आयकर अपीलीय अधिकरण, हैदराबाद पीठें, हैदराबाद
INCOME TAX APPELLATE TRIBUNAL,
HYDERABAD BENCHES, HYDERABAD

BENCH: B

BEFORE SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER
AND
SHRI MADHUSUDAN SAWDIA, HON'BLE ACCOUNTANT MEMBER

ITA 344/HYD/2026 (निर्धारण वर्ष/Assessment Year: **2015-16**)		
SURYANARAYANA KOLLAPARTHI H NO 7-875/3 SUBASH NAGAR , SHAPUR NAGAR, HYDERABAD-500055, TELANGANA	**Vs.**	**ITO, WARD-11(1)** O/O ITO, WARD-11(1), KONDAPUR HYDERABAD-500084, TELANGANA
अपीलार्थी **Appellant**		प्रत्यर्थी **Respondent**
Permanent Account Number of Assessee:		**ANKPK0991M**
अपीलार्थी द्वारा/Appellant represented by:		**Shri Mohd. Afzal, Advocate**
प्रत्यर्थी द्वारा/Respondent represented by:		**Shri P Sai Krishna, Sr-AR**

सुनवाई की तारीख / Date of conclusion of hearing:	**14-10-2026**
घोषणा की तारीख / Date of pronouncement:	**14-10-2026**

आदेश / ORDER

PER RAVISH SOOD, JM:

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income Tax (Appeals), National Faceless Assessment Centre (NFAC), Delhi, dated 06/06/2025, which in turn arises from the order passed by the Assessing Officer (for short "AO") under section 147 r.w.s 144B of the Income Tax Act, 1961 (for short "the Act"), dated 23/01/2024 for

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Assessment Year (AY) 2015-16. The assessee has assailed the impugned order on the following grounds of appeal:

> "1. The order of the learned Commissioner of Income Tax (Appeals) is against the law, weight of evidence and probabilities of case.
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> 2. The learned Commissioner erred in confirming the order u/s 147 r.w.s 144B of the IT Act wherein, a notice u/s 148 dt: 04.04.2022, for the assessment year 2015-16 was issued beyond a period of 6 years from the end of the relevant assessment year in violation of the first proviso to section 149 of the IT Act, therefore, the notice u/s 148 is an invalid notice consequently the order u/s 147 r.w.s 144B of the IT Act, on the foundation of an invalid notice is also to be held as invalid.
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> 3. The learned Commissioner ought to have appreciated that the cash deposits during the period relevant to the subject assessment year are less than Rs.50,00,000/-, therefore, the notice u/s 148 and the order u/s 147 r.w.s 144B of the IT Act are in violation of provision of section 149(1)(a) of the IT Act, therefore, the learned Commissioner erred in confirming the order u/s 147 r.w.s 144B of the IT Act.
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> 4. The learned Commissioner ought to have appreciated that the deposits in the Bank are out of cash generated from the business of sale of tea and tiffins etc, therefore, erred in confirming an addition of Rs.74,92,905/- u/s 69A of the IT Act.
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> 5. The learned Commissioner erred in serving the notices u/s 250 and order u/s 250 by email whereas, the assessee opted not to communicate by email in Form No.35, therefore, erred in confirming the order of the Assessing Officer assuming that the assessee has not responded to the notices issued u/s 250 and further erred in confirming an addition of Rs.74,92,905/- u/s 69A of the IT Act.
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> 6. The learned Commissioner erred in confirming the order of the AO made u/s 147 r.w.s 144B determining the total income at Rs.78,38,296/- as against the income returned at Rs.3,07,830/.
>
> 7. The appellant craves leave to add to, amend OR modify the above grounds of appeal either before OR at the time of hearing of the appeal, if it is considered necessary."

2. Succinctly stated, the AO based on information that the assessee during the subject year had carried out substantial financial transaction, viz., (i) cash deposit in bank account maintained with State Bank of Hyderabad, Shapurnagar Branch: Rs.39,11,000/-; and (ii) cash deposits in bank account maintained with State Bank of Hyderabad, Gun foundry Branch: Rs.41,64,000/-, but had not filed his return

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of income, initiated proceedings under section 147 of the Act. Notice under section 148 of the Act, dated 04/04/2022 was issued by the AO. In response, the assessee filed his return of income for AY 2015-16 on 11/04/2022, declaring an income of Rs.3,07,834/-. Thereafter, the AO vide his order passed under section 147 r.w.s 144B of the Act, dated 23/01/2024 held the cash deposits/credit entries made in the bank account of the assessee aggregating to Rs.78,00,735/- as his unexplained money under section 69A of the Act, and after allowing the credit of the income of Rs.3,07,834/- as was already disclosed by the assessee in his return of income under the head 'business or profession', made the addition of the balance amount of Rs.74,92,905/- (Rs.78,00,735/- (-) Rs.3,07,830/-). Also, the AO made an addition of interest income of Rs.37,561/- in respect of the bank accounts maintained by the assessee with State Bank of India.

3. Aggrieved, the assessee carried the matter in appeal before the CIT(A) but without success.

4. The assessee, aggrieved with the order of the CIT(A) has carried the matter in appeal before us.

5. We have heard the Learned Authorized Representatives of both parties, perused the orders of the authorities below and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Ld. AR to drive home his contentions.

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7. Shri Mohd. Afzal, Advocate, Learned Authorized Representative (for short, "Ld. AR") for the assessee, at the threshold of hearing of the appeal, submitted that the same involves a delay of 156 days. Elaborating on the reasons leading to the delay, the Ld.AR submitted that the assessee, who is a senior citizen of 71 years of age had undergone liver transplantation in the year 2022. It was submitted that the assessee, who during the relevant period was running a small tea stall had while filing the appeal before the CIT(A) opted out of service of notices through email. The Ld. AR to buttress his contention had taken us through the Memorandum of Appeal in Form-35 filed before the CIT(A), which revealed that the assessee opted out of the service of notices/communications from the CIT(A) office through email. The Ld. AR submitted that despite the assessee having opted out of receipt of notice/communications from the CIT(A) office, no such notice intimating the fixation of hearing of the appeal was served upon him at the address provided by him at Column No.17 in Form-35. The Ld. AR further submitted that due to the aforesaid ill-health of the assessee, he could not pursue his appeal filed with the CIT(A). Elaborating further, it was submitted that it was only when the assessee's accountant had gathered about the CIT(A) order in the month of January, 2026 that he had as per his advice filed an appeal before the Tribunal which by the time involved a delay of 156 days. The Ld.AR submitted that as the delay in filing the appeal had crept in not for any lackadaisical approach adopted by the assessee, but for the bona fide reasons due to which he had remained

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oblivious of the dismissal of his appeal by the CIT(A), the delay in filing the present appeal in all fairness and in the interest of justice be condoned.

8. Per contra, Shri P. Sai Krishna, Learned Senior Departmental Representative (for short, "Ld. Sr-DR") objected to the seeking of condonation of delay involved in filing the present appeal.

9. We have given thoughtful consideration and find substance in the Ld. AR's contention that the delay in filing the present appeal stands explained by justifiable reasons. In our view, though the assessee had opted out of the service of notice/communications from the CIT(A) office through email and had specifically provided his address at Column No.17 of Form-35, but the notices intimating fixation of the appeal were not validly served as per the aforesaid mode as was opted by him. Apart from that, the fact that the assessee in the year 2022 had undergone liver transplantation and due to his ill-health could not pursue his appeal before the CIT(A) carries weight and cannot be summarily discarded. Thus, in terms of our aforesaid observations, we are of firm conviction that the delay in filing the present appeal merits to be condoned. Our aforesaid view is fortified by the recent decision of the **Hon'ble Supreme Court** in the case of **Vidya Shankar Jaiswal vs. ITO (2025) 305 Taxman 83 (SC).** The Hon'ble Apex Court, while setting aside the order of the Hon'ble High Court of Chhattisgarh, which had approved the declining of the condonation of delay of 166 days by the Tribunal, had observed that a justice-oriented and liberal approach should be adopted while considering the

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application filed by an appellant seeking condonation of the delay involved in filing the appeal.

