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

**Date of Decision: 19<sup>th</sup> October, 2023**

+ **W.P.(C) 13844/2023 & CM APPLs. 54680-54681/2023**

ANURADHA BAKSHI

..... Petitioner

Through: Mr. Giriraj Subramaniam, Mr. Joy Banerjee and Mr. Akhilesh Tallur, Advocates.

versus

THE PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL  
NEW DELHI – 1

..... Respondent

Through: Mr. Vipul Agrawal, Senior Standing Counsel with Mr. Gibran Naushad and Ms. Shakshi Shairwal, Advocates.

**CORAM:**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE SANJEEV NARULA**

**JUDGEMENT**

**SANJEEV NARULA, J. (Oral):**

1. In March, 2021, the Petitioner was subjected to search and seizure action under Section 132 of the Income Tax Act, 1961 [“IT Act”]. Subsequently, an assessment order pertaining to the assessment year [“AY”] 2015-16 was framed on 31<sup>st</sup> March, 2023. The Respondent [Principal Commissioner of Income Tax] has now invoked their jurisdiction under Section 263 of IT Act, and issued a notice on 24<sup>th</sup> August, 2023, observing that the assessment order passed by the Assistant Commissioner of Income



Tax, Central Circle 5, New Delhi, is erroneous and prejudicial to the interest of revenue [*“impugned notice”*]. Petitioner is aggrieved with the invocation of revisional jurisdiction under Section 263 of IT Act, and seeks quashing of the impugned notice, asserting that the assessment order proposed to be revised, is barred by limitation, rendering the consequent proceedings untenable. This Court is therefore, called upon to adjudicate this jurisdictional issue.

### **THE FACTS AND CONTENTIONS OF THE PARTIES**

#### **The Petitioner’s case**

2. The background facts and arguments presented by Mr. Giriraj Subramaniam, counsel for Petitioner, are as follows:

2.1. The Petitioner is an entrepreneur, engaged in the business of apparel design and consultancy. On 02<sup>nd</sup> March, 2021, the Income Tax Department carried out searches of various premises belonging to Petitioner’s family, pursuant to a warrant dated 01<sup>st</sup> March, 2021. This search was extended to include the following lockers, held in the name of Petitioner and her family members:

- (i) Locker No. 299, Syndicate Bank (now Canara Bank), Vasant Vihar, New Delhi [*“Locker 299”*].
- (ii) Locker No. G-2070, U&I Vaults Limited, F-41, South Extension, Part- 1, Ring Road, New Delhi [*“Locker 2070”*].
- (iii) Locker No. E-1320, U&I Vaults Limited, F-41, South Extension, Part- 1, Ring Road, New Delhi [*“Locker 1320”*].

2.2. On 29<sup>th</sup> April, 2021, the Income Tax Officer [*“ITO”*] again searched Locker 299, but did not effect any seizures, as is discernible from



panchnama dated 29<sup>th</sup> April, 2021. A restraint order was thereafter issued on 29<sup>th</sup> April, 2021, but was promptly revoked on the same day.

2.3. On 30<sup>th</sup> April, 2021, the ITO performed searches of Lockers 2070 and 1320. As was the case with Locker 299, no articles were seized and panchnamas were drawn up reflecting the said status. Restraint orders were issued in respect of aforesaid lockers on 30<sup>th</sup> April, 2021, but were subsequently revoked on the same date.

2.4. As a consequence of search and seizure operation under Section 132 of IT Act, on 22<sup>nd</sup> November, 2021, the Petitioner received notices from the Assistant Commissioner of Income Tax [“ACIT”] under Section 153A for AY 2015-16 to 2020-21. In response, the Petitioner submitted income tax returns for the stipulated periods between January and February, 2022.

2.5. After evaluation of the returns and other documents submitted, the ACIT notified assessment orders for the AY 2015-16 to AY 2021-22, in March, 2023. ACIT’s findings for the AY 2015-16, contained in assessment order dated 31<sup>st</sup> March, 2023, are summarized below:

ASSESSMENT ORDER	DESCRIPTION
<p><b><u>A.Y. 2015-16:</u></b>  Order No.:  ITBA/AST/S/153A/2 022-23/1051802759(1) dated 31<sup>st</sup> March, 2023</p>	<p>1. <u>Income as per Original Return [s. 139(1)]</u>: Rs. 4,41,93,012.</p> <p>2. <u>Income as per Revised Return [s. 153A]</u>: Rs. 4,41,93,012</p> <p>3. <u>Income as per Assessment Order under s. 153A</u>: Rs. 4,46,99,162 (Rs. 5,06,150 added).</p>



2.6. Subsequent to the above proceedings, Respondent issued the impugned notice on 24<sup>th</sup> August, 2023, observing that the afore-noted assessment is erroneous and prejudicial to the interest of revenue. A hearing was thus fixed, affording Petitioner an opportunity to explain as to why assessment should not be revised under Section 263 of the IT Act.

2.7. Respondent's proposed action under Section 263, revising the re-assessment conducted under Section 153A of the IT Act, is barred by limitation prescribed in Section 153B of IT Act. As such, the impugned notice is *non-est*, which cannot be revised under Section 263.

2.8. The impugned notice cannot be saved by Section 292B of the IT Act, which provides that an assessment, notice, or other proceedings issued under the IT Act shall not be deemed invalid merely by reason of any mistake, defect, or omission, provided it conforms to the intent and purpose of the Act.

2.9. Panchnamas in respect of Petitioner's premises/ lockers were issued on two separate dates – first, in respect of search conducted between 02<sup>nd</sup> and 06<sup>th</sup> March, 2021, and second, on 29<sup>th</sup> and 30<sup>th</sup> April, 2021. However, as the lockers searched in April, 2021 were already inspected by the ITO in March, 2021 (during the first search), the panchnamas dated 29<sup>th</sup> and 30<sup>th</sup> April, 2021 cannot be considered as the “last panchnama” for the purpose of limitation under Section 153B.

2.10. The searches carried out on 29<sup>th</sup> and 30<sup>th</sup> April, 2021 are invalid as the conclusion of search of Locker 299 was delayed by 58 days. Similarly, there was an unexplained delay of 59 days in respect of Lockers 2070 and Locker 1320. In this regard, reliance is placed upon *Commissioner of Income Tax*



*v. Katyal*,<sup>1</sup> and *Commissioner of Income Tax v. Sarb Consulate Marine Products (P) Ltd.*<sup>2</sup>

2.11. As per panchnamas dated 29<sup>th</sup> April, 2021 and 30<sup>th</sup> April, 2021 framed in respect of the aforesaid lockers, no seizures were made. In absence of any seizure, the search stood concluded on 02<sup>nd</sup> March, 2021, when the first panchnamas were drawn up. Therefore, the period of limitation for passing an order under Section 153A expired on 31<sup>st</sup> March, 2022 (*i.e.*, the end of the financial year). This delay of one year in passing the re-assessment orders cannot be condoned. On this aspect, reference is made to the judgement of this Court in *Pr. Commissioner of Income Tax v. PPC Business and Products Pvt. Ltd.*<sup>3</sup>

*On behalf of Respondent*

3. Mr. Vipul Agrawal, Senior Standing Counsel for the Respondent, controverts the afore-noted contentions and states that the impugned notice is within limitation, which must be reckoned from the date the last panchnama was drawn *i.e.*, from 29<sup>th</sup> April, 2021.

**ANALYSIS AND FINDINGS**

4. The Petitioner's jurisdictional challenge to the impugned notice hinges on ascertaining whether the assessment order for AY 2015-16, issued on 31<sup>st</sup> March, 2023, was barred by the limitation prescribed in Section 153B of the IT Act. To resolve this issue, we will have to analyse the relevant stipulations of Section 153B, which are extracted hereunder for

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<sup>1</sup> (2009) 221 CTR 310.

<sup>2</sup> (2007) 211 CTR 54.



clarity and reference:

***“153B- Time limit for completion of assessment under Section 153A.***

*(1) Notwithstanding anything contained in Section 153, the Assessing Officer shall make an order of assessment or reassessment, -*  
*(a) in respect of each assessment year falling within six assessment years and for the relevant assessment year or years referred to in clause (b) of sub-section (1) of Section 153A, within a period of twenty-one months from the end of the financial year in which the last of the authorisations for search under Section 132 or for requisition under Section 132A was executed;*

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*Provided also that in the case where the last of the authorisations for search under Section 132 or for requisition under Section 132A was executed during the financial year commencing on or after the 1st day of April, 2019, -*  
*(i) the provisions of clause (a) or clause (b) of this sub-section shall have effect, as if for the words “twenty-one months”, the words “twelve months” had been substituted.*

*xx-xx-xx*

*(2) The authorisation referred to in clause (a) and clause (b) of sub-section (1) shall be deemed to have been executed, -*  
*(a) in the case of search, on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorisation has been issued [...]*

5. Since the first authorisation for search under Section 132 of IT Act was executed during the financial year 2020-21 (in March, 2021), the time period for completion of assessment under Section 153A would be twelve months from the end of the financial year in which the last authorisation for search under Section 132 was executed. An authorisation is deemed to be executed on the conclusion of search as recorded in the “last panchnama” drawn in relation to a person, in whose case the warrant of authorisation has been issued. In the case at hand, the date of authorisation has not been

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<sup>3</sup> (2017) 299 CTR 29.



contested by Petitioner; the controversy however, revolves around the date of conclusion of search, recorded in the “last panchnama”.

6. The Petitioner argues that search of her premises/ lockers was conducted in two phases: during 02<sup>nd</sup> to 06<sup>th</sup> March, 2021, and 29<sup>th</sup> to 30<sup>th</sup> April, 2021. However, the second search was a prolongation of the first one, premised on the warrant of authorisation issued in March, 2021. Therefore, Petitioner contends that this cannot be viewed as an independent and valid search. Further, as evinced from panchnamas for the searches carried out on 29<sup>th</sup> and 30<sup>th</sup> April, 2021, no seizures were made in respect of Lockers 299 and 2070 on the said dates. Referring to the judgement in ***PPC Business and Products (Supra)***, Mr. Subramaniam asserts that inspecting the same lockers on the pretext of concluding the search, without finding/ seizing new articles, cannot give rise to a second panchnama. Therefore, the date of execution of last authorisation would fall in March, 2021, resulting in limitation expiring on 31<sup>st</sup> March, 2022, in terms of Section 153B of IT Act.

7. The above-noted stand of the Petitioner is factually incongruent. The ITO inspected three distinct lockers belonging to the Petitioner, namely, Lockers 299, 2070, and 1320. Out of the three, only Lockers 2070 and 1320 were searched both in March, 2021 and April, 2021, based on warrant dated 01<sup>st</sup> March, 2021. During the search executed in April, 2021 in respect of these two lockers, no seizures were made and consequently, a panchnama was drawn reflecting nil recovery. However, the position of Locker 299 varies significantly. This locker was examined on 29<sup>th</sup> April, 2021, drawing strength from a warrant of authorization issued on 05<sup>th</sup> April, 2021. This fact is reinforced by the panchnama, restraint order, and revocation order, issued on 29<sup>th</sup> April, 2021 for Locker 299. For reference, the revocation and



restraint orders are reproduced below:

**Revocation order:**

“ **REVOCATION ORDER**

*Please refer to the Restraint Order U/s 132(3) dated 02/03/2021, passed by the Deputy Director of Income Tax (Inv), Unit-7(2), New Delhi, Shri Castro Jayaprakash T in respect of Locker No. 299, Syndicate Bank (Now Canara Bank), Vasant Vihar, New Delhi.*

*With reference to the above order, it is communicated to you that the above referred restraint order is revoked today i.e.; on 29/04/2021 for further search proceedings of Locker No. 299 maintained with your branch with immediate effect.”*

**Restraint order:**

**“RESTRAINT ORDER UNDER SECTION 132(3) OF THE INCOME TAX ACT, 1961**

*By virtue of the power vested in me under the warrant of authorisation dated 05.04.2021 issued by the Addl. Director of Income Tax (Inv.), Unit-6, Delhi under section 132(1) of the Income Tax Act, 1961 in the case of Tarun Bakshi, Anuradha Bakshi, Malika Bakshi, Aniket Bakshi and others as per Annexure attached with warrant dated 05.04.2021 and in exercise of the authority conferred on me by section 132(3) of the Income Tax Act, 1961. I hereby order you not to remove part with or otherwise deal with the articles mentioned below without my previous permission:*

**DETAIL OF ARTICLES**

- 1. Locker No. 299 under the name of Smt. Anuradha Bakshi in Syndicate Bank (Now Canara Bank), Vasant Vihar, New Delhi**

*The order is served on you so that you may ensure that the seal pressed by me on the said locker is kept intact. Please note that if the seal is not intact at the time of opening the said locker, all the consequences as laid down in the Code of Criminal Procedure as well as under section 275AA of the income Tax Act, 1961 would follow.”*



8. Petitioner has sought to mislead the Court, arguing that status of “last panchnama” remains unchanged despite the subsequent searches on 29<sup>th</sup> and 30<sup>th</sup> April, 2021 of Lockers 299, 2070, and 1320. While, there is strength in Petitioner’s argument that panchnamas logging nil recovery from the scrutiny of Lockers 2070 and 1320 on 30<sup>th</sup> April, 2021, which were also searched previously in March, 2021, cannot be classified as “last panchnama”; however, the restraint and revocation orders pertaining to Locker 299 (extracted above) unequivocally establish that Locker 299 underwent its initial search on 29<sup>th</sup> April 2021, even though it resulted in no recoveries. This date marks the onset of the limitation period prescribed under Section 153B of IT Act. The Petitioner’s assertion, which suggests that the searches spanning through 02<sup>nd</sup> to 06<sup>th</sup> March, 2021, as logged in the panchnamas, should be viewed as the execution of last authorization under Section 132 of IT Act, does not align with the factual reality. The search operation was an ongoing process that definitively concluded on 29<sup>th</sup> April, 2021, when Locker 299 was inspected. This renders the assessment under Section 153A, which culminated on 31<sup>st</sup> March, 2023, within the time limit prescribed under Section 153B of IT Act. Consequently, the basis for Petitioner’s challenge to the invocation of revisional jurisdiction under Section 263, is untenable. It is indisputable that the limitation period for assessment warrants strict interpretation; however, the facts presented to us confirm conclusively that the search concluded on 29<sup>th</sup> April, 2021. Therefore, it is implausible to assert that the assessment order of 31<sup>st</sup> March, 2023 notified under Section 153A of IT Act exceeds the twelve-month limitation period.

9. In view of the above, since there is no jurisdictional error in the



assessment order dated 31<sup>st</sup> March, 2023 pertaining to AY 2015-16, on the ground of limitation, we are not inclined to entertain the present petition.

10. Dismissed, along with pending applications.

11. It is clarified that we have not examined the merits of the assessment order dated 31<sup>st</sup> March, 2023, and all rights and contentions of the parties to that effect are left open.

**SANJEEV NARULA, J**

**SATISH CHANDRA SHARMA, CJ**

**OCTOBER 19, 2023**

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