



\$~98

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

%

Date of Decision : 23.10.2024

+ **W.P.(C) 14866/2024 & CM APPL. 62415-16/2024**

KAD HOUSING PRIVATE LIMITED

.....Petitioner

Through: Mr Sumit Lalchandani, Advocate.

versus

**DEPUTY COMMISSIONER OF INCOME
TAX CENTRAL CIRCLE 6 DELHI**

.....Respondent

Through: Mr Aseem Chawla, SSC, Ms Monica Benjamin, and Ms Priya Sarkar, JSCs and Ms Pratistha Advocate for the Revenue.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

VIBHU BAKHRU, J. (ORAL)

1. Issue notice. The learned counsel for the Revenue accepts notice.
2. The petitioner has filed the present petition, *inter alia*, impugning the notice dated 31.08.2024 (hereafter *the impugned notice*) issued under Section 148 of the Income Tax Act, 1961 (hereafter *the Act*) for reopening the assessment in respect of the assessment year (AY) 2015-16.
3. It is the case of the petitioner that the impugned notice has been



issued beyond the period of the limitation as stipulated under Section 149(1) of the Act. It is pointed out that the first proviso of Section 149(1) of the Act provides that no notice under Section 148 of the Act could be issued at any time in a case for the relevant AY beginning on or before the first day of April, 2021, if a notice under Section 148, Section 153A or Section 153C of the Act could not have been issued on account of being beyond the time limit as stipulated under the provisions of Section 149(1)(b) or Section 153A or Section 153C of the Act as the said provisions stood immediately prior to the commencement of the Finance Act, 2021.

4. It is, thus, contended that in terms of the provisions of Section 149(1) of the Act, such a notice could not have been issued. The relevant extract of Section 149(1) of the Act reads as under:-

“149. Time limit for notice. - (1) No notice under Section 148 shall be issued for the relevant assessment year, –

(a) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);

(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of–

(i) an asset;

(ii) expenditure in respect of a transaction or in relation to an event or occasion; or

(iii) an entry or entries in the books of account, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more:

Provided that no notice under Section 148 shall be issued at any time in a case for the relevant



assessment year beginning on or before 1st day of April, 2021, if a notice under Section 148 or Section 153-A or Section 153-C could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section or Section 153-A or Section 153-C, as the case may be, as they stood immediately before the commencement of the Finance Act, 2021:

Provided further that the provisions of this sub-section shall not apply in a case, where a notice under Section 153-A, or Section 153-C read with Section 153-A, is required to be issued in relation to a search initiated under Section 132 or books of account, other documents or any assets requisitioned under Section 132-A, on or before the 31st day of March, 2021:”

5. In the present case, the petitioner’s assessment is sought to be reopened on the basis of the information available pursuant to a search conducted on 11.10.2023 in respect of Sterling Agro Industries Ltd. Apparently, certain information pertaining to the petitioner was found during the course of the said proceedings and, on 16.08.2024, the same was forwarded to the Assessing Officer (hereafter AO) exercising jurisdiction in the case of the assessee. On receipt of the said information, the AO issued a notice dated 17.08.2024 under Section 148A(b) of the Act setting out the information, which according to the AO suggested that the petitioner’s income for the relevant AY 2015-16, has escaped assessment.

6. The petitioner responded to the said notice on 26.08.2024, *inter alia*, objecting to the reopening of the assessment on various grounds. The petitioner also provided the list of transactions entered into with M/s ACME



Resources Limited during the financial years 2013-14, 2014-15, and 2015-16.

7. Thereafter, on 31.08.2024, the AO passed the order under Section 148A(d) of the Act and dropped the initiation of the proceedings for issuance of notice under Section 148A(b) of the Act on the ground that the separate proceedings for the same assessment year (AY 2015-2016) have been initiated under Section 148 of the Act. The AO also recorded its conclusion that it was not a fit case for issuance of the notice under Section 148 of the Act.

8. Concededly, in case any incriminating material was found in respect of a non-search party during the search proceedings, procedure under Section 148A of the Act is not required to be followed. It is on this basis that the notice under Section 148 was issued.

9. As noted above, the short question to be considered by this Court is whether the impugned notice has been issued beyond the period of limitation as stipulated under Section 149(1)(b) of the Act. The said issue is squarely covered by the earlier decisions of the Co-ordinate Bench of this Court in ***Dinesh Jindal v. Assistant Commissioner of Income Tax, Central Circle 20, Delhi & Others*¹** as well as in ***The Pr. Commissioner of Income Tax - Central-1 v. Ojjus Medicare Pvt. Limited*²**.

10. In ***Dinesh Jindal v. Assistant Commissioner of Income Tax, Central Circle 20, Delhi & Others*** (*supra*), the Co-ordinate Bench of this Court has

¹ 2024: DHC:4554-DB

² 2024:DHC:2629-DB



observed as under:-

“8. Undisputedly, and in terms of Section 153C(3) of the Act, any search if conducted after 01 April 2021, would cease to be regulated by that provision. Sub-section (3), in that sense, embodies a sunset clause insofar as the applicability of Section 153C is concerned. The First Proviso to Section 149(1), however, bids us to go back in a point of time, and to examine whether a reopening would sustain bearing in mind the timeframes as they stood embodied in Section 149(1)(b) or Section 153A and 153C, as the case may be. The First Proviso essentially requires us to undertake that consideration bearing in mind the timeframes which stood specified in Sections 149, 153A and 153C as they stood prior to the commencement of Finance Act, 2021.

9. Thus, an action of reassessment which comes to be initiated in relation to a search undertaken on or after 01 April 2021 would have to meet the foundational tests as specified in the First Proviso to Section 149(1). A reassessment action would thus have to not only satisfy the time frames constructed in terms of Section 149, but in a relevant case and which is concerned with a search, also those which would be applicable by virtue of the provisions of Section 153A and 153C.

10. Undisputedly, and if the validity of the reassessment were to be tested on the anvil of Section 153C, the petitioner would be entitled to succeed for the following reasons. It is an undisputed fact that the proceedings under Section 148 commenced on the basis of the impugned notice dated 30 March 2023. This date would be of seminal importance since the period of six AYs’ or the “relevant assessment year” would have to be reckoned from the date when action was initiated to reopen the assessment pertaining to AY 2013-14.”



11. In *The Pr. Commissioner of Income Tax-Central-1 v. Ojjus Medicare Pvt. Limited* (*supra*), the Court also explained the manner in which the period of six or ten years is required to be reckoned in respect of reopening of the assessment for a period prior to six years and/or before the expiry of ten years from the relevant assessment years as contemplated under Section 153C of the Act. The court held that the period of ten years is required to be reckoned from the end of the assessment year relevant to the year in which the notice under Section 148 of the Act is issued.

12. The relevant extract of the decision in *The Pr. Commissioner of Income Tax -Central-1 v. Ojjus Medicare Pvt. Limited* (*supra*) is set out below:-

“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."



13. The petitioner has, on the basis of the said decisions, produced a tabular statement, which indicates that the assessment in respect of the AY 2015-16 falls beyond the period of ten years as stipulated under Section 149 read with Section 153C of the Act. It would be apposite to set out the said tabular statement, which reads as under:-

Analysis of time-period to issue reassessment notice	
Date of impugned notice under Section 148 – 31.08.2024	
This chart is prepared in light of the first proviso of Section 149 of the Act as amended by Finance Act 2021	
Relevant Assessment year for initiating proceedings under Section 148 of the Act	Without prejudice computation of 10 years in light of first proviso to Section 149
2025-26	1
2024-25	2
2023-24	3
2022-23	4
2021-22	5
2020-21	6
2019-20	7
2018-19	8
2017-18	9
2016-17	10
2015-16	11 (beyond terminal point of 10 years)

14. Mr Chawla, the learned counsel appearing for the Revenue, fairly states that there is no cavil with the said tabular statement and that the issue is covered by the decisions of this Court in *Dinesh Jindal v. Assistant*



Commissioner of Income Tax, Central Circle 20, Delhi & Others (supra) as well as *The Pr. Commissioner of Income Tax -Central-1 v. Ojjus Medicare Pvt. Limited (supra)*. He, however, submits that the Revenue may challenge the same in appropriate proceedings.

15. In view of the above, the impugned notice is set aside. Consequently, the respondent is restrained from the proceeding with the re-assessment proceedings in respect of the AY 2015-16.

16. The petition is allowed in the aforesaid terms. Pending applications also stand disposed of.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

OCTOBER 23, 2024

M

[Click here to check corrigendum, if any](#)