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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 22.04.2025*

+ W.P.(C) 17660/2024

ADM AGRO INDUSTRIES PRIVATE LIMITEDPetitioner

Through: Ms Ananya Kapoor, Advocate.

versus

ASSISTANT COMMISSIONER OF INCOME TAX,

CIRCLE 1(1), DELHI & ANR.

.....Respondent

Through: Mr Debesh Panda, Ms Zehra Khan,
Mr Vikramaditya Singh and Ms A.
Shankar, 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 26.05.2022 issued under Section 148A(b) of the Act; the impugned notice dated 01.04.2024 issued under Section 148 of the Act and the impugned order dated 31.03.2024 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 directions in the nature of certiorari or any other appropriate writ, order or direction quashing the notice dated 29.11.2024 issued



under Section 143(2) of the Act and notice dated 04.12.2024 issued under Section 142(1) of the Act and the proceedings initiated pursuant thereto;

- C. 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 notice dated 29.11.2024 issued under Section 143(2) of the Act and notice dated 04.12.2024 issued under Section 142(1) of the Act and/or in any proceedings initiated thereunder for the AY 2014-15, and grant stay on the reassessment proceedings;
- D. Issue any other Writ, order or Direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.
- E. To dispense with from filing certified copies of Annexures."

2. The petitioner is a private company incorporated under the laws of India and is engaged in the business of manufacturing/extraction/trading/refining/ processing and packaging of edible oils and other agro-based products.

3. The petitioner filed its return of income under Section 139(1) of the Income Tax Act, 1961 [**the Act**] in respect of Assessment Year [**AY**] 2014-15 on 30.11.2014 declaring its taxable income as nil. The petitioner's return of income was selected for scrutiny through computer-assisted scrutiny selection [**CASS**] and a notice dated 11.09.2015 under Section 143(2) of the Act was issued. Thereafter, notices under Section 142(1) of the Act were



also issued and the petitioner responded to the said notices and also furnished information as sought.

4. The assessment proceedings culminated with the Assessing Officer [AO] passing an assessment order dated 30.12.2016 under Section 143(3) of the Act.

5. On 30.06.2021, the AO issued a notice under Section 148 of the Act. Although the said notice was issued after 31.03.2021, the procedure as prescribed under Section 148A of the Act was not followed. The petitioner challenged the said notice in a writ petition filed before this court [being W.P. (C) No. 7274/2021]. The impugned notice was set aside by this court by an order passed in a batch of matters [lead matter being **Mon Mohan Kohli v. ACIT & Anr. [441 ITR 207 (Del)]**]. Various other High Courts also passed similar orders quashing notices that were issued under Section 148 of the Act after 31.03.2021 without following the amended provisions for reassessment as introduced with effect from 31.03.2021.

6. The Revenue appealed the aforesaid orders before the Supreme Court and in **Union of India & Ors. v. Ashish Agarwal: (2023) 1 SCC 617** and other connected matters, the Supreme Court passed directions under Article 142 of Constitution of India, *inter alia*, directing that the notices issued under Section 148 of the Act after 31.03.2021 be construed as notices under Section 148A(b) of the Act. The requirement to conduct any preliminary enquiry under Section 148A(a) of the Act was dispensed with and the AO was also directed to provide the assessee's information, which suggested



that the income of the assessee had escaped assessment, as was required to be furnished alongwith a notice under Section 148A(b) of the Act.

7. Pursuant to the said directions, the AO provided information to the Assessee under a notice dated 26.05.2022 under Section 148A(b) of the Act. It was alleged that the information available with the AO suggested that an income amounting to ₹9,40,58,944/- had escaped assessment.

8. The petitioner responded to the said notice on 10.06.2022 objecting to the reasons for reopening his assessment. The petitioner disputed that there were any such transactions as suggested in the notice issued on 26.05.2022 and claimed that the only transaction entered into with one of the specified entities was of a value of ₹4,50,000/-.

9. Thereafter, on 23.07.2022, the AO passed an order under Section 148A(d) of the Act holding that it was a fit case for issuance of the notice under Section 148 of the Act for AY 2014-15. The said order was communicated to the Assessee along with a notice dated 23.07.2022 issued under Section 148 of the Act.

10. The petitioner challenged the said notice dated 23.07.2022 by filing a writ petition before this court [being W.P.(C) 16718/2022], *inter alia*, on the ground that the same had been passed without considering the petitioner's response to the information as furnished by the AO. The said petition was allowed by this court by an order dated 06.12.2022 inasmuch as the order dated 23.07.2022 passed under Section 148A(d) of the Act was set aside and the matter was remanded to the AO for a *de novo* hearing.



11. Pursuant to the directions issued by this court, the AO afforded the petitioner a hearing and passed an order dated 31.03.2024 under Section 148A(d) of the Act holding that it was a fit case for issuance of notice under Section 148 of the Act and issued a fresh notice dated 01.04.2024 under Section 148 of the Act.

12. The petitioner has challenged the said notice on several grounds. However, at this stage, the petitioner has confined the petition to initiation of reassessment proceedings as barred by limitation as stipulated under Section 149(1) of the Act.

13. The first notice issued under Section 148 of the Act – which was directed to be construed as a notice under Section 148A(b) of the Act in terms of the decision passed by the Supreme Court in ***Union of India & Ors. v. Ashish Agarwal*** (*supra*) – was issued on 30.06.2021. It is material to note that it was the last date of the period of limitation as extended by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020, [TOLA], for issuance of such a notice under Section 148 of the Act for AY 2014-15. Considering that the said notice was required to be considered as a notice under Section 148A(b) of the Act, no further time was available for issuing a notice under Section 148 of the Act on that date (30.06.2021).

14. In terms of the directions issued by the Supreme Court in the case of ***Union of India & Ors. v. Ashish Agarwal*** (*supra*), the AO was also required to furnish information to the assesses, which was required to be



accompanied by such a notice and the assesseees were required to be afforded a minimum of seven days to respond to the said notice. As explained by the Supreme Court in **Union of India and Ors. v. Rajeev Bansal: 2024 INSC 754**, the period from 30.06.2021 to the date on which the assesseees responded to the notice under Section 148A(b) of the Act – in this case on 10.06.2022 – is required to be excluded.

15. After excluding the said period, the AO had no time left for issuance of notice under Section 148 of the Act as the initial notice under Section 148 of the Act (construed as a notice under Section 148A(b) of the Act) was issued on the last date of limitation as extended by TOLA. Thus, in terms of the then third proviso to Section 149(1) of the Act as was in force at the material time, the AO had seven days for issuance of such a notice. Accordingly, the notice under Section 148 of the Act was required to be issued on or before 17.06.2022. However, the AO had issued a notice under Section 148 of the Act on 23.07.2022.

16. Concededly, the question whether the said notice was issued within the period of limitation is covered by the decision of this court in **Ram Balram Buildhome Pvt. Ltd v. Income Tax Officer & Anr.: 2025: DHC:547-DB**.

17. Notwithstanding that the said notice had been issued beyond the period of limitation, the learned counsel appearing for the Revenue contends that the period of limitation as prescribed under Section 149 of the Act would not be applicable by virtue of Section 150 of the Act as the



subsequent order under Section 148A(d) of the Act, which was issued on 31.03.2024 and the notice dated 01.04.2024 issued under Section 148 of the Act was issued pursuant to the order dated 06.12.2022 passed by this court in W.P.(C) 16718/2022 (*ADM Agro Industries India Private Limited v. Deputy Commissioner of Income Tax, Circle 1(1) Delhi: 2022/DHC/005868*).

18. It is relevant to refer to Section 150 of the Act, which reads as under:

“150. Provision for cases where assessment is in pursuance of an order on appeal, etc.—(1) Notwithstanding anything contained in section 149, the notice under section 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision or by a Court in any proceeding under any other law.

(2) The provisions of sub-section (1) shall not apply in any case where any such assessment, reassessment or recomputation as is referred to in that sub-section relates to an assessment year in respect of which an assessment, reassessment or recomputation could not have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or recomputation may be taken.”

