

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

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

आयकरअपीलसं./ITA No. 1163, 1256, 1257 & 1259/Chny/2025
निर्धारणवर्ष/Assessment Years: 2013-14 to 2016-17

The DCIT, Central Circle-2(2), Chennai.	v.	M/s. Southern Agrifurane – Industries Pvt. Ltd., MGM Centre No.1, 9 th Cross Street, Dr. Radhakrishnan Salai, Mylapore, Chennai – 600 004.
		[PAN: AAGCS 9705 F]
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकरअपीलसं./ITA No.1231, 1232, 1234 & 1236/Chny/2025
निर्धारणवर्ष/Assessment Years: 2013-14 to 2016-17

M/s. Southern Agrifurane – Industries Pvt. Ltd., MGM Centre No.1, 9 th Cross Street, Dr. Radhakrishnan Salai, Mylapore, Chennai – 600 004.	v.	The DCIT, Central Circle-2(2), Chennai.
		[PAN: AAGCS 9705 F]
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Department by	:	Mrs. C. Yamuna, CIT & Mr. Bipin, CIT
Assessee by	:	Mr. N. Arjun Raj, Advocate
सुनवाईकीतारीख/Date of Hearing	:	08.10.2025
घोषणाकीतारीख /Date of Pronouncement	:	21.11.2025



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आदेश / ORDER

PER ABY T. VARKEY, JM:

These appeals preferred by the assessee and the Revenue are against the order of the Learned Commissioner of Income Tax (Appeals)-19, (hereinafter referred to as 'Ld.CIT(A)'), Chennai, dated 12.02.2025 & 20.02.2025 for the Assessment Years (hereinafter referred to as 'AY') 2013-14 to 2016-17 u/s. 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. Briefly stated the facts of the case are that, the assessee is a private limited company which is engaged in the business of manufacturing and sale of Indian made foreign liquor. A search u/s 132 of the Act was conducted upon the assessee on 15-06-2022, in the course of which several material viz., books of accounts, documents & electronic data, loose sheets, note books etc. was found and seized. According to the Revenue, the seized material inter alia contained details of suppression of income by the assessee by debiting bogus purchases from vendors of old liquor bottles and transportation & logistics services. Consequently, the case of the assessee was reopened and notice(s) u/s 148 of the Act dated 30-03-2023 was issued to the assessee for the relevant AYs 2013-14 to 2016-17. The details of the return(s) of income filed in response to notice u/s 148 of the Act and the subsequent re-



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assessment(s) completed by order(s) all dated 15-03-2024 passed u/s 143(3)/147 of the Act are as under: -

Asst Year	Income declared in return of income u/s 148	Total Income assessed u/s 143(3)/147
2013-14	Rs. 31,23,13,310/-	
2014-15	Rs.31,12,72,770/-	Rs.57,33,60,374/-
2015-16	Rs.34,93,08,960/-	Rs.61,74,24,524/-
2016-17	Rs.45,46,48,400/-	Rs.69,79,90,661/-

Aggrieved by the above order(s), the assessee preferred appeal(s) before the Ld. CIT(A).

3. Before the Ld. CIT(A), the assessee had *inter alia* challenged the validity of the initiation of reassessment proceedings u/s 147 of the Act for the impugned AYs 2013-14 to 2016-17 which was allowed by the Ld. CIT(A) and accordingly the re-assessment orders passed u/s 147/143(3) of the Act was quashed. Being aggrieved by the appellate order(s) of the Ld. CIT(A), the Revenue is now in appeal before us. The assessee in their appeal(s) is noted to have assailed the Ld. CIT(A)'s order on other legal issues and the merits of the addition(s) as well. Since the legal issue which was adjudicated by the Ld. CIT(A) strikes at the root of the jurisdiction of the AO to have issued notice u/s.148 of the Act for the impugned AYs 2013-14 to 2016-17, with the consent of both the parties, we consider it fit to decide this legal issue first.



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4. We first take up the Revenue's appeal for AY 2013-14 in ITA No.1163/Chny/2025. It is seen that, before the Ld. CIT(A), the appellant had inter alia urged that, the notice issued u/s 148 of the Act for AY 2013-14 dated 30.03.2023 was beyond the time limit prescribed in proviso to Section 149 of the Act and therefore it contended that the impugned notice so issued and all consequent actions deserves to be declared as null & void. The Ld. CIT(A) is noted to have allowed this legal plea raised by the assessee by holding as under:-

"6.3.4 The undersigned has carefully examined the issue under consideration. The primary contention of the appellant is that the notice issued u/s 148 of the Act dated 30.03.2023 for the AY 2013-14 is barred by limitation on account of the provisions of clause (b) of sub-section (1) of Section 149 of the Act. The First Proviso to Section 149 of the Act reads as under:-

"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 [a notice under section 148 or section 153A or section 153C 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 or section 153A or section 153C, as the case may be], as they stood immediately before the commencement of the Finance Act, 2021:

6.3.5 On examination of the assessment order it can be seen that the AO purportedly relying on the provisions of the Act, as amended by the Finance Act, 2021 has issued a notice u/s 148 of the Act for the AY 2013-14. The provisions of the Finance Act 2021 came into effect from 01.04.2021. Pursuant to the amendment the time limit for issuance of notice u/s 148 of the Act in cases where search proceedings are initiated under the provisions of section 132 of the Act is governed by the section 149 of the Act. As discussed supra, the First Proviso to Section 149 of the Act provides that "no notice u/s 148 of the Act shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if a notice u/s 148 or section 153A or section 153C could not have been issued at that time on account of being



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beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section or section 153A or section 153C, as the case may be, as they stood immediately before the commencement of the Finance Act, 2021. Therefore, for the AY 2013-14, since the notice under section 148 of the Income Tax Act was issued following the search proceedings (i.e., on 15.06.2022), the timeline specified under section 153A of the Act, as it existed prior to 01.04.2021, would clearly apply.

6.3.6 It is significant to bring on record the relevant provisions of section 153A of the Act as it stood prior to 01.04.2021 as under.

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6.3.7 While going through the Explanation 1, it can be seen that the "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.

6.3.8 In the case of the Appellant, the search u/s 132 of the act was carried out on 15.06.2022 and the relevant assessment would be AY 2023-24. The ten-assessment year should have been computed from 31.03.2024 (AY 2023-24) with the said date indubitably constituting the end of the assessment year relevant to the previous year of search. Viewed in the light of the above, the time line of ten assessment years would be as under.

Computation of the ten-year period as provided u/s 153A of the Act	Sequence of the year
AY 2023-24	First year
AY 2022-23	Second year
AY2021-22	Third Year
AY 2020-21	Fourth Year
AY 2019-20	Fifth Year
AY 2018-19	Sixth Year
AY 2017-18	Seventh Year
AY 2016-17	Eight Year
AY 2015-16	Ninth Year
AY 2014-15	Tenth Year
AY 2013-14	Eleventh Year



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6.3.9 Applying this test on the aforesaid precepts, it would be manifest that AY 2023-24 would form the first year of the ten AYs' and with the maximum period of ten AYs' terminating in AY 2014-15. Therefore, the AY 2013-14 is beyond the purview of provisions of the Act. This view is affirmed by the Hon'ble Madras High Court in the case of AR Saifullah Vs. ACIT Central -1, Trichy in WP No. (MD)No. 4327 of 2021 dated 24.03.2021 wherein the Madurai bench of the Hon'ble Madras High Court has rightly expounded the legal position and the legal position liable to be accorded to the identification of ten assessment years which are spoken off in section 153A of the Act.

6.3.10 Further the Divisional bench of the Hon'ble Delhi High Court in the case of ACIT Vs. Ojjus Medicare Private Limited and others dated 03.04.2024 by relying on the decision of the Hon'ble Madras High Court in the case of AR Saifullah Vs. ACIT Central -1, Trichy in WP No. (MD)No. 4327 of 2021 dated 24.03.2021 has made a detailed analysis and has set a bench mark on how to compute the ten year block after identifying the relevant assessment as defined under Explanation 1 to section 153A of the Act. In the present case, the AO has attempted to re-open for the AY 2013-14 which falls beyond ten years from relevant AY 2023-24 from the end of the FY (2022-23) in which the search was conducted on the assessee (15.06.2022) and therefore lacked jurisdiction to issue notice u/s 148 of the Act for the AY 2013-14.

6.3.11 The undersigned is the view that the AO should have satisfied himself that he is empowered under the provisions of Section 148 of the Act r.w.s 153A of the Act to assess or reassess the income for 'relevant assessment year or years' and for this purpose. In such a situation, when the AO has no jurisdiction to issue a notice u/s 148 of the Act and a notice, if at all issued, would be *void ab initio* for patent lack of jurisdiction.

6.3.12 In the case of Hansraj Gordhandas v. H.H. Dave, Asst. Collector of Central Excise & Customs, Surat and Ors, AIR 1970 SC 755 (1969) 2 SCR 253 the observations of Lord Watson in Salomon vs. Salomon & Co., (1897) AC 22) was referred to with the observations are:

"Intention of the legislature is a common but very slippery phrase, which, popularly understood may signify anything from intention embodied in positive enactment to speculative opinion as to what the legislature. probably would have meant although there has been an omission to enact it. in a Court of Law or Equity, what the Legislature intended to be done or not can only be legitimately ascertained from that which it has chosen to enact, either in express words or by reasonable and necessary implication."

6.3.13 Applying the above principle, it becomes clear that the Section 148 r.w.s 153A of the Act understood in the proper context makes the intention of the Legislature evident. It clearly sets out the conditions



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when a notice u/s 148 r.w.s 153A of the Act can be issued for the 'relevant assessment year or years'.

6.3.14 A jurisdictional fact is one on existence or non-existence of which depends assumption or refusal to assume jurisdiction by a court, tribunal or an authority. In 'Black's Legal Dictionary, it is explained as a fact which must exist before a court can properly assume jurisdiction of a particular case. Mistake of fact in relation to jurisdiction is an error of jurisdictional fact. No statutory authority or tribunal can assume jurisdiction in respect of subject matter which the statute does not confer on it and if by deciding erroneously the fact on which jurisdiction depends the court or tribunal exercises the jurisdiction, then the order is vitiated.

6.3.15 In 'Halsbury's Laws of England' it has been stated that where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of the issue. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the Tribunal has to make up its mind whether to Act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive.

6.3.16 In the case of Arun Kumar & Ors. vs. Union of India & Ors. (2006) 205 CTR (SC) 193: (2006) 286 ITR 89 (SC) it has been held:-

"A "jurisdictional fact" is a fact which must exist before a Court, Tribunal or an assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a Court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not posses

6.3.17 The existence of a 'jurisdictional fact' is the *sine qua non* for the exercise of power. In its absence, the power cannot be exercised lawfully. When the jurisdictional fact is established, the AO is empowered to proceed with the case and make decisions in accordance with the provisions of law. In this context, the fulfillment of the preconditions set forth u/s 148 r.w.s 153A of the Act is considered a 'jurisdictional fact.' The AO is required to carefully examine and ascertain whether these specific conditions are satisfied before proceeding. Only after deciding on this issue, and recording a clear finding regarding the presence or absence of these conditions, can the AO issue a notice u/s 148 for the relevant assessment year. Only upon satisfying this crucial prerequisite can the AO lawfully proceed to assess the income of the assessee for the



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relevant year, as the presence of the jurisdictional fact is indispensable for validly initiating the assessment process u/s 147 of the Act

6.3.18 Such conclusion of satisfaction must manifest itself in writing. The AO issuing the notice must be able to justify himself that his action is valid because all conditions mentioned in the section 148 r.w.s 153A of the Act are fulfilled. This is all the more so because issuing of a notice for the 'relevant assessment year or years' is not a ritualistic formality; rather it sets in motion the process which can culminate into imposition of a civil liability and may even invite criminal prosecution for tax evasion on the assessee. It is the vested right of an assessee to examine whether the conditions precedent to issue of notice are satisfied or not so that he may, in a situation where according to his knowledge and belief the condition precedent to issue of notice are not satisfied, challenge the notice issued before appropriate judicial forum as regards its legal validity. This is possible only if the satisfaction is properly recorded by the AO before a notice is issued u/s 148 r.w.s 153A of the Act and provided to the assessee to enable him to rebut the satisfaction of the AO.

6.3.19 In the present case, the AO has attempted to re-open for the AY 2013-14 which falls beyond the time line of 10 year from end of the relevant assessment year 2023-24 in which the search was conducted on the assessee (15.06.2022). The undersigned is of the view that the AO cannot travel beyond a period of ten assessment years to invoke the provisions of section 147 of the Act. Accordingly, all the additional grounds raised by the appellant upon the issue of legality of issuance of notice u/s 148 of the Act to initiate assessment proceedings u/s 147 of the Act for the AY 2013-14 are here by treated as allowed."

5. Assailing the above action of the Ld. CIT(A), the Ld. CIT, DR submitted that, the notice issued u/s 148 of the Act dated 30.03.2023 was well within the period of ten (10) assessment years from the end of the relevant AY 2013-14 and, he therefore contended that, the Ld. CIT(A) was unjustified in holding the impugned notice to be barred by limitation. According to him, even if the reassessment action was to be tested on the basis of the first proviso to Section 149 of the Act then also the assessee was not entitled to any relief, as the notice was well within the



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permissible time limit under the provisions of Section 148, 153A etc. as it stood prior to introduction of the Finance Act, 2021.

6. Per contra, the Ld. AR supported the above findings of the Ld. CIT(A) by relying on the judgments rendered by the Hon'ble Delhi High Court in the cases of **KAD Housing Pvt Ltd Vs DCIT (168 taxmann.com 470)** and **Dinesh Jindal Vs DCIT (469 ITR 32)**.

7. Heard both the parties. Before we proceed to examine the impugned legal issue, let us first have a look at the provisions of Section 149 of the Act as it stood as on 1st April 2022, which read as under:-

"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—

(i) an asset;

(ii)expenditure in respect of a transaction or in relation to an event or occasion; or

(iii)an entry or entries in the books of account,

which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more:

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 a notice under section 148 or section 153A or section



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153C 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 or section 153A or section 153C, as the case may be, 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.

(1A) Notwithstanding anything contained in sub-section (1), where the income chargeable to tax represented in the form of an asset or expenditure in relation to an event or occasion of the value referred to in clause (b) of sub-section (1), has escaped the assessment and the investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one previous years relevant to the assessment years within the period referred to in clause (b) of sub-section (1), a notice under section 148 shall be issued for every such assessment year for assessment, reassessment or recomputation, as the case may be.]

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



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8. Reading of the above provision reveals that, the AO is ordinarily empowered to reopen any relevant assessment year within three (3) years from the end of the relevant assessment year [Section 149(1)(a)]. The AO is also entitled to issue notice u/s 148 of the Act beyond three (3) years but not more than ten (10) years from the end of the relevant assessment year, but for that, he is required to demonstrate that he has in his possession books of accounts or documents or evidence which reveal that income represented in form of asset or expenditure or any entry in books of accounts, has escaped assessment, whose likely quantum is Rs.50 lacs or more [Section 149(1)(b)]. We now come to the proviso to Section 149(1)(b) of the Act, which is of utmost relevance to the present case. The ingredients of the proviso can be broken down for analysis as follows: (i) no notice under section 148 of the new regime can be issued at any time for an assessment year beginning on or before 1 April 2021; (ii) if it is barred at the time when the notice is sought to be issued because of the *"time limits specified under the provisions of"*148, 153A, 153C of the old regime. Hence, in terms of the proviso, the powers of AO is curtailed to issue notice under Section 148 of the new regime for AY 2021-2022 and earlier years only if the time limit for issuance of such notice continued to exist under section 149(1)(b), 153A(1)(b) or 153C of the old regime. It is well settled in law that, notices have to be judged according to the law existing on the date the notice is issued. Under the



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new regime, time limit of ten (10) years has been prescribed subject to fulfillment of conditions laid down in Section 149(1)(b) of the Act. However, the first proviso to Section 149(1)(b) ensures that, the time limit prescribed in the new regime shall apply prospectively i.e. from AY 2021-22 and onwards and that, the AYs prior to the introduction of new regime by Finance Act, 2021 shall continue to be governed by the time limits under the old 148 regime or Section 153A/153C of the Act [which has since merged and/or be substituted in a single all-encompassed new 148/148A regime]. Hence, in order to reopen any AY prior to AY 2021-22, the AO is required to first ascertain as to, whether the relevant AY could have been reopened in light of the time limit laid down in the old 148/149(1)(b) regime [non-search cases] or whether the relevant AY could have been reopened in terms of the time lines contained in erstwhile Section 153A(1)(b) or 153C of the Act [search cases]. If the answer to the aforesaid question is in affirmative viz., the AO can validly reopen the relevant assessment year [AY 2021-22 and earlier years] under the old regime at the time of issuance of notice under the new regime, that, the AO is legally empowered to reopen such relevant assessment year under the new 148 regime, in terms of proviso to Section 149(1)(b) of the Act.



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9. The above analogy is found to have been expressly laid down by the Hon'ble Supreme Court in the case of **UOI Vs Rajeev Bansal (469 ITR 46)** while interpreting the provisions of Section 149 of the Act, as amended by the Finance Act, 2021. The Hon'ble Apex Court explained that, the first proviso to Section 149(1)(b) requires the determination of whether the time limit prescribed under section 149(1)(b) of the old regime continues to exist for the assessment year 2021-2022 and before. It was accordingly held that, a notice under Section 148 of the new regime cannot be issued, if the period of six years[*as provided in erstwhile 149(1)(b) of the Act*] from the end of the relevant assessment year [AY 2021-22 and earlier year(s)] has expired at the time of issuance of the notice. The Hon'ble Supreme Court thus held that, the new time limit of ten years prescribed under section 149(1)(b) of the new regime applies prospectively. This was explained by the Hon'ble Apex Court by way of an illustration, viz., *For example, for the assessment year 2012-2013, the ten year period would have expired on 31 March 2023, while the six year period expired on 31 March 2019. Without the proviso to Section 149(1)(b) of the new regime, the Revenue could have had the power to reopen assessments for the year 2012-2013 if the escaped assessment amounted to Rupees fifty lakhs or more. The proviso limits the retrospective operation of Section 149(1)(b) to protect the interests of the assesses.*



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10. It is also important to bear in mind that, the proviso to Section 149(1)(b) of the Act was amended by the Finance Act, 2022 retrospectively with effect from 01.04.2021, to align the timelines contained proviso of Section 149(1)(b) to the earlier time limits for search related matters, which were earlier governed by 153A/153C of the Act. For the sake of clarity, the original proviso to Section 149(1)(b) [as inserted by Finance Act, 2021] and the amended proviso to Section 149(1)(b) of the Act, is reproduced below:-

First Proviso to Section 149(1)(b) [as inserted by FA 2021]

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:

First Proviso to Section 149(1)(b) [as amended by FA 2022 w.r.e.f 01.04.2021]

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 a notice under section 148 or Section 153-A or Section 153-C 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 or Section 153-A or Section 153-C, as the case may be, as they stood immediately before the commencement of the Finance Act, 2021:

11. The Legislature is noted to have explained the above amendment in the Memorandum to Finance Bill, 2022. It was inter alia stated that, in cases where search is initiated under section 132 of the Act or books of



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account, other documents or any assets are requisitioned under section 132A of the Act, on or after 1st April, 2021, the assessment or reassessment is now to be made under sections 143 or 144 or 147 of the Act after the Finance Act, 2021. According to the Legislature, there were inadvertent drafting errors in Section 149 and that to align the provisions with the intent of the section, the proviso was amended to provide 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 a notice under section 148 [*non-search matters*] or section 153A or section 153C [*search related matters after 01.04.2021*] 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 section 149 or section 153A or section 153C, as the case may be, as they stood immediately before the commencement of the Finance Act, 2021.

12. Hence, in light of the judgment of Hon'ble Supreme Court in **UOI Vs Rajeev Bansal (supra)** and having regard to the above amendment made by Finance Act, 2022, the position which emerges is that, ordinarily the AYs prior to AY 2021-22 can be reopened under the new 148 regime, only if such AY [*in non-search matters*] was otherwise capable of being reopened under the old regime [*six years as laid down in erstwhile Section 149(1)(b)*], at the stage of issuance of notice. However, in cases



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where search has been conducted on or after 1st April 2021 or where document or information has been found & seized in the course of search which relates to the assessee [third party], the assessment or reassessment which was earlier required to be made u/s 153A/153C of the Act, is now required to be made under Section 143 or 144 or 147 of the Act. The timelines for search related cases qua AYs prior to AY 2021-22, would be governed by first proviso to Section 149(1)(b) of the Act and therefore the notice for reopening the assessment u/s 148 of the Act can be issued, only if such AY could have otherwise been validly reopened in terms of Section 153A/153C of the Act [*as it stood prior to introduction of Finance Act, 2021*], at the time of issuance of notice under the new regime.

13. Having taken note of the legal position of law regarding the timelines for reopening of assessment under the new 148 regime, we now revert back to the facts of the present case. In the present case before us, search upon the assessee was conducted on 15-06-2022 and therefore in terms of the second proviso to Section 149 of the Act, the income of the assessee is required to be assessed or reassessed in accordance with the new 148 regime, as introduced by Finance Act, 2021. However, as because the relevant AY involved is AY 2013-14 viz., prior to AY 2021-22; we are required to test the time limit for reopening of the



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relevant AY 2013-14 on the tenets of the first proviso to Section 149(1)(b) of the new regime, at the stage of issuance of notice under section 148 of the new regime i.e. 30.03.2023. Having regard to the legal principles as discussed in preceding paragraphs, it is first required to be ascertained whether AY 2013-14 could have been reopened under the old provisions of Section 153A of the Act on the date of issuance of notice i.e. 30.03.2023 and only if the answer is in affirmative that, the AO could have validly issued notice u/s 148 of the Act under the new regime. For this, let us now have a look at the relevant provisions of Section 153A of the Act, which reads as under:-

“Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person⁵² where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003 but on or before the 31st day of March, 2021, the Assessing Officer shall—

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years and for the relevant assessment year or years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;

(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and for the relevant assessment year or years:

....



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Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless—

(a) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years;

(b) the income referred to in clause (a) or part thereof has escaped assessment for such year or years; and

(c) the search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.

Explanation 1.—For the purposes of this sub-section, the expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made."

14. It is seen that, Section 153A envisages that an assessment to be undertaken *"in respect of each assessment year falling within six assessment years"* referred to in clause (b) thereof. Clause (b) of Section 153A(1) provides for the identification of the six AYs with reference to the *"previous year in which the search is conducted or requisition is made"*. Hence, the block of six AYs is to be identified commencing from the AY *"immediately preceding the assessment year relevant to the previous year"* in which the search may have been conducted. In the present case, as the search occurred on 15.06.2022 i.e., between 1st April 2022 to 31st March 2023; FY 2022-23 relevant to AY 2023-24 would constitute the



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previous year of search and the six AYs as envisaged are those which immediately precede the AY so identified with reference to the date of search. Consequently, and reckoned backward, the six AYs would be, AYs 2022-23, 2021-22, 2020-21, 2019-20, 2018-19 & 2017-18. It is important to bear in mind that, the Finance Act, 2017 stretched the search assessment to an additional four AYs with the introduction of the concept of "*relevant assessment year*", which was defined by Explanation 1 to Section 153A(1) as being the period which would fall beyond "*six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year*" in which search was conducted. Accordingly, the ten AYs would have to be computed from the end of the AY relevant to the FY in which the search was conducted or requisition made [AY 2023-24, in the present case]. It is seen that, Explanation 1 to Section 153A(1) requires computation of the 10-year block period from the end of the relevant AY in which search was conducted whereas the 6-year block period for the purposes of Section 153A(1)(b) comprises of the six relevant AYs '*preceding*' the year of search. To put it simply, the year of search is considered as year '0' for ascertaining the six AYs to be reopened in terms of Section 153A(1)(b) of the Act. However, having regard to the language used in Explanation 1 to Section 153A(1), since the 10-year block period is to be computed from the end of the relevant AY in which search was conducted, the year of



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search [AY 2023-24 in present case] is considered to be year '1' and accordingly the 10-year block period is ascertained. In the context of the present case therefore, it is manifest that, AY 2023-24 would form the first year of the block of ten AYs and the maximum period of ten AYs' shall terminate in AY 2014-15. We are therefore in agreement with the Ld. CIT(A)'s computation of ten-year block period in terms of Section 153A of the Act, which for the sake of convenience, is set out herein-below:-

Computation of the ten-year period as provided u/s 153A of the Act	Sequence of the year
AY 2023-24	First year
AY 2022-23	Second year
AY2021-22	Third Year
AY 2020-21	Fourth Year
AY 2019-20	Fifth Year
AY 2018-19	Sixth Year
AY 2017-18	Seventh Year
AY 2016-17	Eight Year
AY 2015-16	Ninth Year
AY 2014-15	Tenth Year
AY 2013-14	Eleventh Year

15. The above tabulation is found to be supported by the decision of the jurisdictional Hon'ble Madras High Court in the case of **A.R. Safiullah (WP(MD) No. 4327 of 2021)** wherein it was held as follows:-

"9. Explanation-I is clear as to the manner of computation of the ten assessment years. It clearly and firmly fixes the starting point. It is the end of the assessment year relevant to the previous year in which search is conducted or requisition is made. There cannot be any doubt that since search was made in this case on 10.04.2018, the assessment



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year is 2019-20. The end of the assessment year 2019-20 is 31.03.2020. The computation of ten years has to run backwards from the said date i.e., 31.03.2020. The first year will of course be the search assessment year itself. In that event, the ten assessment years will be as follows :

1 st Year	2019-20
2 nd Year	2018-19
3 rd Year	2017-18
4 th Year	2016-17
5 th Year	2015-16
6 th Year	2014-15
7 th Year	2013-14
8 th Year	2012-13
9 th Year	2011-12
10 th Year	2010-11

The case on hand pertains to AY 2009-10. It is obviously beyond the ten year outer ceiling limit prescribed by the statute. The terminal point is the tenth year calculated from the end of the assessment year relevant to the previous year in which search is conducted. The long arm of the law can go up to this terminal point and not one day beyond. When the statute is clear and admits of no ambiguity, it has to be strictly construed and there is no scope for looking to the explanatory notes appended to statute or circular issued by the department.

10. In the case on hand, the statute has prescribed one mode of computing the six years and another mode for computing the ten years. Section 153A(1)(b) states that the assessing officer shall assess or reassess the total income of six years immediately preceding the assessment year relevant to the previous year in which search is conducted. Applying this yardstick, the six years would go up to 2013-14. The search assessment year, namely, 2019-20 has to be excluded. This is because, the statute talks of the six years preceding the search assessment year. But, while computing the ten assessment years, the starting point has to be the end of the search assessment year. In other words, search assessment year has to be including in the latter case. It



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is not for me to fathom the wisdom of the parliament. I cannot assume that the amendment introduced by the Finance Act, 2017 intended to bring in four more years over and above the six years already provided within the scope of the provision. When the law has prescribed a particular length, it is not for the court to stretch it. Plasticity is the new mantra in neuroscience, thanks to the teachings of Norman Doidge. It implies that contrary to settled wisdom, even brain structure can be changed. But not so when it comes to a provision in a taxing statute that is free of ambiguity. Such a provision cannot be elastically construed.

11. One other contention urged by the standing counsel has to be dealt with. It is pointed out that the petitioner has invoked the writ jurisdiction at the notice stage. Since the petitioner has demonstrated that the subject assessment year lies beyond the ambit of the provision, the respondent has no jurisdiction to issue the impugned notice. Once lack of jurisdiction has been established, the maintainability of the writ petition cannot be in doubt."

16. Following the above decision (supra), in the present case, as the AY relevant to the year of search in AY 2023-24, the period of the ten AYs, when computed from the end of AY 2023-24 would terminate upon AY 2014-15, so according to us, AY 2013-14 would clearly fall outside the block period of ten AYs and therefore the AO could not have legally reopened the same under section 153A(1)(b) read with Explanation (1) to fourth proviso of Section 153A of the Act, at the time of issuance of notice u/s 148 of the Act under the new regime i.e. 30.03.2023. Hence, we find that, the Ld. CIT(A) had rightly held that, the AY 2013-14 fell beyond the time line of 10 years from the end of relevant AY 2023-24, as prescribed in Section 153A of the Act and therefore held that the AO lacked the jurisdiction to reopen AY 2013-14 under the new regime, in terms of the



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restrictive covenant set out in first proviso to Section 149(1)(b) of the Act.

17. Our above view is noted to be supported by the Hon'ble Delhi High Court in the case of **KAD Housing Pvt Ltd v. DCIT (supra)** wherein it was held that, an action of reassessment which comes to be initiated in relation to a search undertaken on or after 01 April 2021 would have to meet the foundational tests as specified in the first proviso to Section 149(1) of the Act. The Court held that, a reassessment action would thus have to not only satisfy the time frames constructed in terms of Section 149, but in a relevant case concerned with a search, also those which would be applicable by virtue of the provisions of Section 153A and 153C of the Act. In the decided case, the search was conducted on 11.10.2023 and the seized material / information relating to the assessee was handed over on 16.08.2024. Having regard to the provisions of Section 153C of the Act, the deemed date of search was 16.08.2024, i.e. AY 2025-26. The Hon'ble High Court, having regard to the manner in which the period of six or ten years is required to be reckoned in respect of reopening of the assessment as contemplated under Section 153A(1) read with Explanation (1) to fourth proviso of Section 153A of the Act, held that, the assessment in respect of the AY 2015-16 falls beyond the period of ten years as stipulated in terms of the first proviso to Section 149(1)(b)



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read with Section 153C of the Act and therefore quashed the notice so issued by the AO u/s 148 of the Act under the new regime. The findings of the Hon'ble High Court, which are relevant in the present case, is as under:-

"5. In the present case, the petitioner's assessment is sought to be reopened on the basis of the information available pursuant to a search conducted on 11.10.2023 in respect of Sterling Agro Industries Ltd. Apparently, certain information pertaining to the petitioner was found during the course of the said proceedings and, on 16.08.2024, the same was forwarded to the Assessing Officer (hereafter AO) exercising jurisdiction in the case of the assessee. On receipt of the said information, the AO issued a notice dated 17.08.2024 under Section 148A(b) of the Act setting out the information, which according to the AO suggested that the petitioner's income for the relevant AY 2015-16, has escaped assessment.

....

8. Concededly, in case any incriminating material was found in respect of a non-search party during the search proceedings, procedure under Section 148A of the Act is not required to be followed. It is on this basis that the notice under Section 148 was issued.

9. As noted above, the short question to be considered by this Court is whether the impugned notice has been issued beyond the period of limitation as stipulated under Section 149(1)(b) of the Act. The said issue is squarely covered by the earlier decisions of the Co-ordinate Bench of this Court in *Dinesh Jindal v. Assistant Commissioner of Income Tax, Central Circle 20, Delhi & Others* [2024] 164 taxmann.com 746 (Delhi) as well as in *The Pr. Commissioner of Income Tax -Central-1 v. Ojjus Medicare Pvt. Limited* [2024] 161 taxmann.com 160/465 ITR 101 (Delhi).

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11. In *Ojjus Medicare Pvt. Limited* (supra), the Court also explained the manner in which the period of six or ten years is required to be reckoned in respect of reopening of the assessment for a period prior to six years and/or before the expiry of ten years from the relevant assessment years as contemplated under Section 153C of the Act. The court held that the



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period of ten years is required to be reckoned from the end of the assessment year relevant to the year in which the notice under Section 148 of the Act is issued.

12. The relevant extract of the decision in Ojjus Medicare Pvt. Limited (supra) is set out below:-

"D. The First Proviso to Section 153C introduces a legal fiction on the basis of which the commencement date for computation of the six year or the ten year block is deemed to be the date of receipt of books of accounts by the jurisdictional AO. The identification of the starting block for the purposes of computation of the six and the ten year period is governed by the First Proviso to Section 153C, which significantly shifts the reference point spoken of in Section 153A(1), while defining the point from which the period of the "relevant assessment year" is to be calculated, to the date of receipt of the books of accounts, documents or assets seized by the jurisdictional AO of the non searched person. The shift of the relevant date in the case of a non-searched person being regulated by the First Proviso of Section 153C(1) is an issue which is no longer res integra and stands authoritatively settled by virtue of the decisions of this Court in SSP Aviation and RRJ Securities as well as the decision of the Supreme Court in Jasjit Singh. The aforesaid legal position also stood reiterated by the Supreme Court in Vikram Sujitkumar Bhatia. The submission of the respondents, therefore, that the block periods would have to be reckoned with reference to the date of search can neither be countenanced nor accepted.

E. The reckoning of the six AYs' would require one to firstly identify the FY in which the search was undertaken and which would lead to the ascertainment of the AY relevant to the previous year of search. The block of six AYs' would consequently be those which immediately precede the AY relevant to the year of search. In the case of a search assessment undertaken in terms of Section 153C, the solitary distinction would be that the previous year of search would stand substituted by the date or the year in which the books of accounts or documents and assets seized are handed over to the jurisdictional AO as opposed to the year of search which constitutes the basis for an assessment under Section 153A.

F. While the identification and computation of the six AYs' hinges upon the phrase "immediately preceding the assessment year relevant to the previous year" of search, the ten year period would have to be reckoned from the 31st day of March of the AY relevant to the year of search. This, since undisputedly, Explanation 1 of Section 153A requires us to reckon it "from the end of the assessment year". This distinction would have to necessarily be acknowledged in light of the statute having consciously



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adopted the phraseology "immediately preceding" when it be in relation to the six year period and employing the expression "from the end of the assessment year" while speaking of the ten year block."

13. The petitioner has, on the basis of the said decisions, produced a tabular statement, which indicates that the assessment in respect of the AY 2015-16 falls beyond the period of ten years as stipulated under Section 149 read with Section 153C of the Act. It would be apposite to set out the said tabular statement, which reads as under:-

Analysis of time-period to issue reassessment notice Date of impugned notice under Section 148 - 31.08.2024 This chart is prepared in light of the first proviso of Section 149 of the Act as amended by Finance Act 2021

Relevant Assessment year for initiating proceedings under Section 148 of the Act	Without prejudice computation of 10 years in light of first proviso to Section 149
2025-26	1
2024-25	2
2023-24	3
2022-23	4
2021-22	5
2020-21	6
2019-20	7
2018-19	8
2017-18	9
2016-17	10
2015-16	11 (beyond terminal point of 10 years)

14. Mr Chawla, the learned counsel appearing for the Revenue, fairly states that there is no cavil with the said tabular statement and that the issue is covered by the decisions of this Court in Dinesh Jindal (supra) as



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well as Ojjus Medicare Pvt. Limited (*supra*). He, however, submits that the Revenue may challenge the same in appropriate proceedings.

15. In view of the above, the impugned notice is set aside. Consequently, the respondent is restrained from the proceeding with the re-assessment proceedings in respect of the AY 2015-16."

18. In the above decision, the Hon'ble High Court is found to have relied on their earlier judgment rendered in the case of **Dinesh Jindal v. ACIT (*supra*)**. The relevant findings rendered in this judgment which are held to be applicable in the facts of the present case before us, is as under:-.

"8. Undisputedly, and in terms of Section 153C(3) of the Act, any search if conducted after 01 April 2021, would cease to be regulated by that provision. Sub-section (3), in that sense, embodies a sunset clause insofar as the applicability of Section 153C is concerned. The First Proviso to Section 149(1), however, bids us to go back in a point of time, and to examine whether a reopening would sustain bearing in mind the timeframes as they stood embodied in Section 149(1)(b) or Section 153A and 153C, as the case may be. The First Proviso essentially requires us to undertake that consideration bearing in mind the timeframes which stood specified in Sections 149, 153A and 153C as they stood prior to the commencement of Finance Act, 2021.

9. Thus, an action of reassessment which comes to be initiated in relation to a search undertaken on or after 01 April 2021 would have to meet the foundational tests as specified in the First Proviso to Section 149(1). A reassessment action would thus have to not only satisfy the time frames constructed in terms of Section 149, but in a relevant case and which is concerned with a search, also those which would be applicable by virtue of the provisions of Section 153A and 153C.

10. Undisputedly, and if the validity of the reassessment were to be tested on the anvil of Section 153C, the petitioner would be entitled to succeed for the following reasons. It is an undisputed fact that the proceedings under Section 148 commenced on the basis of the impugned notice dated 30 March 2023. This date would be of seminal importance since the period of six AYs' or the "relevant assessment year" would have to be reckoned from the date when action was initiated to reopen the assessment pertaining to AY 2013-14."



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19. We also gainfully refer to the decision of the Hon'ble Delhi High Court in **Filatex India Ltd. v. Dy. CIT [WP(C) No. 12148 of 2023]** which we find is squarely applicable in the given facts of the assessee before us. In this case, the search action under Section 132 of the Act was conducted on 01.09.2021 and therefore the assessment year relevant to the year of search was AY 2022-23. Having regard to the first proviso appended to the Section 149(1) of the Act, in addition to Section 153A(1)(b) and Explanation 1 appended thereto, it was noted that, the period of ten years from the end of the assessment year in which search was conducted ended with AY 2013-14 and therefore the notice issued u/s 148 of the Act dated 13.03.2023 to reopen AY 2012-13 was held to be barred by limitation in terms of first proviso to Section 149(1)(b) of the Act. The relevant findings of the Hon'ble High Court are as follows:-

"3. As is evident from the prima facie observations which came to be rendered by us on that occasion, the reassessment which is sought to be initiated for Assessment Year ["AY"] 2012-13 would not sustain bearing in mind the prescription of limitation as contained in Section 149(1)(b) of the Income-tax Act 1961 ["Act "] as it stood at the relevant time.

4. We note that while dealing with a similar question of computation of the time limit for the "relevant assessment year " as provided under Explanation 1 to Section 153A of the Act, we had in the case of Principal Commissioner of Income Tax-Central-1 v. Ojjus Medicare Pvt. Ltd. [2024 SCC Online Del 2439] held as follows:-

"D. The First Proviso to Section 153C introduces a legal fiction on the basis of which the commencement date for computation of the six year or the ten year block is deemed to be the date of receipt of books of accounts by the jurisdictional AO. The identification of the starting block for the purposes of computation of the six and the ten year period is



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governed by the First Proviso to Section 153C, which significantly shifts the reference point spoken of in Section 153A(1), while defining the point from which the period of the "relevant assessment year" is to be calculated, to the date of receipt of the books of accounts, documents or assets seized by the jurisdictional AO of the non-searched person. The shift of the relevant date in the case of a non-searched person being regulated by the First Proviso of Section 153C(1) is an issue which is no longer res integra and stands authoritatively settled by virtue of the decisions of this Court in SSP Aviation and RRJ Securities as well as the decision of the Supreme Court in Jasjit Singh. The aforesaid legal position also stood reiterated by the Supreme Court in Vikram Sujitkumar Bhatia. The submission of the respondents, therefore, that the block periods would have to be reckoned with reference to the date of search can neither be countenanced nor accepted.

E. The reckoning of the six AYs' would require one to firstly identify the FY in which the search was undertaken and which would lead to the ascertainment of the AY relevant to the previous year of search. The block of six AYs' would consequently be those which immediately precede the AY relevant to the year of search. In the case of a search assessment undertaken in terms of Section 153C, the solitary distinction would be that the previous year of search would stand substituted by the date or the year in which the books of accounts or documents and assets seized are handed over to the jurisdictional AO as opposed to the year of search which constitutes the basis for an assessment under section 153A.

F. While the identification and computation of the six AYs' hinges upon the phrase "immediately preceding the assessment year relevant to the previous year" of search, the ten year period would have to be reckoned from the 31st day of March of the AY relevant to the year of search. This, since undisputedly, Explanation 1 of Section 153A requires us to reckon it "from the end of the assessment year". This distinction would have to necessarily be acknowledged in light of the statute having consciously adopted the phraseology "immediately preceding" when it be in relation to the six year period and employing the expression "from the end of the assessment year" while speaking of the ten year block."

5. In view of the aforesaid, we find ourselves unable to sustain the impugned notice dated 13 March 2023 issued under section 148 of the Act.

6. The writ petition is accordingly allowed and the impugned order dated 18 May 2023 disposing off the objections of the petitioner is hereby



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quashed. We in consequence also quash the notice dated 13 March 2023 purporting to commence proceedings under section 148 of the Act."

20. Following the above, we countenance the Ld. CIT(A)'s order holding that the, notice dated 30.03.2023 issued u/s 148 of the Act for AY 2013-14 to be ab inito void and therefore all consequent actions thereafter viz., filing of return, issuance of notices, and the passing of impugned assessment order u/s 147/143(3) dated 15.03.2024 for AY 203-14 is held to be non-est in the eyes of law and is accordingly quashed. We thus see no reason to interfere with the order of Ld. CIT(A) and accordingly dismiss the appeal of the Revenue.

21. We now take up the Revenue's appeal(s) for AYs 2014-15 to 2016-17 which was disposed by the Ld. CIT(A) by way of a common consolidated order. With the consent of both parties, AY 2014-15 is taken as the lead case and our decision in this appeal shall mutatis mutandis apply to the Revenue's appeal for AYs 2015-16 & 2016-17. It is observed that, before the Ld. CIT(A), the assessee had contended that, the AO had invalidly initiated reassessment proceedings for AYs 2014-15 to 2016-17 under the new 148 regime, as these notice(s) were barred by limitation. According to the assessee, though Section 149(1)(b) of the Act provided that, the AO was permitted to reopen the income-tax assessment year for an assessment year for a period upto ten years from the end of such assessment year, but in view of the embargo laid down in first proviso to



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Section 149(1)(b) of the Act, the AO could not have reopened beyond the period of six (6) years, which immediately preceded the year of search viz., AY 2023-24, in the present case. It was the appellant's case that, AYs 2014-15 to 2016-17 fell beyond the six-year block period prescribed in Section 153A(1)(b) of the Act and that in order to go beyond the ordinary six (6) year period and reopen the '*relevant assessment year*' as defined in Explanation (1) to Section 153A of the Act, the AO was required to demonstrate that the conditions laid down in fourth proviso to Section 153A of the Act was fulfilled, at the stage of issuance of notice under the new 148 regime. The assessee claimed that, the AO was unable to demonstrate that any income represented in form of 'asset' had escaped assessment in AYs 2014-15 to 2016-17 and therefore in terms of the bar laid down in the first proviso to Section 149(1)(b) of the Act, it was contended that, the AO could not have legally reopened the impugned AYs 2014-15 to 2017-18 under the new 148 regime. It is seen that, the Ld. CIT(A) after examining the provisions of new 148 regime and the first proviso to Section 149(1)(b) of the Act acceded to this legal plea of the assessee and held the notice(s) issued u/s 148 of the Act dated 04-08-2023 for AY 2014-15 and dated 07-08-2023 for AYs 2015-16 to 2016-17 to be barred by limitation. Aggrieved by such order, the Revenue is in appeal before us.



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22. The Ld. CIT, DR appearing before us, contended that, under Section 149(1)(b) of the Act, the AO was empowered to reopen any assessment year for a period exceeding three years but not beyond ten years from the end of such assessment year. According to her, the notice(s) dated 30-03-2023 issued u/s 148 of the Act for AYs 2014-15 to 2016-17 was well within the timeline set out in Section 149(1)(b) of the Act and therefore she submitted that the order of the Ld. CIT(A) holding these notice(s) to be barred by limitation was unsustainable. Referring to the first proviso to Section 149(1) of the Act, she pointed out that, in cases where an assessee is subjected to search u/s 132 of the Act, the proviso provides that, the notice under Section 148 of the Act can be issued only if such a notice could have otherwise be issued under Section 153A of the Act at that material time. According to her, in cases of search, prior to the Finance Act, 2021, the Revenue was permitted to reopen up to ten years from the end of the relevant assessment year in which search was conducted. She therefore submitted that, AYs 2014-15 to 2016-17 fell within the 10 year block period as defined in Explanation (1) to Section 153A of the Act and accordingly claimed that the AO had validly reopened the assessment under the new 148 regime, in terms of proviso to Section 149(1)(b) of the Act.



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23. Per contra, the Ld. AR vehemently opposed the contention of the Revenue and he argued that, in terms of the fourth proviso to Section 153A(1) of the Act, no notice for the relevant assessment year or years could be issued unless the AO had in his possession books of account or other documents or evidence which revealed that income represented in the form of an asset has escaped assessment. According to him therefore, the extended period of limitation beyond the six years preceding the assessment year relevant to previous year in which a search was conducted, would be applicable only in cases where the AO had evidence, which discloses that the escaped income was represented by an asset. He contended that, in the present case, the income which is alleged to have escaped assessment is on account of an expenditure [*purchases*], which the AO had subsequently disallowed and not on account of any income represent in form of an 'asset' and therefore he contended that, the maximum period for which reassessment could be initiated by issuing a notice under Section 153A of the Act was for a period of six years preceding the year of search and not beyond, because the condition precedent in fourth proviso had not been fulfilled. In support of the appellate order of Ld. CIT(A), the Ld. AR relied upon the decision of Hon'ble Delhi High Court in the case of **Smart Chip Pvt Ltd Vs ACIT (467 ITR 389)**.



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24. Heard both the parties and perused the material placed before us. As held by us above, ordinarily the AYs prior to AY 2021-22 can be reopened under the new 148 regime, only if such AY [*in non-search matters*] was otherwise capable of being reopened under the old regime [*six years as laid down in erstwhile Section 149(1)(b)*], at the stage of issuance of notice. However, in cases where search has been conducted on or after 1st April 2021 or where document or information has been found & seized in the course of search which relates to the assessee [third party], the assessment or reassessment which was earlier required to be made u/s 153A/153C of the Act, is now required to be made under Section 143 or 144 or 147 of the Act. As a consequence, the timelines for search related cases qua AYs prior to AY 2021-22, would be governed by first proviso to Section 149(1)(b) of the Act and therefore the notice for reopening the assessment u/s 148 of the Act can be issued, only if such AY could have otherwise been validly reopened in terms of Section 153A/153C of the Act [*as it stood prior to introduction of Finance Act, 2021*], at the time of issuance of notice under the new regime.

25. In the present case before us, search was conducted upon the assessee on 15-06-2022 and therefore in terms of the second proviso to Section 149 of the Act, the income of the assessee is required to be assessed or reassessed in accordance with the new 148 regime, as



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introduced by Finance Act, 2021. The timelines for reopening the assessment of AYs 2014-15 to 2016-17 impugned before us, being prior to AY 2021-22, is required to be tested on the tenets of the first proviso to Section 149(1)(b) of the new regime, at the stage of issuance of notice under section 148 of the new regime i.e. 30.03.2023. Having regard to the legal principles, as already discussed elaborately while adjudicating the Revenue's appeal for AY 2013-14, we are required to first ascertain whether AYs 2014-15 to 2016-17 could have been reopened under the old provisions of Section 153A of the Act on the date of issuance of notice i.e. 30.03.2023 and only if the answer is in affirmative that, the AO could have validly issued notice u/s 148 of the Act under the new regime.

26. As noted earlier, Section 153A of the Act lays down the manner and procedure for reopening the assessments in cases of search. Section 153A(1) of the Act provides that, the assessments can be reopened for a block of six years preceding the assessment year relevant to the previous year in which search under Section 132 of the Act is conducted or requisition is made under Section 132A of the Act as well as the relevant assessment year or years. As is apparent from the plain language of Section 153A(1) of the Act, the AO has the jurisdiction to issue a notice in respect of each of the assessment years falling within six assessment years as well as for the relevant year or years as referred to in Clause (b)



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of Section 153A(1) of the Act. In the present case, having regard to the year of search i.e. AY 2023-24, the six year block period is AYs 2017-18 to 2022-23. However, the fourth proviso to Section 153A(1) of the Act proscribes issuance of any notice for assessment or reassessment in respect of a relevant assessment year unless the conditions as stipulated in the fourth proviso are satisfied. It is seen that, the expression "*relevant assessment year*" is defined under Explanation 1 to sub-section (i) of Section 153A of the Act to mean a year that falls beyond the period of six assessment years preceding the assessment year relevant to the previous year in which search is conducted or requisition is made, but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made. Hence, in our considered view, in order to reopen any assessment year which is beyond the six year block period contemplated in Section 153A(1)(b) and within the ten year block period from the end of the AY in which search was conducted, the AO is required to satisfy the condition precedent in fourth proviso to Section 153A of the Act and show that, he has in his possession books of account or other documents or evidence which reveals that the income, represented in the form of '*asset*', which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year. As per Explanation (2) to Section 153A of the Act, the term "*asset*" shall include immovable



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property being land or building or both, shares and securities, loans and advances, deposits in bank account.

27. We find that, the AO was conscious of the above position of law and is found to have recorded his satisfaction prior to issuance of notice u/s 148 of the Act for AYs 2014-15 to 2016-17. The relevant extract of the satisfaction recorded for AY 2014-15 is as under [*similar satisfaction is found to have been recorded for AYs 2015-16 & 2016-17*] :

"....13. Thus, the information in the seized materials and other evidences available with the undersigned, unambiguously evidenced that the assessee had booked bogus old bottle purchase expenses with the connivance of the five old bottle vendors thereby generating unaccounted cash which clearly suggests that income represented in the form of asset has escaped assessment, and exceeds more than Rs. 50,00,000 for A.Y 14-15. Hence, this case falls under the purview of section 149(1)(b). In view of the above, there is information and evidence which suggests that income represented in the form of asset, has escaped assessment and which exceeds more than Rs. 50,00,000/- and hence, notice u/s 148 is required to be issued in this case."

28. From the above it is seen that, the AO had assumed jurisdiction to issue notice u/s 148 of the Act by making a sweeping remark that income represented in form of asset, in excess of Rs.50,00,000/- had escaped assessment in AY 2014-15. Careful reading of the above satisfaction reveals that, the case of the AO was that the assessee had inflated expenses by booking bogus purchases and the item escaping assessment was 'expenditure' and not any 'asset'. According to us, the allegation concerning the assessee's income which had escaped assessment was regarding the genuineness of the expenses claimed in the accounts. The



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AO has not pointed out as to how such inflation of expenses resulted in acquisition of any 'asset'. It is observed that, even in the reassessment order(s) passed u/s 147/143(3) of the Act, the AO has disallowed the expenses debited on account of purchases made from vendors and he had not brought on record any material to establish that such expenses had resulted in the acquisition of any asset by the assessee. We therefore are of the considered view that, the condition stipulated in the fourth proviso to Section 153A(1) of the Act was not fulfilled by the AO. Hence, in absence of there being any income represented in form of 'asset' escaping tax in the impugned AYs 2014-15 to 2016-17, the period of limitation for issuing a notice under Section 153A of the Act, in the given facts of this case, would necessarily have to be confined to a period of six assessment years immediately preceding the assessment year relevant to the previous year in which the search under Section 132 of the Act was conducted. In our opinion therefore, since AYs 2014-15 to 2016-17 fall beyond the six year block period and the condition precedent in fourth proviso to Section 153A is not met, the AO could not have reopened the impugned AYs in light of the embargo set out in the first proviso to Section 149(1)(b) read with Section 153A of the Act. We thus countenance the following findings rendered by the Ld. CIT(A) holding the AO's action of initiation of reassessment proceedings u/s 148 of the Act



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for AYs 2014-15 to 2016-17 to be impermissible in law, by holding as under:-

“6.3.18 Now the issue before the under signed is whether the income generated by booking purchase expenses represent asset as per the Explanation 2 to section 153A of the Act.

6.3.19 At this juncture, it is appropriate to analyse the Explanation 2 to section 153A of the Act which describes the inclusions in the term Asset in the Act. The undersigned is of the view that an asset represents an economic resource, either immovable or movable, having value, such as immovable property viz., land or building, investment held in shares and securities, loans & advances given and deposits in bank account. Whereas, ‘Liability’ includes items such as share capital, reserves, loans obtained (secured as well as unsecured) etc. which cannot be characterized or classified as ‘Asset’. Therefore, items of ‘expenses’ or revenues in form of ‘sales’ / ‘turnover’ does not constitute ‘asset’.

6.3.20 The Hon’ble ITAT, Guwahati Bench had an occasion to examine the issue of “Asset” in the case of ACIT Central circle-2, Guwahati Vs. Fortune Vanijya Private Limited in ITA No. 21/Gau/2021 dated 10.12.2021 wherein the Hon’ble ITAT has observed as under.

“A reading of the fourth proviso to section 153A of the Act and Explanation (2) to fourth proviso to section 153A of the Act which defines 'Asset for the purpose of fourth proviso to section 153A of the Act, clarify the intention of the Parliament to permit the AO to enlarge the assessment u/s. 153A after search u/s. 132 of the Act beyond six assessment years to ten assessment years preceding the searched assessment year, provided the AO has in his possession the essential jurisdictional fact i.e. "undisclosed/unaccounted asset" valued Rs 50 lakhs or more of the assessee discovered during search pertaining to 7th to 10th Assessment Year preceding the searched assessment year. Since the Parliament has used the expression 'income in the form of asset' and the definition of asset has been spelled out in the fourth proviso, this itself necessarily implies the liability/items falling in the left side of the Balance Sheet stands excluded. For this view of ours, we rely on the legal Maxim for interpretation "Expressio Unius Est Exlcusio Alterius" which principle states that, express mention of one is the exclusion of other and this maxim has been accepted by the Hon'ble Supreme Court in GVK Industries Ltd. Vs. ITO [197 Taxman 337] (Constitution bench of 5 Supreme Court Judges). By express mention of



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'Assets' and definition given to it specifically, it is implied that the Parliament silently excluded the items of 'revenue', 'expenditure' & 'liabilities' from its jurisdictional fact for invoking/assumption/usurpation of jurisdiction u/s. 153C/153A of the Act for the seventh to tenth assessment year preceding the searched assessment year."

6.3.21 When the legislature has specified that for invoking jurisdiction u/s 148 of the Act, the AO ought to have in his possession undisclosed assets of assessee, then the jurisdiction cannot be invoked with the aid of any material which reveal unexplained expenditure or unexplained cash credits. Reliance is placed the dictum of the Privy Council in Nazir Ahmed Vs. King Emperor AIR 1936 PC 253 (followed by Hon. Supreme Court), that *"when a statute requires a thing to be done in a particular manner, it must be done in that manner only."*

6.3.22 Therefore, unless the AO has material in possession to prove that the assessee has 'assets', which is not disclosed in the books, the income cannot be said to have escaped assessment for the purpose of section 153A. Here, the statute specifically mentioned " Asset " shall include

- a) Immovable Property being land and building or both
- b) Shares & Securities
- c) Loans and Advances
- d) Deposits in Bank accounts

Hence, the re-opening beyond a period of six years can be made only if, where AO possess books of accounts, documents or evidence which reveals that 'assets' are found to be undisclosed or unaccounted as specified supra, in the regular books of account maintained by the assessee, resulting in escapement of income.

6.3.23 The facts of the case are squarely covered by the decision rendered by the Hon'ble Gauhati Bench of ITAT in the case of Goldstone Cements Ltd, Meghalaya in IT Nos. 126 to 131/Gau/2020 dated 10.12.2021 wherein it was held that the undisclosed asset exceeding a value of Rs. 50 Lakhs unearthed at the time of search should be clearly identifiable. The Hon'ble Bench has observed in para 8.22 of its order that :

"8.22. From our discussion (supra) it is clear that, only if any of specified 'asset/s' as defined in Explanation (2) is unearthed during the



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course of search and the acquisition of such an asset' being unexplained or undisclosed, which is valued Rs 50 Lakhs or more, that the AO can be said to be in possession of the jurisdictional fact to initiate proceedings u/s 153A for 7th-10th AY (AY 2011-12, in the instant case)."

6.3.24 The above finding of the Hon'ble Tribunal was ratified by the Hon'ble Gauhati High Court in ITA/7/2022 on 29 September, 2023 on further appeal by the Revenue u/s 260A of the Act in the case of CIT V. Goldstone Cements Ltd. *It was emphasized that an expenditure, irrespective of its character, does not fall within the definition of 'asset' defined in Explanation 2 to S.153A and therefore the Jurisdiction assumed by the AO is unsustainable .*

6.3.25 It is appropriate to bring on record that the AO in the assessment order (s) passed for the years under consideration has contemplated disallowance(s) of bogus expenses booked by the assessee and has added the same to the returned income in the respective assessment years rather than making addition on the basis of any un disclosed asset found during the course of search .

6.3.26 In addition, the AO in the assessment order(s) has not categorically made any addition(s) / disallowance(s) while computing the assessed income of the appellant for the years under consideration. The AO has only restricted the assessed income in the order(s) passed u/s 147 of the Act to the income determined by vide order(s) passed u/s 153C of the Act. Therefore, the undersigned is of the view that the income generated by booking purchase expenses can at any stretch of imagination be treated as an asset to invoke the provisions of section 147 of the Act

6.3.27 Further, it is appropriate to rely upon the decision of the Hon'ble High Court of Bombay in the case of Ashok Commercial enterprises Vs. ACIT in [2023] 154 taxmann.com 144 (Bombay) wherein the Hon'ble high Court held that "*A plain reading of section 153A(1)(b) shows that Commissioner having jurisdiction under the said section is empowered to assess or reassess the total income of six years immediately preceding the assessment year relevant to the previous year in which the search was conducted and for the relevant assessment year or years. Explanation 1 below section 153A of the Act defines the expression relevant assessment. In order to make an assessment for assessment year which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year, in which the search was conducted, the 4th proviso to section 153(A)(1) sets out certain further conditions which are required to be fulfilled before a notice can be issued for the*



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relevant assessment years. Clause (a) of the 4th proviso requires that the Assessing Officer must have in his possession books, documents or evidence which reveal that income represented in the form of an asset which has escaped assessment amounts to or is likely to amount to rupees fifty lakhs or more. Explanation 2 to section 153A(1) sets out an expanded definition of the word "asset" for the purposes of the 4th proviso.

6.3.28 Besides, the jurisdictional tribunal in the case of M/s. KAG India Private Limited Vs. DCIT Central circle-2(1), Chennai in ITA No. ITA No.669/Chny/2023 dated 10.07.2024 by relying upon the decision of the decision of Hon'ble Guwahati High Court in the case of Goldstone Cements Ltd. (ITA No.10 of 2022 & ors. Dated 29-09-2023) held that "it is quite clear the impugned AY fall beyond 6 years from relevant assessment year (AY 2021-22) from the end of the previous year (2020-21) in which the search was conducted on the assessee (26-02-2021). In such a situation, the Ld. AO would be subjected to further conditions as stipulated in fourth proviso to Sec.153A(1). These conditions are (a) that certain income has escaped assessment; (b) the fact of income escaping assessment is evident from the books of accounts, other documents or evidences found in the course of search which are in the possession of the assessing officer; (c) that the escaped income pertains to the relevant assessment year or years; (d) that the income escaping assessment is represented by undisclosed specified asset; (e) that the undisclosed specified asset was acquired with the income of the relevant assessment year or years; (f) that the quantum of income escaping assessment is Rs.50 Lacs or more in the aggregate for the relevant assessment years. One of the prime condition is that income should be represented in the form of asset which has escaped assessment. As per Explanation-2, asset includes immovable property being land and building or both, share and securities, loans and advances, deposits in bank accounts.

6.3.29 In the present case of the appellant company, on examination of the assessment order(s) reveals that the AO has not cited or provided any documents or evidence to support the initiation of proceedings u/s 148 of the Act (which is governed by Section 153A of the Act). Specifically, there is no reference to information indicating that income, in the form of an asset, has escaped assessment and amounts to or is likely to exceed fifty lakh rupees, either in the relevant assessment year or cumulatively across the assessment years in question."



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29. We find that the above view expressed by the Ld. CIT(A) is squarely supported by the decision rendered by the Hon'ble Delhi High Court in the case of **Smart Chip Pvt Ltd Vs ACIT (supra)** involving identical facts and circumstances as involved in the present case. In the decided case, search was conducted upon the assessee on 21-03-2023, consequent to which the AO issued reopening notice u/s 148 of the Act on 21-03-2024 for AY 2016-17. The assessee challenged the validity of the notice by filing writ petition before the Hon'ble High Court contending it to be barred by limitation. The assessee argued before the Hon'ble High Court that, in terms of first proviso to Section 149(1)(b) of the Act, the AO could have reopened AY 2016-17 only if such AY could have been reopened in terms of Section 153A of the Act, as it stood prior to introduction of the new 148 regime by Finance Act, 2021. It was pointed out that, ordinarily the AO could have reopened six AYs preceding the AY in which search was conducted i.e. AYs 2017-18 to 2022-23 which preceded AY 2023-24 being the year of search and that AY 2016-17 fell beyond the period of six years. The assessee contended that, if the AO sought to reopen AY 2016-17 in terms of fourth proviso to Section 153A of the Act read with Explanation (1) to Section 153A of the Act, then it was incumbent for the AO to show that the condition precedent in fourth proviso to Section 153A of the Act was met viz., the AO is able to demonstrate that income represented in form of 'asset' exceeding Rs.50



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lacs had escaped assessment in AY 2016-17. Upholding the plea of the assessee, the Hon'ble High Court noted that, the AO had not met this criteria set out in fourth proviso to Section 153A of the Act prior to issuance of notice u/s 148 of the Act for AY 2016-17, which fell beyond the six year block period, under the new 148 regime. The Hon'ble High Court observed that, the AO had sought to disallow expenses doubting its genuineness and that the same did not qualify as income represented in form of 'asset' which had escaped tax. Hence, since the AO was unable to show that such expenses had resulted in the acquisition of any asset, it was held that, the conditions stipulated in the fourth proviso to Section 153A(1) of the Act was not met and thus the impugned notice issued u/s 148 of the Act for AY 2016-17 was held to be barred by limitation, by virtue of the embargo set out in first proviso to Section 149(1)(b) read with Section 153A of the Act. The relevant findings of the Hon'ble High Court which are applicable with equal force in the present case, are as follows:-

"8. A plain reading of the first proviso to Section 149(1) of the Act indicates that the issuance of a notice under Section 148 of the Act is proscribed if a notice under Sections 148, 153A or 153C of the Act could not have been issued at that time on account of the time limit specified under Clause (b) of Section 149(1) of the Act, or under Section 153A or Section 153C, as in force at that time.

9. We also consider it apposite to refer to the following observations made by the Supreme Court in Union of India v. Rajeev Bansal: 2024 SCC OnLine SC 2693/ [2024] 167 taxmann.com 70/301 Taxman 238/469 ITR 46 (SC):



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"49. The first proviso to Section 149(1)(b) requires the determination of whether the time limit prescribed under section 149(1)(b) of the old regime continues to exist for the assessment year 2021-2022 and before. Resultantly, a notice under Section 148 of the new regime cannot be issued if the period of six years from the end of the relevant assessment year has expired at the time of issuance of the notice. This also ensures that the new time limit of ten years prescribed under section 149(1)(b) of the new regime applies prospectively. For example, for the assessment year 2012-2013, the ten year period would have expired on 31 March 2023, while the six year period expired on 31 March 2019. Without the proviso to Section 149(1)(b) of the new regime, the Revenue could have had the power to reopen assessments for the year 2012-2013 if the escaped assessment amounted to Rupees fifty lakhs or more. The proviso limits the retrospective operation of Section 149(1)(b) to protect the interests of the assesses.

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54. The proviso to Section 149(1)(b) of the new regime uses the expression "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." Thus, the proviso specifically refers to the time limits specified under section 149(1)(b) of the old regime. The Revenue accepts that without application of Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, the time limit for issuance of reassessment notices after 1 April 2021 expires for assessment years 2013-2014, 2014-2015, 2015-2016, 2016-2017, and 2017-2018 in the following manner:

(i) for the assessment years 2013-2014 and 2014-2015, the six year period expires on 31 March 2020 and 31 March 2021 respectively; and

(ii) for the assessment years 2016-2017 and 2017-2018, the three year period expires on 31 March 2020 and 31 March 2021 respectively."

10. The aforesaid observations in Rajeev Bansal (supra) were made in the context of time limits for issuing notice under Section 148 of the Act under the provisions as were in force prior to 31.03.2021, as imputed by virtue of the first proviso to Section 149(1) of the Act. This principle would be equally applicable for proscribing the issuance of a notice under Section 148 of the Act, if the proceedings for reassessment could



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not be initiated under the provisions of Section 153A or 153C of the Act, or under Section 153A or Section 153C of the Act as referred to in the first proviso to Section 149(1) of the Act. There is no cavil that the impugned notice would be unsustainable if such a notice could not be issued under the provision of Section 153A of the Act as was applicable in respect of a search conducted prior to 31.03.2021. It thus requires us to determine the period of limitation within which a notice under Section 153A could be issued in respect of AY 2016-17.

11. It is the petitioner's case that the time limit for issuance of such notice is confined to the six assessment years preceding the assessment year relevant to the previous year in which search was conducted. However, the Revenue contends that by virtue of Explanation 1 to Section 153A(1) of the Act, the Revenue can travel back ten years from the end of the assessment year relevant to the previous year in which the search under Section 132 was conducted or a requisition under Section 132A of the Act was made. Plainly, the said controversy is required to be addressed by referring to Section 153A of the Act. Section 153A(1) of the Act is set out below:.....

12. It is apparent from the above that Section 153A of the Act refers to time periods within which the assessments could be reopened. In terms of Section 153A(1) of the Act, the assessments can be reopened for a block of six years preceding the assessment year relevant to the previous year in which search under Section 132 of the Act is conducted or requisition is made under Section 132A of the Act as well as the relevant assessment year or years.

13. As is apparent from the plain language of Section 153A(1) of the Act, the AO has the jurisdiction to issue a notice in respect of each of the assessment years falling within six assessment years as well as for the relevant year or years as referred to in Clause (b) of Section 153A(1) of the Act. However, the fourth proviso to Section 153A(1) of the Act proscribes issuance of any notice for assessment or reassessment in respect of a relevant assessment year unless the conditions as stipulated in the fourth proviso are satisfied.

14. The expression "relevant assessment year" is defined under Explanation 1 to sub-section (i) of Section 153A of the Act to mean a year that falls beyond the period of six assessment years preceding the assessment year relevant to the previous year in which search is conducted or requisition is made, but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.



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15. Mr. Maratha's contention that the extended period of limitation under Section 153A of the Act would be applicable for the purpose of the proviso to Section 149(1) of the Act notwithstanding that the conditions, as stipulated in the fourth proviso to Section 153A of the Act are not satisfied, is unmerited. Once, we accept that a notice under Section 148 of the Act cannot be issued if such a notice could not be issued under Section 153A of the Act; it would be necessary to determine the period of limitation for issuance of a notice under Section 153A of the Act. Since a block of six assessment years and a further period not exceeding the block of ten assessment years is contemplated under Section 153A of the Act, it follows that it would be necessary to determine whether the extended period of ten years is applicable in the facts of the present case. This necessitates considering the reasons as recorded for issuance of the impugned notice. The relevant extract of the reasons for reopening the reassessment, as furnished to the petitioner, is set out below:

"2.1 Information:-

In the case, the search proceedings and post-search investigations of Idemia India and other group entities revealed that these entities are engaged in massive profit shifting outside India. It has been unearthed that Idemia India and its group entities have deployed various mechanisms through which it is shifting profit to their Associated Enterprises (AEs) especially Idemia France SAS and Idemia Germany GmbH.

Investigation have revealed various tax-avoiding arrangements operated by the group entities like export sales made to AEs at very low markup, import purchases made from AEs at unjustified markup, management fees paid to AEs without any actual services received, Purchase of RAW materials from AEs, R&D services provided to AEs at low mark-up, transaction with Non- Filers etc. A summary of the modus operandi is as under:

A. Expenses Debit to Non- Filers:

It was observed that Smart Chip Pvt Ltd had undertaken various transactions in the nature of contract, rent, professional charges with various parties who have not either never filed the ITR or not filed in the year in which transaction occurred. The details of transactions are tabulated below:

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In this regard, summons notices were issued to the above non-filers to verify the genuineness of the transactions by investigation wing. However, no response has been received from the parties till date. In the absence of any compliance by the party and in view of the fact that above parties are non-filer till date, the genuineness of contract/rent payments made by Smart Chip could not be verified.

In view of the above, assessee's income aggregating ₹4,46,21,363/- has escaped assessment by way of various transactions during the FY 2015-16 to FY 2020-21 in the nature of contract, rent, professional charges with various parties who have not either never filed the ITR or not filed in the year in which transaction. Hence the genuineness of expenses of ₹4,46,21,363/- with non-filers from FY 2015-16 to 2020-21 needs to be verified.

B. DISALLOWANCE OF PERSONAL EXPENSES

It is noticed that during the course of search proceedings, some incriminating evidences were seized from the premises of Mr. Matthew David Foxtan (34, Jor Bagh, New Delhi-110003) annexurized as Annexure A-2 in Premise TDR-9, wherein some instances of personal expenses of the key persons of Smart Chip Pvt. Ltd. were claimed in the books of accounts of Smart Chip.

The incriminating evidences found are discussed as under:

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On perusal of the above, it can be noted that gold items worth Rs.2,42,646/- were being purchased in FY 2015-16. Further, it can be noticed that Smart Chip has been regularly incurring expenses for the personal benefit of directors and key managerial personnel for example purchase of iPhones, Sarees, Perfume, Hotel bills, credit card payments, etc. Further, it has also been observed that the company is also regularly incurring expenses for alcohols for officers, IPL tickets for bank officials, travel bills of government officers for availing favours from them. These expenses incurred to illegally obtain undue favours are in infraction of law and cannot be allowed as deduction. Furthermore, such personal expenses cannot also be said to have been incurred wholly and exclusively for the purpose of business and needs to be examined.

C. Disallowance of expenses paid to VIHAAN INFRASYSTEMS LTD.

It is noticed that some incriminating evidences were seized from the premises of Mr. Matthew David Foxtan (34, Jor Bagh, New Delhi-



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110003) annexurized as A-2 in Premise TDR-9, wherein some instances of unduly routing of money to Vihaan Infrsystems Ltd. in the garb of contractual manpower services and other support services and the said expense cost was being claimed in the books of the Smart Chip. The extracts of incriminating evidences as found during the course of search are discussed as under:

On perusal of the above observations as noted from the Memo of KPMG Paris seized during the course of search, Vihaan Infrsystems Ltd. provided significant manpower services to Smart Chip along with other support services such as data management, training, IT services, business support rent etc. In this regard, the details of expenses incurred and paid by Smart Chip to Vihaan Infrsystems Ltd. in FY 2015-16 relevant to AY 2016-17 amounting to Rs.8,70,00,000 /-.

Various incriminating facts were noted from perusal of the seized memo which raised significant doubts over the genuineness of the payments made by Smart Chip to Vihaan Infrsystems Ltd.:

- Smart Chip is the major contributor to the total revenue of Vihaan Infrsystems Ltd. and in some financial years, the expenses paid by Smart Chip to Vihaan Infrsystems Ltd. even exceeded the total revenue of Vihaan Infrsystems Ltd.;
- Mr. Sanjeev Shriya, his family members and Mr. Alok Mukherjee were shareholders and key managerial persons of Vihaan Infrsystems Ltd. in the past years and can be said to have significant influence over the affairs of Vihaan Infrsystems Ltd. and thus, it can be observed that Vihaan Infrsystems Ltd. was used to book non-genuine expenses in the books of Smart Chip and divert money for the benefit of specific persons;
- Common address, website of Vihaan Infrsystems Ltd. and Smart Chip and other group companies;
- Vihaan Infrsystems Ltd. presented as a group company / related company of Idemia Group entities;
- Mr. Sanjeev Kumar Jain, holding substantial shares in Vihaan Infrsystems Ltd., was the former employee of Smart Chip and having close relationship/connivance with Mr. Sanjeev Shriya;
- The fees charged by Vihaan Infrsystems Ltd. was much higher as compared to other contractual manpower company;



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- No proper documentation and proof of service existed in respect of expense transactions with Vihaan Infrasystems Ltd.
- Discrepancies in employee's attendance record found which further establishes the non-receipt of any actual services and non-genuineness of the transaction with Vihaan Infrasystems Ltd.

Further, the above observations in the seized Memo were also corroborated with detailed analysis in the Memo including list of shareholders as on 31.03.2016, Sanjeev Kumar Jain profile, extracts of Memorandum of Association of Vihaan Infrasystems Ltd. signed in 2004, Archived version of Vihaan Infrasystems Ltd. website, LinkedIn profile of Vihaan Infrasystems Ltd., consent form signed by Smart Chip's landlord providing permission to Vihaan Infrasystems Ltd. to use their office space and Vihaan noted as related party, links of Vihaan Infrasystems Ltd. with Aadharshila and Smart Chip, related party disclosures in the other companies of Mr. Sanjeev Shriya (Goldrock Investment) showing Vihaan Infrasystems Ltd. as related party in its Annual report for FY 20 16-17, domain name verification of Vihaan Infrasystems Ltd. wherein Smart Chip shown as registrant organization, proofs that Smart Chip's address noted as address of Vihaan Infrasystems Ltd. on Government's website, MCA etc, analysis of invoices raised by Vihaan Infrasystems Ltd., physical verification of premises of Vihaan Infrasystems Ltd., and various other analysis.

All the above incriminating evidences clearly showed that Vihaan Infrasystems Ltd. was merely a conduit entity which was used to unduly transfer money from Smart Chip and book non-genuine expenses in the books of Smart Chip. The evidences establishes that no genuine services were provided by Vihaan Infrasystems Ltd. to Smart Chip. This finding is in fact based on the internal report prepared by Idemia Group with the help of KPMG Paris. Hence, the payments made by Smart Chip to Vihaan Infrasystems Ltd. are found to be non-genuine and nowhere wholly and exclusively related to the business of the Smart Chip.

Thus, in view of the above, it is clearly corroborated that Smart Chip has been regularly making payments to Vihaan Infrasystems Limited without any actual receipt of any services and thus, claim of expenses of Rs.8,70,00,000/-cannot be said to be wholly and exclusively incurred for the purpose of business during the FY 20 15-16 relevant to AY 2016-17 and treated as escaped assessment and needs to be examined.



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As discussed above, assessee's income of Rs.9.21 Crores by way of expenses debited to non-filers and personal expenses & payment made to Vihaan Infrsystems Limited for F.Y. 2015-16 relevant to A.Y. 2016-17 in the head of business expenses has escaped assessment and needs to be examined.

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2. Evidently, warrant was issued in the name of the assessee and the case of the assessee was covered under Search u/s 132 of the Income Tax Act 1961 on 21.03.2023.

3. Hence, in light of the provisions of Explanation-2 to Section 148 and first proviso to Section 148A, I am satisfied that I have 'information' which suggests that income chargeable to tax has escaped assessment in the case of the assessee for the year under consideration and it is a fit case to issue notice u/s 148 r.w.s 149 r.w.s 151(ii) of the Income Tax Act 1961 as amended by the Finance Act 2022.

4. In view of the above, the assessee has misrepresented the amount of Rs.9.21 Crores [Rs.0.49 Crore expenses debited to non-filers + Rs.0.024 Crores as personal expenses + Rs.8.70 Crores as expenses debited to Vihaan Infrsystems Ltd. represented in the form of an entry and expenditure] in its ITR filed for F. Y. 2015-16 relevant to A. Y. 2016-17 by way of various tax-avoiding arrangements and shifting profits to their Associated Enterprises (AEs) outside India. Therefore, as specified u/s 149(l)(b) of the Income-tax Act, 1961 read with explanation thereto which suggests that income exceeding Rs.50 lakh chargeable to tax has escaped assessment in this case which is represented in the form of an entry and expenditure."

16. It is apparent from the above that the AO believed that the petitioner's income had escaped assessment for AY 2016-17 on essentially three grounds. First, that the petitioner had deducted expenses relating to amounts paid to certain persons who had not filed their income tax returns and the AO thus doubted the genuineness of the said transactions. Second, that the petitioner had booked expenses, which according to the AO, were personal expenses of its directors and had not been incurred wholly and exclusively for the purpose of the petitioner's business. And third, that the petitioner had paid certain amounts as expenses for availing contractual manpower services and the AO doubted the genuineness of the said payments.



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17. It is clear from the above that there is no allegation that the income which has escaped assessment was represented in the form of an asset. Therefore, the conditions as stipulated in Clause (a) of the fourth proviso to Section 153A(1) of the Act are not satisfied. The AO does not have the possession any books of account, other documents or evidence, which reveals that the petitioner's income that is represented in the form of an asset has escaped assessment.

18. In terms of Explanation 2 to Section 153A(1) of the Act, the term 'asset' is defined to include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank accounts.

19. The AO seeks to disallow expenses on account of doubting the genuineness for the reason that the same were not incurred wholly or exclusively for the purpose of the petitioner's business. Absent any further material to establish that such expenses had resulted in the acquisition of any asset, the conditions stipulated in the fourth proviso to Section 153A(1) of the Act would remain unsatisfied.

20. In the aforesaid view the period of limitation for issuing a notice under Section 153A of the Act, in the given facts of this case, would necessarily have to be confined to a period of six assessment years immediately preceding the assessment year relevant to the previous year in which the search under Section 132 of the Act was conducted.

21. The search in question was conducted in financial year 2022-23; thus, the relevant block of six assessment years would be the six assessment years preceding AY 2023-24, being the assessment year relevant to the previous year in which the search was conducted. Accordingly, AY 2016-17 falls beyond the block of six years.

22. In view of the above, the impugned notice as well as the proceedings initiated pursuant thereto are set aside."

30. Respectfully following the above decision (supra), we see no reason to interfere with the order of Ld. CIT(A) holding the AO's usurpation of jurisdiction u/s 147 of the Act and the issuance of notice(s) u/s 148 of the Act for AYs 2014-15 to 2016-17 to be null and resultantly non-est in eyes



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of law. Accordingly, all the grounds raised by the Revenue in AYs 2014-15 to 2016-17 stands dismissed.

31. In view of our above findings, the notice(s) issued u/s 148 of the Act for AYs 2013-14 to 2016-17 is annulled on the ground that they were issued beyond the time limit stipulated in first proviso to Section 149(1) of the Act and hence all the consequential proceedings from the stage of issuance of notice stands effaced. Further, the appeal(s) filed by the assessee for AYs 2013-14 to 2016-17 have now become academic in nature and is therefore dismissed as infructuous. Needless to say, all questions raised on the points of law and merits of the addition(s) raised in these appeals are left open.

32. In the result, both the appeals filed by the Revenue and the assessee are dismissed.

Order pronounced on the 21st day of November, 2025, in Chennai.

Sd/-
(अमिताभ शुक्ला)
(AMITABH SHUKLA)
लेखासदस्य/**ACCOUNTANT MEMBER**

Sd/-
(एबी टी. वर्की)
(ABY T. VARKEY)
न्यायिकसदस्य/**JUDICIAL MEMBER**



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चेन्नई/Chennai,

दिनांक/Dated: 21st November, 2025.

TLN

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF