IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment delivered on: 30.05.2025*

\+ **W.P.(C) 2068/2015**

U.K. PAINTS (OVERSEAS) LTD .....Petitioner

versus

ASSTT.COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE.8, & ORS. .....Respondents

\+ **W.P.(C) 2574/2015**

MR.K.S.DHINGRA, ...Petitioner

versus

ASSTT.COMMISSIONER OF INCOME TAX,CENTRAL CIRCLE-8, & ORS. .....Respondents

\+ **W.P.(C) 11218/2015**

BJN HOLDINGS (I) LTD .....Petitioner

versus

DY.COMMISSIONER OF INCOME TAX CENTRAL CIRCLE-8 & ORS. .....Respondents

\+ **W.P.(C) 11219/2015**

U.K. PAINTS (OVERSEAS)LTD. .....Petitioner

versus

DY. COMMISSIONER OF INCOME TAX CENTRAL CIRCLE-8 & ORS. .....Respondents

\+ **W.P.(C) 9189/2016**

U.K. PAINTS (OVERSEAS) LTD .....Petitioner

versus

DY. COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE -8, & ORS. .....Respondents

+ **W.P.(C) 9465/2016**

BJN HOLDINGS (I) LTD. .....Petitioner

versus

DY. COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE -8, & ORS. .....Respondents

+ **W.P.(C) 5759/2017**

K.S. DHINGRA .....Petitioner

versus

ASSTT. COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE - 8 & ANR. .....Respondents

+ **W.P.(C) 12405/2018**

BJN HOLDINGS (I) LTD. .....Petitioner

versus

ASSTT. COMMISSIONER OFINCOME TAX, CENTRAL CIRCLE -8, & ANR. .....Respondents

+ **W.P.(C) 12406/2018**

U.K. PAINTS (OVERSEAS) LTD. .....Petitioner

versus

ASSTT. COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE -8 & ANR. .....Respondents

+ **W.P.(C) 4230/2022**

BJN HOLDINGS (I) LTD (WRONGLY TREATED AS SUCCESSOR IN INTEREST OF BJN HOLDINGS LTD) .....Petitioner

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ORS. .....Respondents

\+ **W.P.(C) 4969/2022**

BJN HOLDINGS (I) LTD (WRONGLY TREATED AS SUCCESSOR IN INTEREST OF BJN HOLDINGS LTD) .....Petitioner

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ORS. .....Respondents

\+ **W.P.(C) 13184/2019**

U.K. PAINTS (OVERSEAS) LIMITED .....Petitioner

versus

DEPUTY COMMISSIONER OF INCOME-TAX & ORS. .....Respondents

\+ **W.P.(C) 13204/2019**

BJN HOLDINGS (I) LTD[WRONGLY TREATED ASSUCCESSOR IN INTEREST OF BJN HOLDINGS LTD.] .....Petitioner

versus

DEPUTY COMMISSIONER OF INCOME-TAX CENTRAL CIRCLE 8, & ORS. .....Respondents

\+ **W.P.(C) 444/2022**

U K PAINTS (OVERSEAS) LIMITED .....Petitioner

versus

ASSISTANT COMMISSIONER OF INCOME TAX CENTRAL CIRCLE 8 & ANR. .....Respondents

\+ **W.P.(C) 688/2022**

U K PAINTS (OVERSEAS) LIMITED .....Petitioner

versus

DEPUTY COMMISSIONER OF INCOME TAX & ORS. .....Respondents

+ **W.P.(C) 3519/2022**

U K PAINTS (OVERSEAS) LIMITED .....Petitioner

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ANR. .....Respondents

+ **W.P.(C) 5034/2022**

BJN HOLDINGS (I) LTD. (WRONGLY TREATED AS SUCCESSOR IN INTEREST OF BJN HOLDINGS LTD) .....Petitioner

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ORS. .....Respondents

Counsel for the petitioners:

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Mr. Indruj Singh Rai, Mr. Sanjeev Menon, Mr. Rahul Singh, Mr. Anmol Jagga & Mr. Gaurav Kumar, Advs.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MR JUSTICE TEJAS KARIA

JUDGMENT

VIBHU BAKHRU, J

1. These petitions impugn separate notices [**impugned notices**] issued under Section 148 of the Income Tax Act, 1961 [**the Act**],

whereby the concluded assessments of the petitioners for various years were sought to be re-opened. A tabular statement setting out the dates of the impugned notices and the assessment years in these batch of petitions, is set out below:

W.P. (C). No.	**Assessment Year**	**Petitioners**	**Date of impugned notice under section 148 [limitation as per section 149]**
2068 of 2015	1997-98	U.K. Paints (Overseas) Ltd.	27.03.2014 **[31.03.2004]**
11219 of 2015	1998-99	U.K. Paints (Overseas) Ltd.	27.03.2015 **[31.03.2005]**
9189 of 2016	1999-00	U.K. Paints (Overseas) Ltd.	31.03.2016 **[31.03.2006]**
12406 of 2018	2001-02	U.K. Paints (Overseas) Ltd.	26.03.2018 **[31.03.2008]**
13184 of 2019	2002-03	U.K. Paints (Overseas) Ltd.	15.03.2019 **[31.03.2009]**
444 of 2022	2003-04	U.K. Paints (Overseas) Ltd.	20.09.2020 and 20.01.2021 **[31.03.2010]**
688 of 2022	2004-05	U.K. Paints (Overseas) Ltd.	31.03.2021 **[31.03.2011]**
3519 of 2022	2005-06	U.K. Paints (Overseas) Ltd.	31.03.2021 **[31.03.2012]**
2574 of 2015	1997-98	K. S. Dhingra	27.03.2014 **[31.03.2004]**
11218 of 2015	1998-99	BJN Holdings (I) Ltd.	27.03.2015 **[31.03.2005]**
9465 of 2016	1999-00	BJN Holdings (I) Ltd.	31.03.2016 **[31.03.2006]**
5759 of 2017	2000-01	K. S. Dhingra	29.03.2017 **[31.03.2007]**
12405 of 2018	2001-02	BJN Holdings (I) Ltd.	26.03.2018 **[31.03.2008]**
13204 of 2019	2002-03	BJN Holdings (I) Ltd.	25.03.2019 **[31.03.2009]**
4230 of 2022	2003-04	BJN Holdings (I) Ltd.	31.03.2021 **[31.03.2010]**
4969 of 2022	2004-05	BJN Holdings (I) Ltd.	31.03.2021 **[31.03.2011]**
5034 of 2022	2005-06	BJN Holdings (I) Ltd.	31.03.2021 **[31.03.2012]**

