$~49 & 50

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

\+ W.P.(C) 4417/2024 & CM APPL. 18058/2024 (Stay)

SAURABH GUPTA .....Petitioner

Through: Mr. Sumit Lalchandani, Mr. Salil Kapoor, Mr. Tarun Chanana, Mr. Utkarsha Kumar Gupta and Ms. Ananya Kapoor, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE 7(1), NEW DELHI & ORS. .....Respondents

Through: Mr. Sanjay Kumar, SSC along with Ms. Easha Kadian, JSC.

Mr. Abhishek Khanna, SPC for R-2/UOI.

50

\+ W.P.(C) 4456/2024 & CM APPL. 18289/2024 (Stay)

SAURABH GUPTA .....Petitioner

Through: Mr. Sumit Lalchandani, Mr. Salil Kapoor, Mr. Tarun Chanana, Mr. Utkarsha Kumar Gupta and Ms. Ananya Kapoor, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 7-1, NEW DELHI & ORS. .....Respondents

Through: Mr. Sanjay Kumar, SSC along with Ms. Easha Kadian, JSC.

Mr. Abhishek Khanna, SPC for R-2/UOI.

**CORAM:**
**HON'BLE MR. JUSTICE YASHWANT VARMA**
**HON'BLE MR. JUSTICE RAVINDER DUDEJA**

**O R D E R**

% **17.09.2024**

1. The writ petitioner impugns the notices dated 31 March 2023 seeking to reassess the petitioner for **Assessment Year**[1] 2014-15 [W.P.(C) 4417/2024] and 30 March 2023 seeking to reassess the petitioner for AY 2015-16 [W.P.(C) 4456/2024] issued under Section 148 of the **Income Tax Act, 1961**[2].

2. The record would reflect that pursuant to a search and seizure operation conducted in respect of a third party on 09 February 2022, the petitioner was served with notices under Section 148 on 31 and 30 March 2023. Before us it was conceded by parties that since the notices were dated 31 and 30 March 2023 and dispatched thereafter, it would be the amended regime of reassessment which came into effect from 01 April 2021 which would be applicable.

3. The action for reassessment would thus have to satisfy the provisions made in Section 149(1)(b) of the Act. The said provision reads as follows:-

> "[**149. Time limit for notice**.— (1) No notice under Section 148 shall be issued for the relevant assessment year,—
>
> (*a*) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (*b*);
>
> [(*b*) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of—

[1] AY
[2] Act

(*i*) an asset;

(*ii*) expenditure in respect of a transaction or in relation to an event or occasion; or

(*iii*) an entry or entries in the books of account,

which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more:]

Provided that no notice under Section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if [a notice under Section 148 or Section 153-A or Section 153-C could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (*b*) of sub-section (1) of this section or Section 153-A or Section 153-C, as the case may be], as they stood immediately before the commencement of the Finance Act, 2021:

Provided further that the provisions of this sub-section shall not apply in a case, where a notice under Section 153-A, or Section 153-C read with Section 153-A, is required to be issued in relation to a search initiated under Section 132 or books of account, other documents or any assets requisitioned under Section 132-A, on or before the 31st day of March, 2021."

4. As is evident from a reading of that provision any action for reassessment pertaining to an AY prior to 01 April 2021 can be sustained only if it be compliant with the specifications under Section 149(1)(b) of the Act.

5. We further note from the Satisfaction Note recorded by the Jurisdictional **Assessing Officer**[3] of the petitioner and which is dated 28 March 2023, that it is ex facie evident that the income which is alleged to have escaped assessment for the relevant AYs does not exceed INR 50 lakhs, thereby not fulfilling the threshold requirement as prescribed by Section 149(1)(b).

6. It is pertinent to note that one of the pre-conditions under Section 149(1)(b) is of the income which is alleged to have escaped

[3] AO

amounting to or likely to amount to INR 50 lakhs or more. That condition is not shown to be fulfilled from the reasons which have been recorded. Additionally, since the reassessment is predicated upon a search which was conducted, the matter may be examined on the anvil of the Fourth Proviso to Section 153A which raises a threshold in identical terms. The ambit of that provision was noticed by us in some detail in **Principal Commissioner of Income Tax Central – 1 vs. Ojjus Medicare Pvt. Ltd**[4]. 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, <u>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</u>. <u>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</u>.
>
> **H.** <u>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</u>.

[4] 2024 SCC Online Del 2439

> **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."

When tested on the aforesaid principles it becomes apparent that the impugned assessment would not sustain.

7. Accordingly, and for reasons assigned in our decision in *Ojjus Medicare Private Limited,* while we allow the instant writ petitions and quash the impugned notices issued under Section 148 of the Act dated 31 and 30 March 2023 insofar as they relate to AYs 2014-15 and 2015-16, we leave it open to the Jurisdictional AO to examine the issue afresh bearing in mind the observations appearing in para 6 above.

8. In case the Jurisdictional AO be of the opinion that the income alleged to have escaped assessment is likely to amount to or 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**

**RAVINDER DUDEJA, J**

**SEPTEMBER 17, 2024/**RW