets and TMT Bars and trading of other goods. The process of manufacturing of Billets and TMT Bars one of the raw materials consumed is pig iron/sponge iron. For the Assessment Year 2015-16, the Assessee filed return of income of income on 21/09/2015 which was processed under Section 143(1) of the Act. Subsequently, the information was received from the Additional Director Income Tax (Investigation), Jamshedpur that entities controlled by Shri Ajay Kumar Sharma (Namely, M/s Jaymata Di Enterprises, M/s Hari Om Udyog and M/s Hari Om Steel) had indulged in certain bogus transaction and that the Assessee had also taken accommodation entries relating to purchase of goods from the same. Therefore, reassessment proceedings were initiated under Section 147 of the Act which culminated into Assessment Order, dated 26/05/2023, passed under Section 147 read with Section 144B of the Act at assessed income of INR 10,32,46,864/-, after making addition of INR 10,32,46,864/- in the hands of the Assessee under Section 69C of the Act.
6. In appeal preferred by the Assessee against the above

Assessment Order, dated 26/05/2023, the CIT(A) restricted the addition to 4% of the aggregate value of the alleged bogus purchase transaction taking note of the fact that the Assessee had already disclosed gross profit of 8.5%, which was considered by the CIT(A) to be comparable and acceptable to the margins prevailing in the industry in which the Assessee was operating. However, the CIT(A) rejected Assessee's challenge to the validity of reassessment proceedings.

7. Being aggrieved by the partial relief granted by the CIT(A), the Revenue has preferred the present Appeal, while Assessee has filed cross objection against the order of CIT(A) rejecting Assessee's challenge to the validity of reassessment proceedings on the grounds/objections reproduced in paragraph 2 above.
8. The Learned Authorised Representative for the Appellant submitted that the issue raised in the cross objections stand decided in favour of the Appellant by the judgment of the Hon'ble Bombay High Court in the case of **Hexaware Technologies Limited Vs. ACIT: [2024] 464 ITR 430 (Bombay)[03-05-2024]**. It was submitted that in identical facts and circumstances notice, dated 27/08/2022, issued under Section 148 of the Act by the assessing officer for the Assessment Year 2015-16, pursuant to the directions issued by the Hon'ble Supreme Court in the case of **Union of India Vs. Ashish Agarwal: [2022] 444 ITR 1 (SC)[04-05-2022]**, was held by the Hon'ble Bombay High Court to be barred by limitation in view of the first proviso to Section 149 of the Act since it was issued after 31/03/2022.
9. The Learned Departmental Representative relied upon the judgment of the Hon'ble Supreme Court in the case of **Union of India Vs. Ashish Agarwal: [2022] 444 ITR 1 (SC)[04-05-2022]** and submitted that the notice 26/07/2022 under Section

148 of the Act cannot be held to be barred by limitation since the same has been issued as per the directions issued by the Hon'ble Supreme Court. Without prejudice to the aforesaid, it was submitted that the first notice, dated 16/04/2021, issued by the Assessing Officer under Section 148 of the Act was within the period of limitation as prescribed under Section 149(1)(b) of the Act as it stood immediately before the commencement of the Finance Act, 2021. Thus, on both counts it cannot be said that the notice issued under Section 148 of the Act is barred by limitation. Reliance in this regard was placed upon the amended/un-amended provisions of Section 149 of the Act

10. We have given a thoughtful consideration to the rival submissions and perused the material on record including the judicial precedents cited by both the sides.
11. On perusal of judgment of the Hon'ble Supreme Court in the case of **Ashish Agarwal (supra)**, we find that the Hon'ble Supreme Court had, while exercising power under Article 142 of the Constitution of India, held as under:

"8. However, at the same time, the judgments of the several High Courts would result in no reassessment proceedings at all, even if the same are permissible under the Finance Act, 2021 and as per substituted sections 147 to 151 of the IT Act. The Revenue cannot be made remediless and the object and purpose of reassessment proceedings cannot be frustrated. It is true that due to a bonafide mistake and in view of subsequent extension of time vide various notifications, the Revenue issued the impugned notices under section 148 after the amendment was enforced w.e.f. 1-4-2021, under the unamended section 148. In our view the same ought not to have been issued under the unamended Act and ought to have been issued under the substituted provisions of sections 147 to 151 of the IT Act as per the Finance Act, 2021. There appears to be genuine non-application of the amendments as the officers of the Revenue may have been under a bonafide belief that the amendments may not yet have been enforced. Therefore, we are of the opinion that some leeway must be shown in that regard

