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WP No. 22754 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03-11-2025

CORAM

THE HONOURABLE MR JUSTICE C. SARAVANAN

WP No. 22754 of 2022

and

W.M.P.Nos.21792 & 21793 of 2022

1. Samuel Gnanaraj
New No. 45 OldNo. 20 Dr. natesan
Road, Triplicane Chennai Tamil nadu
600 005

Petitioner(s)

Vs

1. Income tax officer
Non Corp Ward 9 (1) Wanaparthi
Block No. 121 Mahatma gandhi Road
Nungambakkam, Chennai 600 034

Respondent(s)

PRAYER

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records in PAN AFNPG6449R for Assessment year AY 2014-15 and the Impugned order u/s 148A(d) of the Income Tax Act 1961 issued by Respondent in DIN and Letter No. ITBA/COM/F/17/2022-23/1044288326(1) dated 29.07.2022 culminating in impugned Notice u/s 148 dated 29.07.2022 issued by the Respondent and all



proceedings in furtherance thereof and to quash the same as arbitrary, unjust and illegal.

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For Petitioner(s): M/s.G.Vardini Karthik

For Respondent(s): Mr.Avinash Krishnan Ravi
Junior Standing Counsel

ORDER

Heard M/s G.Vardini Karthik, learned counsel for the Petitioner and Mr.Avinash Krishnan Ravi, learned Junior Standing Counsel for the Respondents.

2. In this Writ Petition, the Petitioner has challenged the Impugned Order dated **29.07.2022** passed by the respondent under Section 148A(d) of the Act under the New regime and the Impugned Notice dated **29.07.2022** issued by the respondent under Section 148 of the Act under the new regime for the **Assessment Year 2014-2015**.

3. The Petitioner, a wholesale dealer of Aavin Milk products had earlier filed a Return of Income for the **Assessment Year 2014-2015** on **17.11.2014**. There the Petitioner had declared a gross turnover of **Rs.32,11,48,134/-**

4. The Return of Income was accompanied with **Form No.3CB**, wherein details of turnover, gross profit etc., for the previous year was declared. Later, a



Scrutiny Assessment Order dated **29.06.2016** was also passed by the Assessing Officer under Section 143(3) of the Act.

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5. Pursuant to the aforesaid **Assessment Order** dated **29.06.2016**, a Reassessment Notice was issued under Section 148 of the Act on **08.04.2021** under the old regime as in force till **31.03.2021**. The Petitioner also filed a reply to the same, pursuant to which a further Notice under Section 143(2) of the Act was issued on **15.11.2021** to which also the Petitioner replied on **14.12.2021**.

6. Meanwhile, the Hon'ble Supreme Court delivered its verdict in **Union of India Vs. Ashish Agarwal.**, (2024) SCC Online SC 2693 on 04.05.2023, which was later clarified by the Hon'ble Supreme Court in **Union of India Vs. Rajeev Bansal**, 2024 SCC Online SC 2993.

7. In Paragraph No. 28 from **Ashish Agarwal case** (cited *supra*), the Hon'ble Supreme Court held as under:-

28. In view of the above and for the reasons stated above, the present Appeals are allowed in part. The impugned common judgments and orders passed by the High Court of Judicature at Allahabad in W.T. No. 524/2021 and other allied tax appeals/petitions, is/are hereby modified and substituted as under:

(i) The impugned section 148 notices issued to the respective assesseees which were issued under unamended section 148 of the IT Act, which were the subject matter of writ petitions



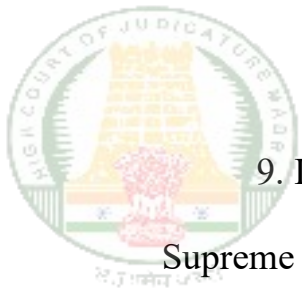
before the various respective High Courts shall be deemed to have been issued under section 148A of the IT Act as substituted by the Finance Act, 2021 and construed or treated to be show-cause notices in terms of section 148A(b). The assessing officer shall, within thirty days from today provide to the respective assessee information and material relied upon by the Revenue, so that the assessee can reply to the showcause notices within two weeks thereafter;

(ii) The requirement of conducting any enquiry, if required, with the prior approval of specified authority under section 148A(a) is hereby dispensed with as a onetime measure visàvis those notices which have been issued under section 148 of the unamended Act from 01.04.2021 till date, including those which have been quashed by the High Courts. Even otherwise as observed hereinabove holding any enquiry with the prior approval of specified authority is not mandatory but it is for the concerned Assessing Officers to hold any enquiry, if required;

(iii) The assessing officers shall thereafter pass orders in terms of section 148A(d) in respect of each of the concerned assessee; Thereafter after following the procedure as required under section 148A may issue notice under section 148 (as substituted);

(iv) All defences which may be available to the assessee including those available under section 149 of the IT Act and all rights and contentions which may be available to the concerned assessee and Revenue under the Finance Act, 2021 and in law shall continue to be available.

8. Following the ratio of the Hon'ble Supreme Court in **Ashish Agarwal case** (referred *supra*), the Petitioner was issued with a fresh Notice dated **25.05.2022** under Section 148A(b) of the Act under the new regime as in force with effect from **01.04.2021**.



9. In **Rajeev Bansal case** (cited *supra*), the above decision of the Hon'ble Supreme Court in **Ashish Agarwal case** (cited *supra*) was re-examined. The Hon'ble Supreme Court framed the following questions of law / issues in Paragraph No.18. Paragraph No.18 from **Rajeev Bansal case** (cited *supra*) is reproduced below:-

“(a) Whether the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 and notifications issued under it will also apply to reassessment notices issued after April 1, 2021; and

(b) Whether the reassessment notices issued under section 148 of the new regime between July and September 2022 are valid.”

10. The above questions of law / issues have been answered in Paragraph No.114 and illustrated in Paragraph No.112 of **Rajeev Bansal case** (cited *supra*).

11. For the sake of clarity, Paragraph No. 112 and 114 from Rajeev Bansal case (cited *supra*) are extracted hereunder:-

“112. Let us take the instance of a notice issued on May 1, 2021 under the old regime for a relevant assessment year. Because of the legal fiction, the deemed show-cause notices will also come into effect from May 1, 2021. After accounting for all the exclusions, the Assessing Officer will have sixty-one days (days between May 1, 2021 and June 30, 2021) to issue a notice under section 148 of the new regime. This time starts ticking for the Assessing Officer after receiving the response of the



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assessee. In this instance, if the assessee submits the response on June 18, 2022, the Assessing Officer will have sixty one days from June 18, 2022 to issue a reassessment notice under section 148 of the new regime. Thus, in this illustration, the time limit for issuance of a notice under section 148 of the new regime will end on August 18, 2022.

114. In view of the above discussion, we conclude that:

1. After April 1, 2021, the Income Tax Act has to be read along with the substituted provisions;
2. Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 will continue to apply to the Income-tax Act after April 1, 2021 if any action or proceeding specified under the substituted provisions of the Income Tax Act falls for completion between March 20, 2020 and March 31, 2021;
3. Section 3(1) of the Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 overrides section 149 of the Income-tax Act only to the extent of relaxing the time limit for issuance of a reassessment notice under section 148;
4. Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 will extend the time limit for the grant of sanction by the authority specified under section 151. The test to determine whether Taxation and other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 will apply to section 151 of the new regime is this : if the time limit of three years from the end of an assessment year falls between March 20, 2020 and March 31, 2021, then the specified authority under section 151(i) has extended time till June 30, 2021 to grant approval;
5. In the case of section 151 of the old regime, the test is : if the time limit of four years from the end of an assessment year falls between March 20, 2020 and March 31, 2021, then the specified authority under section 151(2) has extended time till March 31, 2021 to grant approval;
6. The directions in Union of India Vs. Ashish Agarwal [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617] will extend to all the ninety thousand reassessment notices issued under the old regime during the period April 1, 2021 and June 30, 2021;



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7. The time during which the show- cause notices were deemed to be stayed is from the date of issuance of the deemed notice between April 1, 2021 and June 30, 2021 till the supply of relevant information and material by the Assessing Officers to the assesseees in terms of the directions issued by this court in Union of India Vs. Ashish Agarwal [(2022) 444 ITR 1 (SC); (2023) 1 SCC 617], and the period of two weeks allowed to the assesseees to respond to the show-cause notices; and

8. The Assessing Officers were required to issue the reassessment notice under section 148 of the new regime within the time limit surviving under the Income-tax Act read with the Taxation and other Laws (Relaxation and Amendment of Certain Provisions Act, 2020. All notices issued beyond the surviving period are time barred and liable to be set aside;

12. For the purposes of computing limitation, the period of limitation has to be calculated by excluding the time or extended time allowed to the assessee to file a reply and the period during which the proceedings under Section 148 were stayed by the order of the Hon'ble Supreme Court in **Ashish Agarwal case** (cited *supra*) and **Rajeev Bansal case** (cited *supra*) as per third proviso to Section 149 of the Act as extracted above.

