

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.13391 OF 2018

Bansilal B. Raisonni & Sons

.. Petitioner

v/s.

Asstt. Commissioner of Income Tax,
Central Circle-I, Nashik & Anr.

.. Respondents

Mr. Mihir Naniwadekar a/w Mr. Rohan Deshpande I/b Alisha Pinto for
the petitioner

Mr. Sham Walve for the respondents

**CORAM : AKIL KURESHI &
M.S. SANKLECHA, J.J.**

DATED : 29th NOVEMBER, 2018.

P.C.

1. The petitioners have challenged the Notices dated 12.08.2017 issued by the respondent no.1 – Asstt. Commissioner of Income Tax under Section 153A of the Income Tax Act, 1961 ("the Act" for short). The brief facts are as under :-

2. The petitioner is a partnership firm having its registered office at 401/402, Poonam Plaza, Pune. A search was conducted by the Income Tax Authorities on 05.04.2016 in case of the partnership firm, one of the partners of the firm Mr. Rajendra Bansilal Raisonni and one Mr. Sunil Bansilal Raisonni, brother of Rajendra Raisonni but who was not

a partner of the firm. Said search was conducted at 3 different places namely; (i) at the residential address of Rajendra Bansilal Raisonni (ii) at the residential address of Sunil Bansilal Raisonni, and (iii) at the residential address of Mr. Kunal Pradeep Raisonni. According to the petitioner, no search was conducted at the premises of the partnership firm and, therefore, the Assessing Officer had no authority to initiate proceedings under Section 153A of the Act. Despite this, the impugned show-cause notices for the relevant assessment years came to be issued on 10.08.2017. The petitioner has, therefore, challenged such notices. Before filing the petition, the petitioner has also lodged detailed objections before the Assessing Officer under Communication dated 25.09.2017. However, the same was rejected by the Assessing Officer by an order dated 25.10.2018. The petitioner has, therefore, challenged the said order as well.

3. The case of the petitioner in brief is that the Assessing Officer could not have issued the impugned notices under Section 153A of the Act without carrying out search at the premises of the partnership firm. The Department however, contends that the search was carried in case of the partnership firm and the premises of one of its partners and other persons related to the partnership business, the action of the Assessing

Officer is, therefore, valid. The Department has also taken an objection that the petitioner did not raise objection of the Assessing Officer within the time permitted under sub-section (3) of Section 124 of the Act.

4. In the background of the such facts, learned Counsel for the petitioner raised following contentions :-

(i) No search was initiated against the partnership firm. Notice under Section 153A of the Act, therefore, could not have been issued. He pointed out that there is a difference between search authorization and initiation of search, by relying on the decision of the Karnataka High Court in the case of *Commissioner of Income Tax Vs. Wipro Finance Ltd. 323 ITR 467*. He agreed that in the present case, search authorization was issued against the partnership firm but according to him since no search was actually carried out, it cannot be stated that the search was initiated against the partnership firm.

(ii) Learned Counsel submitted that for the purpose of the Income Tax Act, a partnership firm and its partners are treated as separate independent entities. The search carried out at the premises of the partners cannot be equated with the search against the partnership firm. In this context, the learned Counsel relied on the observations made by the Supreme Court in the case of *Commissioner of Income*

Tax Vs. A.W. Figgies & Co. (1953) 24 ITR 405.

(iii) Counsel further submitted that the objection of limitation of the Department is wholly fallacious. Section 124 of the Act relates to territorial jurisdiction of the Assessing Officer. The time limit provided under sub-section (3) of Section 124, therefore, must be seen in the light of such issue.

5. On the other hand, learned Counsel for the Revenue opposed the petition. By referring to the affidavit-in-reply filed by the respondents, Counsel submitted that the action of the Assessing Officer is legal and valid. A search was conducted in case of partnership firm. Statutory provisions nowhere envisage that search must be confined to the registered office of the firm. He further submitted that in any case in a writ petition, at this stage the High Court would not examine the factual aspects minutely. The assessee must be relegated before the Assessing Officer to contest the assessments and thereafter follows remedies available under the Act.

6. As noted above, the broad facts before us are that the search authorization was issued against the petitioner partnership firm, one of its partners and another person. Actual search was carried, as pointed

out by the petitioner, at three different locations namely at the residential premises of one of the partners and two other residential premises, one of them belonging to the brother of the partner of the partnership firm. In the context of such broad facts, if we refer to Section 153A of the Act, we notice that in sub-section (1) thereof, notwithstanding anything contained in Sections 139, 147, 148, 149, 151 and 153 of the Act, in case of a person where search is initiated under Section 132 or books of accounts, other documents are requisitioned under Section 132A, the Assessing Officer would have the authority to issue notice to such person, requiring him to furnish the return of income in respect of each assessment year falling within six assessment years and thereafter carry out the assessments accordingly. In the present case, we have no hesitation in accepting the petitioner's contention that in order to issue notice under sub-section (1) of section 153A, there must be initiation of search in case of the noticee. Mere search authorization would not be sufficient. There is clear distinction between search authorization and conduct of the search. In sub-section (1) of Section 153A of the Act, therefore, the legislature has advisably used expression "where a search is initiated under Section 132".

