

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 05-03-2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI

AND

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

T.C.A.No.1505 of 2008

Smt.V.Vijayalakshmi

...

Appellant

-VS-

The Deputy Commissioner of Income Tax,
Central Circle II,
Coimbatore.

...

Respondent

Appeal under Section 260A of the Income Tax Act,1961,
against the order of the Income Tax Appellate Tribunal, Chennai 'D' Bench,
dated 06.06.2008, passed in I.T.(SS) A.No.94/MDS/2007.

For Appellant : Mr.A.S.Sriraman

For Respondent : Mr.T.R.Senthil Kumar,
Senior Standing Counsel,
assisted by Mrs.K.G.Usha Rani,
Junior Standing Counsel.

JUDGMENT

(Judgment of the Court was delivered by **Dr.Vineet Kothari,J.**)

This Appeal has been filed by the Assessee Smt.V.Vijayalakshmi, under Section 260-A of the Income Tax Act, 1961, in short, 'Act', raising the following Substantial Questions of Law, arising out of the order from the learned Income Tax Appellate Tribunal, in short, 'Tribunal', dated 06.06.2008, in I.T.(SS) A.No.94/MDS/2007, dismissing the appeal of the Assessee for Block Assessment Period from 01.04.1995 to 13.09.2001 :

(1) Whether the Appellate Tribunal is correct in law in concluding that the assessment framed in terms of Section 158BD of the Act was valid even though there was no satisfaction recorded by the Assessment Officer of the searched person in the course of framing of the Block Assessment in his hands and further even though there were no seized materials indicating payment of on-money with a view to justify the addition of Undisclosed Income in this regard ?

(2) Whether the Appellate Tribunal is correct in law in sustaining the action of the Respondent in framing the Block Assessment in terms of Section 158BD of the Act even though the decision of the Honourable Supreme Court and the decision of this Honourable Court were cited and noticed in the impugned order to support the propositions canvassed on the validity of the Block Assessment framed in the hands of the Appellant ?

(3) Whether the Appellate Tribunal is correct in law in sustaining the action of the Respondent on the jurisdictional issue even though the directions of the Appellate Tribunal while passing the order in the hands of the searched person for initiating and framing of the assessment in the hands of the Appellant in terms of Section 158BD of the Act would not override the mandatory provisions in the said section for recording of satisfaction of Undisclosed Income assessable in the hands of the Appellant while completing the assessment of the searched person ?

(4) Whether the Appellate Tribunal is correct in confirming the addition of Rs.15,39,739/- (enhanced figure) being the on-money payment worked out by the Respondent and the Commissioner of Income Tax (Appeals) solely based on the Sworn Statements of the searched person and the seller of the property in spite of the decision of the Supreme Court laying down the mandatory principles for not making addition in the Block Assessment depending upon and citing the Sworn Statements alone ?”

2. Learned counsel for the Appellant/Assessee has urged before us that the Assessing Authority failed to record any reasons while initiating the proceedings of Assessment under Section 158BD of the Act against the present Assessee, namely, Smt.V.Vijayalakshmi, mother of Mr.S.V.Srinivasan, against whom a Search under Section 132 of the Act was conducted on 13.09.2001 and then proceedings for Assessment under Section 158BC of the Act were initiated. He, therefore, submits that the assessment in the hands of the mother - present Assessee -

Smt.V.Vijayalakshmi - is without any basis in the absence of satisfaction being recorded and the Tribunal has erred in holding that the satisfaction recorded by the learned Tribunal while dealing with the earlier appeal of the son - Mr.S.V.Srinivasan - can be taken as sufficient for initiating the proceedings under Section 158 BD of the Act against the mother - present Assessee. Regarding the '**Additions**' made for the sale of property in the hands of the mother-present assessee, he submitted that there were inconsistencies in the statements recorded by the authorities at the time of search of the searched person Mr.S.V.Srinivasan and the seller of the property and, therefore, no such additions could be made in the hands of the present assessee-mother-Smt.V.Vijayalakshmi under Section 158BD of the Act.

3. On the other hand, Mr.T.R.Senthil Kumar, learned Senior Standing Counsel, appearing for the Respondent/Revenue, supported the impugned order of the learned Tribunal and submitted that during the course of Search under Section 132 of the Act against the son-Mr.S.V.Srinivasan, Statements under Section 132 (4) of the Act were recorded against the present Assessee-Smt.V.Vijayalakshmi, who even

denied the transaction of sale of capital asset in question. It is because of the Tribunal's findings in the case of the son, the present proceedings under Section 158BD of the Act were undertaken against the mother-Smt.V.Vijayalakshmi.

4. We have heard the learned Counsels for the parties and also given due consideration to their submissions.

5. The relevant findings of the learned Tribunal in the case of appeal of the son-Mr.S.V.Srinivasan- in I.T.(SS) A.No.98/Mds/2004 for Block Assessment Period from 01.04.1995 to 13.09.2001, decided on 03.01.2005, are quoted below for ready reference :

“16. We have heard the rival submissions and gone through the case records and seen that the properties purchased in the name of assessee's mother, Smt.V.Vijayalakshmi and she is an existing income-tax assessee since 1991-92 declaring income from money lending and embroidery works etc. No doubt, the seller Shri K.N.Natarajan has admitted that the property was sold for a sum of Rs.18,50,000/- and even the assessee admitted that he has purchased the property for a sum of Rs.18,50,000/- as his mother has no sources of income. But despite all

these, the Department has conducted search on the business as well as the residential premises of the assessee and could not co-relate this investment with any income and moreover could not find out as to how this investment of Rs.18,50,000/- was made by the assessee instead of his mother. The sale deed is a registered document and the ownership of the property is in the name of Smt.V.Vijayalakshmi and moreover she is assessed to tax since 1991-92. Here, we do not dispute as to whether the investment in the property is Rs.18,50,000/- or Rs.4,60,000/- but the vital question to be decided is as to whether the property belongs to the assessee or to his mother, Smt.V.Vijayalakshmi. During the search proceedings, document relating to third party, namely, the mother of the assessee, Smt.V.Vijayalakshmi was found and the right course for the Assessing Officer should have been to initiate action under Sec.158BD of the Act and not in assessing the value of the property or on money payment in assessee's hand. Where in the case of third party, whose assets are found in search, cases or whose books of account or other documents evidencing detention of addition are found therein, then, they are liable to be proceeded against under Sec.158BD of the Act. In the present case also, the Assessing Officer should have initiated action under Sec.158BD of the

Act on the assessee's mother. In view of this, we are of the view that this addition made by the Assessing Officer is not as per the provisions of the Income Tax Act and accordingly, is deleted.”

6. Consequent upon the aforesaid decision of the learned Tribunal in the case of the son-Mr.S.V.Srinivasan- rendered on 03.01.2005, the Assessing Authority, in the present case, initiated the impugned proceedings under Section 158BD of the Act against the present assessee-mother- Smt.V.Vijalakshmi. The Preamble of the Assessment Order passed on 22.12.2006 under Section 158BD read with Section 158BC of the Act is quoted below for ready reference :

“A search under sec.132 of the Income-tax Act 1961 was conducted in the case of Shri S.V.Srinivasan on 13-09-2001. During the course of his search many books of accounts and documents were seized. Some of the documents belonging to the assessee Smt.V.Vijayalakshmi were also seized. Therefore the assessee's case is governed by the provisions of section 158 BD. Therefore, notice under sec. 158 BD r.w.s. 158 BC for the Block Period 01-04-1995 to 13-09-2001 was issued to the assessee on 18-03-2005. This was served on the assessee on 22-03-2005. In

response to this notice the assessee filed her Block Return of Income on 20-02-2006 admitting the undisclosed Income at Rs.NIL. The case was posted for hearing.

2. In response to the notice Shri S.Janardhanan, Chartered Accountant, Pollachi was present. The case was discussed with the assessee's representative on different dates. After scrutinising the details filed by the assessee and after discussing the case with assessee's representative, the case is finalised as under :-

3. During the course of search in the case of Shri S.V.Srinivasan (son of the assessee), it was noticed that an immovable property being land and building was purchased by the assessee on 23.11.1996 from Shri K.N.Natarajan for a stated consideration of Rs.4,60,000/-. It was also noticed from the seized documents that additional stamp duty of Rs.1,00,739/- was paid for registering this property on 24-03-1997. Thus the total stamp duty paid for the purchase of this property (including the stamp paper value) amounts to Rs.1,95,739/-. On the basis of the stamp duty paid the market value of this property as on the date of the purchase amounts to more than 15 lakhs. Therefore a Sworn Statement was recorded during the course of search from the assessee Smt.V.Vijayalakshmi on this point. In her

Sworn Statement she stated that she is looked after by her sons. A Sworn Statement was also recorded from the seller of the property Shri K.N.Natarajan on 17-10-2001. In his Sworn Statement Shri K.N.Natarajan admitted that the above said property was sold by him for an actual consideration of Rs.18,50,000/- though the property was registered for Rs.4,60,000/- only. These facts were pointed out to Shri S.V.Srinivasan (son of the assessee) and a sworn Statement was recorded from him on 08-11-2001. In his Sworn Statement, Shri S.V.Srinivasan also admitted that the above said property was purchased for Rs.18,50,000/- from Shri K.N.Natarajan.

4. A letter was issued to the assessee on 08-09-2006 asking her to explain as to why the unaccounted Investment of Rs.13,90,000/- should not be assessed as her undisclosed Income for the Block Period. In response to this letter, the assessee filed a reply on 23-10-2006 stating as follows :-"

7. The subsequent appeals filed against the said Assessment Order of the Assessee-Smt.V.Vijayalakshmi- came to be dismissed by the learned CIT (Appeals) and also the Tribunal. The relevant extracts from the said orders are also quoted below for ready reference :

CIT (A) Order, dated 13.03.2007 :

"4. I have considered the submissions of the appellant very carefully. As regards questioning the validity of initiation of 158BD proceedings, the observation of Hon'ble ITAT in the case of Sri S.V.Srinivasan is worth reproducing which is as under :

"... Where in the case of third party, whose assets are found in search cases or whose books of account or other documents evidencing detection of addition are found therein, then they are liable to be proceeded against under sec.158BD of the Act. In the present case also, the Assessing Officer should have initiated action under sec. 158BD of the Act on the assessee's mother."

Based on this observation, Hon'ble ITAT itself has held in the case of Sri S.V.Srinivasan that it is a fit case for initiation of 158BD proceedings in the hands of appellant (i.e., the mother of Sri S.V.Srinivasan) to assess the value of property for 'on money' payment in the hands of the appellant. Thus in my opinion the initiation of 158BD proceedings are perfectly in order though the AO did not write this direction of ITAT in the order; rather he independently recorded the reasons for initiating 158 BD

proceedings which are also not incorrect. Thus, in any case, the initiation of action under section 158BD in the case of the appellant is fully justified.

4.1. As regards appellant's claim that no material was found during the course of search relating to 'on money' payment except the statements of seller and purchaser in which there are many contradictions, no addition should be made based on these statements only, I find that AO has rightly mentioned in the order that in view of the decisions as cited by him, the statements recorded during the course of search can be used or making an assessment even though no documents are found during the course of search. In this regard Hon'ble ITAT Chennai Bench "D" in the case of Dr.N.Sadasivam and Smt. S.Nirmala Vs.ACIT, Central Circle, IV, Coimbatore in IT (SS) A No.36 and 37 (Mds)/2004, has observed that :

" it is well settled that the statement recorded u/s 132 (4) has got great evidentiary value. The I.T.Act is a specific act and the assessment has to be made on the basis of material gathered by the AO. For this purpose, vast powers have been conferred on the Income-tax authorities for making investigation including powers to search. In the course of such search, the assessee makes some

admission and the AO need not make further investigation. Such admission and statement can be used as evidence and the assessment can be made on the basis of such statement. Thus, the sanctity of such provision will be lost if the assessee is allowed to contest that no addition can be made on the basis of such admission."

Tribunal's Order, dated 06.06.2008 :

"16. Regarding the contention of the ld. counsel that no satisfaction was recorded by the Assessing Authority before issuing notice under Section 158BD is not acceptable to us. Initially, the addition was made in the hands of the assessee's son Shri S.V.Srinivasan and when Shri S.V.Srinivasan filed appeal before Tribunal. The Tribunal found that the addition should have been considered in the hands of the assessee as required under Section 158BD. The Tribunal has made a definite finding that the matter has to be examined in the hands of the assessee under Section 158BD. The above direction was being executed by the Assessing Authority in compliance of law while assessment was initiated in the hands of the assessee. Therefore, the satisfaction necessary for initiating block assessment under Section 158BD in the hands of the assessee is very much apparent from the records of the case. The satisfaction straightaway comes

out of the order passed by the Tribunal in the case of the assessee's son Shri S.V.Srinivasan. Since the observation of the Tribunal is a judicial observation, it is always public and apparent and on record as well and has to be acted upon. That was done by the Assessing Authority. Therefore, non-recording of satisfaction as argued by the ld. counsel does not exist in this case."

8. The relevant provisions of Section 158BC and 158BD of the Act are also quoted below for ready reference :

"Procedure for Block Assessment.

158BC. *Where any search has been conducted under section 132 or books of account, other documents or assets are requisitioned under section 132A, in the case of any person, then,—*

(a) the Assessing Officer shall—

(i) in respect of search initiated or books of account or other documents or any assets requisitioned after the 30th day of June, 1995, but before the 1st day of January, 1997, serve a notice to such person requiring him to furnish within such time not being less than fifteen days;

(ii) in respect of search initiated or books of account or other documents or any assets requisitioned on or after the 1st day of January, 1997, serve a notice to such person requiring him to furnish within such time not being less than fifteen days but not more than forty-five days, as may be specified in the notice a return in the prescribed form and verified in the same manner as a return under clause (i) of sub-section (1) of **section 142**, setting forth his total income including the undisclosed income for the block period :

Provided that no notice under **section 148** is required to be issued for the purpose of proceeding under this Chapter :

Provided further that a person who has furnished a return under this clause shall not be entitled to file a revised return;

(b) the Assessing Officer shall proceed to determine the undisclosed income of the block period in the manner laid down in **section 158BB** and the provisions of **section 142**, sub-sections (2) and (3) of **section 143**, **section 144** and **section 145** shall, so far as may be, apply;

(c) the Assessing Officer, on determination of the undisclosed income of the block period in accordance with this Chapter, shall pass an order of assessment and determine the tax payable by him on the basis of such assessment;

(d) the assets seized under *section 132* or requisitioned under *section 132A* shall be dealt with in accordance with the provisions of *section 132B*.

Undisclosed Income of any other person.

158BD. Where the Assessing Officer is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search was made under *section 132* or whose books of account or other documents or any assets were requisitioned under *section 132A*, then, the books of account, other 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 under *section 158BC* against such other person and the provisions of this Chapter shall apply accordingly.”

The Scheme of the aforesaid provisions of Sections 158BC and 158BD of the Act is, thus, very clear. Where search is conducted under Section 132 of the Act and the proceedings for Assessment for Block Period are undertaken under Section 158BC of the Act and where the Assessing Officer is satisfied that any **Undisclosed Income** belongs to any other person i.e., a third party, then, the record or document seized in the course of search is to be made over to the Assessing Officer having jurisdiction over such other person or third party and such Assessing Officer can proceed against such third party or other person under the provisions of Section 158BD read with Section 158BC of the Act and the provisions of the said Chapter would apply to such third party or other person, as if he or she is the person against whom Search has been conducted.

9. The very basis of initiating the proceedings under Section 158BD of the Act against the present Assessee-Smt.V.Vijayalakshmi- was the finding of the learned Tribunal in the appeal filed by the son of the Assessee - Mr.S.V.Srinivasan - that the tax was to be levied on **Undisclosed Income** in the form of property sold, which was held in the name of mother-

Smt.V.Vijayalakshmi. The observation that the assessment could be made only against the mother under Section 158BD of the Act was a reason sufficient to proceed against the present Assessee-mother – Smt.V.Vijayalakshmi. It is only after the Tribunal passed the order in the said appeal in the case of Shri S.V.Srinivasan on **03.01.2005** that the proceedings under Section 158BD of the Act were initiated against the present Assessee-Smt.V.Vijayalakshmi- on **18.03.2005** in the first instance, as is clear from the above quoted portion of the Assessment Order. Apparently, no objection was raised by the Assessee before the Assessing Authority regarding the necessity to record separate reasons by the Assessing Authority himself before initiating proceedings under Section 158BD of the Act. Even on issuance of letter on 08.09.2006, in Paragraph 4 of the order, the Assessee filed a reply on merits of the sale transaction, but, no question of jurisdiction on account of non-recording of reasons by the Assessing Authority for initiating proceedings under Section 158BD of the Act was raised before the Assessing Authority. It appears, that, for the first time, such objection was raised only before the learned CIT (A), who, vide Paragraph 4 of his order, quoted above, repelled such objections and found

