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

\+ W.P.(C) 290/2024

CHUKNOO SECURITIES LIMITED THROUGH
ITS DIRECTOR SANJEEV AGARWAL .....Petitioner

Through: Mr. Ankit Agarwal and Ms. Viyushti Rawat, Advocates

versus

DY COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE 28 & ORS. .....Respondents

Through: Mr. Abhishek Maratha, SSC with Mr. Parth Semwal, Mr. Apoorv Agarwal, JSCs, Ms. Nupur Sharma, Mr. Gaurav Singh, Mr. Bhanukaran Singh Jodha and Ms. Muskaan Goel, Advocates

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

<u>O R D E R</u>

% **27.11.2024**

1. The petitioner has filed the present petition impugning a notice dated 29.06.2022 issued under Section 153C of the Income Tax Act, 1961 (hereafter *the Act*) for the assessment year (AY) 2016-17.

2. The petitioner contests the said notice on several grounds, including that the said notice was issued without the Assessing Officer (hereafter *the AO*) recording any satisfaction, that the information and material received by it from the Assessing Officer of the searched person has any bearing on the income of the assessee for the previous year relevant to the AY 2016-17.

3. It is not disputed that the information and material, on which the

impugned notice is premised, pertained to a transaction for the previous year 2009-10, relevant to AY 2010-11. It is a settled law that the Assessing Officer is not required to reassess the income of all years falling within the block of six years under Section 153C of the Act, if the incriminating material, if any, is relevant only to a particular previous year. The said issue stands covered by the decision of this Court in ***Saksham Commodities Limited v. Income Tax Officer, Ward 22(i), Delhi & Anr.: 2024 SCC OnLine Del 2551***. It is relevant to reproduce the following paragraphs from the said decision:

> "63. On an overall consideration of the structure of Sections 153A and 153C, we thus find that a reopening or abatement would be triggered only upon the discovery of material which is likely to "*have a bearing on the determination of the total income*" and would have to be examined bearing in mind the AYs' which are likely to be impacted. It would thus be incorrect to either interpret or construe Section 153C as envisaging incriminating material pertaining to a particular AY having a cascading effect and which would warrant a mechanical and inevitable assessment or reassessment for the entire block of the "*relevant assessment year*".
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> 64. In our considered view, abatement of the six AYs' or the "*relevant assessment year*" under Section 153C would follow the formation of opinion and satisfaction being reached that the material received is likely to impact the computation of income for a particular AY or AYs' that may form part of the block of ten AYs'. Abatement would be triggered by the formation of that opinion rather than the other way around. This, in light of the discernibly distinguishable statutory regime underlying Sections 153A and 153C as explained above. While in the case of the former, a notice would inevitably be issued the moment a search is undertaken or documents requisitioned, whereas in the case of the latter, the proceedings would be liable to be commenced only upon the AO having formed the opinion that the material gathered is likely to inculpate the assessee. While in the case of a Section 153A assessment, the issue of whether additions are

liable to be made based upon the material recovered is an aspect which would merit consideration in the course of the assessment proceedings, under Section 153C, the AO would have to be prima facie satisfied that the documents, data or asset recovered is likely to "*have a bearing on the determination of the total income*". It is only once an opinion in that regard is formed that the AO would be legally justified in issuing a notice under that provision and which in turn would culminate in the abatement of pending assessments or reassessments as the case may be.

65. We would thus recognize the flow of events contemplated under Section 153C being firstly the receipt of books, accounts, documents or assets by the jurisdictional AO, an evaluation and examination of their contents and an assessment of the potential impact that they may have on the total income for the six AYs' immediately preceding the AY pertaining to the year of search and the "*relevant assessment year*". It is only once the AO of the non- searched entity is satisfied that the material coming into its possession is likely to "*have a bearing on the determination of the total income*" that a notice under Section 153C would be issued. Abatement would thus be a necessary corollary of that notice. However, both the issuance of notice as well as abatement would have to necessarily be preceded by the satisfaction spoken of above being reached by the jurisdictional AO of the non-searched entity.

66. Therefore, and in our opinion, abatement of the six AYs' or the "*relevant assessment year*" would follow the formation of that opinion and satisfaction in that respect being reached.

67. On an overall consideration of the aforesaid, we come to the firm conclusion that the "incriminating material" which is spoken of would have to be identified with respect to the AY to which it relates or may be likely to impact before the initiation of proceedings under Section 153C of the Act. A material, document or asset recovered in the course of a search or on the basis of a requisition made would justify abatement of only those pending assessments or reopening of such concluded assessments to which alone it relates or is likely to have a bearing on the estimation of income. The mere existence of a power to assess or reassess the six AYs' immediately preceding the AY corresponding to the year of search or the "*relevant assessment year*" would not justify a sweeping or indiscriminate invocation

of Section 153C.

68. The jurisdictional AO would have to firstly be satisfied that the material received is likely to have a bearing on or impact the total income of years or years which may form part of the block of six or ten AYs' and thereafter proceed to place the assessee on notice under Section 153C. The power to undertake such an assessment would stand confined to those years to which the material may relate or is likely to influence. Absent any material that may either cast a doubt on the estimation of total income for a particular year or years, the AO would not be justified in invoking its powers conferred by Section 153C. It would only be consequent to such satisfaction being reached that a notice would be liable to be issued and thus resulting in the abatement of pending proceedings and reopening of concluded assessments."

(Emphasis Added)

4. The Supreme Court in ***CIT v. Abhisar Buildwell (P.) Ltd., (2024) 2 SCC 433*** approved and referred to the decision of this court in ***CIT v, Kabul Chawla, 2015 SCC OnLine Del 11555***. The relevant extract of the said decision is set out below:-

"26. ...

(*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."

5. The learned counsel appearing for the Revenue also concurs that the

controversy involved in the present petition is squarely covered by the aforesaid decision.

6. In view of the above, the present petition is allowed and the impugned notice dated 29.06.2022, issued under Section 153C of the Act, in respect of AY 2016-17, is set aside.

7. The present petition is disposed of.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

NOVEMBER 27, 2024
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Click here to check corrigendum, if any