

**IN THE INCOME TAX APPELLATE TRIBUNAL “K(SMC)” BENCH, MUMBAI  
BEFORE SMT BEENA PILLAI, JUDICIAL MEMBER  
AND  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.6322/MUM/2025  
Assessment Year: 2013-14**

Bhushan Vasant Parelkar A-204 Saikripa, Navghar Road, Mulund East S.O, Mumbai - 400081  (PAN: AKDPP6556D)	vs	Income Tax Officer, Ward 41(2)(1), Mumbai
Appellant		Respondent

Present for:

Appellant by : Shri Dharan Gandhi, Advocate  
Respondent by : Shri Bhagirath Ramawat, Sr. DR

Date of Hearing : 21.01.2026  
Date of Pronouncement : 30.01.2026

**ORDER**

**PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2025-26/1079866363(1), dated 22.08.2025, passed against the assessment order by ITO, Ward-41(2)(1),, u/s. 147 of the Income-tax Act (hereinafter referred to as the “Act”), dated 31.05.2023 for Assessment Year 2013-14.

2. Grounds taken by the assessee are reproduced as under:

*“The Ld. CIT(A) erred in confirming the action of Ld. AO of reopening the assessment u/s 147 although the reopening is time barred and hence bad in law.*

*2. The Ld. CIT(A) has erred in confirming action of Ld. AO of charging the income in A.Y. 2013-14 through the actual transaction was completed in A.Y. 2011-12.*

*3. The Ld. CIT(A) has erred in confirming action of charging the income to tax in spite of the fact that same is not yet realized.*

*4. The Ld. CIT(A) erred in confirming action of Ld. AO of adding Rs. 41,69,000/- as Short Term Capital Gains.*

*5. The Ld. CIT(A) erred in confirming action of Ld. AO of not allowing the exemption w/s 54F for investment in new property.*

3. In the present appeal, essentially the issue to be decided is on legal ground, challenging the validity of notice issued u/s.148 on account of being barred by limitation and consequent reassessment order passed u/s. 147 being bad in law. Since, the issue involved is legal and the facts relating thereto are already on record, we find it appropriate to first adjudicate on the same.

4. Brief facts of the case are that assessee did not file his original return of income for the year under consideration. Subsequently, on receipt of information by the ld. Assessing Officer from ITO-29(3)(3), Mumbai, it was noted that assessee had entered into property sale transaction along with three co-owners. Total value of consideration as per registered deed of the property was Rs.3 lakhs whereas valuation for payment of stamp duty was at Rs.1,66,76,000/-. Since the sale value consideration of the property was less than the value determined by stamp duty valuation authority, ld. Assessing Officer noted that this has implication of section 50C making assessee liable to tax for the difference. According to the ld. Assessing Officer, since assessee has not filed the return of income and has not disclosed the sale consideration of the property so sold, he arrived at reasons to believe that income of

Rs.1,66,76,000/- has escaped assessment within the meaning of section 147 of the Act. Accordingly, notice u/s.148 was issued on 31.05.2021.

4.1. Chronology of events which took place in the present case for which the relevant material is on record is tabulated below for ready reference, as furnished by the Id. Counsel for the assessee:

<i>Sr.No.</i>	<i>Event</i>	<i>Date/ days</i>
1	<i>Original notice under section 148 which is deemed to be notice under section 148A(b)</i>	<i>31.05.2021</i>
2	<i>Last day to issue notice under section 148 as extended by TOLA</i>	<i>30.06.2021</i>
3	<i>Therefore, surviving period left as per the decision in case of Rajeev Bansal (supra)</i>	<i>31 days</i>
4	<i>Notice issued providing material after the decision in case of Ashish Agrawal</i>	<i>24.05.2022</i>
5	<i>Last day to reply as per such notice and as per the decision in case of Ashish Agrawal i.e., 2 weeks</i>	<i>07.06.2022</i>
6	<i>Therefore, last day to issue notice under section 148 of the Act considering the surviving period</i>	<i>08.07.2022</i>
7	<i>Date of issue of notice under section 148 of the Act</i>	<i>27.07.2022</i>
8	<i>Impugned Assessment order passed</i>	<i>31.05.2023</i>

5. We have heard both the parties on their submissions relating to legal ground. We have also perused the judicial precedents relied upon

for which relevant judicial orders are placed on record. Merits of the case have not been argued upon by either party, nor any submission made to that effect.

5.1. It is noted that the notice u/s.148 is issued on 31.05.2021, which according to the assessee is barred by limitation, since it has been issued after expiry of 6 years from the end of the relevant assessment year i.e., AY 2013-14. According to the assessee, it is contrary to the mandate of the first proviso below section 149(1)(b) and therefore is invalid, bad in law and leading the impugned assessment proceedings as well as the impugned assessment order bad in law liable to be quashed *ab initio*.

6. To delve on the issue in hand before us, let us take note of the provisions contained in section 149 under the new regime introduced by the Finance Act, 2021, prescribing limitation on issue of notice u/s. 148 of the Act. Section 149 of the Act reads as under:

*Time limit for notice.*

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

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

*[(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of-*

*(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 28[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 1530, 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 cases referred to in clauses (i), (iii) and (iv) of Explanation 2 to section 148, where, -*

*(a) a search is initiated under section 132; or*

*b) a search under section 132 for which the last of authorisations is executed; or*

*(c) requisition is made under section 132A,*

*after the 15th day of March of any financial year and the period for issue of notice under section 148 expires on the 31st day of March of such financial year, a period of fifteen days shall be excluded for the purpose of computing the period of limitation as per this section and the notice issued under section 148 in such case shall be deemed to have been issued on the 31st day of March of such financial year:*

*Provided also that where the information as referred to in Explanation 1 to section 148 emanates from a statement recorded or documents impounded under section 131 or section 133A, as the case may be, on or before the 31st day of March of a financial year, in consequence of,-*

*(a) a search under section 132 which is initiated; or*

*(b) a search under section 132 for which the last of authorisations is executed; or*

*(c) a requisition made under section 132A,*

*after the 15th day of March of such financial year, a period of fifteen days shall be excluded for the purpose of computing the period of limitation as per this section and the notice issued under clause (b) of section 148A in such case shall be deemed to have been issued on the 31st day of March of such financial year:]*

*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 30[does not exceed 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.)*

6.1. Finance Act, 2021 amended re-assessment related provisions w.e.f. 01.04.2021. These amended provisions made a significant change in the way re-assessment proceedings are initiated and the limitation period in relation thereto. One of the key amendments is introduction of section 148A. Pursuant to section 148A, it is mandatory for the Assessing Officer to provide an opportunity of being heard to the assessee by serving a notice of show cause as to why the notice u/s. 148 should not be issued. Further, Assessing Officer is required to consider reply, if any, filed by the assessee in response to the said show cause notice. The procedural requirement contained in section 148A, for the Assessing Officer to comply with, mentions that –

- i. Assessing Officer shall conduct any enquiry, if required, with the approval of the specified authority, with respect to information which suggests that income chargeable to tax has escaped assessment.
- ii. He shall provide an opportunity of being heard to the assessee with the prior approval of the specified authority.
- iii. He shall consider the reply of the assessee furnished, if any in response to the show cause notice.
- iv. He shall decide on the basis of material available on record and after considering the reply of the assessee as to fitness of the case to issue a notice u/s.148 for which a specific order shall be passed within the stipulated time.
- v. Thus, section 148A under the new regime of re-assessment is a provision brought on the statute which is in the nature of condition precedent to issuing of notice u/s.148.

6.2. Also, first proviso to section 149 under the new regime introduced by the Finance Act, 2021 prescribed limitation on issuance of notice by taking into consideration the time limit available under the old regime for the relevant assessment year. First proviso to section 149 states, *“Provided that no notice u/s.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. This proviso to section 149 provided a defense and limitation on issuance of notices under the new regime of re-assessment relating to the Assessment Years covered by the old regime. Thus, first proviso to section 149 under the new regime limits the retrospective operation to protect the interest of assessees. Section 149(1)(b) of the old regime provided a time limit of six years from the end of the relevant assessment year for issuing notice under Section 148 of the Act. For the relevant assessment year, being Assessment Year 2013-2014, 6th year expired on 31.03.2020. The notice under Section 148 of the Act, in the present case, is issued on 31.05.2021, i.e., clearly beyond the period of limitation prescribed in Section 149 read with the first proviso to the said section as per the old regime.

6.4. In the present context, we need to deliberate on the purpose of first proviso to section 149 under the new regime so as to decide on the issue raised by the assessee in the present appeal. The first proviso to Section 149 of the Act provides that no notice under Section 148 shall be issued at any point of time in a case for a relevant assessment year beginning on or before the 1<sup>st</sup> day of April 2021, if a notice under Section 148 could not have been issued at that time on account of being beyond the time limit specified under the provision of clause (b) of sub-section (1) of this Section, as it stood immediately before the commencement of the Finance Act, 2021. The purpose of the first proviso to Section 149 of the Act is consistent with the stated object of the government to make prospective amendments in the Act. Accordingly, the proviso provides that up to Assessment Year 2021-22 (period before the amendment), the period of limitation as prescribed in the erstwhile provisions of Section 149(1)(b) of the Act would be applicable and only from Assessment Year

2022-23, the period of ten years as provided in Section 149(1)(b) of the Act, would be applicable.

7. It is pertinent to take note of the observations and findings of the Hon'ble Supreme Court in the case of Union of India and others vs. Rajeev Bansal [2024] 167 taxmann.com 70 (SC), wherein the first proviso to section 149(1)(b) has been deliberated in detail. Relevant paragraphs are extracted below for ready reference:

*“46. The ingredients of the proviso could be broken down for analysis as follows: (1) 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 149(1)(b) of the old regime. Thus, a notice could be issued under Section 148 of the new regime for assessment year 2021-2022 and before only if the time limit for issuance of such notice continued to exist under Section 149(1)(b) of the old regime.*

.....

*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.*

.....

*53. The position of law which can be derived based on the above discussion may be summarized thus: (i) Section 149(1) of the new regime is not prospective. It also applies to past assessment years; (ii) The time limit of four years is now reduced to three years for all situations. The Revenue can issue notices under Section 148 of the new regime only if three years or less have elapsed from the end of the relevant assessment year; (iii) the proviso to Section 149(1)(b) of the new regime stipulates that the Revenue can issue reassessment notices for past assessment years only if the time limit survives according to Section 149(1)(b) of the old regime, that is, six years from the end of the relevant assessment year, and (iv) all notices issued invoking the time limit under Section 149(1)(b) of the old*

*regime will have to be dropped if the income chargeable to tax which has escaped assessment is less than Rupees fifty lakhs.*

8. Similar issue had come up before the Hon'ble Jurisdictional High Court of Bombay in the case of Hexaware Technologies Ltd. vs. ACIT in Writ Petition No.1778 of 2023, dated 03.05.2024, wherein Hon'ble Court while dealing with the provisos to section 149(1)(b) under the new regime for the Assessment Years covered by the erstwhile provisions of section 149(1) observed that the section has to be interpreted so as to give meaning to all the words and phrases used in the said section. It could not be interpreted in such a way so as to render any part or phrase in the said section otiose. According to the Hon'ble Court, terms “at that time” in the first proviso refers to the date on which notice u/s.148 is to be issued by the Assessing Officer. The term “at that time” has to refer to the term “at any time” used earlier in the said proviso. According to the Hon'ble Court the reference to “at any time” is to the date of the notice to be issued by the Assessment officer and therefore, the term “at that time” would also refer to the said date. Thus, on the said date, if a notice could not have been issued under the provision of section 149(1)(b) of the old regime for any Assessment Year beginning on or before 01.04.2021, the notice cannot be issued even under the new regime.

8.1. Hon'ble Court took into consideration the stand of the Revenue to interpret the first proviso to section 149 of the Act to be applicable only for Assessment Years 2013-14 and 2014-15, i.e., for the Assessment Years where the period of limitation has already expired on 01.04.2021 which was held to be not correct because that would render the first proviso to section 149 under a new regime redundant and otiose. According to the Hon'ble Court, if such a stand of the Revenue is

accepted then, it would amount to re-writing the proviso to section 149(1)(b). Hence such an interpretation as canvassed by the Revenue is clearly not permissible in law. Hon'ble Court thus, concluded that the first proviso to section 149(1)(b) is an exception to the period of limitation and provides for a restriction on the notices issued u/s.148 which are issued for Assessment Years up to 2021-22 beyond a certain date. It also took into account the extension of time as contained in fifth and sixth proviso to section 149(1)(b) while concluding on the period of limitation available for issuing the notice u/s.148. Hon'ble Court, thus concluded that if a notice is not issued within the time prescribed under the first proviso to section 149(1)(b) then, such period cannot be extended by fifth proviso and sixth proviso.

8.2. Relevant paragraph is extracted below:

*“30. With respect to applicability of the fifth proviso and the sixth proviso to Section 149(1)(b) of the Act for extension of limitation for issuing the notice under Section 148 of the Act, fifth and sixth provisos are only applicable with respect to the period of limitation prescribed in Section 149(1) of the Act, i.e., three years or ten years, as the case may be. Fifth proviso or sixth proviso extend limitation for issuing notice under Section 149 of the Act, however, the first proviso is an exception to the period of limitation and provides for a restriction on the notices under Section 148 being issued for Assessment Years upto 2021-22 beyond a certain date. Therefore, the way the Section would operate, is first to decide whether a notice issued under Section 148 of the Act is within the period of limitation in terms of Section 149(1)(a) or (b) of the Act. To decide whether the notice is within the period of limitation under Section 149(1)(a) or (b) of the Act, the extension of time as per the fifth and/or sixth proviso would be considered. Once, the notice is otherwise within the period of limitation, thereafter one has to see whether the said time limit is within the restriction provided in the first proviso or not. If the notice is beyond the restriction period, the notice is invalid. The fifth and/or the sixth proviso cannot apply at this stage to extend the period of restriction as per the first proviso. Hence, if a notice is not within the time prescribed under the first proviso to Section 149(1) of the Act, then such period cannot be extended by fifth proviso and sixth proviso.*

9. In this background from the perusal of provisions contained in section 149(1), we note that it states that no notice u/s.148 shall be

issued for the relevant Assessment Year prescribing the conditions and time limit. It does not refer to show cause notice/s.148A(b). The first proviso to section 149(1)(b) also carves out an exception to the limitation in respect of notice u/s.148 and not under section 148A(b). Further, Hon'ble High Court of Bombay in the case of Hexaware Technologies Ltd. (supra) in para-30 has categorically held that if a notice u/s.148 is not with the time prescribed under the first proviso to section 149(1)(b) then, such period cannot be extended by fifth proviso and sixth proviso to the said section.

9.1. We also find our force from the decision of Hon'ble Jurisdictional High Court of Bombay in the case of Ravi Kumar Kailashnath Jaiswal vs. ACIT in Writ Petition (L) No.36517 of 2025, dated 19.11.2025 which deals with similar issue but for AY 2014-15. The said judgement is relevant in the present case before us, as assessee did not file any reply in response to notice issued by the ld. Assessing Officer, dated 24.05.2022 which was so issued in compliance to the decision of Hon'ble Supreme Court in the case of Ashish Agrawal (supra). Hon'ble Court in this case has dealt with this aspect of the issue where no reply is filed by the assessee in response to the notice issued in terms of decision of Ashish Agrawal (supra). Findings of the Hon'ble Court as contained in para-25 are extracted below for ready reference, whereby arguments canvassed on behalf of the Revenue were held to be without merit that no reply was filed by the assessee and therefore, the concept of surviving period does not apply.

*"25. Before closing this matter, it would only be fair to deal with the contention of the Revenue that since no reply is filed to the notice dated 25th May 2022 issued by the Revenue, the concept of the "surviving period" does not apply as set out in Rajeev Bansal (supra).*

*We find that this argument cannot be accepted for the simple reason that there is no such finding in the decision in the case of Rajeev Bansal (supra). In Rajeev Bansal, the Hon'ble Supreme Court has categorically held that the period from the date of the deemed notice under Section 148A(b) to a period of 4 weeks to provide material to the Assessee as directed in Ashish Agarwal, and a further period of 2 weeks to be provided to the Assessee to reply to the said material, were to be excluded. It is therefore difficult to accept that if no reply was filed by the Assessee, then there would be no time limit applicable at all. This is not what has been laid down by the Hon'ble Supreme Court in the case of Rajeev Bansal. Where no reply is filed to answer the material and/or information supplied by the Assessing Officer, then as per the decision of the Hon'ble Supreme Court in Rajeev Bansal the surviving period would start running from the last day to file the said reply, namely, from 8th June 2022. We, therefore, find this argument canvassed on behalf of the Revenue to be without merit.”*

10. Admittedly, the undisputed fact in the present case is that impugned notice issued u/s.148 is dated 31.05.2021 which is after the limitation expired on 31.03.2020 within the meaning of first proviso to section 149(1)(b). In view of the above stated deliberations, on the factual matrix of the present case and the applicable law including the jurisprudence discussed above, we hold that notice for Assessment Year 2013-14 issued on 27.07.2022 u/s.148 of the new regime is barred by limitation and hence bad in law, liable to be quashed, resulting in impugned re-assessment proceedings as well as the impugned assessment order bad in law.

11. In view of above stated deliberation, both on facts and law including the applicable jurisprudence, we hold that notice for A.Y. 2013-14 issued on 27.07.2022 u/s 148 of the new regime is barred by limitation and hence bad in law, liable to be quashed, resulting in

impugned reassessment proceedings as well as the impugned reassessment order bad in law. Accordingly, grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 30January, 2026.

Sd/-  
[ Beena Pillai ]  
Judicial Member

Sd/-  
[Girish Agrawal]  
Accountant Member

*Dated: 30 January, 2026*

*MP, Sr.P.S.*

Copy to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)  
ITAT, Mumbai