that the reasons recorded by the learned Tribunal in the appeal order, passed in the case of the son of the assessee-Mr.S.V.Srinivasan- were sufficient. The learned CIT (A) also recorded in Paragraph 4 of his order that the Assessing Authority independently recorded the reasons for initiating Section 158BD Proceedings. Similar objections reiterated before the learned Tribunal also came to be dismissed as not sustainable. The learned Tribunal had repelled the said contention, holding that the reasons recorded by the learned Tribunal in the appeal order passed in the case of son of the present Assessee, against whom Search was conducted, are sufficient to proceed against the mother-present Assessee under Section 158BD of the Act.

10. In our opinion, the Appellate Authorities below have not committed any error in so holding. On the contrary, for not raising any objection in the first instance by the Assessee before the learned Assessing Authority itself when the Notice under Section 158BD of the Act was served upon her, it should be deemed that the mother – present Assessee - had acquiesced to the jurisdiction of the authority to proceed under Section 158BD of the Act and given up any objection with regard to the same.

Recording of independent and separate reasons other than the one which is already recorded by the learned Tribunal in the appeal order passed in the case of son of the present Assessee, against whom Search was conducted in the present case, is not even envisaged under the Scheme of the Act under Section 158BD of the Act.

11. It is true that the Assessing Authority should record such satisfaction at initial stage itself when the proceedings of Assessment under Section 158BC of the Act are undertaken against the person, on whom Search is conducted. If it is found that the seized documents were the material pertaining to the third party or other person, then, after recording of such satisfaction, such third party or other person can be proceeded against under Section 158BD of the Act and then the Provisions under Section 158BC and Chapter XIVB of the Act would apply to such third party. But, once the Tribunal finally concluded the finding of fact in the case of persons against whom search was made that the transaction of sale of property in question was taxable in the hands of mother-present Assessee-Smt.V.Vijayalakshmi, non-recording of reasons independently by the

Assessing Authority, assuming it to be so, though there is nothing on record to indicate otherwise, cannot be said to be fatal for initiating proceedings under Section 158BD of the Act against the mother-present Assessee.

12. A harmonious and combined reading of Sections 158BC and 158 BD of the Act is necessary to give effect to the Scheme of Assessment in the case of Search undertaken against the Assessee to bring to tax the Undisclosed Income under Chapter XIVB of the Act.

13. Therefore, as far as the First Question framed above is concerned, we answer the same in the aforesaid manner against the Assessee and in favour of the Revenue.

14. Adverting to other Questions relating to merits of Additions made in the hands of the present Assessee, we do not find any illegality or perversity in the same, as they remain findings of fact bringing to tax the Undisclosed Income in the hands of the present Assessee under Section 158BD read with Section 158 BC of the Act.

15. Learned counsel for the Appellant/Assessee relied upon a decision of the Hon'ble Supreme Court in the case of *Manish Maheshwari v. Assistant Commissioner of Income Tax*, (2007) 289 ITR 341, wherein the Hon'ble Supreme Court has held that where the impugned notice under Section 158BC of the Act does not record any satisfaction on the part of the Assessing Officer and the documents and other assets recovered during the Search had not been handed over to the Assessing Officer having jurisdiction in the matter and no proceedings under Section 158BC of the Act had been initiated, the proceedings against the third party could not be undertaken under Section 158BD of the Act. The relevant portion of the said judgment is quoted below for ready reference :

*“11. Law in this regard is clear and explicit. The only question which arises for our consideration is as to whether the notice dated 06.02.1996 satisfies the requirements of **Section 158BD** of the Act. The said notice does not record any satisfaction on the part of the Assessing Officer. Documents and other assets recovered during search had not been handed over to the Assessing Officer having jurisdiction in the matter.*

12. No proceeding under *Section 158BC* had been initiated. There is, thus, a patent non-application of mind. A prescribed form had been utilized. Even the status of the assessee had not been specified. It had only been mentioned that the search was conducted in the month of November 1995. No other information had been furnished. The provisions contained in Chapter XIVB are drastic in nature. It has draconian consequences. Such a proceeding can be initiated, it would bear repetition to state, only if a raid is conducted. When the provisions are attracted, legal presumptions are raised against the assessee. The burden shifts on the assessee. Audited accounts for a period of ten years may have to be reopened.”

16. With respects, we find that the said case is distinguishable on facts itself. While there can be no quarrel on the proposition of law laid down by the Hon'ble Supreme Court, in the case before it, apparently, no proceedings under Section 158BC of the Act had been initiated and also no other information as to the Search conducted in the month of November,1995, was provided. The proceedings under Section 158BD of the Act were initiated against the Assessee by a Notice issued on 06.02.1996. The issuance of such Notice in a prescribed printed format was

found to be faulty by the Court, as the Assessing Officer had not recorded any satisfaction with regard to the same.

17. But, in the case before us, nothing of the said nature has happened. On the contrary, the appeal of the son of the present Assessee- Mr.S.V.Srinivasan- has been dealt with by the Tribunal and in those appellate proceedings under Section 158 BC of the Act only, the Tribunal found that for the transaction in question for sale of property which was standing in the name of the present assessee, namely, mother- Smt.V.Vijayalakshmi, the Assessing Officer could have initiated proceedings only under Section 158BD of the Act. That being so, we have found, as aforesaid, that the Assessing Officer could proceed on the basis of that satisfaction under Section 158BD of the Act. Hence, the learned Tribunal and also the CIT (A) have rightly dismissed the appeal of the present Assessee, laying a challenge to the proceedings under Section 158BD of the Act against the present Assessee.

18. Appeal of the Assessee is, therefore, devoid of merit and

liable to be dismissed. Accordingly, it is dismissed. No costs.

Index : Yes
Internet : Yes
Speaking Order

(V.K.,J.) (C.V.K.,J.)
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To

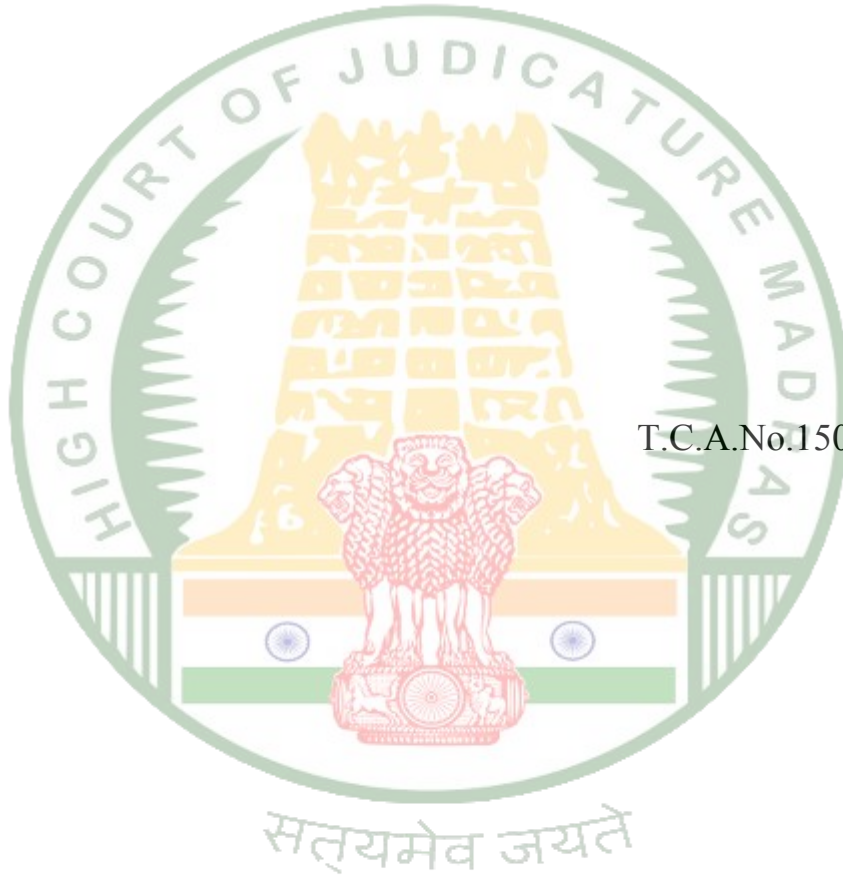
- 1.The Deputy Commissioner of Income Tax,
Central Circle II,
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