

Delhi High Court quashes reassessment notices issued post *Abhisar Buildwell*¹; holds Revenue cannot coax life into notices otherwise barred by limitation

The Hon'ble Supreme Court judgment in *Abhisar Buildwell (supra)* settled the law that in respect of unabated/ completed assessments, no addition can be made under section 153A in the absence of/ de hors any incriminating material found during the course. The apex Court however observed that obvious powers of the assessing officer to reopen/ reassess such completed/ unabated assessments under sections 147/148 is saved “*subject to fulfillment of the conditions as envisaged/ mentioned under section 147/148 of the Act*”

Basis the aforesaid observation and the Instruction No.1 of 2023 (dated 23.08.2023) issued by CBDT, tax Department had issued reassessment notices for years prior to assessment year 2021-22 de hors the fact that limitation for reopening under section 149(1) read with proviso thereto [6 years period] stood expired. The Revenue had resorted to section 150(1) to overcome limitation under section 149 construing the aforesaid observation of the apex Court as ‘finding’ or ‘direction’ for reopening.

The aforesaid reassessment notices stand quashed by **the Delhi High Court** in a batch of writ petitions² as being time barred. The Hon'ble Court held that “*the limited right that was made available to the Revenue by Hon'ble Supreme Court to initiate reassessment proceedings cannot be construed as a carte-blanche enabling the Respondents to overcome and override the restrictions that otherwise appear in Section 149 of the Act.*”

Important observations and principles laid down by the Court are summarized as follows:

- (a) As per Supreme Court, in cases where search does not result in any incriminating material, the only remedy available to Revenue is to resort to reassessment, which was caveated by the observations – “*subject to fulfilment of conditions mentioned in section 147/148 of the Act.*” Thus, limited right granted to Revenue cannot be read or construed as a carte-blanche to override the restrictions u/s 149;
- (b) The Supreme Court was mindful of the statutory prescriptions which imbue commencement of reassessment, and therefore qualified its observations by repeating that the action must be in accordance with the conditions in sections 147 and 148. The observations were repeated even in the case of *U.K Paints*³.

¹ *Principal Commissioner of Income Tax vs. Abhisar Buildwell P. Ltd.* [2023] 454 ITR 212 (SC)

² *Dharampal Satyapal Ltd. (Successor of Abhisar Buildwell Pvt. Ltd.) vs. DCIT* [WPC 5721/2024 (judgment dated 26.09.2024)] [2024:DHC:7423-DB]

³ *DCIT v. U.K Paints (Overseas) Ltd.*: 2023 SCC OnLine SC 818

- (c) In the Miscellaneous Application⁴ before apex Court, Revenue specifically alluded to section 150 which came to be dismissed. Thus, neither *Abhisar Buildwell (supra)* nor *U.K. Paints* enabled the Revenue to overcome the statutory bar of limitation.
- (d) A '**finding**' as occurring in Section 150 of the Act is a conclusion rendered by a Court in the context of a particular case and which is essential for determining the grant of relief. Similarly, a '**direction**' would constitute one which the authority was empowered to issue under the Act. Testes on those precepts, the observations appearing in *Abhisar Buildwell (supra)* are neither a '**finding**' nor a '**direction**' that enables the Revenue to overcome the prescription of limitation by resorting to section 150.
- (e) It would be wholly incorrect for Courts to extend a period of limitation that otherwise stands prescribed in the Act.
- (f) The present case is not where any clause of Explanation 1 to section 153 would apply since the Act provides no exclusion for period spent pursuing an assessment under sections 153A/ 153C were to be ultimately annulled.

Nothing prevented the Revenue to drop the sections 153A/ 153C assessment in cases where no incriminating material were found during search and start action for reassessment under section 147 while the period of limitation for the same was available, particularly when the law that such assessment was not permissible in absence of incriminating material was repeatedly laid down by the High Courts.

VA Comments

Ruling of the Delhi High Court is the first dealing with invalidity to the reassessment proceedings initiated by the Revenue in multiple cases merely relying on observation of the apex Court in *Abhisar Buildwell (supra)* where search assessments stood quashed in absence of incriminating material. The judgement is of great importance and would be helpful in multiple reassessment cases initiated on similar basis.

The judgment is an important and conclusive judicial pronouncement on two legal issues/propositions, i.e., - (i) it puts to rest what tantamount to a '**finding**' and/or '**direction**' for the purposes of section 150; and (ii) there is no power which vests in Courts to extend the statutory period of limitation prescribed in law.

Decision acts as a wake-up call for Revenue to be a vigilant litigant and weigh their options before deciding to litigate a (seemingly lost) cause all the way up to the apex Court, especially where alternative routes, mechanism and modalities were provided. Lastly, by merely issuing instructions to its officers, Revenue cannot bulldoze its interpretation of a particular judgment on the assessee, especially when the law is well settled that Circulars and Instructions of CBDT, although binding on Revenue, cannot be taken to bind the Courts.

⁴ [2023] 294 Taxman 70 (SC)

The matter was successfully represented by **Mr. Ajay Vohra, Sr. Advocate, Mr. Rohit Jain, Mr. Aniket D. Agrawal, Mr. Deepesh Jain, and Mr. Samarth Chaudhari, Advocates.**

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