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

+ **W.P.(C) 3329/2024 & CM APPL. 13739/2024 (stay)**

PARAM DAIRY LTD

..... Petitioner

Through: Mr. Rohit Jain, Mr. Aniket D.
Agrawal, Mr. Deepesh Jain and
Mr. Samarth Chaudhari, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ANR.

..... Respondents

Through: Mr. Puneet Rai, Sr. Standing
Counsel along with Mr.
Rishabh Nangia, Mr. Ashvini
Kumar and Mr. Nikhil Jain, Jr.
Standing Counsels.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE PURUSHAINdra KUMAR

KAURAV

ORDER

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05.03.2024

CM APPL. 13740/2024 (Exemption)

Allowed, subject to all just exceptions.

Application is disposed of.

W.P.(C) 3329/2024 & CM APPL. 13739/2024 (stay)

1. Notice. Since the respondents are duly represented, let a reply be filed within a period of four weeks from today. The petitioner shall have two weeks therefrom to file a rejoinder affidavit.
2. Prima facie, we find ourselves unable to sustain the invocation of Section 148 of the Income Tax Act, 1961 [**Act**] bearing in mind



the undisputed fact that the assessment order under Section 153A of the Act had come to be annulled by the Income Tax Appellate Tribunal [‘ITAT’] on the ground of there being no incriminating material.

3. A perusal of the order referable to Section 148A(d) of the Act would reveal that the invocation of Section 148 of the Act has rested upon the following conclusion by the Supreme Court in **Principal Commissioner of Income Tax, Central-3 vs. Abhishar Buildwell P. Ltd.** [(2024) 2 SCC 433] :-

“36. In view of the above and for the reasons stated above, it is concluded as under:

36.1. That in case of search under Section 132 or requisition under Section 132-A, the AO assumes the jurisdiction for block assessment under Section 153-A;

36.2. All pending assessments/reassessments shall stand abated;

36.3. In case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the “total income” taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and

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.”

4. In our considered opinion, the observations in *Abhishar Buildwell P. Ltd.* which is sought to be relied upon by the respondent cannot be viewed as justification to invoke Section 148 of the Act in the absence of jurisdictional facts. Matter requires consideration.



5. Till the next date of listing, the respondents shall stand restrained from taking further steps pursuant to the impugned notice dated 30 November 2023.
6. Let the matter be called again on 17.05.2024.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 05, 2024
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