आयकर अपीलीय अधिकरण 'ए" न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य एवं
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM

आयकरअपील सं./ ITA No.338/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2015-2016)

Hyundai Transys INC, 105, Sindang 1 Ro Seongyeon, Myeon, Seosan, CCN 356851 Korea.	**Vs.**	The Deputy Commissioner of Income Tax, International Tax, Corporate Circle 1(1) Chennai.
[PAN: AADCD 5479L] (**अपीलार्थी**/Appellant)		(**प्रत्यर्थी**/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri. R. Sivaraman, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Shri. ARV Srinivasan, IRS, Addl.CIT.

सुनवाई की तारीख/Date of Hearing	:	18.06.2024
घोषणा की तारीख /Date of Pronouncement	:	22.07.2024

आदेश / O R D E R

PER MANU KUMAR GIRI (Judicial Member)

The captioned appeal is preferred by the assessee against the order of the Assessing Officer ('AO' in short) framing assessment for Assessment Year ('AY' in short) 2015-16 u/s.143(3) r.w.s.147 r.w.s.144C(13) of the Income Tax Act, 1961 ('the Act' in short) by order dated 12.12.2023 pursuant to the Dispute Resolution Panel-2 ('DRP' in short), Bengaluru, direction u/s 144C(5) dated 29.11.2023.

2. The assessee has raised following grounds of appeal:

"1. Ground 1-General

Hyundai Transys INC ('Hyundai INC' or 'the Appellant') submits that the assessment order ('the order') dated 12 December 2023 passed by the Deputy Commissioner of Income Tax, International Tax, Corporate Circle 1(1), Chennai ('Ld. AO') under section 143(3) r.w.s 147 r.w.s 144C(13) of the Income-tax Act, 1961 ('the Act') is bad in law and is contrary to the facts and circumstances of the present case.

The detailed grounds of appeal being independent and without prejudice to one another, including the position in law and facts is set out in the ensuing paragraphs.

2. Ground 2 Addition of Guarantee Fees received from Hyundai Transys Lear Automotive India Private Limited ('Indian Subsidiary') amounting to INR 3,908,249 (Tax effect-INR 1,641,465)

2.1. The Ld. AO and Dispute Resolution Panel ('DRP') has failed to appreciate the facts of the case and has erroneously concluded that the guarantee fees received by the Appellant amounting to INR 3,908,249 accrues and arises in India and is liable to tax in India under section 5(2) r.w.s section 9(1)(i) of the Act at the rate of 40 percent plus applicable surcharge and cess.

2.2. The Ld. AO and DRP erred on facts and in law in holding that the situs of issue of guarantee in respect of loans availed by Indian subsidiary is in India and therefore, guarantee fees was considered as income in India in terms of section 5 and section 9 of the Act without appreciating the fact that the guarantee was given by the Appellant outside India and the guarantee was given to banks outside India.

2.3. The Ld. AO and DRP erred on facts and has failed to appreciate the fact that the Appellant was holding a NIL withholding certificate under section 195 r.w.s 197 of the Act in relation to the guarantee fees received from the Indian Subsidiary and the same was produced before the Assessing Officer ('AO') during the course of reassessment proceedings.

2.4. Without prejudice to the above, the Ld. AO and DRP erred on facts and failed to appreciate that the guarantee fees received by Appellant arises only in Korea (contracting state) in terms of Article 22(1) 'Other Income' of Double Taxation Avoidance Agreement between Republic of Korea and India ('India-Korea DTAA') and hence, the same is not taxable in India.

2.5. The Ld. AO and DRP erred in law as it failed to appreciate that Article 22(2) of India-Korea DTAA shall be applicable only if the Appellant has a permanent establishment in India and the guarantee fees is effectively connected with such permanent establishment.

2.6. The Ld. AO and DRP has erred on facts and law in holding that Article 22(1) upon a conjoint reading with Article 22(2) of India-Korea DTAA shall not apply to the Appellant and therefore guarantee fee shall be taxable in India.

2.7. Having regards to the facts and circumstances of the case and the provisions of law, the Appellant submits the taxation of guarantee fees is erroneous and the addition requires to be deleted.

3. The Appellant craves leave to add to or alter, by deletion, substitution or otherwise, any or all of the above grounds of appeal, and to submit such statements, documents and papers as may be considered necessary either at or at any time before the hearing of this appeal.

Consequential Relief

The Appellant prays that directions be given to grant all such relief arising from the grounds of appeal mentioned supra as also all consequential relief thereto, including and not limited to reinstatement of appropriate amount of taxable income".

3. Before us, the appellant has filed petition for admission of additional grounds under Rule 11 of the Income Tax Appellate Tribunal Rules 1963. The following additional grounds are raised under Rule 11 of the Income Tax Appellate Tribunal Rules 1963:

'3. Ground 3: Reassessment Proceedings initiated is barred by limitation

3.1 The Ld. AO erred in facts and law without appreciating the fact that the Guarantee fee received by the Appellant amounting to INR 3,908,249 is less than the threshold limit of INR 5,000,000 prescribed under section 149(1)(b) of the Income-tax Act, 1961 ('the Act') as amended vide Finance Act, 2021, read with CBDT Instruction No. 01/2022 and as a result the case cannot be subjected to reassessment proceedings and such proceedings conducted by the Ld. AO is barred by limitation and liable to be quashed.

