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

\+ W.P.(C) 3815/2024 &CM APPL. 15674/2024

BJN HOLDINGS (BD) LIMITED .....Petitioner

Through: Mr. Ajay Vohra, Sr. Adv. with Mr. Vaibhav Kulkarni, Mr. Saksham Singhal, Mr. Akash Shukla, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ORS. .....Respondents

Through: Mr. Puneet Rai, SSC, Mr. Ashvini Kumar and Mr. Rishabh Nangia, Advs.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER

% **24.02.2025**

1. The petitioner has filed the present petition, *inter alia*, impugning notice dated 29.11.2023 (hereafter the *impugned notice*) issued under Section 148 of the Income Tax Act, 1961 (hereafter *the Act*) in respect of assessment year (AY) 2012-13.

2. The learned counsel appearing for the petitioner submits that the issue stands covered by the decision of this Court in ***ARN Infrastructures India Ltd. v. Assistant Commissioner of Income Tax Central Circle-28 Delhi & Ors.: Neutral Citation No.:2024:DHC:7423-DB.***

3. This Court in the case of ***ARN Infrastructures India Ltd.*** *(supra)* held

as under:

> *"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.*
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> *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 fulfillment of the conditions "......as envisaged/mentioned under Sections 147/148 of the Act and those powers are saved".*
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> *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 this petition is covered by the decision of this court in ***ARN Infrastructures India Ltd.*** *(supra)*. The contention that the time-period as stipulated under Section 149 of the Act is

not applicable, in the given facts, is erroneous and thus rejected.

5. The learned counsel for the respondent concurs with the aforesaid view.

6. The petition is, accordingly, allowed and the impugned notice is set aside. Pending application is also disposed of.

DEVENDRA KUMAR UPADHYAYA, CJ

TUSHAR RAO GEDELA, J

FEBRUARY 24, 2025/*rl*