10. Coming to the merits of the case, Shri Mohd. Afzal, Advocate, Learned Authorized Representative (for short, "Ld. AR") for the assessee, at the threshold of hearing of the appeal, submitted that the AO had grossly erred in law and facts of the case in assuming jurisdiction for framing the impugned assessment vide his order passed under section 147 r.w.s. 144B of the Act, dated 23/01/2024. Elaborating on his contention, the Ld. AR submitted that as the AO as per "first proviso" to section 149(1) of the Act (post amended) as was applicable at the time of issuing the notice under section 148 of the Act, dated 04/04/2022 was divested of his jurisdiction to issue any such notice seeking to reopen the case of the assessee for the subject year AY 2015-16 beyond 31/03/2022, i.e., beyond the time limit specified under the clause (b) of sub-section (1) of section 149 of the Act as was available on the statute before commencement of the Finance Act, 2021, therefore, the initiation of the impugned proceedings and the consequential framing of the assessment by him based on the said notice cannot be sustained and is liable to be struck down on account of invalid assumption of jurisdiction. The Ld. AR to buttress his contention had drawn our attention to section 149(1) of the Act - "first proviso" (as was made available on the statute by the Finance Act, 2021, w.e.f. 01/04/2021).

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11. Carrying his contention further, the Ld. AR submitted that though the fifth and sixth provisos of the post amended section 149 of the Act provide for excluding certain periods while computing the period of limitation, viz., (i) the time or extended time allowed to the assessee, as per show cause notice (SCN) issued under clause (b) of section 148A of the Act or the period during which the proceedings under section 148A is stayed by an order or injunction of any Court (as per "fifth proviso"); and (ii) that where immediately after the exclusion (period referred to in "fifth proviso") of the period of limitation available to the AO for passing an order under clause (d) of section 148A of the Act does not exceed seven days, such remaining period shall be extended to seven days and the period of limitation under sub-section (1) of section 149 shall be deemed to be extended accordingly (as per "sixth proviso"), but both the aforementioned provisos, i.e., "fifth proviso" and "sixth proviso" qualify the substantive amended section 149 of the Act and do not relate to the un-amended section 149 of the Act, which in turn is taken care of exclusively by the "first proviso" to section 149(1) of the Act. Accordingly, the Ld. AR based on his aforesaid contentions submitted that the time spent from the issuance of notice under section 148A(b) of the Act upto the passing of the order under section 148A(d) of the Act in terms of "fifth proviso" and "sixth proviso" cannot be excluded for reckoning the limitation period for issuance of notice under section 148 of the Act. Elaborating on his contention, the Ld. AR submitted that as the notice under section 148 of the Act, dated 04/04/2022 for the AY 2015-16 had been issued beyond the time limit specified under the

provisions of clause (b) of sub-section (1) of section 149 of the Act as was available on the statute before the commencement of the Finance Act, 2021, which expired as on 31/03/2022 (six years from the end of the assessment year, i.e., AY 2015-16), therefore, the same cannot be sustained and is liable to be quashed. The Ld. AR to buttress his contention had relied upon the judgment of the Hon'ble High Court of Telangana in the case of Cyberabad Citizens Health Services Private Limited vs. DCIT, Circle-1(1), Writ Petition No.25121 of 2024, dated 17/11/2025.

12. Per contra, Shri P Sai Krishna, Learned Senior Departmental Representative (for short, "Ld. Sr-DR") relied upon the orders of the authorities below.

13. We have heard the Learned Authorized Representatives of both parties and given thoughtful consideration qua the issue in hand before us, i.e., sustainability of the impugned order of assessment passed by the AO under section 147 r.w.s 144B of the Act, dated 23/01/2024, which in turn is based on the notice issued under section 148 of the Act, dated 04/04/2022, for the AY 2015-16.

14. Admittedly, it is a matter of fact borne from record that the impugned notice under section 148 of the Act, dated 04/04/2022 has been issued beyond the time limit specified under the provisions of clause (b) of sub-section (1) of section 149 of the Act as they stood immediately before the commencement of the Finance Act, 2021. We say so, for the reason that as per the pre-amended section 149(1)(b)

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of the Act a notice under section 148 of the Act for the AY 2015-16 could have been issued by the AO latest by 31/03/2022.

15. Considering the aforesaid factual position, we find substance in the Ld. AR's contention that as a notice under section 148 of the Act, dated 04/04/2022 had been issued beyond the time period specified under the provisions of clause (b) of sub-section (1) of section 149 of the Act, as was available on the statute prior to the commencement of the Finance Act, 2021, therefore, the same could not have been issued as per the clear mandate of the "first proviso" to section 149 of the Act as had been made available on the statute by the Finance Act, 2021. Also, we concur with the Ld. AR that the period sought to be excluded for the purpose of computing the period of limitation as contemplated in the "fifth proviso" of section 149(1) of the Act (post amended) and also the extension of time limit to seven days in a case where after the exclusion of the time limit contemplated in the "fifth proviso" to seven days (as per the "sixth proviso") of section 149(1) of the Act cannot be read into for the purpose of computing the period of limitation for issuance of notice under section 148 of the Act as contemplated in the "first proviso" of post amended section 149(1) of the Act. Our aforesaid view is fortified by the judgment of the **Hon'ble High Court of Telangana** in the case of **Cyberabad Citizens Health Services Private Limited vs. DCIT (supra)**, wherein based on exhaustive deliberations, it was observed as under:-

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"6. According to the learned Senior Counsel for the petitioner, notice under Section 148 of the Act is barred by limitation. As per the first proviso to the amended Section 149 of the Act, the impugned notice is beyond the period of six years from the Assessment Year 2017-18. The reopening of assessment proceedings have also been challenged on the ground that during pendency of the proceedings under Section 154 of the Act on the same issue, it cannot be made. The attention of this Court has been drawn to the notice dated 20.01.2022 issued for rectification of mistake and the order under Section l48A(d) of the Act passed on 22.04.2024. Reliance has been placed on the following decisions rendered by the Apex Court in Union of India v. Rajiv Bansal; High Court of Delhi in Sheetal international (P) Ltd v. Chief Commissioner of Income-tax, Central-2z; High Court of Karnataka at Bengaluru in Tarish Investment and Trading Company (P) Ltd., v. Union of India3; High Court of Rajasthan in Shree Cement Ltd., v. Assistant Commissioner of Income Tax; High Court of Bombay in Godrej Industries Ltd., v. The Assistant Commissioner of Income Tax, Circle 14(1X2), Mumbai, and by a coordinate Bench of this Court in M/s. Sri Sai Dhurga Balaji Health and Educational Welfare Society v. the Income Tax Officer6. All these decisions relate to the Assessment Year 2017-18 except the case of Godrej Industries Ltd., (supra) which relates to the Assessment Year 2014-15.

7. On the second issue, reliance has been placed on the decision of the Apex Court in the case of S.M. Overseas (P) Ltd., v. Commissioner of Income-tax. Learned Senior Counsel for the petitioner has distinguished the decision rendered by the High Court of Patna in Chandra Shekhar v. Principal Commissioner of Income-tax as it relates to the Assessment Year 2020-21 where the application of the first proviso to the amended Section 149 of the Act introduced with effect from 01.04.2021 cannot be applied. Based on the said submissions, the learned Senior Counsel for the petitioner has prayed that the impugned notice under Section 148 of the Act may be quashed and the order passed under Section 148A(d) of the Act may also be set aside.

8. On behalf of the Revenue, learned Senior Counsel for the Department has taken us to the chronology of dates and events as referred to hereinabove and thereby drawn the attention of this Court to the notice under Section 148A(b) of the Act dated 26.03.2024. It is submitted that the instant notice was issued prior to the expiry of six years period for reopening the assessment proceedings under the un-amended Section 149 of the Act for the Assessment Year 2017-18. The order under Section 148A(d) of the Act was passed on 22.04.2024. Further, the petitioner took time to file its reply on the date fixed as 10.04.2024. It is submitted that therefore, the benefit of the fifth and sixth provisos to amended Section 149 of the Act come into play. Therefore, the impugned notice under Section 148 of the Act dated 22.04.2024 is not barred by limitation.

9. Upon consideration of the rival submissions and the materials referred to hereinabove placed on record, we are of the considered view that the impugned notice under Section 148 of the Act dated 22.04.2024 relating to the Assessment Year 2017-18 is barred by limitation as per the first proviso to Section 149 of the Act brought into effect from 01.04.2021. The relevant part of amended Section 149 and the first, fifth and sixth provisos are extracted in the footnote".

10. This, we say so for the following reasons:

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In the case of Rajeev Bansal (supra), the position of law stands clear as regards the operation of amended Section 149(1) of the Act. The relevant paragraphs 49 and 53 thereof are extracted hereunder:

"49 The first proviso to Section 149(1)(b) requires the determination of whether the time limit prescribed under Section 149(1)(b) of the old regime continues to exist for the assessment year 2021-2022 and before. Resultantly, a notice under Section 148 of the new regime cannot be issued if the period of six years from the end of the relevant assessment year has expired at the time of issuance of the

(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-

(i) an asset;

(ii) expenditure in respect of a transction or in relation to an event or occasion; or

(iii) an entry or entries in the books of account,

Which has escaped assessment amounts to or in likely to amount to fifty lakh rupees or more:

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 1" 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:

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 does not exceed 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.

Notice. This also ensures that the new time limit of ten years prescribed under Section 149(1)(b) of the new regime applies prospectively. For example, for the assessment year 2012-2013, the ten year period would have expired on 31 March 2023, while the six year period expired on 31 March 2019. Without the proviso to Section 149(1)(b) of the new regime, the Revenue could have had the power to reopen assessments for the year 2012-2013 if the escaped assessment

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amounted to Rupees fifty lakhs or more. The proviso limits the retrospective operation of Section 149(1)(b) to protect the interests of the assessees."

"53 The position of law which can be derived based on the above discussion may be summarized thus: (10) Section 149(1) of the new regime is not prospective. It also applies to past assessment years; (ii) The time limit of four years is now reduced to three years for all situations. The Revenue can issue notices under Section 148 of the new regime only if three years or less have clapsed from the end of the relevant assessment year, (iii) the proviso to Section 149(1)(b) of the new regime stipulates that the Revenue can issue reassessment notices for past assessment years only if the time limit survives according to Section 149(1)(b) of the old regime, that is, six years from the end of the relevant assessment year; and (iv) all notices issued invoking the time limit under Section 149(1)(b) of the old regime will have to be dropped if the income chargeable to tax which has escaped assessment is less than Rupees fifty lakhs."

11. The first proviso) to the amended Section 149 of the Act prescribes that no notice under Section 148 of the Act shall be issued at any time in a case for the relevant assessment year beginning on or before 01.04.2021, if a notice under Section148 of the Act 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 Section 149 of the Act or as they stood immediately before the commencement of the Finance Act, 2021. For the purposes of appreciating the first proviso, the un-amended Section 149 of the Act is also extracted in the foot note10

Time limit for notice.

149. (1) No notice under section 148 shall be issued for the relevant assessment year,

(a) if four years have clapsed 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 mome chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year.

I 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 1 day of April, 2012.

