आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर

**IN THE INCOME TAX APPELLATE TRIBUNAL**
**INDORE SMC BENCH, INDORE**

**BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.259/Ind/2024**
**(Assessment Year: 2016-17)**

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| Smt. Neelima Kothari,<br>601, N.R.K. Villas,<br>22/2 Manoramaganj,<br>Indore | Vs. | Income Tax Officer,<br>Delhi |
| (Appellant / Assessee) | | (Respondent/ Revenue) |
| **PAN: ADNPK7832J** | | |

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| Assessee by | Shri S.S. Deshpande, AR |
| Revenue by | Shri Ashish Porwal, Sr.DR |
| Date of Hearing | 08.08.2024 |
| Date of Pronouncement | 20.09.2024 |

# O R D E R

This appeal by the assesse is directed against the order dated 08.03.2024 of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centers,(NFAC), Delhi for A.Y.2016-17 which is arising from the assessment order u/s 147 r.w.s. 147 r.w.s. 144B of the Act dated 24.05.2023.

2. Assessee has raised following grounds of appeal:

*"01) Issue: Opportunity of being heard :*
*That the Commissioner of Income tax (A) erred in law while concluding that despite opportunities were granted to the appellant, she did not pursue the appeal. He ought to have considered that there may be reasonable and sufficient cause leading to non- response of the notices by*

*the appellant specially when the notices were uploaded every 7th day of February 2024. The addition made in the assessment order was Rs.24.46 lacs which was disputed on the ground of validity of notice as well on merits, hence there was no reason for not pursuing the appeal as presumed by the Ld. CIT(A). He did not even decide the issue regarding validity of reopening of assessment after the time limit permitted under the Act. Order so passed by Ld. CIT(A) therefore, is arbitrary, unjustified and bad in law.*
*02) Section 148: Issue: Proceedings of reassessment barred by time:*

*That the CIT(A) erred in law in not appreciating the fact that notice under section 148 of the Act was issued based on some information received on deptt. insight portal from DGIT (Inv.), Mumbai regarding market price of equity shares of M/s Goyenka Business and Finance Limited which were manipulated by the company. He erred in not considering the fact that Notice under section 148 of the Act was issued on 19.04.2021 based on some flagged information as per CBDT risk management matrics after a period of three years to assess alleged unexplained income of Rs.24,46,824 which had escaped assessment. Said notice u/s. 148 of the Act could have been issued even under the new provisions, only and only when as per the deptt. income of Rs.50 lacs or more had escaped assessment whereas long term capital gain earned on sale of shares was Rs.24,46,824/- only hence notice issued on 19.04.2021 was barred by time and order passed based on such notice deserves to be quashed.*

*03) Issue: Validity of approval of Notice under section 148 of the Act:*
*That the Commissioner of Income tax (A) erred in law in not appreciating the fact that notice under section 148 of the Act was issued on 15/07/2022, after obtaining the prior approval of Hon'ble Pr. CIT-1, Indore on 01/07/2022 vide reference no. F.No.Pr.CIT-1/Ind/148/2022-23/2251 whereas prior approval should have been obtained from Hon'ble Pr. Chief Commissioner of Income Tax, Bhopal, being a mandatory requirement of Section 151(ii) of the Act hence without obtaining prior approval from said authority, notice issued after the period of more than three years from the end of the A.Y.2016-17, being invalid, proceedings were ab-initio void hence assessment order passed should have been quashed.*
*03) Issue: Validity of Information for issuance of notice under section 148 :*
*That the Commissioner of Income tax (A) erred in law in not appreciating the fact that notice under section 148 of the Act was based on information received from SEBI regarding transactions in equity shares of M/s. Goenka Business and Finance Limited. The so called report from SEBI was highly generalized is nothing more than a farce or a cock and bull story hence it cannot be considered as applicable to all assessees in general, including the appellant, who had genuinely purchased and sold the equity shares of above company. The AO had simply observed that SEBI had suspended the trading on 21.12.15 and ignored that the same*

*was resumed in 2016. There being no other documents or evidence to reveal that the income chargeable to tax had escaped assessment, proceedings initiated under section 147 of the Act on the ground that appellant was indulged in manipulating the share price without any corroborative evidences against her is wholly unjustified, improper and bad in law.*

*04) Section 68: Issue: long term capital gain*

*That the CIT(A) erred in law in not considering the genuineness of long term capital gam earned by the appellant claimed as exempt under section 10(38) of the Act at Rs.24,39,177/-. He erred in not appreciating the fact that (a) Equity shares were purchased on 31.03.2014 and they were deposited in D-mat account on the same day. Out of 12,500 shares the appellant sold 9,500 equity shares and 3000 shares are still held by the appellant (b) The shares were listed on BSE on 19.11.2014 and it touched its peak price on 30.08.2015 at Rs.549.90 per share (c) Aforesaid 9,500 equity shares were sold in Oct/Nov 2015 as per date-wise details stated on Page 40/41 of assessment order. These facts proved beyond doubt that the appellant was not involved in any kind of price manipulation so as to earn long term capital gain, Genuineness of purchase and sale of the shares cannot be doubted just on the suspicion as Penny Stock to treat such transactions as bogus or sham.*

