

आयकर अपीलीय अधिकरण सी न्यायपीठ चेन्नई में।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'C' BENCH, CHENNAI**

माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य एवं  
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।  
**BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**AND HON'BLE SHRI MANU KUMAR GIRI, JM**

आयकरअपील सं./ ITA No.3241 &3242/Chny/2024  
(निर्धारणवर्ष / Assessment Years: 2016-2017 & 2017-18)

Yugendiran Vishnupriya  
Door No.284/3,  
Thiruvani Colony, Bellyarea,  
Anna Nagar, Chennai-600040

**Vs.** Income Tax Officer,  
International Tax,  
Ward 2(2)  
Chennai.

**[PAN: APZPV 9903M]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by  
प्रत्यर्थी की ओर से /Respondent by

: Mr. Y. Sridhar, F.C.A  
: Mr. R. Clement Ramesh Kumar, CIT

सुनवाई की तारीख/Date of Hearing

: 25.02.2025

घोषणा की तारीख /Date of Pronouncement

: 25.03.2025

**आदेश / O R D E R**

**PER MANU KUMAR GIRI (Judicial Member)**

The captioned appeal are preferred by the assessee against the separate orders of the Assessing Officer ('AO' in short) framing assessment for Assessment Years ('AYs' in short) 2016-17 and 2017-18 u/s.144 r.w.s. 144C(13) of the Income Tax Act, 1961 ('the Act' in short) by orders dated 22.03.2024 pursuant to the Dispute Resolution Panel-2 ('DRP' in short), Bengaluru, directions u/s 144C(5) dated 26.02.2024.

2. The registry has noted delay of 202 days in filing the appeals. Considering the reasons as stated in the affidavit by the Assessee i.e; 'instead of preferring appeals before the Tribunal had filed appeals before the CIT(A)', we condone the delay and treat the reasons as 'sufficient cause' and admit the appeal for adjudication.

3. The assessee has raised the following grounds of appeal for AYs 2016-17 and 2017-18:

Grounds of appeal for assessment year 2016-2017

- '1. The order of the Dispute Resolution Panel against the draft assessment order by the Id. AO is contrary to law and facts and circumstances of the case.*
- 2. The Hon'ble DRP erred in passing the order without considering the information placed on record.*
- 3. Reassessment proceeding initiated u/s 147 of the act are bad in law and is liable to be quashed.*
- 4. The Id. AO erred in proceeding with the reassessment without issuance of notice u/s 143(2) of the act.*
- 5. The Id AO has erred in denying the exemption under article 15(1) of the DTAA between India and Sweden for salary income received by the appellant amounting to Rs. 14,11,140/- for exercising employment in Sweden.*
- 6. The Id AO failed to appreciate that under article 15(1) of the DTAA between India and Sweden, exclusive right to tax income from salary is attached to the state in which employment is exercised and in the instant case, the appellant was physically present in Sweden and exercised the employment there.*
- 7. The Id AO failed to appreciate that section 5(2) can not be read and applied in isolation. It has to be read with the related provisions of the Act before taxability or otherwise is determined. In the appellant's case, section 5(2) has to be read with section 9 of IT act, whereby the income will not be taxable in India. The Id AO failed to appreciate that under 9(1)(1) of the act, income from salary is taxable in India if it is earned in India.*
- 8. The Id AO ought to have appreciated the fact that if service is not rendered in India then income from salary earned in Sweden is not subject to tax under income tax act.*
- 9. The Id AO ought to have appreciated that employment cost reimbursement was on a cost-to-cost basis and such there is no income taxable in India.*
- 10. The Id AO failed to consider the payment of taxes in Sweden for the services rendered in Sweden.*
- 11. The Id CIT (A) ought to have appreciated the fact no notice u/s 148 shall be issued beyond the period of three years as the escapement of income is below Rs 50 lakhs in this case*

12. For the above reasons and reasons that may be adduced at the time of hearing, the addition made under the head salary amounting to Rs.14,11,140/- may kindly be deleted and justice rendered.
13. The appellant craves to amend, alter or delete any of the above grounds of appeal.

