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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 12625/2024, CM APPLs. 52442/2024 and CM APPL.
168/2025
ACHARAJ RAM SHAMBHU RAM A PARTNERSHIP FIRM
THROUGH ITS PARTNER SHAILENDER SONI.....Petitioner
Through: Mr Abhimanyu Jhamba, Advocate.

versus

INCOME TAX OFFICER WARD 46-1 & ANR.Respondents
Through: Mr Apoorv Agarwal, Advocate.

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

ORDER

% **09.01.2025**

1. The petitioner has filed the present petition impugning a notice dated 31.08.2024 (hereafter *the impugned notice*) issued under Section 148 of the Income Tax Act, 1961 (hereafter *the Act*) in respect of the Assessment Year (AY) 2015-16.
2. The petitioner had filed its return of income for AY 2015-16 on 30.09.2015. The Assessing Officer (hereafter *the AO*) issued a notice dated 24.08.2024 under Section 148A(b) of the Act setting out the information available on the insight portal, which according to the AO was suggestive of the petitioner's income for AY 2015-16 escaping assessment. The information was to the effect that during the course of search conducted in the case of VKC group (including VKC Nuts Private Limited) under Section 132 of the Act, a hard drive containing the books of account in the name of Big Wave Traders was found, which included data of cash transactions. The analysis of the said data allegedly indicated that the petitioner had made



unaccounted sale for a value of ₹92,05,155/- for which the petitioner had received payment in cash.

3. The petitioner responded to the said notice denying the allegations as stated in the impugned notice and asserting that it did not have any transactions with VKC group or VKC Nuts Pvt Ltd.

4. The AO passed an order dated 31.08.2024 under Section 148A(d) of the Act holding that it was a fit case for issuance of notice under Section 148 of the Act.

5. The petitioner has assailed the impugned notice essentially on three fronts. First, that the Assessing Officer (AO) did not have any jurisdiction to issue the said notice after the CBDT's notification dated 29.03.2022, which posits that the reassessment proceedings be conducted in a faceless manner. Second, it is submitted that the impugned notice is beyond the period of limitation as prescribed under Section 149(1) of the Act. And third, that the impugned notice is liable to be set aside on the ground of inconsistency, since no steps were taken for reassessment of income on the basis of information allegedly obtained during the search proceedings, in respect of the searched person.

6. Concededly, the issue whether the AO had the jurisdiction to issue the impugned notice is covered against the petitioner by the earlier decision of this court in ***TKS Builders v. Income Tax Officer Ward 25(3) New Delhi*** and other connected matters: ***Neutral Citation No.:2024:DHC:8330-DB***.

7. Insofar as the third ground of challenge is concerned, the learned counsel appearing for the Revenue submits that, in fact, proceedings have been initiated for reassessment of the searched person (M/s VKC Nuts Pvt. Ltd.) based on the information in respect of which the petitioner's income



for AY 2015-16 is sought to be reassessed and such reassessment proceedings are pending. In view of the above, the petitioner's challenge on the ground of inconsistency also does not survive.

8. However, there is merit in the petitioner's contention that the impugned notice has been issued beyond the period as specified under Section 149(1) of the Act. Concededly, the said issue is covered by the decision of this court in *The Principal Commissioner of Income Tax-Central-1 v. Ojjus Medicare Pvt. Ltd.*: Neutral Citation No.:2024:DHC:2629-DB. In *KAD Housing Pvt. Ltd. v. Deputy Commissioner of Income Tax Central Circle 6 Delhi*: WP(C) 14866/2024 decided on 23.12.2024, this court, following the earlier decision in the case of *The Principal Commissioner of Income Tax -Central-1 v. Ojjus Medicare Pvt. Ltd.* (supra) and *Dinesh Jindal v. Assistant Commissioner of Income Tax, Central Circle 20, Delhi & Ors.*: Neutral Citation No.:2024:DHC:4554-DB allowed a similar petition. The relevant extract of the said decision is set out below:

“9. As noted above, the short question to be considered by this Court is whether the impugned notice has been issued beyond the period of limitation as stipulated under Section 149(1)(b) of the Act. The said issue is squarely covered by the earlier decisions of the Co-ordinate Bench of this Court in *Dinesh Jindal v. Assistant Commissioner of Income Tax, Central Circle 20, Delhi & Others*¹ as well as in *The Pr. Commissioner of Income Tax -Central-1 v. Ojjus Medicare Pvt. Limited*².

10. In *Dinesh Jindal v. Assistant Commissioner of Income Tax, Central Circle 20, Delhi & Others* (supra), the Co-ordinate Bench of this Court has observed as under:-



“8. Undisputedly, and in terms of Section 153C(3) of the Act, any search if conducted after 01 April 2021, would cease to be regulated by that provision. Sub-section (3), in that sense, embodies a sunset clause insofar as the applicability of Section 153C is concerned. The First Proviso to Section 149(1), however, bids us to go back in a point of time, and to examine whether a reopening would sustain bearing in mind the timeframes as they stood embodied in Section 149(1)(b) or Section 153A and 153C, as the case may be. The First Proviso essentially requires us to undertake that consideration bearing in mind the timeframes which stood specified in Sections 149, 153A and 153C as they stood prior to the commencement of Finance Act, 2021.

9. Thus, an action of reassessment which comes to be initiated in relation to a search undertaken on or after 01 April 2021 would have to meet the foundational tests as specified in the First Proviso to Section 149(1). A reassessment action would thus have to not only satisfy the time frames constructed in terms of Section 149, but in a relevant case and which is concerned with a search, also those which would be applicable by virtue of the provisions of Section 153A and 153C.

10. Undisputedly, and if the validity of the reassessment were to be tested on the anvil of Section 153C, the petitioner would be entitled to succeed for the following reasons. It is an undisputed fact that the proceedings under Section 148 commenced on the basis of the impugned notice dated 30 March 2023. This date would be of seminal importance since the period of six AYs’ or the “relevant assessment year” would have to be reckoned from the date when action was initiated to reopen the assessment pertaining to AY 2013-14.”

11. In *The Pr. Commissioner of Income Tax-Central-1 v. Ojjus Medicare Pvt. Limited* (*supra*), the Court also explained the manner in which the period of six or ten years is required to be reckoned in respect of reopening of the assessment for a period prior to six years and/or before the expiry of ten years from the relevant assessment years as contemplated under



Section 153C of the Act. The court held that the period of ten years is required to be reckoned from the end of the assessment year relevant to the year in which the notice under Section 148 of the Act is issued.

12. The relevant extract of the decision in *The Pr. Commissioner of Income Tax -Central-1 v. Ojjus Medicare Pvt. Limited* (*supra*) is set out below:-

“D. The First Proviso to Section 153C introduces a legal fiction on the basis of which the commencement date for computation of the six year or the ten year block is deemed to be the date of receipt of books of accounts by the jurisdictional AO. The identification of the starting block for the purposes of computation of the six and the ten year period is governed by the First Proviso to Section 153C, which significantly shifts the reference point spoken of in Section 153A(1), while defining the point from which the period of the “relevant assessment year” is to be calculated, to the date of receipt of the books of accounts, documents or assets seized by the jurisdictional AO of the non-searched person. The shift of the relevant date in the case of a non-searched person being regulated by the First Proviso of Section 153C (1) is an issue which is no longer *res integra* and stands authoritatively settled by virtue of the decisions of this Court in *SSP Aviation* and *RRJ Securities* as well as the decision of the Supreme Court in *Jasjit Singh*. The aforesaid legal position also stood reiterated by the Supreme Court in *Vikram Sujitkumar Bhatia*. The submission of the respondents, therefore, that the block periods would have to be reckoned with reference to the date of search can neither be countenanced nor accepted.

E. The reckoning of the six AYs’ would require one to firstly identify the FY in which the search was undertaken and which would lead to the ascertainment of the AY relevant to the previous year of search. The block of six AYs’ would consequently be those which immediately precede the AY relevant to the year of search. In the case of a search assessment undertaken in terms of Section 153C, the solitary distinction would be that the previous year of search would stand substituted by the date or the year in which the books of accounts or documents and assets



seized are handed over to the jurisdictional AO as opposed to the year of search which constitutes the basis for an assessment under Section 153A.

F. While the identification and computation of the six AYs' hinges upon the phrase "immediately preceding the assessment year relevant to the previous year" of search, the ten year period would have to be reckoned from the 31st day of March of the AY relevant to the year of search. This, since undisputedly, Explanation 1 of Section 153A requires us to reckon it "from the end of the assessment year". This distinction would have to necessarily be acknowledged in light of the statute having consciously adopted the phraseology "immediately preceding" when it be in relation to the six year period and employing the expression "from the end of the assessment year" while speaking of the ten year block."

13. The petitioner has, on the basis of the said decisions, produced a tabular statement, which indicates that the assessment in respect of the AY 2015-16 falls beyond the period of ten years as stipulated under Section 149 read with Section 153C of the Act. It would be apposite to set out the said tabular statement, which reads as under:-

Analysis of time-period to issue reassessment notice Date of impugned notice under Section 148 – 31.08.2024 This chart is prepared in light of the first proviso of Section 149 of the Act as amended by Finance Act 2021	
Relevant Assessment year for initiating proceedings under Section 148	Without prejudice computation of 10 years in light of first proviso to Section 149



of the Act	
2025-26	1
2024-25	2
2023-24	3
2022-23	4
2021-22	5
2020-21	6
2019-20	7
2018-19	8
2017-18	9
2016-17	10
2015-16	11 (beyond terminal point of 10 years)

14. Mr Chawla, the learned counsel appearing for the Revenue, fairly states that there is no cavil with the said tabular statement and that the issue is covered by the decisions of this Court in *Dinesh Jindal v. Assistant Commissioner of Income Tax, Central Circle 20, Delhi & Others* (*supra*) as well as *The Pr. Commissioner of Income Tax -Central-1 v. Ojjus Medicare Pvt. Limited* (*supra*). He, however, submits that the Revenue may challenge the same in appropriate proceedings.

15. In view of the above, the impugned notice is set aside. Consequently, the respondent is restrained from the proceeding with the re-assessment proceedings in respect of the AY 2015-16.”

9. Undisputedly, the facts in the present case are similar in material aspects as obtaining in *KAD Housing Pvt. Ltd. v. Deputy Commissioner of Income Tax Central Circle 6 Delhi* (*supra*). The learned counsel appearing for the Revenue does not dispute that the said decision would cover the issue



in favour of the petitioner. Accordingly, the impugned notice is set aside.

10. In view of the above, the present petition along with pending applications stand disposed of.

VIBHU BAKHRU, ACJ

TUSHAR RAO GEDELA, J

JANUARY 09, 2025/tr

Click here to check corrigendum, if any