*05) Section 68: Issue: long term capital gain*

*That the Commissioner of Income tax (A) further erred in law in not appreciating that all documentary evidences including broker notes, bank statements etc. duly submitted proved the genuineness of the transactions hence treatment of Long term capital gain earned by the appellant, as bogus or unexplained income merely on the presumption and guess work that the company was a Shell company is wholly unjustified hence addition made under section 68 of the Act deserves to be quashed. Neither there was any allegation against appellant individually regarding involvement in price rigging of shares nor there was adverse witness relating to the genuineness of the transaction. No incriminating evidence material was found against the appellant to demonstrate the share transactions as non-genuine. No documents such as copy of the statement under section 132(4) of the Act of any director of Messers Goenka Business and Finance Ltd., if any, recorded by Investigation Wing and report of Investigation Wing, Mumbai, were ever made available to the appellant to verify the conclusion drawn by the department as Penny Stock. There being no evidence about the cash transfer, either at the time of purchase or at the time of sale of share by the appellant, treatment of LTCG as unexplained credit under section 68 of the Act and confirmation thereof by Ld. CIT(A) is wholly unjustified, improper and bad in law.*

*06) Section 68: Issue: Burden to prove :-*

*That the Commissioner of Income tax (A) erred in law in considering the transactions in shares of Messers Goenka Business and Finance Ltd as*

*sham or bogus solely on the basis of information provided by Investigation Wing, Mumbai. Sale proceeds were verifiable independently from the record of the company as well from the stock exchange. The appellant had purchased shares of an existing company and after holding the same for longer time part of it were sold. The burden casted upon the appellant was proved and shifted on the taxing authorities which was not discharged by laying cogent and legal evidence hence treatment of long term gain as unexplained credits under section 68 of the Act and confirmation thereof by Ld. CIT(A) is unjustified and bad in law and deserves to be quashed.*

*07) Section 69C: Unexplained expenditure:*

*That the Commissioner of Income tax (A) further erred in law in confirming the addition of Rs.1,22,341/- which was made solely on presumption that the appellant arrangec accommodation entry for earning long term capital gain and must have paid commission to the middleman. Addition so made u/s 69C of the Act and confirmation thereof as unexplained expenditure without any cogent evidence or material is wholly unjustified and bad in law.*

*08) The appellant further craves leave to add, alter, and or to amend the aforesaid grounds of appeal as when necessary.*

3. At the time of commencement of hearing it is observed that the assessee has raised legal grounds challenging the validity of the notice issued u/s 148 as well as validity of the reassessment proceedings. Though the assesse has raised grounds on merits also I decide to first take up the hearing only on legal issues. Since both the sides have given their consent, I proceed to hear and adjudicate the legal issues raised in the instant appeal.

3.1 Facts in brief are that the assesse is an individual and filed her return of income declaring income of Rs.4,24,440/-. The assesse also claimed exemption u/s 10(38) of the Act at Rs.24,39,177/- on account of Long Term Capital Gain from sale of equity shares of M/s. Goenka business & Finance Ltd. The case was processed u/s 143(1)(a) of the Act. Subsequently for carrying

out the reassessment proceedings the notice u/s 148 of the Act issued on 16.04.2021 in compliance the assesse filed the return on 07.12.2021. In view of the judgment of Hon'ble Supreme Court in case of *Union of India vs. Ashish Agrawal 444 ITR 1(SC*) Ld. AO issued fresh notice u/s 148A(b) of the Act dated 24.05.2022 as per new provisions inserted by Finance Act 2021. Thereafter proceedings u/s 148A(d) of the Act were carried out, during which the assesse's submissions challenging reopening were considered but finally Ld. AO initiated reassessment proceedings and framed the assessment u/s 147 r.w.section 144B of the Act dated 24.05.2023 treating the LTCG claimed by the assessee as bogus and made addition u/s 68 of the Act at Rs.24,46,824/-. The AO also made an addition for unexplained expenditure u/s 69C at Rs. 1,22,341/-. Income assessed at Rs.30,11,605/-. Aggrieved the assessee preferred an appeal before the CIT(A) raising various legal issues and grounds on merit but failed to succeed.

3.2 Now the assesse is in appeal before this tribunal. The assesse has raised legal issues challenging the validity of notice issue u/s 148 of the Act and also the validity of reassessment proceedings firstly, stating that the proceedings are time barred secondly, that no valid approval u/s 148 of the Act has been taken and thirdly, there was no proper reason to believe about escapement of income for initiating proceedings u/s 148 of the Act. Submissions filed by the assesse on these three legal issues reads as under:

