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

\+ W.P.(C) 7996/2024 & CM APPL. 32948/2024 (Stay)

SANJANA REALCON PVT LTD .....Petitioner
Through: Mr. Ajay Vohra, Sr. Adv. with Mr. Aniket D. Agrawal and Mr. Saksham Singhal, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 22(2) DELHI & ORS. .....Respondents
Through: Mr. Aseem Chawla, SSC with Ms. Pratishtha Chaudhary, Adv.

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:

> "(I) issue a writ in the nature of certiorari/ mandamus or any other appropriate writ, order or direction for quashing:
> (a) the **notice dated 29.03.2024** issued under section 148A(b);
> (b) the **order dated 17.04.2024** passed under section 148A(d), and the consequent initiation of reassessment proceedings vide **notice dated 17.04.2024** issued under section 148 of the Income Tax Act, 1961;
> in the case of the Petitioner for assessment year 2016-17, and all proceedings/ actions consequent thereto;
> (II) grant **ad-interim ex-parte stay** on the reassessment proceedings initiated under sections 147/148 of the Act vide the impugned notice dated 17.04.2024 issued under section 148 of the Act, and/or any other proceedings initiated thereunder for the assessment year 2016-17, during pendency of the present petition;
> (III) Pass such other order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

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.
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> **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.
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> **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.
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> **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 17 April 2024.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 23, 2024/neha