### Grounds of appeal for assessment year 2017-2018

1. The order of the Dispute Resolution Panel against the draft assessment order by the Id. AO is contrary to law and facts and circumstances of the case.
2. The Hon'ble DRP erred in passing the order without considering the information placed on record.
3. Reassessment proceeding initiated u/s 147 of the act are bad in law and is liable to be quashed.
4. The Id. AO erred in proceeding with the reassessment without issuance of notice u/s 143(2) of the act.
5. The Id AO has erred in denying the exemption under article 15(1) of the DTAA between India and Sweden for salary income received by the appellant amounting to Rs. 16,07,730/- for exercising employment in Sweden.
6. The Id AO failed to appreciate that under article 15(1) of the DTAA between India and Sweden, exclusive right to tax income from salary is attached to the state in which employment is exercised and in the instant case, the appellant was physically present in Sweden and exercised the employment there.
7. The Id AO failed to appreciate that section 5(2) can not be read and applied in isolation. It has to be read with the related provisions of the Act before taxability or otherwise is determined. In the appellant's case, section 5(2) has to be read with section 9 of IT act, whereby the income will not be taxable in India. The Id AO failed to appreciate that under 9(1)(I) of the act, income from salary is taxable in India if it is earned in India.
8. The Id AO ought to have appreciated the fact that if service is not rendered in India then income from salary earned in Sweden is not subject to tax under income tax act.
9. The Id AO ought to have appreciated that employment cost reimbursement was on a cost-to-cost basis and such there is no income taxable in India.
10. The Id AO failed to consider the payment of taxes in Sweden for the services rendered in Sweden.
11. The Id AO failed to consider the fact that the approvals were obtained beyond the extended period provided by TOLA and therefore notice issued for 2017-18 was deemed invalid.
12. The Id CIT (A) ought to have appreciated the fact no notice u/s 148 shall be issued beyond the period of three years as the escapement of income is below Rs 50 lakhs in this case
13. For the above reasons and reasons that may be adduced at the time of hearing, the addition made under the head salary amounting to Rs. 16,07,730/- may kindly be deleted and justice rendered.
14. The appellant craves to amend, alter or delete any of the above grounds of appeal".

4. Before us, the appellant's counsel first take up the jurisdictional ground No.11 as under:

*'Ground 11: The Id.(CITA) ought to have appreciated the fact no notice u/s 148 shall be issued beyond the period of three years as the escapement of income is below Rs.50 lakhs in this case'.*

5. Brief facts are that the appellant is a non-resident and has not filed her return of income for the AY 2016-17 as the total income was below taxable limit. However, the case was reopened to verify the foreign remittance made amounting to Rs.23,80,674/- during the year under consideration by issue of a notice u/s 148 dated 30.06.2021. The assessee has submitted his statement of income for AY 2016-17 with admitted income of Rs.1,76,146/- as salary income received from M/s Tata Consultancy Services Ltd. The assessee was an employee of the M/s Tata Consultancy Services Ltd in relevant previous year. The assessee has been sent on international assignment to Sweden and salary for that period had been paid in India by employer. In the year under consideration, the assessee has received undisclosed salary of Rs.14,11,140/- towards her assignment salary in Sweden. As per the details available in NMS Database on Insight Portal that during FY 2015-16, the assessee has made the following huge transactions:

"Foreign Remittance made for Rs.23,80,674/-. Out of which, Rs.14,11,140/- is undisclosed Income". This is the reason for reopening of assessment in this case'.

6. By raising ground No.11, the assessee has challenged in this case, the jurisdiction of the AO to have issued notice dated 30.06.2021 u/s.148 of the Act as per sec.149(1)(b) of the Act (as amended by Finance Act, 2021), no notice for re-assessment could have been issued to assessee for AY 2016-17 and AY 2017-18 as

the time limit for issuing proceedings had expired on 31.03.2020 and 31.03.2021 and the foreign remittance received by the appellant amounting to Rs.23,80,674/- is less than the threshold limit of Rs.50,00,000/- (Rupees fifty lakhs). In other words, according to the assessee, in these two cases, the AO had issued notices to assessee dated 30.06.2021 u/s.148 of the Act under the erstwhile Sec.148 of the Act (as it stood prior to its amendment by the Finance Act, 2021). The action of the AO was to be deemed to have been issued to assessee u/s.148A of the Act, as substituted by the Finance Act, 2021 (as ordered by the Hon'ble Supreme Court in the case of *UoI v. Ashish Agarwal reported in [2022] 444 ITR 1 (SC) dated 04.05.2022*). The Hon'ble Apex Court in *Ashish Agarwal (supra)* having ordered that all the notices issued by AO under the erstwhile Sec.148 of the Act to be treated as issued u/s.148A of the substituted Finance Act, 2021, also gave liberty to the assessee to raise all defense available to the assessee u/s.149 of the Act, and/or which may be available under the Finance Act, 2021. In this back ground, according to the assessee, it is raising the defense that AO could not have issued notices for AYs 2016-17 and 2017-18, under new substituted Finance Act, 2021.

7. Before us Id. counsel contended that the foreign remittance received by the appellant is amounting to Rs.23,80,674/- which is less than the threshold limit of Rs.50,00,000/- (Rupees fifty lakhs) prescribed under section 149(1)(b) of the Income Tax Act, 1961 ('Act' in short) as amended vide Finance Act, 2021 read with CBDT Instruction No.01/2022, therefore, the case cannot be subjected to reassessment proceedings and is barred by limitation.

8. In furtherance of his arguments, Id. counsel has also referred Mumbai bench order in the case of *Pankaj Chandrakant Pimple Vs International Tax (ITA No.1577/Mum/2024) dated 20.12.2024*.

9. The Id.DR, Mr. R. Clement Ramesh Kumar, CIT relied upon the orders of lower authorities and contended that the reopening is valid in law. He further argued that this jurisdictional ground was never raised before the lower authorities.

10. We have heard the both parties and perused the orders of Id.CIT(A), Id.AO and case law citations paper book. It is undisputed fact that the impugned notices u/s 148 were issued to assessee on 30.06.2021 after enactment of the Finance Act, 2021 wherein the section 148 has undergone drastic change specifically in respect of limitation, quantum of escapement, approval and procedure. This is evident from the following observations as rendered by the Hon'ble Supreme Court in *Ashish Agarwal [(2022) 444 ITR 1 (SC) / 286 Taxman 183 SC / (2023) 1 SCC 617]*:

*"19. However, by way of Section 148-A, the procedure has now been streamlined and simplified. It provides that before issuing any notice under Section 148, the assessing officer shall:*

*(i) conduct any enquiry, if required, with the approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;*

*(ii) provide an opportunity of being heard to the assessee, with the prior approval of specified authority;*

*(iii) consider the reply of the assessee furnished, if any, in response to the show-cause notice referred to in clause (b); and*

*(iv) decide, on the basis of material available on record including reply of the assessee, as to whether or not it is a fit case to issue a notice under Section 148 of the IT Act; and*

*(v) the AO is required to pass a specific order within the time stipulated.*

*20. Therefore, all safeguards are provided before notice under Section 148 of the IT Act is issued. At every stage, the prior approval of the specified authority is required, even for conducting the enquiry as per Section 148-A(a). Only in a case where, the assessing officer is of the opinion that before any notice is issued under Section 148-A(b) and an opportunity is to be given to the assessee, there is a requirement of conducting any enquiry, the assessing officer may do so and conduct any enquiry. Thus if the assessing officer is of the opinion that any enquiry is required, the assessing officer can do so, however, with the prior approval of the specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment”.*

Substituted Section 149 is the provision governing the time-limit for issuance of notice under Section 148 of the IT Act. The substituted Section 149 of the IT Act has reduced the permissible time-limit for issuance of such a notice to three years and only in exceptional cases ten years. It also provides further additional safeguards which were absent under the earlier regime pre-Finance Act, 2021.”

11. The Hon’ble High Court of Allahabad in the case of *Ajay Bhandari Vs Union of India [(2022) 446 ITR 699 (Allahabad) / (2022) 288 Taxman 217 (Allahabad)* in similar situation held as under:

*’7. We have carefully considered the submissions of the learned counsels for the parties and perused the record of the writ petition, the judgment of Hon’ble Supreme Court in the case of Ashish Agarwal (supra) and Circular F.No 279/Misc./M-51/2022-ITJ, dated 11.05.2022 issued by the Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, ITJ Section, New Delhi. Section 147 of the Act, 1961 as it existed till 31.03.2021, empowers the Assessing Officer to assess or reassess or recompute the loss or depreciation allowance or any other allowance, as the case may be, for the concerned assessment year in the case of an assessee if he has reason to believe that income chargeable to tax has escaped assessment, subject to the provisions of Sections 148 to 153. A pre-condition to initiate proceedings*

*under Section 147 is the issuance of notice under Section 148. Thus, notice under Section 148 is jurisdictional notice. Section 149 provides time limit for issuance of notice under Section 148. The time limit is provided under the unamended provisions (existed till 31.03.2021) and the amended provisions (effective from 01.04.2021) as amended by the Finance Act, 2021. Unamended Section 149 and Amended Section 149 are reproduced below:*

<i>Time Limit for Notice</i>	
<i>Unamended Section 149 of the Act, 1961</i>	<i>Amended Section 149 of the Act, 1961</i>
<p><i>149. (1) No notice under section 148 shall be issued for the relevant assessment year,-</i></p> <p><i>(a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b) or clause (c);</i></p> <p><i>(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;</i></p> <p><i>(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.</i></p> <p><i>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.</i></p> <p><i>(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section</i></p>	<p><i>149. (1) No notice under section 148 shall be issued for the relevant assessment year,-</i></p> <p><i>(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);</i></p> <p><i>(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 accounts 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:</i></p> <p><i>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:</i></p>

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.*

*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 in sub-section (1) 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, share and securities, loans and advances, deposits in bank account.*

*(2) The provisions of sub-section (1) as to the issue of notice shall*

	<i>be subject to the provisions of section 151.</i>
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*8. In the case of Ashish Agarwal (supra), Hon'ble Supreme Court held in Paras 23, 25 and 27, as under:-*

*"23.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 assessees 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 assessees the information and material relied upon by the Revenue so that the assessees 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 one-time measure vis-a-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 assesseees;*

*(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.*

*25. Therefore, we have proposed to pass the present order with a view avoiding filing of further appeals before this Court and burden this Court with approximately 9000 appeals against the similar judgments and orders passed by the various High Courts, the particulars of some of which are referred to hereinabove. We have also proposed to pass the aforesaid order in exercise of our powers under Article 142 of the Constitution of India by holding that the present order shall govern, not only the impugned judgments and orders passed by the High Court of Judicature at Allahabad, but shall also be made applicable in respect of the similar judgments and orders passed by various High Courts across the country and therefore the present order shall be applicable to PAN INDIA.*

*27. The present order shall be applicable PAN INDIA and all judgments and orders passed by different High Courts on the issue and under which similar notices which were issued after 01.04.2021 issued under section 148 of the Act are set aside and shall be governed by the present order and shall stand modified to the aforesaid extent. The present order is passed in exercise of powers under Article 142 of the Constitution of India so as to avoid any further appeals by the Revenue on the very issue by challenging similar judgments and orders, with a view not to burden this Court with approximately 9000 appeals. We also observe that present order shall also govern the pending writ petitions, pending before various High Courts in which similar notices under Section 148 of the Act issued after 01.04.2021 are under challenge."*

*9. The judgment of Hon'ble Supreme Court under Article 142 of the Constitution of India, in the case of Ashish Agarwal (supra) has been explained for implementation/ clarified by Instruction No.01/2022 being F.No 279/Misc./M-51/2022-ITJ, dated 11.05.2022 issued by the Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, ITJ Section,*

*New Delhi, in exercise of powers under Section 119 of the Act, 1961, which is reproduced below:-*

*F. No 279/Misc./M-51/2022-ITJ*

*Ministry of Finance*

*Department of Revenue*

*Central Board of Direct Taxes*

*ITJ Section*

*New Delhi, Dated: 11th May, 2022*

*Subject: Implementation of the judgment of the Hon'ble Supreme Court dated 04.05.2022 (2022 SCC Online SC 543) (Union of India v. Ashish Agarwal) -- Instruction regarding*

*1. Hon'ble Supreme Court, vide its judgment dated 04.05.2022 (2022 SCC Online SC 543), in the case of Union of India v. Ashish Agarwal has adjudicated on the validity of the issue of reassessment notices issued by the Assessing Officers during the period beginning on 1st April, 2021 and ending with 30th June 2021, within the time extended by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 [hereinafter referred to as "TOLA"] and various notifications issued thereunder (these reassessment notices hereinafter referred to as "extended reassessment notices").*

*2. These extended reassessment notices were issued by the Assessing Officers under the provision of section 148 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") following the procedure prescribed under various sections pertaining to reassessment namely sections 147 to 151, as they existed prior to their amendment by the Finance Act, 2021 (hereinafter referred to as "old law"). With effect from 1 April 2021, the old law has been substituted with new sections 147-151 (hereinafter referred to as the "new law").*

*3. Hon'ble Supreme Court has held that these extended reassessment notices issued under the old law shall be deemed to be the show cause notices issued under clause (b) of section 148A of the new law and has directed Assessing Officers to follow the procedure with respect to such notices. It has also held that all the defences available to assessees under section 149 of the new law and whatever rights are available to the Assessing Officer under the new law shall continue to be available. Hon'ble Supreme Court has passed this order in exercise of its power under Article 142 of the Constitution of India.*

*4. The implementation of the judgment of Hon'ble Supreme Court is required to be done in a uniform manner. Accordingly, in exercise of its power under section 119 of the Act, the Central Board of Direct Taxes (hereinafter referred to as "the Board") directs that the following may be taken into consideration while implementing this judgment.*

*5.0 Scope of the judgment:*

*5.1 Taking into account the decision of the Hon'ble Supreme Court in various paragraphs, it is clarified that the judgment applies to all cases where extended reassessment notices have been issued. This is irrespective of the fact whether such notices have been challenged or not.*

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

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

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

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

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

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

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

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

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

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

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

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

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

*7.0 Cases where the Assessing Officer is required to provide the information and material relied upon within 30 days:*

*7.1 Hon'ble Supreme Court has directed that information and material is required to be provided in all cases within 30 days. However, it has also been noticed that notices cannot be issued in a case for AY 2013-14, AY 2014-15 and AY 2015-16, if the income escaping assessment, in that case for that year, amounts to or is likely to amount to less than fifty lakh rupees. Hence, in order to reduce the compliance burden of assessees, it is clarified that information and material may not be provided in a case for AY 2013-14, AY 2014-15 and AY 2015-16, if the income escaping assessment, in that case for that year, amounts to or is likely to amount to less than fifty lakh rupees. Separate instruction shall be issued regarding procedure for disposing these cases.*

*8.0 Procedure required to be followed by the Assessing Officers to comply with the Supreme Court judgment:*

*8.1 The procedure required to be followed by the Jurisdictional Assessing Officer/Assessing Officer, in compliance with the order of the Hon'ble Supreme Court, is as under:*

- The extended reassessment notices are deemed to be show cause notices under clause (b) of 148A of the Act in accordance with the judgment of Hon'ble Supreme Court. Therefore, all requirement of new law prior to that show cause notice shall be deemed to have been complied with.*
- The Assessing Officer shall exclude cases as per clarification in paragraph 7.1 above.*
- Within 30 days i.e. by 2nd June 2022, the Assessing Officer shall provide to the assessees, in remaining cases, the information and material relied upon for issuance of extended reassessment notices.*
- The assessee has two weeks to reply as to why a notice under section 148 of the Act should not be issued, on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year.*

*The time period of two weeks shall be counted from the date of last communication of information and material by the Assessing Officer to the assessee.*

*- In view of the observation of Hon'ble Supreme Court that all the defences of the new law are available to the assessee, if assessee makes a request by making an application that more time be given to him to file reply to the show cause notice, then such a request shall be considered by the Assessing Officer on merit and time may be extended by the Assessing Officer as provided in clause (b) of new section 148A of the Act.*

*- After receiving the reply, the Assessing Officer shall 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 under section 148 of the Act. The Assessing Officer is required to pass an order under clause (d) of section 148A of the Act to that effect, with the prior approval of the specified authority of the new law. This order is required to be passed within one month from the end of the month in which the reply is received by him from the assessee. In case no such reply is furnished by the assessee, then the order is required to be passed within one month from the end of the month in which time or extended time allowed to furnish a reply expires. If it is a fit case to issue a notice under section 148 of the Act, the Assessing Officer shall serve on the assessee a notice under section 148 after obtaining the approval of the specified authority under section 151 of the new law. The copy of the order passed under clause (d) of section 148A of the Act shall also be served with the notice u/s 148.*

*- If it is not a fit case to issue a notice under section 148 of the Act, the order passed under clause (d) of section 148A to that effect shall be served on the assessee.*

*Tanay Sharma  
DCIT(OSD), ITJ-I*

*Copy to:*

- 1. Chairman, Members and all other officer in CBDT of the rank of Under Secretary and above.*
- 2. All Pr. Chief Commissioner of Income Tax and all Directors General of Income tax with a request to bring to the attention of all officers.*
- 3. ADG(PR. P&P), Mayur Bhawan, New Delhi for printing in the quarterly Tax Bulletin and for circulation as per usual mailing list.*
- 4. The Comptroller and Auditors General of india.*
- 5. ADG (Vigilance), Mayur Bhawan, New Delhi.*
- 6. Joint Secretary & Legal Advisor, Ministry of Law & Justice, New Delhi.*
- 7. All Directorates of Income-tax, New Delhi and Pr. DGIT (NADT), Nagpur.*
- 8. ITCC (3 copies).*
- 9. ADG (System)-4, for uploading on the Department's website.*

10. Data Base Cell for uploading or irsofficeronline.gov.in.
11. njrs Support@nsdl.co.in for uploading on NJRS.
12. Hindi Cell for translation.
13. Guard file."

10. Learned Additional Solicitor General of India has made a statement before us, as noted in paragraph-5 above, that as per Clause-7.1 of the Board's circular dated 11.05.2022, the notices under Section 148 relating to the Assessment Years 2013-14, 2014-15 and 2015-16, shall not attract the judgment of Hon'ble Supreme Court in the case of Ashish Agarwal (supra) and the impugned notice under Section 148 issued on 01.04.2021 for the Assessment Year 2014-15 is, therefore, clearly barred by limitation and consequently without jurisdiction. Therefore, in view of the admission made by the learned Additional Solicitor General on behalf of the respondents, we do not propose to deal with the other arguments of learned counsel for the petitioner as noted in paragraph-6 above and thus all other questions including the question of conferment of jurisdiction etc., are left open.

11. As per Clauses 6.2 and 7.1 of the Board's Circular dated 11.05.2022, if a case does not fall under Clause (b) of sub-Section (i) of Section 149 of the Act, 1961 for the Assessment Years 2013-14, 2014-15 and 2015-16 (where the income of an assessee escaping assessment to tax is less than Rs.50,00,000/-) and notice has not been issued within limitation under the unamended provisions of Section 149, then proceedings under the amended provisions cannot be initiated.

12. For all the reasons aforesaid, the impugned notice under Section 148 of the Act, 1961 issued on 01.04.2021 for the Assessment Year 2014-15 and the impugned notice dated 13.01.2022 under Section 144 of the Act, 1961 and the reassessment order dated 13.01.2022 under Section 147 read with Section 144B of the Act, 1961 for the Assessment Year 2014-15 passed by the respondent No.4 are hereby quashed. The writ petition is allowed".

12. The Hon'ble High Court of Delhi in the case of *Ganesh Dass Khanna Vs Income Tax Officer [(2024) 460 ITR 546 (Delhi) / (2023) 156 Taxmann.com 417 (Delhi)* has considered the entire conspectus of legal arguments contended by the both sides, in similar situation held as under:

"53.1 As would be evident from the extracts set forth above, both from the Finance Minister's speech and the Memorandum, the time limit for reopening under the new regime was reduced from six (06) years to three (03) years and only in respect of "serious tax evasion cases", that too, where evidence of concealment of income of Rs. 50 lakhs or more in a given period was found, the period for reopening the assessment was extended to ten (10) years. In order to ensure that

*utmost care was taken before invoking the extended period of limitation, the proposal was that approval should be obtained from the Principal Chief Commissioner of Income Tax, at the highest hierarchical level of the department. Likewise, the Memorandum emphasized that the new regime was forged with the hope that it would result in less litigation and would provide ease of doing business to tax payers, as there was a reduction in the time limit by which notice for assessment, reassessment and re-computation could be issued.*

*53.2 Thus, as per the Memorandum, in "normal cases", no notice was intended to be issued if three (03) years had elapsed from the end of the relevant AY. Notice, beyond the prescribed three (03) years from the end of the relevant AY, could be issued only in a few specific cases; one such example which is given in the Bill is where the AO was in possession of evidence that escaped income amounted to Rs. 50 lakhs or more.*

*53.3 In sum, the sense that one gets upon a holistic reading of the backdrop in which the new regime for reopening assessments was enacted is that where escapement of income was below Rs. 50 lakhs, the normal period of limitation, i.e., three (03) years was to apply. In comparison, the extended period of ten (10) years would apply in serious tax evasion cases where there was evidence of concealment of income of Rs. 50 lakhs or more in the given period.*

*53.4 The State, perhaps, did not deem it worthwhile to chase assesseees beyond three (03) years, where the alleged escaped income was less than Rs. 50 lakhs. These aspects concerning legislative policy come through if one were to read the relevant provisions of the statute referred to above in the background of the speech of the Finance Minister and the Memorandum.*

*Conclusion:*

*54. Therefore, having regard to the foregoing discussion, we are of the opinion that the impugned actions, which include orders passed under section 148A(d) and the consequent notices issued under section 148 of the amended 1961 Act, concerning AY 2016-17 and AY 2017-18 cannot be sustained. It is ordered accordingly.*

*55. Furthermore, the reference made in paragraphs 6.1 and 6.2(ii) of the Instruction dated 11-5-2022, to the extent it propounds the "travel back in time" theory, is declared bad in law.*

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

13. In the light of the above conspectus of matter, legal issue discussed and the judicial precedents cited (supra) the impugned notices u/s 148 dated 30.06.2021 to re-open the assessment for AYs 2016-17 and 2017-18 are barred by limitation u/s 149(1)(b) of the Substituted Act of 2021 i.e; Finance Act, 2021. Hence, all

consequential reassessment proceedings pursuant to the impugned notices u/s 148 dated 30.06.2021 are set aside. Therefore, appellant succeeds on the legal issue. Since, we have set aside the impugned notices u/s 148 dated 30.06.2021 for AYs 2016-17 and 2017-18 and consequential reassessment proceedings pursuant to the impugned notices u/s 148 dated 30.06.2021, other grounds taken by the assessee on the merits of addition becomes academic in nature and thus, same are dismissed as infructuous.

14. In result, both the appeals of the assessee are allowed.

Order pronounced in open court on 25th day of March, 2025 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

**(MANOJ KUMAR AGGARWAL)**

**लेखा सदस्य / ACCOUNTANT MEMBER**

चेन्नई Chennai:

दिनांक Dated :25-03-2025

KV

आदेश की प्रतिलिपि अग्रेषित /Copy to :

1. अपीलार्थी/Appellant

4. विभागीयप्रतिनिधि/DR

Sd/-

(मनु कुमार गिरि)

**(MANU KUMAR GIRI)**

**न्यायिक सदस्य / JUDICIAL MEMBER**

2. प्रत्यर्थी/Respondent

5. गार्डफाईल/GF

3. आयकरआयुक्त/CIT, Chennai