$~43

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

\+ W.P.(C) 811/2024 & CM APPL. 3499/2024 (stay)

SMT. PREETI GUPTA .... Petitioner

Through: Mr. Gaurav Jain and Mr. Shubham Gupta, Advs.

Versus

ACIT CENTRAL CIRCLE-25 DELHI ..... Respondent

Through: Mr. Shlok Chandra, Sr.SC with Ms. Madhavi Shukla and Ms. Priya Sarkar, Jr.SCs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **09.04.2024**

1. Bearing in mind the undisputed fact that the Satisfaction Note was issued by the jurisdictional Assessing Officer [“**AO**”] of the petitioner on 29 June 2022, the impugned notice dated 29 June 2022 issued under Section 153C of the Income Tax Act, 1961 ["**Act**"] and which relates to Assessment Year [“**AY**”] 2014-15 would clearly fall within the maximum window of ten years as prescribed and when computed in accordance with the principles enunciated by us in **Principal Commissioner of Income Tax Central – 1 v. Ojjus Medicare Private Limited** [2024 SCC Online Del 2439].

2. The relevant paragraphs of the aforesaid decision read as under:-

> “**D**. The First Proviso to Section 153C introduces a legal fiction on the basis of which the commencement date for computation of the

six year or the ten year block is deemed to be the date of receipt of books of accounts by the jurisdictional AO. The identification of the starting block for the purposes of computation of the six and the ten year period is governed by the First Proviso to Section 153C, which significantly shifts the reference point spoken of in Section 153A(1), while defining the point from which the period of the "relevant assessment year" is to be calculated, to the date of receipt of the books of accounts, documents or assets seized by the jurisdictional AO of the nonsearched person. The shift of the relevant date in the case of a non-searched person being regulated by the First Proviso of Section 153C(1) is an issue which is no longer res integra and stands authoritatively settled by virtue of the decisions of this Court in SSP Aviation and RRJ Securities as well as the decision of the Supreme Court in Jasjit Singh. The aforesaid legal position also stood reiterated by the Supreme Court in Vikram Sujitkumar Bhatia. The submission of the respondents, therefore, that the block periods would have to be reckoned with reference to the date of search can neither be countenanced nor accepted.

E. The reckoning of the six AYs' would require one to firstly identify the FY in which the search was undertaken and which would lead to the ascertainment of the AY relevant to the previous year of search. The block of six AYs' would consequently be those which immediately precede the AY relevant to the year of search. In the case of a search assessment undertaken in terms of Section 153C, the solitary distinction would be that the previous year of search would stand substituted by the date or the year in which the books of accounts or documents and assets seized are handed over to the jurisdictional AO as opposed to the year of search which constitutes the basis for an assessment under Section 153A.

F. While the identification and computation of the six AYs' hinges upon the phrase "immediately preceding the assessment year relevant to the previous year" of search, the ten year period would have to be reckoned from the 31st day of March of the AY relevant to the year of search. This, since undisputedly, Explanation 1 of Section 153A requires us to reckon it "from the end of the assessment year". This distinction would have to necessarily be acknowledged in light of the statute having consciously adopted the phraseology "immediately preceding" when it be in relation to the six year period and employing the expression "from the end of the assessment year" while speaking of the ten year block."

3. An ex facie perusal of the aforenoted Satisfaction Note further indicates that the income which is alleged to have escaped assessment for the "*relevant assessment year*" does not exceed INR 50 lakhs. The

jurisdictional AO has, however, failed to record its satisfaction that the escaped income is likely to exceed INR 50 lakhs or more cumulatively for the "*relevant assessment year*", and thereby failing to fulfil the threshold requirement as prescribed by the Fourth Proviso to Section 153A.

4. We had in *Ojjus Medicare Private Limited* emphasised the imperatives of the formation of an opinion in this respect in the following terms:

> "**G.** Insofar as the thresholds put in place by virtue of the Fourth Proviso to Section 153A are concerned and the argument of the writ petitioners of the condition of INR 50 lakhs being an unwavering precondition, we find ourselves unable to sustain that submission bearing in mind the indubitable fact that proceedings for search assessment commence upon the issuance of a notice and the AO at that stage having really not had the occasion to undertake a detailed or in depth examination of the evidence collected or come to a definitive opinion with respect to the total income which may have escaped assessment. Since the computation and assessment of income that is likely to have escaped assessment would at this stage be provisional, it would be incorrect to strike down initiation of action on a mere ex facie examination of the Satisfaction Note. We also in this regard bear in mind the Fourth Proviso using the expression "*amounts to or is likely to amount*". The usage of the phrase "*likely to*" is indicative of the Legislature being conscious of the provisional character of the opinion that the AO may have formed at that stage.
>
> **H.** However, and at the same time, even if the identified asset at that stage be quantified as less than INR 50 lakhs, the AO must for reasons to be duly recorded, be of the opinion that the ultimate computation of escaped income is likely to exceed INR 50 lakhs. The aforesaid satisfaction would have to be based on an assessment of the material gathered and the potentiality of the same being indicative of the escaped assessment exceeding INR 50 lakhs. The formation of opinion in this respect would have to be based not on mere ipse dixit but reflective of a fair assessment of the quantum of income likely to have escaped assessment as distinct from mere speculation and conjecture.
>
> **I.** We further hold that since the precondition of INR 50 lakhs or more constitutes a sine qua non for initiating action for the extended ten year block, the aforesaid satisfaction and the reasons in support

<u>thereof would have to borne out from the Satisfaction Note itself</u>. We are also of the opinion that the precondition of INR 50 lakhs is not liable to be viewed as being the qualifying criteria for each "*relevant assessment year*" that may be thrown open and that the said condition would stand satisfied if the escaped income cumulatively or in the aggregate meets the minimum benchmark of INR 50 lakhs."

5. Accordingly, and for reasons assigned in our decision in *Ojjus Medicare Private Limited*, while we allow the instant writ petition and quash the impugned notice issued under Section 153C of the Act dated 29 June 2022 insofar as it relates to AY 2014-15, we leave it open to the jurisdictional AO to examine the issue afresh bearing in mind the observations appearing in para 4 above.

6. In case the jurisdictional AO be of the opinion that the income alleged to have escaped assessment is likely to exceed INR 50 lakhs in the "*relevant assessment year*", it would be open to it to draw proceedings afresh, if otherwise permissible in law.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

APRIL 09, 2024/p