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

% **Judgment delivered on: 27 May 2024**

\+ W.P.(C) 12091/2023 & CM APPL 47460/2023 (interim relief)

DINESH JINDAL ..... Petitioner

Through: Mr. Ved Jain, Mr. Nischay Kantoor and Ms. Soniya Dodeja, Advocates

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE 20, DELHI & ORS. ..... Respondents

Through: Mr. Prashant Meharchandani, Sr. SC alongwith Mr. Akshat Singh, Jr. SC with Ms. Ritika Vohra and Mr. Utkarsh Kandpal, Advocates

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

YASHWANT VARMA, J.

1. This writ petition has impugned the initiation of reassessment action under Section 148 of the **Income Tax Act, 1961**[1] pertaining to **Assessment Year**[2] 2013-14. The aforesaid action was founded upon a search which was conducted in the case of **M/s Proform Interiors Private Limited**[3] on 09 February 2022. The action for reassessment commenced upon the issuance of a notice dated 30 March 2023 under Section 148 of the Act. The respondents were not obliged to follow the

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[1] Act
[2] AY
[3] M/s Proform

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route of Section 148A of the Act bearing in mind the First Proviso placed in that provision and which exempts the respondents from following the procedure prescribed by clauses (b), (c) and (d) of Section 148A in a search case and where the search is initiated on or after 01 April 2021.

2. When the writ petition was initially entertained, the Court had prima facie found that the impugned action would fall foul of Section 149(1) of the Act bearing in mind the timeframes within which an assessment could have been reopened. It was after taking note of the aforesaid contention that we had proceeded to issue notice on the present writ petition and stayed the reassessment proceedings.

3. Appearing for the petitioner, Mr. Jain, learned counsel, drew our attention to the order dated 15 April 2024 passed in **Filatex India Ltd. vs. Deputy Commissioner of Income Tax & Anr.**[4], and where while dealing with an identical question, upon taking note of the manner in which the relevant period under Section 153C is liable to be reckoned, and which we had otherwise dealt with in some detail in our decision rendered in **Principal Commissioner of Income Tax-1 vs. Ojjus Medicare Pvt. Ltd**[5], we had observed as follows:

> "**3.** As is evident from the prima facie observations which came to be rendered by us on that occasion, the reassessment which is sought to be initiated for Assessment Year ["**AY**"] 2012-13 would not sustain bearing in mind the prescription of limitation as contained in Section 149(1)(b) of the Income Tax Act, 1961 ["**Act**"] as it stood at the relevant time.
>
> **4.** We note that while dealing with a similar question of computation of the time limit for the "*relevant assessment year*" as provided under Explanation 1 to Section 153A of the Act, we had in the case

[4] WP(C) 12148/2023
[5] 2024 SCC OnLine Del 2439

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of **Principal Commissioner of Income Tax-Central-1 v. Ojjus Medicare Pvt. Ltd.** [2024 SCC Online Del 2439] held as follows:-

> "**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.
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> **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

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expression "*from the end of the assessment year" while speaking of the ten year block.*"

5. In view of the aforesaid, we find ourselves unable to sustain the impugned notice dated 13 March 2023 issued under Section 148 of the Act.

6. The writ petition is accordingly allowed and the impugned order dated 18 May 2023 disposing off the objections of the petitioner is hereby quashed. We in consequence also quash the notice dated 13 March 2023 purporting to commence proceedings under Section 148 of the Act."

It was on the aforesaid basis that Mr. Jain, learned counsel, contended that the instant writ petition too is liable to be allowed on identical terms.

4. However, Mr. Meharchandani, learned counsel appearing for the respondents, contends that even if the reassessment action were to be tested based on the First Proviso to Section 149(1) of the Act, the petitioner would not be entitled to any relief for the following reasons. According to Mr. Meharchandani, since the search took place after 01 April 2021, undoubtedly it would be the provisions of Section 148 alone which would apply and the timeframe within which a notice could have been issued would consequently be governed by the First Proviso to Section 149(1). According to learned counsel, the respondents in terms of the statute stand enabled to initiate reassessment, provided the notice pertaining to the AY in question would be compliant with the time limits as specified in Sections 149(1)(b), 153A and 153C, as they stood prior to the commencement of Finance Act, 2021.

5. As per Mr. Meharchandani, by the time the search was conducted in the present case, Section 153C had ceased to apply and consequently the respondents stood absolved of making a reference or transmitting

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the material gathered in the course of the search to the jurisdictional **Assessing Officer**[6]. In view of the above, according to Mr. Meharchandani, the period of six AYs' or the "*relevant assessment year*" would have to be computed from the date of actual search and not from the date of handover of material unearthed in the search. The submission essentially was that the First Proviso to Section 153C would not be attracted. Consequently, he contended that the impugned Section 148 notice would not be beyond the limitation period as provided under the First Proviso to Section 149 when computed from the date of actual search of M/s Proform Interiors [09.02.2022 – FY 2021-22 and consequently AY 2022-23].

6. We find ourselves unable to sustain that submission bearing in mind the unambiguous language in which the First Proviso to Section 149(1) stands framed.

7. In order to appreciate the correctness of the submissions addressed on behalf of the respondents, we deem it apposite to extract the relevant parts of Section 149(1) hereunder:

> "**149. Time limit for notice**.— (1) No notice under Section 148 shall be issued for the relevant assessment year,—
>
> (*a*) if three years have elapsed from the end of the relevant assessment year, unless the case falls under clause (*b*);
>
> (*b*) <u>if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of</u>—
>
> (*i*) an asset;
>
> (*ii*) expenditure in respect of a transaction or in relation to an event or occasion; or

[6] AO

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(*iii*) an entry or entries in the books of account,

which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more:

Provided that 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 153-A or Section 153-C 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 153-A or Section 153-C, as the case may be, as they stood immediately before the commencement of the Finance Act, 2021:

Provided further that the provisions of this sub-section shall not apply in a case, where a notice under Section 153-A, or Section 153-C read with Section 153-A, is required to be issued in relation to a search initiated under Section 132 or books of account, other documents or any assets requisitioned under Section 132-A, on or before the 31st day of March, 2021."

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

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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. 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 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

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> 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."

12. Viewed in that light, it is manifest that AY 2013-14 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 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 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

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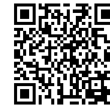

liable to be ignored. Undisputedly, the First Proviso to Section 153C(1), by virtue of a legal fiction enshrined therein requires one to treat the date of initiation of search, and which otherwise constitutes the commencement point for a search assessment in the case of a non-searched party, to be construed as the date when books of accounts 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**[7] 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 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

[7] 2023 SCC Online SC 1265

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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.

15. We find ourselves unable to construe or read the First Proviso to Section 149(1) as requiring us to ignore the First Proviso to Section 153C(1), and for the purposes of computation, reconstruct the point from which the "*relevant assessment year*" is liable to be computed in the case of a non-searched person. Notwithstanding the procedure under Section 153C having not been adhered to, by virtue of the search having been conducted after 31 March 2021, there exists no justification to reconstruct the point from which the computational exercise would have to be undertaken. This, since accepting the submission as canvassed by Mr. Meharchandani, would not only amount to a virtual reconstruction of the statutory prescription of limitation, it would also be contrary to the plain and manifest command of the First Proviso to Section 149(1), and which compels us to adjudge the validity of reopening based on the test of *"could not have been issued at that time on account of being beyond the time limit specified under………. or Section 153A or Section 153C, as the case may be, as they stood immediately before the commencement of the Finance Act, 2021."*

16. Regard must also be had to the statutory scheme for search assessments as it existed prior to Finance Act, 2021 and the indubitable fact that while in the case of the searched person, the six year or the ten year block period is liable to be computed with reference to the date of search, in the case of the non-searched entity, it has to necessarily be

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the date when the material is handed over to the jurisdictional AO of the "*other person*". All that would happen in the case of a search which takes place on or after 01 April 2021, and which warrants a reassessment action being commenced in relation to an AY prior to the first day of April, 2021, since no transmission of material would have occurred, we would necessarily have to bear in mind, the date when a decision may be taken by the jurisdictional AO to proceed against the non-searched entity in terms of the amended scheme pertaining to search assessments, and which now stands merged with the larger power of reassessment which stands comprised in Sections 147 and 148 of the Act.

17. Insofar as the two Provisos to Section 149(1) are concerned, we had in *Ojjus Medicare Private Limited* observed as follows:

> "**108.** We also find ourselves unable to countenance the submissions based upon the two Proviso's placed in Section 149 for the following reasons. It must at the outset be noted that Section 149 regulates the time within which a notice under Section 148 may be issued. It thus neither ventures nor attempts to regulate the search assessment powers that are available to be invoked in terms of Sections 153A or 153C. Secondly, although the First Proviso (and to the extent that it included a reference to Sections 153A and 153C), came to be introduced by virtue of Finance Act, 2022 [Act 6 of 2022] with retrospective effect from 01 April 2021, the non obstante clause in Sections 153A and 153C was left untouched. Of equal significance is the fact that that Sections 153A and 153C of their own stipulate no period within which a notice initiating search assessment may be issued. We further find that the bar created by virtue of the First Proviso is in relation to Sections 153A and 153C as they stood immediately before the commencement of Finance Act, 2021. The concept *of relevant assessment year*" and the block of ten AYs' was made part of those provisions way back in 2017 itself and thus formed an integral part of those provisions as on 01 April 2021.
>
> **109.** Any doubt that could have possibly been harboured is in any case stand dispelled by the Second Proviso to Section 149 and which unambiguously proclaims that the provisions of that sub-section would not apply to searches conducted or requisitions made prior to

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31 March 2021. Thus, all searches conducted prior to 31 March 2021 remained unimpacted by the Provisos' placed in Section 149 of the Act. These statutory amendments to Section 149 would have to be read in juxtaposition with Section 153C(3) which brought the curtains down upon search assessments liable to be made in accordance with the trinity provisions with effect from 01 April 2021. This, since Parliament by virtue of Finance Act, 2021 had merged the original reassessment power as well as those which may be predicated upon a search within the ambit of Section 148 and its family of provisions."

18. Bearing in mind the aforesaid, the computation of the "*relevant assessment year*" from the date of the impugned Section 148 notice dated 30 March 2023 would be as follows:

Computation of the ten-year block period	**No. of years**
AY 2023-24	1
AY 2022-23	2
AY 2021-22	3
AY 2020-21	4
AY 2019-20	5
AY 2018-19	6
AY 2017-18	7
AY 2016-17	8
AY 2015-16	9
AY 2014-15	10

19. It is therefore ex facie evident that AY 2013-14 falls beyond the ten-year block period as set out under Section 153C read with Section 153A of the Act. Consequently, the impugned notice dated 30 March

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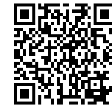

2023 has been issued beyond limitation and is liable to be quashed and set aside on this score alone. All consequential actions pursuant to the impugned notice would thus meet a similar fate.

20. On the prayer pertaining to reading down of Explanation 2(iv) to Section 148 of the Act, we note that the said issue along with a challenge to the vires of the said Explanation is being considered by us in WP(C) 1023/2024 – *Deeksha Holding Limited v. ACIT, Delhi & Anr*. Thus, we refrain from answering this question in the instant writ petition. The same is consequently kept open to be urged by the assessee in an appropriate case and if circumstances so warrant.

21. In view of the above, we allow the instant writ petition and quash the impugned notice dated 30 March 2023 and all consequential actions pursuant to the said notice.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 27, 2024/kk