

आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर
IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH, RAIPUR
श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

आयकर अपील सं. / ITA No: 379/RPR/2024
(निर्धारण वर्ष Assessment Year: 2015-16)

Kamlesh Kukreja, Prop. Anmol Industries, Surajpura Road, Bhatapara, Raipur- 493 118, C.G.	V s	Income Tax Officer, Ward-1(1), Raipur
PAN: AHVPK6618C		
(अपीलार्थी/Appellant)	.	(प्रत्यर्थी / Respondent)
निर्धारिती की ओर से /Assessee by	:	Shri Sunil Kumar Agrawal, CA
राजस्व की ओर से /Revenue by	:	Dr. Priyanka Patel, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	10.02.2025
घोषणा की तारीख/Date of Pronouncement	:	14.02.2025

आदेश / ORDER

Per Arun Khodpia, AM:

This captioned appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeal), NFAC, Delhi, [in short "Ld. CIT(A)"] under section 250 of the Income Tax Act, 1961 (in short "the Act"), dated 05.07.2024, for the Assessment Year 2015-16, which in turn arises from the order of Income Tax Officer, Assessment Unit, Income Tax Department, (in short "Ld. AO") u/s 147 r.w.s. 144B of the Act, dated 30.05.2023.

2. The grounds of appeal filed along with the appeal memo in Form No. 36, raised by the assessee are as under:

1. *On the facts and circumstances of the case and in law, reopening of assessment u/s148/ 147 is invalid; it is barred by limitation on the date of issuing notice u/s148 dt.29-7-22 for AY15-16, is beyond the limitation of 6 years as per first proviso of sec149(l)(b); reopening of reassessment u/s148/ 147 is invalid and is liable to be quashed; relied on Hexaware Technologies Ltd (2024) (Born); Arati Marketing (P) Ltd (2024) (Cal HC); New India Assurance Co Ltd (2023) (Born); Keenara Industries PL (2023) (Guj); Rajeev Bansal (2023) (All HC).*
2. *On the facts and circumstances of the case and in law, notice u/s148 dt.29-7-22 is invalid; issued by ITO-1(1), Raipur (i.e., the 'Jurisdictional AO'), while it ought to have been made by 'faceless AO' after the scheme framed u/s151A dt.29-3-22/ CBDT Notification No.18 dt.29-3- 22; impugned notice u/s148 dt.29-7-22 issued by ITO-1(1) in violation of scheme framed u/s 151A dt.29-3-22, would be invalid; hence, assessment made u/s147 rws.143(3) rws.144B dt.30-5-23 would be invalid and is liable to be quashed.*
3. *On the facts & circumstances of the case and in law, CIT(A) has erred in sustaining addition of Rs.2,29,87,000 i.e., alleged bogus purchase of 'goods' from 8 parties; assessee is 'trader in goods'; 'corresponding sales' of such trading items has been accepted by AO; addition of Rs.2,29,87,000 is unjustified; is liable to be deleted; relied on Nitin Ramdeoji Lohia (2022) (Born).*
4. *On the facts and circumstances of the case and in law, CIT(A) has erred in sustaining addition of Rs.2,29,87,000 on disallowance of business expenditure i.e., purchases of goods, is unjustified; assessment made u/s143(3); books of account has been accepted; sales of Rs.13,48,22,653 & purchases of Rs.12,54,31,935 has been accepted; resultant GP would be 23.28% from GP shown at 6.23% (i.e., GP would increase by 17.05%) which is impossible in the 'trading business' of assessee; addition is liable to be deleted; relied on Smt Sudha Loyalka (2018) (Del-Trib).*
5. *On the facts & circumstances of the case and in law, CIT(A) has erred in sustaining addition of Rs.2,29,87,000 treating it as unexplained business income; while it is purchase of material ofRs.2,29,87,000 from 8 parties & it is included in total purchases of Rs.12,54,31,935 which is accepted by the AO; corresponding sales has been accepted by the AO; addition made merely on presumption & surmises without bringing any material / evidence on record, is unjustified & is liable to be deleted.*
6. *The appellant craves leave, to add, urge, alter, modify or withdraw any grounds before or at the time of hearing.*

2.1 Further, the assessee had furnished following additional grounds stating that these are legal grounds raised first time before us, which goes to the root of matter, therefore, the assessee is entitled to urge these grounds in terms of judgment by the Hon'ble Apex Court in the case of **NTPC Ltd. (1998) (SC)**:

Addl. Gr. No. 1

"On the facts and circumstances of the case and in law, order u/s148A(d) dt.26-7-22 and reopening u/s148 dt.29-7-22 for AY15-16 under new regime are invalid; it is barred by limitation i.e., beyond the period of 6 years as first proviso of sect49(1)(b) of new regime; reopening u/s148A(d) & u/s148 are invalid and is liable to be quashed; relied on Rajeev Bansal (2024) (SC)."

Addl. Gr. No. 2

"On the facts and circumstances of the case and in law, notice u/s148 dt.29-7-22 is invalid, issued by ITO-1(1), Raipur ('Jurisdictional AO'), while it ought to have been made by 'faceless AO' after the scheme framed u/s151A dt.29-3-22/ CBDT Notification No.18 dt.29-3-22; notice u/s 148 dt.29-7-22 issued by the JAO in violation of scheme framed u/s151A dt.29-3-22, would be in valid; hence, assessment made u/s147 rws.143(3) rws.1448 dt.30-5-23 would be invalid and is liable to be quashed."

Addl. Gr. No. 3

"On the facts & circumstances of the case and in law, CIT(A) has erred in sustaining addition of Rs.2,29,87,000 i.e., alleged bogus purchase of 'goods' from 8 parties; assessee is 'trader in goods'; 'corresponding sales' of such trading items has been accepted by AO; addition of Rs.2,29,87,000 is unjustified; is liable to be deleted; relied on Nitin Ramdeoji Lohia (2022) (Born HC)."

