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

\+ W.P.(C) 17812/2024 and CM APPL. 75830/2024

NV HOLDINGS (INDIA) PRIVATE LIMITED. .....Petitioner
Through: Mr Manuj Sabharwal with Mr Drona Negi and Mr Devvrat Tiwari, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME-TAX
CENTRAL CIRCLE - 31, DELHI & ORS. .....Respondents
Through: Mr Sushant Pandey, Advocate.

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

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

% **10.01.2025**

1. Issue notice. The learned counsel for the Revenue accepts notice.

2. The petitioner has filed the present petition, *inter alia,* 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) 2013-14.

3. The petitioner (hereafter *the Assessee*) claims that the impugned notice is barred by the limitation. The Assessing Officer (AO) had commenced the proceedings under Section 153A of the Act by issuance of a notice dated 22.11.2018. The said proceedings culminated in the assessment order dated 30.12.2019 under Section 153A of the Act. The Assessee had appealed the said assessment order before the learned Commissioner of

Income Tax (Appeals) [hereafter *the CIT(A)*]. The said appeal was allowed and the learned CIT(A) deleted the additions made by the AO by the assessment order dated 30.12.2019.

4. The Revenue, taking a cue from the decision of the Supreme Court in ***Principal Commissioner of Income-tax, Central-3 v. Abhisar Buildwell (P.) Limited:(2024) 2 SCC 433,*** issued the notice dated 08.08.2024 under Section 148A(b) of the Act, which is also impugned in the present petition. Pursuant to the said notice, the AO passed the order dated 31.08.2024 under Section 148A(d) of the Act.

5. The Revenue has construed the observations made by the Supreme Court in ***Principal Commissioner of Income-tax, Central-3 v. Abhisar Buildwell (P.) Limited*** *(supra)* as findings and directions for proceeding under Section 147 of the Act. Thus, according to the Revenue, the period of limitation as prescribed under Section 149(1) of the Act is not applicable by virtue of Section 150 of the Act.

6. Concededly, the said question is covered by an earlier decision of this court in ***ARN Infrastructures India Ltd. v. Assistant Commissioner of Income Tax Cental Circle-28 Delhi & Ors.: Neutral Citation :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.
> 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."

7. In view of the above, the learned counsel appearing for the Revenue fairly accepts that the impugned notice ought to be set aside as it is barred by limitation.

8. Accordingly, the present petition is allowed and the impugned notice is set aside.

9. The petition is disposed of in the aforesaid terms. Pending application also stands disposed of.

VIBHU BAKHRU, ACJ

TUSHAR RAO GEDELA, J

JANUARY 10, 2025/tr

Click here to check corrigendum, if any