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

\+ W.P.(C) 12148/2023 & CM APPL 47752/2023

FILATEX INDIA LTD ..... Petitioner

Through: Mr. Ajay Vohra, Sr. Advocate alongwith Mr. Rohit Jain, Mr. Aniket D. Agrawal and Mr. Samarth, Advocates

Versus

DEPUTY COMMISSIONER OF INCOME TAX & ANR.

..... Respondents

Through: Mr. Kunal Sharma, Sr. SC alongwith Ms. Zehra Khan Jr. SC

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

% **15.04.2024**

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

> "(I) Issue a writ in the nature of mandamus/ certiorari or any other appropriate writ, order or direction for quashing:
>
> (a) the **notice dated 13.03.2023** issued under section 148 of the Income Tax Act, 1961 ('the Act');
>
> (b) the **order dated 18.05.2023** passed by Respondent No.1 whereby objections of the Petitioner were mechanically disposed off
>
> in the case of the Petitioner for assessment year 2012-13, and all proceedings/ actions taken consequent thereto;
>
> (II) stay the reassessment proceedings initiated in the case of the Petitioner vide impugned notice dated 13.03.2023 issued under section 148 of the Act, and/or any other proceedings initiated thereunder for the assessment year 2012-13, during pendency of the present petition;

(III) grant ad-interim ex-parte stay in terms of prayer (II) above;

(IV) call for the records of the case from the Respondents;

(V) 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. The challenge which stands raised was succinctly noticed in our order dated 15 September 2023 and which reads thus:-

"**CM APPL. 47753/2023**

1. Allowed, subject to the petitioner filing legible copies of the annexures, at least three days before the next date of hearing.

W.P.(C) 12148/2023 & CM APPL. 47752/2023 ***[Application filed on behalf of the petitioner seeking interim relief]***

2. This writ petition concerns Assessment Year (AY) 2012-13.

3. The record shows that the scrutiny assessment order under Section 143(3) of the Income Tax Act, 1961 [in short, "Act"] was passed on 16.03.2015.

4. The record also shows that a search action under Section 132 of the Act was conducted on 01.09.2021.

5. The petitioner had been issued a notice dated 13.03.2023, under Section 148 of the Act. It is the contention of the petitioner that the notice is time-barred. In this behalf, Mr Ajay Vohra, learned senior counsel, who appears on behalf of the petitioner, has placed reliance on the following tabular chart:

Assessment Year(s)	Computation of 6 years	Computation of 10 years
AY 2022-23	-	1
AY 2021-22	1	2
AY 2020-21	2	3
AY 2019-20	3	4
AY 2018-19	4	5
AY 2017-18	5	6
AY 2016-17	6	7
AY 2015-16	-	8
AY 2014-15	-	9
AY 2013-14	-	10
BAR OF LIMITATION		
AY 2012-13	-	-

> 5.1 In this context, our attention has been drawn to the first proviso appended to the Section 149(1) of the Act, in addition to Section 153A(1)(b) and Explanation 1 appended thereto.
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> 5.2 In support of this submission, Mr Vohra relies upon the judgment dated 24.03.2021, passed by the Madurai Bench of the Madras High Court in W.P. (MD) No. 4327/2021 and W.M.P. (MD) Nos. 3513, 3515 & 3516 of 2021, titled ***A.R. Safiullah vs. The Assistant Commissioner of Income Tax, Central Circle-1, Trichy.***
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> 5.3 It is also pointed out that this issue is also being considered by this Court in W.P.(C) 5643/2023, titled ***Alankit Insurance TPA Limited vs. Dy. Commissioner of Income Tax Circle 28, Delhi.***
>
> 6. Accordingly, issue notice.
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> 6.1 Mr Kunal Sharma, learned senior standing counsel, who appears on behalf of respondent/revenue, accepts notice.
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> 7. Counter-affidavit will be filed within the next two weeks.
>
> 7.1 Rejoinder thereto, if any, will filed at least two days before the next date of hearing.
>
> 8. List the matter on 17.10.2023.
>
> 9. Meanwhile, there shall be a stay on the operation of the impugned notice dated 13.03.2023, till further directions of the court.
>
> 10. Parties will act based on the digitally signed copy of the order."

3. As is evident from the prima facie observations which came to be rendered by us on that occasion, the reassessment which is sought to be initiated for Assessment Year ["**AY**"] 2012-13 would not sustain bearing in mind the prescription of limitation as contained in Section 149(1)(b) of the Income Tax Act, 1961 ["**Act**"] as it stood at the relevant time.

4. We note that while dealing with a similar question of computation of the time limit for the "*relevant assessment year*" as provided under Explanation 1 to Section 153A of the Act, we had in

the case of **Principal Commissioner of Income Tax-Central-1 v. Ojjus Medicare Pvt. Ltd.** [2024 SCC Online Del 2439] held as follows:-

"**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. 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.

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. 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 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."

5. In view of the aforesaid, we find ourselves unable to sustain the impugned notice dated 13 March 2023 issued under Section 148 of the Act.

6. The writ petition is accordingly allowed and the impugned order dated 18 May 2023 disposing off the objections of the petitioner is hereby quashed. We in consequence also quash the notice dated 13 March 2023 purporting to commence proceedings under Section 148 of the Act.

7. The writ petition shall stand disposed of along with all pending applications on the aforesaid terms.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

APRIL 15, 2024
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