which the High Courts could have done so. Therefore, instead of quashing and setting aside the reassessment notices issued under the unamended provision of IT Act, the High Courts ought to have passed an order construing the notices issued under unamended Act/unamended provision of the IT Act as those deemed to have been issued under section 148A of the IT Act as per the new provision section 148A and the Revenue ought to have been permitted to proceed further with the reassessment proceedings as per the substituted provisions of sections 147 to 151 of the IT Act as per the Finance Act, 2021, subject to compliance of all the procedural requirements and the defences, which may be available to the assessee under the substituted provisions of sections 147 to 151 of the IT Act and which may be available under the Finance Act, 2021 and in law. Therefore, we propose to modify the judgments and orders passed by the respective High Courts as under:

- (i) *The respective impugned section 148 notices issued to the respective assessees shall be deemed to have been issued under section 148A of the IT Act as substituted by the Finance Act, 2021 and treated to be show-cause notices in terms of section 148A(b). The respective assessing officers shall within thirty days from today provide to the assessees the information and material relied upon by the Revenue so that the assessees can reply to the notices within two weeks thereafter;*
- (ii) *The requirement of conducting any enquiry with the prior approval of the specified authority under section 148A(a) be dispensed with as a one-time measure vis-à-vis those notices which have been issued under section 148 of the unamended Act from 1-4-2021 till date, including those which have been quashed by the High Courts;*
- (iii) *The assessing officers shall thereafter pass an order in terms of section 148A(d) after following the due procedure as required under section 148A(b) in respect of each of the concerned assessees;*
- (iv) All the defences which may be available to the assessee under section 149 and/or which may be available under the Finance Act, 2021 and in law and whatever rights are available to the Assessing Officer under the Finance Act, 2021 are kept open and/or shall continue to be available and;
- (v) *The present order shall substitute/modify respective judgments and orders passed by the respective High Courts quashing the similar notices issued under*

unamended section 148 of the IT Act irrespective of whether they have been assailed before this Court or not.

9. *There is a broad consensus on the aforesaid aspects amongst the learned ASG appearing on behalf of the Revenue and the learned Senior Advocates/learned counsel appearing on behalf of the respective assessees.*

We are also of the opinion that if the aforesaid order is passed, it will strike a balance between the rights of the Revenue as well as the respective assesses as because of a bonafide belief of the officers of the Revenue in issuing approximately 90000 such notices, the Revenue may not suffer as ultimately it is the public exchequer which would suffer.

Therefore, we have proposed to pass the present order with a view avoiding filing of further appeals before this Court and burden this Court with approximately 9000 appeals against the similar judgments and orders passed by the various High Courts, the particulars of some of which are referred to hereinabove. We have also proposed to pass the aforesaid order in exercise of our powers under Article 142 of the Constitution of India by holding that the present order shall govern, not only the impugned judgments and orders passed by the High Court of Judicature at Allahabad, but shall also be made applicable in respect of the similar judgments and orders passed by various High Courts across the country and therefore the present order shall be applicable to PAN INDIA.

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

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

- (ii) The requirement of conducting any enquiry, if required, with the prior approval of specified authority under section 148A(a) is hereby dispensed with as a one-time measure vis-à-vis those notices which have been issued under section 148 of the unamended Act from 1-4-2021 till date, including those which have been quashed by the High Courts.

Even otherwise as observed hereinabove holding any enquiry with the prior approval of specified authority is not mandatory but it is for the concerned Assessing Officers to hold any enquiry, if required;

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

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

11. The present order shall be applicable PAN INDIA and all judgments and orders passed by different High Courts on the issue and under which similar notices which were issued after 1-4-2021 issued under section 148 of the Act are set aside (Sic) and shall be governed by the present order and shall stand modified to the aforesaid extent. The present order is passed in exercise of powers under Article 142 of the Constitution of India so as to avoid any further appeals by the Revenue on the very issue by challenging similar judgments and orders, with a view not to burden this Court with approximately 9000 appeals. We also observe that present order shall also govern the pending writ petitions, pending before various High Courts in which similar notices under section 148 of the Act issued after 1-4-2021 are under challenge. (Emphasis Supplied)

12. During the course of hearing it was submitted on behalf of Revenue that in the present case notice for the Assessment Year 2015-16 was issued by the Assessing Officer under Section 148 of the Act on 16/04/2021. Thereafter, as per the directions of the Hon'ble Supreme Court, notice, dated 25/05/2022, was issued by the Assessing Officer under Section 148A(b) of the Act.

