

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI**

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.4306/Del/2024
(ASSESSMENT YEAR 2015-16)**

Sunita Salhotra, 179, Block EC, Maya Enclave, Hari Nagar, New Delhi-110064 PAN-BDWPS3811B (Appellant)	Vs.	Income Tax Officer, Ward-43(1), New Delhi. (Respondent)
---	-----	---

Assessee by	Shri Sanjay Sehgal, CA
Department by	Shri Sahil Kumar Bansal, Sr. DR
Date of Hearing	04/02/2025
Date of Pronouncement	12/02/2025

ORDER

PER MANISH AGARWAL, AM:

This is appeal filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 31/07/2024 for Asst. Year 2015-16.

2. The assessee has challenged the appellate order only on the following grounds of appeal:

“1. That the Ld. CIT(A) has grossly erred both in law and on fact by dismissing the appeal of the appellant by dismissing all the grounds of appeal on the ground of non-submission of response to hearing notice which was beyond the control of the appellant as the email id on which hearing notices were sent was not checked due to the fact that the person to whom

email belongs forgot its password and which was later reset with the help of email provider.

2. On the facts and circumstances of the case, the Ld. CIT(A) has grossly erred both in law and on fact by confirming the action of the Ld. AO for issuing notice u/s 148 of the Income Tax Act, 1961 as the original notice issued u/s 148 of the Act dated 30.06.2021 was invalid and bad in law as the limitation period to issue notice in the instant case was not covered under the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 thereby making it invalid as the Ld. AO has again issued notice u/s 148 of the Act on 25.07.2022 after Hon'ble Supreme Court's order in Ashish Agarwal case.

3. On the facts and circumstances of the case, the Ld. CIT(A) has grossly erred both in law and on fact by confirming addition of Rs. 1,92,56,476/- accrued to the appellant from the sale of the shares of M/s Goldline International Finvest Ltd. (a public limited company listed on the Stock Exchange, hereinafter referred as 'GIFL') under the head income from other sources which otherwise is exempt u/s 10(38) of the Act.

4. On the facts and circumstances of the case, the Ld. CIT(A) has grossly erred both in law and fact by confirming addition of Rs. 5,77,694/- u/s 69C of the Act on an presumptive basis.

5. On the facts and circumstances of the case, the Ld. CIT(A) has grossly erred both in law and fact by confirming the action of the Ld. AO in making the addition purely on the basis of the report of the investigation wing and statements of the third parties and material gathered behind the back of the assessee without confronting such report, statements and materials as such assessment framed in complete violation of the principles of the natural justice is a nullity and liable to be quashed.

6. On facts and circumstances of the case, it is submitted that the notice u/s 148A(b) of the Act dated 24.05.2022, order passed u/s 148A(d) of the Act dated 25.07.2022 and notice u/s 148 of the Act dated 25.07.2022 are invalid and illegal as the same is contrary to the amended provision of Section 151A read with Section 144B of the IT Act. As per the said Section, the said notice(s)/orders must have been issued by the Faceless Assessing Officer ("FAO") and not by the Jurisdictional Assessing Officer("JAO"), as there is no concurrent jurisdiction of FAO and JAO to issue a notice/order under the Income Tax Act. As the impugned notice(s) must have been issued by the FAO, the issuance of the impugned notice(s) are' void & illegal and, therefore, liable to be quashed.

7. In view of the facts and circumstances of the case the appellant prays that the additions may kindly be deleted or any other order which this Hon'ble court deems fit and proper be passed including remanding back the appeal to Ld. CIT(A) for fresh adjudication.

The above grounds of appeals are independent of, and without prejudice to each other.

That the appellant craves leave to add, alter, amend or withdraw all or any grounds herein as may be considered necessary either before or during the hearing of the appeal.”

