

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14-12-2018

CORAM

THE HON'BLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.7623 of 2002
and 1143 and 1144 of 2003

T.T.V.Dinakaran

...Petitioner in all WPs

Vs

Deputy Commissioner of Income Tax,
Central Circle II (2),
Chennai-600 034. ... R-1 in WP 7623/2002

Assistant Commissioner of Income Tax,
Central Circle II (5),
Chennai-600 034. ... R-2 in WP 7623/2002

Commissioner of Income Tax,
Central Circle,
Tamil Nadu,
Chennai-600 034. R-3 in WP 7623/2002

The Deputy Commissioner,
Central Circle I,
108 Mahatma Gandhi Road,
Chennai-600 034. ... R-1 in WPs 1143&1144/2003

The Assistant Commissioner,
Central Circle II (2),
108 Mahatma Gandhi Road,
Chennai-600 034. ... R-2 in WPs 1143&1144/2003

The Additional Commissioner of
Income Tax,
Central Range II,
108 Mahatma Gandhi Road,
Chennai-600 034. ... R-3 in WPs 1143&1144/2003

WP No.6923 of 2002 is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the first and second respondents from making an assessment on the petitioner under Chapter XIV-B of the Income Tax Act for the Block Period 1987-1988 to 1997-1998 pursuant to the notice under Section 158-BC issued by the second respondent on 8th October 2001.

WP Nos.1143 and 1144 of 2003 are filed under Article 226 of the Constitution of India praying to issue of Writs of Certiorari, calling for the records in P.A.N.01-D/96-97 and P.A.N.01-D/95-96 dated 15.3.2002 in respect of the Assessment Year 1996-97 and 1995-1996 on the file of the first respondent and quash the same.

For Petitioner in all WPs : Mr.S.Sridhar

For Respondents in all WPs: Mr.A.P.Srinivas and
Mr.A.N.R.Jaya Prathap

C O M M O N O R D E R

The writ petition WP No.1143 of 2003 is filed challenging the notice issued by the Authorities Competent under Section 148 of the Income Tax Act, for reopening of the assessment year 1996-1997 and WP No.1144 of 2003 is filed challenging the notice issued by the Authorities Competent under Section 148 of the Income Tax Act, for reopening of the assessment year 1995-1996.

2. Both the abovesaid writ petitions viz., WP Nos.1143 and 1144 of 2003 were filed challenging the notices issued by the Assessing Officer under Section 148 of the Act, for the purpose of reopening the assessments which were already finalised for the assessment years 1995-1996 and 1996-1997.

3. The third writ petition viz., WP No.7623 of 2002 is filed by the same writ petitioner with a prayer to forbear the first and second respondents from making an assessment on the petitioner under Chapter XIV-B of the Income Tax Act for the Block Period 1987-1988 to 1997-1998 pursuant to the notice issued under Section 158-BC of the Income Tax Act (hereinafter referred to as the 'Act'), by the second respondent on 8th October 2001.

4. The learned counsel for the writ petitioner advanced his arguments, by commencing the initial ground raised by the writ, petitioner that the fair opportunity had not been provided to the writ petitioner to put forth his case before the Authorities Competent. The materials gathered during the search

operations in the premises of the writ petitioner had not been shared at all. Thus, the writ petitioner was deprived of his opportunity of knowing the materials, which were secured at the time of search operations. This made the writ petitioner unable to submit his defence before the appropriate authorities.

5. Under the Statute, the materials secured during the search operations ought to have been served or permitted to be seen by the persons aggrieved. However, the said mandatory procedures had not been implemented by the Authorities Competent in the present cases and therefore, the rights conferred to the writ petitioner are denied and therefore, the writ petitioner is constrained to move the present writ petitions.

6. The learned counsel for the writ petitioner is of an opinion that the notice issued under Section 148 of the Income Tax Act for reopening of the closed assessment is also impermissible in law. The learned counsel for the writ petitioner is mainly on the ground that parallel proceedings under Section 158-BC as well as under Section 148 of the Income Tax Act is impermissible in law. Such parallel proceedings would cause prejudice to the rights of the assessee. In the event of allowing the authorities to proceed parallelly, the assessee would be deprived of his opportunity in submitting his depositions or defence statements, in both the cases where block assessment is taken as well as the reopening of the closed assessment.

