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

WRIT PETITION NO.106 OF 2019

Gemini Engi-Fab Limited … Petitioner
versus
Dy. Commissioner of Income Tax – 12(2) (2) … Respondent

WITH

WRIT PETITION NO.91 OF 2019

Gemini Engi-Fab Limited … Petitioner
versus
Dy. Commissioner of Income Tax – 12(2) (2) … Respondent

WITH

WRIT PETITION NO.107 OF 2019

Gemini Engi-Fab Limited … Petitioner
versus
Dy. Commissioner of Income Tax – 12(2) (2) … Respondent

WITH

WRIT PETITION NO.111 OF 2019

Gemini Engi-Fab Limited … Petitioner
versus
Dy. Commissioner of Income Tax – 12(2) (2) … Respondent

WITH

WRIT PETITION NO.190 OF 2019

Gemini Engi-Fab Limited … Petitioner
versus
Dy. Commissioner of Income Tax – 12(2) (2) … Respondent

WITH

WRIT PETITION NO.191 OF 2019

Gemini Engi-Fab Limited … Petitioner
versus
Dy. Commissioner of Income Tax – 12(2) (2) … Respondent

Mr. S.C.Tiwari with Ms. Rujuta N. Pawar, for Petitioners.
Mr. Charanjeet Chanderpal, for Respondent.

CORAM: AKIL KURESHI &
S.J. KATHAWALLA, JJ.

DATE: 4TH JUNE, 2019

P.C.:

1. Heard the learned Advocates for the parties for the final hearing of these Petitions. The Petitions arise in common background. They have been heard together and would be disposed off by this common Judgment. The facts being similar, we may record them from Writ Petition No.106 of 2019.

2. The Petitioner which is a limited Company, has challenged the Notice dated 27th April, 2018 issued by the Respondent Deputy Commissioner of Income Tax, under Section 153C of the Income Tax Act, 1961 ("the Act" for short).

3. The Petitioner is engaged in the business of manufacturing and trading in engineering machines. A search operation was carried out against the person other than the Petitioner and an action was initiated by the Department in terms of Section 153C of the Act, on the ground that incriminating material was found during such search against the person other than the searched persons. Earlier the Petitioner had filed the Writ Petition bearing No.3626 of 2018 and connected Petitions, challenging these Notices under Section 153C of the Act, on the ground that even as per the satisfaction note, no incriminating material was available at the disposal of the Income

Tax Department, on the basis of which such Assessment can be made in the hands of the Petitioner. These Petitions came to be disposed off by common order dated 22nd December, 2018. The Petitioner was allowed to raise such objections before the Assessing Officer, who would consider the objections and then decide whether to proceed further with the assessment or not. The Petitioner raised such objections under Communication dated 24th December, 2018. The Assessing Officer passed an order dated 25th December, 2018, refusing to drop proceedings stating that the merits or demerits of the information available on the seized material would be subject matter of the assessment order. The Petitioner thereupon filed the present group of Petitions and renewed the challenge to the Notice under Section 153C of the Act. When these Petitions were pending and since no stay was granted by the Court and the assessments pursuant to the impugned notices were getting time barred, the Assessing Officer proceeded to pass separate assessment orders covered under each year of Notice under Section 153C of the Act. All these orders were passed by him on 31st December, 2018. Copies of these orders provided by the Counsel of the Petitioner are taken on record.

4. In the background of such facts, the learned Counsel for the Petitioner vehemently contended that from the beginning, the Department had no incriminating material found during the search for all assessment years except assessment year 2009-10, for which the Petitioner has in any case not filed the Petition. Even when such an

objection was raised before the Assessing Officer, he ignored the same and proceeded to pass assessment orders on the basis of invalid authorization. In support of this contention, he relied on the decision of the Supreme Court in the case of *Commissioner of Income Tax-III, Pune V/s. Sinhgad Technical Education Society*[1] to contend that no additions can be made in assessment pursuant to Section 153C of the Act, if no incriminating material for the relevant assessment year is found during the search. He submitted that merely because pending objections, assessments are framed, would not make the objections infructous. If the every foundation of the assessment order is invalid, the Petitioner may not be relegated to alternate remedy. In this context, the learned Counsel for the Petitioner relied on the decision of the Division Bench of this Court in the case of *Allana Cold Stiorage Ltd. V/s. Income Tax Officer*[2].

5. On the other hand, the learned Counsel for the Department opposed the Petitions contending that the Assessing Officer has acted on the basis of the available materials. The material having been found during the search against the Petitioner which was not searched, the present Notices under Section 153C of the Act were issued. The Petitioner would have ample opportunities to raise all contentions of facts and law in Appeal and therefore, this Court should not interfere at this stage.

6. We have perused the impugned notices as well as the assessment orders already passed by the Assessing Officer against the Petitioner. In a Writ Petition, we

1 [2017] 84 taxmann.com 290 (SC)
2 [2006] 287 ITR 1 (Bom.)

would not like to carry out thread bare inquiry by going into the factual aspects of sufficiency of material in order to initiate proceedings under Section 153C of the Act or of co-relating the incriminating material found during search on the basis of which additions are made in the assessment orders. The assessment orders prima facie would suggest that the Assessing Officer is silent on this issue of co-relation between addition made and the material found during such search.

7. In the case of *Commissioner of Income Tax V/s. Vijaybhai N. Chandrani*[3], the Department had filed an Appeal against the Judgment of the Gujarat High Court setting aside the proceedings under Section 153C of the Act on the ground that no incriminating material belonging to the Assessee was found during the search. The Supreme Court reversed the Judgment of the High Court observing that the High Court ought not to have entertained the Writ Petition and should have directed the Assessee to file Reply to the 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. In short, the Supreme Court did not approve the exercise undertaken by the Gujarat High Court, going into the factual aspect of existence of incriminating material belonging to the Assessee seized during the search operation.

8. In view of the fact that the assessment orders are already passed and bearing

3 [2013] 357 ITR 713 (SC)

in mind the observations of the Supreme Court in the case of *Commissioner of Income Tax V/s. Vijaybhai N. Chandrani* (Supra), we would relegate the Petitioner to appeal remedy. The Supreme Court in the case of *Commissioner of Income Tax and Ors. V/s. Chhabil Dass agarwal*[4] also observed that where statutory appeal remedy is available in taxing statute, the Court would ordinarily not entertain the Writ Petition.

9. Having perused the material on record and in particular the orders of assessment passed by the Assessing Officer pursuant to the Notices under Section 153C of the Act, while relegating the Petitioner to the appeal remedy, we would like to make an interim formula in the peculiar facts of the case. The above Writ Petitions are disposed off with the following directions :

(i) It would be open for the Petitioner to file Appeals against the assessment orders. If such Appeals are filed before 25th June, 2019, the same shall be entertained on merits without having reference to limitation.

(ii) If such Appeals are filed within the period prescribed, the Department shall not carry out recovery arising out of the impugned orders till such appeals are disposed off and for a period of 30 days from the date of communication of the Appellate orders.

(iii) The Petitioner shall co-operate with the early disposal of the Appeals. It would be open for the Commissioner to decide the Appeals expeditiously with

4 [2013] 357 ITR 357 (SC)

which the Petitioner shall render full cooperation.

(iv) All contentions of the Petitioner are kept open.

(v) The above Writ Petitions are accordingly disposed off.

(S.J.KATHAWALLA, J.) **(AKIL KURESHI, J.)**