Thereafter, order under Section 148A(d) of the Act was passed on 26/07/2022 which was followed by the issuance of notice, dated 26/07/2022, under Section 148 of the Act. The contention of the Revenue is that (a) the first notice issued under Section 148 of the Act on 16/04/2021 cannot be said to be time barred as the same was issued within a period of 6 years from the end of the relevant assessment year (i.e., before 01/04/2022), and (b) the second notice under Section 148 of the Act was issued on 26/07/2022 as per the directions issued by the Hon'ble Supreme Court in the case of Ashish Agarwal (supra). It was further submitted that proviso to Section 149(1)(b) of the Act, as applicable from 01/04/2021, also does not support the stand taken by the Assessee. As per Section 149(1)(b) of the Act, as applicable immediately before the commencement of the Finance Act, 2021, the Assessing Officer was permitted to issue notice under Section 148 of the Act till 31/03/2022. The Hon'ble Supreme Court had upheld the jurisdiction of the Assessing Officer to frame assessment and directed the Assessing Officer to proceed as directed. Therefore, second notice was issued under Section 148 of the Act on 26/07/2022 *[after taking requisite approval of the Principal Chief Commission of Income-Tax under Section 151(ii) of the Act]* and the same was within the time specified in Section 149(1)(b) of the Act as per the provisions introduced by the Finance Act, 2021 applicable from 01/04/2021. The proviso to Section 149(1)(b) of the Act merely clarified that in case where the limitation to initiate re-assessment proceedings under Section 147 of the Act had expired and the time limit for issuing of notice under Section 148 of the Act had lapsed as per Section 149(1)(b) of the Act as applicable immediately before commencement of the Finance Act, 2021, the Revenue was not permitted to initiate reassessment proceedings in such cases by taking recourse to the longer period for initiating re-assessment

proceedings as prescribed in the amended provisions contained in Section 149(1)(b) of the Act. Thus, were time limit to issue notice under Section 148 of the Act had not expired as per Section 149(1)(b) of the Act, as applicable immediately before the commencement of the Finance Act, 2021, the Assessing Officer was free to initiate re-assessment proceedings by issuing notice within the longer period specified in Section 149(1)(b) of the Act as effective from 01/04/2021.

13. However, we find that, as submitted by the Learned Authorised Representative for the Appellant during the course of hearing, identical submission made by the Revenue stand rejected by the Hon'ble Bombay High Court in the case of Hexaware Technologies Limited (supra). In the aforesaid case, the Hon'ble Bombay High Court has, while examining the validity of reassessment proceedings for the Assessment Year 2015-16, held that as per the judgment of the Hon'ble Supreme Court in the case of Ashish Agarwal (supra) the first notice issued under Section 148 of the Act would be treated as notice issued under Section 148A of the Act. Therefore, what was required to be considered was the date on which second notice under Section 148 was issued. If on such date (of issuance of second notice), the Assessing Officer was permitted to issue notice under Section 148 of the Act as per Section 149(1)(b) of the Act as it stood immediately before the commencement of the Finance Act, 2021, then the provisions contained in proviso to Section 149(1)(b) of the Act would not be attracted and the notice issued under Section 148 would not be barred by limitation. In the aforesaid judgment, the Hon'ble Bombay High Court had, inter alia, framed the following substantial question of law: "*Whether the notice dated 27th August 2022 issued under section 148 of the Act is barred by limitation as per the first proviso to Section 149 of the Act?*".

Answering the aforesaid substantial question of law in affirmative and in favour of the assessee, the Hon'ble Bombay High Court held as under:

"24. As regards issue no.2, Section 149 of the Act reads as under:

Time limit for notice.

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

(a) *xx xx;*

(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 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:*

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 cases referred to in clauses (i),*

(iii) and (iv) of Explanation 2 to section 148, where

- (a) a search is initiated under section 132; or
- b) a search under section 132 for which the last of authorisations is executed; or
- (c) requisition is made under section 132A, after the 15th day of March of any financial year and the period for issue of notice under section 148 expires on the 31st day of March of such financial year, a period of fifteen days shall be excluded for the purpose of computing the period of limitation as per this section and the notice issued under section 148 in such case shall be deemed to have been issued on the 31st day of March of such financial year:

Provided also that where the information as referred to in Explanation 1 to section 148 emanates from a statement recorded or documents impounded under section 131 or section 133A, as the case may be, on or before the 31st day of March of a financial year, in consequence of:

- (a) a search under section 132 which is initiated; or
- (b) a search under section 132 for which the last of authorisations is executed; or
- (c) a requisition made under section 132A,

after the 15th day of March of such financial year, a period of fifteen days shall be excluded for the purpose of computing the period of limitation as per this section and the notice issued under clause (b) of section 148A in such case shall be deemed to have been issued on the 31st day of March of such financial year:)

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 does not exceed 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 sub-section, "asset" shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.