*"Validity of proceedings u/s 148 of the Act :*
*We respectfully submit that proceedings initiated u/s 148 of the Act were invalid due to following reasons :-*
***A)*** *Barred by time :*
*The return of income was filed on 22.06.2016 (revised on 19.07.2016)wherein long Term gain earned on sale of equity shares at Rs.24,39,177/- was claimed as exempt under section 10(38) of the Act. Notice under section 148 of the Act was issued on 19.04.2021based on information received from SEBI, regarding purchase/sale transactions in equity shares of M/s.Goyenka Business and Finance Limited on the ground that such scrip was"Penny stock".*
*We submit that section 148A of the Act requires that the information based on which reopening is proposed has to be "flagged" as per CBDT risk management matrics. The contention was not accepted by the AO on the ground that such information is available on Insight Portal. The impugned information is,therefore, not as "information" as contemplated u/s 148A of the Act, notice issued was not in accordance with law.*
*Without prejudice, Section 149(1)(b) of the Act provides that no notice u/s 148 of the Act shall be issuedafter a period of three years unless the assessing officer has in his possession any evidence which reveals that the income chargeable to tax has escaped assessment of Rs.50 lacs or more. Kind attention is invited to Para 6.6 and Para 7 of the judgment in the case of Union of India vs. Ashish Agrawal (2022) 444 ITR 1 (SC) wherein the Apex Court categorically held as under :-*
*"Para 6.6 – Section 149 is the provision governing the time limit for issuance of notice u/s 148 of the Income tax Act. The substituted section 149 of the Income tax Act has reduced the permissible time limit for issuance of such a notice to three years and only in exceptional cases ten years. It also provides further additional safeguards which were absent under the earlier regime pre-Finance Act, 2021".*
*In Para-7 of the judgment the Supreme Court observed as under :-*
*"Thus, the new provisions substituted by the Finance Act, 2021 being remedial and benevolent in nature and substituted with a specific aim and object to protect the rights and interest of the assessee as well as and the same being in public interest, the respective High Courts have rightly held that the benefit of new provisions shall be made available even in respect of the proceedings relating to past assessment years, provided section 148 notice has been issued on or after 1st April, 2021. We are in complete agreement with the view taken by the various High Courts in holding so".*
*Section 149 provides"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 u/s 148 or section 153A or section 153C could not have been issued at that time on account of being beyond the time 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 Finance Act, 2021."*
*Therefore, notice u/s. 148 cannot be issued at any time (under new provisions), if a notice could not have been issued u/s. 148 of the Act at that time, on account of being beyond the time limit i.e. 4 years[Time limit under old section 148(1)(b)].*
*In this context, we submit that the Assessment year involved is A.Y. 2016-17, hence the notice could have been issued u/s 148 of the Act even under the new provisions, only and only when the Department is in possession of "information" that income of Rs.50 lacs or more had escaped assessmentrepresented in the form of an asset so for as A.Y. 2015-16 to 2017-18 are concerned. The last date for reopening of assessment for A.Y. 2016-17 was 31.03.2021 unless additional condition regarding escaped income of Rs. 50 lacs or more is proved. The notice u/s 148 of the Act was issued on 19.04.2021 henceit was barred by time because long term capital gain earned on sale of shares was Rs.24,39,177/- only i.e. much less than Rs. 50 lacs. Hence the proceedings initiated u/s 148 of the Act were barred by time.*
*The AO disposed off the objection relying upon CBDT instruction no.1 dated 11.05.2022. Kind attention is invited to recent judgment in the case of SitaramGautam vs. DCIT (2024) 51 ITJ 622 (MP) wherein the Court has held that "Prima-facie it appears that even if the CBDT letter provides otherwise, the same cannot sub-plant the statutory provision u/s 149 of Income tax Act and therefore, prima-facie the petitioner appears to have made out a case of admission and interim relief"*
*Kind attention is also invited to the judgment passed by Delhi High Court in the case of Ganesh Dass Khanna vs. ITO (2024) 460 ITR 546 wherein it was held that notices issued u/s 148 of the Act pertaining to A.Y. 2016-17 & 2017-18 where the escapement of income was below Rs.50.00 lacs, the normal period of limitation i.e. three years was to apply. In comparison, the extended period of ten years would apply in serious tax evasion cases where there was evidence of concealment of income of Rs.50.00 lacs or more in the given period. It was further held that Paragraph 6.1 and 6.2 (ii) of the instruction dated 11.05.2022 issued by CBDT, to the extend it propounds the "Travel back in time" theory, is declared bad in law.*

*B) Validity of approval of "Notice" u/s 148 of the Act:*
*On perusal of para 3 of the notice issued u/s 148 of the Act dated 15/07/2022, it is evident that prior approval of Hon'ble Pr. CIT-1, Indore was obtained on 01/07/2022.We submit that prior approval should have been obtained from Hon'ble Pr. Chief Commissioner of Income Tax, Bhopal, being a mandatory requirement of Section 151(ii) of the Act which provides that specified authority for the purposes of section 148 and section 148A shall beChief Commissioner or Director General, if more than three years have elapsed from the end of the relevant assessment year."*

*Such objection was also disposed off by AO relying upon CBDT instruction dated 11.05.2022. Here again we submit that CBDT instruction dated 11.05.2022 extending the period of limitation cannot over-ride such mandatory provisions of lawunless there is specific amendment in the Act. Therefore, the approval from Pr. CIT, Indore was not in accordance with law which vitiated the proceedings.*

*C) Validity of "Information"for issuance of notice u/s 148 :*
*Without prejudice to above, I submit that notice u/s 148 of the Act was issued on 19.04.2021 based on "information" received from SEBI regarding transactions in equity shares of M/s. Goenka Business & Finance Limited. Kindly appreciate that the so called report from SEBI is highly generalized, and it does not relate to the appellant.It is nothing more than a farce or a cock &bull story whichcannot form basis for drawing any adverse inference.While considering the transactions as Sham or Bogus the assessing authority in para 7.4 referred an order passed by adjudicating officer of SEBI on 25.08.2008 whereas equity shares were purchased by the appellant on 25.03.2014, delivery was taken in D-mat account on 31.03.2014.The AO further himself observed that the BSC had suspended trading in 35 listed companies on 21.12.2015 &the same was resumed in 2016.*

*According to AO independent investigation was done by the Department about penny scrip of M/s. GBFL. Neither the report of SEBI nor any corroborative evidence found by Investigation Wing of the Department regarding sale and purchase of shares of "Goyenka Business" were forwarded to the appellant specially when all related documents to prove genuine purchase and sale of equity shares of M/s. Goyenka Business & Finance Limited, vide letter dated 13.02.2023 were submitted.*
*There was neither any adverse witness nor report of SEBI or any statement given by third party to arrive at the conclusion regarding non-genuineness of the purchase and sale transaction in shares of above company exceptcopy of a statement recorded u/s 133A of the Act of Shri Arun Kumar Khemka, director of another company viz. M/s. Bahubali Forex Company Pvt. Ltd, by the ADIT (Investigation Wing), Mumbai, annexed to assessment order contents of which are dealt here-in-after.*

*We, therefore, submit thatthe issuance of notice u/s148 of the Act based on such information cannot be considered as applicable to all assessees in general, including the appellant, who had genuinely purchased and sold the equity shares of above company and genuine transactions cannot be treated as bogus just on the presumption that the company was a Shell company. We submit that notice u/s 148 of the Act, has been issued by the assessing officer who acted mechanically on the information supplied by SEBI about the long term capital gain earned in share transactions*

*through stock exchange, which is not justified.Reliance is placed on following judgments:-*

a) *CIT V Arun Kumar Agarwal (HUF) (2012) 8 TMI 398 (Jharkhand)*
*Held "It is clear that after getting that enquiry report, the SEBI prima facie found involvement of some of the share brokers in unfair trade practices. Even in a case where the share broker was found involved in unfair trade practice and was involved in lowering and rising of the share price, and any person, who himself is not involved*
*in that type of transaction, if purchased the share form that broker innocently and bonafidely and if he shows his bona fide in transaction by showing relevant material, facts and circumstances and documents, then merely on the basis of the reason that share broker was involved in dealing in the share of a particular co. in collusion with others or in the manner of unfair trade practices against the norms of SEBI and Stock Exchange, then merely because of that fact a person who bonafidely entered into share transaction of that co. through such broker then only by mere assumption such transactions cannot be held to be a shame transaction……"*

*ii) CIT vs. Kelvinator of India Ltd (2010) 320 ITR 526 (SC)*
*Held "After April 1, 1989, the Assessing Officer has power to reopen an assessment, `provided there is "tangible material" to come to the conclusion that there was escapement of income from assessment. Reason must have a link with the formation of the belief.*
*iii)Pr. CIT vs. G. Pharma (I) Ltd (2017) 384 ITR 147 (Del.)*
*iv)CIT vs. Insecticides (I) Ltd (2013) 357 ITR 300 (Del.)*
*v)Durga Prasad Goyal Vs. ITO (2006) 98 ITD 227 (Asr)(SB),*
*vi) ACIT vs. Dhariya Construction Co. (2010) 328 ITR 515 (SC)*
*vii) Pr. CIT vs. Laxman Industrial Resources (2017) 397 ITR 106 (Del)*

*HELD "Without forming a prima facie opinion, on the basis of such material, it was not possible for him to have simply concluded that it was evident that the assessee company has introduced its own unaccounted money in its bank by way of accommodation entries. The basic jurisdictional requirement was application of mind by the assessing officer to the material produced before issuing the notice for reassessment".*
*Thus, the very basis of reopening of assessment u/s 147 of the Act on aforesaid presumption is unjustified and bad in law because there was no tangible material to consider that the share transactions were non-genuine hence proceedings so initiated are bad in law and deserves to be dropped."*

3.3 Though the assesse has referred plethora of judgments mentioned in the written submissions but also placed heavy reliance on the recent judgment of Hon'ble Delhi High court in case of *Ganesh Dass Khanna vs. ITO (2024) 460 ITR 546* stating that the same is squarely applicable on the facts of the instant case.

4. On the other hand, Ld. DR vehemently argued supporting the orders of both the lower authorities and also took me through finding of CIT(A) in support of his contention that the valid notice u/s 148 of the Act has been issued within the prescribed time limit and there were proper reason to believe that the income has escaped and that the assessee has taken accommodation entry in the form of bogus long term capital gain.

5. I have heard rival submissions and perused the record placed before us and also carefully going through decisions and judgments referred and relied by the Ld. Counsel for the assessee. Before me the assessee has raised three fold legal arguments. Firstly, the notice u/s 148 of the Act is time barred secondly, no valid approval as provided u/s 151(ii) of the Act has been taken prior to issue of notice and thirdly, that the AO had no proper reasons to believe before issuing notice u/s 148 of the Act.

5.1 I will first take up legal ground challenging the validity of the proceedings on the ground that they are barred by limitation. The year under appeal is A.Y.2016-17. First notice u/s 148 issued on 06.04.2021 under the old provisions which existed prior to

amendment brought in by Finance Act 2021 which come into effect from 28.03.2021 by virtue of which there were various amendments in section 148 as well as section 149 of the Act. So far as time limit for issuing notice u/s 148 of the Act under the amended provisions as came into effect by virtue of Finance Act 2021, the same is prescribed u/s 149 of the Act reads as under:

> ***"149.*** *(1) No notice under section-148 shall be issued for the relevant assessment year,—*
> *(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);*
> *(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year:*
> ***Provided*** *that no notice under section-148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if such notice could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section, as they stood immediately before the commencement of the Finance Act, 2021:*
> ***Provided further*** *that the provisions of this sub-section shall not apply in a case, where a notice under section-153A, or section-153C read with section-153A, is required to be issued in relation to a search initiated under section-132 or books of account, other documents or any assets requisitioned under section-132A, on or before the 31st day of March, 2021:*
> ***Provided also*** *that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (b) of section-148A or the period during which the proceeding under section-148A is stayed by an order or injunction of any court, shall be excluded:*
> ***Provided also*** *that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of section-148A is less than seven days, such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly.*

*Explanation.—For the purposes of clause (b) of this sub-section, "asset" shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.*
*(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of* section-151.***]***

5.2 Now as per the amended provisions u/s 149 of the Act if the income chargeable to tax represented in the form of asset which is alleged to have escaped assessment is less than Rs.50 lakh notice u/s 148 can be issued only within three years from the end of relevant assessment year. Since the alleged amount escaped from assessment in the instant appeal is only Rs.20,39,177/- the provisions of section 149(1)(b) would not apply. So far as Section 149(1)(a) is concerned for A.Y.2016-17 the notice could have been issued up to 31.03.3020 but the notice is issued on 19.4.2021 which is beyond the time limit prescribed u/s 149(1) of the Act. So what remains for my consideration is about the applicability of section 149A(1)(a) of the Act as per amended provisions or that the notice issued u/s 148 can be treated to be valid having been issued under the old regime considering the period of notice extended on account of Taxation and Other Laws (Relaxations & Amendments of Certain Provisions) Act 2020 (TOLA). I observe that similar issue and almost identical fact about validity of reopening proceedings came up before the Hon'ble High court of Delhi in case of *Ganesh Dass Khanna & others vs. ITO (supra)* and I find it appropriate to reproduce below the submission made by assesse before the Hon'ble Court:

*Submissions on behalf of the assessees:*

*23. On behalf of the assessees, the following broad contentions were raised:*

*(i) Both the orders passed under Section 148A(d) and the consequent notices issued under Section 148 of the 1961 Act have transcended the prescribed limitation, which is three (03) years commencing from the end of the relevant AYs. Since the AYs in issue are 2016-17 and 2017-18, the end date for expiration of limitation for the said AYs would be 31.03.2020 and 31.03.2021. In all cases, the order under Section 148A(d) and the notice under Section 148 has been issued on or after 01.04.2021, i.e., after the expiry of the three (03) year limitation period prescribed under Section 149(1)(a).*

*(ii) The extended period of limitation provided in Section 149(1)(b) of the 1961 Act can be taken recourse to only if the conditions precedent provided therein are fulfilled. One such condition provided in Clause (b) of Sub- Section (1) of Section 149 is that income chargeable to tax, which allegedly has escaped assessment, amounts to or is likely to amount to Rs 50 lakhs or more. In the above-captioned writ petitions, even according to the revenue, the alleged escaped income is below Rs.50 lakhs. That being the case, the period of limitation for issuing notice under Section 148, which extends to ten (10) years, is not available to the revenue.*

*(iii) The revenue"s stand (which is primarily based on the CBDT Instruction dated 11.05.2022) that the directions issued by the Supreme Court in Ashish Agrawal"s case, when read along with TOLA, will allow the "...extended reassessment notices to travel back in time to their original date when such notices were to be issued...." is unsustainable in law for the following reasons:*

*(a) The law does not support the travel back in time theory propounded by the revenue. Such theory is neither borne out from the decision rendered by the Supreme Court in Ashish Agarwal"s case nor does it have any roots in the provisions of the 1961 Act as amended by FA 2021. As a matter of fact, TOLA also does not support this theory.*

*(b) Contrary to the revenue"s submission, TOLA has created no such legal fiction which would allow the notices issued under Section 148, which were issued in and about May-June 2022, to be treated as having been issued on or before 31.03.2021, to calculate the period of limitation prescribed in Section 149(1)(a) of the 1961 Act. [See Keenara Industries Pvt. Ltd. vs. ITO, Surat 2023 (3) TMI 104 (Gujarat High Court); Rajiv Bansal v. Union of India and Ors 2023 (2) TMI 1081 (Bombay High Court) and Mon Mohan Kohli (Delhi High Court) paras 86 to 89]*

*(c) The Instruction dated 11.05.2022 issued by the CBDT, which states in paragraph 6.1 that the extended reassessment notices would travel back in time to their original date when such notices were issued, provides no clarity as to what that "original date" would be.*

*(d) The fallacy in the revenue''s stand is that while it wishes to travel back in time by applying the period of limitation available prior to FA 2021 coming into force, it simultaneously seeks to apply the amended provisions.*

*Therefore, if the unamended provisions are applied, the end date for expiration of limitation for AYs 2016-17 and 2017-18 would be 31.03.2023 and 31.03.2024, respectively. In such a situation, TOLA would have no application, contrary to what is contended by revenue, as it applied to compliances and proceedings whose limitation expired between 20.03.2020 and 31.03.2021.*

*(e) The decision of the Supreme Court rendered in Ashish Agarwal''s case clearly mandated that post 31.03.2021, the new regime, as encapsulated in FA 2021, would apply. There was no reference in the said judgment to the travel back theory propounded on behalf of the revenue. All that the Supreme Court indicated in the said judgment that Section 148 notices issued between 01.04.2021 and 30.06.2021 would be treated as notices under Section 148A(b), i.e., the new regime. No suggestion was made in the Supreme Court's decision that the impugned notices issued under Section 148 would be deemed as having been issued before 31.03.2021, as per the unamended provisions. As is evident upon perusal of the judgment of the Supreme Court, its direction to treat Section 148 notices as notices issued under the new regime was to quell the possibility of reassessment proceedings failing, even where they were viable under FA 2021. [See paragraph 8 of the judgment]*

*(iv). The directions contained in the judgment of the Supreme Court in Ashish Agarwal''s case, while exercising its powers under Article 142 of the Constitution, were issued keeping the aforesaid object in mind while specifically holding that all defences would be available to the assessees. Thus, notices issued on or before 31.03.2021 will be governed by the old regime, while those issued on or after 01.04.2021 must be aligned with the new regime. Accordingly, all those notices issued between 01.04.2021 and 30.06.2021 stood converted to notices issued under Section 148A(b) of the new regime and were, thus, subject to the amended Section 149 of the 1961 Act.*

*(v) The revenue''s stand is flawed as that would result in deferring the application of the amended provisions of Section 149. The revenue, which represents the executive, is not invested with the power to postpone the*

*implementation of Sections 2 to 88 of FA 2021, which included the substituted Sections 147 to 151 of the 1961 Act. TOLA does not delegate any power to the Central Government to postpone the applicability of the new regime enacted by the Legislature.*

*(vi) The revenue"s stand is erroneous as it fails to consider that with the enactment of FA 2021, it not only repealed but also substituted the provisions of Section 147 to Section 151. Substitution involves a two-step procedure. In the first instance, the subject provision ceases to exist. The next step brings into existence a new provision. In that sense, the legislative tool of substitution is different from "suppression" or a mere repeal of the existing provision. [PTC India Ltd. v Central Electricity Regulatory Commission (2010) 4 SCC 603; Government of India v Indian Tobacco Association (2005) 7 SCC 396; Zile Singh v State of Haryana, (2004) 8 SCC 1; Income Tax Officer v Vikram Sujitkumar Bhatia (2023) SCC OnLine SC 370].*

*(vi)(a) The relevant extract of the Finance Minister"s speech and the Memorandum explaining the provisions of Finance Bill 2021 [hereafter referred to as the "Memorandum"] shed light on the object of bringing about amendments to Sections 147 to 151. The amendments intended to reduce litigation and compliance burden, remove discretion, impart certainty, and promote ease of doing business. It is in this light that for cases where the escapement of income was below Rs.50 lakhs, the limitation period was reduced to three (03) years, whereas for those cases where the escaped amount was Rs. 50 lakhs or more, the revenue was given leeway to enquire into those cases up to ten (10) years.*

*(vi)(b) The new regime would thus apply to even past AYs, provided notices under Section 148 were issued on or after 01.04.2021. The viability of these notices would have to be tested against the backdrop of the amended Section 149 of the 1961 Act. TOLA, which received the assent of the President on 29.09.2020 and the Notifications issued under it, could not have amended, modified or even excluded the applicability of FA 2021, which was not born on that date; FA 2021 received the assent of the President of India on 31.03.2021.*

*(vii). The travel back in time theory propounded by the revenue is manifestly arbitrary for the following reason: As per Section 153(2) of the 1961 Act, reassessment proceedings are required to be completed within twelve (12) months from the end of the Financial Year (FY) in which notice under Section 148 is served on the assessee. Thus, if the notice issued under Section 148 is construed to travel back in time, i.e., to 31.03.2020/31.03.2021, the reassessment proceedings ought to have concluded by 31.03.2021/31.03.2022. The portal set up by the revenue, however, discloses that the end date provided for the completion of*

*reassessment proceedings is 31.03.2024. This date has been provided having regard to the fact that the notices were served in FY 2022-23.*

*(viii). The circulars issued by the CBDT cannot run contrary to the decision of the Supreme Court. Likewise, the delegate cannot act in contravention of the Parent Act. Thus, the circulars/instructions/notifications issued by the Central Government cannot override the Parent Act.*

*(ix). The rule of strict interpretation applies to taxing statutes. It is not permissible in the context of taxing statutes to cure deficiencies. The Court should look at the plain words of the statute. Thus, if the assessee does not come within the ambit of the charging provision and the words are ambiguous and open to more than one interpretation, the benefit should enure to the assessee. Furthermore, if the law requires something to be done in a particular manner, it ought to be done in that manner or not at all.*

*(x). At the time of the enactment of FA 2021, it can be safely assumed that the legislature was aware of the state of law, as it existed then, which included the provisions of Section 149, TOLA and the Notifications issued under TOLA. However, despite such a situation obtaining, no provision was made for the extension of time limits under the amended Section 149, as exemplified by Notifications dated 31.03.2021 and 27.04.2021. Upon the enactment of FA 2021, TOLA and the Notifications issued under it were impliedly effaced. The Notifications dated 31.03.2021 and 27.04.2021 do not prescribe any time limit; instead, they merely extend the end dates specified under the repealed provisions of Section 149. Pursuant to the substitution of the old provisions of Section 149 with the enactment of FA 2021, the said Notifications cannot survive. [See Municipal Council Palai v. T. J. Joseph, 1963 SCC OnLine SC 55; Fibre Boards Pvt. Ltd. vs CIT, (2015) 376 ITR 596 (SC) and CIT v. Venkateswara Hatcheries (P.) Ltd, 237 ITR 174 (SC)]*

*(xi) With the enactment of FA 2021, the erstwhile provisions of Section 149(1) were repealed and were substituted by a new provision. The immediate impact of the substitution was, while the limitation prescribed under Clause (a) of the erstwhile Section 149(1) was reduced from four (04) years to three (03) years, no grandfathering clause was provided. As a result, Clause (a) of the Section 149(1) stood wholly obliterated. In contrast, the limitation prescribed in Clause (b) of the erstwhile Section 149(1) stood enhanced from six (06) years to ten (10) years under the new provision. Significantly, a grandfathering clause has been provided, and accordingly, the limitation is governed by Clause (b) of the erstwhile Section 149(1)(b) till AY 2021-22, subject to fulfilment of the prescribed conditions provided therein.*

*(xii). Assuming without admitting that the Notifications issued under TOLA can be relied upon, the consequent notices issued under Section 148, pursuant to orders passed under Section 148A(b), would have to be tested against the provisions of Section 149, as amended via FA 2021.*

*(xiii). Instruction dated 11.05.2022 is bad in law as it seeks to deprive the assessees of defences available to the assessees under the amended Section 149 of the 1961 Act, an aspect which the Supreme Court has recognized in its judgment rendered in Ashish Agrawal''s case.*

5.3 Further I observe that the Hon'ble High Court of Delhi in case of *Ganesh Dass Khanna & others vs. ITO (supra)* after considering the decisions referred by the revenue in the case of *Touchstone Holding Pvt. Ltd. vs. ITO and Ors. (2023) 451 ITR 196 and Salil Gulati v. DCIT 2022 3709-DB* and also considering ratio laid down by the Hon'ble Apex court in the case of *Union of India vs. Ashish Agrawal's (supra)* has held as under:

*"48. Therefore, the arguments advanced on behalf of the revenue that principles of constructive res judicata would apply are flawed for the following reasons:*

*(i) Firstly, a perusal of the judgments in Touchstone and Salil Gulati''s case, as noticed above, did not deal with the facts and circumstances, which obtain in the instant cases. There was no occasion for the writ petitioners in those cases to invoke the provisions of Clause (a) Sub-Section (1) of Section 149, given the fact that the alleged escaped income was not below Rs. 50 lakhs.*

*(ii) Secondly, the defence that the limitation has expired goes to the root of the jurisdiction of the AO to trigger reassessment proceedings. It is well-*

*established that the principle of res judicata is dicta, which governs procedure, and therefore, if the proceedings are wrongly initiated, it cannot come in the way of the court entertaining such an action. The estoppel, waiver or res judicata principles cannot apply in such situations. [See Chandra bhai K. Bhoir and Ors. v Krishna Arjun Bhoir and Ors, (2009) 2 SCC 315. Union of India and Another v. Association of Unified Telecom Providers of India and Ors., (2011) 10 SCC 543, Ashok Leyland Ltd. v. State of Tamil Nadu and Another (2004) 3 SCC 1 at 2861-63].*

*(ii)(a) Explanation IV to Section 11 of Code of Civil Procedure, 1908 [hereafter referred to as "CPC"], which adverts to the principle of constructive res judicata codifies, in a sense, what is a principle of public policy to prevent, among other things, multiplicity of proceedings between the same parties. Therefore, the expression in Explanation IV that the party to the proceedings "might have" and "ought to have" raised an issue rests on the well-established norm/rule that the party invoking the doctrine of res judicata to non-suit a litigant should be able to demonstrate that the opposing party was bound to raise the issue to defend its position.*

*(ii)(b) This is evident from the language of Explanation IV to Section 11 of the CPC from which this principle has been borrowed, where 0the expression used is "might and ought" and not "might or ought". [See Alka Gupta v Narender Kumar Gupta (2010) 10 SCC 141; Shiv Chander More v. Lt. Governor, (2014) 11 SCC 744; Ferro Alloys Corpn. Ltd. and Anr. v. Union of India and Ors. 1999 4 SCC 149; Shuja-ud-Din v. Siraj Din, AIR 1941 Lah 139].*

*(ii)(c). More importantly, in these cases, the interpretation of Section 149(1)(a) was not an issue therefore the principle of constructive res judicata, in our opinion, is not applicable.*

*(ii)(d) Furthermore, if the judgements rendered in Touchstone and Salil Gulati are read in the manner in which the revenue is seeking to profess, they would run counter to the ratio of the judgement of the Supreme Court in the Ashish Agrawal case.*

*49. The arguments advanced on behalf of the revenue that since time limits have been extended by the Central Government by virtue of the Notifications issued under Section 3(1) of TOLA and, therefore, the impugned actions which were taken much before the end date, i.e., 30.06.2021 were valid in the eyes of the law, is misconceived for the following reasons:*

*(i) First, there was no power invested under TOLA, and that too via Notifications, to amend the statute, which had the imprimatur of the Legislature. Since, with effect from 01.04.2021, when FA 2021 came into force, the Notifications dated 31.03.2021 and 27.04.2021, which are sought to be portrayed by the revenue as extending the period of limitation, were contrary to the provisions of Section 149(1)(a) of the Act, in our opinion, they lost their legal efficacy.*

*(ii) Second, the extension of the end date for completion of proceedings and compliances, a power which was conferred on the Central Government under Section 3(1) of TOLA, cannot be construed as one which could*

*extend the period of limitation provided under Section 149(1)(a) of the 1961 Act.*

*As per the ratio enunciated in Ashish Agrawal"s case, Section 149(1)(a) would apply to AY 2016-17 and AY 2017-18.*

*50. The other argument that the provision of the third and fourth proviso would help the cause of the revenue by excluding the periods provided therein fails to take into account the following:*

*50.1. The third proviso appended to Section 149 of the Act, inter alia, provides that the time or extended time allowed to the assessee as per the show-cause notice issued under Section 148A(b) of the 1961 Act shall stand excluded for computation of limitation provided under the said Section. 50.2. The fourth proviso provides that where the timeframe adverted to in the third proviso leads to the situation that the period of limitation available to the AO for passing an order under 148A(d) is less than seven (7) days, then the remaining period shall stand extended to seven (7) days.*

*Consequently, the limitation under Sub-Section (1) shall be deemed to be extended accordingly.*

*50.3. It is vital to bear in mind that a plain reading of the third proviso would show that it only excludes the timeframe obtaining between the date when the notice under Section 148A(b) was issued and the date by which the assessee filed its response within the time and extended time provided in the said notice.*

*50.4. Therefore, the date cannot be shifted beyond the date when the original notice under Section 148 of the unamended 1961 Act was issued, which was treated, as per the judgment in Ashish Agrawal"s case, as notice under 148A(b). Concededly, these notices were issued between 01.04.2021 and 30.06.2021, by which time the limitation under Section 149(1)(a) of the Act had already expired.*

*50.5. The fourth proviso, in our opinion, can have no impact on the outcome of the cases at hand, as it provides for a situation where, after the exclusion of the timeframe referred to in the third proviso, the time available to the AO for passing an order under Section 148A(d) of the Act is less than seven (7) days. The said proviso states that in such a situation, the remaining timeframe shall stand extended to seven (7) days, and consequently, the limitation under Sub-Section (1) of Section 149 shall also stand extended.*

*51. This brings us to the tenability of the travel back in time theory encapsulated in paragraphs 6.1 and 6.2(ii) of the Instruction dated 11.05.2022. For convenience, the relevant part of the instruction is set forth hereafter:*

*"...6.0 Operation of the new section 149 of the Act to identify cases where fresh notice under section 148 of the Act can be issued:*

*6.1 With respect of [to] operation of new section 149 of the Act, the following may be seen:*

*Hon'ble Supreme Court has held that the new law shall operate and all the defences available to assessees under section 149 of the new law and whatever rights are available to the Assessing Officer under the new law shall continue to be available.*

*Sub-section (1) of new section 149 of the Act as amended by the Finance Act, 2021 (before its amendment by the Finance Act, 2022) reads as under:-*

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

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

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

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

*Hon'ble Supreme Court has upheld the views of High Courts that the benefit of new law shall be made available even in respect of proceedings relating to past assessment years. Decision of [the] Hon'ble Supreme Court read with the time extension provided by TOLA will allow extended reassessment notices to travel back in time to their original date when such notices were to be issued and then new section 149 of the Act is to be applied at that point.*

*6.2 Based on [the] above, the extended reassessment notices are to be dealt with as under:*

*(i) AY 2013-14, AY 2014-15 and AY 2015-16: Fresh notice under section 148 of the Act can be issued in these cases, with the approval of the specified authority, only if the case falls under clause*

*(b) of sub-section (1) of section 149 as amended by the Finance Act, 2021 and reproduced in paragraph 6.1 above. Specified authority under section 151 of the new law in this case shall be the authority prescribed under clause (ii) of that section.*

*(ii) AY 16-17, AY 17-18: Fresh notice under section 148 can be issued in these cases, with the approval of the specified authority, under clause (a) of sub-section (1) of new section 149 of the Act, since they are within the period of three years from the end of the relevant assessment year. Specified authority under section 151 of the new law in this case shall be the authority prescribed under clause (i) of that section..."*

*[Emphasis is ours]*

*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 11.05.2022 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 11.05.2022 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 01.02.2021 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 ₹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.*

*xxx xxx xxx 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:-*

*xxx xxx xxx*

*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)*

*xxx xxx xxx*

*(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.*

*(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:*

*• 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...."*

*[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.*

*55. Furthermore, the reference made in paragraphs 6.1 and 6.2(ii) of the Instruction dated 11.05.2022, to the extent it propounds the "travel back in time" theory, is declared bad in law.*

*56. The writ petitions are disposed of in the aforesaid terms."*

5.4 Now examining the facts of the instant case in the light of the above judgment of Hon'ble Delhi High Court I find that the same is squarely applicable on the facts of the instant case and respectfully following the same I am incline to hold that the reopening proceedings carried out on the instant case are barred by limitation under the old as well as new provision which came with effect from 28.03.2021 by Finance Act 2021 under the amended provisions effective from 28.03.2021. The case of the assesse neither falls under the time limit provided u/s 149(1)(a) nor falls u/s 149(1)(b) of the Act as the escaped income alleged is below Rs.50 lakhs and notice has been issued after completion of three years from the end of relevant assessment year. Even the last date of reopening of the assessment as per old provisions for A.Y.2016-17 was 31.03.2021 but the notice has been issued u/s 148 on 19.04.2021. Therefore the impugned notice issued u/s 148 of the Act is barred by limitation both under the old provisions as well as new provisions effective from 28.03.2021. I therefore, hold the notice u/s 148 of the Act as bad in law and invalid and quash the reassessment proceedings completed on 24.05.2023.

5.5 Though I have quashed reassessment proceeding on the ground that the notice u/s 148 of the Act is time barred but I find that the assessee deserve to succeed on second legal ground also raised on the validity of approval of notice u/s 148 of the Act as in the case of the assessee approval should have been taken by Chief Commissioner or Director General for issuing notice after three years from the end of relevant assessment year whereas the notice to the assessee has been issued with approval of Pr. CIT-1 which is not in accordance with the law. Therefore, the approval is not in accordance with the mandatory requirement of section 151(ii) of the Act and thus the notice cannot be treated as valid. Since we have quashed reassessment proceedings by holding that notice u/s 148 of the Act is barred by limitation and that no proper approval taken by the Ld. AO prior to issuance of notice u/s 148 of the Act therefore, dealing with the remaining grounds would be merely academic in nature and therefore the same are rendered infructuous. As the reassessment proceedings have been held by me as illegal and bad in law the impugned addition made u/s 68 of the Act at Rs.24,39,177/- and u/s 69C of the Act at Rs.1,22,341/- stands deleted. Legal issue raised by the assesse in Ground No.2 and Ground No.3 are hereby allowed.

6. In the result appeal of the assessee is allowed as per terms indicated above.

Order pronounced in the open court on 20.09.2024.

***Sd/-***

**(MANISH BORAD)**
Accountant Member

**Indore,_ 20.09.2024**

***Patel/Sr. PS***

*Copies to:* *(1)* *The appellant*
*(2)* *The respondent*
*(3)* *CIT*
*(4)* *CIT(A)*
*(5)* *Departmental Representative*
*(6)* *Guard File*

*By order*

*Sr. Private Secretary*
*Income Tax Appellate Tribunal*
*Indore Bench, Indore*