

IN THE INCOME TAX APPELLATE TRIBUNAL

"G" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.4045/MUM/2024
(Assessment Year : 2013-14)

Sanjay Natwarlal Desai,

B/304, Shreeji Apts.,
Hemukulani Road No.3,
Kandivali West,
Mumbai - 400067
PAN : AGRPD9074C

..... Appellant

v/s

ITO – 33(1)(1),

Kautilya Bhavan,
C-41 to C-43, G Block
Bandra Kurla Complex, Bandra East,
Mumbai - 400057

..... Respondent

Assessee by : Shri Pradeep Sagar

Revenue by : Shri Bhangapatil Pushkaraj Ramesh, Sr.DR

Date of Hearing – 15/05/2025

Date of Order - 27/05/2025

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the present appeal against the impugned order dated 18/06/2024, 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)*], for the assessment year 2013-14.

2. In this appeal, the assessee has raised the following grounds: -

"1.a) The order of the Id. Commissioner of I. T. (Appeals) is erroneous on facts of the case and in law.

b) The Id. Commissioner of I.T. (Appeals) erred in law and facts in treating the transaction of purchase of shares of listed companies as unexplained u/s 69A being unexplained money and unexplained purchase merely on misconstrued facts, suspicion and assumption.

c) That the Id. Commissioner of I.T. (Appeals) has overlooked the relevant factors and material available on record and has relied on factors and material which were either irrelevant or factually incorrect and, hence, the conclusion reached by him is vitiated by errors of facts and law.

d) The learned CIT(A) erred in upholding the addition made u/s.69A of the IT Act, towards unexplained money, though restricting the amount to Rs. 24,72,153/-, without appreciating that the said amount was not found recorded in the books of accounts of the appellant.

e) On the facts and circumstances of the case and in law the Id. Commissioner of I. T. (Appeals) has erred on the ground that the amount of Rs.24,72,153/- being peak value of investment as on a particular date, 24/05/2012 remains unexplained u/s 69A by overlooking the complete evidences on records in respect of the aforesaid purchases vis-à-vis Global report through broker, Alacrity Securities Ltd. along with the ledger account and bank statements.

f) The Id. Commissioner of I.T. (Appeals) has failed to appreciate that the Assessing Officer at no point of time had asked for details of purchases and the appellant had no opportunity to file his reply and the assessment order is incomplete contravention of the provisions of section 147, 148 of the Act.

2a) The Id. Commissioner of I.T. (Appeals) and the order is bad in law both on facts and in law inasmuch as he has overlooked that the grounds for reopening and the addition to income made in the assessment order by the Assessing officer is totally on a different ground from the notice u/s 148A(b) and order u/s 148A(d) dt. 22/07/2022.

b) The Id. Commissioner of I. T. (Appeals) has failed to take into consideration that the Assessing Officer in his reasons for reopening has stated that the appellant has received bogus un-secured loans of Rs.1,41,96,425/- from group of companies managed by Jignesh Shah and Sanjay Shah through bogus accommodation entry but has overlooked the very reasons for reopening of the assessment while passing the impugned order.

3.a) Without prejudice to the above, the Id. Commissioner of I.T. (Appeals) has failed to appreciate that nowhere do the information and statements identify the Appellant as a beneficiary of the alleged accommodation entries: The Id. Commissioner of I. T. (Appeals) ought to have set aside the order of the Assessing Officer in as much as the impugned addition in the assessment order has been framed in violation and utter disregard to the principles of natural justice inasmuch as, amongst others, the Assessing Officer has not given the documents/ statements to the appellant for rebuttal, which are in his possession and on which he has relied upon and has not given an

opportunity to the appellant to cross examine the persons whose statement the Assessing Officer has relied upon.

c) The Id. Commissioner of I.T. (Appeals) has erred in upholding the impugned allegation/addition by the Assessing Officer without any basis/proof that the cash emanated from the coffers of the appellant.

