IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "C" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

ITA No.	**A.Y.**	**Appellant**	**Respondent**
2573/Mum/24	2011-12	Comfort Intech Limited, A-301, Hetal Arch, Opp: Natraj Market, S.V.Road, Malad West Mumbai PAN: AAACC5567H	Assistant Commissioner of Income Tax-4(1)(1), 6th Floor, Aayakar Bhavan, M.K. Road, Mumbai
2926/Mum/24	2012-13		
2218/Mum/24	2011-12	Assistant Commissioner of Income Tax-4(1)(1), 6th Floor, Aayakar Bhavan, M.K. Road, Mumbai	Comfort Intech Limited, A-301, Hetal Arch, Opp: Natraj Market, S.V.Road, Malad West Mumbai PAN: AAACC5567H
2216/Mum/24	2012-13		
2212/Mum/24	2014-15		

For Assessee :	Shri Rajiv Khandelwal& Shri Neelkanth Khandelwal & Shri Akash Kumar,
For Revenue :	Shri Yogendra T. Wakare, Sr.DR

Date of Hearing :	08-08-2024
Date of Pronouncement :	27-09-2024

ORDER

PER BENCH :

These cross appeals of the assessee filed for theAYs. 2011-12& 2012-13 and the appeals filed by the Revenue for the AYs. 2011-12, 2012-13 & 2014-15 are directed against the orders passed by the Ld. Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC), Delhi ['Ld.CIT(A)'].All these appeals were heard together and hence they are being disposed of by this common order, for the sake of convenience.

2. The assessee is engaged in the business of providing inter corporate loans, personal loans, trade financing, bill discounting, syndication of Indian and foreign currency loans, other types of loans, project appraisal etc.

3. We shall now take up the appeals filed for AY. 2011-12. In the appeal of the assessee, it is challenging the validity of reopening of assessment. Since this legal issue goes to the root of the matter, we shall first deal with it.

4. The assessee filed its return of income for AY. 2011-12 on 24-09-2011 declaring a total income of Rs.71.18 lakhs, which was processed u/s. 143(1) of the Income Tax Act, 1961 ('the Act') on 18-07-2012. The regular assessment u/s. 143(3) of the Act was completed on 30-01-2014 determining total income at Rs.75.00 lakhs. Subsequently, the AO reopened the assessment by issuing notice u/s. 148 of the Act on 26-03-2018. It is pertinent to note that this assessment has been reopened by the AO after expiry of four years from the end of the AY. 2011-12. In response to the notice, the assessee filed its return of income declaring income of Rs.75.00 lakhs.

5. The assessee is challenging the validity of reopening of assessment. The reasons recorded by the AO for reopening of assessment is extracted below:-

> *"1. Assessee is an Company. Return of Income for A.Y. 2011-12 was filed on 24-09- 2011 declaring total income of Rs. 71.18.170/- Return was processed u/s 143(1) dt. 18-07-2012. Subsequently case was selected for scruitiny. Scruitiny assessment u/s 143(3) was completed on 30-01-2014 with assessed income of Rs 74,99,710. Assessee has shown business income from Financial Services.*
>
> *2. Information was received in the case of the assessee from the 0/0 Deputy Commissioner of Income Tax (Central Circle) Unit-6(3), Mumbai vide letter dated 15- 09-2017. It was informed that assessee M/s Comfort Intech Ltd is a penny stock company which is used for providing accommodation entries. A Search & Seizure action u/s 132 of the Act was carried out on the assessee by Investigation wing of Income Tax, Mumbai. During the search action the statement of Mr.Anil Agrawal was recorded. Anil Agrawal is director in assessee company and is a key person in comfort group. In the statement. Mr.AnilAgrawal has accepted that he is an entry operator and has used bogus entities/companies managed by him for providing various bogus accommodation entries to the various beneficiaries for commission. In another search operation conducted by Delhi investigation wing statement of another entry operator Mr.Raj Kumar Kedia was recorded. Raj Kedia has highlighted role of Mr.Anil Agrawal in providing accommodation entries in the form of long term capital gain.*
>
> *3. Various entities which have purchased shares of assessee company are identified as bogus companies, who have acted as exit providers. Total value of shares of assessee company purchased by these exit providers comes to Rs.15,35,65,375. Statements of the operators who managed these exit provider companies are recorded and they have agreed that these are paper companies which are used for providing accommodation entries.*
>
> *4. SB1 has carried out investigation in the case of First Financial Services Pvt Ltd. and suspended this entity from trading on Bombay stock exchange. SEBI's order emphasized role of Mr.Anil Agrawal in providing accommodation entries.*
>
> *5. Upon receipt of the Information, Return of Income of assessee and movement of its shares on Bomaby stock exchange was independently assessed. It was found that shares of assessee company were issued and listed on 21-11-2008. Adjusted closing price on 29-10-2009 was Rs.1.99. The price remained more or less constant till July 2009 and was*

