

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (T) No. 6627 of 2008****Reserved on 21/09/2017****Delivered on 23 /01/2018**

1. Sr Satvinder Singh Bhatia S/o Mahendra Singh Bhatia, R/o Barpali Chowk, Champa
2. Sr Sandeep Singh Bhatia S/o Mahendra Singh Bhatia, R/o Barpali Chowk, Champa
3. Sr Gurvinder Singh Bhatia S/o Amolak Singh Bhatia, C-22, Minocha Colony, Bilaspur (CG)
4. Sr Tejender Singh Bhatia S/o Amolak Singh Bhatia, C-22, Minocha Colony Bilaspur (CG)
5. Sr. Bhupendra Pal Singh Bhatia S/o Surjeet Singh Bhatia, Punjabi Colony Dayalband, Bilaspur (CG)
6. Sr Ramandeep Singh Bhatia S/o Gurmeet Singh Bhatia, Bilaspur (CG)
7. Sr Ranjeet Singh Bhatia S/o Inderpal Singh Bhatia, R/o Dhimrapur, Raigarh
8. Smt. Satwant Kaur Bhatia W/o Mahendra Singh Bhatia, R/o Barpali Chouk Champa
9. Smt. Satpal Kaur Bhatia W/o Amolak Singh Bhatia, C-22, Minocha Colony, Bilaspur (CG)
10. Daljeet Singh Bhatia S/o Amolak Singh Bhatia, C-22 Minocha Colony, Bilaspur (CG)
11. Smt. Balbir Kaur Bhatia W/o Inderpal Singh Bhatia, R/o Dhimrapur, Raigarh
12. Smt. Chanpreet Kaur W/o Ramandeep Singh Bhatia, Bilaspur (CG)
13. Smt. Sumeet Kaur Bhatia W/o Gurvinder Singh Bhatia, C-22, Minocha Colony, Bilaspur (CG)
14. Smt. Jegdeep Kaur Bhatia W/o Satvinder Singh Bhatia, R/o Barpali Chouk Champa (CG)
15. Smt. Pritam Kaur Bhatia W/o Lt Harbans Singh Bhatia, Bilaspur (CG)

16. Surjeet Singh Bhpendrapal Singh Bhatia HUF Dayalband, Bilaspur (CG)
17. Mahendra Singh Satvinder Singh Bhatia HUF Dayalband Bilaspur (CG)
18. Amolak Singh Gurvinder Singh Bhatia HUF Bilaspur (CG)
19. Gurmeet Singh Prince Bhatia HUF Dayalband Bilaspur (CG)
20. Inderpal Singh Golden Singh Bhatia HUF Dayalband Bilaspur (CG)
21. M/s Yash Enterpries Dayalband Bilaspur (CG) through its partner Surjeet Singh Bhatia S/o Late Harbans Singh Bhatia
22. M/s Krish Enterpries Dayalband Bilaspur (CG) through its partner Surjeet Singh Bhatia S/o Late Harbans Singh Bhatia
23. M/s Shimar Enterpries Dayalband Bilaspur (CG) through its partner Surjeet Singh Bhatia S/o Late Harbans Singh Bhatia
24. M/s Anmol Enterpries Dayalband Bilaspur (CG) through its partner Surjeet Singh Bhatia S/o Late Harbans Singh Bhatia
25. M/s Amrit Enterpries Dayalband Bilaspur (CG) through its partner Surjeet Singh Bhatia S/o Late Harbans Singh Bhatia
26. M/s K.S. Enterpries Dayalband Bilaspur (CG) through its partner Surjeet Singh Bhatia S/o Late Harbans Singh Bhatia
27. M/s Ramesh Jaiswal, Dayalband Bilaspur (CG) through its partner Surjeet Singh Bhatia S/o Late Harbans Singh Bhatia
28. M/s Ramesh Das, Dayalband Bilaspur (CG) through its partner Surjeet Singh Bhatia S/o Late Harbans Singh Bhatia
29. M/s Sahara Enterpries Dayalband Bilaspur (CG) through its partner Surjeet Singh Bhatia S/o Late Harbans Singh Bhatia
30. M/s Unique Enterpries Dayalband Bilaspur (CG) through its partner Surjeet Singh Bhatia S/o Late Harbans Singh Bhatia
31. M/s Heritage Enterpries, Dayalband Bilaspur (CG) through its partner Surjeet Singh Bhatia S/o Late Harbans Singh Bhatia
32. M/s Amolak Singh (Mahasamund) Dayalband Bilaspur (CG) through its partner Surjeet Singh Bhatia S/o Late Harbans Singh Bhatia
33. M/s Shrihar Enterpries Dayalband Bilaspur (CG) through its partner Gurmeet Singh Bhatia S/o Late Harbans Singh Bhatia
34. M/s Harihar Enterpries, Dayalband Bilaspur (CG) through its partner Inderpal Singh Bhatia S/o Late Harbans Singh Bhatia

35.M/s Nav Bharat Liquor, Dayalband Bilaspur (CG) through its partner
Surjeet Singh Bhatia S/o Late Harbans Singh Bhatia

36.M/s Raja Vatika, Dayalband Bilaspur (CG) through Amolak Singh Bhatia,
S/o Shri Harbans Singh, R/o Dayalband, Bilaspur

37.M/s Bhatia Vatika Dayalband Bilaspur (CG) through Amolak Singh Bhatia,
S/o Shri Harbans Singh Bhatia, R/o Dayalband, Bilaspur (CG)

---- **Petitioners**

Versus

1. Commissioner of Income Tax, Bilaspur
2. Assistant Commissioner of Income Tax, Circle 1(1), Mahima Complex
Vyapar Vihar, Bilaspur
3. Assistant Commissioner of Income Tax, Circle 1(2), Mahima Complex,
Vyapar Vihar, Bilaspur

---- **Respondents**

For Petitioners	:	Shri Neelabh Dubey, Advocate
For Respondents	:	Smt. Naushina Afrin Ali, Advocate

Hon'ble Shri Justice P. Sam Koshy

CAV ORDER

The challenge in the present writ petition is primarily to the notice issued under Section 153C of the Income Tax Act, 1961 (hereinafter referred as 'the Act')

2. The relevant facts for adjudication of the present case are that the petitioners are individual assesseees under Income Tax provisions in their own capacity. The respondents in the instant case have issued notices under Section 153C read with section 153A of the Income Tax Act, 1961 directing the petitioners to prepare a true and correct return of their total income including undisclosed income individually for assessment year 2006-07. Subsequent to the issuance of notice, the petitioners have written letters to the respondents on repeated occasions requesting to provide them copies of the documents and details of valuables found and seized from the premises of the parties by the

respondents pertaining to each of the petitioners. In spite of repeated request in this regard being made, the respondents have not provided the required documents to the petitioners on the ground that the photo copies of the impounded documents were duly supplied to the petitioners through their group and as such they cannot further be provided with the information and documents sought for. As regards the objection of the conditions precedent for issuance of notice under Section 153C not having been complied with, it has been informed by the authorities concerned that the notice under Section 153C had been issued by the predecessors of the assessing officer and therefore, it has to be presumed that he was satisfied with the materials available on record for issuance of notice under Section 153C of the Act.

3. Contention of the counsel for the petitioners is that the impugned notice under Section 153C of the Act issued to the petitioners is not sustainable for the reason that the requisite documents and the belongings which are alleged to have been seized belonging to the petitioners from a different premise have not been provided to the petitioners without which the petitioners would not be able to defend their case effectively. It is the contention of the counsel for the petitioners that the impugned notice is also bad in law for the reason that there is no proper satisfactory note of the assessing officer which depicts that he was satisfied in respect of the documents and belongings seized during search belonging to a person other than the person in whose premises the raid was conducted. Counsel for the petitioners relied upon the decision of the Supreme Court in the case of *Manish Maheshwari Vs. Assistant CIT*, (2007) 289 ITR 341 (SC) and submits that in the light of the aforesaid judgment of the Supreme Court, since there is a clear non-availability of a satisfactory note of the assessing officer, the entire proceeding initiated under Section 153C of the Act stands vitiated and is liable to be declared as invalid.

