

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'SMC' Bench, Hyderabad

Before Shri Manjunatha G., Accountant Member
and
Shri Ravish Sood, Judicial Member

आ.अपी.सं /**ITA No.1218/Hyd/2025**
(निर्धारण वर्ष/Assessment Year:2015-16)

RR Marketing, Hyderabad. PAN: AAJFR9745E	Vs.	Income Tax Officer, Ward-9(1), Hyderabad.
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:	Shri AV Raghuram, Advocate	
राजस्व द्वारा/Revenue by:	Shri K. Vamsi Krishna, Sr.DR	
सुनवाई की तारीख/Date of Hearing:	03/02/2026	
घोषणा की तारीख/Date of Pronouncement:	06/02/2026	

आदेश / ORDER

PER. RAVISH SOOD, J.M:

The present appeal filed by the assessee firm is directed against the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, dated 28/02/2025, which in turn arises from the order passed by the Assessing Officer (for short, "AO") under section 147 r.w.s 144B of the Income Tax Act, 1961 (for short, "the Act"), dated 08/02/2024 for the Assessment Year (AY) 2015-16. The

assessee firm has assailed the impugned order of the CIT(A) on the following grounds of appeal:

“1. On the facts and in the circumstances of the case, the order of the Id. CIT(A) is erroneous and unsustainable in law apart from being passed in violation of principles of natural justice. The Id. CIT(A) failed to appreciate that proper notices were not served on the appellant as required under section 282 of the Act. r.w. rule 127 of the Rules, and therefore Appellant could not put forth the case.

2. Without prejudice to the above, the Id. CIT(A) erred in sustaining the addition made by the AO of Rs.6,94,004 as income from business. The Id. CIT(A) failed to appreciate that the AO has not properly appreciated that the discount received are properly accounted in the purchase account.

3. Any other ground that may be urged at the time of hearing.”

2. Apart from that, the assessee firm has raised the following additional grounds of appeal before us:-

“1. The Appellant has filed appeal before the Hon'ble Tribunal on 28.07.2025 against the order of the Id. CIT(A), challenging the ex-parte order passed by the Id. CIT(A), wherein the Id. CIT(A) has sustained addition of Rs.6,94,004 made by the AO as income from business. However, the Appellant inadvertently could not raise legal grounds before the Id. CIT(A) with respect to limitation for issuing notice u/s.148 of the Income Tax Act, 1961 (hereinafter the Act), jurisdiction of the Asst. Commissioner of Income Tax, Circle 9(1), Hyderabad (hereinafter the JAO) in issuing notice u/s. 148 of the Act and the validity of assessment completed on the basis of notice u/s. 148 of the Act, wherein the escapement of income was below the threshold limit of Rs.50 lakhs.

2. The Appellant, with the leave of the Hon'ble Tribunal, desires to raise the following additional ground, without prejudice to the grounds raised in the appeal memorandum.”

3. As the assessee firm by raising the additional ground of appeal has sought our indulgence for adjudicating a legal issue, which requires looking no further beyond the facts available on record, therefore, we have no hesitation in admitting the same. Our aforesaid view is fortified

by the judgment of the **Hon'ble Supreme Court** in the case of **National Thermal Power Company Ltd. Vs. CIT (1998) 229 ITR 383 (SC)**.

4. Succinctly stated, the AO based on information that the assessee firm had during the subject year carried out substantial financial transactions, viz., (i) cash deposits in Central Bank of India: Rs.1,48,54,340/-; and (ii) received commission/brokerage amount: Rs.518/-, but not filed its return of income for the subject year, initiated proceedings under section 147 of the Act. Order under section 148A(b) of the Act, dated 06/04/2022 was passed by the Assistant Commissioner of Income Tax (ACIT), Circle-9(1), Hyderabad, i.e., Jurisdictional Assessing Officer (JAO). Thereafter, the AO issued notice under section 148 of the Act, dated 08/04/2022. In compliance, the assessee firm filed its return of income on 13/08/2022 declaring a loss of Rs.926/-.

