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

+ W.P.(C) 16928/2024 & CM APPL. 71714-15/2024

+ W.P.(C) 16929/2024 & CM APPL. 71716-17/2024

+ W.P.(C) 16956/2024 & CM APPL. 71824-25/2024

+ W.P.(C) 16957/2024 & CM APPL. 71826-27/2024

APPLE COMMODITIES LIMITED

.....Petitioner

Through: Mr Mani Bhadra Jain and Mr Pranav
Yadav, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX

CENTRAL CIRCLE 2 DELHI & ANR.

.....Respondents

Through: Mr Sunil Aggarwal, SSC, Ms Priya
Sarkar, Mr Shivansh B Pandya, Mr
Viplav Acharya, JSCs and Mr
Utkarsh Tiwari, Advocate.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

09.12.2024

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1. The petitioner has filed the present petitions, *inter alia*, impugning the notices dated 30.10.2024 (hereafter *the impugned notices*) issued under Section 148 of the Income Tax Act, 1961 (hereafter *the Act*) in respect of the assessment years (AYs) 2011-12, 2012-13, 2014-15 and 2013-14, in W.P.(C) 16928/2024, W.P.(C) 16929/2024, W.P.(C) 16956/2024 and W.P.(C) 16957/2024, respectively.

2. The impugned notices are clearly beyond the period as stipulated under Section 149(1) of the Act. However, it is the Revenue's case that the impugned notices are not barred by limitation by virtue of the non-obstante clause under Section 150 of the Act. The Revenue claims that the impugned notices are premised on the 'findings and directions' as embodied in the



decision of the Supreme Court in ***Principal Commissioner of Income-tax, Central-3 v. Abhisar Buildwell (P.) Ltd.: (2024) 2 SCC 433***. The Supreme Court had held that the assessing officer (AO) could exercise its powers under Section 147/148 of the Act, even in cases, which are related to a search conducted under Section 132 of the Act. The Revenue construes the said decision as constituting a finding or a direction for issuing such notices in respect of cases such of the assessee's.

3. The question whether the decision in the case of ***Principal Commissioner of Income-tax, Central-3 v. Abhisar Buildwell (P.) Ltd. (supra)*** constitutes a finding and a direction for permitting the issuance of notices under Section 148 of the Act in cases, which are otherwise beyond the period as stipulated under Section 149 of the Act is no longer *res integra*. In ***ARN Infrastructures India Ltd. v. Assistant Commissioner of Income Tax Central Circle-28 Delhi & Ors.: Neutral Citation No.:2024:DHC:7423-DB*** this Court had rejected a similar contention. The relevant extract of the said decision is set out below:

“38. It is pertinent to note that a reference to Sections 147 and 148 of the Act in *Abhisar Buildwell* firstly appears in paragraph 33 of the report and where the Supreme Court observed that in cases where a search does not result in any incriminating material being found, the only remedy that would be available to the Revenue would be to resort to reassessment.

39. However, the Supreme Court caveated that observation by observing that the initiation of reassessment would be “.....*subject to fulfilment of the conditions mentioned in Sections 147/148, as in such a situation, the Revenue cannot*



be left with no remedy". This sentiment came to be reiterated with the Supreme Court observing that the power of the Revenue to initiate reassessment must be saved failing which it would be left with no remedy. It was thereafter observed in paragraph 36.4 of the report that insofar as completed or unabated assessments were concerned, they could be reopened by the AO by invocation of Sections 147/148 of the Act, subject to the fulfilment of the conditions "*.....as envisaged/mentioned under Sections 147/148 of the Act and those powers are saved*".

40. It thus becomes apparent that the liberty which the Supreme Court accorded and the limited right inhering in the Revenue to initiate reassessment was subject to that power being otherwise compliant with the Chapter pertaining to reassessment as contained in the Act. The observations of the Supreme Court cannot possibly be read or construed as a carte blanche enabling the respondents to overcome and override the restrictions that otherwise appear in Section 149 of the Act. The observations of the Supreme Court in *Abhisar Buildwell* were thus intended to merely convey that the annulment of the search assessments would not deprive or denude the Revenue of its power to reassess and which independently existed. However, the Supreme Court being mindful of the statutory prescriptions, which otherwise imbue the commencement of reassessment, qualified that observation by providing that such an action would have to be in accordance with law. This note of caution appears at more than one place in that judgment and is apparent from the Supreme Court observing that the power to reassess would be subject to the fulfilment of the conditions mentioned in Sections 147 and 148 of the Act."

4. Plainly, the controversy involved in these petitions is covered by the



decision of this court in *ARN Infrastructures India Ltd. v. Assistant Commissioner of Income Tax Cental Circle-28 Delhi & Ors.* (*supra*). The contention that the time as stipulated under Section 149 of the Act is not applicable, in the given facts, is erroneous and thus rejected.

5. The petitions are, accordingly, allowed and the impugned notices are set aside. All pending applications are also disposed of.

ACTING CHIEF JUSTICE

TUSHAR RAO GEDELA, J

DECEMBER 09, 2024

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Click here to check corrigendum, if any