7. With reference to the abovesaid submission, the learned counsel for the writ petitioner cited the provisions of the Income Tax Act. The learned counsel for the writ petitioner states that under Section 158-BA as amended through the Finance (No.2) Act, 1998 with effect from 1.7.1995, provides Explanations to the original provision made under Section 158-BA of the Act. The Explanations are provided for the removal of doubts and it reads as follows:-

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

(a) the assessment made under this Chapter shall be in addition to the regular assessment in respect of each previous year included in the block period;

(b) the total undisclosed income relating to the block period shall not include the income assessed in any regular assessment as income of such block period;

(c) the income assessed in this Chapter shall not be included in the regular assessment of any previous year included in the block period."

8. Explanation (b) unambiguously enumerates that the total undisclosed income relating to the block period shall not include the income assessed in any regular assessment as income of such block period. Explanation (c) stipulates that the income assessed in this Chapter shall not be included in the regular assessment of any previous year included in the block period.

9. Relying on the abovesaid two Explanations inserted by virtue of amendment Finance (No.2) Act, 1998, implemented with retrospective effect from 1.7.1995, the learned counsel for the writ petitioner is of the firm view that the facts and circumstances of the present lis on hand squarely falls within the ambit of these Explanations inserted in the original provision under Section 158-BA of the Act.

10. As per the Explanation, there cannot be any two assessments in respect of the same income. In the present cases, the Assessing Officer is attempting to do so. There is an unambiguity in respect of the actions initiated in this regard by the Assessing Officer by issuing a notice under Section 148 of the Act. Even as per the judgment of the Hon'ble Supreme Court, the aggrieved person at the earliest point of time, is entitled to approach the Court of Law, more specifically, under Article 226 of the Constitution of India. Thus, the writ petitioner has established that such a parallel proceedings are impermissible and would cause prejudice to the rights of the writ petitioner to defend his case and therefore, the writ petitioner had approached this Court at the first instance and accordingly, the impugned notices are scrapped.

11. The learned counsel for the writ petitioner states that reopening of the closed assessment is permissible only if there is no proceedings under Section 158-BC. When the block proceedings are already initiated with reference to the financial year commencing from 1987 to 1996, then the reopening of the assessment for the years 1995-1996 and 1996-1997 is clearly barred in view of the Explanations inserted in Section 158-BA of the Act. At the outset, it is contended that there cannot be two assessments for the same income and therefore, the attempts now made to reopen the assessment already closed on the basis of the same income is impermissible.

12. The learned counsel for the writ petitioner with reference to Chapter XIV-B of Section 158-B of the Act, states that "undisclosed income" is one aspect of the matter and the "block assessment made" is another aspect of the matter. Therefore, the Authorities Competent are empowered to invoke Clause (b) of Section 158-B in respect of undisclosed income and not in respect of the disclosed income.

13. The assessment already made denotes the "disclosed income". Therefore, they have to make reassessment only with reference to the undisclosed income and the over all reopening is impermissible in view of Section 158-B of the Act.

14. The learned Senior Standing Counsel, appearing on behalf of the Income Tax Department, disputed all the contentions raised on behalf of the writ petitioner in entirety. The learned Senior Standing Counsel for the Income Tax Department is of an opinion that the present writ petitions are premature and not maintainable. The facts and circumstances in all respects are under investigation and under the consideration of the Competent Authorities and in this stage, the High Court cannot consider the facts and circumstances now placed by the writ petitioner in the present writ petitions. The disputed facts are to be adjudicated by the Competent Authorities and only after arriving a conclusion and passing final orders, an assessee may get the right of appeal under the provisions of the Act and thereafter before the High Court. Contrarily, the present writ petitions are filed at the initial stage and liable to be dismissed in limine.

15. The learned Senior Standing Counsel for the Income Tax Department with reference to the arguments in respect of the interpretation of the provisions of the Act, contended that Chapter XIV-B of Section 158-B stipulates that "unless the context otherwise requires,— (a) "block period" means 66(a) the previous years relevant to ten assessment years preceding the previous year in which the search was conducted under Section 132 or any requisition was made under Section 132-A and includes, in the previous year in which such search was conducted or requisition made, the period up to the date of the commencement of such search or, as the case may be, the date of such requisition.

