

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 2461/Del/2024
(Assessment Year: 2015-16)

Toyota Boshoku Corporation, 1-1, Toyoda-Cho, Kariya Shi, Aichi, Japan	Vs.	ACIT, Circle-3(1)(1), International Taxation, New Delhi
(Appellant)		(Respondent)
PAN: AADCT4951B		

Assessee by :	Ms. Reema Grewal, CA Shri Kashish Gupta, CA
Revenue by:	Shri M. S. Nethrapal, CIT DR
Date of Hearing	23/09/2025
Date of pronouncement	30/09/2025

ORDER

PER M. BALAGANESH, A. M.:

1. The Assessee Toyota Boshoku Corporation (hereinafter referred to as 'assessee') by filing the present appeal sought to set aside the impugned order dated 29.03.2024 passed by the Assessing Officer (AO) under section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (for short 'the Act') inconsonance with the order passed by the Dispute Resolution Panel (DRP) dated 23.02.2024 u/s 144C(5).
2. The assessee has raised the additional grounds challenging the validity of assumption of jurisdiction u/s 147 of the Act by pleading that the notice u/s 148 of the Act based on which the Learned AO assumed jurisdiction in the instant case, is barred by limitation. This goes to root the matter and hence, is taken up first for adjudication.

3. We have heard the rival submissions and perused the material available on record. These additional grounds go to the root of the matter and being legal in nature. Hence the same are hereby admitted in the light of decision of Hon'ble Supreme Court in the case of NTPC Ltd reported in 229 ITR 383(SC). In the instant case, notice u/s 148 of the Act stood issued to the assessee on 30.06.2021. The Id AR pleaded that the said notice issued was as per old provisions of Section 148 of the Act prior to the substitution by Finance Act, 2021. It was submitted that Section 148 of the Act has been substituted by Finance Act, 2021 w.e.f 01.04.2021 wherein notice u/s 148 of the Act as per the old provisions of Section 148 of the Act applicable upto 31.03.2021 could not have been issued after 31.03.2021. This issue per se was subject matter of various writ petitions filed in various High Courts and ultimately got settled by the Hon'ble Supreme Court in the case of Union of India Vs. Ashish Agarwal reported in 444 ITR 1 (SC) dated 04.05.2022. Thereafter, the Id AO issued letter u/s 148A(b) of the Act on 2.6.2022. The assessee filed its reply on 16.06.2022 and 27.06.2022. The Id AO passed an order u/s 148A(d) of the Act on 28.07.2022 rejecting the objections of the assessee and proceeded to issue notice u/s 148 of the Act on 29.07.2022. All these facts are not in dispute before us with regard to dates. Now the short question that arises for our consideration is as to whether the subsequent notice issued u/s 148 of the Act on 29.07.2022 is to be treated as time barred or not in the light of decision of Hon'ble Supreme Court in the case of Union of India Vs. Rajeev Bansal reported in 469 ITR 46 (SC). In this regard, it would be appropriate to reproduce the relevant portion of the decision of the Hon'ble Supreme Court in the case of Rajeev Bansal referred (supra) as under:-

"110. The effect of the creation of the legal fiction in Ashish Agarwal (supra) was that it stopped the clock of limitation with effect from the date of issuance of Section 148 notices under the old regime [which is also the date of issuance of the deemed notices]. As discussed in the preceding

segments of this judgment, the period from the date of the issuance of the deemed notices till the supply of relevant information and material by the assessing officers to the assesses in terms of the directions issued by this Court in Ashish Agarwal (supra) has to be excluded from the computation of the period of limitation. Moreover, the period of two weeks granted to the assesses to reply to the show cause notices must also be excluded in terms of the third proviso to Section 149.

111. The clock started ticking for the Revenue only after it received the response of the assesses to the show causes notices. After the receipt of the reply, the assessing officer had to perform the following responsibilities: (i) consider the reply of the assessee under Section 149A(c); (ii) take a decision under Section 149A(d) based on the available material and the reply of the assessee; and (iii) issue a notice under Section 148 if it was a fit case for reassessment. Once the clock started ticking, the assessing officer was See State of A P v. A P Pensioners Association, (2005) 13 SCC 161 [28]. [This Court observed that the "legal fiction undoubtedly is to be construed in such a manner so as to enable a person, for whose benefit such legal fiction has been created, to obtain all consequences flowing therefrom."]

PART F required to complete these procedures within the surviving time limit. The surviving time limit, as prescribed under the Income Tax Act read with TOLA, was available to the assessing officers to issue the reassessment notices under Section 148 of the new regime.

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.

4. Now let us see whether the notice issued u/s 148 of the Act on 29.07.2022 is within the time in the light of the aforesaid observation of the Hon'ble Supreme Court. For this purpose, the following table would be relevant which is reproduced as under:-

S. No.	Particulars	Date
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A	Date of original notice issued u/s 148	30.06.2021
B	Time remaining till 30.06.2021	1 Day
C	Date of notice issued u/s 148A(b)	02.06.2022
D	Due date for filing of reply to notice issued u/s 148A(b)	15.06.2022
E	Reply/ objection filed on	16.06.2022 & 27.06.2022
F	Extended date by which notice should have been issued u/s 148 (E + B)	28.06.2022
G	Actual date of notice issued u/s 148	29.07.2022

5. Hence, in view of the observation of the Hon'ble Supreme Court in the case of Rajeev Bansal (supra), the extended due date for issuance of notice u/s 148 of the Act expired on 28.06.2022 and since, the notice u/s 148 of the Act is issued on 29.07.2022, the said notice is to be treated as barred by limitation and consequentially reassessment proceedings would be liable to be quashed as void ab initio. This issue was also subject matter of consideration by the Hon'ble Jurisdictional High Court in the case of Ram Balram Buildhome Vs. ITO & Anr reported in 445 ITR 1 (Del) dated 30.01.2025. Relevant operative portion of the said order is reproduced herein below:-

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

66. By virtue of Section 3 (1) of TOLA time for completion of specified acts, which fell during the period 20.03.2020 to 31.12.2020 were extended till 30.06.2021 [Notification No.38/21 dated 27.04.2021]. Thus, the notice dated 01.06.2021 was issued twenty-nine days prior to the expiry of period of limitation for issuing a notice under Section 148 of the Act as was extended by TOLA. As noted above, the period from 01.06.2021, the date of issuance of notice, and 04.05.2022, being the date of decision of the Supreme Court in Union of India & Ors. v. Ashish Agarwal is required to be excluded by virtue of the third proviso to Section 149 (1) of the Act.

67. Additionally, the period from the date of decision in *Union of India & Ors. v. Ashish Agarwal*² till the date of providing material, as required to be accompanied with a notice under Section 148A (b) of the Act, is required to be excluded. Thus, the period between 04.05.2022 to 30.05.2022, the date on which the AO had issued the notice under Section 148A (b) of the Act in furtherance of his earlier notice dated 01.06.2021, is also required to be excluded by virtue of the third proviso to Section 149 (1) of the Act as held by the Supreme Court in *Union of India & Ors. v. Rajeev Bansal*⁴.

68. In addition to the above, the time granted to the petitioner to respond to the notice dated 30.05.2022-the period of two weeks-is also required to be excluded by virtue of the third proviso to Section 149 (1) of the Act. The petitioner had furnished its response to the notice under Section 148A (b) of the Act on 13.06.2022. Thus, the period of limitation began running from that date.

69. As noted above, by virtue of TOLA, the AO had period of twenty-nine days limitation left on the date of commencement of the reassessment proceedings, which began on 01.06.2021, to issue a notice under Section 148 of the Act. The said notice was required to be accompanied by an order under Section 148A (d) of the Act. Thus, the AO was required to pass an order under Section 148A (d) of the Act within the said twenty-nine days notwithstanding the time stipulated under Section 148A (d) of the Act. This period expired on 12.07.2022.

70. Since the period of limitation, as provided under Section 149 (1) of the Act, had expired prior to issuance of the impugned notice on 30.07.2022. The said is squarely beyond the period of limitation.

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

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

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

6. Respectfully following the said decision, we hold that the notice issued u/s 148 of the Act on 29.07.2022 is barred by limitation. Accordingly, the Additional Ground No. 1 raised by the assessee is allowed.

7. Since, reopening of assessment has been quashed, the adjudication of the other original grounds and additional grounds raised by the assessee become academic in nature and they are left open.

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

Order pronounced in the open court on 30/09/2025.

-Sd/-
(VIMAL KUMAR)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 30/09/2025
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi