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HIGH COURT OF CHHATTISGARH, BILASPUR

REVP No. 4 of 2017

- M/s Natural Ores Pvt. Ltd., Raipur, through its Director, Prem Chand Agrawal, S/o LS Dhanna Lal Agrawal, aged about 70 years, R/o M-52, Rajeev Nagar, Raipur (C.G.)

---- Petitioner

Versus

- Principal Commissioner of Income Tax – I, Raipur

---- Respondent

And

REVP No. 5 of 2017

- M/s Natural Ores Pvt. Ltd., Raipur, through its Director, Prem Chand Agrawal, S/o LS Dhanna Lal Agrawal, aged about 70 years, R/o M-52, Rajeev Nagar, Raipur (C.G.)

---- Petitioner

Versus

- Principal Commissioner of Income Tax – I, Raipur

---- Respondent

And

REVP No. 6 of 2017

- M/s Natural Ores Pvt. Ltd., Raipur, through its Director, Prem Chand Agrawal, S/o LS Dhanna Lal Agrawal, aged about 70 years, R/o M-52, Rajeev Nagar, Raipur (C.G.)

---- Petitioner

Versus

- Principal Commissioner of Income Tax – I, Raipur

---- Respondent

And

REVP No. 7 of 2017

- M/s P.C. Mining Pvt. Ltd. Raipur, Through Its Director, Prem Chand Agrawal S/o L S Dhanna Lal Agrawal, Aged About 70 Years, R/o M-52, Rajeev Nagar, Raipur, Chhattisgarh

---- Petitioner

Versus

- Principal Commissioner Of Income Tax-I Raipur, Chhattisgarh

---- Respondent

And

REVP No. 8 of 2017

- M/s Natural Ores Pvt. Ltd., Raipur, through its Director, Prem Chand Agrawal, S/o LS Dhanna Lal Agrawal, aged about 70 years, R/o M-52, Rajeev Nagar, Raipur (C.G.)

---- Petitioner

Versus

- Principal Commissioner of Income Tax – I, Raipur

---- Respondent

And

REVP No. 9 of 2017

- M/s P.C. Mining Pvt. Ltd. Raipur, Through Its Director, Prem Chand Agrawal S/o L S Dhanna Lal Agrawal, Aged About 70 Years, R/o M-52, Rajeev Nagar, Raipur, Chhattisgarh

---- Petitioner

Versus

- Principal Commissioner Of Income Tax-I Raipur, Chhattisgarh

---- Respondent

And

REVP No. 10 of 2017

- M/s P.C. Mining Pvt. Ltd. Raipur, Through Its Director, Prem Chand Agrawal S/o L S Dhanna Lal Agrawal, Aged About 70 Years, R/o M-52, Rajeev Nagar, Raipur, Chhattisgarh

---- Petitioner

Versus

- Principal Commissioner Of Income Tax-I Raipur, Chhattisgarh

---- Respondent

And

REVP No. 11 of 2017

- M/s P.C. Mining Pvt. Ltd. Raipur, Through Its Director, Prem Chand Agrawal S/o L S Dhanna Lal Agrawal, Aged About 70 Years, R/o M-52, Rajeev Nagar, Raipur, Chhattisgarh

---- Petitioner

Versus

- Principal Commissioner Of Income Tax-I Raipur, Chhattisgarh

---- Respondent

For Petitioners	:	Shri Arvind Shrivastava, Advocate
For Respondent	:	Ms. Naushina Afrin Ali, Advocate

Hon'ble Shri Deepak Gupta, Chief Justice
Hon'ble Shri Justice Sanjay Agrawal

Order on Board

Per Deepak Gupta, Chief Justice

24.01.2017

1. Review has now been sought of the judgment passed by this Court dated 25.10.2016 only on the ground of limitation. Neither this point was taken up in the grounds of appeal nor raised before us when the matter was argued at the admission stage itself. It is more than obvious that this an after thought on behalf of the Petitioners. However, we may point out that in another batch of cases being Tax Case No. 94 of 2016 and analogous cases, we have decided the question of limitation also in the following terms :

> "4. As is apparent from the judgment quoted above, this is a case of search. As far as present appeals are concerned, some relate to assessment of persons who were noticees and some relate to other persons who were not noticees, in search proceedings.
>
> 5. Section 153B of the Income Tax Act deals with limitation in cases relating to search carried out under Section 153A. The relevant portion of Section 153B of the Income Tax Act reads as follows :
>
>> "153B. (1) Notwithstanding anything contained in section 153, the Assessing Officer shall make an order of assessment or reassessment,-
>>
>> (a) in respect of each assessment year falling within six assessment years referred to in clause (b) of sub-section (1) of section 153A, within a period of two years from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed;
>>
>> (b) in respect of the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A, within a period of two years from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed :
>>
>> Provided that in case of other person referred to in section 153C, the period of limitation for making the assessment or reassessment shall be the period as referred to in clause (a) or clause (b) of this sub-section or one year from the end of the financial year in which books of

> account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later:
>
> Provided further that in the case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed during the financial year commencing on or after the 1st day of April, 2004 but before the 1st day of April, 2010,-
>
> (i) the provisions of clause (a) or clause (b) of this sub-section shall have effect as if for the words "two years" the words "twenty-one months" had been substituted;
>
> the period of limitation for making the assessment or reassessment in case of other person referred to in section 153C, shall be the period of twenty-one months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed or nine months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later."

The first part deals with the persons against whom search has been made and the assessment has to be completed within two years from the end of the assessment year in which the search was carried out. As far as other persons to whom notices were issued is concerned, their assessment had to be completed within a period of 21 months from the end of the assessment year in which the search was carried out. The search was carried out on 4.2.2010. The assessment year ended on 31.3.2010 and 21 months period expired on 31.12.2011. In the present cases, the assessment were made on 30.12.2011 and it is not disputed that these assessments were within time.

6. Thereafter, the Commissioner, Income Tax reopened the matter under Section 263 of the Income Tax Act invoking his revisionary powers. The order was passed by the Commissioner, Income Tax on 28.3.2014. The submission of the Learned Counsel for the Appellant

is that since by this time, the period for making assessment is over therefore, no fresh assessment can actually be done because it is beyond the period of limitation.

7. It may be pertinent to point out that Section 153B or 153C of the Income Tax Act do not deal with limitation in case the Commissioner exercises his *suo motu* powers under Section 263 of the Income Tax Act. The only provision in this regard is Section 153(2A), relevant portion of which reads as follows :

> "(2A) Notwithstanding anything contained in sub- sections (1), (1A), (1B) and (2), in relation to the assessment year commencing on the 1st day of April, 1971, and any subsequent assessment year, an order of fresh assessment in pursuance of an order under section 250 or section 254 or section 263 or section 264, setting aside or cancelling an assessment, may be made at any time before the expiry of one year from the end of the financial year in which the order under section 250 or section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner :
>
> Provided that where the order under section 250 or section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, on or after the 1st day of April, 1999 but before the 1st day of April, 2000, such as order of fresh assessment may be made at any time up to the 31st day of March, 2002 :"

8. The contention of the learned counsel for the appellants is that Section 153(2A) only finds place in Section 153A and since 153B and 153C start with non-obstante clause, benefit of Section 2A cannot be availed of to extend the limitation in cases where the Commissioner exercises powers under Section 263 where

the assessment is pursuant to search operations carried out in terms of Section 153A of the Income Tax Act.

9. We are not at all in agreement with the submission of Learned Counsel for the Appellant. Non-obstinate clause of Section 153B and 153C of the Income Tax deals mainly with the extending the period for which the Income Tax Act can carry out the assessment and reassessment under Section 147 of the Income Tax Act. Reassessment can only be done within a period of four years but where the search is carried out, reassessment can be done within a period of six years.

10. No doubt Sections 153B and 153C of the Income Tax Act lay down different time limitations for making the assessment but these time limits are for making initial assessments by the Assessing Officer pursuant to the search and seizure operations. Once those assessments are made if the powers under Section 263 of the Income Tax Act are invoked by the Commissioner then we will have to fall back on the provisions of Section 153(2)A of the Income Tax Act which provides that when the Commissioner invokes the powers under Section 263 of the Income Tax Act then the fresh assessment order in terms of the Commissioner has to be passed within a period of one year from the date of communication of the order.

11. It has been strenuously argued before us that because there is non-obstinate clause for limitation given in case of search and seizure i.e. 153B and 153C of the Income Tax Act, the final limitation cannot be extended. We are not at all in agreement with this submission made by Learned Counsel for the Appellant. If the argument of Learned Counsel for the Appellant is accepted, it would virtually amount to deleting Section 263 in cases of reassessment on the basis of search and seizure. The Commissioner would not be able exercise his *suo moto* powers under Section 263 of the Income Tax Act because by that time the period of limitation would be over. When

> an order is passed under Section 263 of the Income Tax Act it is a fresh order and limitation has to be reckoned from the date of that order. The Income Tax Act does not specifically deal with Section 263 of the Income Tax Act in respect of search and seizure cases and rightly so. Revisionary powers can be exercised by the Commissioner in all cases where assessment is made and once he exercises his revisionary powers then the provisions of Section 153(2A) of the Income Tax Act will be applicable and the limitation will be one year from the date of the order being passed by the Commissioner in revision petition.
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> 12. In our considered view, limitation given in Section 153(2A) of the Income Tax Act will apply in all cases of fresh assessment made pursuant to orders passed under Section 263 of the Income Tax Act. It is immaterial whether the Commissioner has exercised his revisionary jurisdiction in search or seizure cases or has merely reopened old assessments."

2. In view of the above, we find no merit in the review petitions. They are accordingly dismissed.

Sd/-	Sd/-
(Deepak Gupta)	**(Sanjay Agrawal)**
CHIEF JUSTICE	**JUDGE**

Anu