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

\+ W.P.(C) 5055/2025

NAVEEN NARANG HUF .....Petitioner

Through: Mr. Ved Jain, Mr. Nischay Kantoor, Ms. Soniya Dodeja & Mr. Sarthak Abrol, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CENTRAL CIRCLE 28 DELHI & ORS. .....Respondents

Through: Mr. Shlok Chandra, SSC with Ms. Naincy Jain, JSC, Ms. Madhavi Shukla, JSC & Mr. Ujjwal Jain, Advs.

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

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

% 22.05.2025

1. The petitioner has filed the present petition, *inter alia,* impugning the notice dated 30.08.2024 [**the impugned notice**] issued under Section 148 of the Income Tax Act, 1961 [**the Act**] in respect of the Assessment Year [**AY**] 2016-17.

2. The petitioner is a Hindu Undivided Family [**HUF**]. The petitioner filed its return of income for AY 2016-17 on 30.07.2016, declaring an income of ₹15,97,840/-. On 14.10.2020, a search was conducted under Section 132 of the Act in the case of one Sh. Manoj Kumar Singh, his associates, and various other entities, which also covered the premises and locker of the petitioner.

3. It is the petitioner's contention that no incriminating material was found during the said search therefore, no further proceedings were justified. However, the respondent issued a notice under Section 148 of the Act on 30.06.2021.

4. Subsequently, proceedings under Section 153C of the Act were initiated against the petitioner by issuance of a notice dated 17.01.2022. Pursuant to the said notice, an assessment order dated 04.10.2022 was passed under Section 153A read with Section 143(3) of the Act, whereby the Assessing Officer [**AO**] assessed the income of the petitioner at ₹1,89,75,946/-.

5. The petitioner appealed against the said assessment order dated 04.10.2022 before the Commissioner of Income Tax (Appeals)-30 [**CIT(A)**]. The CIT(A) by the order dated 18.10.2023, annulled the proceedings initiated under Section 153C of the Act and deleted the addition of ₹1,73,78,106/- made by the AO by relying on the judgment of the Supreme Court in ***Commissioner of Income Tax-III, Pune v. Sinhgad Technical Education Society**, **(2017) 397 ITR 344*** and the Madras High Court in ***Agni Vishnu Ventures Pvt. Ltd. v. Deputy Commissioner of Income Tax & Anr., 2023 SCC OnLine Mad 8017***.

6. On 07.08.2024, relying on Section 150 of the Act and CBDT Instruction No.1/2023, the AO issued a notice under Section 148A(b) of the Act requiring the petitioner to show cause why the assessment for AY 2016-2017 should not be reopened under Section 148 of the Act. The AO proceeded on an assumption that the reassessment proceedings were required as a "*consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision [or by a Court in any proceeding under any other law*". The AO construed the direction

given by the Supreme Court in ***Principal Commissioner of Income-tax, Central-3 v. Abhisar Buildwell (P.) Ltd.: (2024) 2 SCC 433*** as a finding or direction to initiate an action under Section 148 of the Act.

7. In response to the aforesaid, the petitioner filed a reply on 13.08.2024, challenging the initiation of the reassessment proceedings. The petitioner claimed that the proceedings are barred by limitation and Section 150(1) of the Act would be inapplicable, as there was no direction from the Supreme Court to reopen the case, citing the rejection of such a prayer advanced by the Revenue

8. The AO rejected the petitioner's reply and passed an order dated 30.08.2024 under Section 148A(d) of the Act, deeming it a fit case for reopening the assessment. The AO also issued the impugned notice dated 30.08.2024, requiring the petitioner to furnish its return within a period of 90 days from date.

9. The impugned notice is clearly beyond the period as stipulated under Section 149(1) of the Act. However, it is the Revenue's case that the impugned notice has been issued within the stipulated time by virtue of the *non-obstante* clause under Section 150 of the Act. The Revenue claims that the impugned notice is 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.:*** *(supra)*. In the said decision, the Supreme Court had held that in certain cases, the assessing officer 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 or a requisition made under Section 132A 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 as that of

the assessee's.

10. 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/or a direction for 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*. This Court in the case of ***ARN Infrastructures India Ltd. v. Assistant Commissioner of Income Tax Central Circle-28 Delhi & Ors.: Neutral Citation No.:2024:DHC:7423-DB*** 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.
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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 fulfilment 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."

11. Plainly, the controversy involved in this petition 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 period as stipulated under Section 149 of the Act is not applicable, in the given facts, is erroneous and thus rejected.

12. The petition is, accordingly, allowed and the impugned notice is set aside.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 22, 2025/KS

Click here to check corrigendum, if any