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

+ W.P.(C) 1472/2024 & CM APPL. 6099/2024 (Direction)

OPV PACKAGING PVT LTD

..... Petitioner

Through: Mr. Rohit Jain & Mr. Saksham
Singhal, Advs.

versus

INCOME TAX OFFICER WARD 19(1)

DELHI & ORS.

..... Respondents

Through: Mr. Puneet Rai, SSC with Mr.
Ashvini Kumar, Mr. Rishabh
Nangia & Mr. Nikhil Jain,
Advs.

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+ W.P.(C) 1476/2024 & CM APPL. 6106/2024 (Direction)

OPV PACKAGING PVT LTD

..... Petitioner

Through: Mr. Rohit Jain & Mr. Saksham
Singhal, Advs.

versus

INCOME TAX OFFICER WARD 19(1)

DELHI & ORS.

..... Respondents

Through: Mr. Puneet Rai, SSC with Mr.
Ashvini Kumar, Mr. Rishabh
Nangia & Mr. Nikhil Jain,
Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

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22.05.2024

1. These writ petitions have been preferred against the impugned notices dated 23 June 2022 issued under Section 153C of the Income



Tax Act, 1961 [“**Act**”] for Assessment Years [“**AYs**”] 2012-13 [WP(C) 1472/2024] and 2013-14 [WP(C) 1476/2024] and all consequential proceedings.

2. Bearing in mind the undisputed fact that notices under Section 153C were dated 23 June 2022, it is ex facie evident that the aforenoted AYs’ would fall beyond the maximum window of ten years as prescribed.

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-1 vs. Ojjus Medicare Pvt. Ltd** [2024 SCC OnLine Del 2439]. 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 non-searched 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."

4. Furthermore, bearing in mind the undisputed fact that the Satisfaction Note dated 23 June 2022 issued by the jurisdictional Assessing Officer ["AO"] of the petitioner relates to incriminating material for AY 2010-11 and 2011-12, it is ex facie evident that no incriminating material for the aforementioned AYs' has been found. The AO also fails to record any reasons which may have indicated how the said material could "have a bearing on the determination of the total income of such other person" for the year in question.

5. Undisputedly, the issue now stands answered and covered in favour of the writ petitioners bearing in mind the principles that we had enunciated in **Saksham Commodities Limited vs. Income Tax Officer, Ward 22(1), Delhi & Anr** [2024 SCC OnLine Del 2551].

The relevant paragraphs of the said decision read as follows:-

"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*”.

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 inculcate 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."

6. Accordingly, and for reasons assigned in our decision in *Ojjus Medicare* and *Saksham Commodities Limited*, we allow the instant writ petitions and quash the impugned notices dated 23 June 2022 issued under Section 153C of the Act and all consequential proceedings arising therefrom.

YASHWANT VARMA, J

AMIT BANSAL, J

MAY 22, 2024/kk