5. During the course of the assessment proceedings, the assessee firm on being queried about the cash deposits of Rs.1.48 crores (approx.) in its bank account during the subject year submitted that the same were sourced out of its business of selling SIM cards and recharge coupons. The assessee firm to substantiate its claim had filed before the AO a copy of its trading, Profit & Loss account and balance sheet pertaining to its aforesaid stream of business as a distributor of Vodafone Idia Limited (formerly known as Idea Cellular Ltd). The AO taking

cognizance of the purchases/sales carried out by the assessee firm in its aforesaid line of business found favour with its explanation that the cash deposits made in its bank accounts were sourced from its turnover for the year under consideration.

6. In the meantime, the AO issued notice under section 133(6) of the Act to Vodafone Essar which in turn filed a copy of the ledger account of the assessee firm as appearing in its books of accounts for the year under consideration, which revealed that the assessee firm had during the year was in receipt of discount from its principal of Rs.14,63,581/-. Apart from that, the AO observed that the assessee firm had during the subject year received a commission of Rs.518/- from M/s. Mobile Commerce Solutions Limited. The AO observed that the assessee firm had not disclosed the discount of receipts of Rs.14,63,581/- in its books of account for the subject year. Accordingly, the AO taking cognizance of the fact that the assessee firm had disclosed gross profit from its business as a distributor of Vodafone Idea Limited of Rs.7,69,577/-, therefore, made an addition of the balance amount of Rs.6,94,004/- (Rs.14,63,581/- - Rs.7,69,577/-) in its hands. Also, the AO made an addition of the commission received by the assessee firm from M/s. Mobile Commerce Solutions Limited as reflected in the Form 26AS. Accordingly, the AO vide his order under 147 r.w.s. 144B of the Act,

dated 08/02/2024 determined the income of the assessee firm at Rs.6,93,600/-.

7. Aggrieved, the assessee firm carried the matter in appeal before the CIT(A) but without success.

8. The assessee firm aggrieved with the order of the CIT(A) has carried the matter in appeal before us.

9. We have heard the Learned Authorized Representatives of both parties, perused the orders of the authorities below and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions.

10. Shri AV Raghuram, Advocate, the Learned Authorized Representative (for short, "Ld.AR") for the assessee firm, submitted that the present appeal involved a delay of 46 days. The Ld. AR had drawn our attention to the application filed by the assessee firm seeking condonation of the delay involved in the filing of the present appeal along with an affidavit of Shri Mahaboob Ahmed Mohammed, partner of the assessee firm, dated 22/09/2025. Elaborating on the reason leading to the delay, the Ld. AR submitted that the same had crept in for the reason that as the assessee firm which had commenced its business way back in the period relevant to AY 2007-08 and was being regularly assessed

to tax had suffered substantial loss during the subject year, i.e., AY 2015-16, and due to financial constraints could not follow up the matter with its Chartered Accountant. Also, the Ld.AR submitted that as the email account that was provided by the assessee firm in its Memorandum of Appeal, viz., mahaboobahmed0703@gmail.com was not being used, therefore, the assessee firm had remained unaware about the disposal of the appeal which, thus, has resulted to the delay in filing of the present appeal. Further, the Ld. AR submitted that as the assessee firm due to financial constraints could not pay the outstanding fees of its Chartered Accountant, therefore, the latter had not provided any assistance for filing the appeal. Elaborating further, the Ld.AR submitted that it was only when the assessee firm received information from the Department about its outstanding demand in the third week of July, 2025 that it had checked the Income Tax portal and gathered that its appeal has been dismissed by the CIT(A) on 28/02/2025. The Ld.AR submitted that the assessee firm on learning about the dismissal of its appeal had without any further loss of time filed the same on 28/07/2025, which by the time involved a delay of 89 days. The Ld.AR submitted that as the delay in filing of the appeal had crept in because of bona fide reasons and not for any lackadaisical approach on the part of the assessee firm, therefore, the same in all fairness and in the interest of justice be condoned.

11. Per contra, Dr. K. Vamsi Krishna, Learned Senior Departmental Representative (for short, "Ld. Sr-DR") objected to the seeking of the condonation of the delay involved in the filing of the present appeal filed by the assessee firm.

12. We have given thoughtful consideration to the contentions advanced by the Ld.AR regarding the reasons leading to the delay in filing of the present appeal. In our view, as there is a substance in the Ld. AR's contention that the delay in filing of the present appeal had crept in for bona fide reasons, therefore, the same in all fairness and in the interest of justice merits to be condoned. Our aforesaid view that a liberal approach should be taken while considering an application seeking condonation of the delay involved in filing of an appeal is supported by the judgment of the **Hon'ble Supreme Court** in the case of **Vidya Shankar Jaiswal vs. The Income Tax Officer, Ward-2, Ambikapur in Special Leave Petition (Civil) Nos. 26310-26311/2024, dated 31st January, 2025**. The Hon'ble Apex Court while setting aside the order of the Hon'ble High Court of Chhattisgarh, which had approved the declining of the condonation of delay of 166 days by the Income-Tax Appellate Tribunal, Raipur Bench, had observed, that a justice-oriented and liberal approach should be adopted while considering the application filed by an appellant seeking condonation of the delay

involved in filing the appeal. We thus, in terms of our aforesaid observations, condone the delay involved in the filing of the present appeal.

13. We have heard the Learned Authorized Representatives of both parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions.

14. Shri A.V. Raghuram, Advocate, Learned Authorized Representative (for short, "Ld. AR") for the assessee firm at the threshold of hearing of the appeal, submitted that the AO had grossly erred in law and facts of the case in assuming jurisdiction for framing the impugned assessment vide his order passed under section 147 r.w.s. 144B of the Act, dated 08/02/2024. Elaborating on his contention, the Ld. AR submitted that as the AO as per "first proviso" to section 149(1) of the Act (post amended) as was applicable at the time of issuing the notice under section 148 of the Act, dated 08/04/2022 was divested of his jurisdiction to issue any such notice seeking to reopen the case of the assessee firm for the subject year AY 2015-16 beyond 31/03/2022, i.e., beyond the time limit specified under the clause (b) of sub-section (1) of section 149 of the Act as was available on the statute before

commencement of the Finance Act, 2021, therefore, the initiation of the impugned proceedings and the consequential framing of the assessment by him based on the said notice cannot be sustained and is liable to be struck down on account of invalid assumption of jurisdiction. The Ld. AR to buttress his contention had drawn our attention to section 149(1) of the Act - "first proviso" (as was made available on the statute by the Finance Act, 2021, w.e.f. 01/04/2021).

15. Carrying his contention further, the Ld. AR submitted that though the fifth and sixth provisos of the post amended section 149 of the Act provide for excluding certain periods while computing the period of limitation, viz., (i) the time or extended time allowed to the assessee firm, as per show cause notice (SCN) issued under clause (b) of section 148A of the Act or the period during which the proceedings under section 148A is stayed by an order or injunction of any Court (as per "fifth proviso"); and (ii) that where immediately after the exclusion (period referred to in "fifth proviso") of the period of limitation available to the AO for passing an order under clause (d) of section 148A of the Act does not exceed seven days, such remaining period shall be extended to seven days and the period of limitation under sub-section (1) of section 149 shall be deemed to be extended accordingly (as per "sixth proviso"), but both the aforementioned provisos, i.e., "fifth proviso" and "sixth proviso" qualify

the substantive amended section 149 of the Act and do not relate to the un-amended section 149 of the Act, which in turn is taken care of exclusively by the “first proviso” to section 149(1) of the Act. Accordingly, the Ld. AR based on his aforesaid contentions submitted that the time spent from the issuance of notice under section 148A(b) of the Act upto the passing of the order under section 148A(d) of the Act in terms of “fifth proviso” and “sixth proviso” cannot be excluded for reckoning the limitation period for issuance of notice under section 148 of the Act. Elaborating on his contention, the Ld. AR submitted that as the notice under section 148 of the Act, dated 08/04/2022 for the AY 2015-16 had been issued beyond the time limit specified under the provisions of clause (b) of sub-section (1) of section 149 of the Act as was available on the statute before the commencement of the Finance Act, 2021, which expired as on 31/03/2022 (six years from the end of the assessment year, i.e., AY 2015-16), therefore, the same cannot be sustained and is liable to be quashed. The Ld. AR to buttress his contention had relied upon the judgment of the Hon’ble High Court of Telangana in the case of Cyberabad Citizens Health Services Private Limited vs. DCIT, Circle-1(1), Writ Petition No.25121 of 2024, dated 17/11/2025.

16. Per contra, Shri K. Vamsi Krishna, Learned Senior Departmental Representative (for short, "Ld. Sr-DR") relied upon the orders of the authorities below.

17. We have heard the Learned Authorized Representatives of both parties and given thoughtful consideration qua the issue in hand before us, i.e., sustainability of the impugned order of assessment passed by the AO under section 147 r.w.s 144B of the Act, dated 08/02/2024, which in turn is based on the notice issued under section 148 of the Act, dated 08/04/2022, for the AY 2015-16.

18. Admittedly, it is a matter of fact borne from record that the impugned notice under section 148 of the Act, dated 08/04/2022 has been issued beyond the time limit specified under the provisions of clause (b) of sub-section (1) of section 149 of the Act as they stood immediately before the commencement of the Finance Act, 2021. We say so, for the reason that as per the pre-amended section 149(1)(b) of the Act a notice under section 148 of the Act for the AY 2015-16 could have been issued by the AO latest by 31/03/2022.

19. Considering the aforesaid factual position, we find substance in the Ld. AR's contention that as a notice under section 148 of the Act, dated 08/04/2022 had been issued beyond the time period specified under the provisions of clause (b) of sub-section (1) of section 149 of the

Act, as was available on the statute prior to the commencement of the Finance Act, 2021, therefore, the same could not have been issued as per the clear mandate of the “first proviso” to section 149 of the Act as had been made available on the statute by the Finance Act, 2021. Also, we concur with the Ld. AR that the period sought to be excluded for the purpose of computing the period of limitation as contemplated in the “fifth proviso” of section 149(1) of the Act (post amended) and also the extension of time limit to seven days in a case where after the exclusion of the time limit contemplated in the “fifth proviso” to seven days (as per the “sixth proviso”) of section 149(1) of the Act cannot be read into for the purpose of computing the period of limitation for issuance of notice under section 148 of the Act as contemplated in the “first proviso” of post amended section 149(1) of the Act. Our aforesaid view is fortified by the judgment of the **Hon’ble High Court of Telangana** in the case of **Cyberabad Citizens Health Services Private Limited vs. DCIT (supra)**, wherein based on exhaustive deliberations, it was observed as under:-

“6. According to the learned Senior Counsel for the petitioner, notice under Section 148 of the Act is barred by limitation. As per the first proviso to the amended Section 149 of the Act, the impugned notice is beyond the period of six years from the Assessment Year 2017-18. The reopening of assessment proceedings have also been challenged on the ground that during pendency of the proceedings under Section 154 of the Act on the same issue, it cannot be made. The attention of this Court has been drawn to the notice dated 20.01.2022 issued for

rectification of mistake and the order under Section 148A(d) of the Act passed on 22.04.2024. Reliance has been placed on the following decisions rendered by the Apex Court in Union of India v. Rajiv Bansal; High Court of Delhi in Sheetal international (P) Ltd v. Chief Commissioner of Income-tax, Central-2z; High Court of Karnataka at Bengaluru in Tarish Investment and Trading Company (P) Ltd., v. Union of India³; High Court of Rajasthan in Shree Cement Ltd., v. Assistant Commissioner of Income Tax; High Court of Bombay in Godrej Industries Ltd., v. The Assistant Commissioner of Income Tax, Circle 14(1X2), Mumbai, and by a coordinate Bench of this Court in M/s. Sri Sai Dhurga Balaji Health and Educational Welfare Society v. the Income Tax Officer⁶. All these decisions relate to the Assessment Year 2017-18 except the case of Godrej Industries Ltd., (supra) which relates to the Assessment Year 2014-15.

7. On the second issue, reliance has been placed on the decision of the Apex Court in the case of S.M. Overseas (P) Ltd., v. Commissioner of Income-tax. Learned Senior Counsel for the petitioner has distinguished the decision rendered by the High Court of Patna in Chandra Shekhar v. Principal Commissioner of Income-tax as it relates to the Assessment Year 2020-21 where the application of the first proviso to the amended Section 149 of the Act introduced with effect from 01.04.2021 cannot be applied. Based on the said submissions, the learned Senior Counsel for the petitioner has prayed that the impugned notice under Section 148 of the Act may be quashed and the order passed under Section 148A(d) of the Act may also be set aside.

8. On behalf of the Revenue, learned Senior Counsel for the Department has taken us to the chronology of dates and events as referred to hereinabove and thereby drawn the attention of this Court to the notice under Section 148A(b) of the Act dated 26.03.2024. It is submitted that the instant notice was issued prior to the expiry of six years period for reopening the assessment proceedings under the un-amended Section 149 of the Act for the Assessment Year 2017-18. The order under Section 148A(d) of the Act was passed on 22.04.2024. Further, the petitioner took time to file its reply on the date fixed as 10.04.2024. It is submitted that therefore, the benefit of the fifth and sixth provisos to amended Section 149 of the Act come into play. Therefore, the impugned notice under Section 148 of the Act dated 22.04.2024 is not barred by limitation.

9. Upon consideration of the rival submissions and the materials referred to hereinabove placed on record, we are of the considered view that the impugned notice under Section 148 of the Act dated 22.04.2024 relating to the Assessment Year 2017-18 is barred by limitation as per the first proviso to Section 149

of the Act brought into effect from 01.04.2021. The relevant part of amended Section 149 and the first, fifth and sixth provisos are extracted in the footnote”.

10. This, we say so for the following reasons:

In the case of Rajeev Bansal (supra), the position of law stands clear as regards the operation of amended Section 149(1) of the Act. The relevant paragraphs 49 and 53 thereof are extracted hereunder:

“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

(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 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 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 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.

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 assesseees.”

“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.”

11. The first proviso) to the amended Section 149 of the Act prescribes that no notice under Section 148 of the Act shall be issued at any time in a case for the relevant assessment year beginning on or before 01.04.2021, if a notice under Section 148 of the Act 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 of the Act or as they stood immediately before the commencement of the Finance Act, 2021. For the purposes of appreciating the first proviso, the un-amended Section 149 of the Act is also extracted in the foot note¹⁰

Time limit for notice.

149. (1) No notice under section 148 shall be issued for the relevant assessment year,
(a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b) or clause (c);

(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year.

(c) if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.

Explanation In determining income chargeable to tax which has escaped assessment for the purposes of this sub-section, the provisions of Explanation 2 of section 147 shall apply as they apply for the purposes of that section

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

(3) If the person on whom a notice under section 148 is to be served is a person treated as the agent of a non-resident under section 163 and the assessment, reassessment or recomputation to be made in pursuance of the notice is to be made on him as the agent of such non-resident, the notice shall not be issued after the expiry of a period of six years from the end of the relevant assessment year.

Explanation For the removal of doubts, it is hereby clarified that the provisions of sub-sections (1) and (3), as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1 day of April, 2012.

12. Apparently, the fifth and sixth provisos of the amended Section 149 of the Act extracted hereinabove provide for excluding certain periods while computing the period of limitation as per the amended Section. It prescribes the time or extended time allowed to the assessee as per the show cause notice under clause (b) of Section 148 of the Act or the period during which the proceeding under Section 148A of the Act is stayed shall be excluded. The sixth proviso to the amended Section 149 of the Act also deals with exclusion of the period referred to in the fifth proviso i.e., the period of limitation available to the Assessing Officer for passing an order under clause (d) of Section 148A of the Act if it does not exceed seven days. In that event, 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, both the fifth and sixth provisos in the first place do not amount to clarification of the first proviso. These two provisos qualify the substantive amended Section 149 of the Act and do not relate to the un-amended Section 149 of the Act for which the first proviso takes care of. The contention of the learned counsel for the Revenue that the time spent from the

issuance of notice under Section 148A(b) of the Act up to the passing of the order under Section 148A(d) of the Act in terms of the fifth and sixth provisos stands excluded for reckoning the limitation period for issuance of notice under Section 148 of the Act is not worth acceptance. Section 148A of the Act lays down the procedure for issuance of notice under Section 148 of the Act whereas Section 149 of the Act prescribes strict time limit within which notice under Section 148 of the Act can be issued in the prescribed circumstances. The Revenue is therefore obliged to adhere to the timeline prescribed under Section 149 of the Act for issuance of such notice and undertake the procedure before issuance of notice under Section 148A of the Act.

13. In this regard, it is apposite to refer to opinion of the Delhi High Court. Paragraphs 15 and 16 of Godrej Industries Ltd., (supra) are extracted hereunder:

“15. The validity of a notice must be judged on the basis of the law existing as on the date on which the notice is issued under Section 148 of the Act, which in the present case is 31 July 2022, by which time the Finance Act, 2021 is already on the statute and in terms thereof, no notice under Section 148 of the Act for AY 2014-15 could be issued on or after 1” April 2021 based on the first proviso to Section 149 of the Act. Therefore, the fifth proviso cannot apply in a case where the first proviso applies because, if a notice under Section 148 of the Act could not be issued beyond the time period provided in the first proviso, then the fifth proviso could not save such notices. The fifth proviso can only apply where one has to determine whether the time limit of three years and ten years in Section 149(1) of the Act are breached.

16. The sixth proviso to Section 149 of the Act has no impact as it only provides a situation where after exclusion of the time period referred to in the fifth proviso, the time available with the Assessing Officer for passing an order under Section 148A(d) of the Act is less than 7 days, then the remaining time frame shall be extended to 7 days and limitation also stands extended by 7 days.”

14. Paragraph 12 of Shree Cement Ltd., (supra) is also extracted hereunder.

“12. In this case, as it pertains to Assessment Year 2017-18, six years period would have expired on 31” March 2024. Whereas notice under Section 148 of the Act itself came to be issued on 1” May 2024. Mr. Siddharth Bapna, counsel for Revenue, made an attempt to argue that fifth and sixth provisos to Section 149(1)(b) of the Act would save the period of limitation for issuing notice under Section 148 of the Act. We are afraid we do not agree with him. Same argument was raised in Hexaware Technologies Ltd. (supra) and was rejected. The Court held, with

respect to applicability of fifth and sixth provisos to Section 149(1)(b) of the Act for extension of limitation for issuing notice under Section 148 of the Act, fifth and sixth provisos are only applicable with respect to the period of limitation prescribed under Section 149(1) of the Act ie, three years or ten years, as the case may be. The Court also held that fifth and sixth provisos extend limitation for issuing notice under Section 149 of the Act, however, first proviso is an exception to the period of limitation and provides for a restriction on the notices under Section 148 of the Act being issued for assessment years up to 2021-22 (in this case, it is Assessment Year 2017-18) beyond a certain date. Therefore, the way the section would operate, is to first decide whether a notice issued under Section 148 of the Act is within the period of limitation under Section 149(1)(2) 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 prescribed in fifth and/or sixth proviso would be considered. The Court further held once. The notice is otherwise within the period of limitation, thereafter one has to see whether the said limit is within the prescribed restriction provided in first proviso or not. If the notice is beyond the restriction period, the notice is invalid, and the fifth and/or the sixth proviso cannot apply at this stage to extend the period of restriction as per first proviso. Hence, if a notice is not within the time prescribed under first proviso to Section 149(1) of the Act, then such period cannot be extended by fifth or sixth proviso. In *Hexaware Technologies Ltd.* (supra), the Court had relied upon another judgment of Bombay High Court in *Godrej Industries Ltd. V. Assistant Commissioner of Income-tax* [2024] 160 taxmann.com 13 (Bombay)/(2024) 338 CTR (Bom) 25, which was also authored by one of us (the Chief Justice), where paragraph No.15 reads as under:

“15. The validity of a notice must be judged on the basis of the law existing as on the date on which the notice is issued under Section 148 of the Act, which in the present case is 31st July 2022, by which time the Finance Act, 2021 is already on the statute and in terms thereof, no notice under Section 148 of the Act for AY 2014-15 could be issued on or after 1 April 2021 based on the first proviso to Section 149 of the Act. Therefore, the fifth proviso cannot apply in a case where the first proviso applies because, if a notice under Section 148 of the Act could not be issued beyond the time period provided in the first proviso, then the fifth proviso could not save such notices. The fifth proviso can only apply where one has to determine whether the time limit of three years and ten years in Section 149(1) of the Act are breached.”

15. The reliance placed by the Revenue on the decision rendered by Patna High Court in the case of Chandra Shekhar (supra) is distinguishable as it relates to the Assessment Year 2020-21 in respect of which the notice under Section 148A(b) of the Act was issued on 28.03.2024. The petitioner therein had assailed the notice on the ground that the Assessing Officer had no jurisdiction to undertake the assessment for the Assessment Year 2020-21 after 31.03.2024 with reference to the second notice issued on 22.04.2024 as it was beyond the time limit stipulated under Section 149(1)(a) of the Act. In the aforesaid facts, the learned Court held that the combined reading of the fifth and sixth provisos meant that the first notice dated 28.03.2024 was issued well within the time limit stipulated. Therefore, the Assessment Officer has jurisdiction.

16. In view of the above discussion, the initiation of reopening of assessment by the impugned notice dated 22.04.2024 is barred by limitation being beyond the period of six (6) years reckoned from the relevant Assessment Year 2017-18 as per the un-amended Section 149 of the Act read with the first proviso thereof brought into effect from 01.04.2021.”

20. We thus, in terms of our aforesaid deliberations find substance in the Ld. AR's contention that as the notice issued by the AO under section 148 of the Act, dated 08/04/2022 is barred by limitation as per the mandate of the “first proviso” to section 149 of the Act as had been made available on the statute by the Finance Act, 2021, therefore, the same cannot be sustained and also, the consequential assessment order passed by the AO on the basis of the same vide his order under section 147 r.w.s 144B of the Act, dated 08/02/2024 has to meet the same fate and is liable to be quashed.

21. We thus, in terms of our aforesaid deliberations, quash the assessment order passed under section 147 r.w.s 144B of the Act, dated 08/02/2024 for want of a valid assumption of jurisdiction.

22. As we have quashed the assessment order passed by the AO under section 147 r.w.s 144B of the Act, dated 08/02/2024, therefore, we refrain from adverting to the other contentions based on which the impugned order of assessment has been assailed by the assessee firm before us, which, thus, are left open.

23. In the result, appeal filed by the assessee firm is allowed in terms of our aforesaid observations.

Order pronounced in the open court on 06th February, 2026.

Sd/- (MANJUNATHA G.) ACCOUNTANT MEMBER	Sd/- (RAVISH SOOD) JUDICIAL MEMBER
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Hyderabad,
Dated 06th February, 2026.
OKK / SPS

Copy to:

S.No	Addresses
1	RR Marketing, 20-4-209/19/1, Khilwat, Hyderabad, Telangana-500001.
2	The Income Tax Officer, Ward-9(1), IT Towers, AC Guards, Masabtank, Hyderabad.
3	The Pr. CIT, Hyderabad
4	The DR, ITAT Hyderabad Benches
5	Guard File

By Order

Sr. Private Secretary,
ITAT, Hyderabad.