2. The petitioners have challenged the impugned notices on several grounds, including: (a) that the notices were issued in the name of a non-existing entity; (b) that the reasons recorded for issuance of the impugned notices did not pertain to the relevant assessment year in respect of which the notices were issued; (c) that the petitioners were non-residents at the material time and, therefore, the information regarding an asset located overseas did not present any reason to believe that the income of the petitioners had escaped assessment; and (d) that the impugned notices are barred by limitation as they were issued beyond the period of six years from the end of the relevant assessment year.

3. In the present case, arguments were heard solely on the ground of limitation and the present common order is confined to the question whether the impugned notices were issued beyond the prescribed period from the end of the relevant assessment year.

4. The controversy, essentially, relates to the application of clause (c) of sub-section (1) of Section 149 of the Act, which was introduced by virtue of the Finance Act, 2012 (Act 23 of 2012). In terms of the said clause, the issuance of notice under Section 148 of the Act, in respect of any income in relation to any asset located outside India, which had escaped assessment, was not proscribed for a period of sixteen years from the end of the assessment year in which such income was chargeable to tax. Clause (c) was inserted by virtue of the Finance Act, 2012 and accordingly, the Assessee contends that it would be apply only

to cases where the limitation for re-opening the assessment had not already expired.

5. The Revenue counters the same and contends that Section 149(1)(c) of the Act would be applicable retrospectively. Thus, the assessments for the assessment years could be opened even where the same stood concluded by expiry of the limitation as was applicable prior to insertion of said Clause (c).

6. As stated above, the principal question to be addressed is whether the impugned notices are barred by time insofar as they pertain to assessment years in respect of which income escaping assessment could not be assessed or re-assessed under Section 147 of the Act on account of the period for re-opening such assessments having expired prior to the insertion of clause (c) in sub-section (1) to Section 149 of the Act.

7. Section 147 of the Act enables the Assessing Officer [**AO**] to initiate proceedings of assessment or re-assessment. In terms of Section 147 of the Act as was in force at the material time, the AO could assess or reassess income for an assessment year where the original assessment had been concluded, provided the AO had reasons to believe that income chargeable to tax for the relevant year had escaped assessment. The AO could assume jurisdiction to assess or reassess such income by issuing a notice under Section 148 of the Act. However, Section 149 of the Act proscribes issuance of a notice under Section 148 if the period prescribed under the said section has expired.

8. Section 149(1) of the Act, as amended by the Direct Tax Laws (Second Amendment) Act, 1989, did not proscribe the issuance of a notice in certain cases even if seven years, but not more than ten years, had elapsed from the end of the relevant assessment year.

9. Section 149(1) of the Act as so amended reads as under:

> "149. **Time limit for notice**.– (1) No notice under section 148 shall be issued for the relevant assessment year,—
>
> (*a*) in a case where an assessment under sub-section (3) of section 143 or section 147 has been made for such assessment year,—
>
> (*i*) if four years have elapsed from the end of the relevant assessment year, unless the case falls under sub-clause (*ii*) or sub-clause (*iii*);
>
> (*ii*) if four years, but not more than seven 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 rupees fifty thousand or more for that year;
>
> (*iii*) if seven years, but not more than ten 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 rupees one lakh or more for that year;
>
> (*b*) in any other case,—
>
> (*i*) if four years have elapsed from the end of the relevant assessment year, unless the case falls under sub-clause (*ii*) or sub-clause (*iii*);
>
> (*ii*) if four years, but not more than seven 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 rupees twenty-five thousand or more for that year;

(*iii*) is seven years, but not more than ten 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 rupees fifty thousand or more for that year.

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."

10. Section 149 of the Act was substituted by virtue of the Finance Act, 2001 (Act 14 of 2001) with effect from 01.06.2001 to read as under:

"**149. Time limit for notice**.— (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);

(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.

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 two years from the end of the relevant assessment year."

11. As is apparent from the above, no notice under Section 148 of the Act could be issued in respect of a relevant assessment year if more than four years had elapsed unless the income, which had escaped assessment amounted to or was likely to amount to ₹1,00,000/- or more in respect of that assessment year. However, in such a case, the assessments could be opened beyond the period of four years, but not more than six years from the end of the relevant assessment year. In terms of the Explanation to Section 149(1) of the Act, the provisions of Explanation 2 of Section 147 of the Act were also applicable in determining the income chargeable to tax which had escaped.

12. Section 147 of the Act as was in force at the material time reads as under:

"**147. Income escaping assessment**.— If the Assessing Officer, has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of Sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in Sections 148 to 153 referred to as the relevant assessment year):

Provided that where an assessment under sub-section (3) of Section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the

relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under Section 139 or in response to a notice issued under sub-section (1) of Section 142 or Section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year.

Explanation 1.—Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

Explanation 2.—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:—

(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income tax;

(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

(*c*) where an assessment has been made, but—

(*i*) income chargeable to tax has been underassessed; or

(*ii*) such income has been assessed at too low a rate; or

(*iii*) such income has been made the subject of excessive relief under this Act; or

(*iv*) excessive loss or depreciation allowance or any other allowance under this Act has been computed."

13. Section 147 of the Act remained materially the same. However, the Second Proviso was introduced to Section 147 of the Act by virtue of the Finance Act, 2008 (Act 18 of 2008), which reads as under:

> "Provided further that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment."

14. Section 147 of the Act was further amended by virtue of the Finance Act, 2009 (Act 33 of 2009) and Explanation 3 was introduced, which reads as under:

> "*Explanation* 3.—For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of Section 148."

15. Section 147 of the Act was amended by the Finance Act, 2012 (Act 23 of 2012). The said Section as amended reads as under:

> "**147. Income escaping assessment**.— If the Assessing Officer, has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of Sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation

allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in Sections 148 to 153 referred to as the relevant assessment year):

Provided that where an assessment under sub-section (3) of Section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under Section 139 or in response to a notice issued under sub-section (1) of Section 142 or Section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year:

Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year:

Provided also that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.

Explanation 1.—Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

Explanation 2.—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:—

(*a*) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income tax;

(*b*) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

(*b-a*) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under Section 92-E;

(*c*) where an assessment has been made, but—

(*i*) income chargeable to tax has been underassessed; or

(*ii*) such income has been assessed at too low a rate; or

(*iii*) such income has been made the subject of excessive relief under this Act; or

(*iv*) excessive loss or depreciation allowance or any other allowance under this Act has been computed.

(*d*) where a person is found to have any asset (including financial interest in any entity) located outside India.

Explanation 3.—For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the

reasons for such issue have not been included in the reasons recorded under sub-section (2) of Section 148.

***Explanation 4.*—For the removal of doubts, it is hereby clarified that the provisions of this section, 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**."

[emphasis added]

16. Section 147 of the Act was also amended thereafter by the Finance Act, 2016 (Act 28 of 2016). However, the amendments introduced are not material for the purpose of the present petition. Section 147 of the Act was substituted by the Finance Act, 2021 (Act 13 of 2021) and as currently in force reads as under:

> "**147. Income escaping assessment**.— If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of Sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (hereafter in this section and in Sections 148 to 153 referred to as the relevant assessment year).
>
> *Explanation*.—For the purposes of assessment or reassessment or recomputation under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of Section 148-A have not been complied with."

17. Section 149 of the Act was also amended by the Finance Act, 2012 (Act 23 0f 2012) *vide* which Clause (c) was introduced with effect

from 01.07.2012. Section 149 of the Act as in force with effect from 01.07.2012 is set out below:

> "**149. Time limit for notice**.— (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.
>
> (*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 re-computation 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."

[emphasis added]

18. The said Section remained unchanged till it was substituted by the Finance Act, 2021 (Act 13 of 2021). There were further amendments to the said Section by the Finance Act, 2022 (Act 6 of 2022) and the Finance Act, 2023 (Act 8 of 2023) and the Finance Act, 2024 (Act 15 of 2024). However, the provisions of Section 149(1) of the Act as amended by the Finance Act, 2012 (Act 23 of 2012) are relevant for the purposes of the present petition.

19. As is apparent from the plain language of clause (c) of Section 149(1) of the Act as was brought in force with effect from 01.07.2012, the prohibition to issue notice would not apply in respect of income in relation to an asset located outside India, which was chargeable to tax but had escaped assessment till the expiry of sixteen years from the relevant assessment year.

20. As noted above, it is contended on behalf of the petitioners that clause (c) of Section 149(1) of the Act was not operative retrospectively and therefore, would be applicable only in respect of those assessment years in respect to which assessments had not been concluded.

21. The Revenue contends to the contrary. According to the Revenue, the operation of clause (c) could not be curtailed by excluding the assessment years in respect of which the limitation to re-open the

assessments had expired prior to the introduction of clause (c), that is, prior to 01.07.2012. The Revenue's contention rests on Explanation to Section 149 of the Act, whereby it is clarified that the provisions of sub-sections (1) and (3) of Section 149 of the Act as amended by Finance Act, 2012 (Act 23 of 2012) was also applicable for any assessment year beginning on or before 1st day of April, 2012.

22. The question whether clause (c) of Section 149(1) of the Act as introduced with effect from 01.07.2012 was operative retrospectively was considered by the Division Bench of this Court in ***Brahm Datt v. Assistant Commissioner of Income-Tax & Others***[1]**.** In that case, the AO had issued a notice dated 24.03.2015 under Section 148 of the Act for initiation of the reassessment proceedings in respect of the assessee for AY 1998-99. It was contended on behalf of the assessee that reassessment proceedings under Section 147 of the Act in respect of AY 1998-99 could be initiated within the maximum period of six years from the end of the relevant assessment year. The limitation for reopening of said assessment expired on 31.03.2005. It was contended that the concluded assessment in respect of which the period of limitation for reopening had expired prior to Section 149(1) (as introduced by the Finance Act, 2012) coming into force, could not be reopened by virtue of Section 149(1)(c) of the Act.

23. In ***Brahm Datt v. Assistant Commissioner of Income-Tax & Others***[1] this Court referred to the decisions of the Supreme Court in

[1] Neutral Citation No.:2018:DHC:7709-DB

K.M. Sharma v. Income Tax Officer[2] and ***S.S. Gadgil v. Lal & Co.***[3] and held that the aforesaid decisions were applicable to the facts of the case. The relevant extract of the decision of the Supreme Court in ***K.M. Sharma v Income Tax Officer***[2], as quoted by this court in ***Brahm Datt v. Assistant Commissioner of Income-Tax & Others***[1] and along with the conclusion, is set out below:

> "13. In *KM Sharma's case* (supra) the assesse's land was acquired under the Land Acquisition Act, 1894 and an award was passed in 1967 granting compensation in favour of the assessee. Thereafter, the Additional District Judge by judgment dated 20.05.1980 held the assessee to be entitled to 1/32th share of the compensation and the assessee was granted total compensation of ₹1,18,810 in the year 1981. Subsequently, by another judgment dated 31.07.1991, the assessee was awarded sum of ₹1,10,20,624, which was received by it between 15.10.1992 and 25.05.1993. The said amount comprised of principal compensation as well as interest up to 18.05.1992. As land acquired was agricultural land, principal amount was not chargeable to tax; however, interest amounting to ₹76,84,829 was chargeable on year to year basis. The assessee claimed that proceedings till assessment year 1982-83 had already attained finality and therefore, filed letter requesting the assessing officer to initiate proceedings for subsequent assessment years for bringing to tax interest component relatable to the said assessment years. The assessee was, however, issued notices under section148 of the Act for fifteen assessment years, viz., assessment years 1968-69 to 1971-72 and assessment years 1981-82 to 1992-93 which were challenged on the ground of limitation. This court declined to exercise jurisdiction; on appeal, the Supreme Court held that the provision regulating period of limitation ought to receive strict construction. The Supreme Court held that the law of limitation was intended to give certainty and

[2] (2002) 254 ITR 772
[3] (1964) 53 ITR 231

finality to legal proceedings and therefore, proceedings, which had attained finality under the existing law due to bar of limitation, could not be held to be open for revival unless the amended provision was clearly given retrospective operation so as to allow upsetting of proceedings, which had already been completed and attained finality. The observations of the Supreme Court are reproduced hereunder:

> "*10. The main question that has been raised on behalf of the learned counsels appearing for the parties is whether the provisions of sub-section (1) of section 150 as amended can be availed for reopening assessments, which have attained finality and could not be reopened due to bar of limitation, that was attracted at the relevant time to the proposed reassessment proceedings under the provisions of section 149.*
>
> *11. The submission made on behalf of the appellant is that neither the provisions of sub-section (1) nor sub-section (2) can be read as giving more than intended operation to the said provision. The provisions, it is argued, do not permit the authorities to reopen assessments, which have become final and reassessment of which had become barred by time before 1.4.1989 when section 150(1) was amended Reliance is placed on the decision in S.S. Gadgil v. Lal & Co. [1964] 53 ITR 231.*
>
> *12. The learned counsel appearing on behalf of the department has made an effort to persuade this Court to accept his construction of the provisions of section 150(1) and (2). It is argued that it is for the specific purpose of assessing income, which might accrue on the basis of any decision of any Court in any proceeding in any other law, that the provision has been amended to lift bar of limitation for reassessment.*
>
> *13. Fiscal statute, more particularly a provision such as the present one regulating period of limitation must receive strict construction. The law of limitation is intended to give certainty and finality to legal proceedings and to avoid exposure to risk of litigation to litigant for indefinite period on future unforeseen events. Proceedings, which have attained finality under*

existing law due to bar of limitation cannot be held to be open for revival unless the amended provision is clearly given retrospective operation so as to allow upsetting of proceedings, which had already been concluded and attained finality. The amendment to subsection (1) of section 150 is not expressed to be retrospective and, therefore, has to be held as only prospective. The amendment made to sub-section (1) of section 150 which intends to lift embargo of period of limitation under section 149 to enable authorities to reopen assessments not only on the basis of orders passed in proceedings under the Act but also on order of a Court in any proceedings under any law, has to be applied prospectively on or after 1.4.1989 when the said amendment was introduced to sub-section (1). The provision in sub-section (1), therefore, can have only prospective operation to assessments, which have not become final due to expiry of period of limitation prescribed for assessment under section 149.

14. To hold that the amendment to sub-section (1) would enable the authorities to reopen assessments, which had already attained finality due to bar of limitation prescribed under section 149 as applicable prior to 1.4.1989, would amount to give sub section (1) a retrospective operation which is neither expressly nor impliedly intended by the amended sub-section.

15. On behalf of the assessee before the High Court and in this Court reliance has been placed on the provisions contained in sub-section (2) of section 150. It is submitted that the provision contained in sub-section (2) of section150 is in the nature of clarification or Explanation to sub section(1). Sub-section (2) makes it clear that the embargo of period of limitation lifted under sub section (1) for proposed reassessments based on order in proceedings under appeal, reference or revision, as the case may be, would not apply to assessments which have attained finality due to bar of limitation applicable at the relevant time.

16. The High Court rejected the above contention of the assessee on the ground that on the amendment introduced with effect from 1.4.1989 in sub-section (1),

which enables reopening of assessment based on any Order of 'Court in any proceedings in any law', there is no corresponding amendment made in subsection (2) of Section 150 to bar reassessment based on Order of Court passed in any proceedings in any law in cases where prescribed period of litigation for reassessment had already expired.

17. We do not find the above reasoning of the High Court is sound. The plain language of sub-section (2) of Section 150 clearly restricts application of sub-section (1) to enable the Authority to reopen assessments which have not already become final on the expiry of prescribed period of limitation under Section 149. As is sought to be done by the High Court, sub-section (2) of Section 150 cannot be held applicable only to reassessments based on Orders 'in proceedings under the Act' and not to Orders of Court 'in proceedings under any other law'. Such an interpretation would make the whole provision under Section 150 discriminatory in its application to assessments sought to be reopened on the basis of Orders under the IT Act and other assessments proposed to be reopened on the basis of Orders under any other law. Interpretation, which creates such unjust and discriminatory situation, has to be avoided. We do not find that sub-section (2) of section 150 has that result. Sub-section (2) intends to insulate all proceedings of assessments, which have attained finality due to the then existing bar of limitation. To achieve the desired result it was not necessary to make any amendment in sub-section (2) corresponding to sub-section (1), as is the reasoning adopted by the High Court.

18. Sub-section (2) aims at putting embargo on reopening assessments, which have attained finality on expiry of prescribed period of limitation. Sub-section (2) in putting such embargo refers to whole of sub-section (1) meaning thereby to insulate all assessments, which have become final and may have been found liable to reassessments or re-computation either on the basis of Orders in proceedings under the Act or Orders of Courts passed under any other law. The High Court,

therefore, was in error in not reading whole of amended sub-section (1) into sub-section (2) and coming to the conclusion that reassessment proposed on the basis of order of Court in proceedings under Land Acquisition Act could be commenced even though the original assessments for the relevant years in question have attained finality on expiry of period of limitation under Section 149 of the Act. On a combined reading of sub-section (1) as amended with effect from 1.4.1989 and sub-section (2) of Section 150 as it stands, in our view, a fair and just interpretation would be that the Authority under the Act has been empowered only to reopen assessments, which have not already been closed and attained finality due to the operation of the bar of limitation under Section 149.

19. This Court took similar view in the case of S.S. Gadgil (supra) in somewhat comparable situation arising from the retrospective operation given to Section 34(I) of Income Tax Act, 1922 as amended with retrospective effect from 1.4.1956 by the Finance Act of 1956. In the case of S.S. Gadgil (supra) admittedly under clause (iii) of the proviso to Section 34(I) of the Indian Income Tax Act, 1922, as it then stood, a notice of assessment or reassessment could not be issued against a person deemed to be an agent of a non-resident under Section 43, after the expiry of one year from the end of the year of assessment. The Section was amended by Section 18 of the Finance Act, 1956, extending this period of limitation to two years from the end of the assessment year. The amended was given retrospective effect from April 1, 1956. On March 12, 1957, the Income Tax Officer issued a notice calling upon the assessee to show cause why, in respect of the assessment year 1954-55, the assessee should not be treated as an agent under Section 43 in respect of certain non residents. The case of the assessee, inter alia, was that the proposed action was barred by limitation as right to commence proceedings of assessment against the assessee as an agent of non-resident for the assessment year 1954-55 ended on 31.3.1956, under the Act before it was amended in 1956.

This Court in the case of S.S. Gadgil (supra) accepted the contention of the assessee and held as under:

". The legislature has given to section 18 of the Finance Act, 1956, only a limited retrospective operation, i.e., up to April 1, 1956, only. That provision must be read subject to the rule that in the absence of an express provision or clear implication, the legislature does not intend to attribute to the amending provision a greater retrospectivity than is expressly mentioned, nor to authorise the Income-tax Officer to commence proceedings which before the new Act came into force had by the expiry of the period provided become barred."

20. On a proper construction of the provisions of Section 150 (1) and the effect of its operation from 1.4.1989, we are clearly of the opinion that the provisions cannot be given retrospective effect prior to 1.4.1989 for assessments which have already become final due to bar of limitation prior to 1.4.1989. Taxing provision imposing a liability is governed by normal presumption that it is not retrospective and settled principle of law is that the law to be applied is that which is in force in the assessment year unless otherwise provided expressly or by necessary implication. Even a procedural provision cannot in the absence of clear contrary intendment expressed therein be given greater retrospectivity than is expressly mentioned so as to enable the Authorities to affect finality of tax assessments or to open up liabilities, which have become barred by lapse of time. Our conclusion, therefore, is that sub-section (1) of Section 150, as amended with effect from 1.4.1989, does not enable the Authorities to reopen assessments, which have become final due to bar of limitation prior to 1.4.1989 and this position is applicable equally to reassessments proposed on the basis of Orders passed under the Act or under any other law."

14. The ratio of *K.M Sharma* and *S.S. Gadgil*, in the opinion of this court covers the facts of this case. Reassessment for 1998-99 could not be reopened beyond

> 31.03.2005 in terms of provisions of Section 149 of the Act as applicable at the relevant time. The petitioner's return for assessment year 1998-99 became barred by limitation on 31.03.2005. The question of revival of the period of limitation for reopening assessment for AY 1998-99 by taking recourse to the subsequent amendment made in Section 149 of the Act in the year 2012, i.e., more than 8 years after expiration of limitation on 31.03.2005, has been dealt with by the Supreme Court in *K.M. Sharma* (*supra*)".

24. As noted above, this Court found that the decision of ***K.M. Sharma v. Income Tax Officer***[2] covered the facts in the case. The Court also referred to the decisions of the Supreme Court in ***Sri Prithvi Cotton Mills & Anr. v. Broach Borough Municipality & Ors.***[4] and in ***Govind Das & Ors. v. Income Tax Officer & Anr.***[5] in support of its view that the provisions of Section 149(1)(c) of the Act would not have any retrospective operations.

25. We consider it apposite to also extract following passages from the decision in ***Brahm Datt v. Assistant Commissioner of Income-Tax & Others***[1]:

> "16. It has been said that "the government in all its actions is bound by rules fixed and announced beforehand—rules which make it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances, and to plan one's affairs on the basis of this knowledge" *(Ref. FA Hayek, "Road to Serfdom", 1944*). In this case, the interpretation proposed by the revenue has the potential of arming its authorities to re-open settled matters, in respect of issues where the citizen could genuinely be sanguine and had no obligation of the kind which the Revenue

[4] (1971) 79 ITR 136
[5] (1976) 103 ITR 123

seeks to impose by the present amendment. All the more significant, is the fact that absent a clear indication, every statute is presumed to be prospective. The revenue had sought to contend that the amendment (to Section 149) is merely procedural and no one has a vested right to procedure; and that procedural amendments can be given effect any time, even in ongoing proceedings.

17. This court is of the opinion that there is no merit in the revenue's contention. In *Sri Prithvi Cotton Mills Vs Broach Borough Municipality, AIR 1970 SC 192*, examined the validity of the retrospective amendment of a statute in light of Article 19(1)(g) of the Constitution of India, i.e. a fundamental right to practice any profession, or to carry on any occupation, trade or business. The court said:

> "*In testing whether a retrospective imposition of a tax operates so harshly as to violate fundamental rights under article 19(1)(g), the factors considered relevant include the context in which retroactivity was contemplated such as whether the law is one of validation of taxing statute struck-down by courts for certain defects; the period of such retroactivity, and the decree and extent of any unforeseen or unforeseeable financial burden imposed for the past period etc."*

18. In *Govinddas v Income Tax Officer AIR 1977 SC 552* the Supreme Court held that Section 171 (6) of the Income Tax Act was prospective and inapplicable for any assessment year prior to 1st April, 1962, the date on which the Act came into force and observed that:

> *"11. Now it is a well settled rule of interpretation hallowed by time and sanctified by judicial decisions that, unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The*

> *general rule as stated by Halsbury in Vol. 36 of the Laws of England (3rd Edn.) and reiterated in several decisions of this Court as well as English courts is that all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospectively and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only."*
>
> In *Commissioner of Income Tax v Scindia Steam Navigation Co. Ltd* AIR 1961 SC 1633, it was held that as the liability to pay tax is computed according to the law in force at the beginning of the assessment year, i.e., the first day of April, any change in law upsetting the position and imposing tax liability after that date, even if made during the currency of the assessment year, unless specifically made retrospective, does not apply to the assessment for that year. These principles were reiterated in *Commissioner of Income Tax v Vatika Township (P) Ltd [2014] 367 ITR 466*."

