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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 24.03.2025

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W.P.(C) 2557/2023**MAKEMYTRIP INDIA PRIVATE LIMITED**

.....Petitioner

Through: Mr Salil Kapoor, Mr Sumit Lalchandani, Ms Ananya Kapoor, Mr Tarun Chanana, and Mr Shivam Yadav, Advocates.

versus

**DEPUTY COMMISSIONER OF INCOME
TAX CIRCLE 16 (1) DELHI & ANR.**

.....Respondents

Through: Mr Abhishek Maratha, SSC, Mr Apoorv Agarwal, Mr Parth Samwal, JSCs, Ms Nupur Sharma, Mr Gaurav Singh, Ms Muskaan Goel, Mr Bhanukaran Singh Jodha, Advocates

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

1. The petitioner has filed the present petition, *inter alia*, praying as under: -

“A. Issue a writ of and/or order and or directions in the nature of certiorari or any other appropriate writ, order or direction quashing the notice dated



19.05.2022 issued under Section 148A(b) of the Act; impugned notice dated 27.07.2022 issued under Section 148 of the Act and the impugned order dated 27.07.2022 passed under Section 148A(d) of the Act by the Respondent No. 1 and the proceedings initiated pursuant thereto;

B. Issue a writ of and/or order and/or direction in the nature of Prohibition commanding Respondents to forebear from giving effect to and/or taking any step whatsoever pursuant to and/or in furtherance of the said purported notice under Section 148 of the Act and/or in any proceedings initiated thereunder for the AY 2015-16, and grant stay on the reassessment proceedings.”

2. The petitioner impugns a notice dated 27.07.2022 [**the impugned notice**] issued under Section 148 of the Income Tax Act, 1961 [**the Act**] in respect of the Assessment Year [**AY**] 2015-2016 and contends that the same is barred by limitation.
3. The petitioner had filed its return of income for AY 2015-2016 on 28.11.2015. Thereafter, on 25.10.2017, the petitioner entered into an Advance Pricing Agreement [**APA**]. Consequently, its return of income was required to be modified for the said year. The return as modified was selected for scrutiny. The said proceedings culminated in an assessment order dated 29.12.2018 passed under Section 143(3) of the Act whereby the petitioner's income was assessed at ₹ 1,90,02,11,840/-.
4. Aggrieved by the same, the petitioner filed an appeal before the Commissioner of Income Tax (Appeals) [**CIT(A)**]. The said appeal was allowed by an order dated 24.06.2019 and the additions made by the Assessing Officer [**AO**] were set aside.



5. Thereafter on 21.04.2021, the AO issued a notice under Section 148 of the Act seeking to reopen the assessment for the AY 2015-16. The said notice was issued under the provisions relating to reassessment of income (Sections 147 to 151) of the Act as were in force on 31.03.2021 and prior thereto. The petitioner filed its return of income in response to the said notice and also sought reasons for re-opening of the assessment.

6. In the meanwhile, several petitions were filed assailing such notices that were issued under Section 148 of the Act after 31.03.2021 but following the statutory regime for reassessment as was in enforce prior to the said date. Some of these petitions were allowed on 15.12.2021 by a decision in ***Mon Mohan Kohli v. ACIT & Anr.: Neutral Citation No.: 2021:DHC:4181-DB*** and other connected matters. Similar decisions were rendered by some other High Courts.

7. These decisions were appealed by the Revenue before the Supreme Court. In ***Union of India & Others v. Ashish Agarwal: (2023) 1 SCC 617***, the Supreme Court, issued certain directions in exercise of powers its under Article 142 of the Constitution of India including the direction to treat such notices issued under Section 148 of the Act as notices under Section 148A(b) of the Act. The AO was also directed to furnish such material and information to the assesseees as were required to accompany a notice under Section 148A(b) of the Act.

8. In a subsequent decision in ***Union of India and Others v. Rajeev Bansal: 2024 INSC 754***, the Supreme Court considered the manner of applicability of the provisions of Taxation and Other Laws (Relaxation and



Amendment of Certain Provisions) Act, 2020 [TOLA]. During the said proceedings it was conceded on behalf of the Revenue that TOLA was not applicable for reopening the assessments for AY 2015-16. The said concession was recorded in paragraph 19(f) of the said decision. Paragraphs 19 (e) and 19(f) of the said decision are relevant and are set out below: -

“(e) The Finance Act 2021 substituted the old regime for re-assessment with a new regime. The first proviso to Section 149 does not expressly bar the application of TOLA. Section 3 of the TOLA applies to the entire Income Tax Act, including Sections 149 and 151 of the new regime. Once the first proviso to Section 149(1)(b) is read with TOLA, then all the notices issued between 1 April 2021 and 30 June 2021 pertaining to the assessment years 2013-2014, 2014-2015, 2015-2016, 2016-2017, and 2017-2018 will be within the period of limitation as explained in the tabulation below:

Assessment Year (1)	Within 3 Years (2)	Expiry Limitation read with TOLA for (2) (3)	Within six Years (4)	Expiry of Limitation read with TOLA for (4) (5)
2013-2014	31.03.2017	TOLA not applicable	31.03.2020	30.06.2021
2014-2015	31.03.2018	TOLA not applicable	31.03.2021	30.06.2021
2015-2016	31.03.2019	TOLA not applicable	31.03.2022	TOLA not applicable



2016-2017	31.03.2020	30.06.2021	31.03.2023	TOLA not applicable
2017-2018	31.03.2021	30.06.2021	31.03.2024	TOLA not applicable

(f) The Revenue concedes that for the assessment year 2015-2016, all notices issued on or after 1 April 2021 will have to be dropped as they will not fall for completion during the period prescribed under the TOLA.”

9. Following the aforesaid concession, this court in ***Ibibo Group Private Limited v Assistant Commissioner of Income Tax Circle 10-1, & Anr.***: W.P.(C) 17639/2022 decided on 13.12.2024 allowed the petition challenging a similar notice for AY 2015-16 which was issued beyond the period of limitation as concededly TOLA was not applicable. Similar orders has also been passed by other courts as well.

10. In ***The Income Tax Officer Ward 1(2) Jaipur v R.K. Build Creations Pvt Ltd***: Special Leave Petition (Civil) Diary No. 59625/2024 the Supreme Court dismissed the SLP arising from a similar decision rendered by the Hon’ble Rajasthan High Court in DBCWP No.14414/2022. The said order is set out below: -

“Delay condoned.

Having regard to the concession made by the petitioner-Department in the case of Union of India vs. Rajeev Bansal, Civil Appeal no.8629 of 2024 on 03.10.2024 (2024 SCC ONLINE 754), this Special Leave Petition would not survive for further consideration.

Hence, the Special Leave Petition is dismissed.

Pending application(s), if any, shall stand disposed



of.”

11. In the present case the impugned notice was issued on 27.07.2022, which was admittedly beyond the period of limitation as prescribed under Section 149(1) of the Act. Since TOLA was not applicable in respect of the said notices under Section 148 of the Act for AY 2015-16 as conceded by the Revenue in the case of *Union of India v. Rajeev Bansal: 2024 INSC 754 (supra)*, the impugned notice is liable to be set aside.

12. Accordingly, the impugned notice and proceedings emanating from the said notice are set aside.

13. The petition is allowed in the aforesaid terms.

VIBHU BAKHRU, J

TEJAS KARIA, J

MARCH 24, 2025

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Click here to check corrigendum, if any