Addl.Gr.No.4

"On the facts and circumstances of the case and in law, CIT(A) has erred in sustaining addition of Rs.2,29,87,000 on disallowance of business expenditure i.e., purchases of goods, is unjustified; assessment made u/s143(3); books of account has been accepted; sales ofRs.13,48,22,653 & purchases of Rs.12,54,31,935 has been accepted; resultant GP would be 23.28% from GP shown at 6.23% (i.e., GP would increase by 17.05%) which is impossible in the 'trading business' of

assessee; addition is liable to be deleted; relied on Smt Sudha Loyalka (2018) (Del-Trib).

Addl.Gr.No.5

On the facts & circumstances of the case and in law, CIT(A) has erred in sustaining addition of Rs.2,29,87,000 creating it as unexplained business income; while it is purchase of material of Rs.2,29,87,000 from 8 parties & it is included in total purchases of Rs.12,54,31,935 which is accepted by the AO; corresponding sales has been accepted by the AO; addition made merely on presumption & surmises without bringing any material/ evidence on record, is unjustified & is liable to be deleted."

3. Concisely stated, the assessee, Shri. Kamlesh Kukreja, is an individual, had filed his return of income for AY 2015-16 on 10.09.2015 admitting total income at Rs.6,81,000/-. As per the information available with the Department. the assessee has received accommodation entries in the guise of bogus purchase to the tune of Rs.2,29,87,000/-, from Shri Deepak Nanjyani during FY 2014-15.

4. Based on aforesaid information, notice u/s.148A(b) of the Act was issued to the assessee, in response to which, the assessee had not filed his submissions. Thereafter, an order u/s.148A(d) of the Act was passed on 26.07.2022 and notice u/s.148 of the Act was issued on 29.07.2022. Initially, the order u/s.148A(d) of the Act was passed on 26.07.2022, stating that income of Rs.1,06,95,000/- has escaped assessment, however, during the course of assessment proceedings, it was noticed by

the Ld. AO that the assessee has received accommodation entries to the tune of Rs.2,29,87,000/-. Subsequently, assessment proceedings u/s.147 of the Act was assigned to the Faceless Assessment Unit and the assessee was intimated about the same vide letter dated 02.11.2022.

5. In furtherance of the assessment proceedings, various issues were raised, show cause were issued to the assessee to which point was rebuttal are furnished by the assessee, however, the response of assessee which was considered by the Ld. AO was not accepted for elaborate reasons such as the genuineness / type / nature and creditworthiness of transactions with certain entities, which was requested to establish could not be substantiated by the assessee, therefore, an addition of Rs.2,29,87,000/- was made as bogus transactions and added back to the business income of the assessee.

6. Aggrieved with the aforesaid addition, assessee preferred an appeal before the Ld. CIT(A), wherein elaborate submissions are made by the assessee, along with reliance on various judicial pronouncements, however, the same could not find favour from the Ld. CIT(A), therefore, the appeal of assessee was held to be dismissed.

7. Dissatisfied with the aforesaid order Ld. CIT(A), assessee preferred an appeal before the Tribunal, which is under consideration in the present case.
8. At the outset, Shri Sunil Kumar Agrawal, CA, Authorized Representative on behalf of the assessee, (in short "Ld. AR"), sought the liberty to withdraw additional ground no. 3, 4 & 5 of the present appeal, to which no objection was raised by the revenue, therefore, additional ground no. 3, 4 & 5 are permitted to withdraw, consequently, these grounds are dismissed as not pressed.
9. Ld. AR further requested to take up the additional ground no. 1, raising the legal contention that the order u/s 148A(d) dated 26.07.2022 and notice of reopening u/s 148 dated 29.07.2022 for the AY 2015-16 are barred by limitation. In order to substantiate the aforesaid contention, Ld. AR placed before us the following facts, contentions and dates of events:
- (i) **Notice issued u/s 148** (old regime) for AY 2015-16 – **30.06.2021**, which is considered to be deemed notice u/s 148A(b) in terms of order of Hon'ble Apex Court in the case of **UOI Vs Ashish Agrawal (2022) 444 ITR 1 dated 04.05.2022**. (Copy placed before us at page no. 1 of the APB-relevant portion extracted).



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE INCOME TAX OFFICER
WARD 1(1), RAIPUR

To, KAMLESH KUKREJA Prop. Anmol Industries Surajpura Road , Bhatapara Bhatapara Raipur,Raipur 493118 , Chhattisgarh India	
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PAN: AHVPK6618C	AY: 2015-16	Dated: 30/06/2021	DIN & Notice No : ITBA/AST/S/148/2021-22/1033936957(1)
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- (ii) As per provisions of the Act, the time limit for **reopening u/s 148** for **AY 2015-16**, for **6 years**, as per **1st proviso to section 149(1)(b)** was **available up to 31.03.2022**.
- (iii) As per judgment in the case of **Ashish Agrawal (supra)**, the Show Cause Notice (SCN), u/s 148A(b) was to be issued within 30 days from 04.05.2022, i.e., up to 03.06.2022, whereas the notice u/s **148A(b)** in the instant case was issued on **26.05.2022**, which is within 30 days, however the same remains undelivered. Thereafter, another SCN u/s 148A(b) was issued on 08.06.2022, which is beyond the period of 30 days permitted by the Hon'ble Apex Court as per judgment in the case of **Ashish Agrawal (supra)**. (Copy placed before us at page no. 2 & 3 of the APB-relevant portion extracted).



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WARD 1(1), RAIPUR

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PAN: AHVPK6618C	Assessment Year: 2015-16	Dated: 26/05/2022	DIN & Letter No : ITBA/COM/F/17/2022-23/1043193139(1)
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- (iv) The **order u/s 148A(d)** was issued on **26.07.2022** (Copy placed before us at page no. 4 to 6 of the APB-relevant portions extracted hereunder).



