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

\+ W.P.(C) 2261/2024 & CM APPL. 9453/2024 (stay)

VEENA GUPTA ..... Petitioner

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

versus

DCIT CENTRAL CIRCLE-26, DELHI ..... Respondent

Through: Mr. Shlok Chandra, Sr.SC with Ms. Madhavi Shukla, Ms. Priya Sarkar, Jr.SCs along with Mr. Sudarshan Roy, Adv.

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

O R D E R

% **28.05.2024**

1. This writ petition has been preferred against the impugned notice dated 28 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 impugned Section 153C notice was dated 28 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 of the Act. The jurisdictional AO has 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 of the Act. This position was conceded to by learned counsel appearing for the respondent.

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.
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> **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 28 June 2022, insofar as it relates to AY 2016-17, we leave it open to the jurisdictional AO to examine the issue afresh bearing in mind the observations appearing in paragraph 3 as noted above.

5. 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 in accordance with the liberty reserved in this respect as would be evident from a reading of Para 121 of our decision in *Ojjus Medicare Private Limited*.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 28, 2024/p