3.2 The Ld. AO erred in facts and law in initiating reassessment proceedings by issuing a notice under section 148 of the Act on 15 April

2021 without taking cognizance of the amended provisions of sections 148 to 151 of the Act as it existed as on the date of issuance of such notice, and the procedures prescribed thereunder are mandatory in nature and binding on the Ld. AO to follow in letter and spirit.

3.3 The Ld. AO has erred by not obtaining sanction for issuance of notice under section 148 of the Act as contemplated under section 151 of the Act".

4. Ld.Counsel submitted that by additional ground, appellant is challenging the reassessment proceedings as being barred by period of limitation. Ld.Counsel further contended that additional grounds are legal grounds which goes to the root of matter and does not require investigation into or examination of any new facts or evidence and were available before the Dispute Resolution Panel and AO.

5. The ld.Counsel has referred case laws citation to support the contention of appellant that tribunal has jurisdiction to examine a question of law filed as an additional ground which arises from facts as found by lower tax authorities below even though said issue was not presented before the lower tax authorities. The ld.Counsel has referred following case laws citations:

01 National Thermal Power Co. LTD vs. CIT, (1998) 97 Taxman 358 (Hon'ble SC)

02 CIT, Chennai vs. Indian Bank (2015) 55 taxmann.com 372 (Hon'ble Madras High Court)

03 Mavany Brothers vs. CIT, Panjim (2015) 62 taxmann.com 50 (hon'ble Bombay High Court)

04 ACIT vs. PC Jewellers Ltd (2022) 137 taxmann.com 71 (Hon'ble Delhi –Income Tax Appellate Tribunal)

6. We have heard the rival submissions. The ld.DR vehemently opposed the petition for admission of the additional grounds at belated stage.

7. In fact, dispute relating to the admission of additional grounds is no longer res integra and is settled in catena of cases by the Hon'ble Supreme Court, Hon'ble jurisdiction High Court of Madras and by the Hon'ble High Courts of different judicature.

8. The Hon'ble Supreme Court in the case *of National Thermal Power Co. Ltd. Vs CIT (229 ITR 383 SC)* held as under:

> *"7. The view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner (Appeals) takes too narrow a view of the powers of the Tribunal - vide, e.g., CIT v. Anand Prasad [1981] 128 ITR 388/5 Taxman 308 (Delhi), CIT v. Karamchand Premchand (P.) Ltd. [1969] 74 ITR 254 (Guj.) and CIT v. Cellulose Products of India Ltd. [1985] 151 ITR 499/[1984] 19 Taxman 278 (Guj.) (FB). Undoubtedly, the Tribunal will have the discretion to allow or not allow a new ground to be raised. But where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.*
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> *8. The reframed question, therefore, is answered in the affirmative, i.e., the Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee. We remand the proceedings to the Tribunal for consideration of the new grounds raised by the assessee on the merits".*

9. Similarly, the Hon'ble Jurisdictional High Court of Madras in the case of *CIT Vs Indian Bank [(2015) 230 Taxman 635 (Madras*)] held as under:

> *"4. The appellant /Revenue has challenged that portion of the order of the Tribunal allowing the raising of additional grounds contending that additional grounds ought not to have been raised before the Tribunal on the plea which was not adjudicated before the CIT (Appeals).*

5. Heard learned Standing Counsel appearing for the Revenue and perused the materials placed before this Court.

6. Rule 11 of the Income Tax Appellate Tribunal Rules provides for raising of additional grounds, which reads as follows:

"Grounds which may be taken in appeal.

11. The appellant shall not, except by leave of the Tribunal, urge or be heard in support of any ground not set forth in the memorandum of appeal, but the Tribunal, in deciding the appeal, shall not be confined to the grounds setforth in the memorandum of appeal or taken by leave of the Tribunal under this rule:

Provided that the Tribunal shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of being heard on that ground."

7. The above-said provision makes it clear that the assessee has the right to raise additional grounds and if the same is beneficial to the assessee, the same should be considered by the Tribunal. It is also seen from the order of the Tribunal that the very same issue, raised as additional grounds, has already been considered by the Tribunal in respect of the assessee's own case. Hence, as per the above-said provision, when the additional grounds is beneficial to the assessee, the Tribunal is right in allowing the same'.

10. Further, the Hon'ble High Court Bombay in the case of *Mavany Brothers Vs CIT [2015] 62 taxmann.com 50 (Bombay)* held as under:

''13. We have considered the rival contentions. The jurisdiction under Section 147/148 of the Act is an extra ordinary jurisdiction and can only be exercised when condition precedent as provided in Sections 147/148 of the Act are satisfied. It is the appellant's case that the aforesaid conditions are not satisfied inasmuch as in the absence of the Assessing Officer having the original return of income available it would not be possible for him to have a reasonable belief that income chargeable to tax has escaped assessment. This issue of jurisdiction according to the respondent - Revenue could only have been raised before the Assessing Officer and not having been raised before him, the appellant had waived its rights to raise the same. The appellant having submitted to the jurisdiction of the Assessing Officer cannot now challenge the same. This is not entirely correct. It is well settled that mere acquiescence will not give jurisdiction to an authority who has no jurisdiction. In fact this Court in CIT (Central) v. ITSC [2014] 365 ITR 68/[2013] 35 taxmann.com 443 has held that mere participation by a party in proceedings without jurisdiction will not vest/confer jurisdiction on the authority. Reason to

believe that income chargeable to tax has escaped assessment is a jurisdictional fact and only on its satisfaction does the Assessing Officer acquire jurisdiction to issue notice. Thus this lack of satisfaction of jurisdictional fact can never confer jurisdiction and an objection to it can be raised at any time even in appeal proceedings. The mere fact that no objection is taken before the Assessing Officer would not by itself bestow jurisdiction as the Assessing Officer. Such an objection can be taken in appeal also. Moreover, the Apex Court in its recent decision in Kanwar Singh Saini v. High Court of Delhi [2012] 4 SCC 307 has held that it is settled position that conferment of jurisdiction is a legislative function and cannot be conferred by consent of petitioner. An issue of jurisdiction can be raised at any time even in appeal or execution. Reliance in this regard could usefully be made to Indian Bank v. Manilal Govindji Khona [2015] 3 SCC 712. Paras 22 of the said judgment read as under:

> *"22. In Sushil Kumar Mehta case [Sushil Kumar Mehta v. Gobind Ram Bohra, [1990] 1 SCC 193] this Court has elaborately considered the relevant factual and legal aspect of the case and has laid down the law at para 10, after referring to its earlier decision of a four-Judge Bench of this Court speaking through Venkatarama Ayyar, J. in Kiran Singh v. Chaman Paswan [AIR 1954 SC 340: [1955] 1 SCR 117], which would be worthwhile to be extracted as under: (Sushil Kumar Mehta case [Sushil Kumar Mehta v. Gobind Ram Bohra, [1990] 1 SCC 193], SCC p. 199)*
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> *6. ''10.....'6.... It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr was coram non judice, and that its judgment and decree would be nullities.' (Kiran Singh case [AIR 1954 SC 340: [1955] 1 SCR 117], AIR p. 342, para 6)"*

Thus, it is open to the petitioner to raise the issue of jurisdiction before the appellate authorities.

16. So far as question no. 4 is concerned it raises an issue going to the root of the matter namely jurisdiction. In case the Tribunal after examining all the facts comes to the conclusion that the notice was without jurisdiction then the other issues as formulated herein will not arise for consideration. This is so as the foundation of proceedings on the other issues is the validity of the reopening notices. A decision on the reopening notice will determine whether the other issues are to be considered. The legal maxim sublato fundamento cadit opus i.e. when foundation is removed the superstructure falls would apply in this case. Therefore, for the

> *present we are not answering questions no. 1 to 3 as formulated by the Revenue. However, we are setting aside the impugned order in its entirety in view of the discussion herein above. The issues raised with regard to capital gains tax would be reconsidered by the Tribunal in case it comes to the conclusion that the notice dated 13/11/2000 is a notice within jurisdiction of the Assessing Officer".*

11. Therefore, in the light of above settled position of law and respectfully following the Hon'ble Supreme Court and Hon'ble High Courts judgments referred supra , we admit the additional grounds of appeal raising validity of jurisdictional notice dated 15.04.2021 u/s 148 of the Act on the anvil of limitation which goes root of the matter.

12. By preferring petition for additional ground of appeal No.3 (3.1 to 3.3), inter alia, the assessee company has challenged in this case, the jurisdiction of the AO to have issued notice dated 15.04.2021 u/s.148 of the Act as per sec.149(1)(b) of the Act (as amended by Finance Act, 2021), no notice for re-assessment could have been issued to assessee for AY 2015-16 as the time limit for issuing proceedings had expired on 31.03.2019 and the guarantee fee received by the appellant amounting to Rs.39,08,249/- is less than the threshold limit of Rs.50,00,000/- (Rupees fifty lakhs). In other words, according to the assessee, in this case, the AO had issued notice to assessee company dated 15.04.2021 u/s.148 of the Act under the erstwhile Sec.148 of the Act (as it stood prior to its amendment by the Finance Act, 2021). The action of the AO was to be deemed to have been issued to assessee u/s.148A of the Act, as substituted by the Finance Act, 2021 (as ordered by the Hon'ble Supreme Court in the case of *UoI v. Ashish Agarwal reported in [2022] 444 ITR 1 (SC) dated 04.05.2022)*. The Hon'ble Apex Court in Ashish

Agarwal (supra) having ordered that all the notices issued by AO under the erstwhile Sec.148 of the Act to be treated as issued u/s.148A of the substituted Finance Act, 2021, also gave liberty to the assessee to raise all defense available to the assessee u/s.149 of the Act, and/or which may be available under the Finance Act, 2021. In this back ground, according to the assessee, it is raising the defense that AO could not have issued notice for AY 2015-16, under new substituted Finance Act, 2021.