16. Referring the abovesaid provision, the learned Senior Standing Counsel for the Income Tax Department states that the Competent Authorities are empowered to take ten assessment years under the provisions of Section 158-B (a) of the Act. In the present cases, the ten years period is taken from the year 1986, more specifically, the block period is considered by the authorities with effect from 1.4.1986 to 31.3.1996 and from 1.4.1996 to 15.7.1996. Thus, the Authorities Competent had taken ten assessment years as block period with reference to the abovesaid Section cited. There is no error or otherwise in respect of the period of ten assessment years taken into account for the purpose of reopening of the assessment under Section 158-B of the Act. Secondly, the learned Senior Standing Counsel states that the entire actions were initiated on account of the search conducted by Foreign Exchange

Regulation Act (FERA) and with reference to Section 132-A of the Act.

17. Section 132-A of the Income Tax Act stipulates that where the Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, in consequence of information in his possession, has reason to believe that—

(a) any person to whom a summons under sub-section (1) of Section 37 of the Indian Income-tax Act, 1922 (11 of 1922), or under sub-section (1) of Section 131 of this Act, or a notice under sub-section (4) of Section 22 of the Indian Income-tax Act, 1922, or under sub-section (1) of Section 142 of this Act was issued to produce, or cause to be produced, any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of account or other documents, as required by such summons or notice and the said books of account or other documents have been taken into custody by any officer or authority under any other law for the time being in force, or

(b) any books of account or other documents will be useful for, or relevant to, any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act and any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, such books of account or other documents on the return of such books of account or other documents by any officer or authority by whom or which such books of account or other documents have been taken into custody under any other law for the time being in force, or

(c) any assets represent either wholly or partly income or property which has not been, or would not have been, disclosed for the purposes of the Indian Income-tax Act, 1922 (11 of 1922), or this Act by any person from whose possession or control such assets have been taken into custody by any officer or authority under any other law for the time being in force, then, the Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may authorise any Additional Director, Additional Commissioner, Joint Director, Joint Commissioner, Assistant Director or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer (hereafter in this section and in sub-section (2) of section 278D referred to as the requisitioning officer) to require the officer or authority referred to in clause (a) or clause (b) or clause (c), as the case may be, to deliver such books of account, other documents or assets to the requisitioning officer.

18. The learned Senior Standing Counsel for the Income Tax Department is of the firm opinion that the informations and the materials received from the FERA on account of the search taken by the FERA is also source for initiation of the action under the provisions of the Income Tax Act in respect of block assessment already made with reference to the assessment of the writ petitioner. The block assessment was taken based on the informations and for ten years with reference to Section 132-A of the Act. Thus, there is no error in respect of initiation of the action for block assessment as well as the period for which the block assessment is taken.

19. The learned Senior Standing Counsel for the Income Tax Department has fairly said that the Income Tax Department is ready and willing to provide the opportunities contemplated under the Act, with reference to the materials available with the Department. Such opportunities will be provided to the writ petitioner on request and as per the procedures contemplated. It is further contended that the writ petitioner earlier approached the Income Tax Appellate Tribunal and the Income Tax Appellate Tribunal remanded the matter in its order dated 4.10.2000.

20. The Income Tax Appellate Tribunal, Chennai Bench remanded the matter on the ground that the Department had not provided the opportunities contemplated under the Act and therefore, the principles of natural justice had been violated. In this regard, the learned Senior Standing Counsel for the Income Tax Department states that the Department is ready to provide all such opportunities in accordance with law and by following the procedures contemplated. The order dated 15.11.1996 issued by the Assistant Commissioner of Income Tax, Central Circle II (5), Chennai-34 also denotes that books and documents seized by the Enforcement Directorate in the cases of the writ petitioner are available with the Assistant Commissioner of Income Tax. In case, the writ petitioner require any inspection of those documents, the writ petitioner is at liberty to do so during any working day by giving a requisition letter one day in advance and by specifying the documents required for inspection. Citing the abovesaid letter dated 15.11.1996, the learned Senior Standing Counsel for the Income Tax Department, states that such an opportunity to be provided has already been informed to the writ petitioner and it is left open to the writ petitioner to avail such opportunity by submitting the requisition letter to the Authorities Competent.

21. The learned counsel for the writ petitioner states that the writ petitioner made a request and the same has not been considered at all. This Court is of an opinion that the previous happenings in this regard needs no consideration and

this Court is of fervent hope that the statement made now before this Court by the learned Standing Counsel would be followed scrupulously in the matter of providing opportunity to the writ petitioner in respect of his right to inspect the documents at his request and other opportunities to be provided under the Act.

22. The learned counsel for the writ petitioner cited the judgment of the Gujarat High Court in the case of Cargo Clearing Agency (Gujarat) Vs. Joint Commissioner of Income Tax [(2008) 76 CCH 0915 GujHC], wherein in paragraphs 28, 29, 32 and 33, it has been held as under:-

"28. In the present case, none of the exceptional contingencies exist. As already noticed, on a plain reading it becomes discernible that there are two separate streams of procedure provided by the Legislature : (1) under Chapter XIV of the Act which provides for "procedure for assessment", and (2) under Chapter XIV-B of the Act which provides for "a special procedure for assessment of search cases". Only in the event the special procedure for assessment has not provided for some procedure for assessment can one refer to the procedure under Chapter XIV of the Act. Therefore, the interpretation sought to be placed by the Revenue on the provisions of the Act so as to read in the term "block period" for the purpose of invoking and applying sections 147 to 153 of the Act cannot be countenanced. Neither does a plain reading of the provisions permit such an exercise, nor is there any lacuna in the provisions which is required to be filled up.

29. In Chapter XIV-B of the Act the only place where one finds the use of the term "assessment year" is in the definition of the term "block period". This itself indicates that if the "block period" was equivalent to "assessment year" the definition of block period would not have provided that "block period" means period comprising previous years relevant to 10/6 assessment years. To put it differently, reference to the number of assessment years is only a means, a measure to indicate and specify the period of previous years which would comprise block period. The Revenue, therefore, cannot contend successfully that wherever the term "assessment year" is used in the group of sections from section 147 to 153 of the Act

the said term has to be replaced by the term "block period". Furthermore, the amendment which is retrospectively made in the definition of the block period by the Finance (No. 2) Act, 1996, itself indicates that originally the term "block period" meant as consisting of 10 previous years prior to the previous year in which the search was conducted and also the period of current previous year up to the date of search, but, before adoption of uniform previous year, in case of different assessees, "block period" would be different depending on the accounting period adopted in terms of section 3 of the Act. To obviate this situation the definition of block period was amended. This becomes clear from Circular No. 762, dated February 18, 1998 ([1998] 230 ITR (St.) 12), issued by the Central Board of Direct Taxes extracted hereinbefore.

32. As already noticed hereinbefore, the entire scheme under Chapter XIV of the Act, more particularly from Sections 147 to 153 of the Act pertaining to reassessment, and the special procedure for assessing the undisclosed income of the block period under Chapter XIV-B of the Act are not only separate and distinct from each other, but if an effort is made to incorporate the scheme under Chapter XIV of the Act for the purpose of assessment of the block period there is a conflict between the provisions which becomes apparent on a plain reading. In the circumstances, as per the established rules of interpretation, unless and until a plain reading of the two streams of assessment procedure does not result in the procedures being independently workable, only then the question of resolving the conflict would arise. But to the contrary, in the present case, in the light of the provisions of section 158BH of the Act, once there is a conflict between the two streams of procedure, as laid down by the apex court, the provisions of Chapter XIV-B of the Act shall prevail and have primacy.

33. Thus, viewed from any angle, the stand of the Revenue does not merit acceptance. Once assessment has been framed under section 158BA of the Act in relation to

undisclosed income for the block period as a result of search there is no question of the Assessing Officer issuing notice under section 148 of the Act for reopening such assessment as the said concept is abhorrent to the special scheme of assessment of undisclosed income for block period. At the cost of repetition it is required to be stated and emphasised that the first proviso under section 158BC(a) of the Act specifically provides that no notice under section 148 of the Act is required to be issued for the purpose of proceeding under Chapter XIV-B of the Act."

23. The learned for the writ petitioner is of an opinion that the Gujarat High Court considered the similar issue with reference to the block period as well as the reopening of the assessment and arrived a conclusion that parallel proceedings are impermissible and therefore, the same ratio would apply to the facts and circumstances of the present writ petitions also.

24. In yet another case of South Asian Enterprises Ltd and Another vs. Commissioner of Income Tax and Another [(2017) 99 CCH 0029 DelHC], wherein the High Court of Delhi in paragraph 25 held as under:-

"25. In the facts and circumstances of the present case, the Court is satisfied that reopening of the assessment for AYs 1994-95 to 1996-97 by the impugned notices dated 31st May 2001 under Section 148 of the Act during the pendency of the block assessment proceeding was impermissible in law. Having initiated the proceeding under Section 158BC for the block assessment, there was no justification to issue the aforementioned notice under Section 147 of the Act as that would undoubtedly result in parallel proceedings. They are based on the same materials which form subject matter of the block assessment. The impugned notices dated 31st May 2001 are hereby quashed."

25. The learned counsel for the writ petitioner emphasized that the High Court of Delhi reiterated the principle that during the pendency of the block assessment proceeding, the reopening of the assessment under Section 148 of the Income Tax Act is impermissible and therefore, the very notice issued and

impugned in the present writ petitions are to be quashed.

26. To counter, the learned Senior Standing Counsel for the Income Tax Department said that the facts and circumstances of those cases may be different and this Court has to consider the facts and circumstances of the present writ petitions. With reference to Section 158-BC and Section 148 of the Act, the Supreme Court has decided that such proceedings are permissible and parallel proceedings can be done with reference to the undisclosed income and based on the new materials available on record are found during the search operations.

27. In the present cases on hand, the block assessment was taken for ten years. However, the reopening of the assessment is made only with reference to the assessment years 1995-1996 and 1996-1997. Therefore, all these factual details are to be scrutinised by the Authorities Competent and it is premature for this Court to go into such details in the present writ petitions as these writ petitions are filed challenging the very notice issued by the Competent Authorities under Section 148 of the Act and certain factual details are to be arrived only after the scrutiny of all the documents. It is admitted that the search operations were made in the premises of the writ petitioner. Number of materials were seized. The books of accounts and the materials seized are now under the custody of the Income Tax Department.

28. This Court is of an opinion that the materials collected may be by way of statements from various persons and the documents from other resources. Search operation is of such one where the Competent Authorities are bound to get informations from all the sources irrespective of their position, status or otherwise. The very purpose of search operations are to ensure that the Law Enforcing Agency identify all irregular activities which are all undisclosed or black money or otherwise in violation of the Act.

29. The power of search operations are provided under the Act for the authorities to prevent the evasion of income and payment of tax by the citizen in general. Therefore, there cannot be any doubt in respect of conducting of search operations and obtaining informations from persons concerned. These informations or statements obtained by these persons can be correlated with any other documents or with any other Department or with any other Agencies. Therefore, this Court cannot restrict the powers of the authorities to conduct search operations and such search operations are to be conducted only by following the procedures contemplated under the Statute and not otherwise. The Competent Authorities are the best persons to conduct search operations in a logical manner and in an

intelligent way to identify all such violations under the provisions of the Act. Thus, search operating officials are trained for that purpose and this Court cannot invade into the powers of such authorities under the Act in respect of conducting search operations.

30. The sources found by these authorities cannot be questioned by the assessee under the provisions of the Income Tax Act. Thus, the only mandatory provision is to ensure that adequate opportunities are provided to the assessee to put forth his defence before the Competent Authorities under the Act. This Court in a writ jurisdiction also must ensure that such opportunities contemplated under the Act are provided to the authorities, while undertaking the process of actions under the Act. Thus, under these circumstances, this Court cannot appreciate or accept the factual contentions raised by the writ petitioner on merits. The writ petitions are filed challenging the notices and therefore, all the facts on merits to be placed before the Competent Authorities by the writ petitioner by producing evidences, documents or by way of statements.

31. Contrarily, this Court cannot appreciate the contention raised on behalf of the writ petitioner that the parallel proceedings are impermissible. In respect of parallel proceedings, the legal principles are that if any prejudice is caused to the person concerned then, parallel proceedings need not be permitted. Secondly, if there is any express bar for such parallel proceedings under the Statute, then also the parallel proceedings can be stalled. In all circumstances, the concept of parallel proceedings shall be accepted and in large number of Statutes such parallel proceedings are permitted enabling the authorities to initiate actions under various law. For instance, the Tamil Nadu Co-operative Societies Act, contemplates an enquiry under Section 81 of the Act. If a statutory enquiry is conducted under Section 81 of the Act, with reference to the irregularities in any Co-operative Society, then an enquiry can be ordered and a report can be submitted by the Enquiry Officer. Such an enquiry report may result into three fold actions against the erring persons. Based on the enquiry report, a criminal prosecution can be initiated by filing a complaint before the Commercial Crime Investigation Wing and disciplinary proceedings can be initiated against the employees of the Department and the surcharge proceedings can be initiated to recover the loss if any occurred to the Institution. Thus, there cannot be any absolute prohibition of parallel proceedings under law. This Court has to examine, when such parallel proceedings are permissible and impermissible with reference to the Statutes and with reference to the facts and circumstances of each case.

32. The concept of parallel proceedings even in departmental proceedings are permitted by the Apex Court of

India. In respect of Government employees, both the departmental proceedings and the criminal prosecutions are permissible. Thus, this Court is unable to appreciate the general contention raised by the writ petitioner that parallel proceedings are impermissible.

33. Let us now look into the provisions of the Income Tax Act.

34. The block assessment is undertaken with reference to Section 132-A of the Income Tax Act. Now block assessment proceedings are initiated and actions under Section 158-BC are commenced. Pursuant to the block assessment made, based on the informations received on account of search operations, the reopening of the assessment is also simultaneously done with reference to the assessment years 1995-1996 and 1996-1997 alone. Thus, the reopening of the assessment is initiated based on other reasons.

35. The learned Senior Standing Counsel also clarified that reopening of the assessment is taken with reference to two assessment years based on the materials available with the Assessment Officer. The notice issued under Section 148 of the Act itself stipulates that the Department has received information that the writ petitioner has made an investment of Rs.45,71,26,016/- from U.K. Companies and also incurred expenses during the year ended 31.3.1995. But the writ petitioner has not admitted any income accrued or received based on the investment during the previous year ended 31.3.1996 relating to the assessment year 1996-1997.

36. The learned Senior Standing Counsel for the Department also clarifies that these informations or materials are independent and unconnected with the block assessment made with reference to Section 158-BC for ten years. Thus, when the Assessing Officer has got reason to believe under Section 147 of the Act, then they are empowered to issue notice under Section 148 of the Act and deal with the case under Sections 147 to 153 of the Act and by following the procedures contemplated under the provisions of the Act.

37. When the Income Tax Department come out with a plea that the reopening of the assessment is made based on the independent informations and the documents available, it is left open to the assessee to seek the reasons from the Department, which was already given to the writ petitioner and accordingly, submit his defence to the reasons stated and allow the Assessing officer to assess the income and pass final orders of assessment under the Act.

38. In the present cases on hand, the reasons for reopening of the assessment had already been provided to the writ petitioner. Thus, the writ petitioner ought to have given his explanations/objections in respect of the reasons stipulated in the reply by the Income Tax Department. Contrarily, if this Court adjudicate the merits and demerits, the same would cause prejudice to the Income Tax Department in concluding the reassessment proceedings with reference to Sections 147 to 153 of the Act.

39. The very object and purpose of the reassessment and reopening of the assessment is to ensure that the tax evaders are dealt in accordance with law. If the assessee failed to disclose the actual income to the Department in a parallel assessment year, the Assessing Officer is empowered to reopen the assessment with reference to Sections 147 to 153 of the Act. Once the proceedings are commenced under Section 148 of the Act, then this Court must allow the Assessing Officer to adjudicate the reassessment and arrive a conclusion and pass assessment orders by affording opportunities to the assessee and by following the procedures. This being the concept and the object sought to be achieved under the provisions of the Act and by quashing the very notice, the very purpose of the proceedings would be defeated.

40. Even in the case of *Dayanidhi Maran vs. Assistant Commissioner of Income Tax, Non-Corporate Circle-1, Chennai* [(2018 98 taxmann.com 202 (Madras)], this Court had reiterated the principles that no writ petition can be entertained against the notice in a routine manner. Judicial review against such statutory notices are limited and the aggrieved persons are at liberty to submit their explanations/objections with reference to the reasons stated in the impugned notice and participate in the proceedings so as to reach a logical conclusion. In paragraph 100 of the abovesaid judgment, this Court made the following observations, which is extracted hereunder:-

"100. In the present writ petitions, this Court is of an opinion that undoubtedly notice was issued based on the reasons recorded by the Assessing Officer under Section 147 of the Act. However, the reasons arrived had not been communicated to the writ petitioner. But the writ petitioner requested the reasons to be furnished. Responding to the letter sent by the writ petitioner, the Assessing Officer communicated the reasons to the Assessee/writ petitioner and the objections were rejected. Thus, the writ petitioner has not been prejudiced in respect of the proceedings communicated by the

Assessing Officer. Thus, this Court, has to consider the very fact that, whether any prejudice has been caused to the Assessee resulting any injustice or otherwise in the present writ petitions on hand. The writ petitioner very well can respond to the Assessing Officer and establish his genuinity or otherwise by producing the materials available with him and by providing informations known to him. Without doing so, the writ petitioner filed the present writ petitions, challenging the notice."

41. The constructive interpretation of these provisions are certainly imminent. Constructive interpretation and the pragmatic approach to reach the object of the Statute is also a mandate of the Constitution. Any legislation has got a definite purpose and object so also the Income Tax Act. The provisions of the Income Tax Act had to be interpreted constructively so as to understand the purpose and the object.

42. In the present cases on hand, admittedly there was search operations. Admittedly, certain materials were secured by the Authorities Competent. Admittedly, in its order dated 15.11.1996, the Assistant Commissioner of Income Tax provided opportunity to the writ petitioner to inspect all those documents. However, opportunities proposed to be provided was informed by the Assistant Commissioner of Income Tax.

43. However, now the learned Senior Standing Counsel for the Income Tax Department made a submission that an opportunity will be provided to the writ petitioner by following the procedures. This being the submission made, this Court is of an opinion that complete opportunity as contemplated under the Act must be provided to the assessee, enabling him to submit his explanations/objections and the documents if any along with the statements for the purpose of concluding the proceedings in all respects and to ensure that the proceedings reaches its logical conclusion.

44. In this view of the matter, this Court is of an opinion that WP Nos.1143 and 1144 of 2003 as well as the WP No.7623 of 2002 are devoid of merits and stands dismissed and this Court hope that the writ petitioner would cooperate for the early completion of all the proceedings and the Department initiate steps to conclude all these proceedings by providing opportunity to the writ petitioner as contemplated under the Act without any further lapse of time and this observation is made consciously that the writ petitions are filed in the year 2002 and 2003 respectively and decided in the year 2018 by the High Court and such an unfortunate situation shall also to be averted

in future in all such cases where the income and financial interests of our great Nation are involved.

45. Accordingly, all the writ petitions stand dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Svn

To

1. Deputy Commissioner of Income Tax,
Central Circle II (2),
Chennai-600 034.
2. Assistant Commissioner of Income Tax,
Central Circle II (5),
Chennai-600 034.
3. Commissioner of Income Tax,
Central Circle,
Tamil Nadu, Chennai-600 034.
4. The Deputy Commissioner,
Central Circle I,
108 Mahatma Gandhi Road,
Chennai-600 034.
5. The Assistant Commissioner,
Central Circle II (2),
108 Mahatma Gandhi Road,
Chennai-600 034.
6. The Additional Commissioner of
Income Tax, Central Range II,
108 Mahatma Gandhi Road,
Chennai-600 034.

+2cc to Mr.S.Sridhar, Advocate, S.R.No. 87093, 87094
+2cc to Mr.A.P.Srinivas, Advocate, S.R.No.86997, 86998

WP Nos.7623 of 2002
and 1143 and 1144 of 2003

GJII(CO)
GN(08/01/2019)