

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No. 913/MUM/2025
Assessment Year: 2015-16**

Mohamedali Shabanali Badami Badami & Son, Mogal Building, 25 Vaju Kotak Marg, Fort, MUMBAI – 400001, Maharashtra (PAN: AALPB5829M)	Vs	Income Tax Officer- 25(2)(1) Mumbai
(Appellant)		(Respondent)

Present for:

Assessee : Shri. Kirith Sheth, CA
Revenue : Shri R.R. Makwana, Addl. CIT

Date of Hearing : 03.04.2025
Date of Pronouncement : 16.06.2025

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2024-25/1072709483(1), dated 30.01.2025 passed against the assessment order by National Faceless Assessment Centre, Delhi, u/s. 144 r.w.s. 147 of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 29.02.2024 for Assessment Year 2015-16.

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

“ Ground 1 - The learned CIT(A) has erred in not adjudicating the first ground raised in Form 35 challenging the validity of notice u/s 148 dated 19th April 2022. Your appellant respectfully submits that the learned CIT(A) ought to have adjudicated the first ground which challenges the AO's jurisdiction to issue notice u/s 148 contrary to the mandate of the first proviso below section 149.

Ground 2 - The notice u/s. 148 dated 19th April 2022, which was issued after expiry of six years from the end of the relevant assessment year, was contrary to the mandate of the first proviso below section 149 of the IT Act and hence invalid. Your appellant respectfully submits that the said notice u/s. 148 dated 19th April 2022 and consequent order u/s. 147 r.w.s. 144B dated 29th February 2024 are bad in law and should therefore be annulled.”

2.1. In this 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 assessment order u/s.147 r.w.s. 144B being bad in law.

3. We have heard both the parties who have made their extensive submissions on the issues relating to legal ground. We have also perused the judicial precedents relied upon, for which a legal compilation is placed on record. Assessee has also furnished a paper book containing 126 pages to corroboratively demonstrate the factual matrix relevant to the legal issues to be dealt herein. Merits of the case have not been argued upon by either party nor any submissions made to that effect. Accordingly, we draw facts from the records relating to the legal grounds argued before the Bench.

4. Brief facts of the case are that assessee did not file his return of income u/s. 139(1). Case of the assessee was reopened by recording reasons which are reproduced in para-1 of the impugned assessment order, relating to income on transaction of sale of immovable property which according to the ld. Assessing Officer had escaped from assessment. Notice u/s. 148 was issued on 19.04.2022.

4.1. Ld. Assessing Officer issued a show cause notice u/s.148A(b), dated 24.03.2022, show causing the assessee as to why in view of the details contained in Annexure-A, a notice u/s.148 should not be issued. Ld. Assessing Officer provided the information in Annexure-A to the said notice, which according to him suggested that income chargeable to tax had escaped assessment within the meaning of section 147 of the Act. Subsequently, ld. Assessing Officer passed an order u/s. 148A(d), dated 19.04.2022, wherein it was noted that information was flagged in accordance with Risk Management Strategy (RMS) which constituted information with the ld. Assessing Officer suggesting that income chargeable to tax had escaped assessment for the purpose of section 148 and section 148A. No reply was furnished by the assessee. In para 5 of the said order, ld. Assessing Officer noted that section 148A(d) requires the Assessing Officer to decide on the basis of the material available on record including reply of the assessee, as to whether or not, it is a fit case for issue of notice u/s.148 of the Act. Since assessee did not furnish any explanation or reply in response to the information supplied to him nor did assessee file any return, ld. Assessing Officer concluded that it is a fit case for issue of notice u/s. 148, since income of more than Rs. 50 lakhs is chargeable to tax being represented by the transaction in immovable property has escaped assessment. He also noted that conditions of section 149(1)(b) are also satisfied. Based on this order, notice u/s.

148 was issued dated 09.04.2022 requiring the assessee to furnish a return in prescribed form within 30 days of service of the said notice.

4.2. On these set of facts, the moot point in the argument made by the assessee is that notice u/s.148, dated 19.04.2022 is barred by limitation since it has been issued after expiry of six years, from the end of the relevant Assessment Year, i.e., Assessment Year 2015-16, which is contrary to the mandate of the first proviso below section 149(1)(b) and therefore the impugned notice is invalid, bad in law, leading to the impugned assessment proceedings as well as the impugned assessment order, bad in law and liable to be quashed *ab initio*.

5. 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-

(1) 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.)

5.1. 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.

5.2. 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”*

5.3. This proviso to section 149 provided a defence 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 2015-2016, 6th year expired on 31 March 2022. The notice under Section 148 of the Act, in the present case, is issued on 19.04.2022, 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.

5.4. 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 1st 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 2021-2022 (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 2022-2023, the

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

6. 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.

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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.

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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.

7. 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.

7.1. 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.

7.2. 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.

8. In the present case, notice issued u/s.148 is dated 19.04.2022 which was issued pursuant to order passed u/s.148A(d) which is also of the even date, wherein it was held by the Assessing Officer that it is a fit case to issue notice u/s.148 of the Act. The moot case of the controversy arisen in this case is on account of show cause notice issued u/s.148A(b) which is dated 24.03.2022 and is prior to the date of 31.03.2022 when the limitation under the old regime expires. However, the notice u/s.148 is issued subsequent to this date, i.e., on 19.04.2022. Thus, the process of initiation of considering whether reopening is to be done or not was initiated within the limitation period available as per the old regime but it got concluded beyond the period of limitation. 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.

8.1. Admittedly, the undisputed fact in the present case is that impugned notice issued u/s.148 is dated 19.04.2022 which is after the limitation expired on 31.03.2022 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 2015-16 issued on 19.04.2022 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. Accordingly, ground nos. 1 and 2 raised by the assessee are allowed.

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

Order is pronounced in the open court on 16 June, 2025

Sd/-
(Amit Shukla)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 16 June, 2025

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