IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:01.07.2021

CORAM:

THE HON'BLE Dr.JUSTICE ANITA SUMANTH

W.P. Nos.481 & 482 of 2020
And
WMP. Nos.3555, 3181, 561, 565, 564, 3183, 562, 3554 of 2020

Navkar Electronics,
Rep by Anil Chand Kothari,
No.4/11, Periyar Plaza,
Wallers Road, Mount Road,
Chennai - 600 002.
PAN No: AADFN4905C

..Petitioner in both WPs

Vs

Income Tax Officer,
Non-Corporate Ward - 9 (3),
No.121, M.G. Road,
Chennai - 600 034.

... Respondent in both Wps

Common Prayer: The writ petitions filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari to call for the records of the Respondent in PAN No:AADFN4905C dt.24.12.2019 and quash the Reassessment Order dated 24.12.2019 for AY 2016-17 & 2017-18 passed therein.

For Petitioner : Ms.G.Vardini Karthik in both Wps

For Respondent : Mrs.Hema Muralikrishnan, Senior Standing Counsel in both WPs

C O M M O N   O R D E R

Heard Ms.G.Vardini Karthik, learned counsel for the petitioner and Mrs.Hema Muralikrishnan, learned Senior Standing Counsel for the Income Tax Department.

2. The petitioner is a company and challenges two orders of re-assessment both dated 24.12.2019, passed under the provisions of the Income Tax Act, 1961 (in short 'Act') for assessment years 2016-17 and 2017-18. The legal issue argued before me is the assumption of jurisdiction by the Assessing Authority under Section 147 of the Act, which deals with re-assessment.

3. According to the learned counsel for the petitioner, the re-assessments have emanated out of search proceedings in the case of one Laxmi Remote India Pvt. Ltd. (LRIPL), under Section 132 of the Act. In such case, the only recourse would, according to her, be the provisions of Section 153C of the Act and not Section 147.

4. LRIPL had been subject to search by the Income Tax Department and the Assessing Authority of LRIPL had found the petitioner's name appearing along with 500 other entities in the Inventory Management System data base of LRIPL. That officer thus, forwarded the information in regard to this petitioners' engagement with LRIPL, under cover of communication dated 21.05.2018. The aforesaid communication as well as subsequent communications, exchanged between that Assessing Officer and the Assessing Officer of this petitioner, constitute internal communications that have been provided in a sealed cover for the benefit of the Court.

5. The documents reveal that a search was conducted on LRIPL, that was found to maintain two parallel softwares i.e. IVMS and Enterprise Resources Personnel (ERP) software for recording transactions. It was only the details in the ERP that was disclosed to Government agencies whereas, according to that Assessing Officer, the IVMS was used as a second set of accounts to record cash sales. It was in the IVMS that this petitioners' name figured along with details of sales of varying amounts for the periods 2015-16, 2016-17 and 2017-18. A statement had also been recorded in the course of that search wherein reference was made to the IVMS. This, according to that Assessing Officer, constituted 'information' which he shared with his counterpart in Chennai, the respondent herein.

6. After setting out the entire history of the search in the case of LRIPL, he states that information over in regard to 500 LRIPL customers, to whom cash sales had been made by LRIPL was being passed on to their respective assessing officers to examine whether undisclosed income would arise in those cases under Section 69C or other applicable provisions of the Act.

7. The petitioner would argue that the provisions of Section 153C constitute a complete code. It commences with a

non-obstante clause, as it is applicable notwithstanding other statutory provisions, including Section 147 of the Act. Section 153C is applicable not just in the case of seized material containing particulars of third parties but also 'information' found in the course of search, relatable to third parties. Thus, according to the petitioner, since information has been allegedly found relatable to this petitioner in the course of search of LRIPL, it is only jurisdiction under Section 153C that should have been assumed and not Section 147.

8. She relies on certain decisions of the Tribunal that support this view. Though some of the Tribunal decisions did travel to the High Court, those appeals, filed at the instance of the revenue, came to be closed on the basis of low monetary effect and thus there is no High Court that has considered this issue thus far. All the decisions cited by learned counsel for the petitioner proceed on the basis that the provisions of Section 153, which replace erstwhile chapter XIV-B of the Act constitute a complete code and would stand automatically triggered in the course of search of a third party where incriminating material/information has been found.

9. Per contra, the revenue counsel would argue that the provisions of Section 147 are in fact more stringent than the provisions of Section 153C, since they require prior sanction to be obtained from a superior officer before issuing a notice for re-assessment. The information in this case was not specific to only one or a few individuals but names around 500 individuals/entities to whom cash sales had been made. It was thus not practicable for the Assessing Officer at that end to have invoked the procedure under Section 153C in so many cases. Thus, and in order to protect the interests of the revenue, he proceeded to share the information with his counterparts suggesting that the needful be done to bring to tax any income that might have escaped assessment.

10. Learned revenue counsel distinguishes the decision relied on by the petitioner stating that those petitions involved only a single or few third parties/entity whereas, the present case involved around 500 such entities.

11. The provisions of Section 153C and 147 are separate, distinct and independent measures that apply to different situations. No doubt, in the present case, the impugned assessment is based upon materials found in the course of search under Section 132. Also unquestionably, the provisions of Section 153C apply notwithstanding anything contained in other provisions including Section 147. This only means that the provisions of Section 153C can be invoked irrespective of

whether a regular or re-assessment order had been framed originally.

12. The procedure under Section 153C requires the satisfaction of the following parameters:

(a) A search in the premises of an entity/person under Section 132.

(b) Incriminating material such as money, bullions, jewellery or other valuable article, which has been seized or requisitioned in the searched premises but belongs to a third party.

(c) Books of accounts or documents that have been seized or requisitioned which pertains to a third party or which contains information relating to a third party, (b) and (c) collectively referred to as 'materials'.

(d) The recording of satisfaction by the Assessing officer of the searched entity to the effect that the materials found refer to a specified third party.

(e) The transfer of that incriminating material to the Assessing Officer of the third party.

(f) The recording of a satisfaction by the Assessing officer of the third party that the material transferred to him has a bearing on the determination of the total income of the third party.

13. If the conditions as set out under (a) to (f) are satisfied, then the assessing officer of the third party would proceed to initiate assessment proceedings under Section 153C, as against that third party.

14. In this case, the names of around 500 persons/entities figure in the IVMS data and the question of logistics or practicable application of the provisions cannot be lost sight of. If the law offers multiple options to an officer as to how to proceed in a matter, it is for that officer to determine and come to a conclusion as to the proper, appropriate and simplest method of proceeding further.

15. The provisions of Section 147 and 148 provide for assessment of income that have escaped assessment. Nowhere in Section 147 are the provisions of Section 153 excluded.

16. The Assessing Officer must, in choosing the provision to apply, bear in mind the statutory conditions set out and arrive at a decision having regard to the logistics and the efficacy of the provision chosen. In a case such as the present, the respondent has, in my view, arrived at the proper conclusion, bearing in mind the interests of revenue, to share the information found with the assessing officers of the third parties. He is in no position to arrive at statutory

‘satisfaction’ in all the cases as to whether the name of the third party in the IVMS data is genuine/germane or otherwise.

17. The decisions relied on by the petitioner proceed on the basis that the use of the non-obstante clause in Section 153C would limit the choice of the Assessing Officers only to a search assessment.

18. In one of the decisions, in the case of Assistant Commisioner of Income Tax Vs. Shri Srinivas Rao Hoskote (ITA.Nos.1154 and 1155/Bang/2015 dated 21.02.2018) at para 3.8 of the order, the Tribunal states that ‘A satisfaction to the effect that material seized during the search belongs to the appellant ought to have been arrived at and proceedings u/s 153C read with section 153A ought to have been commenced against the appellant’.

19. Certainly, satisfaction cannot be thrust upon the Assessing Officer. The requirement of recording of ‘satisfaction’ requires independent application of mind by the officer upon his detailed examination of all relevant material.

20. These writ petitions are dismissed. The petitioner is permitted to file appeals, if it so desires, before the Commissioner of Income Tax (Appeals) agitating merits of the matter. If such appeals are filed within a period of four weeks from the date of uploading of this order on the official website of this Court, such appeals shall be taken on file by the Commissioner of Income Tax (Appeals) without reference to limitation, heard and disposed on merits and in accordance with law. These writ petitions have been filed within thirty days from date of impugned assessment orders and hence this liberty. Connected miscellaneous petitions are closed. No costs.

-s/d-
Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

ska
To
1. The Income Tax Officer,
Non-Corporate Ward – 9 (3),
No.121, M.G. Road,
Chennai – 600 034.

2.The Commisioner of Income Tax(Appeals)
Chennai

+2 Ccs to M/s.G. Vardhini Karthik, Advocate sr 30706, 30707
+1 CC to M/s. Hema Muralikrishnan, Advocate sr 30511.

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NRL(CO)
SP(25/08/2021)