12. Apparently, the fifth and sixth provisos of the amended Section 149 of the Act extracted hereinabove provide for excluding certain periods while computing the period of limitation as per the amended Section. It prescribes the time or extended time allowed to the assessee as per the show cause notice under clause (b) of Section 148 of the Act or the period during which the proceeding under Section 148A of the Act is stayed shall be excluded. The sixth proviso to the amended Section 149 of the Act also deals with exclusion of the period referred to in the fifth proviso i.e., the period of limitation available to the Assessing Officer for passing an order under clause (d) of Section 148A of the Act if it does not exceed seven days. In that event, 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, both the fifth and sixth provisos in the first place do not amount to clarification of the first proviso. These two provisos qualify the substantive amended Section 149 of the Act and do not relate to the un-amended Section 149 of the Act for which the first proviso takes care of. The contention of the learned counsel for the Revenue that the time spent from the issuance of notice under Section 148A(b) of the Act up to the passing of the order under Section 148A(d) of the Act in terms of the fifth and sixth provisos stands excluded for reckoning the limitation period for issuance of notice under Section 148 of the Act is not worth acceptance. Section 148A of the Act lays down the procedure for issuance of notice under Section 148 of the Act whereas Section 149 of the Act prescribes strict time limit within which notice under Section 148 of the Act can be issued in the prescribed circumstances. The Revenue is therefore obliged to adhere to the timeline prescribed under Section 149 of the Act for issuance of such notice and undertake the procedure before issuance of notice under Section 148A of the Act.

13. In this regard, it is apposite to refer to opinion of the Delhi High Court. Paragraphs 15 and 16 of Godrej Industries Ltd., (supra) are extracted hereunder:

"15. The validity of a notice must be judged on the basis of the law existing as on the date on which the notice is issued under Section 148 of the Act, which in the present case is 31 July 2022, by which time the Finance Act, 2021 is already on the statute and in terms thereof, no notice under Section 148 of the Act for AY 2014-15 could be issued on or after 1" April 2021 based on the first proviso to Section 149 of the Act. Therefore, the fifth proviso cannot apply in a case where the first proviso applies because, if a notice under Section 148 of the Act could not be issued beyond the time period provided in the first proviso, then the fifth proviso could not save such notices. The fifth proviso can only apply where one has to determine whether the time limit of three years and ten years in Section 149(1) of the Act are breached.

16. The sixth proviso to Section 149 of the Act has no impact as it only provides a situation where after exclusion of the time period referred to in the fifth

proviso, the time available with the Assessing Officer for passing an order under Section 148A(d) of the Act is less than 7 days, then the remaining time frame shall be extended to 7 days and limitation also stands extended by 7 days."

14. Paragraph 12 of Shree Cement Ltd., (supra) is also extracted hereunder.

"12. In this case, as it pertains to Assessment Year 2017-18, six years period would have expired on 31" March 2024. Whereas notice under Section 148 of the Act itself came to be issued on 1" May 2024. Mr. Siddharth Bapna, counsel for Revenue, made an attempt to argue that fifth and sixth provisos to Section 149(1)(b) of the Act would save the period of limitation for issuing notice under Section 148 of the Act. We are afraid we do not agree with him. Same argument was raised in Hexaware Technologies Ltd. (supra) and was rejected. The Court held, with respect to applicability of fifth and sixth provisos to Section 149(1)(b) of the Act for extension of limitation for issuing notice under Section 148 of the Act, fifth and sixth provisos are only applicable with respect to the period of limitation prescribed under Section 149(1) of the Act ie, three years or ten years, as the case may be. The Court also held that fifth and sixth provisos extend limitation for issuing notice under Section 149 of the Act, however, first proviso is an exception to the period of limitation and provides for a restriction on the notices under Section 148 of the Act being issued for assessment years up to 2021-22 (in this case, it is Assessment Year 2017-18) beyond a certain date. Therefore, the way the section would operate, is to fira decide whether a notice issued under Section 148 of the Vet is within the period of limitation under Section 149(1)(2) or (b) of the Act. To decide whether the notice is within the period of limitation under Section 149(1)(a) or (b) of the Act, the extension of time as prescribed in fifth and/or sixth proviso would be considered. The Court further held once. The notice is otherwise within the period of limitation, thereafter one has to see whether the said limit is within the prescribed restriction provided in first proviso or not. If the notice is beyond the restriction period, the notice is invalid, and the fifth and/or the sixth proviso cannot apply at this stage to extend the period of restriction as per first proviso. Hence, if a notice is not within the time prescribed under first proviso to Section 149(1) of the Act, then such period cannot be extended by fifth or sixth proviso. In Hexaware Technologies Ltd. (supra), the Court had relied upon another judgment of Bombay High Court in Godrej Industries Ltd. V. Assistant Commissioner of Income-tax [2024] 160 taxmann.com 13 (Bombay)/(2024) 338 CTR (Bom) 25, which was also authored by one of us (the Chief Justice), where paragraph No.15 reads as under:

"15. The validity of a notice must be judged on the basis of the law existing as on the date on which the notice is issued under Section 148 of the Act, which in the present case is 31" July 2022, by which time the Finance Act, 2021 is already on the statute and in terms thereof, no notice under Section 148 of the Act for AY 2014-15 could be issued on or after 1 April 2021 based on the first proviso to Section 149 of the Act. Therefore, the fifth proviso cannot apply in a case where the first proviso applies because, if a notice under Section 148 of the Act could not be issued beyond the time period provided in the first proviso, then the fifth proviso could not save such notices. The fifth proviso can only apply where one has to determine whether the time limit of three years and ten years in Section 149(1) of the Act are breached."

> 15. The reliance placed by the Revenue on the decision rendered by Patna High Court in the case of Chandra Shekhar (supra) is distinguishable as it relates to the Assessment Year 2020-21 in respect of which the notice under Section 148A(b) of the Act was issued on 28.03.2024. The petitioner therein had assailed the notice on the ground that the Assessing Officer had no jurisdiction to undertake the assessment for the Assessment Year 2020-21 after 31.03.2024 with reference to the second notice issued on 22.04.2024 as it was beyond the time limit stipulated under Section 149(1)(a) of the Act. In the aforesaid facts, the learned Court held that the combined reading of the fifth and sixth provisos meant that the first notice dated 28.03.2024 was issued well within the time limit stipulated. Therefore, the Assessment Officer has jurisdiction.
>
> 16. In view of the above discussion, the initiation of reopening of assessment by the impugned notice dated 22.04.2024 is barred by limitation being beyond the period of six (6) years reckoned from the relevant Assessment Year 2017-18 as per the un-amended Section 149 of the Act read with the first proviso thereof brought into effect from 01.04.2021."

16. We thus, in terms of our aforesaid deliberations find substance in the Ld. AR's contention that as the notice issued by the AO under section 148 of the Act, dated 04/04/2022 is barred by limitation as per the mandate of the "first proviso" to section 149 of the Act as had been made available on the statute by the Finance Act, 2021, therefore, the same cannot be sustained and also, the consequential assessment order passed by the AO on the basis of the same vide his order under section 147 r.w.s 144B of the Act, dated 23/01/2024 has to meet the same fate and is liable to be quashed.

17. We thus, in terms of our aforesaid deliberations, quash the assessment order passed under section 147 r.w.s 144B of the Act, dated 23/01/2024 for want of a valid assumption of jurisdiction.

18. As we have quashed the assessment order passed by the AO under section 147 r.w.s 144B of the Act, dated 23/01/2024, therefore, we refrain from adverting

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to the other contentions based on which the impugned order of assessment has been assailed by the assessee before us, which, thus, are left open.

19. In the result, appeal filed by the assessee is allowed in terms of our aforesaid observations.

Order pronounced in the open court on 14th October, 2026.

Sd/-	Sd/-
MADHUSUDAN SAWDIA	**RAVISH SOOD**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Hyderabad.
Dated: 14th October, 2026.

OKK/SPS

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