4a) On the facts and in the circumstances of the case and in law, the Id. Commissioner of I.T. (Appeals)'s order is bad in law inasmuch as he has failed to appreciate that notice after 01/04/2021 should have been issued under the substituted provisions of section 147 to 151 of the Act.in the absence of issuance of a valid notice, the proceedings initiated under section 147 cannot be said to be a valid one.

b) The Id. Commissioner of I.T. (Appeals) has failed to appreciate that the notice issued u/s 148 is time barred u/s 149(1)(a) as the addition of Rs.24,72,153/- is less than Rs.50 lakhs, being below the monetary threshold and the same is bad-in-law and needs to be quashed.”

3. We, at the outset, noticed that one of the grounds raised by the assessee, i.e. ground no.4(a), pertains to challenging the validity of the reopening of the assessment under section 147 of the Act, is a jurisdictional issue which goes to the root of the matter, and therefore, the same is considered at the outset.

4. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is an individual and for the year under consideration, filed his return of income on 02/07/2013, declaring a total income of Rs. 2,11,720. Pursuant to the enquiry conducted by the DDIT, Ahmedabad, after search action on Mr. Jignesh Shah and Mr. Sanjay Shah group of companies, it was found that the assessee is one of the beneficiaries of the accommodation entry transactions of bogus long-term capital gains and has traded in the penny scrip and booked fictitious long-term capital gain/short-term capital loss of Rs. 1,41,96,425 during the year under consideration. Accordingly, on the basis of the aforesaid information, the

Assessing Officer ("AO") issued notice under section 148 of the Act on 29/06/2021.

5. 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), the 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 25/05/2022, 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 13/06/2022 in terms of the provisions of section 148A(b) of the Act.

6. After rejecting the objections filed by the assessee, an order under section 148A(d) of the Act was passed on 22/07/2022 declaring that it is a fit case for issuance of notice under section 148 of the Act. On the very same date, i.e., on 22/07/2022, 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 his return of income on 18/08/2022, declaring a total income of Rs. 5,67,070. The assessment order was passed under section 147 r.w. section 144B of the Act, assessing the total income of the assessee at Rs. 59,81,413. 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.

7. During the hearing, 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 22/07/2022 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 Union of India v/s Rajeev Bansal, reported in (2024) 469 ITR 46 (SC).

8. 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."

9. 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 a 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.

10. 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."

11. 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 Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (*“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.

12. We find that the Hon'ble Supreme Court in paragraphs 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 assesses 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."

13. 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."

14. 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 a reassessment 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."

15. Therefore, the surviving/balance time limit can be calculated by computing the number of days between the date of issuance of the deemed notice and 30/06/2021. In the present case, 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>First Notice issued u/s 148</i>	<i>29.06.2021</i>
2	<i>Extended Limitation as per the TOLA</i>	<i>30.06.2021</i>
3	<i>Surviving Time</i>	<i>2 Days</i>
4	<i>Notice u/s 148A(b)</i>	<i>25.05.2022</i>
5	<i>Assessee's Reply</i>	<i>13.06.2022</i>
6	<i>Order u/s 148A(d)</i>	<i>22.07.2022</i>
7	<i>Second Notice u/s 148</i>	<i>22.07.2022</i>

16. 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 15/06/2022, after receipt of the response from the assessee on 13/06/2022 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 22/07/2022, i.e., 37 days after the surviving/balance time period as per the decision of the Hon'ble Supreme Court in Rajeev Bansal (supra).

17. 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 22/07/2022 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.

18. 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 22/07/2022 is barred by limitation period specified under section 149 of the Act. Accordingly, we are of the considered view that the notice issued under section 148 of the Act on 22/07/2022 is *void ab initio* and bad in law. Therefore, the same is quashed. Consequently, the entire reassessment proceedings and assessment order passed under section 147 r.w. section 144B of the Act is also quashed.

19. 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.

20. In the result, the appeal by the assessee is allowed.

Order pronounced in the open Court on 27/05/2025

Sd/-

**NARENDRA KUMAR BILLAIYA
ACCOUNTANT MEMBER**

Sd/-

**SANDEEP SINGH KARHAIL
JUDICIAL MEMBER**

MUMBAI, DATED: 27/05/2025

Prabhat