13. Brief facts of the case are that the assessee company is a resident of Korea and engaged in the business of manufacturing and marketing of automotive parts. It offers transmission products, automatic transmission products for combat vehicles and reduction gear boxes for high speed trains / electric locomotives. . The assessee e-filed return of income on 27/11/2015 returning declaring an income of Rs. 18,45,97,940/-. The case of the assessee was selected for scrutiny under Computer Aided Scrutiny Selection (CASS) for the AY 2015-16. The case of the assessee company was referred to Transfer Pricing Officer (TPO) with the approval of the Competent Authority. The TPO vide order u/s 92 CA (3) of the Income Tax Act, 1961 dated 20/09/2018 has not drawn any adverse inference in respect of the international transactions held by the assessee during the FY-2014-15. The scrutiny assessment proceedings were completed accepting the return of Income for the AY 2015-16 by the Jurisdictional Assessing Officer ACIT, Circle- 2(1)(1)(Intl Taxn) New Delhi. The case of the assessee was re-opened for the AY 2015- 16 with the approval of the Competent Authority and Notice u/s 148 of the Income Tax Act,

1961 dated 15/04/2021 was issued to the assessee company. The assessee in response to the issued notice e-filed return of income declaring an income of Rs. 18,45,97,940/- on 31/05/2021. Further reasons to re-open assessment proceedings was issued to the assessee vide office letter dated 06/12/2021.

14. Reasons for reopening was that the assessee company has not offered for taxation the entire amount of Rs.18,97,63,119/- for taxation as income for the AY 2015-16 and on verification with the Indian entity it was noted that the Indian entity had booked expenses to the tune of Rs.19,23,72,397/- towards payment to the assessee company in the FY 2014-15 relevant to the AY 2015-16. Hence created difference of guarantee fee of Rs.39,08,249/- which was not offered for taxation by the appellant.

15. Before us ld.Counsel contended that the guarantee fee received by the appellant amounting to Rs.39,08,249/- is less than the threshold limit of Rs.50,00,000/- (Rupees fifty lakhs) prescribed under section 149(1)(b) of the Income Tax Act, 1961 ('Act' in short) as amended vide Finance Act, 2021 read with CBDT Instruction No.01/2022, therefore, the case cannot be subjected to reassessment proceedings and is barred by limitation.

16. The ld.Counsel further AO initiated reassessment proceedings without taking cognizance of the amended provisions of section 148 to 151 of the Act as it existed on the date of issuance of impugned notice. The ld.Counsel has referred following case law citations to bolster his arguments:

01	*Union of India. Vs. Ashish Agarwal (2022) 138 taxmann.com 64) (SC)*
02	*Instruction No.01/2022 issued by Central Board of Direct Taxes regarding the implementation of judgment of the case Union of India vs. Ashish Agarwal (2022)*
03	*Ajay Bhandari vs. Union of India (2022) 139 taxmann.com 541 (Allahabad High Court)*
04	*Geetha Agarwal wife of Shri. Navratan Agarwal vs. Income Tax Officer & Ors (2022) WP No.14794/2022 (Rajasthan High Court)*
05	*Ganesh Dass Khanna vs Income Tax Officer (2023) 156 taxmann.com 471 (Delhi High Court)*
06	*Dinesh Kumar Goyal, HUF vs. Income Tax Officer, Ward 34(1) Kolkata & Ors (WPA 20669 of 2022) Calcutta High Court.*

In furtherance of his arguments, ld.Counsel has also referred co-ordinate bench order in the case of *Shri Jesudason Biji Vs The ITO (ITA No.567/Chny/2024) dated 30.05.2024*.

17. The ld.DR, Shri ARV Srinivasan, Addl.CIT relied upon the orders of lower authorities and contended that the reopening is valid in law.

18. We have heard the both parties and perused the orders of ld.CIT(A), ld.AO and case law citations paper book. It is undisputed fact that the impugned notice u/s 148 was issued to assessee on 15.04.2021 after enactment of the Finance Act, 2021 wherein the section 148 has undergone drastic change specifically in respect of limitation, quantum of escapement, approval and procedure.This is evident from the following observations as rendered by the Hon'ble Supreme Court in *Ashish Agarwal [(2022) 444 ITR 1 (SC) / 286 Taxman 183 SC / (2023) 1 SCC 617*]:

"19. However, by way of Section 148-A, the procedure has now been streamlined and simplified. It provides that before issuing any notice under Section 148, the assessing officer shall:

(i) conduct any enquiry, if required, with the approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;

(ii) provide an opportunity of being heard to the assessee, with the prior approval of specified authority;

(iii) consider the reply of the assessee furnished, if any, in response to the show-cause notice referred to in clause (b); and

(iv) decide, on the basis of material available on record including reply of the assessee, as to whether or not it is a fit case to issue a notice under Section 148 of the IT Act; and

(v) the AO is required to pass a specific order within the time stipulated.

20. Therefore, all safeguards are provided before notice under Section 148 of the IT Act is issued. At every stage, the prior approval of the specified authority is required, even for conducting the enquiry as per Section 148-A(a). Only in a case where, the assessing officer is of the opinion that before any notice is issued under Section 148-A(b) and an opportunity is to be given to the assessee, there is a requirement of conducting any enquiry, the assessing officer may do so and conduct any enquiry. Thus if the assessing officer is of the opinion that any enquiry is required, the assessing officer can do so, however, with the prior approval of the specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment".

Substituted Section 149 is the provision governing the time-limit for issuance of notice under Section 148 of the IT Act. The substituted Section 149 of the IT Act has reduced the permissible time-limit for issuance of such a notice to three years and only in exceptional cases ten years. It also provides further additional safeguards which were absent under the earlier regime pre-Finance Act, 2021."

19. The Hon'ble High Court of Allahabad in the case of *Ajay Bhandari Vs Union of India [(2022) 446 ITR 699 (Allahabad) / (2022) 288 Taxman 217 (Allahabad*) in similar situation held as under:

'7. We have carefully considered the submissions of the learned counsels for the parties and perused the record of the writ petition, the judgment of Hon'ble Supreme Court in the case of Ashish Agarwal (supra) and Circular F.No 279/Misc./M-51/2022-ITJ, dated 11.05.2022 issued by the Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, ITJ Section, New Delhi. Section 147 of the Act, 1961 as it existed till 31.03.2021, empowers the Assessing Officer to assess or reassess or recompute the loss or depreciation allowance or any other allowance, as the case may be, for the concerned assessment year in the case of an assessee if he has reason to believe that income chargeable to tax has escaped assessment, subject to the provisions of Sections 148 to 153. A pre-condition to initiate proceedings under Section 147 is the issuance of notice under Section 148. Thus, notice under Section 148 is jurisdictional notice. Section 149 provides time limit for issuance of notice under Section 148. The time limit is provided under the unamended provisions (existed till 31.03.2021) and the amended provisions (effective from 01.04.2021) as amended by the Finance Act, 2021. Unamended Section 149 and Amended Section 149 are reproduced below:

Time Limit for Notice	
Unamended Section149 of the Act, 1961	*Amended Section 149 of the Act, 1961*
149. (1) No notice under section 148 shall be issued for the relevant assessment year,- (a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b) or clause (c); (b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year;	*149. (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 accounts or other documents or*

(c) if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment. *Explanation.-In determining income chargeable to tax which has escaped assessment for the purposes of this sub-section, the provisions of Explanation 2 of section 147 shall apply as they apply for the purposes of that section.* *(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.* *(3) If the person on whom a notice under section 148 is to be served is a person treated as the agent of a non-resident under section 163 and the assessment, reassessment or recomputation to be made in pursuance of the notice is to be made on him as the agent of such non-resident, the notice shall not be issued after the expiry of a period of six years from the end of the relevant assessment year.* *Explanation.-For the removal of doubts, it is hereby clarified that the provisions of sub-sections (1) and (3), as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.*	*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 in sub-section (1) 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, share 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.*

8. In the case of Ashish Agarwal (supra), Hon'ble Supreme Court held in Paras 23, 25 and 27, as under:-

> *"23.However, at the same time, the judgments of the several High Courts would result in no reassessment proceedings at all, even if the same are permissible under the Finance Act, 2021 and as per substituted sections 147 to 151 of the IT Act. The Revenue cannot be made remediless and the object and purpose of reassessment proceedings cannot be frustrated. It is true that due to a bonafide mistake and in view of subsequent extension of time vide various notifications, the Revenue issued the impugned notices under section 148 after the amendment was enforced w.e.f. 01.04.2021, under the unamended section 148. In our view the same ought not to have been issued under the unamended Act and ought to have been issued under the substituted provisions of sections 147 to 151 of the IT Act as per the Finance Act, 2021. There appears to be genuine non-application of the amendments as the officers of the Revenue may have been under a bonafide belief that the amendments may not yet have been enforced. Therefore, we are of the opinion that some leeway must be shown in that regard which the High Courts could have done so. Therefore, instead of quashing and setting aside the reassessment*

notices issued under the unamended provision of IT Act, the High Courts ought to have passed an order construing the notices issued under unamended Act/unamended provision of the IT Act as those deemed to have been issued under section 148A of the IT Act as per the new provision section 148A and the Revenue ought to have been permitted to proceed further with the reassessment proceedings as per the substituted provisions of sections 147 to 151 of the IT Act as per the Finance Act, 2021, subject to compliance of all the procedural requirements and the defences, which may be available to the assessee under the substituted provisions of sections 147 to 151 of the IT Act and which may be available under the Finance Act, 2021 and in law. Therefore, we propose to modify the judgments and orders passed by the respective High Courts as under:

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

(ii) The requirement of conducting any enquiry with the prior approval of the specified authority under section 148A(a) be dispensed with as a one-time measure vis-a-vis 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;

(iii) The assessing officers shall thereafter pass an order in terms of section 148A(d) after following the due procedure as required under section 148A(b) in respect of each of the concerned assessees;

(iv) All the defences which may be available to the assessee under section 149 and/or which may be available under the Finance Act, 2021 and in law and whatever rights are available to the Assessing Officer under the Finance Act, 2021 are kept open and/or shall continue to be available and;

(v) The present order shall substitute/modify respective judgments and orders passed by the respective High Courts quashing the similar notices issued under unamended section 148 of the IT Act irrespective of whether they have been assailed before this Court or not.

25. Therefore, we have proposed to pass the present order with a view avoiding filing of further appeals before this Court and burden this Court with approximately 9000 appeals against the similar judgments and orders passed by the various High Courts, the particulars of some of which are referred to hereinabove. We have also proposed to pass the aforesaid order in exercise of our powers under Article 142 of the Constitution of India by holding that the present order shall govern,

not only the impugned judgments and orders passed by the High Court of Judicature at Allahabad, but shall also be made applicable in respect of the similar judgments and orders passed by various High Courts across the country and therefore the present order shall be applicable to PAN INDIA.

27. The present order shall be applicable PAN INDIA and all judgments and orders passed by different High Courts on the issue and under which similar notices which were issued after 01.04.2021 issued under section 148 of the Act are set aside and shall be governed by the present order and shall stand modified to the aforesaid extent. The present order is passed in exercise of powers under Article 142 of the Constitution of India so as to avoid any further appeals by the Revenue on the very issue by challenging similar judgments and orders, with a view not to burden this Court with approximately 9000 appeals. We also observe that present order shall also govern the pending writ petitions, pending before various High Courts in which similar notices under Section 148 of the Act issued after 01.04.2021 are under challenge."

9. The judgment of Hon'ble Supreme Court under Article 142 of the Constitution of India, in the case of Ashish Agarwal (supra) has been explained for implementation/ clarified by Instruction No.01/2022 being F.No 279/Misc./M-51/2022-ITJ, dated 11.05.2022 issued by the Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, ITJ Section, New Delhi, in exercise of powers under Section 119 of the Act, 1961, which is reproduced below:-

F. No 279/Misc./M-51/2022-ITJ
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
ITJ Section
New Delhi, Dated: 11th May, 2022

Subject: Implementation of the judgment of the Hon'ble Supreme Court dated 04.05.2022 (2022 SCC Online SC 543) (Union of India v. Ashish Agarwal) -- Instruction regarding

1. Hon'ble Supreme Court, vide its judgment dated 04.05.2022 (2022 SCC Online SC 543), in the case of Union of India v. Ashish Agarwal has adjudicated on the validity of the issue of reassessment notices issued by the Assessing Officers during the period beginning on 1st April, 2021 and ending with 30th June 2021,within the time extended by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 [hereinafter referred to as "TOLA"] and various notifications issued thereunder (these reassessment notices hereinafter referred to as "extended reassessment notices").

2. These extended reassessment notices were issued by the Assessing Officers under the provision of section 148 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") following the procedure prescribed

under various sections pertaining to reassessment namely sections 147 to 151, as they existed prior to their amendment by the Finance Act, 2021 (hereinafter referred to as "old law"). With effect from l April 2021, the old law has been substituted with new sections 147-151 (hereinafter referred to as the "new law").

3. Hon'ble Supreme Court has held that these extended reassessment notices issued under the old law shall be deemed to be the show cause notices issued under clause (b) of section 148A of the new law and has directed Assessing Officers to follow the procedure with respect to such notices. It has also held that all the defences available to assessees under section 149 of the new law and whatever rights are available to the Assessing Officer under the new law shall continue to be available. Hon'ble Supreme Court has passed this order in exercise of its power under Article 142 of the Constitution of India.

4. The implementation of the judgment of Hon'ble Supreme Court is required to be done in a uniform manner. Accordingly, in exercise of its power under section 119 of the Act, the Central Board of Direct Taxes (hereinafter referred to as "the Board") directs that the following may be taken into consideration while implementing this judgment.

5.0 Scope of the judgment:

5.1 Taking into account the decision of the Hon'ble Supreme Court in various paragraphs, it is clarified that the judgment applies to all cases where extended reassessment notices have been issued. This is irrespective of the fact whether such notices have been challenged or not.

6.0 Operation of the new section 149 of the Act to identify cases where fresh notice under section 148 of the Act can be issued:

6.1 With respect of operation of new section 149 of the Act, the following may be seen:

> *- Hon'ble Supreme Court has held that the new law shall operate and all the defences available to assessees under section 149 of the new law and whatever rights are available to the Assessing Officer under the new law shall continue to be available.*
> *- Sub-section (I) of new section 149 of the Act as amended by the Finance Act, 2021 (before its amendment by the Finance Act, 2022) reads as under:-*

149. (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 0fficer 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:

- Hon'ble Supreme Court has upheld the views of High Courts that the benefit of new law shall be made available even in respect of proceedings relating to past assessment years. Decision of Hon'ble Supreme Court read with the time extension provided by TOLA will allow extended reassessment notices to travel back in time to their original date when such notices were to be issued and then new section 149 of the Act is to be applied at that point.

6.2 Based on above, the extended reassessment notices are to be dealt with as under:

(i) AY 2013-14, AY 2014-15 and AY 2015-16: Fresh notice under section 148 of the Act can be issued in these cases, with the approval of the specified authority, only if the case falls under clause (b) of sub-section (1) of section 149 as amended by the Finance Act, 2021 and reproduced in paragraph 6.1 above. Specified authority under section 151 of the new law in this case shall be the authority prescribed under clause (ii) of that section.

(ii) AY 16-17, AY 17-18: Fresh notice under section 148 can be issued in these cases, with the approval of the specified authority, under clause (a) of sub-section (1) of new section 149 of the Act, since they are within the period of three years from the end of the relevant assessment year. Specified authority under section 151 of the new law in this case shall be the authority prescribed under clause (i) of that section.

7.0 Cases where the Assessing Officer is required to provide the information and material relied upon within 30 days:

7.1 Hon'ble Supreme Court has directed that information and material is required to be provided in all cases within 30 days. However, it has also been noticed that notices cannot be issued in a case for AY 2013-14, AY 2014-15 and AY 2015-16, if the income escaping assessment, in that case for that year, amounts to or is likely to amount to less than fifty lakh rupees. Hence, in order to reduce the compliance burden of assessees, it is clarified that information and material may not be provided in a case for AY 2013-14, AY 2014-15 and AY 2015-16, if the income escaping assessment, in

that case for that year, amounts to or is likely to amount to less than fifty lakh rupees. Separate instruction shall be issued regarding procedure for disposing these cases.

8.0 Procedure required to be followed by the Assessing Officers to comply with the Supreme Court judgment:

8.1 The procedure required to be followed by the Jurisdictional Assessing Officer/Assessing Officer, in compliance with the order of the Hon'ble Supreme Court, is as under:

> *- The extended reassessment notices are deemed to be show cause notices under clause (b) of 148A of the Act in accordance with the judgment of Hon'ble Supreme Court. Therefore, all requirement of new law prior to that show cause notice shall be deemed to have been complied with.*
> *- The Assessing Officer shall exclude cases as per clarification in paragraph 7.1 above.*
> *- Within 30 days i.e. by 2nd June 2022, the Assessing Officer shall provide to the assessees, in remaining cases, the information and material relied upon for issuance of extended reassessment notices.*
> *- The assessee has two weeks to reply as to why a notice under section 148 of the Act should not be issued, on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year. The time period of two weeks shall be counted from the date of last communication of information and material by the Assessing Officer to the assessee.*
> *- In view of the observation of Hon'ble Supreme Court that all the defences of the new law are available to the assessee, if assessee makes a request by making an application that more time be given to him to file reply to the show cause notice, then such a request shall be considered by the Assessing Officer on merit and time may be extended by the Assessing Officer as provided in clause (b) of new section 148A of the Act.*
> *- After receiving the reply, the Assessing Officer shall decide on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148 of the Act. The Assessing Officer is required to pass an order under clause (d) of section 148A of the Act to that effect, with the prior approval of the specified authority of the new law. This order is required to be passed within one month from the end of the month in which the reply is received by him from the assessee. In case no such reply is furnished by the assessee, then the order is required to be passed within one month from the end of the month in which time or extended time allowed to furnish a reply expires. If it is a fit case to issue a*

notice under section 148 of the Act, the Assessing Officer shall serve on the assessee a notice under section 148 after obtaining the approval of the specified authority under section 151 of the new law. The copy of the order passed under clause (d) of section 148A of the Act shall also be served with the notice u/s 148.
- If it is not a fit case to issue a notice under section 148 of the Act, the order passed under clause (d) of section 148A to that effect shall be served on the assessee.

Tanay Sharma
DCIT(OSD), ITJ-I

Copy to:
1. Chairman, Members and all other officer in CBDT of the rank of Under Secretary and above.
2. All Pr. Chief Commissioner of Income Tax and all Directors General of Income tax with a request to bring to the attention of all officers.
3. ADG(PR. P&P), Mayur Bhawan, New Delhi for printing in the quarterly Tax Bulletin and for circulation as per usual mailing list.
4. The Comptroller and Auditors General of india.
5. ADG (Vigilance), Mayur Bhawan, New Delhi.
6. Joint Secretary & Legal Advisor, Ministry of Law & Justice, New Delhi.
7. All Directorates of Income-tax, New Delhi and Pr. DGIT (NADT), Nagpur.
8. ITCC (3 copies).
9. ADG (System)-4, for uploading on the Department's website.
10. Data Base Cell for uploading or irsofficeronline.gov.in.
11. njrs Support@nsdl.co.in for uploading on NJRS.
12. Hindi Cell for translation.
13. Guard file."

10. Learned Additional Solicitor General of India has made a statement before us, as noted in paragraph-5 above, that as per Clause-7.1 of the Board's circular dated 11.05.2022, the notices under Section 148 relating to the Assessment Years 2013-14, 2014-15 and 2015-16, shall not attract the judgment of Hon'ble Supreme Court in the case of Ashish Agarwal (supra) and the impugned notice under Section 148 issued on 01.04.2021 for the Assessment Year 2014-15 is, therefore, clearly barred by limitation and consequently without jurisdiction. Therefore, in view of the admission made by the learned Additional Solicitor General on behalf of the respondents, we do not propose to deal with the other arguments of learned counsel for the petitioner as noted in paragraph-6 above and thus all other questions including the question of conferment of jurisdiction etc., are left open.