26. It is apparent from the above that the issue involved is squarely covered in favour of the petitioners. However, it is contended on behalf of the Revenue that the said decision requires reconsideration as the court had not noticed the Explanation to Section 149 of the Act.

27. Before proceeding further, we consider it apposite to refer to the decisions in ***J.P. Jani, Income-Tax Officer, Circle IV Ward G,***

Ahmedabad & Anr. v. Induprasad Devshanker Bhatt[6] and ***S.S. Gadgil v. Lal & Co.***[3]**.**

28. In ***J.P. Jani, Income-Tax Officer, Circle IV Ward G, Ahmedabad & Anr. v. Induprasad Devshanker Bhatt***[6], the Supreme Court set aside a notice for initiation of proceedings under Section 147(a) of the Act in respect of AY 1947-48. In that case, the assessment for AY 1947-48 was completed on 31.01.1952 under the Indian Income Tax Act, 1922. Thereafter, the ITO had, on the basis of information received, issued a notice under Section 34(1)(a) of the Income Tax Act, 1922 for re-assessing the assessee's income in respect of AY 1947-48. Thereafter, the re-assessment proceedings culminated in an order dated 09.03.1957. The assessee successfully appealed the said decision to the Assistant Appellate Commissioner and by an order dated 05.01.1963, the Assistant Appellate Commissioner set aside the re-assessment order dated 29.03.1957 on the ground that there was no valid service of notice. In the meanwhile, the Indian Income Tax Act, 1922 was repealed and the Act came into force. Thus, the ITO issued a notice as to why proceedings should not be undertaken under Section 147(a) of the new Act. The said notice was set aside, *inter alia*, on the ground that the assessments under the Indian Income Tax Act, 1922 (which was in force prior to the Act coming into force), could not be re-opened under the provisions of the Act.

[6] (1969) 72 ITR 595

29. In ***S.S. Gadgil v. Lal & Co.***[3] the Supreme Court considered the question whether concluded assessments could be reopened under Section 34 of the Indian Income Tax Act, 1922. The said section prescribed a limitation period of one year for assessment or reassessment in cases where income had escaped assessment in the hands of a person deemed to be an agent of a non-resident. By virtue of the Finance Act, 1956, this limitation period was extended to two years. The Court examined whether the Income Tax Officer could issue a notice for assessment or reassessment of such a person after the limitation period had already expired, prior to the amended provision coming into force. In the aforesaid context the Supreme Court held as under:

> "**13.** As we have already pointed out, the right to commence a proceeding for assessment against the assessee as an agent of a non-resident party under the Income Tax Act before it was amended, ended on March 31, 1956. It is true that under the amending Act by Section 18 of the Finance Act, 1956, authority was conferred upon the Income Tax Officer to assess a person as an agent of a foreign party under Section 43 within two years from the end of the year of assessment. But authority of the Income Tax Officer under the Act before it was amended by the Finance Act of 1956 having already come to an end, the amending provision will not assist him to commence a proceeding even though at the date when he issued the notice it is within the period provided by that amending Act. This will be so, notwithstanding the fact that there has been no determinable point of time between the expiry of the time provided under the old Act and the commencement of the amending Act. The legislature has given to Section 18 of the Finance Act, 1956, only a limited retrospective operation i.e. up to April 1, 1956, only.

> That provision must be read subject to the rule that in the absence of an express provision or clear implication, the legislature does not intend to attribute to the amending provision a greater retrospectivity than is expressly mentioned, nor to authorise the Income Tax Officer to commence proceedings which before the new Act came into force had by the expiry of the period provided, become barred."

30. The aforesaid decision supports the petitioners' case and was also referred to by this court in ***Brahm Datt v. Assistant Commissioner of Income-Tax & Others.***[1]

31. The learned counsel for the Revenue has relied upon the decision in the case of ***Ahmedabad Manufacturing & Calico Printing Co. Limited v. S. G. Mehta, Income Tax Officer & Another***[7] and on the strength of this decision contended that the general rule of all the statutes, other than those which are declaratory or relating to matter of procedure are *prima facie* prospective except where the statute has provided expressly otherwise or by necessary implication. The learned counsel also referred to the decision in the case of ***Commercial Tax Officer & Others v. Biswanath Jhunjhunwalla & Anr.***[8] and ***Additional Commissioner (Legal) & Anr. v. Jyoti Traders & Another.***[9]

32. In ***Ahmedabad Manufacturing and Calico Printing Co. Ltd. v. S.G. Mehta, Income Tax Officer and Anr.***[7], the Supreme Court reiterated the principle that all statutes other than those which are merely declaratory or which relate only to matters of procedure or of

[7] (1963) 48 ITR 154
[8] (1996) 5 SCC 626
[9] **(**1999) 2 SCC 77

evidence are *prima facie* prospective, unless it is otherwise provided by express words or by necessary implication.

33. In that case, the question that fell for consideration of the Supreme Court was whether sub-section (10) of Section 35 of the Indian Income Tax Act, 1922, which came into force on 1st April, 1956 could apply where a company declares dividends by availing wholly or partly an amount of rebate of income tax, which was allowed in earlier years. The first paragraph of the said decision, which sets out the issue considered by the Court, is set out below:

> "This appeal on a certificate of fitness granted by the High Court of Bombay raises a question of interpretation of sub-section (10) of section 35 of the Indian Income tax Act, 1922. This sub-section is one of a group of sub-sections substituted or inserted in the said section by section 19 of the Finance Act, 1956 (18 of 1956). By section 28 of the said Finance Act, sub-section (10) of section 35 of the Income tax Act, 1922, came into force on April 1, 1956. The short question before us is, whether on its true construction, sub- section (10) of section 35 applies in a case where a company declares dividends by availing itself wholly or partly of the amount on which a rebate of income tax was earlier allowed to it under clause (i) of the proviso to Paragraph B of Part 1 of the relevant Schedules to the Finance Acts, when such dividends were declared prior to the coming into force of the sub-section, that is prior to April 1, 1956."

34. It was contended on behalf of the appellant that, under sub-section (10) of Section 35 of the Indian Income Tax Act, 1922, the appellant had a vested right—namely, the right to a rebate of income tax on the company's total income, as well as the further right to declare dividends out of the undisputed profits of the previous year. It was thus

argued that the amendments to sub-section (10) of Section 35 could not be interpreted as curtailing the declaration of dividends out of rebates availed in previous years. The appellant relied on the well-settled principle that all statutes, other than those which are merely declaratory or relate only to matters of procedure or evidence, are *prima facie* prospective, unless otherwise provided by express words or necessary implication.

35. The Supreme court (by majority of 3:2) held that the language of the Section 35(10) of the Indian Income Tax Act, 1922, had a retrospective operation. A.K. Sarkar, J. delivering one of the concurring opinions, examined the provisions of sub-section (10) of Section 35 and observed as under:

> "I will assume that if the sub-section were applied to a case like the present, it would affect a vested right. The rule no doubt is that a statute is presumed not to be so. But this rule does not apply if the language of the statute indicates an intention to give it a retrospective operation. It seems to me that sub-section (10) uses language which indicates sufficiently clearly that it was intended to be applied where the amount on which rebate had been obtained was availed of for declaring dividends before the sub-section came into force, that is to say, to have a retrospective operation. It says," subsequently the amount on which the rebate of income-tax was allowed as aforesaid is valid of…for declaring dividends in any year". There is no doubt that the words "subsequently" and "in any year" mean in any year subsequently to the year in which the rebate was granted. They would, therefore, clearly include a year before the sub-section came into force. But it is said that these words should in view of the rule be read as not including a year before the sub-section came into force as they also include years

> subsequent to the coming into force of the sub-section and are therefore ambiguous."

36. Hidayatullah, J. penned down the majority opinion observed as under:

> "The purport of this new sub-section was the recall of rebate which had been allowed in any of the assessments for the years April 1, 1948, to March 31, 1956, under certain circumstances. At the very start, the sub-section takes one to assessment years to which section 28 which prescribed the commencement as April 1,1956, did not take one to.
> We do not accept the argument of the learned counsel for the assessee company that the mention of the years is merely a repetition of a historical facts for ready reference. The words "in any of the assessments for the years etc." show in respect of which assessments rectification would be possible. The years are mentioned individually by using the word any. The law speaking in 1956 was thus speaking of all the assessment years individually going back to 1st April, 1948. The language was clearly one of retrospectivity and the suggestion that there is no intent behind these words and that they merely refer to a historical facts is not acceptable to us. This conclusion is further fortified by the words: "and subsequently the amount…is availed of…for declaring dividends in any year…"

37. It is, therefore, important to examine the legislative intent and the language of the statute to determine whether the same is intended to be applicable retrospectively.

38. The aforesaid decisions in the cases of ***S.S. Gadgil v. Lal & Co.***[3] and ***J.P. Jani, Income-Tax Officer, Circle IV Ward G, Ahmedabad & Anr. v. Induprasad Devshanker Bhatt***[6] were distinguished by the Supreme Court in the later decision in ***Additional Commissioner (Legal) & Anr. v. Jyoti Traders & Anr.***[9] on the ground that in those

cases, there was no express provisions of clear implication to impute that the provisions were applicable with retrospective effect.

39. In ***Additional Commissioner (Legal) & Anr. v. Jyoti Traders & Anr.***[9] the appeal before the Supreme Court in the case of Jyoti Traders was in respect of re-opening of assessments in respect of AY 1985-86 under the U.P. Sales Tax Act, 1948. The same were completed on 28.02.1990. According to Section 21 of the UP Sales Tax Act, 1948, the assessment or re-assessment could be initiated for four years under Section 21 of the said Act. Thus, the assessments for AY 1985-86 could not be re-opened after 31.03.1990. However, the U.P. Sales Tax Act, 1948 was substantially amended by the U.P. Sales Tax Act (Amendment and Validation) Act, 1991. The said amendments came into force with effect from 19.02.1991. The time period within which assessment or reassessment could be made was enlarged from four years to eight years. The Sales Tax Officer issued notices for assessment/re-assessment in respect of AY 1985-86 on 11.01.1994.

40. The Supreme Court examined the import of the proviso to Section 21(2) of the U.P. Sales Tax Act, 1948 introduced by the Amending Act. The said proviso reads as under:

> "Provided that if the Commissioner of Sales Tax, on being satisfied on the basis of reasons recorded by the assessing authority that it is just and expedient so to do authorises the assessing authority in that behalf, such assessment or reassessment may be made after the expiration of the period aforesaid but not after the expiration of eight years from the end of such year notwithstanding that such assessment or reassessment may involve a change of opinion."

41. The Supreme Court referred to the decision in the cases of ***Commercial Tax Officer & Others v. Biswanath Jhunjhunwalla & Anr.***[8] and ***Ahmedabad Manufacturing and Calico Printing Co. Ltd. v. S.G. Mehta, Income Tax Officer and Anr.***[7] and as stated earlier distinguished the decisions in ***S.S. Gadgil v. Lal & Co.***[3] and ***J.P. Jani, Income-Tax Officer, Circle IV Ward G, Ahmedabad & Anr. v. Induprasad Devshanker Bhatt***[6]. We consider it apposite to refer to the following extract from the said decision:

> "**25.** The two decisions in the cases of *Ahmedabad Manufacturing & Calico Printing Co. Ltd.* [AIR 1963 SC 1436 : 1963 Supp (2) SCR 92 : (1963) 48 ITR 154] and *Biswanath Jhunjhunwalla* [(1996) 5 SCC 626] are more closer to the issue involved in the present case before us. They laid down that it is the language of the provision that matters and when the meaning is clear, it has to be given full effect. In both these cases, this Court held that the proviso which amended the existing provision gave it retrospectivity. When the provision of law is explicit, it has to operate fully and there could not be any limits to its operation. This Court in *Biswanath Jhunjhunwalla case* [(1996) 5 SCC 626] said that if the language expressly so states or clearly implies, retrospectivity must be given to the provision. Under Section 34 of the Income Tax Act, 1922, it is the service of the notice which is the sine qua non, an indispensable requisite, for the initiation of assessment or reassessment proceedings where income had escaped assessment. That is not so in the present case. Under sub-section (1) of Section 21 of the Act before its amendment, the assessing authority may, after issuing notice to the dealer and making such inquiry as it may consider necessary, assess or reassess the dealer according to law. Sub-section (2) provided that except as otherwise provided in this section, no order for any assessment year shall be made after the expiry of 4 years from the end of such year. However, after the amendment, a proviso was added to sub-section (2) under which the Commissioner of Sales Tax authorises the assessing authority to make assessment or reassessment

before the expiration of 8 years from the end of such year notwithstanding that such assessment or reassessment may involve a change of opinion. The proviso came into force w.e.f. 19-2-1991. We do not think that sub-section (2) and the proviso added to it leave anyone in doubt that as on the date when the proviso came into force, the Commissioner of Sales Tax could authorise making of assessment or reassessment before the expiration of 8 years from the end of that particular assessment year. It is immaterial if a period for assessment or reassessment under sub-section (2) of Section 21 before the addition of the said proviso had expired. Here, it is the completion of assessment or reassessment under Section 21 which is to be done before the expiration of 8 years of that particular assessment year. Read as it is, these provisions would mean that the assessment for the year 1985-86 could be reopened up to 31-3-1994. Authorisation by the Commissioner of Sales Tax and completion of assessment or reassessment under sub-section (1) of Section 21 have to be completed within 8 years of the particular assessment year. Notice to the assessee follows the authorisation by the Commissioner of Sales Tax, its service on the assessee is not a condition precedent to reopen the assessment. It is not disputed that a fiscal statute can have retrospective operation. If we accept the interpretation given by the respondents, the proviso added to sub-section (2) of Section 21 of the Act becomes redundant. Commencement of the Act can be different than the operation of the Act though sometimes, both may be the same. The proviso now added to sub-section (2) of Section 21 of the Act does not put any embargo on the Commissioner of Sales Tax not to reopen the assessment if the period, as prescribed earlier, had expired before the proviso came into operation. One has to see the language of the provision. If it is clear, it has to be given its full effect. To reassure oneself, one may go into the intention of the legislature in enacting such provision. The date of commencement of the proviso to Section 21(2) of the Act does not control its retrospective operation. Earlier the assessment/reassessment could have been completed within four years of that particular assessment year and now by the amendment adding the proviso to Section 21(2) of the Act it is eight years. The only safeguard being that it is after the

> satisfaction of the Commissioner of Sales Tax. The proviso is operative from 19-2-1991 and a bare reading of the proviso shows that the operation of this proviso relates and encompasses back to the previous eight assessment years. We need not refer to the provisions of the Income Tax Act to interpret the proviso to Section 21(2) the language of which is clear and unambiguous and so is the intention of the legislature. We are, thus, of the view that the High Court was not right in quashing the sanction given by the Commissioner of Sales Tax and notices issued by the assessing authority in pursuance thereof."

42. In the present case, the Explanation to Section 149 of the Act, which was introduced by virtue of Finance Act, 2012 (Act 23 of 2012) expressly clarified that the provisions of sub-sections (1) and (3) of the amended provisions would also be applicable for "any assessment year" beginning on or before 1st day of April 2012. The import of using the word "any" is not restrictive.

43. It is material note that Section 147 of the Act was also amended by Finance Act, 2012 (Act 23 of 2012) and Explanation 4 was added. The said explanation reads as under:

> *Explanation 4*.—For the removal of doubts, it is hereby clarified that the provisions of this section, 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."

44. The decision in the case of ***Brahm Datt v. Assistant Commissioner of Income-Tax & Others***[1] has not noticed this explanation. There is no discussion to the meaning and import of this explanation. It is also relevant to refer to the notes on clauses of the Finance Bill, 2012, which indicates the legislative intent for amending Section 149 of the Act. The said notes on clauses is set out below:

"**Reassessment of income in relation to any asset located outside India**

Under the provisions of section 149 of the Income-tax Act, the time limit for issue of notice for reopening an assessment on account of income escaping assessment is 6 years. The time limit of 6 years is not sufficient in cases where assets are located outside India because gathering information regarding such assets takes much more time on account of additional procedures and laws of foreign jurisdictions.

It is proposed to amend the provisions of section 149 so as to increase the time limit for issue of notice for reopening an assessment to 16 years, where the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.

Amendments are also proposed to be made in section 147 of the Income-tax Act to provide that income shall be deemed to have escaped assessment where a person is found to have any asset (including financial interest in any entity) located outside India.

The provisions of sections 147 and 149 are procedural in nature and will take effect from 1st July, 2012 for enabling reopening of proceedings for and assessment year commencing prior to this date. This is proposed to be clarified through an Explanation stating that the provisions of these sections, 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.

Corresponding amendments are also proposed to be made to the provisions of section 17 of the Wealth-tax Act.

These amendments will take effect from the 1st day of July, 2012."

(emphasis added)

45. As noted above, the decision in ***Brahm Datt v. Assistant Commissioner of Income-Tax & Others***[1] has neither construed the import of the Explanation added to Section 149 of the Act nor the import

of Explanation 4 added to Section 147 of the Act as were in force at the material time. The decision in ***Additional Commissioner (Legal) & Anr. v. Jyoti Traders & Anr.***[9] is also instructive. Additionally, the notes to clauses to the Finance Bill, 2012, which we find are material to to construing the legislative intent behind the amendments to Sections 147 and 149 of the Act, were not brought to the notice of this Court in ***Brahm Datt v. Assistant Commissioner of Income-Tax & Others***[1]. Thus, the view expressed in the said decision may require consideration by a larger bench of this court.

46. List on 25.07.2025.

47. The matter be placed before Hon'ble the Chief Justice to constitute a larger bench.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 30, 2025
RK