IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 4372 OF 2022

Wavy Construction LLP)
having its office at Level 6, Ceejay House)
Dr. Annie Besant Road, Worli,)
Mumbai – 400 018.) ..Petitioner

Versus

1. Asst. Commissioner of Income-tax,)
Circle-22(1))
Room No. 322, Piramal Chambers,)
Lal Baug, Parel, Mumbai – 400 012.)

2. Principal Commissioner of Income Tax-20)
Room No. 418, 4th Floor, Piramal Chambers)
Lal Baug, Parel, Mumbai – 400 012.)

3. Assistant Commissioner of Income-tax)
having his office at National Faceless)
Assessment Centre, Delhi.)

4. Union of India)
through Ministry of Finance, North Block,)
New Delhi – 110 001.) ..Respondents

Mr. J. D. Mistri, Senior Advocate with Mr. B. V. Jhaveri and Ms. Bhargavi Raval for Petitioner.
Mr. Akhileshwar Sharma for Respondents.

CORAM: G. S. KULKARNI &
ADVAIT M. SETHNA, JJ.
RESERVED ON: 26 NOVEMBER 2024.
PRONOUNCED ON: 20 DECEMBER 2024.

Judgment (per G. S. Kulkarni, J.):

1. Rule, returnable forthwith. Respondents waive service. By consent of the parties, heard finally.

2. This petition under Article 226 of the Constitution of India challenges an order dated 14 October 2021 passed by the Assessing Officer whereby the petitioner's objections against the reopening of assessment under Section 147 of the Income Tax Act, 1961 (for short, the "**IT Act**") has been rejected and the consequent assessment order dated 30 September 2022 passed by the Assessing Officer under Sections 143(3) read with Sections 147, 260 and 144B of the IT Act. Assessment Year relevant to the impugned orders is A.Y. 2012-13.

3. The necessary facts as the petition would set out, need to be noted:-

The petitioner is a limited liability partnership firm, which was initially incorporated as a Private Limited Company on 27 November 1995 and thereafter converted into a limited liability partnership (LLP) on 30 March 2011. It is regularly filing its income tax returns since its incorporation.

4. For the assessment year 2012-13, the petitioner filed its return of income on 29 September 2012. On 03 October 2013, an intimation was issued to the petitioner under Section 143(1) of the IT Act. After a long

period of time that is on 12 November 2018, a notice under Section 133(6) was issued by the DDIT (I & CI), Unit-2(2) calling for details like share of the petitioner in the sale proceeds, from the sale of land, computation of capital gains, etc. The petitioner, by its letter dated 27 November 2018, replied to the said notice in which it furnished all the details which were called for. On 07 December 2018, the petitioner filed further details as also requested that a personal hearing be granted to it by the DDIT. Again notices under Section 133(6) were issued to the petitioner by the Income Tax Officer (I & CI), Unit-2(1) on 20 November 2018 and 19 December 2018 to which replies were filed by the petitioner on 14 December 2018 and 28 December 2018, respectively. On 17 January 2019, a further notice was issued to the petitioner by the said Income Tax Officer under Section 133(6).

5. It is on the aforesaid backdrop, on 29 March 2019, a notice was issued to the petitioner under Section 148 of the IT Act, informing the petitioner that there was reason to believe that income chargeable to tax for the assessment year in question (2012-13) had escaped assessment within the meaning of Section 147 of the IT Act, and for such reason, it was proposed to assess/re-assess the income/loss for the said assessment year. Accordingly, the petitioner was called upon to deliver within 30 days from the receipt of such notice, a return in the prescribed form, for the said

assessment year. The assessing officer by a communication dated 23 April 2019 furnished reasons to the petitioner for reopening of the case *inter alia* recording that the income chargeable to tax of Rs. 4,13,05,930/- had escaped assessment within the meaning of section 147 of the IT Act which was in relation to transaction of sale of property undertaken by Shri. Daayas Lovaji Frezar and Shri. Sanjay B. Jadhav on 16 August 2011, to the tune of Rs. 9,00,00,000/-.

6. The petitioner objected to the reasons by its letter dated 06 May 2019 dealing the same on merits, thereby contending that the reasons to believe were vague; they had no nexus to the conclusion arrived at by the assessing officer, hence, they were bad in law. The assessing officer considered such objections, and by an order dated 25 November 2019 rejected the objections raised by the petitioner. Thereafter an assessment order dated 19 May 2021 was passed by the Assessing Officer.

7. In the aforesaid circumstances, the petitioner approached this Court by filing Writ Petition No. 3368 of 2019 challenging the notice issued under Section 148 and the said order dated 25 November 2019 rejecting / disposing of the objections raised by the petitioner. On such writ petition, an ad-interim order came to be passed by the Division Bench on 13 December 2019 whereby stay was granted to the impugned notice and further proceedings. The stay order was continued till the Division Bench

heard the parties on 21 September 2021 when it passed the following order disposing of the writ petition in terms of paragraph 3 with the concurrence of learned counsel.

> "1. Mr. Walve states that an affidavit of one Biju Thomas, Assistant Commissioner of Income Tax sworn on September 17, 2021 has been filed in compliance with the order dated September 14, 2021. We have considered the affidavit and we accept the explanation given therein.
>
> 2. The assessment order dated May 19, 2021 is hereby quashed and set aside. Naturally, consequential notices, if any, are also quashed and set aside.
>
> 3. Keeping open the rights and contentions of the parties, we **pass the following order with the concurrence of the counsel.**
>
> (A) The impugned order dated November 25, 2019 (Exhibit 'P' to the petition) disposing the objection raised against reopening of assessment under Section 147 of the Income Tax Act, 1961 (the 'Act') is quashed and set aside.
>
> **(B) The matter is remanded to the concerned authority to reconsider the objection dated May 6, 2019 and pass further orders. Should petitioner wish to file any further submissions in response to the letter dated April 23, 2019 giving reasons for reopening assessment for AY 2012-13, petitioner may do so within two weeks from today. No extension will be granted.**
>
> **(C) Should petitioner seek any clarification regarding the figures which are mentioned in the reasons for reopening, the concerned authority shall provide the same within two weeks of receiving the communication from petitioner.**
>
> **(D) The concerned authority may further dispose of the objection to the reopening of assessment after giving a personal hearing to the petitioner as per Rules prescribed**.
>
> 4. We clarify that we have not made any observations on the merits of the case.
>
> 5. Mr. Walve states that in case of reopening upto the stage of disposal of objection, it remains with the jurisdictional Assessing Officer, and once it is disposed by the jurisdictional Assessing Officer, the matter goes to Faceless Scheme for further assessment. Statement accepted.
>
> 6. Writ Petition disposed."

(emphasis supplied)

8. Thus, according to the petitioner, as a consequence of the aforesaid order passed by this Court, the proceedings stood remanded to the Assessing Officer to reconsider the objections dated 06 May 2019 raised by the petitioner and pass further orders. It is the petitioner's case that as permitted by paragraph 3(B) of the aforesaid order passed by the Division Bench, the petitioner on 30 September 2021 filed further objections, in response to the reasons as provided to the petitioner for reopening of the assessment, by Assessing Officer's letter dated 23 April 2019.

9. The Assessing Officer thereafter addressed a letter dated 08 October 2021 to the petitioner enclosing a communication addressed by the Income Tax Officer (I & CI) to the Principal Commissioner of Income Tax dated 06 March 2019, in regard to the information on the said transaction namely the transaction of sale of property as undertaken by Shri. Darayas Lovaji Frezar and Shri. Sanjay B. Jadhav on 16 August 2011 which was in the tune of Rs. 9,00,00,000/-. Thus, enclosing the said letter dated 06 March 2019, the petitioner was informed that following the principles of natural justice, the petitioner shall make submissions/reply on such information on the transactions as received by the Assessing Officer.

10. It is the petitioner's case that on 14 October 2021, respondent no.1 rejected the objections of the petitioner. Also, the petitioner was not

furnished with a copy of the approval under Section 151 of the IT Act, although it was specifically sought by the petitioner. Thereafter the assessment proceedings were transferred to the National Faceless Assessment Centre, Delhi as per the intimation dated 08 September 2022. The petitioner contends that a show cause notice dated 12 September 2022 was issued to the petitioner by posting such notice on the Income Tax portal. Also a notice under Section 142(1) of the IT Act dated 12 September 2022 was lodged on the portal. The petitioner contends that it was not aware about the issuance of the show cause notice as also the notice under Section 142(1) both dated 12 September 2022, hence, the same remained to be responded by the petitioner.

11. On 20 September 2022, a communication was addressed by respondent no.3/Assistant Commissioner of Income-tax, National Faceless Assessment Centre (for short, "**NFAC**") to the petitioner enclosing therewith a show cause notice dated 20 September 2022 *inter alia* recording that the variations, which were intended to be made, prejudicial to the interest of the petitioner, were primarily in regard to the information stated to be received in respect of transaction of sale of property by Shri. Daayas Lovaji Frezar and Shri. Sanjay Jadhav on 16 August 2011 to the tune of Rs. 9,00,00,000/- and more particularly, as seen from a copy of Index-II, which was obtained in relation to the said transaction from the

office of the Sub-Registrar, Maval, Pune. The reason was recorded that the petitioner although was issued a notice, the same was not replied. The following reasons which were set out:-

> "2. The following variation(s) prejudicial to your interest are proposed to be made in your case:-
>
> In your case, order u/s. 147 was passed on 19.05.2021. Against this order, you preferred appeal before Hon'ble High Court. Then, High Court passed order on 24.09.2021. In view of order of High Court, you filed fresh objections on 30.09.2021 for issuance of notice u/s.148 and reasons recorded thereof u/s.148(2) of the Act. The JAO disposed off the objection raised by you vide order dated 14.10.2021. As per para 5 of High Court order, the matter goes to Faceless Scheme for further assessment.
>
> Thereafter, notice u/s.142(1) dated 12.09.2022 issued. Reminder letter dated 15.09.2022 issued. Further, notice u/s.142(1) issued on 17.09.2022 and 20.09.2022. In addition, personal hearing via V.C. dated 13.09.2022, 17.09.2022 and 20.09.2022 were conducted. However, you have not replied till date. In your case following reasons were raised:
>
> > 1. Subsequently, an information received from the Income Tax Officer (Intelligence & Criminal Investigation), Unit-2(1), Mumbal vide letter No.ITO(I&CI) Unit-2(1)/Actionable Case/ 2018-19 dated 06.03.2019 that there had been sale of property/ land amounting to Rs. 9,00,00,000/- and the such sale transaction has been done by the assessee M/s Wavy Construction LLP (formerly known as Wavy Construction Pvt Ltd) during the F.Y. 2011-12 relevant to A.Y. 2012-13.
>
> From the information it is learnt that the transaction of sale of property done by Shri. Daayas Lovaji Frezar and Shri. Sanjay B. Jadhav on 16.08.2011 to the tune of Rs. 9,00,00,000/-. During verifying the transaction, it is found that both persons filed reply stating that they had holder of Power of Attorney only.
>
> Copy of Index-II of transaction amount of Rs.9 Crore was obtained from the Sub-Registrar, Maval, Pune. The SRO had provided another Index-II of another transaction amount of Rs. 108,25,00,000/- which was also registered on 16.08.2011. On perusal of Index-II, it is found that Shri. Darayas Lovaji Frezar acted as Power of Attorney holders in respect of sellers namely Noshir D Talati, Rashna Talatia nd M/s Zenriba Estate & Investment P. Ltd. Whereas Shri. Sanjay B. Jadhav acted as POA

holder for Wavy Construction LLP. On perusal of Index- II, it is found that Mis Wavy Construction LLP was one of the seller.

It is further learnt that the entire sale transaction had taken place in three stages as detailed below

Description of Property	Area in Sq. Mt.	Date of conveyance	Total sale value in Rs.	Amount received
Plot A	17615.93	10.08.2011	9,00,00,000	8,75,00,000
Plot B	214879.95	10.08.2011	108,25,00,000	107,00,00,000
N.A. Land 12 Mtrs Internal Road of Plot A	8330	10.08.2011	3,25,00,000	3,25,00,000

While calculating the LTCG the assessee has taken into consideration expenses viz. cost of acquisition of and improvement, professional fees, supervisory charges etc. to curtail the amount of receipts of the assessee. In view of the above facts, the assessee had incurred aforesaid expenses to the tune of Rs.4,13,05,930/- escaped assessment.

1. In view of the above facts, I have reason to believe that income chargeable to tax of Rs. 4,13,05,930/- has escaped assessment within the meaning of section 147 of the I.T Act, 1961 for the failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment for the previous year relevant to A.Y. 2012-13.

2. Considering the above mentioned facts, and circumstances of the case, I have reason to believe that an amount of Rs. 4,13,05,930/-has escaped assessment in the hands of the assessee for A. Y. 2012-13. The Income has escaped assessment on account of failure on the assessee's part to disclose the correct nature of income. So, the case of the assessee for A.Y. 2012-13 is being re-opened u/s 147 of the Income-tax Act, 1961 to bring to tax the income escaping assessment.

3. In this case a return of income was filed for the year under consideration. Since, 4 years from the end of the relevant year has expired in this case, the requirements to initiate proceeding u/s 147 of the Act are reason to believe that income for the year under consideration has escaped assessment because of failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for the assessment year under consideration. It is pertinent to mention here that reasons to believe that income has escaped assessment for the year under consideration have been recorded above.

> **4. In this case more than four year have been lapsed from the end of assessment year under consideration, hence necessary approval to initiate proceedings u/s 147 of the I.T. Act and to issue notice u/s 148 is needed from Principal Commissioner of Income-21, Mumbai as per the provisions of section 151......"**
>
> Since, you have not furnished any submission or reply, you are requested to show cause why the amount of Rs. 4,13,05,930/- should not be added to the total income for A.Y.2012- 13."
>
> (emphasis supplied)

12. The petitioner was accordingly called upon to show cause as to why the proposed variation should not be made and the assessment should not be completed accordingly. On 21 September 2022, the petitioner through its Chartered Accountant replied to the show cause notice *inter alia* recording that the notices/letters as issued by the respondents and the reassessment proceedings were time barred, bad in law, void ab initio and illegal. In this context, the petitioner contended that the notice under Section 148 was issued on 29 March 2019 for assessment year 2012-13. It was stated that as per provisions contained in Section 153(2), the last date for passing the assessment order in cases of notice being issued under Section 148 before 01 April 2019, was 31 December 2019 i.e. 9 months from the end of the financial year in which notice under Section 148 was served. It was stated that for such reason, in the assessee's case, the last date for passing the assessment order was 31 December 2019. The petitioner pointed out that Writ Petition No. 3368 of 2019 was filed by the petitioner on which this Court had granted ad-interim stay on 13 December 2019

which was continued till the writ petition was disposed of i.e. on 21 September 2021. It was thus contended that the assessment proceedings had remained stayed by this Court from 13 December 2019 till 21 September 2021. Considering such fact, it was contended by the petitioner that as per Explanation 1 to Section 153 of the IT Act, in computing the period of limitation, the period during which the assessment proceeding was stayed by an order or injunction of any Court was required to be excluded. The petitioner hence contended that even taking into consideration such excluded period, the last date of passing the order as per the provisions of Section 153 of the Act which was 31 December 2019 stood extended by the period for which stay granted by the High Court was operating, which was for a period of 21 months and 9 days and accordingly, the last date for passing the assessment order had stood extended till 09 October 2021. It was contended that, accordingly, as the writ petition was disposed of by the High Court on 21 September 2021, the assessing officer had only 18 days to pass the order. However, applying the provisions of Section 153 of the IT Act, where immediately after the exclusion of the said period, the period of limitation available to the assessing officer for making an order of reassessment was less than 60 days and such remaining period was to be extended to 60 days, which was deemed to be extended. Accordingly, the assessment order ought to have been passed on or before 20 November 2021. It was stated that all the notices / letters which were

issued after 20 November 2021 (which was the last date for completion of the assessment proceedings), were time barred and had no validity in law. The petitioner also replied on merits to the reasons furnished in reopening the petitioner's assessment. The petitioner also requested the Assessing Officer to grant a personal hearing to the petitioner and drop the proceedings.

13. It is on the above backdrop, a show cause notice dated 24 September 2022 came to be issued to the petitioner as to why the proposed variation should not be made for the reasons as set out in the said notice. Such notice was replied by the petitioner on 26 September 2022 *inter alia* recording that the petitioner had already submitted voluminous information along with its reply dated 26 September 2022. The petitioner reiterated that the entire re-assessment proceedings were time barred, despite which the show cause notice dated 27 September 2022 was issued to the petitioner by the NFAC.

14. Within two days of the petitioner submitting its reply to the show cause notice dated 27 September 2022, i.e. on 28 September 2022, an assessment order was passed under Section 143(3) read with Sections 147, 260 and 144B of the IT Act making addition of Rs.4,69,02,981/- to the total income of the petitioner.

15. It is on the aforesaid facts, the present petition is filed praying for the

following substantive reliefs:-

> "(a) that this Hon'ble Court may be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India calling for the records of the case leading to the passing order of the Respondent No.1 dated 14 October, 2021 rejecting the objections of the Petitioner (Ex. 'J') and the assessment order u/s. 143(3) r. w. sections 147, 260 and 144B of the Act dated 30" September, 2022 for A.Y. 2012-13. (Ex. 'Q') and after going through the same and examining the question of legality thereof to quash, cancel and set aside the order of the Respondent No.1 dated 14" October, 2021 rejecting the objections of the Petitioner (Ex. 'J') and the assessment order u/s. 143(3) r. w. sections 147, 260 and 144B of the Act dated 30% September, 2022 for A.Y. 2012-13 (Ex. 'Q').
>
> (b) that this Hon'ble Court may be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India ordering and directing the Respondent No.1 to withdraw and cancel the alleged order dated 14th October, 2021 rejecting the objections of the Petitioner (Ex. 'J'), withdraw and cancel notices issued from 8'" September, 2022 to 27th September, 2022 and the assessment order u/s. 143(3) r. w. sections 147, 260 and 144B of the Act dated 30th September, 2022 for A.Y. 2012-13 by Respondent No.3 (Ex. 'Q').
>
> (c) that this Hon'ble Court may be pleased to issue a writ of prohibition or a writ in the nature of prohibition or any other appropriate writ, order or direction under Article 226 of the Constitution of India ordering and directing the Respondent No.1 & 3, not to proceed with or in pursuance of or in furtherance of the alleged order dated 14 October, 2021 (Ex.'J') rejecting the objections of the Petitioner and the notices issued by the Respondent No.3 from 8" September, 2022 to 27th September, 2022 and the assessment order u/s. 143(3) r. w. sections 147, 260 and 144B of the Act dated 30th September, 2022 for A.Y. 2012-13 by the Respondent No.3 (Ex. 'Q')."

16. Reply affidavit is filed on behalf of the Revenue of Shri Jaibhim T. Narnaware, Deputy Commissioner of Income Tax, Circle-22(1), Mumbai, who has described himself as Jurisdictional Assessing Officer ("**JAO**")

which *inter alia* denying the petitioner's case contends that the writ petition ought to be not entertained and the same be dismissed.

Submissions on behalf of the Petitioner

17. Mr. Mistri, learned senior counsel for the petitioner, in assailing the legality of the impugned assessment order passed under Section 147 read with Sections 260 and 144B of the IT Act, would raise a question, as to whether such order of assessment, reassessment or recomputation could at all be passed, after the expiry of nine months from the end of the financial year in which notice under Section 148 was served. The impugned notices and orders are also challenged on the other grounds, suffice it to observe that the primary contention as urged by Mr. Mistri as on the limitation as prescribed under Section 153(2) of the IT Act along with Explanation 1(ii) below the proviso to Section 153(9) of the Act. Mr. Mistri submits that the impugned notices issued by respondent no.3 from 8 September 2022 till 27 September 2022 for the reassessment proceedings being initiated and thereafter in passing the impugned assessment order under Section 143(3) read with Sections 147, 260 and 144B of the IT Act on 30 September 2022 are bad in law and without jurisdiction, as the same had been issued after the expiry of the limitation period prescribed in Section 153(2) of the IT Act along with Explanation 1 below proviso to Section 153(9) of the IT Act.

18. In supporting such contention, it is submitted that as per Section 153(2), the Assessing Officer was required to pass such order within nine months from the end of the financial year in which the notice under Section 148 was served. The submission is that the notice under Section 148 was issued on 29 March 2019. The financial year ended on 31 March 2019, and the nine months period from 01 April 2019 ended on 31 December 2019. This would have been the normal position. However, Writ Petition No. 3368 of 2019 was filed by the petitioner in this Court challenging the notice under Section 148 of the IT Act, in which this Court had granted interim stay on 13 December 2019, which continued until the petition was disposed of on 21 September 2021. Such period during which the stay operated would be required to be excluded. It is hence submitted that consequently the reassessment proceedings having remained stayed from 13 December 2019 till 21 September 2021, such period would be required to be excluded in computing the period of limitation. Mr. Mistri submits that as per Explanation 1 (ii) below the proviso to Section 153(9) of the IT Act provides that in computing the period of limitation, the period during which the assessment proceedings were stayed by an order or injunction of any Court shall be excluded. It is thus submitted that respondent no.1 was left with only 18 days to pass the reassessment order, i.e. from 13 December 2019 to 31 December 2019 being the period from the date the stay was granted to the period the limitation would expire

under the normal course.

19. It is submitted that as per the second proviso to Section 153(9) of the IT Act, immediately after the exclusion of the said period, the period available to the Assessing Officer for making an order of reassessment is less than sixty days, as such remaining period would stand extended to sixty days from the date the stay was vacated and the said period of limitation shall be deemed to be extended accordingly. It is, therefore, submitted that respondent no.1 had sixty days available from 21 September 2021 to pass the reassessment order i.e. on or before 20 November 2021, whereas, the Income Tax Officer, NFAC passed the impugned order under Section 143(3) read with Sections 147 and 144B on 30 September 2022 which is after a period of almost ten months from the limitation having expired, hence, the assessment order is *ex-facie* barred by limitation. Mr. Mistri in supporting such contention, submits that the consequence was that the High Court in its order dated 21 September 2021 had neither given any direction nor recorded any finding, as referred to in sub-section (6) of Section 153, in as much as, the High Court held that: (i) the order passed under Section 143(3) read with Section 147 on 19 May 2021 was in violation of the ad-interim relief granted by the High Court on the writ petition of the petitioner and therefore, the said order was quashed and set aside and consequently all notices issued pursuant thereto were quashed

and set aside; (ii) the High Court quashed the order disposing of the objections dated 25 November 2019 and held that the petitioner can file any further objections in addition to its letter dated 06 May 2019 objecting to the notice under Section 148 of the IT Act. (iii) the High Court asked the Assessing Officer to dispose of the objections of the petitioner after giving a personal hearing to the petitioner.

20. It is hence submitted that the High Court has neither given directions nor recorded any findings and on the contrary, the High Court observed - *"We clarify that we have not made any observations on merits of the case."* Supporting such contentions on the proceedings being barred by limitation under the provisions of Section 153, Mr. Mistri has placed reliance on the decisions of the Supreme Court in **Income-tax Officer vs. Murlidhar Bhagwan Das**[1], **Rajinder Nath v. Commissioner of Income-Tax, Delhi**[2] and on the decision of the Division Bench of Karnataka High Court in **Principal Commissioner of Income-Tax & Anr. vs. Tally India Pvt. Ltd.**[3].

21. It is next submitted that the impugned notice under Section 148 of the IT Act dated 29 March 2019 records that the notice was issued after obtaining the necessary satisfaction of the Principal Commissioner of Income Tax – 21, Mumbai and this fact was reproduced in the copy of the reasons recorded and furnished to the petitioner on 23 April 2019. In such

1 52 ITR 335 SC
2 120 ITR 14, SC
3 435 ITR 137 Kar.

context, Mr. Mistri submits that the petitioner had requested for a copy of the approval under Section 151 of the IT Act being furnished to it, as also the same was demanded by the petitioner in its letters dated 21 September 2022 and 26 September 2022 however, the same is not furnished to the petitioner till date. It is therefore submitted that the petitioner is justified in raising the ground in the petition that respondent no.1 had issued notice under Section 148 of the IT Act without obtaining the approval of respondent no.2, and hence, the notice issued under Section 148 *void ab initio*. It is submitted that such statement as made by the petitioner is not controverted by the respondents. In the aforesaid circumstances, it is submitted that the petition deserves to be allowed.

Submissions on behalf of the Revenue

22. On the other hand, Mr. Sharma, learned counsel for the Revenue in opposing the petition, has primarily relied on the reply affidavit which has been filed. Mr. Sharma would contend that the order dated 21 September 2021 passed by this Court sufficiently constitutes a direction to deal with the fresh objections and in pursuance of such order passed by the Court, the Revenue was entitled to pass an order during the extended period of twelve months as provided under sub-section (6) of Section 153 of the Act from the end of the month in which the order was passed by this Court, hence, the period would stand extended from 01 October 2021 upto 30

September 2022. According to Mr. Sharma, the impugned assessment order being passed on 30 September 2022, was within the prescribed limitation. It is, therefore, Mr. Sharma's contention that by virtue of the order dated 21 September 2021 passed by this Court, necessarily the extended period under sub-section (6) of Section 153 was available, as also clear from the tenor of the orders passed by this Court. It is his submission that there cannot be any other reading of the High Court's order. In supporting such contention, Mr. Sharma has also referred to the observations of the Supreme Court in **Rajinder Nath v. Commissioner of Income-Tax, Delhi** (supra) as according to Mr. Sharma, it would not be a correct understanding/reading of the High Court's order that it has simply set aside the assessment order dated 19 May 2021, as it provides for a further action to be undertaken as per the directions as contained in paragraph 3(A) to 3(D) which, according to Mr. Sharma, were necessarily required to be adhered by the Revenue in passing fresh orders. Hence, the original period of limitation was no more available and it is the extended period of limitation as provided by sub-section (6) of Section 153 which was available for a fresh order to be passed. It is, therefore, Mr. Sharma's submission that the petitioner is not correct in its submission relying on the decision to support its contentions that the extended period of limitation was not available to pass the impugned assessment order dated 30 September 2022. He accordingly submits that the Writ Petition be

dismissed.

23. We have heard Mr. Mistri, learned senior counsel for the petitioner and Mr. Sharma, learned counsel for the respondents. With their assistance, we have perused the record.

Reasons and conclusion

24. In the facts and circumstances of the case, the short question which arises for consideration is whether the impugned assessment order dated 30 September 2022 would be required to be held to be bad in law and without jurisdiction, on the ground that the same was passed after the expiry of the period of limitation as prescribed under Section 153 of the IT Act and more particularly read with the proviso below Explanation 1 fallowing under sub-section (9) of Section 153.

25. Having noted the factual matrix in detail, to answer the issue at the outset it would be imperative to note the provisions of Section 153 which read thus:-

> "153. Time limit for completion of assessment, reassessment and recomputation.
>
> (1) No order of assessment shall be made under section 143 or section 144 at any time after the expiry of twenty-one months from the end of the assessment year in which the income was first assessable:
>
> P*rovided* that in respect of an order of assessment relating to the assessment year commencing on the 1st day of April, 2018, the provisions of this sub-section shall have effect, as if for the

words "twenty-one months", the words "eighteen months" had been substituted:

Provided further that in respect of an order of assessment relating to the assessment year commencing on—

(*i*) the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "twelve months" had been substituted;

(*ii*) the 1st day of April, 2020, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "eighteen months" had been substituted:]

P*rovided also* that in respect of an order of assessment relating to the assessment year commencing on [33][***] the 1st day of April, 2021, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "nine months" had been substituted:

Provided also that in respect of an order of assessment relating to the assessment year commencing on or after the 1st day of April, 2022, the provisions of this sub-section shall have effect, as if for the words "twenty-one months", the words "twelve months" had been substituted.]

[(1A) Notwithstanding anything contained in sub-section (1), where a return under sub-section (8A) of section 139 is furnished, an order of assessment under section 143 or section 144 may be made at any time before the expiry of [twelve] months from the end of the financial year in which such return was furnished.]

[*(1B) Notwithstanding anything in sub-section (1), where a return is furnished in consequence of an order under clause (*b*) of sub-section (2) of section 119, an order of assessment under section 143 or section 144 may be made at any time before the expiry of twelve months from the end of the financial year in which such return was furnished.*]

(2) No order of assessment, reassessment or recomputation shall be made under section 147 after the expiry of nine months from the end of the financial year in which the notice under section 148 was served:

P*rovided* that where the notice under section 148 is served on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "twelve months" had been substituted.

(3) Notwithstanding anything contained in sub-sections (1), (1A) and (2), an order of fresh assessment [or fresh order under

section 92CA, as the case may be,] in pursuance of an order under [*section 250 or*] section 254 or section 263 or section 264, setting aside or cancelling an assessment, [or an order under section 92CA, as the case may be], may be made at any time before the expiry of nine months from the end of the financial year in which the order under [*section 250 or*] section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the [Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be] :

P*rovided* that where the order under [*section 250 or*] section 254 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the [Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be,] on or after the 1st day of April, 2019, the provisions of this sub-section shall have effect, as if for the words "nine months", the words "twelve months" had been substituted.

(3A) Notwithstanding anything contained in sub-sections (1), (1A), (2) and (3), where an assessment or reassessment is pending on the date of initiation of search under section 132 or making of requisition under section 132A, the period available for completion of assessment or reassessment, as the case may be, under the said sub-sections shall,—

(*a*) in a case where such search is initiated under section 132 or such requisition is made under section 132A;

(*b*) in the case of an assessee, to whom any money, bullion, jewellery or other valuable article or thing seized or requisitioned belongs to;

(*c*) in the case of an assessee, to whom any books of account or documents seized or requisitioned pertains or pertain to, or any information contained therein, relates to, be extended by twelve months.]

(4) Notwithstanding anything contained in [43][sub-sections (1), (1A), (2), (3) and (3A)], where a reference under sub-section (1) of section 92CA is made during the course of the proceeding for the assessment or reassessment, the period available for completion of assessment or reassessment, as the case may be, under the said [43][sub-sections (1), (1A), (2), (3) and (3A)], shall be extended by twelve months.

(5) Where effect to an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 is to

be given by the Assessing Officer [44][or the Transfer Pricing Officer, as the case may be,] wholly or partly, otherwise than by making a fresh assessment or reassessment [44][or fresh order under section 92CA, as the case may be], such effect shall be given within a period of three months from the end of the month in which order under section 250 or section 254 or section 260 or section 262 is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be, the order under section 263 or section 264 is passed by the [45][Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be] :

P*rovided* that where it is not possible for the Assessing Officer [44][or the Transfer Pricing Officer, as the case may be,] to give effect to such order within the aforesaid period, for reasons beyond his control, the Principal Commissioner or Commissioner on receipt of such request in writing from the Assessing Officer [46][or the Transfer Pricing Officer, as the case may be], if satisfied, may allow an additional period of six months to give effect to the order:

P*rovided further* that where an order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 requires verification of any issue by way of submission of any document by the assessee or any other person or where an opportunity of being heard is to be provided to the assessee, the order giving effect to the said order under section 250 or section 254 or section 260 or section 262 or section 263 or section 264 shall be made within the time specified in sub-section (3).

[(5A) Where the Transfer Pricing Officer gives effect to an order or direction under section 263 by an order under section 92CA and forwards such order to the Assessing Officer, the Assessing Officer shall proceed to modify the order of assessment or reassessment or recomputation, in conformity with such order of the Transfer Pricing Officer, within two months from the end of the month in which such order of the Transfer Pricing Officer is received by him.]

(6) Nothing contained in sub-sections (1) (1A) and (2) shall apply to the following classes of assessments, reassessments and recomputation which may, subject to the provisions of [48][sub-sections (3), (5) and (5A), be completed—

(i) where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 250, section 254, section 260, section 262, section 263, or section 264 or in an order of any

court in a proceeding otherwise than by way of appeal or reference under this Act, on or before the expiry of twelve months from the end of the month in which such order is received or passed by the [49][Principal Chief Commissioner or Chief Commissioner or] Principal Commissioner or Commissioner, as the case may be; or

(*ii*) where, in the case of a firm, an assessment is made on a partner of the firm in consequence of an assessment made on the firm under section 147, on or before the expiry of twelve months from the end of the month in which the assessment order in the case of the firm is passed.

(7) Where effect to any order, finding or direction referred to in sub-section (5) or sub-section (6) is to be given by the Assessing Officer, within the time specified in the said sub-sections, and such order has been received or passed, as the case may be, by the income-tax authority specified therein before the 1st day of June, 2016, the Assessing Officer shall give effect to such order, finding or direction, or assess, reassess or recompute the income of the assessee, on or before the 31st day of March, 2017.

(8) Notwithstanding anything contained in the foregoing provisions of this section, sub-section (2) of section 153A or sub-section (1) of section 153B [50][*or section 158BE*], the order of assessment or reassessment, relating to any assessment year, which stands revived under sub-section (2) of section 153A [50][*or sub-section (5) of section 158BA*], shall be made within a period of one year from the end of the month of such revival or within the period specified in this section or sub-section (1) of section 153B [50][*or section 158BE*], whichever is later.

(9) The provisions of this section as they stood immediately before the commencement of the Finance Act, 2016, shall apply to and in relation to any order of assessment, reassessment or recomputation made before the 1st day of June, 2016:

P*rovided* that where a notice under sub-section (1) of section 142 or sub-section (2) of section 143 or section 148 has been issued prior to the 1st day of June, 2016 and the assessment or reassessment has not been completed by such date due to exclusion of time referred to in *Explanation 1*, such assessment or reassessment shall be completed in accordance with the provisions of this section as it stood immediately before its substitution by the Finance Act, 2016 (28 of 2016).

Explanation 1.—For the purposes of this section, in computing the period of limitation—

(*i*) the time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be re-heard under the proviso to section 129; or

(*ii*) the period during which the assessment proceeding is stayed by an order or injunction of any court; or

(*iii*) the period commencing from the date on which the Assessing Officer intimates the Central Government or the prescribed authority, the contravention of the provisions of clause (*21*) or clause (*22B*) or clause (*23A*) or clause (*23B*) [51][, under clause (*i*) of the first proviso]to sub-section (3) of section 143 and ending with the date on which the copy of the order withdrawing the approval or rescinding the notification, as the case may be, under those clauses is received by the Assessing Officer; or

(*iv*) the period commencing from the date on which the Assessing Officer directs the assessee to get his accounts audited [52][or inventory valued] under sub-section (2A) of section 142 and —

(*a*) ending with the last date on which the assessee is required to furnish a report of such audit [52][or inventory valuation] under that sub-section; or

(*b*) where such direction is challenged before a court, ending with the date on which the order setting aside such direction is received by the Principal Commissioner or Commissioner; or

(*v*) the period commencing from the date on which the Assessing Officer makes a reference to the Valuation Officer under sub-section (1) of section 142A and ending with the date on which the report of the Valuation Officer is received by the Assessing Officer; or

(*vi*) the period (not exceeding sixty days) commencing from the date on which the Assessing Officer received the declaration under sub-section (1) of section 158A and ending with the date on which the order under sub-section (3) of that section is made by him; or

(*vii*) in a case where an application made before the Income-tax Settlement Commission is rejected by it or is not allowed to be proceeded with by it, the period commencing from the date on which an application is made before the Settlement Commission under section 245C and ending with the date on which the order under sub-section (1) of section 245D is received by the Principal Commissioner or Commissioner under sub-section (2) of that section; or

(*viii*) the period commencing from the date on which an application is made before the Authority for Advance Rulings or before the Board for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the order

rejecting the application is received by the Principal Commissioner or Commissioner under sub-section (3) of section 245R; or

(*ix*) the period commencing from the date on which an application is made before the Authority for Advance Rulings or before the Board for Advance Rulings under sub-section (1) of section 245Q and ending with the date on which the advance ruling pronounced by it is received by the Principal Commissioner or Commissioner under sub-section (7) of section 245R; or

(*x*) the period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information requested is last received by the Principal Commissioner or Commissioner or a period of one year, whichever is less; or

(*xi*) the period commencing from the date on which a reference for declaration of an arrangement to be an impermissible avoidance arrangement is received by the Principal Commissioner or Commissioner under sub-section (1) of section 144BA and ending on the date on which a direction under sub-section (3) or sub-section (6) or an order under sub-section (5) of the said section is received by the [Assessing Officer; or

(*xii*) the period (not exceeding one hundred and eighty days) commencing from the date on which a search is initiated under section 132 or a requisition is made under section 132A and ending on the date on which the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing seized under section 132 or requisitioned under section 132A, as the case may be, are handed over to the Assessing Officer having jurisdiction over the assessee,—

(*a*) in whose case such search is initiated under section 132 or such requisition is made under section 132A; or

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

(*c*) to whom any books of account or documents seized or requisitioned pertains or pertain to, or any information contained therein, relates to; or]

[(*xiii*) the period commencing from the date on which the Assessing Officer makes a reference to the Principal Commissioner or Commissioner under the second proviso to sub-section (3) of section 143 and ending with the date on which the copy of the order under clause (*ii*) or clause (*iii*) of the fifteenth proviso to clause (*23C*) of section 10 or clause (*ii*) or clause (*iii*) of sub-section (4) of section 12AB, as the case may be, is received by the

Assessing Officer,] shall be excluded:

P*rovided* that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in sub-sections (1), (1A), (2), (3) and sub-section (8) available to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly:

P*rovided further* that where the period available to the Transfer Pricing Officer is extended to sixty days in accordance with the proviso to sub-section (3A) of section 92CA and the period of limitation available to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly:

P*rovided also* that where a proceeding before the Settlement Commission abates under section 245HA, the period of limitation available under this section to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, shall, after the exclusion of the period under sub-section (4) of section 245HA, be not less than one year; and where such period of limitation is less than one year, it shall be deemed to have been extended to one year; and for the purposes of determining the period of limitation under sections 149, 154, 155 and 158BE and for the purposes of payment of interest under section 244A, this proviso shall also apply accordingly:

P*rovided also* that where the assessee exercises the option to withdraw the application under sub-section (1) of section 245M, the period of limitation available under this section to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, shall, after the exclusion of the period under sub-section (5) of the said section, be not less than one year; and where such period of limitation is less than one year, it shall be deemed to have been extended to one year:

P*rovided also* that for the purposes of determining the period of limitation under sections 149, 154 and 155, and for the purposes of payment of interest under section 244A, the provisions of the fourth proviso shall apply accordingly:

[*Provided also that where after exclusion of the period referred to in clause (*xii*), the period of limitation for making an order of assessment, reassessment or recomputation, as the case may be, ends before the end of the month, such period shall be extended to the end of such month.*]

> Explanation 2.—For the purposes of this section, where, by an order referred to in clause (*i*) of sub-section (6),—
>
> (*a*) any income is excluded from the total income of the assessee for an assessment year, then, an assessment of such income for another assessment year shall, for the purposes of section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order; or
>
> (*b*) any income is excluded from the total income of one person and held to be the income of another person, then, an assessment of such income on such other person shall, for the purposes of section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order, if such other person was given an opportunity of being heard before the said order was passed."
>
> (emphasis supplied)

26. Thus, the question as deliberated at the Bar is qua the applicability of the provisions of sub-sections (2) and (6) of Section 153, and Explanation 1 below sub-section (9) (supra), and as underscored by us. Section 153 provides for "Time limit for completion of assessment, reassessment and recomputation". Sub-section (1) thereof provides that no order of assessment shall be made under section 143 or section 144 at any time after the expiry of twenty-one months from the end of the assessment year in which the income was first assessable. Sub-section (2) which is relevant for the context in hand, provides that no order of assessment, reassessment or recomputation shall be made under section 147 after the expiry of nine months from the end of the financial year in which the notice under section 148 was served. The proviso below sub-section is not applicable, as it applies only in a case where the notice under section 148 is served on or

after the 1st day of April, 2019, which is not the case. Sub-section (6) is the debated provision which the Revenue intends to apply when it contends that the extended period of limitation of 12 months from the end of the month in which the Court had passed the order (dated 21 September 2021) would become applicable. Sub-section (6) provides that nothing contained in sub-sections (1), (1A) and (2) shall apply to the classes of assessments, reassessments and recomputation which may, subject to the provisions of sub-sections (3), (5) and (5A), be completed so as to ordain that where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or *"to give effect to any finding or direction" contained in an order under section 250, section 254, section 260, section 262, section 263, or section 264* or *"in an order of any court in a proceeding otherwise than by way of appeal or reference under the Act, on or before the expiry of twelve months from the end of the month in which such order is received or passed"* by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be. Explanation 1(ii) to Section 153 which falls below sub-section (9) provides that for the purposes of this section, in computing the period of limitation, the period during which the assessment proceeding is stayed by an order or injunction of any court shall be excluded. Further the proviso below Explanation 1 ordains that where immediately after the exclusion of the period as contemplated under the Explanation, the period

of limitation referred to in sub-sections (1), (1A), (2), (3) and sub-section (8) available to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the period of limitation as provided under the Explanation shall be deemed to be extended accordingly.

27. As to what would be the effect of these provisions to the notice issued to the petitioner under Section 148 dated 29 March 2019 and the consequent order passed in relation thereto on 30 September 2022, after giving effect to the stay to the Section 147 proceedings, by an interim order dated 13 December 2019 passed by this Court, till the disposal of this petition on 21 September 2021, would now be required to be considered. It is plainly seen that no order of assessment, reassessment or recomputation as per the provisions of sub-section (2) of Section 153 shall be made under section 147 after the expiry of nine months from the end of the financial year in which the notice under section 148 was served. Applying such provision and assuming that there was no stay order passed to the notice under Section 148, the period of nine months from the date of issuance of notice under Section 148 (29 March 2019) was to expire on 31 December 2019 i.e. on a strict application of the limitation as prescribed by sub-section (2). However, Section 148 notice and the reasons recorded for

reopening of the assessment, as objected by the petitioner being rejected by the Assessing Officer vide an order dated 25 November 2019, were challenged by the petitioner by filing Writ Petition No. 3368 of 2019, on 13 December 2019 on which an interim order was passed by this Court granting stay to the notice issued under Section 148 i.e. prohibiting the Assessing Officer to pass a reassessment order under Section 147. Such order came to be effected on 21 September 2021.

28. The controversy which arises is as to what is the nature of the order passed by this Court and whether the order passed by this Court would be required to be construed to fall within the provisions of sub-section (6) of Section 153, so as to provide the extended period of limitation of twelve months as clause (i) of sub-section (6) provides or whether the order would be required to be construed so as to accept a situation falling within the purview of the first proviso below Explanation 1, namely that only the extended period of sixty days was available with the Revenue in the present facts to pass the reassessment order. The aforesaid analysis of the provisions would lead us to construe as to what is provided by clause (i) of sub-section (6) as applicable to the facts in hand, namely whether the assessment/reassessment in question "is being made in consequence of" or to give effect to any finding or direction as contained in the orders passed by this Court, being a proceeding otherwise than by way of appeal or

reference under the Act, for which the limitation would stand extended for a period of twelve months, from the end of the month in which such order is received or passed by the Competent Authority.

29. To appreciate the issue, as to what has been the interpretation of this provision by the Court is required to be seen. The Constitution Bench of Supreme Court in **Income Tax Officer vs. Murlidhar Bhagwan Das** (supra) was considering the facts, where the respondent / assessee was assessed to income-tax under Section 23(4) of the IT Act for the assessment year 1949-50, on the ground that the notice issued under sub-section (2) and (4) of Section 22 of the IT Act had not been complied with. On 27 September 1955, the said assessment was cancelled under Section 27 of the IT Act, but before the said cancellation, it was found that an interest income of Rs. 88,737/- received by the assessee in discharge of the debts due from third parties had escaped assessment as the assessee failed to disclose the same. The Income-tax Officer issued a notice under Section 34 (1) (a) of the IT Act for the assessment year 1949-50 on the ground that such income had escaped assessment. After the assessment of that year was set aside under Section 27 of the Act, the Income-tax Officer, ignoring the notice issued by him under Section 34 (1)(a) of the Act, included that amount in the fresh assessment made by him. The assessee preferred an appeal against that order which was disposed of by an order passed by the

Appellate Assistant Commissioner on 4 December 1957, in which he held that such income was received by the assessee in the previous accounting year and, therefore, directed that the sum objected should be deleted from the assessment for the year ending 1949-50 and included in the assessment for the year ending 1948-49. Pursuant to the said direction issued by the Appellate Assistant Commissioner, the Income-tax Officer initiated proceedings under Section 34(1) of the Act in respect of the assessment year 1948-49. The notice issued under such section was served on the respondent on 5 December 1957. The assessee filed a petition under Article 226 of the Constitution in the High Court of Judicature at Allahabad praying for quashing of the proceedings, mainly on the ground that the proceedings were initiated beyond the time prescribed by Section 34 of the Act. The High Court accepted the contention and quashed the proceedings initiated by the Income-tax Officer. It is assailing such orders passed by the High Court, the proceedings reached the Supreme Court. In such context, the Constitution Bench of the Supreme Court examined as to what is the true meaning of the terms of the second proviso to Section 34(3) of the Act, which is quite similar to the provisions of Clause (i) of sub-section (6) of Section 153 of the IT Act. The second proviso to Section 34(3) of the IT Act which fell for consideration of the Supreme Court and as extracted in the report, needs to be noted which reads thus:

> "Provided further that nothing in this section limiting the time within which any action may be taken, or any order, assessment or re- assessment may be made, shall apply to a re-assessment made under Section 27 or to an assessment or re-assessment made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under Section 31, Section 33, Section 33A, Section 33B, Section 66 or Section 66A."

30. In the context of the facts in hand, the expression "direction" and "in consequence of" or "to give effect to" are the key words which are common expressions used in the second proviso to Section 34(3) of the IT Act, as it stood at the relevant time, and presently as falling under clause (i) of sub-section (6) of Section 153 of the IT Act. The Supreme Court in interpreting the said expressions held that the expression "finding" has not been defined in the IT At. Referring to Order XX Rule 5 of the Code of Civil Procedure, it was observed that a finding is, therefore, a decision on an issue framed in a suit and a finding shall be one which by its own force or in combination with findings on other issues should lead to the decision of the suit itself. It was observed that this was to say, the finding shall be one which is necessary for the disposal of the suit. It was held that a "finding", therefore, can only be that which is necessary for the disposal of an appeal in respect of an assessment of a particular year as the Appellate Assistant Commissioner may hold in the facts, that the income shown by the assessee is not the income for the relevant year and thereby exclude that income from the assessment of the year under appeal. In such situation, the

finding in that context is that the income does not belong to the relevant year. It was observed that he may incidentally find that the income belongs to another year, but it is not a finding necessary for the disposal of an appeal in respect of the year of assessment in question. Similarly, the expression "direction" as used in the provision was interpreted when the Court observed that the expression “direction” cannot be construed in vacuum, but must be collated to the directions which the Appellate Assistant Commissioner can give under Section 31. It was observed that the expression "directions" in the proviso could only refer to the directions which the Appellate Assistant Commissioner or other Tribunals can issue, under the powers conferred on him or them under the respective sections. It was observed that therefore the expression "finding" and the expression "direction" can be given full meaning, namely, that the finding is a finding necessary for giving relief in respect of the assessment of the year in question and the “direction” is a direction which the appellate or revisional authority, as the case may be, is empowered to give under the provisions. The Court also considered the words "*in consequence of or to give effect to*" to observe that these words do not create any difficulty, for they have to be collated with, and cannot enlarge, the scope of the finding or direction under the proviso. It was observed that if the scope is limited in such manner, the said words also must be related to the scope of the findings and

directions. The relevant observations of the Supreme Court are required to be noted which read thus:-

> "Now, let us scrutinize the expressions on which strong reliance is placed for the contrary conclusion. The words relied upon are "section limiting the time", "any person", "in consequence of or to give effect to any finding or direction." Pointing out that before the amendment the word "sub-section" was in the proviso but it was replaced by the expression "section", it is contended that this particular amendment will be otiose if it is confined to the assessment year under appeal, for it is said that under no circumstances the Income-tax Officer would have to initiate proceedings for the said year pursuant to an order made by an Appellate Assistant Commissioner. This contention is obviously untenable. The Appellate Assistant Commissioner or the Appellate Tribunal may set aside the notice itself for one reason or other and in that event the Income-tax Officer may have to initiate the proceedings once again in which case section 34(1) will Il be attracted. The expression "finding or direction", the argument proceeds, is wide enough to take in at any rate a finding that is necessary to dispose of the appeal or direction which Appellate Assistant Commissioners have in practice been issuing in respect of assessments of the years other than those before them in appeal. What does the expression "finding" in the proviso to sub-section (3) of section 34 of the Act mean? "Finding" has not been defined in the Income-tax Act. Order XX, rule 5, of the Code of Civil Procedure reads:
>
> > "In suits in which issues have been framed, the court shall state its finding or decision, with the reasons therefore, upon each separate issue, unless the finding upon any one or more of the issues is sufficient for the decision of the suit."
>
> Under this Order, a "finding" is, therefore, a decision on an issue framed in a suit. The second part of the rule shows that such a finding shall be one which by its own force or in combination with findings on other issues should lead to the decision of the suit itself. That is to say, the finding shall be one which is necessary for the disposal of the suit.
>
> .....…
>
> ……
>
> A "finding", therefore can be only that which is necessary for the disposal of an appeal in respect of an assessment of a particular year. The Appellate Assistant Commissioner may hold, on the evidence, that the income shown by the assessee is not the income

> for the relevant year and thereby exclude that income from the assessment of the year under appeal. The finding in that context is that that income does not belong to the relevant year. He may incidentally find that the income belongs to another year, but that is not a finding necessary for the disposal of an appeal in respect of the year of pecht in question the expendreciof an in of must be collated to the directions which the Appellate Assistant Commissioner can give under section 31. Under that section he can give directions, inter alia, under section 31 (3) (b), (c) or (e) or section 31(4). The expression "direction" in the proviso could only refer to the directions which the Appellate Assistant Commissioner or other tribunals can issue under the powers conferred on him or them under the respective sections. Therefore, the expression "finding" as well as the expression "direction" can be given full meaning namely, that the finding is finding necessary for giving relief in respect of the assessment of the year in question and the direction is a direction which the appellate or revisional authority, as the case may be, is empowered to give under the sections mentioned therein. The words "in consequence of or to give effect to" do not create any difficulty, for they have to be collated with, and cannot enlarge, the scope of the finding or direction under the proviso. If the scope is limited as aforesaid, the said words also must be related to the scope of the findings and directions."
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> (emphasis supplied)

31. In **Rajinder Nath vs. Commissioner of Income Tax, Delhi** (supra) the expressions "finding" and "direction" fell for consideration of the Supreme Court as used in the provisions of Section 153(3)(ii) of the IT Act. The contention urged before the Court was whether there was any finding or direction within the meaning of Section 153(3)(ii) of the Act in the order passed by the Appellate Assistant Commissioner, in consequence of which or to give effect to which the assessments in question were made. In such context, the Supreme Court considered as to what could be the meaning required to be attributed to the expressions "finding" and "direction". It was held that the finding given in an appeal, revision or reference arising

out of an assessment must be a finding necessary for the disposal of the particular case, that is to say, in respect of the particular assessee and in relation to the particular assessment year. As regards the expression "direction" in Section 153(3)(ii) of the IT Act, it was observed that it was well settled that it must be an express direction necessary for the disposal of the case before the authority or Court. It must also be a direction which the authority or Court is empowered to give while deciding the case before it. It was thus held that the expressions "finding" and "direction" in section 153(3)(ii) of the IT Act must be accordingly confined and more particularly considering the fact that section 153(3)(ii) was not a provision enlarging the jurisdiction of the authority or Court and it was a provision which merely raises the bar of limitation of making an assessment order under section 143 or section 144 or section 147. The relevant observations of the Court are required to be noted which read thus:

> 32. "…. … … … … The only contention is that there is no "finding" or "direction" within the meaning of section 153(3) (ii) of the Act in the order of the Appellate Assistant Commissioner in consequence of which or to give effect to which the impugned assessments have been made.
>
> 33. The expressions "finding" and "direction" are limited in meaning. A finding given in an appeal, revision or reference arising out of an assessment must be a finding necessary for the disposal of the particular case, that is to say, in respect of the particular assessee and in relation to the particular assessment year. To be a necessary finding, it must be directly involved in the disposal of the case. It is possible in certain cases that in order to render a finding in respect of A, a finding in respect of B may be called for. For instance, where the facts show that the income can belong either to A or B and to no one else, a finding that it belongs to B or does not belong to B would be determinative of the issue

whether it can be taxed as A's income. A finding respecting B is intimately involved as a step in the process of reaching the ultimate finding respecting A. If, however, the finding as to A's liability can be directly arrived at without necessitating a finding in respect of B, then a finding made in respect of B is an incidental finding only. It is not a finding necessary for the disposal of the case pertaining to A. The same principles seem to apply when the question is whether the income under enquiry is taxable in the assessment year under consideration or any other assessment year. As regards the expression "direction" in section 153(3)(ii) of the Act, it is now well settled that it must be an express direction necessary for the disposal of the case before the authority or court. It must also be a direction which the authority or court is empowered to give while deciding the case before it. The expressions "finding" and "direction" in section 153(3) (ii) of the Act must be accordingly confined. Section 153(3)(ii) is not a provision enlarging the jurisdiction of the authority or court. It is a provision which merely raises the bar of limitation of making an assessment order under section 143 or section 144 or section 147: **ITO v. Murlidhar Bhagwan Das** [1964]52 ITR 335 (SC) and and **N. K. T. Sivalingam Chettiar v. CIT**.[1967]66 ITR 586(SC). The question formulated by the Tribunal raises the point whether the Appellate Assistant Commissioner could convert the provisions of section 147(1) into those of section 153(3)(ii) of the Act. In view of S. 153(3)(ii) dealing with limitation merely, it is not easy to appreciate the relevance or validity of the point."

34. … … … .

35. It is also not possible to say that the order of the Appellate Assistant Commissioner contains a direction that the excess should be assessed in the hands of the co-owners. What is a "direction" for the purposes of section 153(3)(ii) of the Act has already been discussed. In any event, whatever else it may amount to, on its very terms the observation that the Income Tax Officer "is free to take action" to assess the excess in the hands of the co-owners cannot be described as a "direction". A direction by a statutory authority is in the nature of an order requiring positive compliance. When it is left to the option and discretion of the Income Tax Officer whether or not to take action it cannot, in our opinion, be described as a direction. Therefore, in our judgment the order of the Appellate Assistant Commissioner contains neither a finding nor a direction within the meaning of section 153(3)(ii) of the Income Tax Act in consequence of which or to give effect to which the impugned assessment proceedings can be said to have been taken."

32. Similar issue had fell for consideration of the Division Bench of the Karnataka High Court in **Principal Commissioner of Income Tax & Anr.**

Vs. Tally India Pvt. Ltd. (supra) wherein the Court, in the context of the provisions of Section 153(1)(a) and Section 153(3)(ii) of the IT Act, was considering the contention as urged by the assessee that no direction / finding has been issued by the High Court in the order dated 7 March 2012 passed in the Writ Petition and when a direction was issued to remit the matter asking the assessee to appear before the Assessing Officer on a particular date did not tantamount to either issuing a direction / finding within the meaning of Section 153(3)(ii) of the IT Act. The Court applying the decisions of the Supreme Court in **Income Tax Officer vs. Murlidhar Bhagwan Das** (supra) and **Rajinder Nath vs. Commissioner of Income Tax, Delhi** (supra) observed that these provisions are concerned only when a finding is given in an appeal, revision or reference are concerned, arising out of an assessment and it must be a finding necessary for disposal of a particular case and similarly, a direction must be an expressed direction necessary for disposal of the case before authority or Court and must also be a direction which the authority or Court is empowered to give while deciding a case before it. It was held that it was evident that the order dated 7 March 2012 passed by the High Court neither contained any finding nor any direction and accordingly, accepted the contention as urged on behalf of the assessee and held against the Revenue. The relevant observations as made by the Court which are similar to the facts in hand, are required to be noted which read thus:-

> "7. A bench of this court by an order dated 07.03.2012 disposed of the writ petition viz., W.P.No.45313/2011 in the following terms:
>
> > 3. Having regard to the submission made by both the counsel, there is no option but to accept the writ petition, set aside the impugned order and remit the matter to the 1st respondent-Assessing Officer.
> >
> > 4. The petitioner shall take these proceedings as notice to them and shall appear before the 1st respondent on 21st March 2012. The petitioners are not entitled for any fresh notice.
>
> 8. The Supreme Court in Rajinder Nath v. CIT, [1979] 120 ITR 14 (SC); [1979] taxman 204 (SC) and ITO v Murlidhar Bhagwan Das [1964] 52 ITR 335 (SC), has held that a finding given in an appeal, revision or reference arising out of an assessment must be a finding necessary for disposal of a particular case. Similarly, a direction must be an expressed direction necessary for disposal of the case before the authority of court and must also be a direction which the authority of court is empowered to give while deciding a case before it. Thus, it is evident that the order dated March 7, 2012 passed by learned Single Judge of this court neither contains any finding nor any direction.
>
> 9. The proceedings were stayed for a period from December 8, 2011 to March 7, 2012, i.e., for a period of 103 days and if the period of 103 days is added, and a period of 60 days as prescribed in the proviso to Section 153(4) is added, the draft order ought to have been passed by the Assessing Officer upto May 6, 2012, whereas, in the instant case, the draft order has been passed on July 5, 2012 and therefore, the draft order is barred by limitation and no fault can be found with the finding of the tribunal."

33. Adverting to the aforesaid principles of law, the nature of the order dated 21 September 2021 passed by this Court as extracted by us in paragraph 7 hereinabove, would be required to be discussed:

(i) The purport of the order can be seen from the contents of paragraph 3(A) to 3(D). In paragraph 3(A), the order impugned in the said writ petition dated 25 November 2019 disposing of the objections

raised against the reopening of the assessment under Section 147 of the IT Act, is quashed and set aside.

(ii) In paragraph 3(B) of the order, the matter stoold remitted to the concerned authority to reconsider the objection of the petitioner dated 5 May 2019 and for passing further orders, while permitting the petitioner to file any "further submissions" in response to the letter dated 23 April 2019 giving reasons for reopening of the assessment for Assessment Year 2012-13, to be complied with within two weeks from the date of the order.

(iii) Paragraph 3(C) provides that if the petitioner seeks any clarification regarding the figures which are mentioned in the reasons for reopening, the concerned authority shall provide the same within two weeks of receiving the communication from the petitioner.

(iv) Finally in paragraph 3(D) of the order, it is observed that the concerned authority "may" further dispose of the objection to the reopening of assessment after giving a personal hearing to the petitioner as per Rules prescribed.

(v) What is significant is paragraph (4) of the order where the Court clarifies that the Court has not made any observations on the merits of the case.

34. Thus, applying the principles of law as laid down in the decisions in **Income Tax Officer vs. Murlidhar Bhagwan Das** (supra), **Rajinder Nath vs.**

Commissioner of Income Tax, Delhi (supra) and **Principal Commissioner of Income Tax & Anr. Vs. Tally India Pvt. Ltd.** (supra), it is clear that the order dated 21 September 2021 passed by the Division Bench (supra) does not contain any findings necessary for disposal of the writ petition in a particular manner, so as to govern the issues which would be decided by the Assessing Officer. We may observe that in the context in hand when the Revenue seeks to take recourse to sub-section (6)(i) of Section 153 of the IT Act so as to avail all the benefits of extended period as stipulated by such provision, necessarily the Court is required to apply the principles as enunciated in the decisions as noted by us hereinabove, so as to make an exception from the applicability of sub-sections (1), (1A) and (2) and subject to the provisions of sub-sections (3), (5) and (5A) can be, only in the event when such assessment, reassessment and recomputation is being made qua the assessee "in consequence of or to give effect to any finding or direction" of any Court, as relevant in the present facts. Thus, the words "in consequence of or to give effect" would be required to be read in conjunction. As both these expressions are complementary to each other namely that such assessment, reassessment or recomputation is required to be made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order of the nature as specified in clause (i) of sub-section (6). Thus, the consequence needs to be created by such order and as a result of a finding or direction as may be contained

in an order, as the provision envisages. It is but for natural, that any finding or direction needs to be taken to its logical conclusion and which is the sequel which would emanate from a finding or direction in the order. Thus, the intention of the legislature in providing for such expression is that an order which clause (i) of sub-section (6) talks about, is necessarily required to be an order which not only guides, but controls the course of such assessment, reassessment or recomputation, and not otherwise. In reaching to this conclusion, we are supported by what has been held by the Supreme Court in **Income Tax Officer vs. Murlidhar Bhagwan Das** (supra) when the Supreme Court observed that the words "in consequence of or to give effect to" do not create any difficulty, for they have to be collated with, and cannot enlarge, the scope of the finding or direction under the proviso. It was further observed that if the scope is limited in such event, the said words also must be related to the scope of the findings and directions.

35. Thus, considering such consequence which would be brought about by the provisions of sub-section (6)(i) of Section 153 of the IT Act, we are not persuaded to accept Mr. Sharma's contention that this would not be the case which would fall within the provisions of the first proviso below Explanation 1 of Section 153. In fact as the order dated 21 September 2021 passed by this Court on the petitioner's writ petition (supra) do not,

in any manner, record a finding or issues directions as understood in terms of clause (i) of sub-section(6) of Section 153. We do not see how the Revenue can avoid the consequence of the limitation in the present case, being triggered by the first proviso below Explanation 1. In our opinion, as rightly contended on behalf of the petitioner, applying the provisions of clause (ii) below Explanation 1 read with the first proviso below Explanation 1, certainly the limitation for the Assessing Officer to pass the Assessment Order had come to an end on 20 November 2021 i.e. sixty days from 21 September 2021 (orders passed by the High Court) by applying the extended period as per the first proviso below Explanation 1, whereas the impugned assessment order has been passed almost ten months after the limitation expired. Thus, the case of the Revenue in regard to applicability of the extended period under sub-section (6)(i) of Section 153 cannot be accepted.

36. Considering the nature of the orders passed by this Court, although Mr. Sharma, learned Counsel for the Revenue took all the efforts to persuade us that the orders passed by this Court are required to be interpreted, so as to have findings or directions and as a consequence of which re-assessment order would be required to be passed. We are not persuaded to accept the same in the light of our aforesaid discussion.

37. For the aforesaid reasons, the petition needs to succeed. It is accordingly allowed in terms of prayer clause (a).

38. Rule is made absolute in the aforesaid terms. No costs.

(ADVAIT M. SETHNA, J.) (G. S. KULKARNI, J.)