2023INSC882

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.....OF 2023
(@ S.L.P.(C) No. 6644 of 2016)

COMMISSIONER OF INCOME TAX 14 .....Appellant(s)

Vs.

JASJIT SINGH .....Respondent(s)

WITH

CIVIL APPEAL NO.....OF 2023
(@ S.L.P.(C) No. 14447 of 2016)

WITH

CIVIL APPEAL NO.....OF 2023
(@ S.L.P.(C) No. 23621 of 2016)

WITH

CIVIL APPEAL NO.....OF 2023
(@ S.L.P.(C) No. of 2023)
(Dy. No. 30718 of 2023)

J U D G M E N T

1. Delay condoned in SLP(C) Dy. No. 30718 of 2023 and all connected petitions.

2. Special leave granted. With the consent of the learned counsel for the parties, the appeals were heard.

3. In this batch of appeals the revenue questions four sets of orders of the Delhi High Court, dismissing its appeals under

Section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'IT Act'). Though the facts in each appeal differ, substantially for the purposes of clarity and completeness the facts in the appeal arising from SLP (C) No.6644 of 2016 are taken into account. The facts are that search and seizure proceedings were conducted in the premises of one M/s KOUTON Group on 19.02.2009. In the course of scrutiny, the concerned Assessing Officer (A.O.) having jurisdiction after issuing notice under Section 154 A of the IT Act, to the searched party, was of the opinion that some documents and material "belonging to" the respondents(s) assessee, were involved. Therefore, notices were issued to them by the AO having jurisdiction over their assessments on different dates (i.e. 25.02.2010 in [SLP(C) No. 6644 of 2016 & SLP(C)No. 14447 of 2016], 12.03.2009 in [SLP(C)No. 23621 of 2016] and 11.08.2014 [SLP(C) Diary No(s). 30718/2023]).

4. Notice was issued by the concerned jurisdictional A.Os. to the said assessees who contended that the period for which they were required to file returns, commenced only from the date the materials were forwarded to their A.Os. The Revenue, on the other hand, urged that the date (relatable to the period for which six years returns were to be filed by the assessee) was to be from the date when the search and seizure proceedings were conducted, in respect of the main assessee under Section 132.

5. The impugned order upheld the order of the Income Tax Appellate Tribunal (hereinafter referred to "ITAT") which in turn

affirmed the assessee's arguments.

6. It is submitted on behalf of the revenue by Ms. Bagchi, learned counsel that the impugned order is erroneous because the date referred under proviso to Section 153(1) is relatable to the second proviso to Section 153A, only as far as it concerns abatement. The revenue relied upon the ruling of a Division Bench of the Delhi High Court, reported as "*SSP Aviation Ltd. vs. Deputy Commissioner of Income Tax*" reported in (2012) 346 ITR 177.

7. Sections 153A and Section 153C of the Income Tax Act, 1961 to the extent they are relevant are extracted below:-

> ***"153A. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003 61[but on or before the 31st day of March, 2021], the Assessing Officer shall—***
>
> ***(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years and for the relevant assessment year or years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;***
>
> ***(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is***

made and for the relevant assessment year or years:

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years and for the relevant assessment year or years:

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years and for the relevant assessment year or years referred to in this sub-section pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate:….”

“153C.(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of section 153A:

Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to sub-section

(1) of section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person :

Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years as referred to in sub-section (1) of section 153A except in cases where any assessment or reassessment has abated."

8. In *SSP Aviation* (supra) the High Court inter alia reasoned as follows:-

"14. Now there can be a situation when during the search conducted on one person under Section 132, some documents or valuable assets or books of account belonging to some other person, in whose case the search is not conducted, may be found. In such case, the Assessing Officer has to first be satisfied under Section 153C, which provides for the assessment of income of any other person, i.e., any other person who is not covered by the search, that the books of account or other valuable article or document belongs to the other person (person other than the one searched). He shall hand over the valuable article or books of account or document to the Assessing Officer having jurisdiction over the other person. Thereafter, the Assessing Officer having jurisdiction over the other person has to proceed against him and issue notice to that person in order to assess or reassess the income of such other person in the, manner contemplated by the provisions of Section 153A. Now a question may arise as to the applicability of the second proviso to Section 153A in the case of the other person, in order to examine the question of pending proceedings which have to abate. In the case of the searched person, the date with reference to which the proceedings for assessment or reassessment of any assessment year within the period of the six assessment years shall abate, is the date of initiation of the search under Section

