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

\+ W.P.(C) 13968/2019, CM APPL.21274/2024

KANHAIYA LAL BOTHRA ..... Petitioner

Through: Ms. Ankita Prakash and Mr. Kishore Kunal, Advs.

Versus

UNION OF INDIA THROUGH ITS SECRETARY & ORS. ..... Respondents

Through: Mr. Abhishek Maratha, SSC along with Mr. Parth Semwal, JSC and Ms. Nupur Sharma, Adv. for Revenue.

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

<u>O R D E R</u>

% 09.04.2024

<u>CM APPL.21274/2024</u>

The present application seeks permission to bring legal heirs of the deceased petitioner on record of these proceedings.

Bearing in mind the disclosures made, the prayer as made is allowed.

Application shall stand disposed of.

<u>W.P.(C) 13968/2019</u>

1. The writ petition impugns the initiation of action and the consequential notices dated 05 December 2019 issued under Section 153A of the Income Tax Act, 1961 [“**Act**”] for Assessment Years’ [“**AYs**”] 2008-09 to 2011-12. The primary ground of challenge appears to be that the extended period of ten years and which came to be introduced by virtue of the Finance Act, 2017 and with effect from

01 April 2017 would not be available to be invoked in respect of the aforenoted AYs', since the period of limitation to initiate proceedings under Section 153A came to expire prior to the 2017 amendments being introduced.

2. Dealing with an identical challenge in **Principal Commissioner of Income Tax-Central-1 vs. Ojjus Medicare Private Limited** [2024 SCC Online Del 2439], the following conclusions came to be recorded by this Court:-

> "J. The contention of finality and closure addressed with respect to AYs' 2010-2011 and 2011-2012 on the basis of the statutory timeframes prescribed for assessment or reassessment and as those provisions stood prior to 01 April 2017 is misconceived, since it proceeds on the assumption that once the period of assessment or reassessment were to come to an end, it would inevitably lead to the creation of a vested right in favour of the assessee. The aforesaid argument proceeds on the incorrect premise of the reassessment provisions controlling or cabining the power conferred by Sections 153A and 153C. Acceptance of the aforesaid contention would amount to ignoring the plain and evident intent of the Legislature for Sections 153A and 153C operating above and beyond the reassessment powers.
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> K. The submission of closure and finality also fails to bear in consideration the indubitable fact that a search is an eventuality which is inherently unpredictable, a circumstance which would defy prophecy and it consequently being wholly irrational to read the time frames pertaining to reassessment as regulating or controlling the period within which an assessment predicated on that event may be initiated. It would be wholly illogical to conceive of a connection between the statutory time frames which are otherwise embodied in the Act and search assessments. In fact the acceptance of this submission would amount to virtually erasing the non obstante clause contained in Sections 153A and 153C.
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> L. The legislative intent of those provisions having retroactive application is clearly evidenced from the statue declaring that they would apply to all searches conducted between 31 May 2003 to 31 March 2021, and the Fourth Proviso in unambiguous terms extending the applicability of those provisions to all searches conducted post 01 April 2017 and Sections 153A and 153C superseding the provisions for reassessment, otherwise appearing in the Act.

M. The argument of closure also fails to take note of the accepted distinction between the liability to tax under the Act and the right to assess and enforce a liability created pursuant thereto. While a statute may denude an authority of the power to enforce a liability and in that limited sense conferring finality upon an assessment, the said position would prevail only till such time as that halo of impregnability is not statutorily removed. As was eloquently observed by the Supreme Court, the deprivation of a power to enforce would not lead to the creation of a vested right. As was pertinently observed, the liability to the State exists and operates de hors a consideration of time and in the absence of the statute itself imposing a time limit. The only limitations which are introduced while enacting Sections 153A and 153C was of the period within which the search had been conducted."

3. Consequently, and for reasons aforenoted, we find ourselves unable to countenance the submission as raised by the petitioner that the 2017 amendments would not apply to the aforenoted AYs.

4. Bearing in mind the undisputed fact that the search was conducted upon the petitioner on 21 August 2017 and the impugned notices dated 05 December 2019 relate to AYs' 2008-09 to 2011-12, it is evident that AYs' 2009-10, 2010-11 and 2011-12 fall within the maximum window of ten years as prescribed. It is only AY 2008-09 which would fall beyond the extended ten year period.

5. The issue insofar as that AY is concerned in any case stands answered in the judgment rendered in *Ojjus Medicare Private Limited* and the relevant observations read as under:

"**B**. Both Sections 153A and 153C embody non-obstante clauses and are in express terms ordained to override Sections 139, 147 to 149, 151 and 153 of the Act. By virtue of the 2017 Amending Act, significant amendments came to be introduced in Section 153A. These included, inter alia, the search assessment block being enlarged to ten AYs' consequent to the addition of the stipulation of "*relevant assessment year*" and which was defined to mean those years which would fall beyond the six year block period but not later than ten AYs'. The block period for search assessment thus came to be enlarged to stretch up to ten AYs'. The 2017 Amending Act also put in place certain prerequisite conditions which would have to inevitably be shown to be satisfied before the search assessment could stretch to the "*relevant assessment year*". The preconditions include the prescription of income having escaped assessment and represented in the form of an asset amounting to or "*likely to amount to*" INR 50 lakhs or more in the "*relevant assessment year*" or in aggregate in the "*relevant assessment years*".

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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 31^{st} 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."

6. Accordingly, and for reasons assigned in our decision in *Ojjus Medicare Private Limited*, the writ petition fails insofar as the challenge to the impugned notices relating to AYs' 2009-10 to 2011-12. This, we so hold since in the absence of a Satisfaction Note, we have no means of ascertaining whether there was any formation of opinion with respect to the material being compliant with the additional stipulations as prescribed in terms of the Fourth Proviso to Section 153A and the ambit of which has been duly explained in *Ojjus Medicare Private Limited*. All contentions in that respect are kept open. We consequently leave it open to the respondents to proceed

afresh if permissible in law.

7. The writ petition however stands partly allowed, insofar as the challenge to the impugned notice relating to AY 2008-09 and which falls beyond the ten year block. Consequently, we quash the impugned notice dated 05 December 2019 issued under Section 153A of the Act, insofar as it relates to AY 2008-09 alone.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

APRIL 9, 2024/neha