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

\+ W.P.(C) 1668/2023

J KISHORE EXPORTS .....Petitioner

Through: Dr. Kapil Goel and Mr. Sandeep Goel, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 46 (1) DELHI .....Respondent

Through: Mr. Abhishek Maratha, SSC, Mr. Apoorv Agarwal, Mr. Parth Samwal, JSCs, Ms. Nupur Sharma, Mr. Gaurav Singh, Mr. Bhanukaran Singh Jodha, Ms. Divya Verma and Mr. Himanshu Gaur, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

O R D E R

% **27.02.2025**

1. The instant writ petition had been preferred assailing the reassessment action initiated by the respondent pertaining to Assessment Year [‘**AY**’] 2013-14. We take note of the principal challenge which now remains and pertains to the issue of surviving period.

2. The petitioner, in order to buttress its claim of the proceedings being time barred, has placed for our consideration the following chart:

WP (C) NO	1668//2023 (item 33)
NAME OF CASE	J KISHORE EXPORTS
ASST YEAR	2013-2014 (**REGULAR ASST FRAMED U/S 143(3) ON 04.03.2016: INSTANT REOPENING IS HIT BY PROVISO TO SEC 147 - refer** ***annexure P-2 page 106 to 110*** **of WP)**
OLD LAW /INITIAL NOTICE U/S 148	07.04.2021 (*refer annexure P-3 pages 111 TO 121*)
148A(B)NOTICE	25.05.2022 (*refer annexure P- 4 page 122 /123*)
REPLY 148A(C)	31.05.2022 *Refer annexure P-5 pages 124 to 151*
148 NEW LAW NOTICE AND 148A(D) ORDER	30.07.2022 *Refer annexure P- 6 & P-7 pages 152 to 163 & 164-165*
STATUS	Covered by this hon'ble court decision in case of **Kanwaljeet Kaur v. Assistant Commissioner Of Income Tax** **Circle (34) 1 Delhi & Ors2025:DHC:656-DB(para 27 to para 29) &** **OTHER ISSUES TO BE EXAMIED AS RAISED IN WRIT PETITION (HIGHLIGHTED)** **INCORRECT REPLY CONSIDERED SHOWS TOTAL LACK OF APPLICATION OF MIND**: That impugned proceedings u/s148 and 148A are ex facie invalid as in impugned order u/s 148A(d) reply for **AY 2014-2015** is reproduced at pages 6 to 9 where as impugned order is for **AY 2013-2014** which displays total lack of application of mind on part of a) respondent (AO) and b) PCCIT (approving authority). **BASELESS/INVALID ALLEGATION**: allegation in impugned order u/s 148A(d) that "*Further declassification reveals the fact that during the Financial Year 2012- 13, assessee has booked bogus sales to M/s Parth International amounting to Rs. 1,96,74,999/- against which payment has been received by the assessee." And "In the absence of any explanation furnished by the assessee in this regard, the sales made to M/s Parth International is found to be accommodation entry in the nature of bogus sales.*" where as in previous regular/scrutiny asst itself vide conformation placed on record u/s 143(3) it is patent that assessee has made purchases and not sales to said concern in the subject period.This foundational error completely invalidates the impugned reopening; ***MECHANICAL SANCTION*** *: even approval/sanction u/s 151 dated 31.03.2021 by PCIT 10 is equally deficient and lacking on legality being without application of mind*

	<u>FACTUM OF PREVIOUS SCURTINY ASST U/S 143(3) AND BAR OF FIRST PROVISO TO SEC 147 (OLD REGIME</u>): regular asst is completed u/s 143(3) vide order dated 04.03.2016 and instant reopening is made after end of four assessment years as in foundational reasons there is no valid /requisite finding /averment on jurisdictional aspect of the positive deficiency of disclosure by assessee in previous scrutiny asst u/s 143(3),so reopening is in violation of first proviso to sec 147 (Old regime(. **<u>NO BACK MATERIAL CONFONTED:</u>** No back material/annexure as purportedly referred in so called statement of Mr Ashok Kr Gupta and foundational reasons etc , is ever purveyed /shared with petitioner herein which also vitiates the impugned reopening

3. The said question would have to be necessarily examined by the Jurisdictional Assessing Officer bearing in mind the judgment of the Supreme Court in **Union of India v. Rajeev Bansal** [2024 SCC OnLine SC 2693] as well as of this Court in **Ram Balram Buildhome Pvt. Ltd. v. Income Tax Officer & Anr.** [2025 SCC OnLine Del 481].

4. Dealing with identical issues, we had disposed of a batch of writ petitions by our judgment rendered in **Kanwaljeet Kaur vs. Commissioner of Income Tax** [2025 SCC OnLine Del 605] in the following terms:

> **"27.** We accordingly dispose of this batch of writ petitions by directing the concerned AOs to evaluate the individual SCNs' under Section 148 of the Act bearing in mind our judgments in *T.K.S. Builders, Abhinav Jindal and Naveen Kumar Gupta*. These decisions have conclusively settled issues pertaining to the accordal of sanction under Section 151 as well as the authority of the jurisdictional AO to commence and undertake reassessment. Those decisions also lay at rest the challenge which the writ petitioners had raised that an AO is bound to adhere to the procedure prescribed by Section 153C in cases emanating from a search.
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> **28.** A similar exercise would have to be undertaken to examine the issue of surviving period in respect of each individual noticee

under Section 148 and which would necessarily be guided by the judgments of *Rajeev Bansal and Ram Balram*.

29. The concerned AOs shall consequently pass a reasoned and speaking order dealing with the impact of the judgments referred to above upon the impugned reassessment notices and in the manner indicated in paras 27 and 28 of this order. That decision shall thus render a finding on whether the impugned reassessment notices would survive or be liable to be recalled. It shall be open to the writ petitioners to assail any adverse orders that may come to be passed pursuant to the above in accordance with law."

5. Consequently, and in light of the above, we dispose of the writ petition on terms identical to those provided in paragraphs 27 to 29 of *Kanwaljeet Kaur*.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

FEBRUARY 27, 2025/RW