IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-11-2025

CORAM

THE HONOURABLE MR JUSTICE C. SARAVANAN

WP No. 23501 of 2022
AND
WMP NO. 22458 OF 2022,WMP NO. 22459 OF 2022

1. NAPC Limited
Represented by its Director Ms.
Anuradha Rangarajan No. 3 6th Floor
Apex plaza Nungambakkam High Raod
chennai 34

Petitioner(s)

Vs

1. The Assistant commissioner of
Incom Tax
Corporate Circle 4 (1) Room No. 430
Main Building 4th Floor No. 121
Mahatma Gandhi road Nungambakkam
chennai

2.Principal commissioner of Income
Tax 4
Chennai 34

Respondent(s)

PRAYER

Calling for the records on the file of the 1st respondent and quash the impgned order in ITBA / COM / F / 17 / 2022-23 / 1044304145 (1) dated 29.07.2022 under section 148A(d) of the Income Tax Act 1961 and the consequential Impugned notice in ITBA / AST / M / 148 1 / 2022-23 / 1044321842(1) dated 29.07.2022 under section 148 of the Act passed by the 1st respondent for the Assessment year 2016 - 17 as illegal and not in accordance with law

For Petitioner : Mr. T. Banusekar

For Respondent(s): Mrs. S. Premalatha
Senior Standing Counsel

ORDER

In this writ petition, the Petitioner has challenged the Order dated 29.07.2022 passed under Section 148A(d) and the consequential Section 148 Notice dated 29.07.2022 issued under the provisions of the Income Tax Act, 1961 under the new regime as in force with effect from 01.04.2021 for the Assessment Year 2016-2017.

2. The impugned order dated 29.07.2022 passed under Section 148A(d) of the Act and the consequential Section 148 Notice dated 29.07.2022 under the new regime were passed and issued in the light of the Judgement of the Hon'ble Supreme Court in **Ashish Agarwal Vs. Union of India.,** (2023) 1 SCC 617 on **04.05.2022**, which was later clarified by the Hon'ble Supreme Court in **Union of India** Vs. **Rajeev Bansal**, 2024 SCC Online SC 2993.

3. The facts on record reveal that the Petitioner had filed its Return of Income on **15.09.2017** for the Assessment Year 2016-2017 pursuant to which as Assessment Order dated **22.12.2018** was passed under Section 143(3) of the Act.

4. It is in this background, a Notice dated 25.06.2021 was issued under Section 148 of the Act under the old regime as in force till 31.03.2021. Meanwhile, the Hon'ble Supreme Court delivered its judgement in **Ashish Agarwal case,** referred to *supra* which later clarified by the decision of the Hon'ble Supreme Court in **Union of India** Vs. **Rajeev Bansal**, referred to *supra*.

5. It is in this background, a fresh Notice dated **25.05.2022** under Section 148A(b) of the Act was issued to the Petitioner for the Assessment Year 2016-2017 under the new regime in the light of the aforesaid decision of the Hon'ble Supreme Court in **Ashish Agarwal case** referred to *supra*, to which the petitioner replied on **08.06.2022** which culminated in the impugned Section 148A(d) Order and the consequential Section 148 Notice.

6. The learned counsel for the petitioner would submit that the petitioner is in possession of several information, which were secured by the petitioner

under the Right to Information (RTI) pursuant to an application filed on 28.06.2022.

7. It is therefore submitted that if these information that were secured by the Petitioner through RTI was available at the time of issuance of Section 148 Notice dated 25.06.2021 under the old regime, the question of re-opening of the assessment for the relevant Assessment Year would not have arisen.

8. It is further submitted by the learned counsel for the petitioner that the Department was aware of the Audit objections and the response of the Assessing Officer. It is submitted that these informations should have been considered by the Officer before passing the impugned Section 148A(d) Order dated 29.07.2022 and the consequential Section 148 Notice dated 29.07.2022.

9. The learned counsel for the petitioner would also endeavour to state that the impugned Section 148A(d) Order dated 29.07.2022 and the consequential Section 148 Notice dated 29.07.2022 were passed and issued beyond the period of limitation in accordance with the decision of the Hon'ble Supreme Court in **Ashish Agarwal case,** referred to *supra* which later clarified by the decision of the Hon'ble Supreme Court in **Union of India** Vs. **Rajeev Bansal**, referred to *supra.*

10. The learned Senior Standing Counsel on the other hand would submit that the reply of the Petitioner dated 08.06.2022 to the Section 148A(b) Notice dated 25.05.2022 issued under of the Act was considered by the Respondents while passing the impugned Section 148A(d) Order dated 29.07.2022 and while issuing the consequential Section 148 Notice dated 29.07.2022.

11. It is therefore submitted by the learned Senior Standing Counsel for the Respondents that the impugned Section 148A(d) Order and the consequential Section 148 Notice both dated 29.07.2022 issued for the Assessment Year 2016-2017 does not merit any interference.

12. I have heard the learned counsel for the Petitioner and the learned Junior Standing Counsel for the Respondent and have perused the documents and the list of dates and events *qua* Paragraph No.28 from the decision of the Hon'ble Supreme Court in **Union of India** Vs. **Ashish Agarwal**, (2023) 1 SCC 617 and Paragraph Nos.112 and 114 from the decision of the Hon'ble Supreme Court in **Union of India** Vs. **Rajeev Bansal**, 2024 SCC Online SC 2993.

13. It will therefore be useful to refer to passage from Paragraph No.28 from **Ashish Agarwal case** (cited *supra*) and Paragraph Nos.112 and 114 from **Rajeev Bansal case** (cited *supra*).

14. For the sake of clarity, Paragraph No.28 from **Ashish Agarwal case** (cited *supra*) is reproduced below:-

> "*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 assessees 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 assessees information and material relied upon by the Revenue, so that the assessees can reply to the show cause 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 assessees; 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 assesses including those available under section 149 of the IT Act and all rights and contentions which may be available to the concerned assessees and Revenue under the Finance Act, 2021 and in law shall continue to be available."

15. 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."*

16. 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*).

17. For the sake of clarity, Paragraph Nos.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 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:

(a) After April 1, 2021, the Income Tax Act has to be read along with the substituted provisions;

(b) 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;

(c) 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;

(d) 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;

(e) 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;

(f) 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;

(g) 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 assessees 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 assessees to respond to the show-cause notices; and

(h) 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."

18. Applying the above ratio, particularly, in the light of the limitation for issuance of Notice under Section 148 of the Income Tax Act, 1961 (hereinafter

referred to as 'the Act') prescribed under Section 149 of the Act read with Section 151 of the Act, it is clear that the Section 148 Notices that was issued between **1st April, 2021** under the old regime as it stood till **31.03.2021** are to be treated as a Notice under Section 148A(b) of the Act under the new regime in terms of Paragraph No.28.1 of **Ashish Agarwal case** (cited supra) and in terms of Paragraph No.114(g) of **Rajeev Bansal case** (cited supra).

19. The time during which the aforesaid Notice issued under Section 148 of the Act under the old regime as it stood till **31.03.2021** were deemed to be stayed from the date of issuance between **April 1, 2021** and **June 30, 2021** till the supply of relevant information and material by the Assessing Officers to the assessees in terms of the directions issued by this Court in **Ashish Agarwal case** (cited *supra*), and for a further period of **two weeks** for the assessees to respond to the Show Cause Notices as confirmed by **Rajeev Bansal case** (cited *supra*) are to be excluded.

20. 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.

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

Assessment Year 2016-2017	
Date	**Event**
25.06.2021	Notice under Section 148 of the Act (old regime)
04.05.2022	Ashish Agarwal case
02.06.2022	Time granted to issue Notice under Section 148A(b) of the Act as per Ashish Agarwal case (30 days)
25.05.2022	Notice under Section 148A(b) of the Act
14 days	Time granted for the Petitioner to file a reply
08.06.2022	Reply given by the Petitioner
29.07.2022	Order under Section 148A(d) of the Act (new regime)
29.07.2022	Notice under Section 148 of the Act (new regime)

22. Applying the above ratio to the facts of the case it is clear that the Notice that was issued on **25.06.2021** under Section 148 of the Act for the **Assessment Year 2016-2017** under the old regime as it stood till **31.03.2021** was to be treated as a Notice issued under Section 148A(b) of the Act under the

new regime as in force with effect from **01.04.2021** in terms of **Ashish Agarwal case** (cited supra) and **Rajeev Bansal case** (cited supra).

23. In the light of the ratio in **Ashish Agarwal case** (cited *supra*) and **Rajeev Bansal case** (cited *supra*), the Notice issued under Section 148 of the Act under the old regime on **31.03.2021** is deemed to have been stayed for thirty days for the Income Tax Department to provide to the respective assessees information and material relied upon and two weeks thereafter for the assessees to reply to the Show Cause Notices.

24. A Notice under Section 148 of the Act under the new regime as in force with effect from **01.04.2021** was required to be issued for reassessment within the time limit under Section 149 of the Act as in force with effect from **01.04.2021** within the surviving time under the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) [TOLA] Act, 2020.

25. The only condition for issuance of 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. This is as per the first proviso to Section 149 of the Act as in force with effect from **01.04.2021**.

26. Section 149 of the Act under the new regime with effect from **01.04.2021** 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."

27. The time limit for issuance of Notice under Section 148 of the Act as per Section 149 of the Act under the new regime with effect from **01.04.2021** is 3/10 years depends upon the amount of income allegedly escaping assessment. Under the old regime it was 4/6 years depending upon the amount of income allegedly escaping assessment.

28. 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**
2016-2017	31.03.2021	31.03.2023	30.06.2021*	31.03.2027

*[Note: *However, the 3 years extended to **30.06.2021** in view of the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (TOLA).]*

29. Thus, for the **Assessment Year 2016-2017**, a Notice under Section 148 of the Act for reassessment under the new regime therefore, ought to have been issued either on or before:-

(i) **30.06.2021** (within three years from the end of the Assessment Year) if the income escaping assessment was less than **Rs.50,00,000/-**; or

(ii) **31.03.2027** (within ten years) if the income escaping assessment was more than **Rs.50,00,000/-.**

30. Since the income allegedly escaping assessment is more than Rs.50,00,000/- for the Assessment Year 2016-2017, a Notice under Section 148 of the Act under the new regime could be issued under the new regime if the limitation had already not expired under the old regime. This is the purport of 1st proviso to Section 149 of the Act which is reproduced below:-

> *"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*

31. The last date to issue the Notice under Section 148 of the Act under the old regime would have expired only on **31.03.2023**. Since Section 148 Notice issued under the old regime was issued on **30.06.2021** before the expiry of limitation of **six years** under the Old Regime, the Assessing Officer has a period up to **Ten years** from the end of the Assessment Year to issue the reassessment notice under Section 148 of the Act under the new regime.

32. Therefore, the argument of the learned counsel for the Petitioner that the impugned Section 148 Notice dated **29.07.2022** is barred by limitation in view of the first proviso to Section 149 of the Act as in force with effect from 01.04.2021 stands answered against the Petitioner 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. The exclusions contained therein operate against the Petitioner in so far as limitation is concerned.

33. It is further noticed that Section 148 Notice dated **29.07.2022** issued pursuant to the impugned Order dated **29.07.2022** passed under Section 148A(d) of the Act under the new regime had also preceded with an approval from the 'Specified Authority' viz., the Principal Commissioner of Income Tax - 4 on 28.07.2022 under Section 151 of the Income Tax Act, 1961 as amended with effect from 01.04.2021. Therefore, the challenge to the impugned proceedings on this count also have to fail.

34. However, considering the fact that the Petitioner is possession of certain documents obtained through an application filed under Right to Information Act, 2007 to substantiate its defense, the impugned Section

148A(d) Order and the consequential Section 148 Notice both dated 29.07.2022 are quashed and the case is remitted back to the Respondent to pass a fresh order on merits after hearing the petitioner.

35. It is made clear that the de novo adjudication shall be confined to the merits and to limitation under the new regime of the Act as in force with effect from 01.04.2021 for the issuance of Section 148 Notice.

36. The Petitioner shall file a proper reply along with requisite documents that are needed to substantiate the defense and enclosing the information obtained by the Petitioner through RTI to Section 148A(b) Notice dated 25.05.2022 issued under the new regime of the Act as in force with effect from 01.04.2021 within a period of 14 days from the date of receipt of a copy of this order.

37. In case, the Petitioner files such a reply to Section 148A(b) Notice dated 25.05.2022 within the stipulated time, the Respondent shall proceed to pass a fresh order on merits and in accordance with law as expeditiously as possible.

38. 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.

39. This Writ Petition is disposed of with the above observation. No costs. Connected Writ Miscellaneous Petitions are closed.

04-11-2025

Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No
ab / raja

To

1.The Assistant commissioner of Incom
Tax
Corporate Circle 4 (1) Room No. 430
Main Building 4th Floor No. 121
Mahatma Gandhi road Nungambakkam
chennai

2.Principal commissioner of Income
Tax 4
Chennai 34

C.SARAVANAN J.

ab/raja

WP No. 23501 of 2022 AND WMP NO. 22458 OF 2022,WMP NO. 22459 OF 2022

04-11-2025