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

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Date of Decision : 03.12.2024+ **W.P.(C) 16459/2024, CM APPL. 69455/2024 & CM APPL. 69456/2024**

SANJAY SINGHAL

.....Appellant

Through: Ms. Shreya Jain & Mr. Gaurav
Tanwar, Advocates

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL
CIRCLE 15, DELHI

.....Respondent

Through: Mr. Debesh Panda, SSC with Ms.
Zehra Khan & Mr. Vikramaditya
Singh, JSCs.**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****VIBHU BAKHRU, J. (ORAL)**

1. At the outset, the learned counsel for the parties submit that an inadvertent error has crept in the order passed on 28.11.2024, whereby the above captioned petition was adjourned on account of non-appearance of the counsel. The counsel states that, in fact, the counsel had mentioned the matter. Thus, the order incorrectly records that none had appeared on behalf of the parties. In view of the above, the order dated 28.11.2024 is recalled.



2. We have heard the counsels for both the parties.
3. The petitioner has filed the present petition, *inter-alia*, impugning a notice dated 31.08.2024, issued under Section 148A(b) of the Income Tax Act, 1961 (hereafter *the Act*), proposing to initiate re-assessment proceedings in respect of assessment year (AY) 2015-16 and an order dated 24.09.2024, passed under Section 148A(3) of the Act. The petitioner also impugns a notice dated 25.09.2024, issued under Section 148 of the Act.
4. The petitioner (hereafter *the Assessee*) had filed his return of income for AY 2015-16 on 20.08.2015. Search and seizure operations were conducted by the Investigation Wing of the Income Tax Department on 07.04.2017, in Sharp Group of cases. The premises of the Assessee was also searched, and pursuant to the said operations, a notice under Section 153A of the Act was issued to the Assessee on 09.07.2019. In response to the said notice, the Assessee filed his return of income for the relevant assessment year (AY 2015-16), declaring an income of ₹7,26,500/-. The assessment proceedings under Section 153A read with Section 143(3) of the Act, were completed and the assessment order was passed on 23.12.2019, determining the Assessee's income at ₹11,43,11,530/-. The enhancement in the declared income was on account of an addition of ₹11,35,85,032/- made under Section 69A of the Act.
5. The Assessee, being aggrieved by the said assessment order, preferred an appeal before the learned Commissioner of Income Tax (Appeals) [hereafter *CIT(A)*]. The same was allowed by an order dated 12.07.2022 and the addition of ₹11,35,85,032/- made under Section 69A of the Act was



deleted. The CIT(A)'s order was premised principally on the ground that no incriminating material was found during the search proceedings, and therefore, the assessment pursuant to notice under Section 153A of the Act could not be sustained.

6. Aggrieved by the decision of the learned CIT(A), the Revenue filed an appeal before the learned Income Tax Appellate Tribunal (hereafter *the learned ITAT*). The said appeal (ITA No. 2421/Del/2022) was dismissed by the learned ITAT, by an order dated 17.04.2023. The relevant extract of the said decision as set out in the impugned notice dated 24.09.2024, issued under Section 148A(3) of the Act, is extracted below:

“30. The entire assessment is based upon the statement of Shri Naresh Aggarwal, which is extracted in the body of the assessment order itself.

31. We have carefully perused each and every question therein. We find that there is not even a whisper about Shri Sanjay Singhal, the assessee. In fact, for every specific question relating to the impugned transaction, Shri Naresh Aggarwal stated that he is not aware of the same and correct person is Shri Padam Chand Gupta and surprisingly, Shri Padam Chand Gupta was never examined by the Assessing Officer. The transaction sheet extracted in the body of the assessment order shows that it pertained to M/s Rajlaxmi Commodities Pvt Ltd and not to the assessee. Therefore, if any person needs to be questioned about the impugned loss is M/s Rajlaxmi Commodities Pvt Ltd and not the assessee.

32. We are of the considered view that the entire addition has been made merely on surmises and conjectures and hypothesis. Moreover, we fail to understand how the statement recorded on 29.12.2015 is relevant for the search conducted on 07.04.2017. In



fact, in his statement itself, in reply to question Nos. 22 and 24, Shri Naresh Aggarwal has categorically stated that all transactions were recorded in the books of account of M/s Rajlaxmi Commodities Pvt Ltd and in reply to Question Nos. 25 and 32, Shri Naresh Aggarwal has stated that profit and loss of USR ID 3 pertained to M/s Rajlaxmi Commodities Pvt Ltd.

33. The undisputed fact is that income from the same transaction USR 3 for A.Y under consideration has been accepted by the department as income of M/s Rajlaxmi Commodities Pvt Ltd. Therefore, there appears to be no motive behind the allegation that the assessee Shri Sanjay Singhal has taken accommodation entries to reduce his taxable income as he has never claimed any loss in his return of income.

34. The undisputed fact is also that transactions are not in the name of the assessee and therefore, the assessee cannot claim benefits arising from such transactions in his return of income.

35. Considering the totality of facts from all possible angles, we do not find any reason to interfere with the findings of the Id.CIT(A).”

7. The Revenue preferred an appeal against the said decision before this Court, being ITA No. 807/2023, which was dismissed by an order dated 22.12.2023.

8. Thereafter, the Assessing Officer (hereafter *the AO*) issued a notice dated 31.08.2024 under Section 148A(b) of the Act, which was followed by the impugned order under Section 148(3) of the Act. The AO issued notice under Section 148 of the Act for reinitiating the proceedings for reassessing the Assessee’s income for AY 2015-16 under Section 147 of the Act.

9. It is evident from the above that the impugned notice has been issued



beyond the period as stipulated under Section 149(1) of the Act. However, it is the Revenue's case that the impugned notices were within the prescribed time period by virtue of the *non-obstante* clause under Section 150 of the Act. The said contention is premised on the assumption that the decision of this Court, dismissing the Revenue's appeal against an order dated 17.04.2023, passed by the learned ITAT in ITA No. 2421/Del/2022, is to be construed as containing findings and directions for commencing proceedings under Section 147 of the Act. The Revenue relies on the decision of the Hon'ble Supreme Court in ***Principal Commissioner of Income Tax, Central-3 v. Abhisar Buildwell Private Limited: (2024) 2 SCC 433*** in support of this assumption.

10. It is material to note that in ***Principal Commissioner of Income Tax, Central-3 v. Abhisar Buildwell Private Limited (supra)***, the Hon'ble Supreme Court had upheld the decisions of this Court in ***Commissioner of Income Tax v. Kabul Chawla: 2015 SCC OnLine Del 11555***, and the decision of the High Court of Gujarat in ***Principal Commissioner of Income Tax-4 v. Saumya Construction P. Ltd.: 2016 SCC OnLine Guj 9976***, whereby it was held that the proceedings under Section 153A of the Act could be initiated only if incriminating material had been found during the search proceedings. However, the Hon'ble Supreme Court had also noted that in cases where the said proceedings could not be initiated, the Revenue was not remediless and could take recourse to Sections 147 and 148 of the Act. The relevant observations made by the Hon'ble Supreme Court, in that regard, are set out below:

“36.4. In case no incriminating material is unearthed during



the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132-A of the 1961 Act. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under Sections 147/148 of the Act and those powers are saved.”

11. It is apparent from the above that the said observations cannot be read as permitting reopening of assessments, even in cases where necessary conditions for invoking Sections 147 and 148 of the Act are not satisfied. The said decision also does not permit reopening of assessments beyond the period as stipulated under Section 149(1) of the Act.

12. We are unable to accept that the decision of this court in ITA No. 807/2023 [order dated 22.12.2023 dismissing the Revenue’s appeal] can be read as findings and directions within the meaning of Section 150 of the Act, to permit the Revenue to issue notices under Section 148 of the Act, beyond the period as stipulated under Section 149(1) of the Act. The said issue is also covered by the decision of this court in **ARN Infrastructures India Ltd. v. Assistant Commissioner of Income Tax Cental Circle-28 Delhi & Ors.: Neutral Citation No.: 2024:DHC:7423-DB**. The relevant observations of the said decision are 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.

41. We also bear in mind the order passed on the Miscellaneous Application which was moved by the Revenue before the Supreme Court and more particularly to the prayers that were made therein. The Revenue had specifically alluded to Section 150 of the Act and sought appropriate clarifications enabling it to proceed afresh. It had also sought the liberty to commence proceedings for reassessment within 60 days of the disposal of that application. The said application, however, came to be dismissed with it being left open to the respondents to move a formal application for review, if so chosen and advised. It appears, however, that no such review was ultimately moved.

42. Regard must also be had to the judgment rendered in the batch of *U.K. Paints*, and where while according liberty to the respondents to initiate reassessment, the Supreme Court pertinently observed that the same would be subject to the proposed action being in accordance with law and if “permissible in law”. Thus, neither *Abhisar Buildwell* nor *U.K. Paints* are liable to be read as enabling the respondents to overcome the statutory bar of limitation which may have come into play. Those judgments cannot possibly be construed as freeing the respondents from the obligation of independently establishing that the proposed action for reassessment would otherwise be in accordance with law.

43. We had in *Sumitomo Corporation* also taken note of the aspect of limitation and where the respondents had sought to contend that a finding or direction would enable them to overcome the time frames erected by virtue of Section 144C of the Act. An argument, again founded on Section 150, came to be negated with the Court observing that a direction would have to necessarily be in accordance with the scheme of the Act and the statutory prescriptions comprised therein. It was further observed that it would be wholly incorrect for courts to



extend a period of limitation that otherwise stands prescribed in the Act.

44. As was explained in *Sumitomo Corporation*, the expression “finding” as occurring in Section 150 of the Act is liable to be understood to be a conclusion or a decision of an authority or tribunal rendered in the context of a particular case and essential for determining the grant of relief. A “direction”, we had held, would constitute one which an authority was empowered to issue under the Act. Tested on those precepts, we find ourselves unable to countenance the observations appearing in *Abhisar Buildwell* as amounting to a finding since the principal question in those appeals was with respect to the validity of the search assessments which were undertaken. The Supreme Court had, in order to balance equities, additionally observed that it would be open for the Revenue to commence reassessment, if otherwise permissible in law. That observation cannot be viewed as amounting to a direction which would enable the respondents to overcome the prescription of limitation which otherwise applied.”

13. In view of the above, the contention that the time period, within which a notice can be issued under Section 148 of the Act as stipulated under Section 149(1) of the Act, is not applicable in the facts of the case, is unmerited.

14. The petition is accordingly allowed and the impugned order dated 24.09.2024 under Section 148A(3) of the Act and the impugned notice issued under Section 148 of the Act for AY 2015-16 are set aside.

15. Pending applications also stand disposed of.

VIBHU BAKHRU, J

SWARANA KANTA SHARMA, J

DECEMBER 03, 2024/at