11. As per Clauses 6.2 and 7.1 of the Board's Circular dated 11.05.2022, if a case does not fall under Clause (b) of sub-Section (i) of Section 149 of the Act, 1961 for the Assessment Years 2013-14, 2014-15 and 2015-16 (where

the income of an assessee escaping assessment to tax is less than Rs.50,00,000/-) and notice has not been issued within limitation under the unamended provisions of Section 149, then proceedings under the amended provisions cannot be initiated.

12. For all the reasons aforestated, the impugned notice under Section 148 of the Act, 1961 issued on 01.04.2021 for the Assessment Year 2014-15 and the impugned notice dated 13.01.2022 under Section 144 of the Act, 1961 and the reassessment order dated 13.01.2022 under Section 147 read with Section 144B of the Act, 1961 for the Assessment Year 2014-15 passed by the respondent No.4 are hereby quashed. The writ petition is allowed".

20. The Hon'ble High Court of Delhi in the case *of Ganesh Dass Khanna Vs Income Tax Officer [(2024) 460 ITR 546 (Delhi) / (2023) 156 Taxmann.com 417 (Delhi)* has considered the entire conspectus of legal arguments contended by the both sides, in similar situation held as under:

"53.1 As would be evident from the extracts set forth above, both from the Finance Minister's speech and the Memorandum, the time limit for reopening under the new regime was reduced from six (06) years to three (03) years and only in respect of "serious tax evasion cases", that too, where evidence of concealment of income of Rs. 50 lakhs or more in a given period was found, the period for reopening the assessment was extended to ten (10) years. In order to ensure that utmost care was taken before invoking the extended period of limitation, the proposal was that approval should be obtained from the Principal Chief Commissioner of Income Tax, at the highest hierarchical level of the department. Likewise, the Memorandum emphasized that the new regime was forged with the hope that it would result in less litigation and would provide ease of doing business to tax payers, as there was a reduction in the time limit by which notice for assessment, reassessment and re-computation could be issued.

53.2 Thus, as per the Memorandum, in "normal cases", no notice was intended to be issued if three (03) years had elapsed from the end of the relevant AY. Notice, beyond the prescribed three (03) years from the end of the relevant AY, could be issued only in a few specific cases; one such example which is given in the Bill is where the AO was in possession of evidence that escaped income amounted to Rs. 50 lakhs or more.

53.3 In sum, the sense that one gets upon a holistic reading of the backdrop in which the new regime for reopening assessments was enacted is that where escapement of income was below Rs. 50 lakhs, the normal period of limitation, i.e., three (03) years was to apply. In comparison, the extended period of ten (10)

years would apply in serious tax evasion cases where there was evidence of concealment of income of Rs. 50 lakhs or more in the given period.

53.4 The State, perhaps, did not deem it worthwhile to chase assessees beyond three (03) years, where thealleged escaped income was less than Rs. 50 lakhs. These aspects concerning legislative policy come through if one were to read the relevant provisions of the statute referred to above in the background of the speech of the Finance Minister and the Memorandum.

Conclusion:

54. Therefore, having regard to the foregoing discussion, we are of the opinion that the impugned actions, which include orders passed under section 148A(d) and the consequent notices issued under section 148 of the amended 1961 Act, concerning AY 2016-17 and AY 2017-18 cannot be sustained. It is ordered accordingly.

55. Furthermore, the reference made in paragraphs 6.1 and 6.2(ii) of the Instruction dated 11-5-2022, to the extent it propounds the "travel back in time" theory, is declared bad in law.

56. The writ petition are disposed of in the aforesaid terms".

21. In the light of the above conspectus of matter, legal issue discussed and the judicial precedents cited (supra) the impugned notice u/s 148 dated 15.04.2021 to re-open the assessment for AY 2015-16 is barred by limitation u/s 149(1)(b) of the Substituted Act of 2021 i.e; Finance Act, 2021. Hence, all consequential reassessment proceedings pursuant to the impugned notice u/s 148 dated 15.04.2021 are set aside. We also find that the AO had no sanction or approval for issuance of notice u/s 148 as per newly substituted Finance Act, 2021. Therefore, appellant succeeds on the legal issues. Since, we have set aside the impugned notice u/s 148 dated 15.04.2021 and consequential reassessment proceedings pursuant to the impugned notice u/s 148 dated 15.04.2021, other grounds taken by

the assessee on the merits of addition becomes academic in nature and thus, same are dismissed as infructuous.

22. In result, appeal of the assessee is allowed.

Order pronounced in open court on 22nd day of July, 2024 at Chennai.

Sd/-	**Sd/-**
(मनोज कुमार अग्रवाल)	**(मनु कुमार गिरि)**
(MANOJ KUMAR AGGARWAL)	**(MANU KUMAR GIRI)**
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य / JUDICIAL MEMBER**

चेन्नई Chennai:
दिनांक Dated : 22-07-2024
KV

आदेश की प्रतिलिपि अग्रेषित /Copy to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai/Coimbatore/Madurai/Salem.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF