

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES 'A': NEW DELHI.**

**BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.5891/Del/2024
(Assessment Year: 2013-14)**

**ITA No.5899/Del/2024
(Assessment Year: 2015-16)**

ACIT, Delhi. vs. Brij Bhushan Gupta,
E – 151, Preet Vihar,
Delhi – 110 092.
(PAN : AAEPB2388Q)

**CO No.60/Del/2025
(in ITA No.5891/Del/2024)
(Assessment Year: 2013-14)**

**CO No.61/Del/2025
(in ITA No.5899/Del/2024)
(Assessment Year: 2015-16)**

Brij Bhushan Gupta,
E – 151, Preet Vihar,
Delhi – 110 092.
(PAN : AAEPB2388Q)

(APPELLANT) (RESPONDENT)

ASSESSEE BY : Shri Ved Jain, Advocate
Shri Pawan Garg, CA
REVENUE BY : Shri Ajay Kumar Arora, Sr. DR

Date of Hearing : 27.10.2025
Date of Order : 09.01.2026

O R D E R

PER S. RIFAUR RAHMAN, ACCOUNTANT MEMBER :

1. The Revenue has filed appeals against the order of the Learned Commissioner of Income Tax/National Faceless Appeal Centre, Delhi [“Ld. CIT(A)”, for short] dated 28.10.2024 for the Assessment Years 2013-14 & 2015-16 and the assessee has also filed cross objections in both the impugned assessment years.
2. Since the issues are common and the appeals are connected, hence the same are heard together and being disposed off by this common order.
3. First we take up assessee’s cross objection being CO No.61/Del/2025 for AY 2015-16.
4. At the time of hearing, ld. AR of the assessee submitted that Ground No.2 in the cross objection which is on the issue of limitation as assessment has been reopened beyond the period of 3 years without there being any evidence in possession of the Assessing Officer represented in the form of asset which reveal that income chargeable to tax has escaped assessment. He submitted that as per the provision of section 149(1) inserted by the Finance Act, 2021, no reassessment can be reopened after a period 3 years without there being any evidence in possession of the Assessing Officer represented in the form of asset which reveal that income chargeable to tax has escaped assessment.
8. At the time of hearing, ld. AR of the assessee submitted before us key

dates as under and submitted that notice issued u/s 148 of the Act dated 29.11.2022 is barred by limitation and, therefore, the reassessment order is liable to be quashed as AY 2015-16 is otherwise time barred in view of the decision of Hon'ble Supreme Court in UOI vs. Rajeev Bansal 2024

(10) TMI 264:-

Dates	Notice/Order
31.03.2021	Notice u/s 148 of the Act (old regime)
13.10.2022	Notice u/s 148A(b) of the Act
26.11.2022	Response filed by the assessee to notice issued under section 148A(b) of the Act
29.11.2022	Order u/s 148A(d) of the Act
29.11.2022	Notice u/s 148 of the Act
29.05.2022	Assessment order u/s 147 rws 144B of the Act

9. In this regard, ld. AR further submitted that the impugned proceedings initiated by the assessee is barred by limitation in view of the decision of Hon'ble Supreme Court in the case of Union of India and others vs. Rajiv Bansal (2024) SSC Online SC 2693 wherein the Revenue conceded that for AY 2015-16, all 148 notice which is on or after 1st April 2021 will have to be dropped as they will not fall for completion during the period prescribed under the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. He placed on record relevant decision of Hon'ble Supreme Court and he brought to our notice relevant findings of Hon'ble Supreme Court as under :-

“(e) The Finance Act, 2021 ((2021) 432 ITR (Stat) 52) substituted the old regime for reassessment with a new regime. The first proviso to section 149 does not expressly bar the application

of Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020. Section 3 of the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 applies to the entire Income-tax Act, including sections 149 and 151 of the new regime. Once the first proviso to section 149(1)(b) is read with Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, then all the notices issued between April 1, 2021 and June 30, 2021 pertaining to the assessment years 2013-2014, 2014-2015, 2015-2016, 2016-2017, and 2017-2018 will be within the period of limitation as explained in the tabulation below:

Assessment Year	Within Years	Expiry of Limitation read with TOLA for (2) (3)	Within Six Years (4)	Expiry of Limitation read with TOLA
2013-2014	31.03.2017	TOLA not applicable	31.03.2020	30.06.2021
2014-2015	31.03.2018	TOLA not applicable	31.03.2021	30.06.2021
2015-16	31.03.2019	TOLA not applicable	31.03.2022	TOLA not applicable
2016-17	31.03.2020	30.06.2021	31.03.2023	TOLA not applicable
2017-18	30.06.2021	30.06.2021	31.03.2024	TOLA not applicable

(f) The Revenue concedes that for the assessment year 2015-2016, all notices issued on or after April 1, 2021 will have to be dropped as they will not fall for completion during the period prescribed under the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020.”

10. On the other hand, ld. DR of the Revenue relied on the orders of the lower authorities below.
11. Considered the rival submissions and material placed on record. We

observed that before Hon'ble Supreme Court, Revenue had conceded that for AY 2015-16, all the appeals have to be dropped as they will not fall for completion during the period prescribed under TOLA, 2020. Based on the findings of Hon'ble Supreme Court, we are inclined to agree with the submissions of ld. AR of the assessee. Accordingly, the cross objections for AY 2015-16 filed by the assessee is allowed.

12. Since the cross objections filed by the assessee is allowed, the Department's appeal for AY 2015-16 is also dismissed as infructuous.
13. Now we take up cross objections filed by the assessee for AY 2013-14.
14. At the time of hearing, ld. AR of the assessee pressed Ground No.2 of cross objections which read as under :-

“2. On the facts and circumstances of the case, notice issued under section 148 of the Act and consequent reassessment order passed under section 147 of the Act are invalid, illegal and barred by limitation as the same has been issued without there being any books of accounts, evidence or other documents in the possession of AO represented in the form of asset which reveal that income chargeable to tax has escaped assessment.”

15. He submitted that the assessee has raised the objection that the assessment reopened for the AY 2013-14 is barred by limitation since this assessment has been reopened after a period of three years. He submitted that as per the amended provisions of Section 149(1) applicable from 1st April 2021, an assessment after 1st April 2021, can be reopened after three years only when the AO has information in his possession,

which reveal that the income chargeable to tax represented in the form of an asset which has escaped assessment amounts to or is likely to amount to Rs.50,00,000 or more for that year. In this regard, he brought to our attention to section 149(1) which read as under :-

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

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

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

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

Provided further that the provisions of this sub-section shall not apply in a case, where a notice under section 153A, or section 153C read with section 153A, is required to be issued in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or before the 31st day of March, 2021:

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"

16. Further Id. AR submitted that thus, for an assessment to be reopened after a period of three years, not only the income exceeding Rs.50,00,000 should have escaped assessment, but it should be represented in the form of asset. Further explanation to section 149(1) has defined asset to include

immovable property, being land or building or both, shares and securities, loans and advances, deposit in bank account. He submitted that in the present case, admittedly, the issue is not that of the any asset. It is a disallowance of the expenditure. Since expenditure is not covered within the limitation prescribed and it does not fall within the meaning of the asset, the assessment cannot be reopened after 3 years. In this case, assessment was reopened by issue of notice u/s 148 on 01.04.2021 which is beyond 3 years from assessment year 2013-14 and hence the present assessment is barred by limitation.

17. In this regard, he submitted that an exactly similar issue has come up before the Honourable Delhi High Court, in the case of Smart Chip Private Limited versus ACIT, [2025] 476 ITR 389, where the court was seized of the issue whether expenditure can be covered within the meaning of the asset. In that case, issue was of a search where the period of six years and ten years are applicable. Upto 6 years, assessment can be reopened upto any amount and beyond six years, assessment can be reopened only when the income escaping assessment is Rs.50,00,000 or more and it is represented in the form of asset. The wording of proviso to section 153A and Explanation 2 thereto is exactly the same as in section 149(1). Further he relied on the following decisions :-

- (i) ITAT, Delhi Bench in JKM Infra Projects Pvt. Ltd. – ITA No.3031/Del/2025, CO 132/Del/2025 dated 30.09.2025;
- (ii) Hon'ble Delhi High Court in Ratnagiri Gas and Power Private Limited vs. ACIT WP (C) 221/2023 / 2025 (5) TMI 449 dated May 2, 2025;
- (iii) Hon'ble Delhi High Court in ATS Township Pvt. Ltd. vs. ACIT - WP (C) 13790/2024/ 2024 (12) TMI 1265 dated December 11, 2024;
- (iv) Hon'ble Supreme Court in the case of Rajeev Bansal – (2024) 469 ITR 46 (SC).

18. In conclusion, he submitted that in view of the judicial precedents relied upon, no notice u/s 148 can be issued after 3 years when the Assessing Officer does not have in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset has escaped assessment and disallowance of purchases is an expenditure and not an asset, and accordingly, no addition on account of alleged expenditure can be sustained.

19. On the other hand, ld. DR of the Revenue objected to the submissions of the ld. AR and heavily relied on the findings of the lower authorities.

20. Considered the rival submissions and material placed on record. We observed that the aforesaid issue is squarely covered by various decisions of Hon'ble Delhi High Court and also by the decisions of coordinate Benches. In this regard, we observe that Hon'ble Delhi High Court in the case of Smart Chip Private Limited (supra) held that after going

through the facts held that in the absence of any material to show that the escaped income is represented in the form of an asset, the extended limitation period u/s 149(1)(b) read with the fourth proviso to section 153A(1) of the Act cannot be invoked and the relevant part of the order is reproduced as under :-

“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.

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. The petition is allowed in the aforesaid terms. Pending applications also stand disposed of.”

21. Respectfully following the decision of the Hon’ble jurisdictional High Court, we hold that the impugned notice as well as proceedings initiated pursuant thereto are set aside and accordingly the assessment is quashed and the ground raised in the cross objection by the assessee is allowed.

22. In the result, the cross objections for AY 2013-14 filed by the assessee is allowed.

23. Since we have allowed the cross objections for AY 2013-14, the department’s appeal for AY 2013-14 is dismissed as infructuous.

15. To sum up : both the cross objections filed by the assessee are allowed and both the department’s appeal are dismissed.

Order pronounced in the open court on this 9th day of January, 2026.

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

s/-
(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated: 09.01.2026
TS

Copy forwarded to:

1. Appellant
2. Assessee
3. CIT
4. CIT(Appeals).
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**