IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2020
CORAM
THE HON'BLE MR.JUSTICE M.M.SUNDRESH
and
THE HON'BLE MRS.JUSTICE R.HEMALATHA

W.P.No.2542 of 2018
& W.M.P.Nos. 26821 & 3102 of 2018

M.J.Shankar .. Petitioner

Vs

1.The Director of Income Tax (Investigation),
No.108, Mahatma Gandhi Salai,
Nungambakkam, Chennai - 600 034.

2.The Joint Director of Income Tax (Investigation),
No.108, Mahatma Gandhi Salai,
Nungambakkam, Chennai - 600 034.

3.The Central Bureau of Investigation (Special Unit),
'A' Wing - 3rd Floor,
Rajaji Bhawan, Besant Nagar,
Chennai - 600 090. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the respondents 1 and 2 to complete the investigation on my complaint dated 06.10.2015 and the act upon the said investigation within a time frame to be fixed by this Court may deem it fit and necessary on the facts and circumstances of the case.

For Petitioner .. Mr.M.J. Shankar
Party-in-Person

For Respondents .. Mr.A.P.Srinivas
for R1 and R2
No appearance for R3

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ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

The petitioner herein has provided a secret information to the respondents and based upon the same sought action against the entity, who is not before us. As no action was forthcoming, the petitioner has come forward with this writ petition seeking a direction to the respondents to complete the investigation on his complaint dated 06.10.2015 and act upon the same.

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2. The aforesaid petition filed by the petitioner dated 06.10.2015 is the tax evasion petition in respect of certain land transactions between the parties mentioned in the memorandum of understanding.

3. The petitioner submitted that it is the respondents who have not taken action on the information furnished. Section 147 r/w 149 of the Income Tax Act, 1961 would not stand in the way in the teeth of Section 153-A of the Income Tax Act, 1961. In the year 2017, an amendment has been made to the extending the time period of six years for the purpose of investigation qua search assessment to 10 years. Therefore, the writ petition will have to be allowed.

4. The learned counsel appearing for the respondents 1 and 2 submitted that the period of six years is over since the alleged occurrence was much earlier. Therefore, there is a bar under the Act to go into the allegations and the materials made by the petitioner against the third party for the purpose of initiating action. Section 147 of the Act deals with the income escaping assessment. This provision has to be read along with Section 149 of the Act which prescribes time limit for notice. As per Section 149 of the Act, the time limit is four years with an exception being two more years. Accordingly, the total period is six years. Section 153-A of the Act cannot be pressed into service since it speaks of assessment in case of search or requisition. The said situation is not available on hand. Therefore, the writ petition will have to be dismissed.

5. We have heard the petitioner and the learned counsel appearing for the respondents.

6. Though the petitioner submitted that Section 153-A of the Act will also apply to a case of requisition, the same cannot be attributable at the instance of the petitioner. Initiation of search and requisition have to be attributed to the department alone. Otherwise Section 153 of the Act can never be applied. The word "initiation" of search has to be kept in mind in giving interpretation to the word "requisitioning of". While interpreting the revenue statute one has to adopt a meaning which is beneficial to the assessee. The person against whom the petitioner seeks action is not before us. In fact, the said factual position has also been noted by this court when an order was passed on 21.08.2018 directing the petitioner to implead the person against whom he wants action to be taken. Though notice was ordered in the impleading petition filed pursuant to the above said order in W.M.P.No.26821 of 2020, as of now, service has not been effected.

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7. A perusal of the counter affidavit also would show that the information provided by the petitioner on 06.10.2015 being pertaining to the year 2005-2008 is barred by limitation. To initiate search is a role which is to be played by the department alone and for doing so, there has to be a subjective satisfaction under Section 132 of the Act. Therefore, this court cannot direct the respondents 1 and 2 to undertake the said role not it can perform it by itself. Thus looking from any perspective we do not find any merit in the writ petition.

8. In the light of the discussions made above, we are of the view that the petitioner cannot seek such a relief before this court. Certainly, Section 153-A of the Act prohibits granting of the relief. The petitioner has come forward to file this writ petition anticipating reward from the respondents. Such a request cannot be at the cost of an assessee. When the law prohibits an action and the department itself has come forward to file an affidavit before this court that they are unable to initiate action, a writ of mandamus cannot be issued.

9. This writ petition stands dismissed accordingly. No costs. Consequently, connected WMPs are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

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Nungambakkam, Chennai - 600 034.

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3.The Central Bureau of Investigation (Special Unit),
'A' Wing - 3rd Floor,
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Chennai - 600 090.

+1 CC to Mr.A.P.Srinivas, Advocate sr 30042.

W.P.No.2542 of 2018

GJ(CO)
SP(16/10/2020)

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