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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 16685/2022**
AJAY GUPTA PROPRIETOR OF M/S KANHAI OVERSEAS

.....Petitioner

Through: Mr Salil Kapoor, Mr Sumit
Lalchandani and Ms Ananya Kapoor,
Advocates.

versus

DY. COMM. INCOME TAX CIRCLE 13(1) DELHI

.....Respondent

Through: Mr Gaurav Gupta, SSC, Mr
Shivendra Singh, Mr Yojit Pareek,
JSCs and Ms Prakriti Rastogi,
Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

ORDER

21.05.2025

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1. The petitioner has filed the above-captioned petition, *inter alia*, impugning an order dated 30.07.2022 [**impugned order**] passed under Section 148A(d) of the Income Tax Act, 1961 [**the Act**] along with the notice dated 30.07.2022 [**impugned notice**] issued under Section 148 of the Act; in respect of assessment year [**AY**] 2013-14.
2. It is the Assessee's case that the impugned notice has been issued beyond the prescribed period of limitation.
3. The initial notice under Section 148 of the Act for AY 2013-14 was issued on 27.06.2021. The said notice was unsustainable as it was issued in accordance with the statutory regime regarding reassessment as in force



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.

4. However, the Supreme Court in the case of ***Union of India & Ors. v. Ashish Agarwal***: (2023) 1 SCC 617, issued directions for considering the said notices as notices issued under Section 148A(b) of the Act, and granting time to the Assessing Officer [AO] to supply the material on the basis of which such notices were premised. Therefore, in compliance with the directions issued by the Supreme Court in the case of ***Union of India & Ors. v. Ashish Agarwal*** (*supra*), the AO in the present case, provided information and material to the Assessee on 02.06.2022 and directed the Assessee to furnish the reply by 27.06.2022. The Assessee responded to the said notice dated 02.06.2022 on 27.06.2022.

5. The AO passed an order under Section 148A(d) of the Act on 30.07.2022. According to the Assessee, the same was beyond the period as stipulated.

6. In the present case, the period of six years from the end of the assessment year available for issuing a notice under Section 148 of the Act expired on 31.03.2020. Thus, in terms of the first proviso to Section 149(1) 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 under Section 148 was extended to 30.06.2021.



7. The original notice under Section 148 of the Act was issued on 27.06.2021, which was issued three (3) days before the expiry of period of limitation.

8. 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 ***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 a 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 in terms of the fifth proviso to Section 149(1) of the Act. 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 allowed to the assessee to respond to the said notice was also required to be excluded by virtue of the fifth proviso to Section 149(1) of the Act, as applicable at the material time.

9. Since the initial notice under Section 148 of the Act –subsequently construed as a notice under Section 148A(b) of the Act – was issued three (3) days before the expiry of period of limitation; there were only three days available for the AO to issue notice under Section 148 of the Act after the petitioner had furnished its reply to the said notice. Since this period available to the AO to issue notice under Section 148 of the Act was less than seven (7) days, in terms of sixth proviso to Section 149(1) of the Act, the AO had seven (7) days to issue notice under Section 148 of the Act. Therefore, the last day to issue notice was 04.07.2022, that is seven days



from 27.06.2022. The impugned notice was issued on 30.07.2022, which is after the period for issuing such a notice had expired.

10. Concededly, the controversy involved in the present case is covered by the decision of this Court in ***Ram Balram Buildhome Pvt. Ltd. v. Income Tax Officer and Anr.: Neutral Citation No.2025:DHC:547-DB.***

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 21, 2025

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[Click here to check corrigendum, if any](#)