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

\+ W.P.(C) 5934/2024

ASHOK MITTAL .....Petitioner

Through: Mr. Ajay Vohra, Sr. Adv. with Mr. Sandeep Mittal, Adv.

versus

UNION OF INDIA .....Respondent

Through: Mr. Debesh Panda, SSC with Ms. Zehra Khan, JSC.

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\+ W.P.(C) 6003/2024

SOPHISTICATED MARBLES & GRANITES INDUSTRIES .....Petitioner

Through: Mr. Ajay Vohra, Sr. Adv. with Mr. Sandeep Mittal, Adv.

versus

UNION OF INDIA .....Respondent

Through: Mr. Debesh Panda, SSC with Ms. Zehra Khan, JSC.

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

O R D E R

% **20.09.2024**

CM 45417/2024 (58 Days Delay in C.A.) in WP(C) 5934/2024

Bearing in mind the disclosures made, the application is allowed. The delay of 58 days in filing the counter affidavit is condoned.

Application stands disposed of.

W.P.(C) 5934/2024 & CM APPL. 24676/2024 (Interim Stay)
W.P.(C) 6003/2024 & CM APPL. 24946/2024 (Interim Stay)

1. These two writ petitions question the reassessment action initiated pursuant to notices dated 31 March 2024 and pertaining to **Assessment Year**[1] 2013-14. The notices are principally challenged on the basis of the First Proviso to Section 149(1) of the **Income Tax Act, 1961**[2] with it being contended that AY 2013-14 would fall outside the block period of 10 years as contemplated under Sections 153A and 153C of the Act. Since the issues raised are common we propose to briefly take note of the following salient facts as they obtain in W.P.(C) 5934/2024.

2. A search action is stated to have been initiated in the case of the Litolier Group on 07 July 2022. In terms of the warrant of authorisation, the searches also extended to the residential and office premises of the petitioner assessee. The case of the petitioner is stated to have been centralised with the office of the Deputy Commissioner of Income Tax, Central Circle-14, New Delhi in terms of an order dated 02 November 2022.

3. On 09 March 2023 notices under Section 148 of the Act for AYs 2019-20, 2020-21 2021-22 and 2022-23 came to be issued. In response to the aforesaid, the petitioner is stated to have filed its Return of Income for the concerned AYs'. The aforesaid Section 148 notice proceedings thereafter culminated in the passing of assessment orders on 30 March 2024 in terms of which the following demands for the years in question came to be created:-

[1] AY
[2] Act

AY 2019-20:	INR 9,12,38,220/-
AY 2020-21:	INR 8,48,18,760/-
AY 2021-22:	INR 6,91,11,470/-
AY 2022-23:	INR 50,21,210/-
Total Demand:	INR 24,51,68,450/-

It is thereafter and more particularly on 31 March 2024 that the impugned notice under Section 148 of the Act for AY 2013-14 came to be issued.

4. Appearing in support of the writ petitions, Mr. Vohra, learned senior counsel, submitted that the reassessment action would not sustain bearing in mind the fact that AY 2013-14 would fall outside the span of 10 years and which Sections 153A and 153C of the Act constitute as the "block period" for the purposes of search related assessments.

5. Mr. Vohra drew our attention to the following tabular statement in order to establish that the reassessment action impugned in these two writ petitions would fall outside the block period of 10 years:-

"Date of Search: 07.07.2022 (AY 2023-24)

Computation of the ten year block period as provided under section 153A of the Act

Assessment year	**No. of Year**
2023-2024	1
2022-2023	2
2021-2022	3
2020-2021	4
2019-2020	5
2018-2019	6

2017-2018	7
2016-2017	8
2015-2016	9
2014-2015	10

6. The aforesaid table would indicate that the search year would be 2022 bearing in mind the admitted position that the search itself was conducted on 07 July 2022. It is in the aforesaid context that Mr. Vohra submitted that the relevant **Financial Year**[3] of search would be FY 2022-23 and which would correspond to AY 2023-24. It is on the aforesaid basis that the aforesaid table had been furnished.

7. The relevance of identifying the block period of 10 years emanates from the First Proviso to Section 149(1) of the Act and which reads as under: -

> "149. (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 accounts or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year:
>
> <u>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 such notice 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, as they stood immediately before the commencement of the Finance Act, 2021</u>:
>
> ……………………… "

[3] FY

8. Undisputedly AY 2013-14 would be a year of assessment falling prior to 01 April 2021. It is in the aforesaid context that the First Proviso assumes seminal importance since it mandates that no notice under Section 148 of the Act for such an AY would issue unless it were in law permissible to issue such a notice in accordance with Sections 148, 153A and 153C as those provisions existed prior to the commencement of Finance Act, 2021. It is these provisions which bid us to test the validity of the notice resting on the imaginary state of whether such notice would have sustained bearing in mind the timelines which existed on or before the commencement of Finance Act, 2021.

9. We note while dealing with an identical question we had in **Dinesh Jindal vs. Assistant Commissioner of Income Tax**[4] observed as under: -

> "**8.** Undisputedly, and in terms of Section 153C(3) of the Act, any search if conducted after 01 April 2021, would cease to be regulated by that provision. Sub-section (3), in that sense, embodies a sunset clause insofar as the applicability of Section 153C is concerned. The First Proviso to Section 149(1), however, bids us to go back in a point of time, and to examine whether a reopening would sustain bearing in mind the timeframes as they stood embodied in Section 149(1)(b) or Section 153A and 153C, as the case may be. The First Proviso essentially requires us to undertake that consideration bearing in mind the timeframes which stood specified in Sections 149, 153A and 153C as they stood prior to the commencement of Finance Act, 2021.
>
> **9.** Thus, an action of reassessment which comes to be initiated in relation to a search undertaken on or after 01 April 2021 would have to meet the foundational tests as specified in the First Proviso to Section 149(1). A reassessment action would thus have to not only satisfy the time frames constructed in terms of Section 149, but in a relevant case and which is concerned with a search, also those which would be applicable by virtue of the provisions of Section 153A and 153C.

[4] 2024 SCC OnLine Del 4230

10. Undisputedly, and if the validity of the reassessment were to be tested on the anvil of Section 153C, the petitioner would be entitled to succeed for the following reasons. It is an undisputed fact that the proceedings under Section 148 commenced on the basis of the impugned notice dated 30 March 2023. This date would be of seminal importance since the period of six AYs' or the "*relevant assessment year*" would have to be reckoned from the date when action was initiated to reopen the assessment pertaining to AY 2013-2014.

11. The computation of the six or the block of ten AYs' was explained by us in *Ojjus Medicare Private Limited* in the following terms:

> "**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>.
>
> **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. <u>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</u>

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."

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Tested on the aforesaid principles it becomes apparent that the impugned reassessment action would not sustain.

10. We accordingly allow the instant writ petitions and quash the impugned notices under Section 148 of the Act dated 31 March 2024 bearing DIN and Notice No. ITBA/AST/S/148_1/2023-24/1063786398 (1) [W.P.(C) 5934/2024] and DIN and Notice No. ITBA/AST/S/ 148_1/2023-24/1063786409(1) [W.P.(C) 6003/2024].

YASHWANT VARMA, J

RAVINDER DUDEJA, J

SEPTEMBER 20, 2024
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