132 or the requisition under Section 132A. For instance, in the present case, with reference to the Puri Group of Companies, such date will be 5.1.2009. However, in the case of the other person, which in the present case is the petitioner herein, such date will be the date of receiving the books of account or documents or assets seized or requisition by the Assessing Officer having jurisdiction over such other person. In the case of the other person, the question of pendency and abatement of the proceedings of assessment or reassessment to the six assessment years will be examined with reference to such date."

9. It is evident on a plain interpretation of Section 153C(1) that the Parliamentary intent to enact the proviso was to cater not merely to the question of abatement but also with regard to the date from which the six year period was to be reckoned, in respect of which the returns were to be filed by the third party (whose premises are not searched and in respect of whom the specific provision under Section 153-C was enacted. The revenue argued that the proviso [to Section 153(c)(1)] is confined in its application to the question of abatement.

10. This Court is of the opinion that the revenue's argument is insubstantial and without merit. It is quite plausible that without the kind of interpretation which *SSP Aviation* adopted, the A.O. seized of the materials – of the search party, under Section 132 – would take his own time to forward the papers and materials belonging to the third party, to the concerned A.O. In that event if the date would virtually "relate back" as is sought to be contended by the revenue, (to the date of the seizure), the prejudice caused to the third party, who would be drawn into

proceedings as it were unwittingly (and in many cases have no concern with it at all), is dis-proportionate. For instance, if the papers are in fact assigned under Section 153-C after a period of four years, the third party assessee's prejudice is writ large as it would have to virtually preserve the records for at latest 10 years which is not the requirement in law. Such disastrous and harsh consequences cannot be attributed to Parliament. On the other hand, a plain reading of Section 153-C supports the interpretation which this Court adopts.

11. For the foregoing reasons, the Court finds no merit in these appeals; they are accordingly dismissed, without order on costs.

.....J.
(S. RAVINDRA BHAT)

.....J.
(ARAVIND KUMAR)

New Delhi;
September 26, 2023.

ITEM NO.26 COURT NO.8 SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 6644/2016

(Arising out of impugned final judgment and order dated 11-08-2015 in ITA No. 337/2015 passed by the High Court of Delhi at New Delhi)

COMMISSIONER OF INCOME TAX 14 Petitioner(s)

VERSUS

JASJIT SINGH Respondent(s)

WITH
SLP(C) No. 14447/2016 (XIV)

SLP(C) No. 23621/2016 (XIV)

Diary No(s). 30718/2023 (XVI)
(IA No. 163625/2023 - CONDONATION OF DELAY IN FILING
IA No. 163626/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT)

Date : 26-09-2023 These petitions were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE ARAVIND KUMAR

For Petitioner(s) **Mr. N Venkatraman, A.S.G.**
Mr. Raj Bahadur Yadav, AOR
Mr. V C Bharathi, Adv.
Mr. A K Kaul, Adv.
Mr. Priyanka Das, Adv.
Mr. Sabrish Subramanium, Adv.
Mr. Rupesh Kumar, Adv.
Mr. Nisha Bagchi, Adv.
Mr. Anmol Chandan, Adv.

For Respondent(s) **Mr. K.R. Manjani, Adv.**
Mr. Pankaj Kumar Singh, Adv.
Mr. Kailash J. Kashyap, Adv.
Mr. K. L. Janjani, AOR

Ms. Kavita Jha, AOR
Mr. Ajay Vohra, Sr. Adv.
Mr. Ajay Vohra, Adv.

Ms. Kavita Jha, Adv.
Mr. Udit Naresh, Adv.
Mr. Akash Shukla, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Delay condoned in SLP(C) Dy. No. 30718 of 2023 and all connected petitions.

Leave granted.

The appeals are dismissed in terms of signed reportable judgment.

All pending applications are disposed of.

(NEETA SAPRA)
COURT MASTER (SH)

(BEENA JOLLY)
COURT MASTER (NSH)

(Signed reportable judgment is placed on the file)