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INCOME TAX DEPARTMENT
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WARD 1(1), RAIPUR

To, KAMLESH KUKREJA Prop. Anmol Industries Surajpura Road,Bhatapara Bhatapara Raipur,Raipur 493118,Chhattisgarh India	
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PAN: AHVPK6618C	Assessment Year: 2015-16	Dated: 26/07/2022	DIN & Order No : ITBA/COM/F/17/2022-23/1044109082(1)
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- (v) It was the contention that taking the dates from first SCN u/s 148A(b) dated 26.05.2022, which was validly issued though was not delivered and no response was furnished by the assessee. Adding 14 days from the date of issuance of notice u/s 148A(b) for response by the assessee as permitted by the Hon'ble Apex Court in **Ashish Agrawal (supra)**, the time available to issue order u/s 148 was arrived at 09.06.2022

(26.05.2022 + 14 days). It was the submission that as the notice u/s 148 (old regime) was issued on 30.06.2021, therefore, there was no / "Zero", surviving period left to be added, in terms of order of Hon'ble Apex Court in the case of **UOI Vs Rajeev Bansal (2024) 167 taxmann.com 70 (SC) (03.10.2024) (Para 112)**.

- (vi) In terms of aforesaid submissions, it is further clarified by the Ld. AR that the **notice u/s 148** (under new regime) was also required to be issued on or before **09.06.2022**, whereas the same was issued on **29.07.2022**. (Copy placed before us at page no. 7 & 8 of the APB-relevant portion extracted).



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 OFFICER
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PAN	A.Y.	Dated	DIN & Notice No:
AHVPK6618C	2015-16	29/07/2022	

10. To support the aforesaid contentions, Ld. AR placed his reliance on the order of Coordinate Bench of ITAT, Raipur in the case of **kachrulal Jitendra Kumar Vs. ITO in ITA No. 307/RPR/2024** for the AY 2014-15 vide order dated 05.02.2025, wherein the aforesaid issue raised in the present case has been dealt with and deliberated by the Tribunal and have held as under:

13. Apropos the validity of the jurisdiction that was assumed by the AO for framing the impugned assessment, the Ld. AR submitted that as the notice u/s. 148 of the Act, dated 25.07.2022 is barred by limitation, therefore, the consequential assessment order passed by the A.O u/s. 147r.w.s. 144B of the Act, dated 29.04.2023 cannot be sustained and is liable to be quashed on the said count itself. Elaborating further on his contention, the Ld. AR had taken us through a "Chart", as per which, notice u/s. 148 of the Act, dated 25.07.2022 in the case of the assessee firm could have been issued latest by 16.06.2022. The Ld. AR submitted that as the notice u/s. 148 of the Act had been issued by the A.O on 25.07.2022 i.e. much after 16.06.2022, therefore, the same being barred by limitation was invalid.

14. Apropos the aforesaid issue, Dr. Priyanka Patel, Ld. Sr. Departmental Representative (for short 'DR') submitted that as the A.O had validly assumed jurisdiction and framed the assessment vide his order passed u/s. 147 r.w.s. 144B of the Act, dated 29.04.2023, therefore, no infirmity did emanate from his order.

15. Before proceeding any further, we deem it fit to cull out the substitution of the scheme of the assessment under section 147 to 151 of the Act, as had been made available on the statute vide the Finance Act, 2021 w.e.f. 01.04.2021, along with the scope of the said amendments as had been looked into by the Hon'ble Supreme

Court in the backdrop of The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance Act, 2020.

16. The Finance Act, 2021 had substituted the entire scheme of reassessment under Sections 147 to 151 of the Income Tax Act w.e.f 1st April 2021. Broadly speaking, the changes made available on the statute by the legislature in all its wisdom are, viz. (i) Section 148 now mandates the assessing officer to initiate proceedings only based on prior information and with the prior approval of the specified authority; (ii) Section 148A requires the A.O to provide an opportunity of being heard to the assessee before deciding to issue a reassessment notice u/s. 148 of the Act; (iii) Section 148A requires the A.O to, viz. (a) conduct any enquiry, if required, with the prior approval of the specified authority; (b) provide an opportunity of being heard to the assessee, with the prior approval of the specified authority; (c) consider the reply furnished by assessee, if any, in response to the show-cause notice; and (d) decide on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice u/s.148 of the Act by passing an order; (iv) Further, the time limit under Section 149 has been reduced from four years to three years from the end of the relevant assessment year for all situations. However, an exception has been carved out, as per which, an assessment can be reopened beyond three years but within ten years from the end of the relevant assessment year if the income chargeable to tax which has escaped assessment amounts to or is likely to amount to Rupees fifty lakhs or more; (v) The "1st proviso" to Section 149 prohibits the issuance of a reassessment notice under the new regime if such notice have become time-barred under the old regime; and (vi) the sanctioning authorities specified under Section 151 of the new regime are different from those specified under the old regime.

17. Also, Section 151 of the new regime specifies the following authorities for Sections 148 and 148A of the Act, viz. (i) Principal Commissioner or Principal Director or Commissioner or Director if three years or less have elapsed from the end of the relevant assessment year; and (ii) Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General if more than three years have elapsed from the end of the relevant assessment year.

18. The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance Act, 2020 [for short "TOLA"], had come into force with retrospective effect from March 31, 2020. Section 3(1) of TOLA extended the time limit for completion of actions or compliances under the "Specified Act", which fell for completion or compliance during the period from March 20, 2020 to March 31 2021. Section 3(1) of the TOLA empowered the Central Government to extend the time limit beyond 31st March, 2021 by a notification. In pursuance of its powers, the Central Government issued Notifications to extend the period of relaxation till June 30, 2021. The effect of TOLA, 2020 and the notifications issued under the legislation was that, viz. (i) if the time prescribed for passing of any order or issuance of any notice, sanction, or approval fell for completion or compliance from March 20, 2020 to March 31, 2021; and (ii) if the completion or compliance of such action could not be made during the stipulated period, then, the time limit for completion or compliance of such action was extended to June 30, 2021. Accordingly, the TOLA, 2020 provided for a relaxation of the time limit for issuing reassessment notice u/s.148 of the Act.