7. We are also in agreement with the contention of the Counsel for the petitioner that the petitioner's objection to the jurisdiction of the Assessing Officer on the ground that if no search was initiated, notice under Section 153A of the Act could not have been issued, cannot be curtailed on the ground that such objection was raised beyond the period referred to in sub-section (3) of Section 124 of the Act. Section 124 of the Act pertains to jurisdiction of Assessing Officers. Sub-section (1) of Section 124 lays down territorial jurisdiction of the Assessing Officer. Sub-section (2) of Section 124 provides that where the question arises under said section, as to whether an Assessing Officer has jurisdiction to assess any person, such question shall be determined by the authority prescribed under the said sub-section. Sub-section (3) of section 124 provides time limits for a person to call in question jurisdiction of an Assessing Officer. Clause (c) of sub-section (3) of section 124 provides that no person shall be entitled to call in question jurisdiction of an Assessing Officer where an action has been taken under Section 132 or section 132A, after the expiry of one months from the date on which he was served with a notice under sub-section (1) of Section 153A or sub-section (2) of Section 153C of the Act or after the completion of the assessment, whichever is earlier. In clear terms, the time limit for raising objection to the jurisdiction of the

Assessing Officer prescribed under sub-section (3) of section 124 has a relation to the Assessing Officer's territorial jurisdiction. The time limit prescribed would not apply to a case where the assessee contends that the action of the Assessing Officer is without authority of law and, therefore, wholly without jurisdiction.

8. Having said that, we are still not prepared to entertain this petition primarily for two reasons. Firstly, at this stage, in a writ petition we would not go into the minute factual details when said factual aspects can be and should be considered by the Assessing Officer before whom the proceedings are pending. In this context, we may refer to the judgment of the Supreme Court in the case of ***Commissioner of Income Tax Vs. Vijaybhai N. Chandrani, (2013) 357 ITR 713***. It is the case, in which the assessee had approached Gujarat High Court challenging show-cause notice under Section 153C of the Act contending that during the search conducted by the Department against another person, no material belonging to the assessee was found and, therefore, action against the assessee under Section 153C of the Act was invalid. The High Court had examined the material on record and allowed the petition. Upon which, the Department had approached the Supreme Court. The Supreme Court

allowed the Department's appeal making following observations :-

“14. In our considered view, at the said stage of issuance of the notices under section 154C, the assessee could have addressed his grievance 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 alternative remedy is available to the aggrieved party, it must exhaust the same before approaching the writ court. In Bellary Steels and Alloys Ltd. Vs. Deputy Commissioner, Commercial Taxes (Assessment) (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 the statutory remedy, but for the fact that huge investments involving the large number of industries are in issue.”

16. In the present case, the assessee has invoked the writ jurisdiction of the High Court at the first instance without first exhausting the alternative 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.

17. In view of the above, without expressing any opinion on the correctness or otherwise of the construction that is placed by the High Court on section 153C, we set aside the impugned judgment and order. Further, we grant time to the assessee, if it so desires, to file reply / objections, if any, as contemplated in the said notices within 15 days' time from today. If such reply / objections is / are

filed within time granted by this Court, the assessing authority shall first consider the said reply / objections and thereafter direct the assessee to file the return for the assessment year in question. We make it clear that while framing the assessment order, the assessing authority will not be influenced by any observations made by the High Court while disposing of the writ petition. If, for any reason, the assessment order goes against the assessee, he / it shall avail of and exhaust the remedies available to him / it under the Act, 1961.”

The second reason for our reluctance in entertaining this petition is that admittedly search authorization was issued against the firm as well as other persons. Actual search was also conducted and carried out at 3 different locations, which included the residential premises of one of the partners of the firm and residential premises of two more persons. *Prima-facie*, we do not find any provision which would restrict the Department's search action only to the registered office of a partnership firm. The conduct of the search at these places in relation to the partnership firm and its business need to be examined in proper perspective keeping in mind the objections of the partnership firm and such exercise should be allowed to be done at the level of the Assessing Officer. At this stage, we do not propose to thwart the assessment pursuant to the impugned notices.

9. Under the circumstances, keeping the petitioner's factual and

legal contentions and objections open, we relegate the petitioner before the Assessing Officer. Once the Assessing Officer passes final order pursuant to the impugned notices, it will always be open to the petitioner to pursue the remedy available under the Act.

10. With these observations, the petition is disposed of.

(M.S. SANKLECHA, J.)

(AKIL KURESHI, J.)