13. The time during which the aforesaid Show Cause Notices were deemed to be stayed between 1st April, 2021 and 30th June, 2021 till the supply of relevant information and material by the Assessing Officers to the assesseees in terms of the directions issued by the Hon'ble Supreme Court in **Ashish Agarwal case** (cited *supra*), and a further period of two weeks allowed to the



assesseees to respond to the show-cause notices as affirmed by the Hon'ble Supreme Court in **Rajeev Bansal case** (cited *supra*) was to be excluded for issuance of a Section 148 Notice under the new regime.

14. Applying the above ratio of the Hon'ble Supreme Court **Ashish Agarwal case** (cited *supra*) and **Rajeev Bansal case** (cited *supra*) to the facts of the case, it is clear that Section 148 Notice issued on **08.04.2021** under the old regime as it stood till **31.03.2021** has to be treated as a Notice issued under Section 148A(b) of the Act.

15. The time limit for issuance of Notice under Section 148 as per Section 149 of the Act under the new regime with effect from **01.04.2021** is **3/10 years**. By virtue of TOLA extensions, the six year limitation for issuance of Notice under Section 148 under the old regime extended upto **30.06.2021** for the **Assessment Year 2014-2015**.

16. For the sake of clarity, relevant dates for the calculation of limitation period are captured hereunder:-



Assessment Year	Old tax regime as in force till 31.03.2021		New tax regime with effect from 01.04.2021	
	4 years	6 years	3 years	10 years
2014-2015	31.03.2019	31.03.2021*	31.03.2018	31.03.2025

[Note: *However, the 6 years stood extended to **30.06.2021** in view of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TOLA).]

17. For the purpose of issuing Notice under Section 148 of the Act under the new regime, this Court in **W.P.(MD) No. 30938 of 2024 etc batch** had simplified the name of the “Specified Authority” for issuance of sanction under Section 151 of the Act as under:-

Section 151	Specified authority for Section 148 and 148A of the Act
Within three years	(i)Principal Commissioner/or (ii) Principal Director/or (iii) Commissioner/or (iv) Director
After three years	(i)Principal Commissioner/or Chief (ii)Principal Director General/or (iii)Chief Commissioner/or (iv) Director General



18. Section 149 of the Act is extracted hereunder:-

“149. Time limit for notice.

(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 asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year:

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 such notice 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, 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 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 is less than 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. (2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151."

19. As per the first proviso to Section 149 of the Act as in force with effect from **01.04.2021**, the only condition for issuance of a Section 148 Notice under the new regime is that the limitation under Section 148, Section 153A or Section 153 under the old regime as in force till **31.03.2021** had already not expired.

20. Applying the ratios of the Hon'ble Supreme Court, particularly in Paragraph No. 28.1 of **Ashish Agarwal case** (cited *supra*) and Paragraph No. 114(g) of **Rajeev Bansal case** (cited *supra*) and the limitation under Section 149 of the Act read with Section 151 of the Act under the new regime as in force with effect from **1st April, 2021** for issuance of Notice under Section 148 of the Income Tax Act, 1961 had to be issued within the surviving period after



excluding the period where the Notice that was issued after **1st April, 2021** under the old regime as it stood till **31.03.2021** was stayed by the Hon'ble Supreme Court.

21. A new Notice under Section 148 of the Act under the new regime as in force with effect from **1st April, 2021** was required to be issued for reassessment within the time limit surviving under the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) [TOLA] Act, 2020, if the same was applicable.

22. Relevant dates for the present case are as follows:-

Assessment Year 2014-2015	
Notice/Event	Date
Notice under Section 148 of the Act (old regime)	08.04.2021
Ashish Agarwal case	04.05.2022
Notice under Section 148A(b) of the Act	25.05.2022
Time granted to issue Notice under Section 148A(b) of the Act as per Ashish Agarwal case (30 days)	02.06.2022
Reply given by the Petitioner	30.05.2022
Time given as per Ashish Agarwal case to Reply	14 days
Order under Section 148A(d) of the Act (new regime)	29.07.2022
Notice under Section 148 of the Act (new regime)	29.07.2022



23. Thus, for the **Assessment Year 2014-2015**, a Notice under Section 148 of the Act for reassessment under the new regime therefore, ought to have been issued either:-

(i) on or before **31.03.2018** (within three years from the end of the Assessment Year) if the income escaping assessment was less than **Rs.50,00,000/-**; or

(ii) on or before **31.03.2025** (within ten years) if the income escaping assessment was more than **Rs.50,00,000/-**.