19. As the notifications dated March 31, 2021 and April 27, 2021 issued by the Central Government under Section 3(1) of TOLA, 2020 contained an explanation declaring that the provisions under the old regime shall apply to the reassessment proceedings initiated under them, therefore, the A.Os had accordingly issued

reassessment notices between April 1, 2021 and June 30, 2021 by relying on the provisions under Section 148 of the old regime. These reassessment notices issued between April 1 2021 and June 30, 2021 under the old regime were challenged by the assessee's before various High Courts, which quashed the same for the reasons, viz. (i) Sections 147 to 151 stood substituted by the Finance Act, 2021 from April 1, 2021; (ii) that in the absence of any saving clause, the department could initiate reassessment proceedings after April 1, 2021 only in accordance with the provisions of the new regime since they were remedial, beneficial, and meant to protect the rights and interests of the assessees; and (iii) the Central Government could not exercise its delegated authority to re-activate the pre-existing law.

20. Thereafter, the Hon'ble Apex Court in the case of Union of India & Ors Vs. Ashish Agrawal, (2022) 444 ITR 1 (SC), to resolve the multi-facet controversies that had cropped up inter-se the assessees and the department, had held, that it was in complete agreement with the view taken by the various High Courts in holding that the benefit of the new provisions shall be made available even in respect of proceedings relating to the past assessment years, provided Section 148 notice was issued on or after 01-4-2021. However, the Court in order to balance the interests of the Revenue and the assessee exercised its discretionary jurisdiction under Article 142 of the Constitution of India and directed that the reassessment notices issued under the old regime shall be deemed to have been issued under Section 148A(b) of the new regime. Further, it was provided that the A.O shall within 30 days provide to the respective assessees, the information and material relied upon by the department, so that the assessee's could reply to the show-cause notices within two weeks thereafter. The requirement of conducting any enquiry, if required, with the prior approval of specified authority u/s.148A(a) was hereby dispensed with as a one-time measure vis-à-vis those notices which

had been issued u/s. 148 of the un-amended Act from 01-4-2021 till date, including those which was quashed by the High Courts. It was directed that the A.Os shall thereafter pass orders in terms of Section 148A(d) in respect of each of the assessee concerned and, thereafter, following the procedure as required u/s.148A of the Act, they may issue notice u/s.148 of the Act. For the sake of clarity, the observations of the Hon'ble Apex Court in the case of Union of India Vs. Ashish Agrawal (supra), wherein the notices issued by the department u/s. 148 of the Act, as per the old regime were to be treated as "Show Cause Notices" issued u/s. 148A(b) of the Act, are culled out as under:

"8. However, at the same time, the judgments of the several High Courts would result in no reassessment proceedings at all, even if the same are permissible under the Finance Act, 2021 and as per substituted sections 147 to 151 of the IT Act. The Revenue cannot be made remediless and the object and purpose of reassessment proceedings cannot be frustrated. It is true that due to a bonafide mistake and in view of subsequent extension of time vide various notifications, the Revenue issued the impugned notices under section 148 after the amendment was enforced w.e.f. 01.04.2021, under the unamended section 148. In our view the same ought not to have been issued under the unamended Act and ought to have been issued under the substituted provisions of sections 147 to 151 of the IT Act as per the Finance Act, 2021. There appears to be genuine non-- application of the amendments as the officers of the Revenue may have been under a bonafide belief that the amendments may not yet have been enforced. Therefore, we are of the opinion that some leeway must be shown in that regard which the High Courts could have done so. Therefore, instead of quashing and setting aside the reassessment notices issued under the unamended provision of IT Act, the High Courts ought to have passed an order construing the notices issued under unamended Act/unamended provision of the IT Act as those deemed to have been issued under section 148A of the IT Act as per the new provision section 148A and the Revenue ought to have been permitted to proceed further with the reassessment proceedings as per the substituted provisions of sections 147 to 151 of the IT Act as per the Finance Act, 2021, subject to compliance of all the procedural

requirements and the defences, which may be available to the assessee under the substituted provisions of sections 147 to 151 of the IT Act and which may be available under the Finance Act, 2021 and in law. Therefore, we propose to modify the judgments and orders passed by the respective High Courts as under:

(i) The respective impugned section 148 notices issued to the respective assessee shall be deemed to have been issued under section 148A of the IT Act as substituted by the Finance Act, 2021 and treated to be show cause notices in terms of section 148A(b). The respective assessing officers shall within thirty days from today provide to the assessee the information and material relied upon by the Revenue so that the assessee can reply to the notices within two weeks thereafter;

(ii) The requirement of conducting any enquiry with the prior approval of the specified authority under section 148A(a) be dispensed with as a onetime measure vis à vis those notices which have been issued under Section 148 of the unamended Act from 01.04.2021 till date, including those which have been quashed by the High Courts;

(iii) The assessing officers shall thereafter pass an order in terms of section 148A(d) after following the due procedure as required under section 148A(b) in respect of each of the concerned assessee;

(iv) All the defences which may be available to the assessee under section 149 and/or which may be available under the Finance Act, 2021 and in law and whatever rights are available to the Assessing Officer under the Finance Act, 2021 are kept open and/or shall continue to be available and;

(v) The present order shall substitute/modify respective judgments and orders passed by the respective High Courts quashing the similar notices issued under unamended section 148 of the IT Act irrespective of whether they have been assailed before this Court or not."

Accordingly, the Hon'ble Apex Court in the case of Union of India & Ors Vs. Ashish Agrawal (supra), had held as under:

(i) the notices issued u/s. 148 of the Act to the respective assesseees under the old regime during the period 01.04.2021 to 30.06.2021 shall be deemed to have been issued u/s.148A of the Income Tax Act as substituted by the Finance Act, 2021 and treated to be show cause notices in terms of Section 148A(b) of the Act;

(ii) the A.O shall within thirty days from the date of order of the Hon'ble Apex Court in the case of Union of India & Ors Vs. Ashish Agrawal (supra) i.e. 04.05.2022 provide to the assessee information/material that was relied upon by the department which suggested that his income chargeable to tax had escapement;

(iii) that a period of two weeks shall thereafter be allowed to the assessee's to file reply in response to the notice issued u/s. 148A(b) of the Act;

(iv) the A.O shall, thereafter, pass an order u/s. 148A(d) of the Act with the prior approval of the specified authority, within one month from the end of the month, in which, the assessee's reply is received by him; or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish the aforesaid reply expires.

21. Thereafter, the Hon'ble Apex Court in the case of Union of India and Ors. Vs. Rajeev Bansal (2024) 469 ITR 46 (SC) had, inter alia, further clarified as under:

(i) The A.O is required to obtain prior approval of the specified authority according to section 151 of the new regime before passing an order under section

148A(d) or issuing a notice under section 148 of the Act which were required to be issued within the time limit specified under section 151 of the new regime r.w. TOLA, 2020, where applicable;

(ii) that the directions issued by the Hon'ble Apex Court in the case of Union of India & Ors Vs. Ashish Agrawal (supra) applied PAN-India including all the 90,000 reassessment notices issued under section 148 of the old regime during the period April 1, 2021 to June 30, 2021.

(iii) the department was directed to provide all the relevant material or information to the assessee's and thereafter, allow the assessee's to respond to the "Show cause notices" by availing all the defences including those available under Section 149 of the Act.

(iv) that as per Section 148A(b) of the Act, the A.O. had to comply with two requirements, viz. (i) issuance of a show cause notice; and (ii) supply of all the relevant information which formed the basis of the show-cause notice.

(v) the total time that was excluded for computation of limitation for the deemed notices is, viz. (i) the time during which the show-cause notices were effectively stayed, that is, from the date of issuance of the deemed notice between 1st April, 2021 and 30th June, 2021 till the supply of relevant information or material by the assessing officers to the assesses in terms of the directions in Union of India & Ors Vs. Ashish Agarwal (supra); and (ii) two weeks allowed to the assesses to respond to the show-cause notices.

(vi) that the time surviving under the Act read with TOLA, 2020 that would be available to the department to complete the remaining proceedings in furtherance

of the deemed notices, including issuance of reassessment notices u/s. 148 of the new regime could be calculated by computing the number of days between the date of issuance of the deemed notice and June 30, 2021. For the sake of clarity, the observations of the Hon'ble Apex Court in the case of Union of India & Ors. Vs. Rajeev Bansal (supra) are culled out as under:

"114. In view of the above discussion, we conclude that:

- a. After 1 April 2021, the Income Tax Act has to be read along with the substituted provisions;*
- b. TOLA will continue to apply to the Income Tax Act after 1 April 2021 if any action or proceeding specified under the substituted provisions of the Income Tax Act falls for completion between 20 March 2020 and 31 March 2021;*
- c. Section 3(1) of TOLA overrides Section 149 of the Income Tax Act only to the extent of relaxing the time limit for issuance of a reassessment notice under Section 148;*
- d. TOLA will extend the time limit for the grant of sanction by the authority specified under Section 151. The test to determine whether TOLA will apply to Section 151 of the new regime is this: if the time limit of three years from the end of an assessment year falls between 20 March 2020 and 31 March 2021, then the specified authority under Section 151(i) has extended time till 30 June 2021 to grant approval;*
- e. In the case of Section 151 of the old regime, the test is: if the time limit of four years from the end of an assessment year falls between 20 March 2020 and 31 March 2021, then the specified authority under Section 151(2) has extended time till 31 March 2021 to grant approval;*
- f. The directions in Ashish Agarwal (supra) will extend to all the ninety thousand reassessment notices issued under the old regime during the period 1 April 2021 and 30 June 2021;*

g. The time during which the show cause notices were deemed to be stayed is from the date of issuance of the deemed notice between 1 April 2021 and 30 June 2021 till the supply of relevant information and material by the assessing officers to the assesses in terms of the directions issued by this Court in Ashish Agarwal (supra), and the period of two weeks allowed to the assesses to respond to the show cause notices; and h. The assessing officers were required to issue the reassessment notice under Section 148 of the new regime within the time limit surviving under the Income Tax Act read with TOLA. All notices issued beyond the surviving period are time barred and liable to be set aside;"

22. Shri Ravi Agrawal, Ld. AR for the assessee, after referring to the post-amended Section 148 r.w.s. 148A r.w.s. 149 of the Act (as had been made available on the statute vide the Finance Act, 2021 w.e.f. 01.04.2021) read in the backdrop of the aforesaid judicial pronouncements of the Hon'ble Apex Court, submitted that as the notice u/s. 148 of the Act, dated 25.07.2022 had been issued beyond the surviving/balance period that was available with the A.O, therefore, the same was barred by limitation. Elaborating further on his contention, the Ld. AR submitted that the A.O pursuant to the judgment of the Hon'ble Apex Court in the case of Union of India & Ors Vs. Ashish Agarwal (supra), had issued show-cause notice u/s. 148A(b) of the Act, dated 25.05.2022, Page 1 & 2 of APB, wherein the assessee firm was called upon to furnish its reply within two weeks from the date of receipt of the said letter. In compliance, the assessee firm which though was allowed a time period of two weeks to furnish its reply, had filed/uploaded the same on 30.05.2022, Page 3 to 7 of APB. The Ld. AR submitted that the period of two weeks allowed to the assessee firm to file its reply to the show-cause notice issued u/s. 148A(b) of the Act lapsed as on 07.06.2022. Carrying his contention further, the Ld. AR submitted, that as observed by the Hon'ble Apex Court in the case of Union of India & Ors Vs. Rajeev Bansal (supra), the clock started ticking for the department to issue notice u/s. 148 of the

Act from 07.06.2022 (supra) i.e. after considering the balance/surviving period that was available with it. The Ld. AR submitted that as the A.O had issued the deemed notice u/s.148A of the Act on 30.06.2021, therefore, after accounting for all the exclusions, the A.O had one day [between June 30, 2021(date on which deemed notice u/s. 148A was issued) to June, 30, 2021 (extended time period as per TOLA, 2020)] to issue notice u/s. 148 of the Act under the new regime. The Ld. AR submitted that as per the "4th proviso" to Section 149 of the Act, where the balance/surviving period available with the A.O for passing an order under clause (d) of Section 148A of the Act was less than 7 days, then such remaining period shall be extended to seven days and the period limitation shall be deemed to be extended accordingly. Elaborating further on his contention, the Ld. AR submitted that the time started ticking for the A.O to issue notice u/s. 148 of the Act within the time period of 7 days from the lapse of period of two weeks (14 days) to respond to the SCN issued to the assessee firm u/s. 148A(b) of the Act, dated 25.05.2022, which, thus, lapsed on 16.06.2022. The Ld. AR submitted that as the A.O in the present case had issued notice u/s. 148 of the Act, dated 25.07.2022 i.e. much beyond the period of limitation which expires on 16.06.2022, therefore, the same was barred by limitation.

23. We have thoughtfully considered the contentions advanced by the Ld. Authorized Representatives of both the parties. Admittedly, the following facts are discernible from the record:-

- *Notice u/s. 148 of the Act under the old regime (deemed notice u/s 148A) was issued by the A.O to the assessee firm on 30.06.2021;*
- *show-cause notice u/s 148A(b) of the Act was issued by the A.O to the assessee firm on 26.05.2022;*

- *the time period of two weeks (14 days) from the date of issuing of notice u/s. 148A(b) dated 26.05.2022 [as per the judgment of the Hon'ble Apex Court in the case of Union of India & Ors Vs. Ashish Agrawal (supra)] lapsed on 08.06.2022;*
- *the balance/surviving period available with the A.O to issue notice u/s 148 of the Act (under new regime) was 1 day [time between 30.06.2021 (the date of issuance of notice u/s.148A of the Act) AND 30.06.2021 i.e. (extended time period under TOLA, 2020);*
- *as the balance/surviving period available with the A.O for passing an order under clause (d) of 148A of the Act was 1 day i.e. less than 7 days, therefore, as per the "fourth proviso" to Section 148A of the Act, the period of limitation so available would stand extended to 7 days;*
- *the A.O could have validly issued notice u/s. 148 of the Act (under the new regime) latest by 14.06.2022;*

24. As the A.O in the present case had issued notice u/s. 148 of the Act, dated 25.07.2022 i.e. much subsequent to lapse of the period of limitation as was available with him upto 13.06.2022, therefore, as stated by the Ld. AR (subject to correction of the date by the Ld. AR as 16.06.2022), and rightly so, the same is found to be barred by limitation. Accordingly, the assessment order passed by the A.O u/s. 147 r.w.s. 144B of the Act, dated 29.04.2013 in absence of a valid notice issued u/s. 148 of the Act cannot be sustained and, is quashed.

11. Based on aforesaid submissions, it was the prayer by Ld. AR that the present case of the assessee is squarely covered by the aforesaid case,

wherein under identical circumstances, the issue was decided in favour of the assessee, therefore, it was the prayer that the matter may be considered in light of the aforesaid decision and the impugned order passed u/s 147 r.w.s. 144B dated 30.05.2023 is liable to be quashed.

12. Per contra, Dr. Priyanka Patel, Ld. SR. DR representing the revenue have furnished a report on the aforesaid issue prepared by the concerned AO, the same is culled out as under:



Government of India
Ministry of Finance: Department of Revenue
CENTRAL BOARD OF DIRECT TAXES
OFFICE OF THE Jt. COMMISSIONER OF INCOME TAX (ITAT), Raipur (C.G.)
F.No. Jt. CIT (ITAT)/RPR/2024-25/ Date 10.02.2025

To,

The Member(s),
ITAT, Raipur.

R/ Sirs

Subject: Submission of report in the case of Kamlesh Kukreja in ITA No. 379/RPR/2024 for A.Y. 2015-16 - reg.

Kindly refer to the above.

2. In this connection, kindly find enclosed herewith the report filed by the AO in the case of Kamlesh Kukreja in ITA No. 379/RPR/2024 for A.Y. 2015-16.
3. It is requested that the same may please be put up before the Hon'ble Bench, ITAT, Raipur.

Yours faithfully,

(Dr. Priyanka Patel)
Jt. Commissioner of Income Tax, ITAT
Raipur.

Encl: As above



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
(Department of Revenue)
OFFICE OF THE INCOME TAX OFFICER - 1(1)
AAYKAR BHAWAN, CIVIL LINES, RAIPUR - 492001

F.No. ITO-1(1)/RPR/ITAT/VEEPL/2024-25

Dated: 07.02.2025

To

The Joint Commissioner of Income Tax (ITAT),
B & C Wing, 5th Floor, Central Secretariat Building,
Sector-24, Atal Nagar, Naya Raipur
Raipur

Madam,

Sub-Submission of report in the case of Kamlesh Kukreja, PAN:
AHVPK6618C for A.Y. 2015-16 in ITA No. 379/RPR/2024 -reg.-

Kindly refer to your letter F. No. JCIT-ITAT/RPR/REQ/2024-25 dated 22.01.2025 on the subject above.

2. In this regard, it is submitted that on the basis of information received from ITO(Inv.), Raipur, the case of the assessee was selected for re-assessment proceedings u/s 147 of the Act for which the limitation to issue notice u/s 148 of the Act was upto 31.03.2021. However, due to the spread of COVID-19 pandemic, the limitation was extended by the Board till 30.06.2021 and accordingly the notice u/s 148 of the Act for A.Y. 2016-17 was issued on 30.06.2021 with the prior approval of the Pr. CIT-1, Raipur (who was the specified authority u/s 151 of the Act as the period was within four years from the end of the relevant assessment year). In the meantime, the judgment in the Civil Appeal No. 3005/2022 in the case of UOI and other Vs Shri Ashish Agrawal & others was given by the Hon'ble Supreme Court on 04.05.2022.

3. In compliance of the said verdict of the Apex Court, the information/material available on record which suggested for income escaping assessment within the meaning of the provisions of section 147 of the Act were provided to the assessee on 26.05.2022 seeking reply as to why order u/s 148A(d) of the Act should not be passed in the case of the assessee which remained undelivered. Therefore, another letter was sent on 08.06.2022 through email, which was duly delivered to him on 08.06.2022 seeking

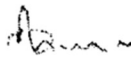
reply as to why order u/s 148A(d) of the Act should not be passed in his case holding it to be a fit case for issue of notice u/s 148. The assessee was allowed to file his reply with other relevant material within two weeks from the date of the said letter. However, no reply was filed by the assessee. It is therefore presumed that the assessee has nothing to say in respect of alleged bogus transaction made by him and the order u/s 148A(d) of the Act was passed on 26.07.2022 and notice u/s 148 of the Act was issued on 29.07.2022 with the prior approval of the specified authority i.e. Chief Commissioner of Income Tax, Raipur. As in the case of the assessee, the order u/s 148A(d) was passed after the direction issued by the Hon'ble Apex Court and the proceeding for reopening of the case of the assessee was initiated well within the time as allowed as per the Act, therefore, the Specified Authority to grant approval u/s 148A(d) is the Chief Commissioner of Income Tax, Raipur.

4. In view of the said facts, the contention of the assessee regarding failure of the AO to make available the material based on which "Show Cause Notice (SCN)" was issued to assessee and notice u/s 148 barred by limitation, is not maintainable and deserves to be rejected. The case record in one volume containing page no. 1 to 48 pages and order sheet page no. 1 to 9 of Shri Kamlesh Kukreja, PAN-AHVPK6618C for A.Y. 2013-14 is also attached herewith.

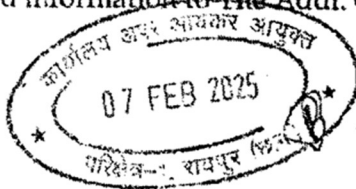
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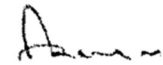
Encl: As above.

Yours faithfully,


(Alok Ranjan)
Income Tax Officer- 1(1),
Raipur

Copy for kind information to The Addl. Commissioner of Income Tax, Range-1, Raipur




Income Tax Officer- 1(1),
Raipur

13. Based on aforesaid submissions, Ld. Sr. DR argued that, in terms of directions of Hon'ble Apex Court in the case of **Ashish Agrawal (supra)**, the first notice u/s 148A(d) was issued on 26.05.2022 (within 30 days from 04.05.2022 the date of order by Hon'ble Apex Court), however, the same remain undelivered, therefore, another letter was sent on 08.06.2022 through email which was duly delivered to the assessee on 08.06.2022 seeking reply in response to notice u/s 148A(b). The assessee was allowed to file his reply with other relevant material within two weeks from the date of said letter. However, no reply was filed by the assessee. Presuming that the assessee has nothing to say in compliance an order u/s 148A(d) was passed on 26.07.2022 and notice u/s 148 was issued on 29.07.2022 with prior approval of the specified authority i.e., Chief Commissioner of Income Tax, Raipur. Ld. Sr. DR further submitted that as the reopening proceedings are completed in accordance with the directions of Hon'ble Apex Court the order u/s 148A(d) was well within time as per the Act. In terms of aforesaid submissions and contentions, it was the prayer that the contention of assessee regarding failure on the part of AO to issue SCN u/s 148(b), passing of order u/s 148A(d) and issuance of notice u/s 148 are barred by limitation, is not maintainable and deserves to be rejected.

14. We have considered the rival submissions, perused the material available on record and case laws placed before us to support the contentions by the Ld. AR. After having given a thoughtful consideration to the aforesaid facts, circumstances, observations and judicial pronouncements, we are of the firm conviction that the case of assessee is squarely covered by the decision of this tribunal in the case of **Kachrual Jitendra Kumar Vs. ITO (supra)**.

15. Our aforesaid view is further fortified by the judgment of Hon'ble Delhi High Court in the case of **Ram Balram Buildhome (P.) Ltd. Vs. Income Tax Officer (2025) 171 taxmann.com 99 (Delhi)**, wherein under the similar facts and circumstances Hon'ble High Court has held as under:

Analysis – In the Factual Context

65. *Thus, in the facts of the present case, the last date for issuance of notice under Section 148 of the Act for AY 2013-14 under the statutory framework, as was existing prior to 01.04.2021 was 31.03.2020, that is, six years from the end of the relevant assessment year.*

66. *By virtue of Section 3(1) of TOLA time for completion of specified acts, which fell during the period 20.03.2020 to 31.12.2020 were extended till 30.06.2021. Thus, the notice dated 01.06.2021 was issued twenty-nine days prior to the expiry of period of limitation for issuing a notice under Section 148 of the Act as was extended by TOLA. As noted above, the period from 01.06.2021, the date of issuance of notice, and 04.05.2022, being the date of*

decision of the Supreme Court in Union of India & Ors. v. Ashish Agarwal² is required to be excluded by virtue of the third proviso to Section 149(1) of the Act.

- 67. Additionally, the period from the date of decision in Union of India & Ors. v. Ashish Agarwal² till the date of providing material, as required to the accompanied with a notice under Section 148A(b) of the Act, is required to be excluded. Thus, the period between 04.05.2022 to 30.05.2022, the date on which the AO had issued the notice under Section 148A(b) of the Act in furtherance of his earlier notice dated 01.06.2021, is also required to be excluded by virtue of the third proviso to Section 149(1) of the Act as held by the Supreme Court in Union of India & Ors. v. Rajeev Bansal⁴.*
- 68. In addition to the above, the time granted to the petitioner to respond to the notice dated 30.05.2022 – the period of two weeks –is also required to be excluded by virtue of the third proviso to Section 149(1) of the Act. The petitioner had furnished its response to the notice under Section 148A(b) of the Act on 13.06.2022. Thus, the period of limitation began running from that date.*
- 69. As noted above, by virtue of TOLA, the AO had period of twenty-nine days limitation left on the date of commencement of the reassessment proceedings, which began on 01.06.2021, to issue a notice under Section 148 of the Act. The said notice was required to be accompanied by an order under Section 148A(d) of the Act. Thus, the AO was required to pass an order under Section 148A(d) of the Act within the said twenty-nine days notwithstanding the time stipulated under Section 148A(d) of the Act. This period expired on 12.07.2022.*
- 70. Since the period of limitation, as provided under Section 149(1) of the Act, had expired prior to issuance of the impugned notice on 30.07.2022. The said is squarely beyond the period of limitation.*

71. *It is contended on behalf of the Revenue that the AO is required to pass an order under Section 148A(d) of the Act by the end of the month following the month on which the reply to the notice under Section 148A(b) of the Act was received. Thus, the order under Section 148A(d) of the Act as well as the notice under Section 148 of the Act (both dated 30.07.2022) are within the prescribed period. This contention is without merit as it does not take into account that proceedings under Section 148A of the Act necessarily required to be completed within the period available for issuing notice under Section 148 of the Act, as prescribed under Section 149 of the Act. Thus, the time available to the AO to pass an order under Section 148A(d) of the Act was necessarily truncated and the same was required to be passed on or before 12.07.2022. The fourth proviso to Section 149 of the Act did not come into play as the time period available for the AO to pass an order under Section 148A(d) of the Act was in excess of the seven days.*

72. *In view of the above, we find merit in Mr. Sehgal's contention that the impugned notice dated 30.07.2022 has been issued beyond the period of limitation.*

73. *The petition is accordingly allowed and the impugned order dated 30.07.2022 passed under Section 148A(d) of the Act; the impugned notice dated 30.07.2022 issued under Section 148 of the Act; and the assessment order dated 30.05.2023 framed under Section 147 of the Act pursuant to the notice dated 30.07.2022 for AY 2013-14, are set aside. Pending application is also disposed of.*

16. Apropos, the contentions of revenue that the period of 14 days to be considered from the date of letter / email communication issued on 08.06.2022 (placed before us at page no. 121 of the APB), attached

therewith the copy of SCN u/s 148A(b) dated 26.05.2022, was only a reminder letter/ communication and the same cannot substitute or extend the date for issuance of SCN u/s 148A(b). Further, the revenue was not permitted to allow the assessee to respond within two weeks' time from the date of such reminder communication, which in accordance with the judgment of Hon'ble Apex Court in the case of **Ashish Agarwal (supra)** was to be calculated from the date of SCN u/s 148A(b) (issued within 30 days from 04.05.2022). In view of such observations, it is incomprehensible to concur with the contention placed before us by the revenue as per report of the Ld. AO dated 07.02.2025 (extracted supra), we, thus, find no substance in such argument by the revenue, accordingly, the same stands rejected.

17. Adverting to the facts of present case, as we have observed that the same is squarely covered by the decision of this tribunal in the case of **Kachrual Jitendra Kumar Vs. ITO (supra)**, in terms of our decision and findings in the said case, wherein the period of limitation was computed in para 23 of the said order, following the same analogy the facts / dates of events of the present appeal are analysed as under:

- (i) Notice u/s. 148 of the Act under the old regime (deemed notice u/s 148A) was issued by the A.O to the assessee firm on 30.06.2021;
- (ii) show-cause notice u/s 148A(b) of the Act was issued by the A.O to the assessee firm on 26.05.2022;

- (iii) the time period of two weeks (14 days) from the date of issuing of notice u/s. 148A(b) dated 26.05.2022 [as per the judgment of the Hon'ble Apex Court in the case of Union of India & Ors Vs. Ashish Agrawal (supra)] lapsed on 08.06.2022;
- (iv) the balance/surviving period available with the A.O to issue notice u/s 148 of the Act (under new regime) was **1 day** [time between 30.06.2021 (the date of issuance of notice u/s.148A of the Act) AND 30.06.2021 i.e. (extended time period under TOLA, 2020);
- (v) as the balance/surviving period available with the A.O for passing an order under clause (d) of 148A of the Act was 1 day i.e. less than 7 days, therefore, as per the "fourth proviso" to Section 148A of the Act, the period of limitation so available would stand extended to 7 days;
- (vi) the A.O could have validly issued notice u/s. 148 of the Act (under the new regime) latest by 14.06.2022;

18. In backdrop of aforesaid facts of the present case, as the order u/s 148A(d) of the Act was issued on 26.07.2022 and the notice u/s 148 (new regime) of the Act was issued on 29.07.2022, much beyond the period of limitation as was available with him up to 14.06.2022, therefore, the contentions raised by Ld. AR found to be of substance that the order u/s 148A(d) as well as the notice u/s 148 (new regime) are barred by limitation, accordingly, the assessment order passed by the Ld. AO u/s 147 r.w.s. 144B of the Act dated 30.05.2023, *dehors* a valid notice issued u/s 148 of the Act cannot be sustained, liable to be quashed, and we do so.

19. As the impugned assessment in the instant case has been rendered as quashed for the want of valid assumption of jurisdiction by the Ld. AO,

therefore, we refrain deliberating upon and to deal with the other contentions raised by the assessee against the impugned addition made by the Ld. AO, thus, the same are left open.

20. In result, the appeal of assessee in **ITA No. 379/RPR/2024** is **allowed** in terms of our aforesaid observations.

Order pronounced in the open court on 14/02/2025.

Sd/- (RAVISH SOOD) न्यायिक सदस्य / JUDICIAL MEMBER रायपुर/Raipur; दिनांक Dated 14/02/2025 Vaibhav Shrivastav	Sd/- (ARUN KHODPIA) लेखा सदस्य / ACCOUNTANT MEMBER
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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant- Kamlesh Kukreja
2. प्रत्यर्थी / The Respondent- ITO, Ward-1(1), Raipur
3. The Pr. CIT, Raipur (C.G.)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर/ DR, ITAT, Raipur
5. गार्ड फाईल / Guard file.

// सत्यापित प्रति True copy //

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)
आयकर अपीलीय अधिकरण, रायपुर/ITAT, Raipur