4. Per contra, counsel appearing for the Income Tax Department opposing the petition submits that it is only a notice which has been issued by the Department and that the petitioners would get all the right to defend themselves after furnishing the requisites as have been sought for in the notice under Section 153C of the Act. According to the counsel for the Department, the proper course of action left for the petitioners was for filing of the return and thereafter if they so desire, they could sought for the reasons for issuance of notice. Having not done so and filing of the petition straightway in the High Court, is therefore not sustainable and the same deserves to be dismissed. According to the counsel for the Department, a search operation was conducted under Section 132 of the Act at the premises of Amolak Singh Bhatia Group and during search, certain incriminating documents and valuables belonging to the petitioners were seized and it is this which necessitated the issuance of notice under Section 153C of the Act. In support of her contention regarding writ petition not being maintainable, counsel for the Department relied upon the case of Calcutta Discount Co. Ltd. Vs. Income Tax Officer, Companies District 1 Calcutta and another, (1961) 41 ITR 191 and also the case of CIT Vs. Chhabil Dass Agarwal (2013) 357 ITR 357 (SC). So far as the petition being filed at the notice stage is concerned, counsel for the Department relied upon (2013) 14 SCC 661 in the case of Commissioner of Income Tax, Gujarat Vs. Vijaybhai N. Chandrani and in the case of Rajhans Builders Vs. Deputy Commissioner of Income Tax reported in (2014) 226 Taxman 415.

5. Another contention which counsel for the Income Tax Department raised is that the persons who have been issued notices are all close relatives of the same family of Amolak Singh Bhatia Group and therefore, if the reply of the Department given to the petitioners is perused, it would reveal that the information sought for by the petitioners has in fact been already provided to them through their group. Thus, individual issuance of information sought for to

each of the petitioners is not required. Counsel for the Department further referred to the order sheet dated 11.03.2008 Annexure R-1 to highlight the fact that after considering the entire materials which were seized during the course of search conducted at the premises of Amolak Singh Bhatia Group, the assessing officer was satisfied with the materials collected and the proceedings initiated and therefore, the allegation of non-recording of reason and there being no satisfactory note stands disproved. Further contention of the counsel for the Department is that it is only a subjective satisfaction of the assessing officer which is required and that the elaborate proceeding would be conducted after the assessee furnishes returns and other information sought for. Thus, prayed for rejection of the petition.

6. So far as the maintainability of the case at the notice stage is concerned, counsel for the petitioners has referred to a recent decision of the Supreme Court in (2017) 390 ITR 10 (SC) in the case of Jeans Knit (P) Ltd. Vs. Deputy Commissioner of Income Tax and Ors. wherein the Supreme Court had set aside the order of the High Court which had dismissed the writ petitions as not maintainable and the matters were remitted back to the High Court for a fresh adjudication of the case on merits. Counsel for the petitioners has further relied upon a landmark decision of the Supreme Court in the case of Calcutta Discount Co. Ltd. (supra) wherein paragraph-28 it has been held as under:

“28.There is nothing in its conduct which would justify the refusal of proper relief under Article 226. When the Constitution confers on the High Courts the power to give relief it becomes the duty of the courts to give such relief in fit cases and the courts would be failing to perform their duty if relief is refused without adequate reasons. In the present case we can find no reason for which relief should be refused.”

7. Counsel for the petitioners relied upon the decision of this Court in the case of M/s Fortune Metaliks Ltd. Vs. State of Chhattisgarh and another in WPT No. 50 of 2017 decided on 15.05.2017 and also the order passed by the Division Bench of this Court in WPT No. 129 of 2015 decided on 09.02.2010 in

the case of M/s Sarda & Semec Electromech Pvt. Ltd. Vs. State of Chhattisgarh & others.

8. In the case of Calcutta Discount Co. Ltd. (supra) in paragraph-50 the Supreme Court has held as under:

“50.If the conditions precedent do not exist, the jurisdiction of the High Court to issue high prerogative writs under Article 226 of the Constitution to prohibit action under the notice may be exercised. But if the existence of the conditions is asserted by the authority entrusted with the power and the materials on the record prima facie support the existence of such conditions, an enquiry whether the authority could not have reasonably held the belief which he says he had reason to hold and he did hold, is, in my judgment, barred.”

The Supreme Court in the case of Vijaybhai N. Chandrani (supra) in paragraphs 12 to 14 has held as under:

“12. In our considered view, at the said stage of issuance of the notices under Section 153C, the assessee could have addressed his grievances and explained his stand to the Assessing Authority by filing an appropriate reply to the said notices instead of filing the Writ Petition impugning the said notices. It is settled law that when an alternate remedy is available to the aggrieved party, it must exhaust the same before approaching the Writ Court. In Bellary Steels & Alloys Ltd. v. CCT, (2009) 17 SCC 547, this Court had allowed the assessee therein to withdraw the original Writ Petition filed before the High Court as the said proceedings came to be filed against the show-cause notice and observed that the High Court should not have interfered in the matter as the Writ Petition was filed without even reply to the show cause notice. This Court further observed as follows:

“3....In the circumstances, we could have dismissed these civil appeals only on the ground of failure to exhaust statutory remedy, but for the fact that huge investments involving the large number of industries is in issue.”

13. We are fortified by the decision of this Court in Indo Asahi Glass Co. Ltd. v. ITO, (2002) 10 SCC 444, wherein the assessee had approached this Court against the judgment and order of the High Court which had dismissed the Writ Petition filed by the assessee wherein challenge was made to the show cause notice issued by the Assessing Authority on the ground that alternative remedy was available to the assessee. This Court concurred with the findings and conclusions reached by the High Court and dismissed the said appeal with the following observations:

“5. This and the other facts cannot be taken up for consideration by this Court for the first time. In our opinion, the High Court was right in coming to the conclusion that it is appropriate for the appellants to file a reply to the show-cause notice and take whatever defence is open to them.”

14. In the present case, the assessee has invoked the Writ jurisdiction of the High Court at the first instance without first exhausting the alternate remedies provided under the Act. In our considered opinion, at the said stage of proceedings, the High Court ought not have entertained the Writ Petition and instead should have directed the assessee to file reply to the said notices and upon receipt of a decision from the Assessing Authority, if for any reason it is aggrieved by the said decision, to question the same before the forum provided under the Act.

9. Subsequently, relying upon these judgments, the Division Bench of Gujarat High Court in the case of *Rajhans Builders (supra)* in paragraphs 5 & 7 has held as under:

“5. We are of the opinion that at this stage no interference is called for. Section 153C of the Act, as is well known, pertains to assessment of income of persons other than one who is subjected to search. Subsection (1) of section 153C provides that where any Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belonged 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 such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A of the Act. Section 158BD of the Act makes similar provisions for block assessment of undisclosed income of persons other than the searched person.

7. With respect to the validity of the notice itself, at this stage, we are not inclined to examine the same in view of the decisions of the Supreme Court in the case of *CIT v. Vijaybhai N. Chandrani*, 357 ITR 713 (SC) and in the case of *CIT v. Chhabil Dass Agarwal*, 357 ITR 357 (SC). The decision in the case of *Vijaybhai N. Chandrani (supra)* was rendered in the background of validity of notice under section 153C of the Act being challenged before the High Court. The High Court had quashed the notice on reaching to the conclusion that the documents seized by the Assessing Officer under section 132A did not belong to the assessee and therefore condition precedent for issuing notice under section 153C was not fulfilled. In this context, the Supreme Court held that the assessee could not have invoked the writ jurisdiction without first exhausting the alternative remedies provided under the Act and the High Court ought not to have entertained the writ petition. It was observed as under:

“14. In our considered view, at the said stage of issuance of the notices under Section 153C, the assessee could have addressed his grievances and explained his stand to the Assessing Authority by filing an appropriate reply to the said notices instead of filing the

Writ Petition impugning the said notices. It is settled law that when an alternate remedy is available to the aggrieved party, it must exhaust the same before approaching the Writ Court. In *Bellary Steels & Alloys Ltd. v. CCT*, (2009) 17 SCC 547, this Court had allowed the assessee therein to withdraw the original Writ Petition filed before the High Court as the said proceedings came to be filed against the show-cause notice and observed that the High Court should not have interfered in the matter as the Writ Petition was filed without even reply to the show cause notice. This Court further observed as follows:

“3....In the circumstances, we could have dismissed these civil appeals only on the ground of failure to exhaust statutory remedy, but for the fact that huge investments involving the large number of industries is in issue.”

15. We are fortified by the decision of this Court in *Indo Asahi Glass Co. Ltd. v. ITO*, (2002) 10 SCC 444, wherein the assessee had approached this Court against the judgment and order of the High Court which had dismissed the Writ Petition filed by the assessee wherein challenge was made to the show cause notice issued by the Assessing Authority on the ground that alternative remedy was available to the assessee. ”

10. Now if we look into the documents which have been furnished along with the writ petition, it would clearly reflect that the petitioners were issued notices initially under Section 142 (1) and later on under Section 153 C of the Income Tax Act to which the petitioners had also filed an objection first on 18.09.2008 and then on 03.10.2008 wherein they had raised certain objections so far as the satisfaction on the part of the Assessing Officer before initiating the action under Section 153C so also non-providing the necessary materials which are said to have been seized from a third person.

11. Thereafter, the Department, vide its letter dated 19.09.2008 is said to have intimated the petitioners that photocopies of the relevant documents impounded were duly supplied to them through their group and that mirror image of all the seized digital items were also prepared in the presence of the representatives of the petitioners. In addition, Annexure R-1 filed along with the petition is an order sheet of the Assessing Officer wherein he has given his satisfactory note for issuance of notice under Section 153C of the Income Tax Act. Based on the reply of the Department to the objections filed by the petitioners as also considering the order sheet reflecting satisfactory note of the

Commissioner, it cannot be said that the Authority concerned has prima facie not applied its mind and it also cannot be said that there is no proper satisfactory note of the Assessing Officer, as Annexure R-1 would actually reflect that the Assessing officer had in fact taken into consideration all the relevant factors and then had given the satisfactory note for issuance of notice under Section 153C of Income Tax Act.

12. At this stage, it would be too premature for the writ Court to go into the veracity of the case on its merit when the petitioners could furnish the necessary information to the Department and take all relevant stand and defence before the concerned competent Authority. Thereafter, the Authority could pass an order which further could still be challenged by the petitioners before the appropriate forum if they are still aggrieved by the order so passed by the Assessing Officer. One cannot fail taking note of the fact that the entire proceeding was initiated after a search was conducted at the premises of Amolak Singh Bhatia Group and during search, certain incriminating materials were found which in fact were belonging to the petitioners on the basis of which the entire action was initiated.

13. In view of the aforesaid facts, this Court is of the opinion that at this juncture, no interference with the proceeding initiated by the Department is called for. The petitioners may furnish the necessary details to the Assessing Authorities and if for any reason, they are aggrieved by the decision of the Assessing Authority, they would be at liberty to challenge the same before the appropriate forum under the Act.

14. It would be pertinent to refer to the judgment of the Supreme Court in the case of Chhabil Dass Agarwal (supra) wherein the Hon'ble Supreme Court in paragraph-19 has held as under:

“19. Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental

principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titagarh Paper Mills case and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.”

15. In view of the aforesaid legal position particularly taking note of the observations of the Supreme Court in the case of Chhabil Dass Agarwal (supra) as also in the case of Vijaybhai N. Chandrani (supra), this Court is of the opinion that the writ petition in its present form would not be maintainable. However, the petitioners will be at liberty to approach the Authority concerned by furnishing relevant documents as have been sought for.

16. With the aforesaid observation, the present writ petition stands dismissed.

**Sd/-
(P. Sam Koshy)
JUDGE**