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

\+ W.P.(C) 3738/2024 & CM APPL. 15409/2024 (Stay)

FLOWMORE LIMITED ..... Petitioner

Through: Mr. Sumit Lalchandani, Mr. Salil Kapoor, Mr. Utkarsh Gupta, Ms. Ananya Kapoor & Mr. Shivam Yadav, Advs.

versus

DEPUTY COMMISSIONER OF INCOME TAX, CENTRAL CIRCLE 28, NEW DELHI & ANR. ..... Respondents

Through: Mr. Hemant Kumar Yadav, SPC for Resp./ UOI.
Mr. Shlok Chandra, SSC with Ms. Madhavi Shukla, Ms. Priya Sarkar, JSCs & Mr. Sudarshan Roy, Adv.

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

O R D E R

% 27.05.2024

1. The writ petitioner impugns the notice dated 31 March 2023 issued under Section 148 of the Income Tax Act, 1961 ["**Act**"]. The aforesaid notice seeks to reassess the petitioner for **Assessment Year** ["**AY**"] 2013-14.

2. Undisputedly, and since the notice was issued on 31 March 2023, it would be the amended regime of reassessment which came into effect from 01 April 2021 which would be applicable. The action for reassessment would thus have to satisfy the provisions made in the First Proviso to Section 149(1) of the Act. The said provision reads as follows:

"[**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*) 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—

(*i*) an asset;

(*ii*) expenditure in respect of a transaction or in relation to an event or occasion; or

(*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."

3. As is evident from a reading of that provision any action for reassessment pertaining to an AY prior to 01 April 2021 can be sustained only if it be compliant with the timeframes specified under Section 149(1)(b), Section 153A or Section 153C as the case may be and on the anvil of those provisions as they existed prior to the commencement of Finance Act, 2021.

4. Viewed in that light, it is manifest that the assessment for AY

2013-14 could not have been reopened.

5. This we note bearing in mind the following additional facts. The record would reflect that pursuant to a search and seizure operation conducted in respect of the Alankit Group on 18 October 2019, the petitioner was served a notice under Section 153C on 03 March 2022. On culmination of those proceedings, the respondent proceeded to pass a final order of assessment on 23 March 2023, accepting the income which had been assessed originally under Section 143(3) of the Act. The petitioner discloses that insofar as the original Section 143(3) assessment was concerned, an appeal was taken to the Income Tax Appellate Tribunal which ultimately accorded relief to the petitioner with respect to disallowances made under Section 40(a)(ia) of the Act.

6. The subsequent notice under Section 148 of the Act dated 31 March 2023 was concerned with a search which was conducted in the case of the Proform Group on 09 February 2022. Undisputedly and for the purposes of reopening, bearing in mind the proviso to Section 149(1), action could have been initiated only upto AY 2014-15.

7. We take note of the decision in **Filatex India Ltd. vs. Deputy Commissioner of Income Tax & Anr.** [WP(C) 12148/2023] 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** [2024 SCC OnLine Del 2439], 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 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 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."

8. Bearing in mind the aforesaid, the computation of the "*relevant assessment year*" from the date of the impugned Section 148 notice dated 31 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

9. 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 is rendered unsustainable.

10. In view of the aforesaid, we allow the instant writ petition and quash the notice dated 31 March 2023 referrable to Section 148 of the Act.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 27, 2024/kk