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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 06.05.2025+ **W.P.(C) 4583/2023**

ADM AGRO INDUSTRIES LATUR
AND VIZAG PRIVATE LIMITED

.....Petitioner

Through: Ms Ananya Kapoor, Advocate.

versus

ASSISTANT COMMISSIONER OF INCOME
TAX, CIRCLE 1(1), DELHI AND ANR.

.....Respondents

Through: Mr. Debesh Panda, SSC Ms. Zehra
Khan, Mr. Vikramaditya Singh, JSCs
Ms Anauntta Shankar and Ms
Ravicha Sharma, Advocates.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE TEJAS KARIA****VIBHU BAKHRU, J. (ORAL)**

1. The petitioner [Assessee] has filed the present petition, *inter alia*, impugning a notice dated 20.07.2022 [**the impugned notice**] issued under Section 148 of the Income Tax Act, 1961 [**the Act**] in respect of the Assessment Year [**AY**] 2013-14. It is the Assessee's case that the impugned notice has been issued beyond the prescribed period of limitation.

2. The initial notice under Section 148 of the Act for AY 2013-14 was issued on 30.06.2021. The said notice was unsustainable as it was issued in



accordance with the statutory regime as stood prior to 31.03.2021. This court in the case of *Mon Mohan Kohli v. Assistant Commissioner of Income Tax & Anr.*: **Neutral Citation No.: 2021:DHC:4181-DB** had set aside such notices that were issued after 31.03.2021 without following the procedure as prescribed under Section 148A of the Act. Some of the other High Courts also took a similar view and struck down notices that were issued under Section 148 of the Act after 31.03.2021 but under the unamended provisions relating to the re-assessment of income that had escaped assessment.

3. The Revenue appealed the decisions rendered by various High Courts to the Supreme Court of India. In *Union of India v. Ashish Agarwal*: **2022 SCC OnLine SC 543** – which was one of such appeals arising from the decision of the Allahabad High Court – the Supreme Court delivered its decision on 04.05.2022, whereby it concurred with the view that the amended provisions which came into force after 31.03.2021 would be applicable to notices issued thereafter. However, the Supreme Court also issued certain directions in exercise of powers under Article 142 of the Constitution of India. The Court directed that all notices that were issued under Section 148 of the Act after 01.04.2021 till the date of the said decision (04.05.2022), including those that had been set aside by the High Courts, would be construed as show cause notices under Section 148A(b) of the Act. The Assessing Officers were directed to provide the information and material relied upon by the Revenue for issuance of such notices, to the respective assesseees within a period of thirty days from the date of the decision so as to enable the respective assesseees to respond to the same.



4. In compliance with the directions issued by the Supreme Court in the case of *Union of India & Ors. v. Ashish Agarwal* (*supra*), the Assessing Officer [AO] provided information and material to the Assessee on 25.05.2022. The Assessee was granted two weeks' time to respond to the said notice. The Assessee responded to the notice dated 25.05.2022 by a letter dated 09.06.2022.

5. The AO passed an order under Section 148A(d) of the Act on 19.07.2022. According to the Assessee, the same was beyond the period as stipulated for issuance of notice under Section 148 of the Act.

6. In the present case, the period of six years from the end of the assessment year for issuing a notice under Section 148 of the Act expired on 31.03.2020. Thus, in terms of Section 149 of the Act, a notice under Section 148 of the Act could not be issued. However, the said period was extended by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 [TOLA]. Consequently, the time limit for issuing such a notice was extended to 30.06.2021. The original notice under Section 148 of the Act was issued on 30.06.2021, which was the last date of expiry of the period of limitation.

7. As noted above, the said notice was deemed to be a notice under Section 148A(b) of the Act by virtue of the decision of the Supreme Court in *Union of India & Ors. v. Ashish Agarwal* (*supra*). The Supreme Court also granted further time to provide the material, which was required to accompany such notice. As explained by the Supreme Court in the case of *Union of India v. Rajeev Bansal: 2024 SCC OnLine SC 2693*, the period from the date of the issuance of the notice till 04.05.2022, the date on which



the Supreme Court had rendered the decision in *Union of India & Ors. v. Ashish Agarwal* (*supra*), is required to be excluded. Additionally, the time provided till the date of providing the material, which should have accompanied a notice under Section 148A(b) of the Act, as well as the time available to the assessee to respond to the said notice is also required to be excluded by virtue of the Fourth Proviso to Section 149(1) of the Act, as applicable at the material time.

8. In the present case, the time period for issuance of notice under Section 148 of the Act expired on 16.06.2022. However, the impugned notice was issued on 20.07.2022, which is beyond the said period. Thus, the notice was beyond the period of limitation.

9. This court in *Ram Balram Buildhome Pvt. Ltd. v. Income Tax Officer and Anr.*: *Neutral Citation No.: 2025:DHC:547-DB* observed as under: -

“53. As is apparent from the plain language of the fourth proviso to Section 149(1) of the Act, it extends the period of limitation for issuing a notice under Section 148 of the Act so as to provide the AO a minimum of seven days to pass an order under Section 148A(d) of the Act. If the time available to the AO to decide whether it is a fit case for issuance of notice under Section 148 of the Act in terms of Section 148A(d) of the Act is less than seven days after excluding the period as provided under the third proviso, then the period of three years or ten years as prescribed is required to be extended by such period so as to make available to the AO at least seven days to pass an order under Section 148A(d) of the Act and issue a notice under Section 148 of the Act. Illustratively, if the show cause notice under Section 148A(b) of the Act is issued to an assessee, on the last date on which issuance of such a notice under Section



148 of the Act is permissible, that is, on the last day of expiry of three years from the end of the relevant assessment year or ten years from the end of the assessment year as the case may be, the time made available to the assessee to respond to a notice under Section 148A(b) of the Act (being a minimum of seven days but not exceeding thirty days as provided in the notice plus such further time as extended pursuant to an application), is required to be excluded for the calculation of the period of three years or ten years as the case may be. And, an additional period of seven days is made available for the AO to pass an order. Thus, the period of limitation in such case would be three years (after excluding the time provided to the assessee to respond to the notice under Section 148A(b) of the Act) and seven days, or a period of ten years (after excluding the time provided to the assessee to respond to the notice under Section 148A(b) of the Act) and seven days as the case may be.

54. It is obvious, that in such a case, the AO would not have a time for passing an order under Section 148A(d) of the Act as stipulated under the said Clause, that is, one month from the end of the month in which the assessee furnishes a reply to the notices issued under Section 148A(b) of the Act. As noted above, the AO is required to complete the entire procedure for issuance of notice under Section 148 of the Act within the period as prescribed under Section 149 of the Act. Plainly, if the AO is unable to complete such procedure within the period of limitation, the AO would cease to have the jurisdiction to issue such a notice.

65. Thus, in the facts of the present case, the last date for issuance of notice under Section 148 of the Act for AY 2013-14 under the statutory framework, as was existing prior to 01.04.2021 was 31.03.2020, that is, six years from the end of the relevant assessment year.

66. By virtue of Section 3(1) of TOLA time for completion of specified acts, which fell during the period 20.03.2020 to 31.12.2020 were extended till



30.06.2021. Thus, the notice dated 01.06.2021 was issued twenty-nine days prior to the expiry of period of limitation for issuing a notice under Section 148 of the Act as was extended by TOLA. As noted above, the period from 01.06.2021, the date of issuance of notice, and 04.05.2022, being the date of decision of the Supreme Court in *Union of India & Ors. v. Ashish Agarwal* is required to be excluded by virtue of the third proviso to Section 149(1) of the Act.

67. Additionally, the period from the date of decision in *Union of India & Ors. v. Ashish Agarwal* till the date of providing material, as required to the accompanied with a notice under Section 148A(b) of the Act, is required to be excluded. Thus, the period between 04.05.2022 to 30.05.2022, the date on which the AO had issued the notice under Section 148A(b) of the Act in furtherance of his earlier notice dated 01.06.2021, is also required to be excluded by virtue of the third proviso to Section 149(1) of the Act as held by the Supreme Court in *Union of India & Ors. v. Rajeev Bansal*.

68. In addition to the above, the time granted to the petitioner to respond to the notice dated 30.05.2022 – the period of two weeks – is also required to be excluded by virtue of the third proviso to Section 149(1) of the Act. The petitioner had furnished its response to the notice under Section 148A(b) of the Act on 13.06.2022. Thus, the period of limitation began running from that date.

69. As noted above, by virtue of TOLA, the AO had period of twenty-nine days limitation left on the date of commencement of the reassessment proceedings, which began on 01.06.2021, to issue a notice under Section 148 of the Act. The said notice was required to be accompanied by an order under Section 148A(d) of the Act. Thus, the AO was required to pass an order under Section 148A(d) of the Act within the said twenty-nine days notwithstanding the time stipulated under Section 148A(d) of the Act. This period expired on 12.07.2022.

70. Since the period of limitation, as provided under



Section 149(1) of the Act, had expired prior to issuance of the impugned notice on 30.07.2022. The said is squarely beyond the period of limitation.”

10. Concededly, the said controversy is covered in favour of the Assessee by the decision of this court in ***Ram Balram Buildhome Pvt. Ltd. v. Income Tax Officer and Another*** (*supra*).

11. The present petition is, accordingly, allowed and all proceedings initiated pursuant thereto are set aside. The pending application is also disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 06, 2025

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Click here to check corrigendum, if any