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

+ **W.P.(C) 5781/2025 & CM APPL. 26369-71/2025**

MEERA GUPTA

.....Petitioner

Through: Mr Aditya Kumar Garg, Advocate.

versus

ASSISTANT COMMISSIONER OF INCOME TAX AND ANR

.....Respondents

Through: Mr Sanjay Kumar, SSC, Ms Monica Benjamin and Ms Easha Kadian, JSCs for the Revenue.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

ORDER

02.05.2025

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1. The petitioner has filed the present petition, *inter alia*, impugning the notice dated 21.02.2024 [**impugned notice**] issued under Section 148 of the Income Tax Act, 1961 [**the Act**] in respect of the Assessment Year [**AY**] 2011-12.

2. The petitioner had filed its return of income for AY 2011-12 on 28.07.2011, declaring an income of ₹16,06,270/-. On 11.11.2014, a search was conducted under Section 132 of the Act in the case of Sh. Y.K. Gupta and his family members (Smt. Meera Gupta and Mukul Gupta).

3. It is the petitioner's contention that no incriminating material pertaining to the searched persons was found during the said search, thus no further proceedings were warranted.

4. Pursuant to the search, proceedings under Section 153A of the Act were initiated against the petitioner by issuance of a notice dated 22.12.2016. Thereafter, the assessment order dated 30.12.2016 was passed under Section 153A read with Section 143(3) of the Act. The petitioner



contends that the assessment year in question was a completed assessment and, in the absence of any incriminating material found during the course of the search, the addition of ₹14,82,60,830/- made by the Assessing Officer [AO] was without jurisdiction and contrary to the settled legal principles.

5. Aggrieved by the assessment order dated 30.12.2016 passed by the AO, the petitioner preferred an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. By an order dated 12.09.2019, the CIT(A) deleted the additions made by the AO, by relying on **Commissioner of Income-tax v. Kabul Chawla: (2016) 380 ITR 573** and **Principal Commissioner of Income-tax v. Meeta Gutgutia (2017) 395 ITR 526**, that no addition was permissible in the absence of incriminating material, as the year in question was not an abated assessment year.

6. The Revenue appealed against the order dated 12.09.2019 passed by the CIT(A) before the learned Income Tax Appellate Tribunal [ITAT]. The learned ITAT dismissed the appeal preferred by the Revenue by the order dated 12.10.2022, relying upon **Commissioner of Income-tax v. Kabul Chawla (supra)** and **Chintels India Ltd. v. Deputy Commissioner of Income-tax: (2017) 397 ITR 416**.

7. On 11.01.2024, relying on the CBDT Instruction No.1/2023, dated 23.08.2023, the AO issued a notice under Section 148A(b) of the Act requiring the petitioner to show cause why the assessment for the relevant assessment year [AY 2011-12] should not be reopened under Section 148 of the Act.

8. In response to the aforesaid notice, the petitioner filed a reply on 25.01.2024, challenging the initiation of the reassessment proceedings. The petitioner claimed that the notice dated 11.01.2024 was time barred and was



not valid as the said notice did not contain the signatures of the AO.

9. On 21.02.2024, the AO rejected the petitioner's reply and passed an order under Section 148A(d) of the Act, deeming the case fit for reopening and further issued a notice under Section 148 of the Act, asserting that the proceedings were within the limitation period by invoking Section 150 of the Act.

10. 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.: (2024) 2 SCC 433***. In the said decision, the Supreme Court had held that in certain cases, 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 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.

11. 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 Cental 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.

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.”

12. 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.

13. The petition is, accordingly, allowed and the impugned notice is set aside. The pending applications are also disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 02, 2025/M

[Click here to check corrigendum, if any](#)