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

\+ W.P.(C) 3269/2024 & CM APPL. 13458/2024 (Stay)

FLOWMORE LIMITED ..... Petitioner

Through: Mr. Sumit Lalchandani, Mr. Salil Kapoor, Mr. Tarun Chanana, Ms. Ananya Kapoor & Mr. Utkarsa Gupta, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE 28, NEW DELHI & ANR. ... Respondents

Through: Mr. Shlok Chandra, SSC with Mrs. Madhavi Shukla, Ms. Priya Sarkar, JSCs & Mr. Sudarshan Roy, Adv.

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

ORDER

% **06.05.2024**

1. We had on 30 April 2024 noticed the principal issues which were addressed on the writ petition. Mr. Lalchandani, learned counsel for the petitioner, essentially raises a challenge to the initiation of reassessment proceedings under Section 148 of the Income Tax Act, 1961 ["**Act**"] on the basis of the First Proviso to Section 149(1)(b) of the Act.

2. According to learned counsel, if the provisions of the First Proviso were borne in consideration, it would be manifest that the assessment sought to be initiated for Assessment Year 2012-13, in terms of the impugned notice dated 31 March 2023 issued under Section 148 of the Act, would not sustain.

3. We note that while dealing with an identical question we had in **Filatex India Ltd. vs. Deputy Commissioner of Income Tax & Anr.** [Order dated 15 April 2024 passed in WP(C) 12148/2023], held as follows:

> "**3.** As is evident from the prima facie observations which came to be rendered by us on that occasion, the reassessment which is sought to be initiated for Assessment Year ["AY"] 2012-13 would not sustain bearing in mind the prescription of limitation as contained in Section 149(1)(b) of the Income Tax Act, 1961 ["Act"] as it stood at the relevant time.
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> **4.** We note that while dealing with a similar question of computation of the time limit for the "relevant assessment year" as provided under Explanation 1 to Section 153A of the Act, we had in the case of **Principal Commissioner of Income Tax-Central-1 v. Ojjus Medicare Pvt. Ltd.** [2024 SCC Online Del 2439] held as follows:-
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>> "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. <u>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.</u>
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>> 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. The legal position as enunciated above could not be questioned by learned counsel appearing for the respondents. In view of the aforesaid, we find ourselves unable to sustain the impugned notice.

5. Accordingly, the writ petition is allowed. The impugned notice dated 31 March 2023 issued under Section 148 of the Act is quashed and set aside.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 06, 2024/kk