24. Since the income allegedly escaping assessment is **more than Rs.50,00,000/- viz., Rs.15,97,62,213/-**, for the **Assessment Year 2014-2015**, the Notice under Section 148 of the Act under the new regime could be issued if the limitation had not expired under the old regime.

25. The last date to issue the Notice under Section 148 of the Act under the old regime would have expired on **31.03.2021**. However, by virtue of TOLA extensions, the said period was extended up to **30.06.2021**.

26. Since Section 148 Notice issued under the old regime on **08.04.2021** was in time viz., before the expiry of limitation of **six years** under the Old Regime, the Assessing Officer has a period upto Ten years from the end of the



Assessment Year to issue the reassessment notice under Section 148 of the Act under the new regime.

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27. This will be in accordance with the ratio in **Ashish Agarwal case** (cited *supra*) and **Rajeev Bansal case** (cited *supra*) and in accordance with the 1st proviso to Section 149 of the Act which reads as under:-

*“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;”*

** Amended by the Finance Act, 2022, w.r.e.f. 01.04.2021*

28. Since Notice issued under Section 148 of the old regime on **08.04.2021** was issued within the limitation of six years, the impugned Section 148 notice issued on **29.07.2022** under the new regime is in time, as the income that had allegedly escaped assessment was more than **Rs.50,00,000/-**. The Assessing Officers has time upto **30.06.2025** to issue a Notice under Section 148 of the Act under the new regime with effect from **01.04.2021**.



29. Therefore, the impugned Section 148 Notice dated **29.07.2022** issued under the new regime of the Act has to be held to be in time. It is noticed that the impugned Section 148 Notice dated **29.07.2022** had also preceded with an approval from the 'Specified Authority' under Section 151 of the Income Tax Act, 1961 viz., the Principal Chief Commissioner of Income Tax, Tamil Nadu and Puducherry as amended with effect from 01.04.2021. Therefore, the challenge to the impugned proceedings on this count also have to fail.

30. However, it is noticed that while passing the impugned Order dated **29.07.2022** and while issuing the impugned Section 148 Notice dated **29.07.2022**, the defence of the Petitioner, particularly the Reply dated **30.05.2022** has not been clearly answered. Indeed, the Petitioner has taken a categorical stand that the Petitioner was receiving huge amounts in cash and that such amounts were accounted and deposited on the stated dates.

31. Therefore, this aspect ought to have been discussed and considered before the impugned dated 29.07.2022 was passed under Section 148A(d) of the Act and impugned Section 148 Notice dated **29.07.2022** was issued to the Petitioner, particularly in the light of the fact that the Petitioner had filed the relevant documents during the earlier assessment proceedings under Section 143(3) dated **29.06.2016** in Form No.3CB.



32. The law settled by the Hon'ble Supreme Court in **Commissioner of Income Tax, Delhi Vs. Kelvinator of India Ltd.**, (2010) 2 SCC 723 will hold good even under the regime with effect from 01.04.2021 as held by this Court in **Mahogany Logistics Services Private Limited Vs. the Income Tax Officer** in W.P.(MD) No.10198 of 2024 dated 23.08.2024.

33. Under these circumstances, the impugned order dated **29.07.2022** passed under Section 148A(d) and the impugned Section 148 Notice dated 29.07.2022 are quashed and the case is remitted back to the respondent to pass a fresh order on merits as expeditiously as possible in the light of the ratio of this Court in **Mahogany Logistics Services Private Limited Vs. the Income Tax Officer** referred to *supra*.

34. The time between the passing of the impugned Order dated 29.07.2022 and impugned Notice dated 29.07.2022 till the passing of de novo order shall stand excluded for computing the period of limitation for issuance of Section 148 Notice under the new regime.



35. This Writ Petition is partly allowed and disposed of with the above observation. No costs. Connected Writ Miscellaneous Petitions are closed.

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03-11-2025

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Index:Yes/No

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes/No

To

1.Income tax officer

Non Corp Ward 9 (1) Wanaparthi

Block No. 121 Mahatma gandhi Road

Nungambakkam chennai 600 034



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