

IN THE INCOME TAX APPELLATE TRIBUNAL

"H(SMC)" BENCH, MUMBAI

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.6140/MUM/2024

(Assessment Year : 2013-14)

ITA No.6167/MUM/2024

(Assessment Year : 2014-15)

Nilanjana Arvinder Singh.,

Office No.2/D, 2nd Floor Calcot House,

Tamrind Lane, Fort, Mumbai,

G.P.O. Mumbai - 400001

Maharashtra

PAN – BGAPS2172J

..... Appellant

v/s

DCIT, Circle – 16(3),

Mumbai

..... Respondent

Assessee by : Shri Bharat Kumar

Revenue by : Shri Pravin Salunkhe, Sr.DR

Date of Hearing – 12/03/2025

Date of Order – 13/03/2025

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the present appeals against the separate impugned order of even date 01/05/2024, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], inter-alia, for the assessment years 2013-14 and 2014-15.

2. The present appeals are delayed by 144 days. Along with the appeal, the assessee has filed an affidavit seeking condonation of delay, wherein the assessee submitted that the Chartered Accountant handling her case was not well and therefore could not compile the necessary documents to file the

appeal. In the affidavit, the assessee further submitted that she was travelling out of India on office work for most of the time during the period. Therefore, it is submitted that due to the aforesaid circumstances the present appeals could not be filed within the prescribed limitation period. In support of the aforesaid submission, the assessee has also placed on record the copy of her passport.

3. We find that the reasons stated by the assessee for seeking condonation of delay fall within the parameters for grant of condonation laid down by the Hon'ble Supreme Court in the case of Collector Land Acquisition, Anantnag Vs. MST Katiji and others: 1987 SCR (2) 387. It is well established that rules of procedure are handmaid of justice. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. In the present case, the assessee did not stand to benefit from the late filing of the appeal. In view of the above and having perused the affidavit, we are of the considered view that there exists sufficient cause for not filing the present appeals within the limitation period and therefore, we condone the delay in filing the appeals by the assessee and we proceed to decide the appeals on merits.

4. Since in both the appeals the assessee has raised similar issues which arise out of the similar factual matrix, therefore, these appeals were heard together as a matter of convenience, and are being decided by way of this consolidated order. With the consent of the parties, the assessee's appeal for the assessment year 2013-14 is considered as a lead case, and decision

rendered therein shall apply mutatis mutandis to the other appeal of the assessee.

5. In its appeal for the assessment year 2013-14, the assessee has raised the following grounds: –

"1. On the facts and circumstances of the case and in law, the learned Assessing Officer erred passing order u/s 147 of the Act.

- a. Notices absolutely time barred*
- b. Presumption and surmises and*
- c. Mechanically approved*
- d. Without disposing objections well*
- e. Based on reasons not recorded particularly in respect of the addition made*
- f. No asset is found above Rs. 50 lacs.*
- Wrongly reopened by JAO instead of FAO*
- h. Notice u/s 148 issued after 4 years*
- i. No hearing granted u/s 148A*
- j. No verification was done by JAO*

2. On the facts and circumstances of the case and in law, the learned FAO erred in disallowing Rs. 6,35,978/- u/s 37(1) of the Act being 20% of total expenses amounting to Rs. 31,79,890/- claimed in Profit & Loss account for lack of documentary evidences on ad hoc basis.

3. On the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (A) erred in confirming the same.

4. On the facts and circumstances of the case and in law, the learned A.O. erred in levying interest u/s 234A, B, C and D & initiating penalty proceedings u/s 271(1)(b), 271(1)(c) and 271B of the Act."

6. In both appeals, the assessee has challenged the validity of the reopening of the assessment under section 147 of the Act and has also raised the grounds on merits, challenging the addition made by the Assessing Officer ("AO"). Since the ground challenging the reopening of assessment under section 147 of the Act has raised a jurisdictional issue, therefore, the same is considered at the outset.

7. During the hearing, the learned Authorized Representative ("*learned AR*") submitted that the notice issued under section 148 of the Act in the present case is beyond the limitation period specified under section 149(1) of the Act, and thus, the re-assessment order passed under section 147 r.w. section 144B of the Act is *void ab initio*.

8. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is an individual and advocate by profession. For the year under consideration, the assessee did not file her return of income. Subsequently, on the basis of the information available on AIR/ITS, it was found that as per Form 26AS, the assessee received INR 52,22,917 as fees for professional services rendered for the year under consideration, however, the same was not disclosed as the return of income itself was not filed by the assessee. Accordingly, on the basis of the aforesaid information, the AO issued notice under section 148 of the Act on 29/06/2021.

9. Subsequently, in view of the decision of the Hon'ble Supreme Court in Union of India vs. Ashish Agarwal, reported in [2022] 444 ITR 1 (SC), original notice issued under section 148 on 29/06/2021 was deemed to be issued under section 148A(b) of the Act. Vide show cause notice dated 24/05/2022, the information and material relied upon by the Revenue was provided to the assessee and time was granted to the assessee to respond on or before 08/06/2022 in terms of the provisions of section 148A(b) of the Act.

10. After rejecting the objections filed by the assessee, an order under section 148A(d) of the Act was passed on 28/07/2022 declaring that it is a fit

case for issuance of notice under section 148 of the Act. Thereafter, on 28/07/2022, notice under section 148 of the Act was issued by the Jurisdictional Assessing Officer. In response to the notice issued under section 148 of the Act, the assessee filed her return of income on 09/08/2022, declaring a total income of INR 22,78,430. The assessment order was passed under section 147 r.w. section 144B of the Act, assessing the total income of the assessee at INR 29,14,408, after disallowing 20% of the total expenditure claimed by the assessee. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee and upheld the addition made by the AO. Being aggrieved, the assessee is in appeal before us.

11. During the hearing, the learned AR submitted that for the year under consideration, the limitation period available with the AO under section 149 for issuance of notice under section 148 of the Act was till 31/03/2020, and even if the extension granted by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (*the TOLA*), in light of the decision of the Hon'ble Supreme Court in Union of India v/s Rajeev Bansal, reported in (2024) 469 ITR 46 (SC), is considered, the AO had time only till 26/06/2022 to issue notice under section 148 of the Act. Therefore, the learned AR submitted that the notice issued under section 148 of the Act on 28/07/2022 for the assessment year 2013-14 is barred by limitation. Hence, it was submitted that the entire re-assessment proceedings culminating in the order passed under section 147 r.w. section 144B of the Act is *void ab initio*. The learned AR placed reliance upon various judicial pronouncements, copy of which forms part of the legal paper book.

12. On the other hand, the learned Departmental Representative ("*learned DR*") submitted that the first notice issued under section 148 of the Act on 29/06/2021 was protected by the Hon'ble Supreme Court vide its decision in Ashish Agarwal (supra), and therefore, all the proceedings subsequent thereto are pursuant to the directions of the Hon'ble Supreme Court. Thus, the learned DR submitted that the notice dated 28/07/2022 issued under section 148 of the Act cannot be challenged on the ground of limitation, as the same was issued pursuant to the guidelines laid down by the Hon'ble Supreme Court in Ashish Agarwal (supra), which were not amended in the subsequent decision of the Hon'ble Supreme Court in Rajeev Bansal (supra). The learned DR further submitted that as per the third proviso to section 149 of the Act, as amended by the Finance Act, 2021, the time period from the date of issuance of deemed show cause notice till the date of filing of response by the assessee shall be excluded for the purpose of computation of time limit for issuance of notice under section 148 of the Act. The learned DR submitted that as per the fourth proviso to section 149 of the Act if after exclusion of the aforesaid time period, the period of limitation available to the AO is less than 7 days, then such remaining period shall be extended to 7 days and the period of limitation under section 149 of the Act shall be deemed to be extended accordingly. Further, by referring to the provisions of section 148A(d) of the Act, the learned DR submitted that the AO has time period of one month from the end of the month in which the reply is received from the assessee to pass the order. Thus, it was submitted that since in the present case, the assessee filed its reply on 24/06/2022, therefore the order passed under section 148A(d)

and notice issued under section 148 of the Act on 28/07/2022 is within the limitation period.

13. We have considered the submissions of both sides and perused the material available on record. In order to decide the issue at hand, it is, at the outset, relevant to note that the provisions of section 149 of the Act, as amended by the Finance Act, 2021, which provides the time limit for issuance of notice under section 148 of the Act, and the same reads as follows: -

"Time limit for notice.