(1A) Notwithstanding anything contained in sub-section (1), where the income chargeable to tax represented in the form of an asset or expenditure in relation to an event or occasion of the value referred to in clause (b) of sub-section (1), has escaped the assessment and the investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one previous years relevant to the assessment years within the period referred to in clause (b) of sub-section (1), a notice under section 148 shall be issued for every such assessment year for assessment, reassessment or recomputation, as the case may be.

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

*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 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 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 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 2015-2016, 6th year expired on 31 March 2022. The notice under Section 148 of the Act, in the present case, is issued on 27th August 2022, i.e., clearly beyond the period of limitation prescribed in Section 149 read with the first proviso to the said section. This is squarely covered by paragraphs 36 and 37 of New India Assurance (Supra) which has been reproduced above in paragraph 23.***
26. *The purpose of the first proviso to Section 149 of the Act is consistent with the stated object of the government to make prospective amendments in the Act. Accordingly the proviso provides that up to Assessment year 2021-2022 (period before the amendment), the period of limitation as prescribed in the erstwhile provisions of Section 149(1)(b) of the Act would be applicable and only from Assessment Year 2022-2023, the period of ten years as provided in Section 149(1)(b) of the Act, would be applicable. **The submission of the Revenue to interpret the first proviso to Section 149 of the Act to be applicable only for Assessment Years 2013-2014 and 2014-2015, i.e, for assessment years where the period of limitation had already expired on 1 April 2021 is not sustainable.** The interpretation canvassed by the Revenue is clearly contrary to the plain language of the proviso. When the language in the statute is clear, it has to be so interpreted and there is no scope for interpreting the provision on any other basis. The taxing statute should be strictly construed. [Godrej &*

Boyce Manufacturing Company Ltd. vs. DCIT], (2017) 394 ITR 449(SC).

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 1" 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 1" 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 Commissioner of Income Tax vs. Onkarmal Meghraj (HUF)", the Hon'ble Apex Court was dealing with the question whether a proviso could be applied without reference to any period of limitation. It held that "it is a well-settled principle that no action can be commenced where the period within which it can be commenced has expired. It is unnecessary to cite authorities in support of this position. Does the fact that the second proviso says that there is no period of limitation make a difference?"*

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

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

(iii) at that time' in the fourth line of the proviso.

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, 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 Sec 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 148 of the Act, the fresh/presently impugned notice dated 27th August 2022 under Section 148 of the Act is required to be considered. The said no admittedly beyond the erstwhile period of limitation of six years pre by the Act prior to its amendment by the Finance Act, 2021. Assessment Year 2015-2016, the erstwhile time limit of six years prescribed by the Act prior to its amendment by the Finance Act, 2021. For the Assessment year 2015-16, 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.**" (Emphasis Supplied)

14. On perusal of the above, it becomes clear that the Hon'ble Bombay High Court has held that for the Assessment Year 2015-16 notice issued under Section 148 of the Act, after complying with the provisions of Section 148A of the Act, would be barred by limitation as per the provisions contained in Proviso to Section 149(1)(b) of the Act, in case the notice under Section 148 of the Act has been issued after 31/03/2022. In the present case the second notice under Section 148 of the Act was issued on

26/07/2022. Therefore, respectfully following the above judgment of the Hon'ble Bombay High Court we hold that the notice, dated 26/07/2022, issued under Section 148 of the Act for the Assessment Year 2015-2016 is barred by limitation as per Proviso to Section 149(1)(b) of the Act. Accordingly, notice, dated 26/07/2022 issued under Section 148 of the Act and the Assessment Order dated 26/05/2023, passed under Section 147 read with Section 144B of the Act are quashed. The cross objection raised by the Assessee are allowed while the grounds raised by the Revenue in appeal are dismissed as having been rendered infructuous.

15. In result, the Cross Objection of the Assessee is allowed while the appeal by the Revenue is dismissed.
16. Order pronounced on 11.09.2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 11.09.2024
Patil, Sr.P.S.

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त/ The CIT
4. प्रधान आयकर आयुक्त/ Pr.CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापितप्रति //True Copy//

उप/सहायकपंजीकार /(Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai