



\$~2

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

%

Date of Decision : 11.12.2024

+ **W.P.(C) 13790/2024 & CM APPL. 57737/2024**

ATS TOWNSHIP PVT LTD

.....Petitioner

Through: Mr. Ved Jain, Mr. Nishcay Kantoor,
Ms. Soniya Dodeja and Mr. Divyansh
Dubey, Advocates

versus

ASSISTANT COMMISSIONER OF INCOME TAX
CIRCLE 1(1) DELHI & ORS

.....Respondent

Through: Mr. Indruj Singh Rai, SSC, Mr. Rahul
Singh, JSC and Mr. Anmol Jagga,
Advocate

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

VIBHU BAKHRU, ACJ. (ORAL)

1. The petitioner has filed the present petition impugning a notice dated 23.08.2024 issued under 148A(b) of the Income Tax Act, 1961 (hereafter *the Act*); an order dated 31.08.2024 (hereafter *the impugned order*) passed under Section 148A(d) of the Act pursuant to the said notice; and a notice dated 31.08.2024 issued under Section 148 of the Act, in respect of assessment year (AY) 2014-15.

2. The petitioner's challenge to the notices dated 23.08.2024 and 31.08.2024 (hereafter *the impugned notices*) and the impugned order is



founded on several grounds, however, the learned counsel for the petitioner has confined the present petition to challenging the initiation of the reassessment proceedings as being barred by limitation.

3. A plain reading of the impugned notice dated 23.08.2024 issued under Section 148A(b) of the Act, indicates that the assessing officer (AO') had information regarding fictitious purchase transaction amounting to Rs.9,83,65,488/- reflected during financial year (FY) 2013-14. Apparently, the said information was revealed by one Mr. Rajesh Rathi during the search conducted in the premises of KALA Rathi RSW Steel Pvt. Ltd (hereafter *the searched person*) on 10.10.2021. It is material to note that there is no allegation or suggestion in the impugned notice dated 23.08.2024, which suggests that any asset was found representing the petitioner's income that had allegedly escaped assessment.

4. The petitioner responded to the impugned notice dated 23.08.2024 contesting the allegations. Additionally, the petitioner also contended that the issuance of the said notice was issued beyond the period of limitation.

5. The AO was not persuaded with the petitioner's response dated 31.08.2024 to drop the proceedings and proceeded to pass the impugned order holding that it was a fit case for issuance of a notice under Section 148 of the Act.

6. It is the petitioner's case that the said controversy is now covered by the decision of this court in ***Manju Somani v. Income Tax Officer Ward-70(1) & Ors***: ***Neutral Citation: 2024:DHC:5411-DB***.



7. In terms of the first proviso to Section 149 of the Act, "no notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 1st day of April, 2021, if a notice under section 148 or section 153A or section 153C could not have been issued at that time on account of being beyond the time limit specified under the provisions of clause (b) of sub-section (1) of this section or section 153A or section 153C, as the case may be as they stood immediately before the commencement of the Finance Act, 2021"

8. A notice for reopening assessment for AY 2014-15 could not be issued beyond the period of six years from the said date. However, since the initiation of reassessment proceedings are premised on material containing information allegedly pertaining to the petitioner, the assessments/reassessment could be initiated under Section 153C of the Act

9. The learned counsel for the Revenue does not dispute that the case stands covered in favour of the petitioner by the case of ***Dinesh Jindal v. Assistant Commissioner of Income Tax, Central Circle 20, Delhi & Others: Neutral Citation: 2024:DHC:4554-DB***. In the said case, this court has held that the reassessment pursuant to a search carried out after 01.04.2021 would necessarily have to follow the timeframe as specified under Sections 153A and 153C of the Act. The relevant extract of the said decision is set out below:

“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 in so far 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 Section 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 the AY 2013-2014.

11. The computation of the six or the block of ten AYs was explained by us in *Ojjus Medicare Private Limited* in the following terms:

“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 account 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 account, 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 Ltd. v. Dy. CIT* [(2012) 346 ITR 177 (Delhi); 2012 SCC OnLine Del 1898.] and *CIT v. RRJ Securities Ltd.* [(2016) 380 ITR 612 (Delhi); 2015 SCC OnLine Del 13085.] as well as the decision of the Supreme Court in *CIT v. Jasjit Singh* [(2023) 458 ITR 437 (SC); 2023 SCC OnLine SC 1265.] . The aforesaid legal position also stood reiterated by the Supreme Court in *ITO v. Vikram Sujitkumar Bhatia* [(2023) 453 ITR 417 (SC); 2023 SCC OnLine SC 370.] . 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 assessment year 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 account 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 to section 153A requires us to reckon it ‘*from the end of the assessment year*’. This distinction would have to necessarily be acknowledged in the 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.”

12. Viewed in that light, it is manifest that the AY 2013-2014 would fall beyond the block period of ten years. It becomes pertinent to note that the First Proviso to Section 149(1) compels us to test the validity of initiation of action for reassessment commenced pursuant to a search, based upon it being found that the proceedings would have sustained bearing in mind the timelines prescribed in Sections 149, 153A and 153C, as they existed prior to the commencement of the Finance Act, 2021. This necessarily requires us to advert to the timeframes comprised in both Section 149(1)(b) as well as section 153C as it existed on the statute book prior to 01 April 2021, which undisputedly was the date from when the Finance Act, 2021 came into effect.

13. While it is true that Section 153C and the procedure prescribed therein had ceased to be applicable post 31 March 2021, the First Proviso to Section 149(1) does not appear to suggest that the First Proviso to Section 153C(1) would either become inapplicable or be liable to be ignored. Undisputedly, the First Proviso to Section 153C(1), by virtue of a legal fiction enshrined therein requires one to treat the date of initiation of search, and which otherwise constitutes the commencement point for a search assessment in the case of a non-searched party, to be construed as the date when the books of account or documents and assets seized or requisitioned are transmitted to the AO of such “*other person*”. Resultantly, the computation of the six preceding AYs or the “*relevant assessment year*” in the case of the non-searched entity has to be reckoned from the time when the material unearthed in the search is handed over to the jurisdictional AO. The import of this legal fiction is no longer res



integra bearing in mind the judgment of the Supreme Court in *CIT v. Jasjit Singh & Ors.*, 2023 SCC OnLine SC 1265 and the whole line of precedents rendered by our High Court which were noticed in *Ojjus Medicare Private Limited*. Those decisions have consistently held that in the case of a non-searched entity, it is the date of hand over of material, as opposed to that of the actual search which would constitute the starting point for reckoning the block of six or ten AYs.

14. However, Section 149(1), as it came to be placed and introduced in the statute book by virtue of the Finance Act, 2021, neither effaces nor removes from contemplation the First Proviso to Section 153C(1). Consequently, in cases where a search is conducted after 31 March 2021, the said Proviso would have to be construed and tested with reference to the date when the AO decides to initiate action against the non-searched entity. While in the case of a search initiated after 31 March 2021 there would be no actual hand over of material to the jurisdictional AO, that does not convince us to revert to section 153A and hold that the block period is liable to be computed from the date of search. That, in our considered opinion, would amount to rewriting section 153C which would clearly be impermissible.

[emphasis added]

10. The learned counsel for the Revenue had also contended that the date of placing the material on the insight portal ought to be considered the date of search for the purposes of computing limitation under Section 153C of the Act. However, *prima facie*, the same is contrary to the decision in ***Dinesh Jindal v. Assistant Commissioner of Income Tax, Central Circle 20, Delhi & Others: (supra)***. It is to be noted that in said case, this court had reasoned that in case of a search after 31.03.2021, there would be no actual handover of material to the jurisdictional Assessing Officer and therefore it would not be permissible to revert to Section 153A of the Act for the



purposes of computing the period of limitation from the date of the search. *Prima facie*, this reasoning would also hold good in case of assuming the date of placing information on insight portal as the date of search for the purposes of the proviso to Section 153C of the Act.

11. Uploading of information by the investigation wing of the Income Tax department would not be a substitute for recording of a satisfaction note by the AO of a searched person and handing over the assets, books of accounts or other material to the AO of the person other than the searched person for the purpose of initiation of proceedings under Section 153C of the Act.

12. The petitioner has handed over a tabular statement which indicates a computation of ten years' period in terms of the decision of this Court in ***Pr. CIT v. Ojjus Medicare Pvt. Ltd.*** (2024) 465 ITR 101. The said tabular statement is reproduced below:-

Computation of the 10 year block period for which notice under section 153C can be issued	No. of years
AY 2025-26	1
AY 2024-25	2
AY 2023-24	3
AY 2022-23	4
AY 2021-22	5
AY 2020-21	6
AY 2019-20	7
AY 2018-19	8



AY 2017-18	9
AY 2016-17	10

13. In view of the above, the controversy involved is covered in favour of the petitioner by the decisions of this Court in ***Dinesh Jindal v. Assistant Commissioner of Income Tax, Central Circle 20, Delhi & Ors.*** and ***Pr. CIT Ojjus Medicare (supra)***.

14. It is material to note that in this case, there is no reference of an asset representing income escaping assessment. Thus, reopening the assessments for a period of ten years as contemplated under Section 153A of the ACT may not be applicable. In the present case, a notice has been issued beyond the period of six years from the end of the AY 2014-15 and therefore, the notice is clearly beyond the period of limitation.

15. In view of the above, the petition is allowed and the impugned notices issued under Section 148A(b) and 148 of the Act, are set aside. The impugned order passed under Section 148A(d) of the Act is also set aside.

16. The petition is allowed in the aforesaid terms.

VIBHU BAKHRU, ACJ

TUSHAR RAO GEDELA, J

DECEMBER 11, 2024

Aj

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