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

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

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

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

Provided further that the provisions of this sub-section shall not apply in a case, where a notice under section 153A, or section 153C read with section 153A, is required to be issued in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or before the 31st day of March, 2021:

Provided also that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show cause notice issued under clause (b) of section 148A or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded:

Provided also that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to

the Assessing Officer for passing an order under clause (d) of section 148A is less than seven days, such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly.

Explanation — For the purposes of clause (b) of this sub-section, "asset" shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.

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

14. Therefore, from the plain reading of the provisions of Section 149 of the Act, it is evident that no notice under section 148 of the Act shall be issued after the expiry of 3 years from the end of the relevant assessment year, unless the case falls under clause (b) to section 149(1) of the Act. Further, clause (b) to section 149(1) of the Act provides the time period of 10 years to issue notice under section 148 of the Act, if the conditions laid down therein are satisfied. We find that the first proviso to section 149(1) of the Act specifically provides that no notice under section 148 of the Act, as per the amended provisions, can be issued at any time for assessment year beginning on or before 01/04/2021, if such notice could not have been issued at that time on account of being beyond the time limit specified under the provisions of section 149(1)(b), as it stood immediately before the commencement of the Finance Act, 2021.

15. Section 149 of the Act, prior to its amendment by the Finance Act, 2021, reads as follows: -

"Time limit for notice.

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

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

(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year;

(c) if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.

Explanation.— In determining income chargeable to tax which has escaped assessment for the purposes of this sub-section, the provisions of Explanation 2 of section 147 shall apply as they apply for the purposes of that section.

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

(3) If the person on whom a notice under section 148 is to be served is a person treated as the agent of a non-resident under section 163 and the assessment, reassessment or recomputation to be made in pursuance of the notice is to be made on him as the agent of such non-resident, the notice shall not be issued after the expiry of a period of six years from the end of the relevant assessment year.

Explanation.— For the removal of doubts, it is hereby clarified that the provisions of sub-sections (1) and (3), as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.”

16. From the plain reading of section 149 of the Act, prior to its amendment by the Finance Act, 2021, it is evident that the same provides period of 4 years, up to 6 years, and up to 16 years for issuance of notice under section 148 of the Act, provided the conditions laid down therein are satisfied. In the present case, it cannot be disputed that the time limit of 4 years from the end of the relevant assessment year, i.e., assessment year 2013-14, expired on 31/03/2018, and the period of 6 years from the end of the relevant assessment year expired on 31/03/2020. Therefore, in the present case, the time period covered under the provisions of the TOLA, i.e. from 20/03/2020

to 31/03/2021, only includes 30/03/2020, i.e., 6 years from the end of the relevant assessment year. It is evident from the record that the original notice under section 148 of the Act, which was deemed to be a notice issued under section 148A(b) of the Act pursuant to the decision of the Hon'ble Supreme Court in Ashish Agarwal (supra), was issued on 29/06/2021. We find that the Hon'ble Supreme Court in Rajeev Bansal (supra) in paragraph-114(b) held that the TOLA will continue to apply to the Act after 01/04/2021 if any action or proceeding specified under the substituted provisions of the Act falls for completion between 20/03/2020 and 31/03/2021. Therefore, applying the aforesaid ratio of the Hon'ble Supreme Court to the facts of the present case, we are of the considered view that as the period of 6 years from the end of the relevant assessment year expires on 31/03/2020, which fell within the period from 20/03/2020 to 31/03/2021, therefore, the notice issued on 29/06/2021, which was deemed to be noticed under section 148A(b) of the Act, is covered under the extended time limit till 30/06/2021 provided under the TOLA.

17. As regards the submission of the learned DR that the time period from the date of issuance of the deemed show cause notice till the date of filing of response by the assessee shall be excluded under the third proviso to section 149 of the Act, we find that the Hon'ble Supreme Court in paragraph-106 and 107 of its decision in Rajeev Bansal (supra), observed as follows: –

"106. In Ashish Agarwal (supra), this Court directed the assessing officers to provide relevant information and materials relied upon by the Revenue to the assessee within thirty days from the date of the judgment. A show cause notice is effectively issued in terms of Section 148A(b) only if it is supplied along with the relevant information and material by the assessing officer. Due to the legal

fiction, the assessing officers were deemed to have been inhibited from acting in pursuance of the Section 148A(b) notice till the relevant material was supplied to the assesses. Therefore, the show cause notices were deemed to have been stayed until the assessing officers provided the relevant information or material to the assesses in terms of the direction issued in Ashish Agarwal (supra). To summarize, the combined effect of the legal fiction and the directions issued by this Court in Ashish Agarwal (supra) is that the show cause notices that were deemed to have been issued during the period between 1 April 2021 and 30 June 2021 were stayed till the date of supply of the relevant information and material by the assessing officer to the assessee. After the supply of the relevant material and information to the assessee, time begins to run for the assesses to respond to the show cause notices.

107. The third proviso to Section 149 allows the exclusion of time allowed for the assesses to respond to the show cause notice under section 149A(b) to compute the period of limitation. The third proviso excludes "the time or extended time allowed to the assessee." Resultantly, the entire time allowed to the assessee to respond to the show cause notice has to be excluded for computing the period of limitation. In Ashish Agarwal (supra), this Court provided two weeks to the assesses to reply to the show cause notices. This period of two weeks is also liable to be excluded from the computation of limitation given the third proviso to Section 149. Hence, the total time that is excluded for computation of limitation for the deemed notices is: (i) the time during which the show cause notices were effectively stayed, that is, from the date of issuance of the deemed notice between 1 April 2021 and 30 June 2021 till the supply of relevant information or material by the assessing officers to the assesses in terms of the directions in Ashish Agarwal (supra); and (ii) two weeks allowed to the assesses to respond to the show cause notices."

18. From the perusal of the aforesaid findings of the Hon'ble Supreme Court in Rajeev Bansal (supra), it is evident that the Hon'ble Supreme Court directed that while computing the time limit for issuance of notice under section 148, the time during which the show cause notice was stayed till the supply of relevant information or material by the AO and further period of two weeks allowed to the assessee to respond to the show cause notice should be excluded. We find that while examining the validity of notices issued from 01/04/2021 to 30/06/2021 under the old regime, the Hon'ble Supreme Court in Rajeev Bansal (supra), analysing the interplay of Ashish Agarwal (supra) with the TOLA, in paragraph-108 of its judgment observed as follows: -

"108. The Income Tax Act read with TOLA extended the time limit for issuing reassessment notices under Section 148, which fell for completion from 20 March 2020 to 31 March 2021, till 30 June 2021. All the reassessment notices under challenge in the present appeals were issued from 1 April 2021 to 30 June 2021 under the old regime. Ashish Agarwal (supra) deemed these reassessment notices under the old regime as show cause notices under the new regime with effect from the date of issuance of the reassessment notices. The effect of creating the legal fiction is that this Court has to imagine as real all the consequences and incidents that will inevitably flow from the fiction. 163 Therefore, the logical effect of the creation of the legal fiction by Ashish Agarwal (supra) is that the time surviving under the Income Tax Act read with TOLA will be available to the Revenue to complete the remaining proceedings in furtherance of the deemed notices, including issuance of reassessment notices under Section 148 of the new regime. The surviving or balance time limit can be calculated by computing the number of days between the date of issuance of the deemed notice and 30 June 2021."

19. Thus, the Hon'ble Supreme Court held that the surviving time under the Act read with the TOLA will be available to the Revenue to complete the remaining proceedings in furtherance of the deemed notice, including issuance of re-assessment notice under section 148 of the Act under the new regime. While explaining the methodology for computation of the surviving or balance time limit, the Hon'ble Supreme Court in paragraph-112 of Rajeev Bansal (supra) observed as follows: -

"112. Let us take the instance of a notice issued on 1 May 2021 under the old regime for a relevant assessment year. Because of the legal fiction, the deemed show cause notices will also come into effect from 1 May 2021. After accounting for all the exclusions, the assessing officer will have sixty-one days [days between 1 May 2021 and 30 June 2021] to issue a notice under Section 148 of the new regime. This time starts ticking for the assessing officer after receiving the response of the assessee. In this instance, if the assessee submits the response on 18 June 2022, the assessing officer will have sixty-one days from 18 June 2022 to issue a reassessment notice under Section 148 of the new regime. Thus, in this illustration, the time limit for issuance of a notice under Section 148 of the new regime will end on 18 August 2022."

20. Therefore, the surviving/balance time limit can be calculated by computing the number of days between the date of issuance of deemed notice and 30/06/2021. Since, in the present case, we find that the period of 6 years

from the end of the relevant assessment year expires on 31/03/2020, which falls within the time period from 20/03/2020 to 31/03/2021, in order to compute the surviving/balance time as per the decision of the Hon'ble Supreme Court in paragraph-108, it is relevant to note the following dates: -

<i>S. No.</i>	<i>Particulars</i>	<i>Dates</i>
1	<i>Period of Limitation under the Old Act</i>	<i>31.03.2020</i>
2	<i>First Notice issued u/s 148</i>	<i>29.06.2021</i>
3	<i>Extended Limitation as per the TOLA</i>	<i>30.06.2021</i>
4	<i>Surviving Time</i>	<i>2 Days</i>
5	<i>Date of Decision of Ashish Agarwal</i>	<i>04.05.2022</i>
6	<i>Notice u/s 148A(b)</i>	<i>24.05.2022</i>
7	<i>Time Given</i>	<i>30 Days</i>
8	<i>Assessee's Reply</i>	<i>24.06.2022</i>
9	<i>Order u/s 148A(d)</i>	<i>28.07.2022</i>
10	<i>Second Notice u/s 148</i>	<i>28.07.2022</i>

21. Therefore, computing the surviving/balance time limit, as per the decision of the Hon'ble Supreme Court in Rajeev Bansal (supra), we find that the Revenue had only 2 days (i.e., between 29/06/2021 to 30/06/2021) to issue notice under section 148 of the Act of the new regime in the present case, i.e. till 26/06/2022, after receipt of the response from the assessee on 24/06/2022 to the show cause notice issued under section 148A(b) of the Act. However, undisputedly, in the present case, the notice under section 148 of the Act was issued on 28/07/2022, i.e., 32 days after the surviving/balance time period as per the decision of the Hon'ble Supreme Court in Rajeev Bansal (supra).

22. We find that even if the benefit of the fourth proviso to section 149 of the Act is granted to the Revenue, since the remaining period in the present case, after the exclusion of time period as provided in the third proviso to section 149, is less than 7 days, even then the notice dated 28/07/2022 under

section 148 of the Act was issued much beyond the 7 days' extension provided in the fourth proviso to section 149 of the Act.

23. As regards the other contention of the learned DR that as per the provisions of section 148A(d) of the Act, the AO has time period of one month from the end of the month in which the reply is received from the assessee, and therefore, since in the present case, the assessee filed its reply on 24/06/2022, the order passed under section 148A(d) and notice issued under section 148 of the Act on 28/07/2022 is within the limitation period, we find that similar argument of the Revenue was negated by the Hon'ble Delhi High Court in Ram Balram Buildhome (P.) Ltd. v/s Income-tax Officer, reported in [2025] 171 taxmann.com 99 (Delhi), by observing as follows: –

"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."*

24. Therefore, in view of the findings of the Hon'ble Delhi High Court in the decision cited supra, we do not find any merits in the aforesaid submission of the learned DR, and the reliance placed by the learned DR upon the decision of the SMC Bench of the Tribunal in Pushpadevi Shivilal Rathi v/s ITO, in ITA No. 1995/Pun./2024, dated 04/12/2024 is also of no relevance.

25. Therefore, having considered the provisions of the Act, pre as well as post the amendment by the Finance Act, 2021, and the TOLA, in the light of the decision of the Hon'ble Supreme Court in Ashish Agarwal (supra) and Rajeev Bansal (supra), we are of the considered view that the notice issued under section 148 of the Act on 28/07/2022 is barred by limitation period specified under section 149 of the Act. Accordingly, we are of the considered view that notice issued under section 148 of the Act on 28/07/2022 is *void ab initio* and bad in law. Therefore, the same is quashed. Consequently, the entire re-assessment proceedings and assessment order passed under section 147 r.w. section 144B of the Act are also quashed.

26. Since the relief has been granted to the assessee on the aforenoted jurisdictional aspect, the other grounds raised by the assessee in the appeal are rendered academic, and therefore, are left open.

27. In the result, the appeal by the assessee for the assessment year 2013-14 is allowed.

28. In its appeal for the assessment year 2014-15, the assessee has raised the following grounds: –

"1. On the facts and circumstances of the case and in law, the learned Assessing Officer erred passing order u/s 147 of the Act.

- a. Notices absolutely time barred*
- b. Presumption and surmises and*
- c. Mechanically approved*
- d. Without disposing objections well*
- e. Based on reasons not recorded particularly in respect of the addition made*
- f. No asset is found above Rs. 50 lacs*
- g. Wrongly reopened by JAO instead of FAO*
- h. Notice u/s 148 issued after 4 years*
- i. No hearing granted u/s 148A*
- j. No verification was done by JAO*

2. On the facts and circumstances of the case and in law, the learned FAO erred in disallowing Rs. 10,40,822/- (2,92,530+3,74,700+3,73,592) u/s 37(1) of the Act being 30% of Rs. 34,69,407/- (9,75,100+12,49,000+12,45,307) in respect of total expenses claimed towards Rent, Salaries & Wages and Traveling expenses in Profit & Loss account for lack of documentary evidences on ad hoc basis.

3. On the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (A) erred in confirming the same.

4. On the facts and circumstances of the case and in law, the learned A.O. erred in levying interest u/s 234A, B, C and D & initiating penalty proceedings u/s 270A(2)(b) even though section 270A is not applicable to the Assessment year under consideration and u/s 271B of the Act."

29. Since in this appeal also, the assessee has raised the ground challenging the reopening of assessment under section 147 of the Act, therefore, the same is considered at the outset.

30. In the assessment year 2014-15, in order to compute the surviving/balance time period as per the decision of the Hon'ble Supreme Court in Rajeev Bansal (supra), it is relevant to note the following dates: –

<i>S. No.</i>	<i>Particulars</i>	<i>Dates</i>
1	<i>Period of Limitation under the Old Act</i>	<i>31.03.2021</i>
2	<i>First Notice issued u/s 148</i>	<i>29.06.2021</i>
3	<i>Extended Limitation as per the TOLA</i>	<i>30.06.2021</i>
4	<i>Surviving Time</i>	<i>2 Days</i>
5	<i>Date of Decision of Ashish Agarwal</i>	<i>04.05.2022</i>
6	<i>Notice u/s 148A(b)</i>	<i>24.05.2022</i>
7	<i>Time Given</i>	<i>30 Days</i>
8	<i>Assessee's Reply</i>	<i>24.06.2022</i>
9	<i>Order u/s 148A(d)</i>	<i>28.07.2022</i>
10	<i>Second Notice u/s 148</i>	<i>28.07.2022</i>

31. Therefore, computing the surviving/balance time limit, as per the decision of the Hon'ble Supreme Court in Rajeev Bansal (supra), we find that similar to the assessment year 2013-14, in this year also the Revenue had only 2 days (i.e., between 29/06/2021 to 30/06/2021) to issue notice under section 148 of the Act of the new regime, i.e. till 26/06/2022, after receipt of the response from the assessee on 24/06/2022 to the show cause notice issued under section 148A(b) of the Act. However, undisputedly, in the present case, the notice under section 148 of the Act was issued on 28/07/2022, i.e., 32 days after the surviving/balance time period as per the decision of the Hon'ble Supreme Court in Rajeev Bansal (supra). Therefore, we are of the considered view that our findings/conclusions as rendered in assessee's appeal for the assessment year 2013-14 shall apply *mutatis mutandis* to the appeal for the assessment year 2014-15. Accordingly, we are of the considered view that notice issued under section 148 of the Act on 28/07/2022 is barred by limitation period specified under section 149 of the Act, and therefore is *void ab initio* and bad in law. Thus, the same is quashed.

Consequently, the entire re-assessment proceedings and assessment order passed under section 147 r.w. section 144B of the Act are also quashed.

32. Since the relief has been granted to the assessee on the aforementioned jurisdictional aspect, the other grounds raised by the assessee in the appeal are rendered academic, and therefore, are left open.

33. In the result, the appeal by the assessee for the assessment year 2014-15 is allowed.

34. To sum up, both appeals by the assessee are allowed.

Order pronounced in the open Court on 13/03/2025

Sd/-

**AMARJIT SINGH
ACCOUNTANT MEMBER**

MUMBAI, DATED: 13/03/2025

prabhat

Sd/-

**SANDEEP SINGH KARHAIL
JUDICIAL MEMBER**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai