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

\+ W.P.(C) 4980/2025, CM APPLS. 22856/2025 & 22855/2025

SAHIL KOHLI .....Petitioner

Through: Mr. Yogesh Jagia, Mr. Amit Sood, Mr. Mohit Gupta, Advocates.

versus

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

Through: Mr. Vikramaditya Singh, JSC, Mr. Debesh Panda, Mr. Zehra Khan, Ms. Yashika Gupta, Mr. Sajal Singhai, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

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

% **21.04.2025**

1. Issue notice. Learned counsel for Revenue accepts notice.

2. The Petitioner has filed the present petition, *inter alia*, praying as under:-

> "(a.) Allow the present Writ Petition and issue any writ, order or direction in the nature of Mandamus and/or Certiorari and/or any other writ, order or direction in the nature thereof to quash/set aside the Impugned notice dated 30/03/2024 u/s 148A(b) of the Act and approval dated 06/05/2024 granted under section 151 of Act and consequent order passed in pursuance thereof on 07/05/2024 u/s 148A(d) of the Act and Impugned Notice u/s 148 of the Act dated 08/05/2024 issued to the Petitioner for AY 2014-15, by the Respondent No.1 and all proceedings emanating therefrom, and;
> (b.) Pass any other such orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case in favour of the Petitioner and against the Respondents."

3. It is the Petitioner's case that the impugned notice issued under Section 148 of the Act has been issued beyond the period of limitation. The Petitioner states that he was carrying on the business of catering under the

name and style of a sole proprietorship concern named Saffron Caterers. Thereafter, the partnership firm was constituted with effect from 18.09.2015 as recorded in the partnership deed dated 16.01.2016. And, the said firm continued the said business. It is stated that during the previous year relevant to the assessment year [**AY**] 2014-15, the Petitioner was carrying on business under the name of its sole proprietorship concern, Saffron Caterers.

4. The Petitioner filed its return for the AY 2014-15 on 31.03.2015.

5. On 03.05.2018, search was conducted under Section 132 of the Income Tax Act, 1961, **[the Act]**. However the Petitioner claims that no incriminating material was found relating to the relevant assessment year. Notwithstanding that no incriminating material was found during the search, the Assessing Officer **[AO]** issued a notice under Section 153A of the Act. The said proceedings culminated in assessment order dated 29.06.2021 whereby the AO made an addition of ₹1,03,67,479/- to the Petitioner's income for financial year **[FY]** 2013-14 relevant to AY 2014-15. The Petitioner appealed the said decision before the Commissioner of Income Tax (Appeals) [**CIT(A)**] which was allowed by an order dated 06.09.2023. The learned CIT(A) held that since no incriminating material found during the search in respect of the relevant assessment year, the re-assessment proceedings initiated by issuance of notice under Section 153A were invalid. Thereafter, on 30.03.2024, the AO issued a notice under Section 148A(b) of the Act relying on certain observations made by Supreme Court in ***Principal Commissioner of Income-tax, Central-3 v. Abhisar Buildwell (P.) Ltd.: (2023) SCC OnLine SC 481***. According to the Revenue, the observations made by the Supreme Court in the said decision could be construed as directions and findings pursuant to which re-assessment proceedings could be initiated by virtue of Section 150(1) of the Act notwithstanding the period

of limitation as prescribed under Section 149(1) of the.

6. Thus, the Petitioner's objections raised on that ground was rejected and the AO passed an order dated 07.05.2024 under Section 148A(d) of the Act holding that it is a fit case for issuance of a notice under Section 148 of the Act. The said order was served to the Petitioner accompanied by a notice under section 148 of the Act.

7. We are unable to accept that any observation made by Supreme Court in the case of ***Principal Commissioner of Income-tax, Central-3 v. Abhisar Buildwell (P.) Ltd.*** (supra) could be construed as directions or findings for the purpose of Section 150(1) of the Act.

8. The said issue is covered by earlier decision of this Court in ***ARN Infrastructures India Ltd. v. Assistant Commissioner of Income Tax Cental Circle-28 Delhi & Ors.: Neutral Citation No.: 2024:DHC:7423-DB***. 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.
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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".

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."

9. In view of the above the present petition is allowed and the impugned notice dated 08.05.2024 issued under Section 148 of the Act and further proceedings commenced pursuant to the said notice are set aside.

10. All pending applications also stand disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

APRIL 21, 2025

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Click here to check corrigendum, if any