19. It is apparent that Section 150 of the Act contemplates a case where an assessment, reassessment or re-computation is necessitated on account of an order passed by an appellate, revisional or any other authority in any



proceedings under the Act or by a court in any proceedings under any law. This, clearly, contemplates a case where it may not be possible to adhere to the timelines as specified under Section 149 of the Act to give effect to any findings or directions issued by an authority in an appeal, reference or revision, or by a court under any other law. It does not contemplate rejuvenating the timelines in respect of time barred assessments and orders which were subject matter of proceedings in which findings or directions are issued.

20. It is also relevant to refer to Sub-section (2) of Section 150 of the Act. The said Sub-section explains that the provision of Sub-section (1) of Section 150 of the Act would not be applicable where the assessment, reassessment or re-computation relates to an assessment year in respect of which assessment, reassessment or re-computation could not have been made at the time of order, which was subject matter of appeal, reference or revision, was made. Thus, if the order, which is subject matter of proceedings before the appellate or revisional authority, could not have been passed on account of being barred by limitation, Section 150(1) of the Act would not be applicable. Sub-section (2) of Section 150 of the Act is in essence carves out an exception to Sub-section (1) of Section 150 of the Act and posits that Sub-section (1) of Section 150 of the Act would not be applicable where by virtue of any other provision limiting the time within which action for assessment, reassessment or re-computation may be taken and such assessment, reassessment or re-computation is beyond the period of limitation on the date on which the order which is subject matter of



appeal, reference or revision is passed.

21. We consider it apposite to refer to the following observations of the Punjab and Haryana High Court in ***Praveen Kumari v. CIT: (1999) 237 ITR 339:***

“20. Sub-section (2) of section 150 lays down an exception and, where such an exception exists, the provisions of sub-section (1) would not be applicable. Sub-section (1) of section 150 shall not apply where the notice for reassessment for an assessment year had become barred by limitation at the time when the order, which was the subject-matter of appeal, revision or reference, was passed. Generally, the time limits prescribed in section 149 shall not apply where reassessment proceedings are initiated by a notice to give effect to any finding or direction, under sub-section (1) of section 150 of the Act. But, under sub-section (2) of section 150, the period of limitation as laid down in section 149 shall come into play. If the action for assessment or reassessment cannot be initiated for an assessment year on the date of the order, which was a subject-matter of appeal, reference or revision, that would prevent the Assessing Officer from proceeding under section 148 of the Act.

21. According to sub-section (2) of section 150, the provisions of sub-section (1) of that section shall not apply where, by virtue of any other provision limiting the time within which action for assessment or reassessment may be initiated, issuance of notice for such assessment or reassessment is barred on the date of the order, which is the subject-matter of appeal, reference or revision, in which the finding or direction is contained. It would, thus, mean that an appellate or revisional authority cannot give a direction for assessment or reassessment which goes to the extent of conferring jurisdiction upon the Assessing Officer if his



jurisdiction had ceased due to the bar of limitation. If the issuing of a notice for assessment or reassessment for a particular assessment year had become time-barred at the time of the order, which was the subject-matter of the appeal, the provisions of section 150(1) cannot be invoked to the aid of the Revenue for making an assessment or reassessment.

22. In *CIT v. G. Viswanatham*, [1988] 172 ITR 401, the Andhra Pradesh High Court also examined the provisions of sub-section (2) of section 150 of the Act and held that an action for reassessment was barred by time if such action could not be initiated at the time when the order, which was the subject-matter of appeal, was made.”

22. In *Intec Corporation v. Asst. CIT: (2020) 424 ITR 167*, a Division Bench of this court had referred to the aforesaid decision and had also observed as under:

“26. Adverting now to the ground of limitation raised by the petitioner, a plain reading of section 150 reveals that it deals with a situation where an assessment or reassessment for a particular year or for a particular person is necessitated by an order passed by the appellate or revisional authority or on a reference. In such cases, it may not be possible for the Revenue to adhere to the time limits prescribed under section 149, as the order of appeal, reference or revision or by a court, in a proceeding under any other law may be passed beyond the period contemplated under section 149. It is for this reason, the Legislature has not placed any time limit for making the assessment or reassessment in such circumstances and for this reason, section 150 begins with the non obstante clause. At the same time, it does not mean that the power under section 150(1) is uncanalised or unrestricted. The safeguard has been built under sub-section (2) of section 150.



The entire object of section 150(2) is to bar the proceedings under sub-section (1) in the matter of assessment/reassessment or recomputation, which has become the subject-matter of the reference or revision by reasons of any other provisions limiting the time limit. Section 150(1) provides that the power to issue notice under section 148 in consequence of or giving effect to any finding or direction of the appellate/revisional authority or the court, is subject to the provision contained in section 150(2), which provides that directions under section 150(1) cannot be given by the appellate/revisional authority or the court if on the date on which the order impugned in the appeal/revision was passed, the reassessment proceedings had become time barred. In other words, as per section 150(2), the appellate authority could give directions for the reassessment only in respect of an assessment year, which was within the limitation stipulated under section 148 in respect of which reassessment proceedings could be initiated on the date of passing of order under appeal.”

23. In the present case, notice under Section 148 of the Act which was subject matter of challenge in the writ petition [W.P.(C) 16718/2022] was barred by limitation on the date, it was issued by virtue of Section 149(1) of the Act. Thus, any order passed in a challenge to the said notice would not have the effect of obliterating the time limits for passing such an order.

24. We find no merit in the contention advanced on behalf of the Revenue. It is necessary to note that the said writ petition [W.P.(C) 16718/2022] was filed by the petitioner, *inter alia*, challenging the order dated 23.07.2022 issued under Section 148A(d) of the Act and the notice dated 23.07.2022 issued under Section 148 of the Act.

25. As noted above, there is no dispute that the impugned notice was



barred by limitation and thus, was liable to be set aside on the said ground alone. However, the petitioner had challenged the impugned notice and the order under Section 148A(d) of the Act, *inter alia*, on the ground that the same had been passed without considering the reply dated 10.06.2022 furnished by the petitioner to the notice issued under Section 148A(b) of the Act. In the aforesaid context, this court had passed the order dated 06.12.2022 (Neutral Citation: 2022:DHC:005868), the operative part of which reads as under:

- “10. Having regard to the fact that the reply filed had not been considered, the impugned order and the notice issued under Section 148 of the Act of even date, i.e., 23.07.2022 are set aside.
- 10.1 The matter is remitted to the Assessing Officer for a *de novo* hearing.
- 10.2 The Assessing Officer will grant a personal hearing to the authorised representative of the Petitioner and thereafter pass a speaking order taking into account the reply filed and the submissions tendered before him.
11. The Writ Petition is disposed of in the aforesaid terms. Consequently, the pending application shall stand closed.”

26. There is no dispute that the matter was remitted to the AO for considering afresh. However, the contention that the AO is now absolved of the timelines is unmerited. Clearly, the AO was required to pass an order in accordance with law. And, as noted above, the time period for passing such order had already elapsed on the date the impugned notice was issued. The import of the order is not to obliterate the timelines stipulated for issuing the



notice under Section 148 of the Act. On the contrary, it was incumbent on the AO to examine whether it was a fit case for issuance of a notice under Section 148 of the Act, which would not be the case if issuance of such a notice was barred by limitation.

27. In the present case, the matter had been remanded to the AO to merely consider afresh in the light of the challenge raised by the petitioner. The import of the said order dated 06.12.2022 was not to foreclose any right or contention of the parties.

28. In view of the above, the order dated 31.03.2024 issued under Section 148A(d) of the Act, and the notice dated 01.04.2024 issued under Section 148 of the Act are set aside. Any further proceedings or orders passed pursuant to the said notice are also set aside.

29. This petition is allowed in the aforesaid terms.

VIBHU BAKHRU, J

TEJAS KARIA, J

APRIL 22, 2025

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Click here to check corrigendum, if any