

**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**BEFORE SHRI BALAKRISHNAN S, ACCOUNTANT MEMBER**  
**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.367/VIZ/2025**  
**(Assessment Year 2016-17)**

**ITA No.368/VIZ/2025**  
**(Assessment Year 2016-17)**

**Sivadurgavara Prasad Chennupati,**  
H. No. 27-32-27, Raghu Paints,  
Mudda Subbaiah Street, Governorpet,  
Vijayawada  
PAN: AEEPC5404L

..... Appellant

v/s

**Assistant Commissioner of Income Tax,**  
**Circle – 2(1),**  
C R Building, 1<sup>st</sup> Floor Annex,  
M.G. Road, Vijayawada

..... Respondent

Assessee by : Shri C.R. Hemanth Kumar, CA  
Revenue by : Dr. Aparna Villuri, Sr. AR

Date of Hearing – 17/09/2025

Date of Order - 27/10/2025

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The assessee has filed the present appeals against the separate impugned orders of even date 26/03/2025, 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 2016-17.

**ITA No. 368/Viz./2025**  
**Assessee's appeal – Quantum appeal**

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

*"1. The order of the learned Commissioner of Income Tax (A) is not correct either on facts or in law and in both.*

*2. In the facts and circumstances of the case, the Ld. First Appellate Authority is not justified in confirming the addition of foreign travel expenditure incurred by Asian Paints Ltd. of Rs. 3,71,567/- computed on pro rata basis as benefit or perquisite as taxable in the hands of the appellant u/s 28(iv) of IT Act, without appreciating the facts and submissions made.*

*3. The Ld. Commissioner of Income Tax (Appeals) failed to appreciate the fact that the assessment order is arbitrary, bad in law and addition made is contrary to the legal position."*

3. The assessee has also raised the following additional grounds of appeal:-

*"This appeal is against the order of the Hon'ble Commissioner of Income Tax dated 26.03.2025. In addition to the grounds of appeal as stated before the First Appellate Authority and filed along with form 36, the appellant now submits the following additional grounds which are purely legal in nature:*

*1. The notice under Section 148 issued on 27.07.2022, in respect of the initial notice under Section 148 dated 29.06.2021, and reply filed on 10.06.2022 with further time granted till 15.07.2022, is barred by limitation, as it was not issued within the surviving period of 2 days from the original limitation, thereby rendering the notice and subsequent proceedings void and without jurisdiction.*

*2. In the facts and circumstances of the case, in the light of the fact that more than 3 years lapsed from the end of the relevant A.Y. 2016-17 the approval for issuance of notice under section 148 granted on 23.07.2022 by Principal Commissioner of Income Tax (PCIT), Vijayawada, is bad in law, since the competent authority for granting such approval is Principal Chief Commissioner of Income Tax (PCCIT).*

*3. On the facts and circumstances of the case, since the notice under Sec. 148 was issued by local jurisdictional officer, i.e., by an authority not having jurisdiction to issue notice u/s 148, the entire proceedings under Sec. 147 r.w.s 144 r.w.s 144B are bad in law."*

4. Since the issues raised by way of additional grounds are legal issues, which can be decided on the basis of material available on record, therefore, the same are admitted in view of the ratio laid down by the Hon'ble Supreme Court in NTPC vs CIT, reported in (1998) 229 ITR 383 (SC).

5. In his appeal, 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 grounds challenging the reopening of assessment under section 147 of the Act have raised a jurisdictional issue, they are considered at the outset.

6. During the hearing, the learned Authorised 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*.

7. The brief facts of the case pertaining to this issue, as emanating from the record, are: The assessee is an individual. For the year under consideration, the assessee filed his return of income, declaring a total income of Rs.6,85,730. Subsequently, on the basis of the information received by the assessment unit that M/s Asian Paints Ltd. arranged several local as well as intentional trips to 3519 dealers based on achievement of sales and targets and claimed expenditure under the head trips and the same has been disallowed in case of M/s Asian Paints by treating the transaction as commission, the AO issued notice under section 148 of the Act on 29/06/2021, as the assessee was one such dealer.

8. 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 27/05/2022, the information and material relied upon by the Revenue were 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.

9. After rejecting the objections filed by the assessee on 13/06/2022, an order under section 148A(d) of the Act was passed on 26/07/2022 declaring that it is a fit case for issuance of notice under section 148 of the Act. Thereafter, on 27/07/2022, a notice under section 148 of the Act was issued by the Jurisdictional Assessing Officer. After considering the submissions filed by the assessee in response to the statutory notices issued during the re-assessment proceedings, the AO proceeded to pass the order dated 12/04/2023 under section 147 read with section 144B of the Act, making an addition of Rs.3,71,367 under section 28(iv) of the Act being the pro-rata amount spent by M/s Asian Paints Ltd. on the assessee. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee. Being aggrieved, the assessee is in appeal before us.

10. 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 31/03/2021, 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

15/06/2022 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 27/07/2022 for the assessment year 2016-17 is barred by limitation. Hence, it was submitted that the entire re-assessment proceedings culminating in the order passed under section 147 read with section 144B of the Act is *void ab initio*. The learned AR placed reliance upon various judicial pronouncements.

11. On the contrary, the learned Departmental Representative vehemently relied upon the orders passed by the lower authorities.

12. We have considered the submissions of both sides and perused the material available on record. 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 2016-17, expired on 31/03/2021, which also falls within the period from 20/03/2020 to 31/03/2021 covered under the TOLA. Therefore, the notice issued on 29/06/2021, which was deemed to be a notice under section 148A(b) of the Act, is covered under the extended time limit till 30/06/2021 provided under the TOLA.

13. We further 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 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."*

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. Since, in the present case, the period of 4 years from the end of the relevant assessment year expired on 31/03/2021, 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: -

S. No.	Particulars	Page No.
a)	1 <sup>st</sup> Notice u/s.148	29/06/2021
b)	Notice u/s.148A(b)	27/05/2022
c)	Reply of the assessee	13/06/2022
d)	Order passed u/s.148A(d)	26/07/2022
e)	Notice u/s.148	27/07/2022

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 27/07/2022, i.e., 42 days after the surviving/balance time period as per the decision of the Hon'ble Supreme Court in Rajeev Bansal (supra).

17. Therefore, having considered the provisions of the Act 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 27/07/2022 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 27/07/2022 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 read with section 144B of the Act are also quashed.

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

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

**ITA No. 367/Viz./2025**  
**Assessee's appeal – Penalty appeal**

20. Having considered the submissions and perused the material available on the record, we find that the penalty of Rs.76,236 was levied under section 271(1)(c) of the Act, as the addition of Rs.3,71,367 was made vide assessment order passed under section 147 read with section 144B of the Act. Since we have quashed the assessment order, the penalty is also liable to be quashed. We order accordingly. As a result, the grounds raised by the assessee in the penalty appeal are allowed.

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

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

Order pronounced in the Open Court on 27/10/2025

**Sd/-**  
**BALAKRISHNAN S**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**VISAKHAPATNAM, DATED: 27/10/2025**

*Prabhat*

Copy of the order forwarded to:

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

By Order

Assistant Registrar  
ITAT, VISAKHAPATNAM