$~58

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

\+ W.P.(C) 6978/2024 & CM APPL. 29058/2024 (Stay)

KAPIL GARG .....Petitioner

Through: Mr. Kapil Goel and Mr. Sandeep Goel, Advs.

versus

INCOME TAX OFFICER WARD 43(6), DELHI .....Respondent

Through: Mr. Ruchir Bhatia, SSC, Mr. Anant Mann, Mr. Pratyaksh Gupta, Mr. Pallav Gaur, Ms. Aditi Sabharwal, Mr. Digvijay Rawat and Mr. Vinod Jain, Advs.

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

O R D E R

% **23.07.2024**

1. This writ petition has been preferred seeking the following reliefs:

> "**A**. Issue of a writ of certiorari, mandamus, prohibition or any other writ and/or order and or directions quashing the impugned reopening proceedings initiated vide notice u/s 148 dated ***18.04.2024***; and order passed u/s 148A(d) dated ***18.04.2024*** by respondent being ***time barred u/s 149(1) and based on totally erroneous understating of order of this hon'ble court in Twylight case (05.01.2024) and based on totally incorrect invocation of clause relating to "Information which requires action in consequence of the order of a Tribunal or a Court."***
>
> **B.** Issue of a writ of certiorari, mandamus, prohibition or any other writ and/or order and or directions quashing the impugned reopening proceedings initiated vide notice u/s 148 dated ***18.04.2024***; and order passed u/s 148A(d) dated ***18.04.2024*** by respondent ***being passed in arbitrary manner without application of mind***;
>
> **C.** Issue of a writ of certiorari, mandamus, prohibition or any other writ and/or order and or directions quashing the ***impugned***

proceedings u/s 148/148A in violation of sec. 151A/cbdt notifications
D. Issue of a writ of certiorari, mandamus, prohibition or any other writ and/or order and or directions quashing the impugned reopening proceedings initiated vide notice u/s 148 dated ***18.04.2024***; and order passed u/s 148A(d) dated ***18.04.2024*** by respondent ***being made in violation of CBDT guidelines***.
E. Issue of a writ of certiorari, mandamus, prohibition or any other writ and/or order and or directions quashing the ***impugned proceedings u/s 148/148A made on basis of invalid sanction u/s 151 of 1961 Act***
F. FOR ISSUE OF A WRIT OF CERTIORARI/MANDAMUS OR AN ORDER *QUASHING* SCN's DATED 31.03.2024 BEING ILLEGALY /IRRATIONALLY ISSUED WITHOUT ANY APPLICATION OF MIND;;
G. Pass any other order(s) as this Hon'ble Court may deem to be fit and more appropriate may please give order to grant interim relief to the petitioner by ***staying the operation of impugned order passed u/s 148A(d)/notice u/s 148 by respondent***, which suffers from series of ***patent and manifest jurisdictional errors as pointed above***;"

2. We have by a separate decision rendered today in W.P.(C) 7364/2024 examined the proviso to Section 149(1) of the Income Tax Act, 1961 ["**Act**"] and held that for a notice of reassessment pertaining to a period prior to 01 April 2021 to sustain, it would have to comply with the time frames applicable as per the erstwhile regime. We deem it apposite to extract the following paragraphs from the aforenoted decision:-

> "**12.** As is manifest from the above, the Proviso to Section 149 clearly bids us to go back in point of time and examine whether a proposed reassessment pertaining to a period prior to 01 April 2021 would sustain based on the time frames as they existed prior to the promulgation of Finance Act, 2021. The Proviso embodies a negative command restraining the respondents from issuing a notice under Section 148 in respect of an AY prior to 01 April 2021, if the period within which such a notice could have been issued in accordance with the provisions as they existed prior thereto had elapsed. This is manifest from the provision using the expression "*no notice under Section 148 shall be issued*" if the time limit specified in the relevant provisions "*.....as they stood immediately prior to the commencement of the Finance Act, 2021*" had expired. A reassessment which is sought to be commenced

post 01 April 2021 would thus have to abide by the time limits prescribed by Sections 149 (1)(b), 153A or 153B as may be applicable.

13. Undisputedly, Section 149(1)(b) as it stood prior to the introduction of the amendments by way of Finance Act, 2021 prescribed that no notice under Section 148 shall be issued if four years *"but not more than six years"* have elapsed from the end of the relevant assessment year. Thus the period of six years stood erected as the terminal point which when crossed would have rendered the initiation of reassessment impermissible in law.

14. Viewed in light of the above, the impugned notice when tested on the anvil of the pre-amendment Section 149(1)(b) in order to be sustained would have to meet the prescription of six years. Undisputedly that period in respect of AY 2016-17 came to an end on 31 March 2023. We thus find ourselves unable to sustain the impugned action of reassessment and which was commenced pursuant to the notice dated 29 April 2024.

15. It would be important to note that the respondents also do not attempt to sustain the initiation of action on any other statutory provision and which could be read as extending the time limit that applied. We also find ourselves unable to read *Twylight Infrastructure* as empowering them to reopen assessments contrary to the negative covenant which forms part of Section 149 of the Act. "

3. Tested on the aforesaid and bearing in mind the position that for A.Y. 2016-17 the period for issuance of notice would have come to an end on 31 March 2023, we find ourselves unable to sustain the impugned notices.

4. Accordingly and for the reasons recorded in our judgement rendered in W.P.(C) 7364/2024, we allow the instant writ petition and quash the notice under Section 148 for A.Y. 2016-17 dated 18 April 2024.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 23, 2024/neha