Rs.3.2 as on 17-07-2009. Thereafter price started rising and reached Rs. 29.6 on 23-11-2009. This is an increase of 82.5% in just period of four months. The price remained in the range Rs.30 till 1-06-2010 and thereafter fell to Rs.17.40 on 02-06-2010 due to rights issue in the ratio of 1:1. The price remained in the vicinity of Rs.15 till Nov 2010 and thereafter there was a steep fall in price. During this phemomenal price rise there was no corporate announcement. Finances of the company do not support this rise. This price rise is achieved through rigging and manipulation.

6. Assesse company has recorded turnover of Rs.118.16 Crores for AY 2011-12. Mr. Anil Agrawal and Mr.Raj Kumar Kedia in their statements have agreed that they are providing accommodation entries after receiving commission which is to the tune of 4-6% of amount of accommodation entries provided. Assessee company has turnover of Rs 118.16 Crores, hence it can be said that is has received commission of 6% of total turnover. Assessee company has not disclosed this income from commission in its return of income. Hence it should be charged as unexplained cash credit u/s 68. Hence income escaped the assessment comes to Rs.7.08 Crore which is more than Rs.1,00,000.

7. So, after due application of mind on the materials available on the record, I have reason to believe that amount of more than Rs.1,00,000. has escaped the assessment for A.Y. 2011-12.

8. In this case a return of income was filed for the year under consideration and scrutiny assessment u/s 143(3) of the Act was completed. Accordingly, in this case, the the requirement to initiate proceedings u/s 147 is reason to believe that income has escaped assessment which is more than Rs.1,00,000. And Failure on be half of assessee to disclose truly and fully all material facts necessary to complete the scrutiny assessment. Both of which are duly recorded in above paragraphs.

9. It is pertinent to mention here that in this case assessee has filed return of income for the year under consideration and assessment as stipulated u/s 2(40) of the Act was made and the return of income was processed u/s 143(1) of the Act. In view of the above, provisions of clause (c) of explanation 2 to Section 147 are applicable to the facts of this case and the assessment year under consideration is deemed to be a case where income chargable to tax has escaped assessment and assessee has failed to disclose all material facts necessary for completion of assessment.

10. In view of the above, I have reason to believe that the income to the extent of more than Rs.1,00,000 chargeable to tax for A.Y.2011-12 has escaped assessment, as assessee has failed to disclose fully and truly

all material facts necessary for its assessment in this case in terms of the provisions of section 147 of the 1.T.Act.

11. This case is beyond four years from the end of the assessment years under consideration. Hence necessary sanction to issue the notice u/s 148 has been sought from Principal Commissioner of Income Tax as per the provisions of the Section 151 of the Act so that notice u/s 148 can be issued to the assessee."

We notice that, even though the assessee raised the issue of validity of reopening of assessment before Ld.CIT(A), yet the First Appellate Authority did not address the same.

6. It is necessary to deliberate upon the facts that led to the reopening of assessment. The AO has recorded in the reasons for re-opening of assessment that the assessee was subjected to search and seizure operations u/s. 132 of the Act in April, 2015. However, according to the Ld. AR, the search took place in the hands of Shri Rajkumar Kedia. A statement was recorded from him on 13-06-2014, which was later retracted by him on 14-10-2014. However, he withdrew the retraction on 31-03-2015. Subsequently, a statement recorded u/s. 132(4) of the Act from Shri Anil Agarwal on12-04-2015, who was the Director of the assessee company. However, he also retracted the statement on 14-04-2015. According to Ld. AR, this statement was recorded during the course of search action in the hands of Shri Anil Agarwal (HUF). It is the submission of the assessee that no search was conducted in the hands of the assessee. In the statements taken from Shri Rajkumar Kedia and Shri Anil Agarwal, both the persons accepted that they were entry operators and were providing accommodation entries in the form of long term capital gains. It is the submission of the Ld.AR that both these parties did not mention the name of the assessee company in their respective statements. Based on the above facts, the AO entertained belief that there was escapement of income in the hands of the assessee. The AO noticed that

the sales turnover of assessee company was Rs.1,18,28,56,920/- for the year ending 31-03-2011. In the reopened assessment, the AO estimated the commission income at 4% of the bogus Long Term Capital Gains, which worked out to Rs.4,73,14,277/-. The Ld.CIT(A) reduced the commission income to 0.25%. Hence, the Revenue is in appeal challenging the relief granted by Ld.CIT(A). The assessee is in appeal challenging the addition sustained by him and further it is also challenging the validity of reopening of assessment.

7. We heard the parties on the issue of validity of reopening of assessment. The Ld.DR placed his reliance on the orders passed by the tax authorities on this issue. We notice that the AO has reopened the assessment of the assessee for the AY. 2011-12 apparently on the basis of statements taken from a person named Shri Rajkumar Kedia and Shri Anil Agarwal. Following inconsistencies were pointed out by the Ld. AR on the reasons so recorded by the AO:-

(a) The AO has stated that a search and seizure action u/s 132 of the Act was taken in the hands of the assessee. According to Ld A.R, search action was conducted in the hands of Anil Agarwal (HUF) and not on the assessee.

(b) A statement from Shri Anil Agarwal was recorded only during the course of search in the case of Anil Agarwal (HUF).

(c) The AO has referred to the statement recorded from another person Shri Rajkumar Kedia and has stated that Shri Rajkumar Kedia has highlighted the rold of Shri Anil Agarwal in providing accommodation entries in the form of long term capital gains. According to Ld A.R, Shri Kedia did not highlight as mentioned by the AO.

(d) The AO is referring to the investigation conducted in the case of First Financial Services P Ltd, which is nothing to do with the affairs of the assessee company.

(e) The AO is referring to the price movements of shares of assessee company. The share prices of the assessee company are determined by the market forces and there is no connection between the market prices of shares of assessee company with the alleged escapement of income in the hands of the assessee company.

According to the Ld.AR, the above inconsistencies have occurred mainly for the reason that the AO did not apply his mind at all on the issue and he has fully relied upon the information given by the O/o. Deputy Commissioner of Income tax (Central Circle), Unit-6(3), Mumbai. Accordingly, it was contended that the AO has reopened the assessment on borrowed satisfaction. Further, it was submitted that Shri Anil Agarwal has retracted his statement and hence the AO could not have placed reliance on the above said retracted statement. With regard to the reliance placed upon the statement given by Shri Rajkumar Kedia, it was submitted that he has taken different stands, viz., he gave statement, then retracted the same and again withdrew the retraction. Hence, the AO could not have placed reliance on the statement given by Shri Rajkumar kedia. Further, it was submitted that the above said two persons might have indulged in manipulation of prices of shares of assessee company and for that reasons, it cannot be said that there was escapement of income in the hands of the assessee company.

8. On a careful perusal of the reasons recorded by the AO and the deficiencies pointed out by the Ld.AR, we notice that there is total lack of application of mind on the part of the AO. We notice that the AO has placed reliance on incorrect facts and unreliable statement given by Shri

Rajkumar Kedia. Further, the allegation of providing Long Term Capital Gains is on the above said person and also on Shri Anil Agarwal, the director of the assessee company. The allegation is that they were manipulating the prices of shares of assessee company for providing bogus Long Term Capital Gains. There should not be any dispute that the assessee company and its shareholders are different persons. The person holding the shares of the assessee-company are entitled to deal with it as he likes and the profit/loss arising on sale of the shares of assessee-company is assessable in the hands of the concerned shareholder. Hence, the persons, who are dealing in the shares of the assessee-company in the open market are liable to the consequences of such dealing. Hence, even if it is assumed that Shri Rajkumar kedia and Shri Anil Agarwal have used the shares of the assessee-company for generating bogus Long Term Capital Gains, it is they who are liable to be assessed for the income, if any, generated by them through those transactions.

9. In our consideration, the income, if any, generated by the above said persons cannot be considered to be the income of the assessee. Accordingly, we are of the view that, in the facts discussed above, the AO has entertained wrong belief about escapement of income in the hands of the assessee company.Accordingly, we are of the view that there is no vital link between the materials (which are also deficient in many aspects) and the alleged reason to believe that there was escapement of income in the hands of the assessee. Accordingly, we are of the view that the AO was not justified in reopening the assessment of AY.2011-12 on the reasons recorded by him. Accordingly, we hold it to be invalid and not in accordance with the mandate of law. Consequently, the assessment order passed by the AO for the AY.2011-12 is liable to be quashed. We order accordingly.

10. Since we have quashed the assessment order, the appeal filed by the Revenue for the AY.2011-12 is also liable to be dismissed.

11. We shall now take up the appeals filed for the AY.2012-13. In this year also, the assessee is challenging the validity of reopening of assessment. The AO has recorded identical reasons in this year also, as that recorded in AY.2011-12. Accordingly, the decision rendered by us in the preceding paragraphs on the issue of validity of reopening of assessment of AY.2011-12 shall equally apply to this year also. Accordingly, we hold that the AO was not justified in reopening the assessment of AY.2012-13 on the reasons recorded by him. Accordingly, we hold it to be invalid and not in accordance with the mandate of law. Consequently, the assessment order passed by the AO for the AY.2012-13 is liable to be quashed. We order accordingly.

12. Since we have quashed the assessment order, the appeal filed by the Revenue for the AY.2012-13 is also liable to be dismissed.

13. We shall now take up the appeal filed by the Revenue for the AY. 2014-15. In this year also, the assessee is challenging the validity of notice issued u/s. 148 of the Act. In this year, the AO issued notice u/s. 148 of the Act on 28-07-2022. It is the contention of the assessee that the time limit for issuing notice u/s. 148 of the Act under the old provisions has already expired on 31-03-2021 and hence the AO could not have reopened the assessment of this year and accordingly, it was contended that the AO could not have placed reliance on the decision rendered by the Hon'ble Supreme Court in the case of Union of India vs. Ashish Agarwal (Civil Appeal No. 3005/2022 dated 4th May, 2022; 444 ITR 1)(SC).

14. We notice that the above said contention of the assessee finds support from the decision rendered by Hon'ble jurisdictional Bombay High

Court in the case of New India Assurance Company Ltd vs. ACIT (2024)(158 taxmann.com 367)(Bom). The above said case was related to AY. 2013-14 and the Revenue issued notice u/s.148 of the Act on 28-07-2022. As per the provisions of Sec.149 of the Act, the time limit for issuing notice u/s.148 of the Act had expired on 31-03-2020. Accordingly, the Hon'ble Bombay High Court held that the reopening notice issued in June 2021 is barred by limitation and hence notice dated 28-7-2022 issued u/s.148 of the Act in pursuance of the decision rendered in the case of Ashish Agarwal is liable to be quashed. The case of the Revenue was that the time limit extended by TOLA and the decision rendered by the Hon'ble Supreme Court in the case of Ashish Agarwal(supra) would validate the notice issued u/s. 148 of the Act after the expiry of time limit prescribed u/s. 149 of the Act. The said arguments were rejected by the Hon'ble jurisdictional High Court with the following observations:-

> *"35 The Revenue's contention that the reopening notice was to relate back to an earlier date is entirely flawed and unacceptable. Thus, the reassessment notices issued for AY 2013-14 are patently barred by limitation as the six years limitation period under the Act (as extended by Section 3 of TOLA) expired by 31st March 2021. However, even on the Revenue's demurrer and assuming that such reopening notices could travel back in time and that the provisions of TOLA protected such reopening notices (we do not agree), even then, in so far as the notices issued for AY 2013-14 is concerned, would in any case be barred by limitation. As stated earlier, under the erstwhile Section 149, a notice under Section 148 could have been issued within a period of six years from the end of the relevant assessment year. The Notifications issued under TOLA, viz., Notification No.20/2021, which is relied upon by the Revenue, only cover those cases where 31st March, 2021 was the end date of the period during which the time limit, specified in, or prescribed or notified under the Income Tax Act falls for completion. The limitation under the Income Tax Act, 1961 (erstwhile Section 149) for reopening the assessment for the AY 2013-14 expired on 31st March 2020. Hence, Notification No.20/2021 did not apply to the facts of the present case, viz., reopening notice for the AY 2013-14. Therefore, the Revenue could not issue any notice under Section 148 beyond 31st March 2021 and hence, even the relate back theory of the Revenue could not safeguard the reassessment proceedings initiated after 1st April 2021 for AY 2013-14*

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

> *"That raises the question whether that proviso could be applied without reference to any period of limitation. It is a well-settled principle that no action 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? xxxxxxxxxx.*
>
> *xxxxxxxxxx In J.P. Jani, Income-tax Officer v. Induprasad Devshanker Bhatt (1969) 72 I.T.R. 595; (1969) 1 S.C.R. 714 (S.C.) this court held that the Income-tax Officer cannot issue a notice under section 148 of the Income Tax Act, 1961, in order to reopen the assessment of an assessee in a case where the right ti reopen the assessment was barred under the 1922 Act at the date when the new Act camne into force. It was held that section 297(2)(d)(ii) of the 1961 Act was applicable only to this cases where the right of the Income-tax Officer to reopen an assessment was not barred under the repealed Act. This decision is broadly in line with the opinion of Das and Kapur JJ. in Prashar's case (1963) 49 I.T.R. (S.C.) 1; (1964) 1 S.C.R. 29 (S.C.) xxxxxxxxxx.*

For AY 2013-14, the time limit to issue a notice under Section 148 of the Act had already expired on 1 st April 2021. On the said date, the assessee had a vested right, which de hors the 1st proviso to the amended Section 149 of the Act, could not be taken away and thus, based on the well 14 (1974) 93 ITR 233 (SC) Gauri Gaekwad / Meera Jadhav 58/66 WP-1945-2023.doc settled principles of law, the reopening of the AY 2013-14 after 31 st March 2021 is invalid, without jurisdiction and barred by limitation.

37 We shall deal with Mr. Sharma's submissions as under :

(a) As regards reliance on the provisions of the Limitation Act, 1963, the provisions of the Limitation Act, 1963 do not apply to the provisions of the Income Tax Act, 1961 and especially, not in the present case in view of the specific period provided for in the provisions of the Act as well as TOLA. In any case, this defence of respondents cannot be sustained as they have not taken any such contention in either the order passed under Section 148A(d) or in the affidavit in reply;

(b) As regards applicability of Section 3 of TOLA - exclusion of Covid period, this argument is, in effect, nothing but the theory of travel back in time which was urged by the Revenue to support the reopening notices issued between 1st April 2021 to 30th June 2021 before this Court, as well as other High Courts [and which eventually led to the judgment in Ashish Agarwal (Supra)]. As noted earlier, this Court and other Courts have already snubbed the relate back/travel back in time theory and also the Instruction No.1 of 2022;

(c) As regards applicability of Notifications No.20 of 2021 dated 31st March 2021 and No.38 of 2021 dated 27th April 2021 extending Gauri Gaekwad / Meera Jadhav 59/66 WP-1945-2023.doc the time limit even for AY 2014-15 and it is extended till 30 th June 2021, respondent, in other words, argues that the Notification No.20 of 2021 seeks to extend the time limit inter alia for issuing notice under Section 148 which was expiring on 31st March 2021 not only under the provisions of the Act, but would also include the time extension in the Act by virtue of TOLA.To put in another way, the time limit expiring on 31 st March 2021 specified in Notification No.20 of 2021, according to respondents, would have to be read to include limitation under the Act read with TOLA. As noted earlier, this contention is flawed inasmuch as it expands the scope of the Notification and violates its plain language, viz., the time limit, specified in, or prescribed or notified under the Income Tax Act falls for completion. The limitation under the Act (erstwhile Section 149) for reopening the assessment for the AY 2013-14 expired on 31 st March 2020. Hence, Notification No.20 of 2021 did not apply to the facts of the present case. Notification No.38 of 2021 dated 27th April 2021 categorically uses the expression the time limit for completion of such action expires on the 30th day of April 2021 due to its extension by the said notifications, such time limit shall further stand extended to the 30 th day of June 2021. Hence, it is incorrect to say that 31st March 2021 under the Act would mean under the Act, plus, extension by TOLA;

(d) The submission that the Hon'ble Supreme Court, while deciding Ashish Agarwal (Supra), was conscious of the limitation of 6 years expiring on 31st

March 2021 under the pre-amendment provisions in respect of AY 2013-14 if the Covid period was not excluded, despite which the Apex Court has stated that all notices issued should be read to be issued under Section 148A to prevent the Revenue getting remediless, is unacceptable. This argument clearly fails to appreciate that the effect of Revenue's contention is that despite the substantive defence available to the assessee in Section 149 of the amended Act, as well as the express directions of the Hon'ble Supreme Court allowing the assessee to take all defences available under the Act, the judgment of Ashish Agarwal (Supra) would permit them to reopen the assessment of AY 2013-14 would not only make the defence expressly available to the assessees useless and unusable, but would be contrary to well established principles of law. In Supreme Court Bar Association (Supra), the Hon'ble Supreme Court espoused that its powers conferred under Article 142 of the Constitution of India, being curative in nature and even with the width of its amplitude, cannot be construed as powers which authorise the Court to ignore the substantive rights of a litigant while dealing with a cause pending before it. Article 142 would not be used to supplant substantive law applicable to a case or cause and it will not be used to build a new edifice where none existed earlier by ignoring express statutory provisions dealing with a subject and thereby to Gauri Gaekwad / Meera Jadhav 61/66 WP-1945-2023.doc achieve something indirectly which cannot be achieved directly. In the present case, Revenue's argument, if accepted, would be in conflict with the above law as despite the express language of 1 st proviso to Section 149, reopening notice for the AY 2013-14 would be permitted to be issued beyond 6 years on the pretext that the Hon'ble Supreme Court in exercise of its powers under Article 142 permitted them to do so and otherwise, they would be remediless. On the contrary, while permitting the Revenue to re- initiate the reassessment proceedings, the Apex Court also granted liberty to assessees to raise all defences available to the assessee including the defences under Section 149 of the Act. The Apex Court observed that its order will strike a balance between the rights of the Revenue as well as the respective assessees. Moreover, in Siemens Financial (Supra), this Court has already considered a similar contention of the Revenue and held that equity has no place in taxation or while interpreting taxing statute such intendment would have any place and that taxation statute has to be interpreted strictly. The Revenue also fails to appreciate that no particular case was considered by the Hon'ble Supreme Court while deciding Ashish Agarwal (Supra).

It is apposite to cite here an extract of the judgment of the Hon'ble Supreme Court in Parashuram Pottery Works Co. Ltd V/s. Income Tax Officer (1977) 106 ITR 1, which reads as under :

> *..... It has been said that the taxes are the price that we pay for civilization. If so, it is essential that those who are entrusted with the task of calculating and realising that price should familiarise themselves with the relevant provisions and become well-versed with the law on the subject.*

> *Any remissness on their part can only be at the cost of the national exchequer and must necessarily result in loss of revenue. At the same time, we have to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity...".*

(e) The contentions that (i) the true meaning of Apex Court order in Ashish Agrawal (Supra) is that the notices issued under Section 148, irrespective of the Assessment Year of the unamended Act, between 1st April 2021 to 30th June 2021 are to be treated as show cause notices without being hit by limitation, if issued on or before 30th March 2021 and (ii) the defence under Section 149 available to the assessee would mean that if the Revenue had issued any notice under Section 148 under the unamended Act during the period 1 st April 2021 to 30th June 2021 pertaining to AY 2013-14, the same would be barred by limitation under Section 149 in effect means the Civil Appeal of the Revenue in Ashish Agrawal (Supra) was dismissed, are completely flawed. It completely fails to appreciate that the limitation period to issuance of reopening notices under Section 148 for all Assessment Years prior to AY 2013-14 had already expired on 31st March 2019 or earlier. The provisions of TOLA obviously could not save such a time limit and the Revenue could not have validly issued reopening notices for years prior to AY 2013-14 on or after 1 st April 2019. Therefore, the defence so expressly allowed to be taken by the Hon'ble Supreme Court would otherwise be unnecessary;

(f) The submission that the Apex Court, in exercise of power under Article 142 of the Constitution, has deemed the notices issued between 1st April 2021 to 30th June 2021 under Section 148A(b) of the Act issued within limitation and by following the manner of computation of limitation provided in TOLA, the days from 1 st April 2021 to 30th June 2021 would stand excluded and, therefore, the notices could be deemed to be issued on 31st March 2021, we find it to be rather fallacious. The fallacy of this contention of Revenue is conspicuous inasmuch as if the notices issued under Section 148 between 1 st April 2021 and 30th June 2021, which according to them, are deemed to be issued on 31 st March 2021, then it is obvious that the provisions of the new reassessment law introduced by the Finance Act, 2021 cannot apply as they came into force w.e.f. 1 st April 2021 and onwards. Ashish Agarwal (Supra) in no uncertain words stated that the new provisions have to apply to all such notices. Therefore, the argument urged is completely contrary to law as well as the binding directions of the Hon'ble Supreme Court;

(g) As regards reliance on Touchstone Holdings (Supra), the Hon'ble Delhi High Court held that the initial notice dated 29 th June, 2021 Gauri

Gaekwad / Meera Jadhav 64/66 WP-1945-2023.doc issued under Section 148 is within limitation. No findings on the validity or otherwise of the notice issued after May 2022 pursuant to the judgment in Ashish Agarwal (Supra) is given. Moreover, in that case, petitioner did not argue that for AY 2013-14 the time limit would have expired even under TOLA on 31st March 2021;

(h) As regards Salil Gulati (Supra), the Delhi High Court, to reach its conclusion, has merely relied upon its earlier decision in Touchstone Holdings (Supra). It will be relevant to note that following Salil Gulati (Supra), a similar view was taken by the Delhi High Court in Yogita Mohan V/s. Income Tax Officer16. Against the judgment, in an SLP preferred by the assessee, the Apex Court has issued notice vide its order dated 20th February 2023. It should also be noted that the Hon'ble Gujarat High Court in Keenara Industries (P.) Ltd. V/s. Income Tax Officer 17 and the Allahabad High Court in Rajeev Bansal V/s. Union of India 18 have taken a view that notices issued for AY 2013-14 were barred by limitation in view of the amended Section 149 of the Act. Subsequently, the Apex Court, in SLPs preferred by the Revenue, has issued notice and stayed both the orders/judgments;

(i) We are unable to comprehend the contention raised that if the notice dated 30th May 2022 under Section 148A(b) of the Act is valid in terms of Apex Court order in Ashish Agrawal (Supra), then the notice under Section 148 of the Act cannot be issued on 31 st March 2021 and respondent cannot be expected to do impossible. It has nowhere been urged by petitioner that assessing officer ought to complete the proceedings before the show cause notice under Section 148A(b) of the Act was issued. It is the case of petitioner that the reopening notice under Section 148 ought to have been issued within 6 years from the end of the AY 2013-14. This limitation period, as extended by TOLA, expired on 31 st March 2021. However, in the present case, the reopening notice has been issued in July 2022 and, therefore, beyond the statutory time limit. In any case, as stated above, the Hon'ble Supreme Court, while invoking powers under Article 142, consciously and categorically granted liberty to assessees to raise all defences available to the assessee, including the defences under Section 149 of the Act. This specific and express directions cannot be set at naught. Accepting this contention of the Revenue would be a travesty of justice. 38 In the circumstances, in our view, the notice issued under Section 148 of the Act, impugned in this petition, for AY 2013-14 is issued beyond the period of limitation.

39 Having decided in favour of assessee/petitioner on this issue of limitation, we are not discussing the other grounds of challenge raised in the petition. Petitioner may raise all those contentions independently in any other proceeding.

40 Petition disposed accordingly. No order as to costs."

In our considered view, the ratio of above decision shall equally apply to the notice dated 28-07-2022 issued u/s.148 of the Act for the AY. 2014-15 to the assessee, as the time limit for issuing notice as prescribed in Sec.149 of the Act has already expired on 31-03-2021. Accordingly, we hold that the reopening of assessment of AY.2014-15 is also bad in law. Consequently, the assessment order passed by AO is liable to be quashed.

15. Since we have quashed the assessment orders of all the three years under consideration, there would not be any requirement to deal with the grounds urged on merits of additions.

16. In the result, the appeals filed by the Assessee are allowed and the appeals of the Revenue are dismissed.

Order pronounced in the open court on 27-09-2024

Sd/-	Sd/-
[ANIKESH BANERJEE]	[B.R. BASKARAN]
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai,
Dated: 27-09-2024

TNMM

Copy to

1.	The Appellant
2.	The Respondent
3.	The Pr. CIT, Mumbai concerned
4.	D.R. ITAT, "C" Bench, Mumbai.
5.	Guard File.

//By Order//

//True Copy //

Dy./Asst. Registrar,
ITAT, Mumbai