$~61 and 62

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

\+ W.P.(C) 7118/2024 & CM APPL. 29694/2024 (stay)

DART INFRABUILD PRIVATE LIMITED .....Petitioner

Through: Mr. Ajay Vohra, Sr. Adv. with Mr. Gaurav Jain and Mr. Shubham Gupta, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-28, NEW DELHI .....Respondent

Through: Mr. Siddhartha Sinha, Sr. Standing Counsel with Ms. Dacchita Shahi and Ms. Anuja Pethia, Advocates.

62.

\+ W.P.(C) 7120/2024 & CM APPL. 29698/2024 (stay)

DART INFRABUILD PRIVATE LIMITED .....Petitioner

Through: Mr. Ajay Vohra, Sr. Adv. with Mr. Gaurav Jain and Mr. Shubham Gupta, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE-28, NEW DELHI .....Respondent

Through: Mr. Siddhartha Sinha, Sr. Standing Counsel with Ms. Dacchita Shahi and Ms. Anuja Pethia, Advocates.

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

O R D E R

% **23.08.2024**

1. The present writ petitions assail the notices issued under Section 148 of the Income Tax Act,1961 [“**Act**”] on the ground of the

same being barred by limitation. Mr. Vohra, learned senior counsel, has placed for our consideration the following chart encapsulating the relevant Assessment Years ["**AYs**"] in challenge:-

Item No	**Writ Petition No.**	**Assessment Year**	**Date of issue of Notice u/s 148A(b)**	**Limitation as per erstwhile provisions**
61	7118/2024	AY 2014-15	25.01.2024	31.03.2021
62	7120/2024	AY 2015-16	25.01.2024	31.03.2022

2. Mr. Vohra draws our attention to the First Proviso of Section 149(1) of the Act to contend that on the date when the impugned notices were issued, the reassessment action in respect of the aforementioned AYs would be barred by limitation by virtue of the timeframes applying in terms of Section 149(1)(b) of the Act, as it stood at the relevant time.

3. The ambit of the First Proviso to Section 149(1) was an aspect which had arisen for our consideration in **Manju Somani vs. Income-tax Officer and Ors.** [2024 SCC OnLine Del 5292]. Dealing with a similar challenge based on the prescription of limitation we had in *Manju Somani* held as under:-

> "**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 April 1, 2021 would sustain based on the time frames as they existed prior to the promulgation of the Finance Act, 2021. The proviso embodies a negative command restraining the respondents from issuing a notice under section 148 in respect of an assessment year prior to April 1, 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 April 1, 2021 would thus have to abide by the time limits prescribed by section 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 the Finance Act, 2021 ([2021] 432 ITR (St.) 52) 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. <u>Viewed in the 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 the assessment year 2016-2017 came to an end on March 31, 2023. We thus find ourselves unable to sustain the impugned action of reassessment and which was commenced pursuant to the notice dated April 29, 202</u>4.

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* [*Twylight Infrastructure Pvt. Ltd.* v. *ITO*, (2024) 463 ITR 702 (Delhi); 2024 SCC OnLine Del 330.] as empowering them to reopen assessments contrary to the negative covenant which forms part of section 149 of the Act."

4. When tested on the aforesaid principles, it becomes apparent that the impugned action of reassessment cannot be sustained.

5. In view of the aforesaid, we allow the present petitions and quash the impugned notices dated 31 March 2024 referable to Section 148 of the Act.

YASHWANT VARMA, J

RAVINDER DUDEJA, J

AUGUST 23, 2024/sk