

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(T) No. 2650 of 2023

Devika Construction and Developers Private Limited.
..... Petitioner

Versus

1. Principal Chief Commissioner of Income Tax, having its office at 3rd Floor, C.R. Building, B.C. Patel Marg, P.O & P.S. Patna, District Patna, Pin-800001.
 2. Assistant Commissioner of Income Tax, Central Circle-2, Ranchi having its office at Mahavir Tower, Main Road, P.O,-G.P.O & P.S. Lower Bazar, District Ranchi, Jharkhand
.....Respondents
- With

W.P.(T) No. 2651 of 2023

Naresh Kumar Kejriwal
..... Petitioner

Versus

1. Principal Chief Commissioner of Income Tax, having its office at 3rd Floor, C.R. Building, B.C. Patel Marg, P.O & P.S. Patna, District Patna, Pin-800001.
2. Assistant Commissioner of Income Tax, Central Circle-2, Ranchi having its office at Mahavir Tower, Main Road, P.O,-G.P.O & P.S. Lower Bazar, District Ranchi, Jharkhand
.....Respondents

CORAM: Hon'ble Mr. Justice Rongon Mukhopadhyay
Hon'ble Mr. Justice Deepak Roshan

For the Petitioner : Ms. Kavita Jha, Adv.
Ms. Lavanya Gadodia, Adv.
For the Respondent : Mr. R. N. Sahay, Sr. S.C.
Mr. Anurag Vijay, Adv.

CAV on :-22/08/2023

Pronounced on: 28/11/2023

Per Deepak Roshan, J.

Both these writ applications have been preferred for the same and similar reliefs i.e., praying therein for quashing and setting aside the Notice bearing ITBA/ AST/ S/ 148_1/ 2022-23/ 1051809259(1) dated 31.03.2023 & ITBA / AST / S/ 148_1 /2022-23/ 1051808276(1) dated 31.03.2023, respectively in case of

respective petitioners issued by the respondent no.2 under Section 148 of the Income Tax Act, 1961 for A.Y. 2013-14, on the ground of being illegal and beyond jurisdiction inter alia for the reason that the same is beyond the limitation prescribed under Section 149 of the Income Tax Act, (hereinafter to be referred as 'the Act').

2. Since both these writ applications involves common question of law as such both are heard together and disposed of by this common order.

3. The brief fact of the case is that Mr. Naresh Kumar Kejriwal, the Petitioner in W.P. (T) No. 2651/2023 is an individual and chartered accountant by profession.

Devika Constructions Pvt. Ltd., the Petitioner in W.P. (T) 2650/2023, is a company registered under the Companies Act, 1956 and is engaged primarily in the construction and development of residential flats, commercial establishments and schools.

The genesis of the present dispute relates to issuance of notice dated 31.03.2023 to the respective Assessee issued under section 148 of the Act by the Respondent. The basis of issuance of the aforesaid notices was stated to be search and seizure operations conducted on the business premises of Mr. Naresh Kumar Kejriwal on 09.06.2022. Pertinently, Devika

Constructions was only subjected to survey under section 133A of the Act.

Thus, in both these writ applications the petitioners have challenged the jurisdiction for issuance of notice under Section 148 of the Act.

4. Ms. Kavita Jha, learned counsel assisted by Ms. Lavanya Gadodia appearing for the Assessee in both these writ applications made following submissions: -

(i) The legislative intent behind introduction of Finance Act, 2021 was to reduce the time limit in ordinary cases to three years and to increase the threshold amount of income having escaped assessment to Rs.50 lakhs for invoking extended time limit of ten years was to reduce litigation and compliance burden, remove discretion, impart certainty and promote ease of doing business.

(ii) The Grandfathering clause in the form of Proviso, incorporated in section 149 of the Act, is in built safeguard to put quietus to those assessment years which had already become time-barred prior to introduction of Financial Amendment.

(iii) Pursuant to introduction of Finance Act, 2021, section 153A/153C was no longer applicable in cases where search had been conducted on or after 01.04.2021, and the same is to be governed by the provisions of section 147/148 of the Act.

(iv) Subsequent retrospective amendment to section 149 of the Act by way of Finance Act 2022, cannot revive the period of limitation that has already lapsed, pursuant to introduction of Finance Act, 2021.

(v) The respective impugned notices issued under Section 148 of the Act involved in both these writ applications have been issued by the respondent on factually incorrect premise rendering the impugned reassessment proceeding beyond the jurisdiction as the mandatory provision has not been followed.

(vi) The impugned reassessment proceedings are time barred by limitation in terms of Section 149 of the Act.

(vii) The extended time limit under Section 149(1)(b) is not applicable in the present case, since, the allegation, if at all, on the basis of so-called information, does not result in any income escaping assessment in a hand of respective petitioners represented in the form of any "ASSET".

Relying upon the aforesaid grounds and several provisions of the Act, learned counsel submits that the respective notices involved in both the writ applications should be quashed and set aside as it is time barred. In support of her contentions, learned counsel relied upon following decisions:-

- (a) S.S. Gadgil vs Lal & Company : (1964) 53 ITR 231 (SC)
- (b) Brahm Dutt VS ACIT: (2018) 100 taxman.com 324 (Delhi)
- (c) C. B. Richards Ellis Mauritius Ltd. vs ADIT : [2012] 21 taxmann.com 535 (Delhi).

(d) Oracle India Pvt. Ltd vs DCIT. : (2015) 376 ITR 411
(Delhi)

5. Mr. R. N. Sahay, learned senior standing counsel appearing for the revenue oppose the prayer of the petitioners and submits that Section 149 of the Act prescribes limitation to issue notice under Section 148 of the Act. He further submits that with the amendment made by the Finance Act, 2021, though Section 153A is no longer applicable for making assessment of income where search has been conducted on or after 01.04.2021; the Hon'ble Apex Court in the case of **Union of India Vs. Aashish Agrawal** reported in (2022) 138 taxmann.com 64 (SC) has held in Para-7 & 8 (part) as under:

“7. Thus, the new provision substituted by the Finance Act, 2021 being remedial and benevolent in nature and substituted with a specific aim and object to protect the rights and interest of the assessee as well as and the same being in public interest, the respective High Courts have rightly held that the benefit of new provisions shall be made available even in respect of the proceedings relating to past assessment years, provided section 148 notice has been issued on or after 1st April, 2021. We are in complete agreement with the view taken by the various High Courts in holding so.

8. However, at the same time, the judgments of the several High Courts would result in no reassessment proceeding at all, even if the same are permissible under the Finance Act, 2021 and as per

substituted section 147 to 151 of the I.T. Act. The Revenue cannot be made remediless and the object and purpose of reassessment proceeding cannot be frustrated.....”

He further submits that to give effect to the judgment of Hon'ble Supreme Court, the CBDT has issued detail guidelines being instruction No.01/2022 dated 11.05.2022 wherein in sub para (i) of 6.2 of the CBDT Instruction No.01/2022, it is clearly mentioned that fresh Notice under Section 148 of the Act can be issued for A.Y. 2013-14, A.Y. 2014-15 and A.Y.2015-16. He further relied upon the explanation 2 of Section 148 of the Act which provides that where search and survey has been initiated after 01.04.2021; the assessing officer is deemed to have information which suggests that the income chargeable to tax has escaped assessment.

He further relied upon the judgment in the case of ***Principal CIT Vs. Abhisar Buildwell Private Ltd.***, reported in ***2023 SCC Online SC 481*** wherein the Hon'ble Apex Court has held that if during search undisclosed income is found on unearthing the incriminating material during the search, the Assessing Officer assumes jurisdiction to assess or reassess the total income even in case of completed/unabated assessments.

He reiterated that the impugned notice issued under 148 of the Act in respect of both the petitioners is within jurisdiction.

6. Having heard learned counsel for the parties and after going through the averments made in the respective affidavits and the documents annexed therein, it appears that a search was conducted on 09.06.22 which falls in the financial year 2022-23. During the course of search at the business premises of Naresh Kumar Kejriwal situated at GEL Church Complex, Ranchi a bunch of loose sheets containing written pages 1 to 110 identified as NKK01 was seized. On examination, it was found that page 01 and 02 of the loose sheets of NKK-01, contains the accommodation entries of loan given to Devika Construction and Developers Private Limited. As per these loose sheets, M/s Devika Construction and Developers Private Limited has received bogus loan of Rs.88,00,000/- on 29.06.2012, Rs. 1,00,000/- on 23.07.2012, Rs. 1,00,000/- on 27.11.2012 and Rs.3,00,000/- on 08.01.2013. As detailed in the said seized/impounded document, the loan has been given at the interest rate of Rs. 1.5% per month. However, the enquires conducted by the Investigating Officer reveal that the aforesaid loans given by Mr. Kejriwal to M/s Devika Construction and Developers Private Limited have not been accounted for in the books of account of the petitioner company. It further appears that the petitioner company in its ITR filed before the department for AY 2013-14, has declared its liability as 'NIL'. Thus, *prima-facei* it appears from this fact

that the Petitioner Company has not declared any loan in ITR filed for AY 2013-14.

The sole question which is to be decided by this Court is ***“whether in the facts and circumstances of these cases, with the amendment brought in by Finance Act 2021, the respective notices issued to the respective petitioners under Section 148 of the Act for the Assessment Year 2013-14 is/are beyond jurisdiction?”***

To decide the aforesaid issue few provisions of law is to be examined. For brevity Section 148, 149 of the Amended Act/Finance Act 2021 and 153A and 153C of the Income Tax Act prior to the amendment is quoted hereinbelow: -

148. *Before making the assessment, reassessment or recomputation under [section 147](#), and subject to the provisions of [section 148A](#), the Assessing Officer shall serve on the assessee a notice, along with a copy of the order passed, if required, under clause (d) of [section 148A](#), requiring him to furnish within such period, as may be specified in such notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, 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](#):*

Provided *that no notice under this section shall be issued unless there is information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and the Assessing Officer has obtained prior approval of the specified authority to issue such notice.*

Explanation 1.—For the purposes of this section and [section 148A](#), the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,—

- (i) any information flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;
- (ii) any final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act.

Explanation 2.—For the purposes of this section, where,—

- (i) **a search is initiated under [section 132](#)** or books of account, other documents or any assets are requisitioned under [section 132A](#), on or after the 1st day of April, 2021, in the case of the assessee; or
- (ii) **a survey is conducted under [section 133A](#)**, other than under sub-section (2A) or sub-section (5) of that section, on or after the 1st day of April, 2021, in the case of the assessee; or
- (iii) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under [section 132](#) or [section 132A](#) in case of any other person on or after the 1st day of April, 2021, belongs to the assessee; or
- (iv) **the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner**, that any books of account or documents, seized or requisitioned under [section 132](#) or [section 132A](#) in case of any other person on or after the 1st day of April, 2021, pertains or pertain to, or any information contained therein, relate to, the assessee, the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the three assessment years immediately preceding the assessment year relevant to the previous year in which the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.

Explanation 3.—For the purposes of this section, specified authority means the specified authority referred to in [section 151](#).]

149. (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 asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more for that year:

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 such notice 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, 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 153A](#), or [section 153C](#) read with [section 153A](#), 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 132A](#), on or before the 31st day of March, 2021:

Provided also that for the purposes of computing the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under clause (b) of [section 148A](#) or the period during which the proceeding under [section 148A](#) is stayed by an order or injunction of any court, shall be excluded:

Provided also that where immediately after the exclusion of the period referred to in the immediately preceding proviso, the period of limitation available to the Assessing Officer for passing an order under clause (d) of [section 148A](#) is less than seven days, such remaining period shall be extended to seven days and the period of limitation under this sub-section shall be deemed to be extended accordingly.

Explanation.—For the purposes of clause (b) of this sub-section, "asset" shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of [section 151](#).]

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, 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 :

Provided also that the Central Government may by rules made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second proviso), specify the class or classes of cases 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:

Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless—

(a) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the

form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years;

(b) the income referred to in clause (a) or part thereof has escaped assessment for such year or years; and

(c) the search under [section 132](#) is initiated or requisition under [section 132A](#) is made on or after the 1st day of April, 2017.

Explanation 1.—For the purposes of this sub-section, the expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.

Explanation 2.—For the purposes of the fourth proviso, "asset" shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.

(2) If any proceeding initiated or any order of assessment or reassessment made under sub-section (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section (1) or [section 153](#), the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revived with effect from the date of receipt of the order of such annulment by the Principal Commissioner or Commissioner:

Provided that such revival shall cease to have effect, if such order of annulment is set aside.

Explanation.—For the removal of doubts, it is hereby declared that,—

(i) save as otherwise provided in this section, [section 153B](#) and [section 153C](#), all other provisions of this Act shall apply to the assessment made under this section;

(ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year.

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.

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under [section 132](#) or requisition is made under [section 132A](#) and in respect of such assessment year—

(a) no return of income has been furnished by such other person and no notice under sub-section (1) of [section 142](#) has been issued to him, or

(b) a return of income has been furnished by such other person but no notice under sub-section (2) of [section 143](#) has been served and limitation of serving the notice under sub-section (2) of [section 143](#) has expired, or
(c) assessment or reassessment, if any, has been made, before 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, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in [section 153A](#).”

Emphasis Supplied

7. From conjoint reading of the aforesaid provisions of the Act few things are apparent: -

(i) Prior to the amendment, the Assessing Officer in the case of search could assess Six assessment years, however explanation-1 of 153A which was inserted with effect from 01.04.2017 by way of Finance Act 2017, it was clarified that the expression relevant assessment year shall mean an assessment year preceeding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than 10 assessment years from the end of assessment year relevant to the previous year in which search is conducted or requisition is made.

In the said Section vide explanation 2, it was also clarified that asset would include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.

Further, vide amendment in section 149 (1) (b) w.e.f. 01.04.22, entries in books of account were also incorporated as clause 149(1)(b)(iii) apart from existing terms of asset in 149(1)(b)(i) & expenditure in respect of transaction in relation to an event or occasion in 149(1)(b)(ii). Thus, the legislature has expanded the scope of AO in search proceedings and as stated herein above, the search was conducted on 09.06.22.

(ii) In Section 153C the only difference was that the assessment could have been made against a 3rd person whose documents etc. have been found during the course of search conducted on the premises and which relates to such 3rd person in the same manner which has been prescribed under 153A.

(iii) The first proviso to Section 149 stipulates that no notice under Section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before first day of April 2021, if notice under Section 148 or Section 153 A or under Section 153 C could not have been issued at that time on account of being beyond the period of limitation specified under the provisions of clause (b) of sub-Section (1) of this section or Section 153A or 153C as the case may be; in other words, any notice under Section 148 in the amended provision can be issued only and only

if the same could have been issued under the old provision of 153A and/or 153C.

8. In the instant case since the search was conducted on 09.06.2022, then as per the first proviso of Section 149 read with unamended Section 153A and 153C and also the amended Section 148 explanation 2 the assessing officer could and has rightly issued notice under Section 148 of the I.T. Act. for the AY 13 – 14 for the following reasons: -

(i) Under the old provision, there were three categories of reassessment i.e. 4 years, 6 years and 16 years; however, after the amendment w.e.f. Finance Act 21, there was only two categories i.e., 3 years but not more than 10 years with certain conditions.

After the amendment by Finance Act-21, by virtue of first proviso to sub section (b) of 149(1) read with fourth proviso to section 153A and section 153C (2) of the Income Tax Act, 1961, the present proceedings under section 148 of the Act could be initiated, inasmuch as, the 1st proviso of the amended section 149(1), squarely covers these cases under section 153A/153C of the unamended provision of the Act, because of the fact that the first proviso to Section 149 stipulates that no notice under Section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before first day of April 2021, if notice under Section 148 or Section 153 A or under 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 153A or 153C as the case may be.

In other words, any notice under Section 148 in the amended provision can be issued if the same could have been issued under the old provision of 153A and/or 153C.

To elaborate this issue, it is evident that in this case the search was conducted on 09.06.22 which falls in the financial year 2022-23 which would be assessment year 2023-24, as such the assessing officer was correct in issuing notice under 148 of the amended Section for the assessment year 13-14 in case of both the Assesseees i.e., 10 years from the end of relevant assessment year has not lapsed.

(ii) Further, section 153C(2) of the Act further elaborates that in such cases Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A.

(iii) Further, 4th proviso of section 153A of the Act enables Assessing Officer to complete assessment for assessment year which is beyond six assessment years but not later than ten assessment years from the end of the

assessment year relevant to the previous year in which search is conducted or requisition is made if Assessing Officer has in his possession books of account or other documents or evidence which reveals that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year.

Further, vide amendment in section 149 (1) (b) w.e.f. 01.04.22, entries in books of account were also incorporated as clause 149(1)(b)(iii) apart from existing terms of asset in 149(1)(b)(i) & expenditure in respect of transaction in relation to an event or occasion in 149(1)(b)(ii). Thus, the legislature has expanded the power of AO in search proceedings and as stated herein above, the search was conducted on 09.06.22.

To find out whether the cases before us will come under extended period of ten years, at the cost of repetition, the facts of the case are reiterated. During the course of search at the business premises of Naresh Kumar Kejriwal situated at GEL Church Complex, Ranchi a bunch of loose sheets containing written pages 1 to 110 identified as NKK01 was seized. On examination, it was found that page 01 and 02 of the loose sheets of NKK-01, contains the accommodation entries of loan given to Devika Construction and Developers Private Limited. As per these

loose sheets, M/s Devika Construction and Developers Private Limited has received bogus loan of Rs.88,00,000/- on 29.06.2012, Rs. 1,00,000/- on 23.07.2012, Rs. 1,00,000/- on 27.11.2012 and Rs.3,00,000/- on 08.01.2013. As detailed in the said seized/impounded document, the loan has been given at the interest rate of Rs. 1.5% per month. However, the enquires conducted by the Investigating Officer reveal that the aforesaid loans given by Mr. Kejriwal to M/s Devika Construction and Developers Private Limited have not been accounted for in the books of account of the petitioner company. It further appears that the petitioner company in its ITR filed before the department for AY 2013-14, has declared its liability as 'NIL'. All these facts lead to the conclusion that there is no error in the action of the AO to issuing Notice u/S 148 of the Act.

(iv) At this stage it is very relevant to reiterate explanation-1 of section 153A of the Act which explains the expression of relevant assessment year. It stipulates that relevant assessment year shall mean as assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond Six assessment years but not later than 10 assessment year from the end of assessment year relevant

to previous year in which search is conducted or requisition is made.

Thus, in the instant case since the search was conducted on 09.06.22 which falls in the financial year 2022-23 which would be assessment year 2023-24, as such the assessing officer was correct in issuing notice under 148 of the amended Section for the assessment year 13-14 in case of both the Assesseees.

9. It is true that in the newer provision of reassessment, in cases where search is initiated after 01.04.2021, it is required to be made as per provisions contained in section, 148, 149 and 151. The discussions made herein above clearly states that no error has been committed by the AO in issuing Notice u/S 148 of the Act for the AY 2013-14.

10. It goes without saying that Section 148A is not applicable in this case as information emanated from searched party and materials/documents pertained to/relates to the both Assessee i.e., where the search is conducted and against the 3rd person whose documents have been seized which goes to show that the information and the documents forms an asset and beyond 50 Lakh. Further the records suggest that investigating team has also alleged about the entries in the Books of Account.

11. Thus, the first and the main contention of the learned counsel for the respective Assessee that the Notice u/s 148 is time barred, has no legs to stand in the eye of law in view of the discussions made in the preceding paragraphs. Accordingly, the judgments cited by the learned counsel is not applicable in the instant case, inasmuch as, the Notice issued by the Revenue is not time barred as discussed herein above.

12. One more contention of learned counsel for the petitioner in the case of Devika construction was that no search was made in the case of Assessee and only survey was conducted as such 10 years will not be applicable in its case. Even this submission is misconceived because of the fact that 153C (2) of the Act is very clear in explaining the manner of assessment. The provision of this subsection in unequivocal term stipulates that the Assessing Officer shall issue Notice and assess or reassess total income of such other person of such assessment year in the same manner as provided in section 153A of the Act.

Thus, so far as the argument of difference between survey and search as developed by the learned counsel for the petitioner is concerned; the same is misconceived and without any basis.

13. In view of the aforesaid discussions we hold as under:-

(a) The A.O was justified in reopening the assessment for A.Y.13-14 in case of both the Assesseees for 10 years as they have rightly taken previous sanction of the competent authority.

(b) There is no illegality, whatsoever, with regard to initiation of reassessment proceeding by issuing notice under Section 148 of the Income Tax Act.

14. As a result, both these writ applications are dismissed without interfering with the respective show-cause notices, however, there shall be no order to cost. Pending I.A., if any, is also closed.

(Rongon Mukhopadhyay, J.)

(Deepak Roshan, J.)

Fahim/-
AFR-