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

\+ W.P.(C) 1219/2024 & CM APPL. 5063/2024 (Stay)

KAMAL PRAKASH GUPTA HUF ..... Petitioner

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

versus

ACIT CENTRAL CIRCLE 25 DELHI ..... Respondent

Through: Mr. Shlok Chandra, Sr. Standing Counsel with Ms. Madhavi Shukla and Ms. Priya Sarkar, Jr. Standing Counsel with Mr. Sudarshan Roy, Advocate.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MS. JUSTICE TARA VITASTA GANJU

O R D E R

% **21.05.2024**

1. This writ petition has been preferred against the impugned notices dated 29 June 2022 issued under Section 153C of the Income Tax Act, 1961 ["**Act**"] for Assessment Year' ["**AY**"] 2016-17 and all consequential proceedings.

2. Bearing in mind the undisputed fact that the notice under Section 153C was dated 29 June 2022 it is ex facie evident that the aforenoted AY would fall beyond the window of six preceding AYs' as provided under Section 153C. An ex facie perusal of the undated Satisfaction Note recorded by the Assessing Officer ["**AO**"] of the non-searched person and the Satisfaction Note dated 12 May 2022 recorded by the AO of the searched person further indicates that the

income which is alleged to have escaped assessment for the "*relevant assessment year*" does not exceed INR 50 lakhs. The AO has also 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 fulfilling the threshold requirement as prescribed by the Fourth Proviso to Section 153A.

3. The issue in any case stands answered and covered in favour of the writ petitioner in light of the judgment rendered in **Principal Commissioner of Income Tax Central – 1 vs. Ojjus Medicare Pvt. Ltd** [2024 SCC Online Del 2439]. The relevant paragraphs of the aforesaid decision read as under:-

> ""**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.
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> **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 thereof would have to borne out from the Satisfaction Note itself. 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."

4. 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 2016-17, we leave it open to the AO to examine the issue afresh bearing in mind the observations appearing in paragraph 3 above.

5. In case the 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

TARA VITASTA GANJU, J

MAY 21, 2024/RW