$~37 to 42

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

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\+ **<u>W.P.(C) 1708/2014</u>**

BJN HOLDINGS LIMITED ..... Petitioner

versus

DEPUTY COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE 20, ND ..... Respondent

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<u>W.P.(C) 1709/2014</u>

BJN HOLDINGS (I) LIMITED ..... Petitioner

versus

DEPUTY COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE 20, NEW DELHI ..... Respondent

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<u>W.P.(C) 1710/2014</u>

BJN HOLDINGS (BD) LIMITED ..... Petitioner

versus

DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL
CIRCLE 20, NEW DELHI ..... Respondent

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<u>W.P.(C) 1769/2014</u>

UK PAINTS (OVERSEAS) LTD ..... Petitioner

versus

DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL
CIRCLE 20, NEW DELHI ..... Respondent

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<u>W.P.(C) 1770/2014</u>

J&N INVESTMENT (ASIA) LIMITED ..... Petitioner versus

DEPUTY COMMISSIONER OF INCOME TAX CENTRAL CIRCLE 20, ND ..... Respondent

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W.P.(C) 1771/2014

JENSON & NICHOLSON (ASIA) LIMITED ..... Petitioner

versus

DEPUTY COMMISSIONER OF INCOME TAX CENTRAL CIRCLE 20 ND ..... Respondent

Present: Mr. M.S. Syali, Sr. Advocate with Mr. Mayank Nagi, Mr. Vikrant A. Maheshwari and Mr. Mohit Jhamb, Advocates for the petitioner in all matters.
Mr. Ruchir Bhatia and Mr. Puneet Rai, Advocates for respondents in all matters.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% **02.05.2018**

In these petitions the validity of Section 153C of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') has been challenged on various grounds.

These proceedings were entertained and the following common order was made on 18.03.2014:-

> **"CM No. 3573/2014 in W.P.(C) 1708/2014, CM No.3575/2014 in W.P.(C) 1709/2014, CM No. 3577/2014 in W.P.(C) 1710/2014, CM No. 3690/2014 in W.P.(C) 1769/2014, CM No. 3692/2014 in W.P.(C)**

1770/2014 and CM No. 3694/2014 in W.P.(C) 1771/2014

The exemptions are allowed subject to all just exceptions.

W.P.(C) 1708/2014 & CM No. 3572/2014, W.P.(C) 1709/2014 & CM No. 3574/2014, W.P.(C) 1710/2014 & CM No. 3576/2014, W.P.(C) 1769/2014 & CM No. 3689/2014, W.P.(C) 1770/2014 & CM No. 3691/2014 and W.P.(C) 1771/2014 & CM No. 3693/2014

Issue notice.

Notice is accepted by the learned counsel appearing on behalf of all the respondents. The counter affidavit be filed within six weeks. The rejoinder affidavit, if necessary, be filed within two weeks thereafter.

Renotify on 14.07.2014."

During the pendency of these petitions, the law relating to interpretation of Chapter-XIV of the Act (which includes Sections 153-A and 153-C of the Act) was interpreted. The leading judgment on this aspect is *'Commissioner of Income Tax vs. Kabul Chawla'* 380 ITR 573. The conclusions of the case of *Kabul Chawla* (supra) are extracted below:-

"37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

i. Once a search takes place under Section 132 of the Act, notice under Section 153 A (1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the *previous year relevant to the AY in which the search takes place.*

ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".

iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.

vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on

> *the basis of the findings of the search and any other material existing or brought on the record of the AO.*
>
> *vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment.*
>
> *Conclusion*
>
> *38. The present appeals concern AYs, 2002-03, 2005-06 and 2006-07. On the date of the search the said assessments already stood completed. Since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed."*

Besides, the manner in which the third party assessments are to be completed in certain other proceedings has been the subject matter in several other Division Bench judgments including the judgments in the cases of *'Commissioner of Income Tax vs. Super Malls Pvt. Ltd.'*, 393 ITR 557 (Del.), *'Commissioner of Income Tax vs. Nau Nidh Overseas Pvt. Ltd.'*, 394 ITR 753 (Del.), *'Commissioner of Income Tax-7 vs. RRJ Securities Ltd.',* 380 ITR 612 (Del.) and *'ARN Infrastructures India Ltd. vs. Assistant Commissioner of Income Tax'*, WP(C) No.2768/2016 decided on 25.04.2017.

In the light of these subsequent developments, the Court is of the opinion that the challenge to the provisions of Section 153 of the

Act has been rendered academic to an extent since these judgments have tempered in the condition of the use of statutory powers as it were. Consequently, the Revenue is directed to proceed afresh and re-determine the assessment under Sections 153A/153C of the Act in accordance with law having regard to the above judgments, within six months from today. At the same time, it is clarified that the assessee is precluded from urging the bar of limitation having regard to the fact that the order of 18.03.2014 had enured and bound the parties till now. All rights and contentions of the parties are reserved.

The writ petitions are disposed of in the above terms.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

MAY 02, 2018
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