3. The brief facts of the case are that the assessee is an individual. The case of the assessee was reopened u/s 148 of the Income Tax Act (“the Act” for short) and the assessment was completed vide order passed u/s 147 r.w.s 144B of the Act dated 24/05/2023 at total income of Rs.2,01,94,960/- as against declared income of Rs.3,60,790/-. Against such order, the assessee preferred an appeal before Ld. CIT(A), who decided the appeal *ex-parte* as assessee has failed to make compliance on various occasions. Thus, the present appeal is preferred before us.

4. In ground of appeal no.1, the assessee has challenged the action of Ld. CIT(A) in not providing proper opportunity of being heard and in ground no.2, the assessee has challenged the reopening on the ground that the notice issued u/s 148 is barred by limitation.

3. During the course of hearing, the Ld. AR of the assessee submitted that though the appellate order was passed *ex-parte*, however, in the interest of justice, the legal issue may be decided at this stage, therefore, the matter was heard on legal issue. In this

regard, the Ld. AR of the assessee submitted that the impugned year is Asst. Year 2015-16, for which notice u/s 148 of the Ace was originally issued on 30/06/2021 and, thereafter, following the judgment of Hon'ble Supreme Court in the case of Union of India vs. Ashish Agarwal, the fresh notice u/s 148 of the Ace was issued on 25/07/2022. As per Ld. AR of the assessee, the notice so issued u/s 148 of the Act dated 25/07/2022 is barred by limitation. According to the time limit provided in the old provisions of section 149 of the Act, notice u/s 148 of the Act could be issued within a period of six years from the end of relevant assessment year which limitation expired on 31/03/2022. In the instant case, the notice u/s 148 of the Act was issued on 25/07/2022, however, the time limit available as per erstwhile section 149 of the Act expired on 31/03/2022 thus is beyond the period of limitation. Ld. AR further submits that during the course of hearing in the case of Union of India & Ors. vs. Rajiv Bansal in Civil Appeal No.8629 of 2024, the Learned Additional Solicitor General of India, Mr. N. Venkataraman has made a statement at a Bar that the Revenue will drop all the notices issued on or after 1st April, 2021 related to Assessment Year 2015-16. It is, thus, prayed by the Ld. AR that the notices issued in the instant case for Asst. Year 2015-16 u/s 148 being after 1st April, 2021, therefore, the same deserves to be dropped and consequently the re-assessment order be quashed.

5. On the other hand, the Ld. Sr. DR vehemently supported the orders of the lower authorities and submitted that the matter be

decided in terms of the judgment of Hon'ble Supreme Court in the case of Rajiv Bansal in Civil Appeal No.8629/24 (supra).

6. We have heard the rival submissions and perused the materials available on record. In the instant case, the appeal of the assessee was dismissed *ex-parte* by the Ld. CIT(A) for want of prosecution, however, since, the legal ground raised with regard to the legality of notices u/s 148 of the Act could be decided, therefore, we proceed to decide the appeal of assessee on legal issue. The assessee on legal issue. It is an admitted fact that earlier, the notice u/s 148 in the case of assessee was issued on 30/06/2021 which was dropped and proceedings u/s 148 of the Act were initiated in terms of order of Hon'ble Supreme Court in the case of Union of India vs. Ashish Agarwal and finally the notice u/s 148 was issued on 25/07/2022. The Ld. Additional Solicitor General of India in the case of Rajiv Bansal (supra) has made categorical statement at Bar before the Hon'ble Supreme Court that all the notices issued for Asst. Year 2015-16 on or after 1st April 2021 will be dropped, however, in the instant case, no such action has been taken and re-assessment order has been framed in the case of the assessee on the basis of the notice issued u/s 148 of the Act on 25/07/2022. The relevant extract of the assertion made by the Ld. Additional Solicitor General of India before the Hon'ble Supreme Court as reproduced in para 19(f) of the said order is as under:

“19. *Mr. N. Venkataraman, learned Additional Solicitor General of India, made the following submissions on behalf of the Revenue:*

a. Parliament enacted TOLA as a free-standing legislation to provide relief and relaxation to both the assesses and the Revenue during the time of COVID-19. TOLA seeks to relax actions and proceedings that could not be completed or complied with within the original time limits specified under the Income Tax Act;

b. Section 149 of the new regime provides three crucial benefits to the assesses: (i) the four-year time limit for all situations has been reduced to three years; (ii) the first proviso to Section 149 ensures that re-assessment for previous assessment years cannot be undertaken beyond six years; and (iii) the monetary threshold of Rupees fifty lakhs will apply to the re-assessment for previous assessment years;

c. The relaxations provided under Section 3(1) of TOLA apply "notwithstanding anything contained in the specified Act." Section 3(1), therefore, overrides the time limits for issuing a notice under Section 148 read with Section 149 of the Income Tax Act;

d. TOLA does not extend the life of the old regime. It merely provides a relaxation for the completion or compliance of actions following the procedure laid down under the new regime;

e. The Finance Act 2021 substituted the old regime for re-assessment with a new regime. The first proviso to Section 149 does not expressly bar the application of TOLA. Section 3 of TOLA applies to the entire Income Tax Act, including Sections 149 and 151 of the new regime. Once the first proviso to Section 149(1)(b) is read with TOLA, then all the notices issued between 1 April 2021 and 30 June 2021 pertaining to assessment years 2013-2014, 2014-2015, 2015-2016, 2016-2017, and 2017-2018 will be within the period of limitation as explained in the tabulation below:

Assessment year (1)	Within 3 Years (2)	Expiry of Limitation read with TOLA for (2) (3)	Within six Years (4)	Expiry of Limitation read with TOLA for (4) (5)
2013-2014	31.03.2017	TOLA not applicable	31.03.2020	30.06.2021
2014-2015	31.03.2018	TOLA not applicable	31.03.2021	30.06.2021
2015-2016	31.03.2019	TOLA not applicable	31.03.2022	TOLA not applicable

2016-2017	31.03.2020	30.06.2021	31.03.2023	TOLA not applicable
2017-2018	31.03.2021	30.06.2021	31.03.2024	TOLA not applicable

f. The Revenue concedes that for the assessment year 2015-16, all notices issued on or after 1 April 2021 will have to be dropped as they will not fall for completion during the period prescribed under TOLA;

g. Section 2 of TOLA defines "specified Act" to mean and include the Income Tax Act. The new regime, which came into effect on 1 April 2021, is now part of the Income Tax Act. Therefore, TOLA continues to apply to the Income Tax Act even after 1 April 2021; and

h. Ashish Agarwal (supra) treated Section 148 notices issued by the Revenue between 1 April 2021 and 30 June 2021 as show-cause notices in terms of Section 148A(b). Thereafter, the Revenue issued notices under Section 148 of the new regime between July and August 2022. Invalidation of the Section 148 notices issued under the new regime on the ground that they were issued beyond the time limit specified under the Income Tax Act read with TOLA will completely frustrate the judicial exercise undertaken by this Court in Ashish Agarwal (supra).

Looking to the facts and considering the assessment year involved is 2015-16, notice issued in the case of originally on 30/06/2021 and later on 25/07/2022 which both the dates have fallen on or after 1st April, 2021, therefore, both the notice deserves to be dropped in view of the admission made by the Revenue before the Hon'ble Supreme Court. Further, for Assessment Year 2015-16, no notice u/s 148 of the Act could be issued after the expiring of six years from the end of the relevant assessment year which limitation expired on 31st March, 2022. As the Hon'ble Supreme Court in the case of Rajiv Bansal (supra) has observed that Tola is not applicable for Asst. Year 2015-16, therefore, even otherwise under the old provisions of section 149

of the Act, the notice issued u/s 148 of the Act for Asst. Year 2015-16 on 25/07/2022 is barred by limitation. In view of these facts, the notice issued u/s 148 of the Act dated 25/07/2022 is hereby quashed. Accordingly, legal ground taken by the assessee is allowed.

7. Since, the legal ground taken by the assessee is allowed, other grounds of appeal relate to the merits of the case became academic in nature and need not be fresh adjudication.

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

Order pronounced on 12/02/2025.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Dated: 12/02/2025

PK/ Ps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI