

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT AND
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER

ITA No.3597/Mum/2024
(Assessment Year: 2013-14)

Deepak Mahadeo Bhoir, C/o Bharat Kumar, 317, Prasad chamber, Opera House, Mumbai – 400 004	Vs.	Income Tax Officer, Ward 42(1)(2), Mumbai - 400051
(Appellant)	:	(Respondent)
PAN NO. AJUPB 7841H		

Appellant by	:	Shri Bharat Kumar, CA
Respondent by	:	Shri Annavaran Kosuri, Sr.- DR
(Appellant)		(Respondent)

Date of Hearing	:	12.02.2026
Date of Pronouncement	:	06.03.2026

O R D E R

Per Saktijit Dey, Vice President:

This is an appeal by the assessee challenging the order dated 26.06.2024 passed by National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year (A.Y.) 2013-14.

2. Before we proceed to decide the substantive issue arising for consideration, it is necessary to provide a brief factual background. This appeal was earlier disposed of by the Coordinate Bench vide order dated 12.12.2024. Subsequently, assessee filed a miscellaneous application seeking rectification/recall of the appellate order on the ground that while deciding the appeal, the Bench had failed to decide Ground No. 2.a and 2.b. While deciding the miscellaneous application, the Bench having found merit in the submissions of assessee, recalled the order for the limited purpose of deciding Ground No. 2.a and 2.b raised in the Memorandum of appeal. This is how the appeal came up for hearing before us.

3. In Ground No.2a and 2.b, the assessee has challenged the validity of reopening of assessment under section (u/s.) 147 of the Income Tax Act, 1961 (in short the 'Act') as also the assessment order passed in pursuance thereof. It is the say of the assessee before us that the assessment order dated 30.05.2023 passed u/s. 147 r.w.s. 144 of the Act is barred by limitation, hence *void ab initio*.

4. Before us, learned counsel submitted that the outer limit for reopening of assessment under the old regime was a period of six years, which for the assessment year under dispute expired on 31.03.2020. Whereas, he submitted, the Assessing Officer (AO) issued a notice u/s. 148 of the Act under the old regime on 24.06.2021. He submitted, on application of extended time limit as per Taxation and Other Laws Amendment Act ('TOLA'), the notice u/s. 148 of the Act could have been issued on or before 30.06.2021. He submitted, in case of *Union of India v. Ashish Agarwal* [2022] 138 taxmann.com 64 (SC), the Hon'ble Supreme Court in judgement dated 04.05.2022 held that the notice issued u/s. 148 of the Act under the old regime would be treated as show cause notice u/s. 148A(b) of the Act under new regime. He submitted, in terms with the decision of Hon'ble Supreme Court in case of *Union of India v. Ashish Agarwal* (supra), the Assessing Officer issued a notice u/s. 148A(b) of the Act on 26.05.2022 calling upon the assessee to furnish reply by 13.06.2022. He submitted, assessee did not reply to the show cause notice. Whereas, the Assessing Officer passed the order u/s. 148A(d) and issued the notice u/s. 148 of the Act on 30.07.2022.

5. Drawing our attention to the ratio laid down in the decisions of Hon'ble Supreme Court in case of *Union of India v. Ashish Agarwal* (supra) and *Union of India v. Rajeev Bansal* [2024] 167 taxmann.com 70/301 Taxman 238/469 ITR 46 (SC), learned counsel

submitted, after excluding the period, which is available to the Assessing Officer in terms with these decisions the order u/s. 148A(d) as also the notice u/s. 148 of the Act should have been issued on or before 19.06.2022. Whereas, the AO has passed the order u/s. 148A(d) and issued the notice u/s. 148 of the Act on 30.07.2022, which are barred by limitation. In support, he relied upon the following decisions:

1. *Krishna Naitik Patel vs. Assessment Unit 175* taxmann.com 814 (Guj)
2. *Gurpreet Singh vs. DCIT 176* taxmann.com 673 (Bombay HC)(Goa)
3. *Sandeep Singh Saluja vs. IT Dept. 176* taxmann.com 882 (MP)
4. *Ram Balram Buildhome (P.) Ltd. vs. ITO 171* taxmann.com 99/477 ITR 133 (Del)
5. *Prolife Industries Ltd. vs. ITO 178* taxmann.com 272 (Guj)
6. *RJD Buildcon Ltd. vs. ACIT 179* taxmann.com 31 (Guj)
7. *Ramadoss Srikanth vs. ACIT 174* taxmann.com 150/481 ITR 126 (Mad)
8. *Hitesh Ramniklal Shah vs. ACIT 180* taxmann.com 642 (Bom)

6. The learned Departmental Representative (ld. DR for short) submitted, as per the substituted provision of section 149 of the Act, introduced w.e.f. 01.04.2021, the A.O. had passed the order u/s. 148A(d) and issued notice u/s. 148 of the Act within the period of limitation. Hence, the question regarding validity initiation of proceeding u/s. 147 of the Act has to be decided in favour of the Revenue. In support of such contention, ld. DR relied upon the decision of Hon'ble Madras High Court in case of *Kandasamy Veluswamy vs. Asst. CIT* [2026] 182 taxmann.com 74 (Madras).

7. We have considered rival submissions in the light of the judicial precedents cited before us and perused the materials on record. While, it is the case of the assessee that the order passed u/s. 148A(d) and notice issued u/s. 148 of the Act on 30.07.2022 are barred by limitation, the department has opposed such contention. At this juncture, we must observe that upon conclusion of hearing, at the request of ld. DR time was allowed to furnish brief synopsis, if any, by 16.02.2026. However, till the date of dictation no such

synopsis has been filed by him. Thus, it is presumed that ld. DR has nothing more to add to the submissions made at the time of hearing.

8. Before we proceed to decide the specific issue relating to validity of reopening of assessment u/s. 147 of the Act, it is necessary to bear in mind the following crucial dates and events:

i.	<i>Six year period from the end of the relevant assessment year as per the old regime expired on</i>	31.03.2020
ii.	<i>First notice u/s. 148 of the Act issued to the assessee</i>	24.06.2021
iii.	<i>Extended time limit as per TOLA</i>	30.06.2021 (Surviving time available to the assessee is 6 days)
iv.	<i>Judgement in case of UOI vs. Ashish Agrawal delivered on</i>	04.05.2022
v.	<i>Notice u/s. 148A(b) of the Act</i>	26.05.2022
vi.	<i>Time given for reply by the assessee</i>	13.06.2022
vii.	<i>Assessee's reply</i>	No reply furnished
viii.	<i>Order u/s. 148A(d) of the Act</i>	30.07.2022
ix.	<i>Second notice issued u/s. 148 of the Act</i>	30.07.2022

9. As could be seen from the aforesaid timeline, the order u/s. 148A(d) and second notice u/s. 148 of the Act were issued after 47 days of the date given for reply by the assessee. Keeping in view the aforesaid factual position, let us examine the judicial precedents cited before us by ld. Counsel for the assessee. In case of *Gurpreet Singh vs. DCIT* (supra), the facts before the Hon'ble Jurisdictional High Court were as under:

<i>Sr.No.</i>	<i>Date</i>	<i>Event</i>
1	29/06/2021	Notice under erstwhile Section 148 (deemed to be under new Section 148(b))
2	04/05/2022	Judgment of the Hon'ble Supreme Court in Ashish Agarwal (supra)
3	20/05/2022	Notice conveying reasons for reopening and relied-upon material
4	03/06/2022	Reply filed by Petitioner to notice under Section 148A(b)
5	04/06/2022	Two weeks elapsed from issuance of Notice under Section 148A(b)
6	28/06/2022	Second reply filed by Petitioner to Notice under Section 148A(b)
7	14/07/2022	Notice of change of incumbent and grant of additional one week time to file reply
8	21/07/2022	Additional one-week time elapsed
9	29/07/2022	Order passed under Section 148A(d)
10	29/07/2022	Notice issued under Section 148
11	07/05/2023	SCN Notice under Section 147
12	29/05/2023	Order under Section 147

10. In the context of the aforesaid factual position, the Hon'ble Jurisdictional High Court, keeping in view the ratio laid down by the Hon'ble Apex Court in case of *UOI vs. Ashish Agarwal* and *UOI vs. Rajeev Bansal* (supra), observed as under:

“15. In terms of the decisions in *Ashish Agrawal* and *Rajeev Bansal* (supra), the following position emerges in the context of the present case :-

(i)	The period for subject reassessment in terms of Section 149 of the old regime is deemed to be extended till 30/06/2021 under the TOLA.
(ii)	The notice dated 29/06/2021 would be deemed to be notice under Section 148A(b).
(iii)	The surviving period by excluding the date of re-issuance of notice on 29/06/2021 would be the remainder days in the month of June 2021 (30/06/2021 - 28/06/2021), namely, two days.
(iv)	On 30/06/2021, the extension in terms of the TOLA would come to an end.
(v)	The period that stands excluded is :
(a)	The period up to 30/06/2021, which is covered by the provisions of the IT Act read with the TOLA.
(b)	The period from 01/07/2021 to 03/05/2022 being the period before the decision of the Hon'ble Supreme Court in <i>Ashish Agarwal</i> (supra).
(c)	The Period from 04/05/2022 till 20/05/2022, which is the date when the material was furnished and the reasons for reopening were given to the Petitioner.
(d)	The period of two weeks time for reply to be filed by the Petitioner, which ended on 04/06/2022 and the extended time to file reply (additional reply was filed by the Petitioner on 28/06/2022). Further extension was given to the Petitioner in pursuance to notice dated 14/07/2021 giving additional time of one week in view of change in the incumbent to the Office, which period ended on 21/07/2022.

16. By considering all the exclusions, the remainder days for conclusion of the procedure for passing of an order in terms of Section 148A(d) and issuance of notice under Section 148 would be two days from 21/07/2022 and the same would expire of 23/07/2022. Applying the ratio of the decisions in *Ashish Agarwal* and *Rajeev Bansal* (supra) in the context of the 1st proviso to Section 149 we are therefore of the opinion that the notice under Section 148 dated 29/07/2022 is time barred. The order under Section 148A(d) as well as the notice issued under Section 148 are dated 29/07/2022 which is much after the surviving period which expired on 21/07/2022.”

11. Keeping in view the contention of the Revenue that the order passed u/s. 148A(d) and the second notice issued u/s. 148 of the Act on 29.07.2022 are within the prescribed period of limitation, the Hon'ble Jurisdictional High Court held as under:

“17. In light of the above, the contentions raised by the Revenue lack foundation in terms of law. Although the Revenue has contended that the order dated 29/07/2022 passed under Section 148A(d) and the notice issued under Section 148 were within the timelines contemplated by the decisions in *Ashish Agarwal* and *Rajeev Bansal* (supra), the same lacks substance. In the written synopsis, an attempt was made to justify the timelines by contending that in terms of Section 148A(d), the

period mandated for passing of the order was within one month from the end of the month in which the reply referred to is received or where no such reply is furnished within one month from the end of the time by which the extended time allowed to furnish reply as per clause (b) expired. Relying on the said provision it was contended that the replies are dated 03/06/2022 and 28/06/2022 and going by the same, the end of the month would be 30/06/2022. Hence the expiry of time would be on 31/07/2022. It is therefore contended that the order is passed within the one month time contemplated under Section 148A(d).

18. The said contention is fundamentally misconceived. A notice under Section 148 of the IT Act accompanied by an order under Section 148A(d) is required to be issued within the time stipulated under Section 149 of the IT Act. Section 148A(d) does not govern the computation of time as contemplated in terms of Section 149 of the IT Act. The entire process under Section 148A(a) to (d) and the issuance of notice under Section 148 has to be completed within the total time available in terms of Section 149(1) of the IT Act for issuance of notice under Section 148. A notice issued under Section 148 of the IT Act which is beyond the time line stipulated under Section 149(1) is non-complaint and invalid. The timeline under Section 148A(d) is for the Assessing Officer to comply with the stipulations and the streamlining contemplated under Section 148A. This is primarily to bring in transparency and accountability into the system and is intended for the benefit of the assesseees. However to suggest that Section 148A(d) extends the time limit under Section 149(1) and/or has a bearing on the time under Section 149(1) is a submission which is misconceived and lacks legal sanctity.

19. It was urged by the Revenue that the decision of this Court in *Hexaware Technologies Limited (supra)* was under challenge before the Hon'ble Supreme Court and hence the Court could consider awaiting its outcome. The decision in *Hexaware Technologies Limited* has not been stayed. Since we have proceeded on the basis of the law laid down in *Ashish Agarwal and Rajeev Bansal (supra)*, this contention cannot be accepted. Reference to various decisions has been made. In fact, the decisions referred to are inconsistent with the case set up by the Respondents. Except for the decision in *Ashish Acharatlal Varaiya (supra)*, other judgments are rendered prior to the decision in *Rajeev Bansal (supra)* and /or do not consider the said decision. Hence the said judgments do not in any manner assist us in deciding the controversy in issue especially in the context to the limited issue that is raised by the Petitioner herein.

20. At this point we deem it appropriate to note that the Delhi High Court in the case of *Ram Balram Buildhome (P.) Ltd. v. ITO [2025] 171 taxmann.com 99 (Delhi)/2025 SCC OnLine Del 481* dealt with an identical issue. It considered the principles laid down in *Ashish Agarwal and Rajeev Bansal (supra)* and concluded that the notice issued under Section 148 under the IT Act was time barred. In the facts of that case as well, the AY was 2013-2014 and the notice under Section 148 issued to the assessee was dated 01/06/2021. The date of furnishing material to the Petitioner in that case was 30/05/2022. The said Petitioner furnished its response to the notice under Section 148A(b) of the IT Act on 13/06/2022. In this factual backdrop, the Delhi High Court applying the ratio of the decisions in *Ashish Agarwal and Rajeev Bansal (supra)* came to the conclusion that the remainder period with the Assessment Officer was twenty-nine days from 01/06/2021 when the reassessment proceedings commenced for issuing notice under Section 148 of the IT Act. The limitation for passing of the order under Section 148A(d) expired on 12/07/2022. Accordingly, the notice under Section 148A of the IT Act issued on 30/07/2022 was held to be beyond limitation and the same was quashed. The Delhi High Court also relied on the observations made in the case of *Raminder Singh v. Asstt. CIT [2023] 156 taxmann.com 148/[2024] 461 ITR 368 (Delhi)/2023 DHC 6672-DB* wherein it was held that one month from the end of the month in which the time available to the assessee to respond to the notice under clause (b) of Section 148A expires is available to the Assessment Officer to pass an order under Section 148A(d) of the IT Act. It was further held that notice under Section 148 of the IT Act that is not accompanied by an order under Section 148A(d) of the Act would be non-compliant with the IT Act and no such notice could be issued beyond the period as specified under Section 149(1) of the IT Act. This decision of the Delhi High Court is consistent with our view based on the interpretation of the decisions in *Ashish Agarwal and Rajeev Bansal (supra)*."

12. Thus, as per the ratio laid down in the aforesaid decision the period to be excluded for the purpose of limitation is as under:

- a) The period upto 30.06.2021 covered under TOLA
- b) Period from 01.07.2021 to 03.05.2022, the period during which *UOI vs. Ashish Agarwal* (supra) was subjudice before Hon'ble Supreme Court.
- c) The period from 04.05.2022 till the issuance of notice u/s. 148A(b) of the Act conveying the reasons for reopening and furnishing materials relied upon for reopening of assessment.
- d) The time limit allowed to the assessee to furnish its reply

13. In the aforesaid case before the Hon'ble Jurisdictional High Court, which incidentally was for assessment year 2013-14 like the appeal before us, the first notice u/s. 148 of the Act was issued on 29.06.2021. Thus, the surviving period in terms of TOLA was two days. Therefore, after excluding the period in terms of (a) to (d), the surviving period available to the A.O. to pass the order u/s. 148A(d) and issue notice u/s. 148 of the Act would be two days from the date on which the assessee furnished its final reply, which ended on 21.07.2022. Whereas, the A.O. passed the order u/s. 148A(d) of the Act and issued notice u/s. 148 of the Act on 29.07.2022. Thus, the Hon'ble Jurisdictional High Court held them to be barred by limitation.

14. The aforesaid decision was subsequently followed by the Hon'ble Jurisdictional High Court in case of *Hitesh Ramniklal Shah* (supra), which again is for assessment year 2013-14. The crucial dates and events of the case are as under:

<i>Sr. No.</i>	<i>Date</i>	<i>Event</i>
1.	29-06-2021	Notice under erstwhile section 148 [deemed to be a notice under new section 148A(b)]
2.	04-05-2022	Judgment of the Hon'ble Supreme Court in <i>Ashish Agarwal</i>

3.	25-05-2022	Notice conveying reasons for reopening provided to the Petitioner pursuant to the judgment in <i>Ashish Agarwal</i> and providing a period of two weeks to the Petitioner to respond
4.	03-06-2022	Reply filed by the Petitioner to the notice under section 148A(b)
5.	08-06-2022	The two weeks' time granted elapsed.
6.	17-06-2022	Second reply filed by the Petitioner to the notice issued under section 148A(b)
7.	25-06-2022	Third reply filed by the Petitioner to the notice issued under section 148A(b)
8.	26-07-2022	Order passed under section 148A(d)
9.	27-07-2022	Notice issued under section 148
10.	09-10-2025	Notice under section 142(1)
11.	13-10-2025 & 14-10-2025	Reply filed by the Petitioner
12.	14-10-2025	Notice under section 142(1)
13.	17-10-2025	Reply filed by the Petitioner
14.	18-10-2025	Show cause notice issued by Respondent No. 1

15. In the context of the aforesaid factual position, the Hon'ble Court after referring to the decisions of the Hon'ble Apex Court in case of *Union of India v. Ashish Agarwal* (supra) and *Union of India v. Rajeev Bansal* (supra) as also various other decisions of different High Courts, ultimately concluded as under:

26. After considering the above exclusion period, we observe that the remaining days for conclusion of the procedure for passing of an order in terms of Section 148A(d) and issuance of the notice under Section 148 of the Act would be two days. In the present case, whichever way we see it, the period of two days would expire on 10 June 2022 or 27 June 2022 respectively and, therefore, the notice under Section 148 of the Act issued on 27 July 2022 is time barred, inasmuch as it is issued much after the surviving period. We concur with the judgments of the co-ordinate bench in *Gurpreet Singh* (supra), of the Delhi High Court in *Ram Balram Buildhome (P.) Ltd* (supra) and the Gujarat High Court in *Dhanraj Govindram Kalle* (supra) which have dealt with the surviving period and quashed the notices issued under Section 148 of the Act passed beyond the surviving period.

27. In view of the above, it is apparent that Respondent No.1 has acted beyond jurisdiction and we accordingly set aside the impugned notice issued under Section 148 of the Act as well as all the subsequent notices issued under Section 142(1) and the show cause notice on the above ground. The other contentions raised by the Petitioner are kept open.

16. If the timeline of reassessment proceedings in assessee's case is kept in juxtaposition to the facts involved in case of *Gurpreet Singh vs. DCIT* (supra) and *Hitesh Ramniklal Shah* (supra), it can be seen that the first notice u/s. 148 of the Act under the old regime was issued on 24.06.2021. Thus, in terms with the decision of Hon'ble Supreme Court in case of *Union of India v. Ashish Agarwal* (supra) and *Union of India v. Rajeev*

Bansal (supra) such notice has to be treated as notice u/s. 148A(b) of the Act under the new regime. Therefore, the surviving period available to the A.O. to pass an order u/s. 148A(d) and issue notice u/s. 148 of the Act will be upto 30.06.2021, i.e., six days. After excluding the period, from 01.07.2021 to 03.05.2022 during which *Union of India v. Ashish Agarwal* (supra) was subjudice and the period from 04.05.2022 till 26.05.2022 when the assessee was supplied the reasons for reopening and was also communicated the materials for reopening, as also the time given for furnishing reply till 13.06.2022, the surviving period available to the A.O. to pass order u/s. 148A(d) and issue notice u/s. 148 of the Act was a period of six days, which in terms of the sixth proviso u/s. 149(1) of the Act, as it stood prior to its substitution by Finance Act, 2024, would get extended by one more day upto 7 days. Whereas, in the facts of the present case, the A.O. has passed the order u/s. 148A(d) and issued notice u/s. 148 of the Act on 30.07.2022, i.e., 47 days from 13.06.2022, the date by which the assessee was given time to furnish his reply to the notice issued u/s. 148A(b) of the Act.

17. Thus, as per the ratio laid down by the Hon'ble Supreme Court and Hon'ble Jurisdictional High Court discussed above, the order passed u/s. 148A(d) and notice issued u/s. 147 of the Act are barred by limitation. Hence, all consequential proceedings based on such invalid notice cannot survive. Before parting, in all fairness, we must refer to the decision of Hon'ble Madras High Court in case of *Kandasamy Veluswamy vs. Asst. CIT* (supra). Upon carefully going through the said judgement, we are of the view that the Hon'ble High Court has proceeded on the premise that since the income escaping assessment has exceeded Rs.50 lacs, the A.O. has 10 years time to reopen the assessment in terms with section 149 of the Act under the new regime. The issues which were canvassed

before Hon'ble Jurisdictional High Court as also before us were not specifically canvassed before the Hon'ble Madras High Cour. In any case of the matter, the decisions of the Hon'ble Jurisdictional High Court being binding on us, following them we hold that the order passed u/s. 148A(d) and notice issued u/s. 148 of the Act are barred by limitation. Hence, the assessment order passed in pursuance thereof is also invalid. Accordingly, we quash the assessment order. The order of ld. first appellate authority is set aside. Grounds are allowed.

18. In the result, the appeal is allowed as indicated above.

Order pronounced in the open court on 06.03.2026

Sd/-

(Makarand Vasant Mahadeokar)
Accountant Member

Mumbai; Dated : 06.03.2026
Aks/- & Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

Sd/-

(Saktijit Dey)
Vice President

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai