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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 4304/2026 CM APPL. 20983/2026 CM APPL. 20984/2026**
DEEPAK NAGAR

Through: Mr. Raghvendra K. Singh, Mr. Abhishek Gupta and Mr. Ashish Shukla, Advs.Petitioner

versus

ASSISTANT COMMISSIONER OF INCOME TAX

Through: Mr. Indruj Singh Rai SSC, Mr. Sanjeev Memon, Mr. Rahul Singh, Ms Priya Sarkar JSCs and Mr. Gaurav Kumar, Adv.Respondent

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE VINOD KUMAR

ORDER
02.04.2026

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1. This writ petition lays challenge to notice dated 31.08.2024 issued under Section 148 of the Income Tax Act, 1961 (*hereinafter referred to as 'the Act of 1961'*) and consequential proceedings thereof for the Assessment Year (AY) 2016-17.
2. Learned counsel for the petitioner argued that the initiation of proceedings lacks foundational jurisdictional fact viz existence of assets more than Rs.50 lacs as given under Clause (a) of proviso to Section 149(1) of the Act of 1961 (as applicable at the relevant time).
3. Learned counsel invited Court's attention towards the reasons



recorded by the Assessing Officer (AO) in his order/notice dated 31.08.2024 and argued that there is no finding in the reasons which gives any indication of existence of an asset.

4. Learned counsel for the petitioner relied upon a judgment of this Court dated 23.04.2025 in the case of **Smart Chip Private Limited v. Assistant Commissioner of Income Tax, Central Circle-25 NC 2025:DHC:2834-DB** decided on 23.04.2025 in support of his contention.

5. Mr. Indruj Singh Rai, learned Senior Standing Counsel for the respondent-Department, on the other hand, submitted that on 31.03.2026, the assessment proceedings have been culminated by the Assessing Officer (AO) and assessment order has been passed and therefore, the assessee should avail the remedy available to him in accordance with law.

6. He further submitted that the ground of limitation which the petitioner has taken before this Court was never raised before the AO and therefore, the same cannot be allowed to be raised.

7. Having heard learned counsel for the parties, we are of the *prima facie* view that the issue of limitation being a fundamental jurisdictional aspect is required to be examined by the AO himself on the basis of statute or judicial precedence. May be the assessee has not taken this plea but since he had approached this Court on 26.03.2026 i.e. before the assessment order was passed, we are of the view that the writ petitions can be entertained and merely because an assessment order has been passed, petitioner's right to raise jurisdictional issue and invocation of writ jurisdiction cannot be denied.

8. Learned Senior Standing Counsel for the respondent however could not dispute the legal position emanating from the judgment of this Court in



the case of **Smart Chip** (supra).

9. We have heard learned counsel for the parties and perused the material to the extent necessary so also the judgment of this Court in **Smart Chip** (supra).

10. In **Smart Chip** (supra), this Court has held as under :

“18. In terms of Explanation 2 to Section 153A(1) of the Act, the term ‘asset’ is defined to include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank accounts.

19. The AO seeks to disallow expenses on account of doubting the genuineness for the reason that the same were not incurred wholly or exclusively for the purpose of the petitioner’s business. Absent any further material to establish that such expenses had resulted in the acquisition of any asset, the conditions stipulated in the fourth proviso to Section 153A(1) of the Act would remain unsatisfied.

20. In the aforesaid view the period of limitation for issuing a notice under Section 153A of the Act, in the given facts of this case, would necessarily have to be confined to a period of six assessment years immediately preceding the assessment year relevant to the previous year in which the search under Section 132 of the Act was conducted.”

11. It is noteworthy that the reasons or the notice dated 31.08.2024 does not make a whisper about existence or creation of an asset, which is precursor to initiate proceedings under Section 153A of the Act of 1961 with extended period of ten years. Relevant para is reproduced hereunder:-

“9. In view of the above factual & legal position and on the basis of material available on record, it is suggested that the income of Rs. 14,33,24,369/- or more chargeable to tax, has escaped assessment for the relevant AY under consideration. The income chargeable to tax, is represented as unexplained cash expenses made in respect of Goa



project. Hence, income chargeable to tax, represented in the form of “expenditure in respect of a transaction or in relation to an event or occasion” as defined u/s 149 of the Income-tax Act, 1961 amounting to fifty lakh rupees or more, has escaped assessment.”

12. Accordingly to the judgment, in absence of recording of jurisdictional fact of any asset, the extended period of ten years cannot be applicable and the maximum period available to an Assessing Officer should be six years and since on 31.08.2024, more than six years have elapsed from the end of the relevant Assessment Year (AY) i.e. 2016-17, the notice under Section 148 of the Act of 1961 is also declared to be fundamentally without jurisdiction.

13. Hence, the notice under Section 148 of the Act of 1961 dated 31.08.2024 for Assessment Year 2016-17 so also the consequential demand assessment order dated 31.03.2026, notice of demand so also notice of penalty, if any, stand quashed.

14. The pending application(s) stand disposed of.

DINESH MEHTA, J

VINOD KUMAR, J

APRIL 2, 2026/ġġ