

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 18.03.2021

DELIVERED ON: 16.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE C.SARAVANAN

W.P.No.34571 of 2013

Shri A. N. Dyaneswaran, ... Petitioner

Vs.

1.The Commissioner of Income Tax,
Central Circle, II(4),
Ayyakar Bhavan, No.46,
Mahatma Gandhi Road, Nungambakkam,
Chennai 600 034.

2.The Deputy Commissioner of Income Tax,
Central Circle, II(4),
Ist Floor, New Building, No.46,
Mahatma Gandhi Road, Nungambakkam,
Chennai 600 034. ... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India praying for to issue a Writ or order in the nature of Writ more particularly Writ of Certiorari calling for records of the 2nd respondent in assessment proceedings in C.No.DCIT/C.C-II(4)/2013-14 dated 11.12.2013 and No.DCIT/C.C-II(4)/2013-14 dated 09.12.2013 pertaining to Pan No.AAFPD4407M, communication dated 19.11.2013, quash the same as it is being initiated after a lapse of six years from the order of this Hon'ble Court in TCA No.150 of 2004 dated 03.09.2007.

For Petitioner : Senior Counsel Mr.B.Kumar
(For Mr. B. Satish Sundar)

For Respondents : Mr.A.P. Srinivas
(Senior Standing Counsel)

O R D E R

The present writ petition has been filed by the petitioner for a writ of certiorari, to call for the records of the 2nd respondent in assessment proceedings in C.No.DCIT/C.C-II(4)/2013-14 dated 11.12.2013 and No.DCIT-II

(4)/2013-14 dated 09.12.2013, pertaining to PAN No.AAFPD4407M vide communication dated 19.11.2013 and quash the same as having been initiated after a lapse of 6 years from the order of this Court in Tax Case (Appeal) No.150 of 2004 dated 03.09.2007.

2.The petitioner, a former Managing Director of Tamilnadu Minerals Limited (TAMIN) was subject to a block assessment for the period 01.04.1985 to 20.01.1996, pursuant to a search conducted at various places of the petitioner and his associates on 19/20.01.1996. Several incriminating documents were recovered and therefore based on the above such proceedings under Chapter XIVB of the Income Tax Act, 1961 were initiated. As per Section 158-BC of the Income Tax Act, 1961 as it stood there the time limit for completion of block assessment was one year from the end of the month in which the last of the authorization of search under Section 132 or for requisition under authorization was made.

3.Under these circumstances, an Assessment order came to be passed on 31.01.1997 under Section 143(3) read with Section 158BC of the Income Tax Act, 1961.

4. A very detailed order was passed by the Assistant Commissioner of Income Tax, Chennai on 30.01.1997 for the block period 1986-1987 to 1996-

1997 upto 20.01.1996 being the date of the search. The order placed reliance on the following:-

List of Annexures

1.	Granite Sample Papers	Annexure A(11 papers)
2.	Details of money received for grant of quarry lease	Annexure B(80 papers)
3.	Dr.Dharmambal Signature & Affidavit	Annexure C(10 papers)
4.	List of costly gadgets	Annexure D(1 papers)
5.	Copy of the seized material relating to secret commission received by the assessee	Annexure E(5 papers)
6.	Details of donation to D.N.Trust received as Demand Drafts	Annexure F(6 papers)

5.Aggrieved by the said order, the petitioner herein filed an appeal under Section 253 (1)(b) of the Income Tax Act, 1961 before the Income Tax Appellate Tribunal in IT(S&S) A.No.54/Mds/1997 for the assessment years 1986-1987 to 1996-1997. An order came to be passed by the Tribunal on 29.10.2013 by partly allowing the appeal.

6.It is not relevant to delve into the aforesaid order authored by the Judicial Member. However what is curious from the preamble to the said order is that the Income Tax Department was not represented by any of the authorized representatives before the Tribunal and the order came to be passed based on written submissions filed. The cause title reads as under:

IT(S&S) A.No.54/Mds/1997
(Block Assessment years: 1986-1987 to 1996-1997)
Shri A.N.Dyaneswaran,
Chennai. :Appellant

Asstt.Commissioner of Income-Tax,
Central Circle II(4), Chennai. :

Respondent

Appellant by : Shri K.Ravi
Respondent by : None (Written submissions filed).

7.It appears that the case was taken up for hearing on 20.02.2013 and since the hearing could not be completed on that date. It was adjourned to 24.02.2003 and heard again on 24.02.2003 and 25.02.2003 on which date the departmental representative submitted that he would require the presence of the Assessing Officer while making submissions and therefore requested for adjournment of the case to the 3rd week of April, 2003. It was submitted that the Assessing Officer would be busy, for completing the assessments as the time for completing the assessment in his circle would expire. The Tribunal therefore directed the counsel for the petitioner before the Tribunal to file a written submission and supply a copy of the same to Departmental representative in advance and the Departmental representative was directed to file a reply before the next date of hearing and the matter was adjourned to 22.04.2003.

8.The case was thereafter taken up for hearing on 19.05.2003 and again when the matter was taken up for hearing, there was a request for adjournment on behalf of the Income Tax Department. It appears that a letter dated 19.05.2003 was filed before the Tribunal for adjournment with the following request:-

''Since no one else is conversant with the case, please forward the enclosed written submission of the Departmental Representatives before the Hon.Members, Income Tax Appellate Tribunal, 'A' Bench for favour of their orders.''

Rejecting the request of the Income Tax Department, the following observations:-

''The case is treated as closed. The Department may file the reply if desire so

on or before 18th June 2003 and after getting the copies the assessee if so desire a re-joinder within a week of getting his reply.''

9.The Tribunal thereafter proceeded to pass an order dated 29.10.2003 and thereby granted substantial relief to the petitioner.

10.Aggrieved by the same, the respondent Income Tax Department filed the TCA.No.150 of 2004 before the Division Bench of this Court under Section 260A of the Income Tax Act, 1961. The Division bench of this Court by its order dated 03.09.2007 framed the following substantial questions of law:-

1.Whether in the facts and circumstances of the case, the Tribunal had enough material to hold, as was right in deleting the additions made on account of money received by the assessee from persons seeking granite mining licenses from TAMIN?

2.Whether in the facts and circumstances of the case, the Tribunal was right in holding that the case found in the assessee's office and residential premises was amounts given to the Tamil Nadu Basket Ball Association?

3.Whether in the facts and circumstances of the case, the Tribunal was right in treating the huge investments made in the names of the assessee's mother and son as not that of the assessee on the ground that since the mother had filed a declaration under KVSS and since the son is a bank officer who has an independent source of income?

4.Whether in the facts and circumstances of the case, the Tribunal was right in holding that the amounts in deposits in the name of Dr.Dharmambal Namasivayam Trust cannot be included in the hands of the assessee under Chapter XIV-B in the absence of clear evidence found as a result of search?

5.Whether in the facts and circumstances of the case, the Tribunal had enough material to hold, and was right in accepting the assessee's explanation that the costly sarees worth Rs.10.20 lakhs found during the search were received as gifts at the time of marriage?

6.Whether in the facts and circumstances of the case, the Tribunal was right in deleting the addition on account of estimated marriage expenses of the assessee's son?

7.Whether in the facts and circumstances of the case, the Tribunal had enough material

to hold and was right in holding that the advance given to the Tamil nadu Basket Ball Association by the assessee came out of collections made for the association?

8. Whether in the facts and circumstances of the case, the Tribunal was right in deleting the addition on account of secret commission received by the assessee from foreign companies for sale of granite, on the ground that the revenue had not placed on record how the amount was received by the assessee?

9. Whether the facts and circumstances of the case, the Tribunal was right in holding that the foreign currency found in the assessee's house belonged to Seethalakshmi on the basis of a mere statement?

10. Whether the facts and circumstances of the case, the Tribunal was right in holding that the addition in respect of fixed deposits in the name of Narayanan should be deleted from the hands of the assessee as the said Narayanan had filed KVSS declarations?

11. Whether in the facts and circumstances of the case, the Tribunal was hyper technical in insisting only on direct evidence to prove each addition, and in not accepting circumstantial evidence?.

11. The Division bench of this Court after hearing the substantial questions raised by the respondent Income Tax Department ultimately partly set aside the order of the Tribunal vide its order dated 03.09.2007 and remitted the case back with a direction to re-consider the matter afresh, keeping in view of the discussions made therein, and to pass orders after giving opportunity to the petitioner in accordance with law. The operative portion of the order dated 03.09.2007 of the Division Bench of this Court in TCA No.150 of 2004 is reproduced below:-

6. To summarise:-

Question No.1- Remitted to the Assessing officer with observation.

Questions No.2 to 10 - Answered in favour of the assessee.

Question No.11 - As this question has become academic, it does not require consideration by this Court.

Accordingly, the Tax Case is partly allowed, Consequently, T.C.M.P.No.118 of 2005 is closed. No costs.

12. Aggrieved by the above order dated 03.09.2007 of the Division Bench of this Court in TCA No.150 of 2004, the respondent Income Tax Department filed an appeal with a delay

before the Hon'ble Supreme Court. Though, the number of delay has not be explained in the counter filed by the respondent Income Tax Department, what is evident is that the SLP filed by the respondent Income Tax Department against the order dated 03.09.2007 of the Division Bench of this Court in TCA.No.150 of 2004 was dismissed only on the ground of delay in filing the appeal by the Hon'ble Supreme Court vide its order dated 05.07.2013.

13.Pursuant to the dismissal of the SLP filed by the respondent Income Tax Department, notice dated 19.11.2013 was issued to the petitioner which has been impugned in this writ petition wherein the respondent Income Tax Department has stated that the an opportunity was being given to the petitioner to work out the modality for cross examination of about 29 persons who had given statement against the petitioner and the petitioner was to make his own arrangement for cross examining these persons at his convenience in different places in Tamil Nadu, Karnataka and Andhra Pradesh. The respondent also includes 3 seized materials and that entries relating to same which reads as follows:

7.In this connection, it is seen that in 3 seized material viz. NGN/B&D/LS-15, NGN/B&D/LS-17 and NGN/B&D/LS-18, there are 149, 53 and 420 entries respectively, totalling to 622 entries. The full list of these entries are enclosed herewith. Out of the 29 persons referred to above, entries relating to some of them are found in this list also which is indicated separately in the list as (***). Except very few cases as above, these entries do not have complete addresses. Thus in the absence of complete address, as directed by the Hon'ble High court the enquiries cannot be extended to other persons in this list even on a sampling basis if not for all persons.

8.It is seen that these 3 seized materials fall under the category of being in your own letterhead or that of TAMILNADU and also in your handwriting apparently. Therefore, you are requested to furnish the complete address of these persons in the list and also explain the nature of its contents, so that the order of the High Court could be implemented. In this connection, your attention is also drawn to the provisions of section 132(4A) of the Income Tax Act.

14.The petitioner partly participated in the said proceedings and thereafter raised an objection under Section 131(1) A of the Income Tax Department and stated that the

proceedings were been conducted in violation of principles of natural justice. By communication dated 11.12.2013 Deputy Commissioner of Income Tax informed the petitioner that the questioning the jurisdiction of the Deputy Commissioner of Income Tax, Central Circle II (4), Chennai was rejected as devoid of merits as a cross objection of proceedings were conducted in his capacity of the Assessing Officer as per the directions of the High Court and there were 3 persons who were present and are made available for the petitioner to commence his cross examination. The petitioner was therefore called upon to commence cross examination of these witnesses.

15. On receipt of the above communication dated 11.12.2013 the petitioner filed the present writ petition for the above relief. The case of the petitioner in the present writ petition is that though the respondent have re-commenced the remand proceedings after a lapse of six years from 03.09.2007 from the date of disposal of the petitioner's Appeal in TCA.No.150 of 2004 by this Court.

16. It is submitted that there was no reasonable excuse on the part of the respondent in delaying to comply with the directions of this Court. It is submitted that even though there is no time limit prescribed in the order of the High Court remanding the case back to the 2nd respondent to complete the assessment, it should have commenced within a reasonable period of time.

17. The said proceedings should have been commenced and completed within a reasonable period and therefore the commencing under the proceedings long after the event by merely producing few witnesses for cross examination was in violation of principles of natural justice.

18. It is further submitted that the entire investigation was based on certain records allegedly evidencing receipt of Commission for giving mineral license to about 971 persons out of which only 23 were examined by the Department and therefore the assessment proposed was based on sampling and cannot be accepted.

19. The department had itself admitted the inability locate the scores of the persons from whom the petitioner had allegedly received commission during the information allegedly gathered during the search conducted on 19/20.01.1997.

20. It is submitted that the Division Bench of this Court has categorically held that the respondent cannot proceed without corroborative evidence of persons whose statements have been recorded. It is submitted that the seized materials relate to 345 applicants, however no dates have been mentioned. In respect of the same, the Assessing Officer totalled the amount and made the addition of Rs.20,31,99,350/-

in the year of search, i.e, for the assessment year 1996-1997. It is submitted that huge addition was made without verification from the 345 persons. The fact whether really amounts were paid or not is not mentioned. Even if it is assumed that the said amounts were paid, the details regarding the dates of payment are not mentioned. Without considering the above aspects, the Assessing Officer has made addition without any factual basis and justification.

21.It is submitted that under these circumstances, the case was remitted back to the Assessing Officer with a specific direction to consider the matter afresh, keeping in view of the discussions made in the order, and to pass orders after giving opportunity to the assessee in accordance with law.

22.The learned Senior Counsel appearing for the petitioner further submits that under Section 158BH of the Income Tax Act, 1961 it has been provided that save as otherwise provided in a search conduct, all the other provision of the Acts were applied assessment made in chapter 14 of the Income Tax Act, i.e, (XIV) and therefore submits there should be a harmonious interpretation to the provisions of the Income Tax Act, 1961 in the context of remand order. The respondents should have completed the assessment proceedings within a period of 1 year. However the Department has taken about 6 years to implement the order of the High Court and that the delay is not excusable.

23.In this connection, learned senior counsel placed the reliance on the decision of the Allahabad High Court in the case of in the case of Manik Chand Burman Vs. Income-Tax Officer (1998) 229 ITR 90 which reads as under:

2.This is a classic example of the callousness and the lethargic attitude of the respondent. The facts are that the assessment came to be completed for the year 1949-50 on the petitioner on March 23, 1954. The petitioner, aggrieved by the said assessment order, went up in appeal. The Appellate Assistant commissioner of Income Tax by his order dated December 30, 1957, set aside the assessment order directing the Assessing Officer to redo the assessment in the light of directions as contained in the appellate order. The petitioner thereafter was called upon to appear before the Assessing Officer on several dates. Several notices had been issued during the period, ranging from 1970 to 1976. After a lapse of about 7 years, the respondent issued two notices dated January 18, 1983, and January 28, 1983, and then the petitioner filed the instant writ petition before this Court challenging the impugned notices mainly on the

ground that after a considerable lapse of time, the respondent was not justified in having issued the said notices. In paragraph No.19 of the writ petition, it is stated that at the relevant time, there was no limitation for making such assessment. However, learned counsel for the petitioner submits before us that when no limitation is prescribed, then the respondent should have made the assessment within a reasonable time. It is a well-settled principle of law that when no limitation is prescribed to complete an assessment, the same should be done within a reasonable time. In the absence of the law of limitation, the respondent is not free to take up the proceedings at any time.

4.It is therefore, clear from Sub-section (2A) of Section 153 of the Income-Tax Act that after setting aside or cancellation, an order of assessment may be made at any time before the expiry of two years from the end of the financial year in which the order under Section 146 cancelling the assessment is passed by the Assessing Officer. Prior to the insertion of Sub Section (2A) in Section 153 in the year 1970, there was a Circular No.10-P(V-68) of 1968, dated 15th October, 1968, to the effect that if any assessment has been set aside in appeal that should normally be completed within two years. The period of limitation as suggested in the said circular was later accepted by the Central legislation and this is how sub-section (2A) came to be inserted in Section 153 of the Income-Tax Act. From, this it is manifest that the Department never intended to keep the proceedings open for years. Though limitation was not there before sub-section (2A) was inserted in Section 153 yet the circular clearly indicates the Department's intention in this regard. Therefore, even if limitation was not there under the old Act, still it is not open to learned Standing Counsel to argue that the assessment could have been completed at any time in case an order in appeal for redoing the assessment was passed.

24.The learned senior counsel for the petitioner thereafter placed the reliance on the decision of the Kerala High Court in K.Iswara Bhat Vs. Commissioner of Agricultural Income-tax (2000) ITR 238 wherein Division Bench of this Court held that proceedings initiated were set aside with a direction to the assessing authority to assess the assessee in

as HUF. Delay in initiating the proceedings was held unreasonable and irrational as order was passed after an inordinate delay.

25.The another decision of this Court in the case of M.Srinivasa Rao Vs. Assistant Commissioner of Income Tax (2007) 295 ITR 136 was invited which followed the decisions of the Hon'ble Supreme Court in Mohamad Kavi Mohamd Amin Vs. Fatmabal Ibrahim (1997) 6 SCC 71 wherein held as follows:

It was held that time limit is not prescribed under Section 153(3) of the Act, the impugned proceedings initiated by the respondent after a lapse of six years cannot be allowed to continue, hence, the impugned order is quashed and the writ petition is allowed. The fact that the Tribunal had remitted the case back to the Assessing Officer for fresh consideration by its order dated 09.07.2001, after holding an enquiry regarding the entry in the trial balance of S.M.S.Gardens receiving Rs.3,96,000 from one Periyaswamy towards sale of old furniture and fixtures at Rs.3,96,000 and whether this amount was really given by the petitioner or Periyasamy.

26.It is submitted that there the impugned proceedings initiated by the respondent after a lapse of six years of the order could not be allowed to be continued and therefore the impugned order was quashed and the writ petition was allowed. Therefore, the Tribunal had remitted the case back to the Assessing Officer for fresh consideration, by its order dated 09.07.2001, after holding an enquiry regarding the entry in the trial balance of S.M.S.Gardens receiving Rs.3,96,000 from one Periyaswamy towards sale of old furniture and fixtures at Rs.3,96,000 and whether this amount was really given by the petitioner or Periyasamy. It is the further case of the petitioner that after the order of the Tribunal, the respondent has not taken any action for holding an enquiry for passing fresh assessment order with regard to addition of Rs.3,96,000.

27.The learned Senior Counsel also referred to the decision of this Court in GE T & D India Limited Vs Deputy Commissioner of Income-Tax, Company Circle I(1), Chennai [2019] 414 ITR 727 (Mad) was followed by the following observations:

22.The alternate ground raised by the petitioner is that the assessment proceedings requires to be made within a reasonable time and as such, the delay of 8 years and 7 months is inordinate and unreasonable and therefore, the petitioner is

entitled to succeed. One of the settled proposition of law, as decided in various decisions of the Hon'ble Apex Court as well as many High Courts is that where no limitation is prescribed for completion of reassessment, such process must be completed within a reasonable time and this proposition would depend on the facts and circumstances of each and every case.

28. The learned senior counsel also submits that the decisions rendered in Hon'ble Supreme Court in *State of Punjab and Others Vs. Bhatinda District Cooperative Milk Producers Union Limited* (2007) 11 SCC 363 wherein held as follows:

"In Section 21 of the Act although no period of limitation has been prescribed therefor, the same would not mean that the suo motu power can be exercised at any time. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors."

29. The learned senior counsel for the petitioner further drew attention to the decision of the Hon'ble Delhi High Court in *Commissioner of Income-Tax Vs. NHK Japan Broadcasting Corporation* (2008) 305 ITR 137 wherein it was held as follows:

Whether the Income-tax Appellate Tribunal was correct in law in holding that the orders passed under Section 201(1) and 201(1A) of the Income-tax Act, 1961, are invalid and barred by time having been passed beyond a reasonable period? Filing of paper books is dispensed with. Since, the question arising in this appeal has arisen in a large number of other appeals, we have heard the matter in full and proceed to deliver the judgment rather than merely admitting the matter for taking it up in due course.

30. The learned counsel for the petitioner also placed a decision of the Hon'ble Delhi High Court in *Nokia India Private Limited Vs Deputy Commissioner of Income Tax in W.P. (C).No.1773 of 2016* order dated 21.09.2017 wherein the Hon'ble Delhi High Court held as under:

23. The Court is also unable to agree with the contention that unless the entire

assessment order is wholly set aside, the time limit for passing the fresh order under Section 153 (2A) would not be attracted. There is no warrant for such an interpretation. The object behind introduction of sub-section (2A) was to prescribe a time limit for completing the assessment proceedings upon the original assessment being set aside or being cancelled in appeal. Clearly, the intention was not to restrict the applicability of sub-section (2A) only to such cases where the 'entire' original assessment order is set aside.

25. In the present case, of the seven issues, the assessment in respect of five was set aside and the issues remanded for a fresh determination. Whether the remand was to the TPO or the DRP would not make a difference as long as what results from the remand is a fresh assessment of the issue. Clearly, therefore, the time limit for completing that exercise was governed by Section 153(2A) of the Act.

31. The learned counsel also states that prior to 1968, there was no limitation prescribed and that there was a circular and thereafter the Act has been amended and it has been specifically amended with a view to put an effort to complete the assessment proceedings in time.

32. Finally, the learned senior counsel for the petitioner also drew my attention to an unreported decision of the Delhi High Court at New Delhi in ITA 23/2021 & CM Appl. 5385/2021 (Condonation of Delay) in PCIT (Central) - 3 Vs. Anand Kumar Jain (HUF) and ITA 26/2021 & CM Appl. 5516/2021 (Condonation of Delay) in PCIT (Central) - 3 Vs. Anand Kumar Jain and ITA 27/2021 & CM Appl. 5522/2021 (Condonation of Delay) in PCIT (Central) - 3 Vs. Satish Dev Jain and ITA 28/2021 & CM Appl. 5524/2021 (Condonation of Delay) in PCIT (Central) - 3 Vs. Sajan Kumar Jain and ITA 29/2021 & CM Appl. 5525/2021 (Condonation of Delay) in PCIT (Central) - 3 Vs. Anand Kumar Jain and ITA 30/2021 & CM Appl. 5526/2021 (Condonation of Delay) in PCIT (Central) - 3 Vs. Anand Kumar Jain and ITA 31/2021 & CM Appl. 5540/2021 (Condonation of Delay) in PCIT (Central) - 3 Vs. Satish Dev Jain.

33. It is submitted that statement howsoever incriminating during the search made under Section 132(4) of the Income Tax Act, though has evidentiary value and is relevant, such statement cannot, on a standalone basis, without reference to any other material discovered during search and seizure

operations, empower an AO to frame the block assessment.

34. A reference was made to a decision of the Division Bench of the Andhra High Court in CIT Vs Sri Ramdas Motor Transport Ltd (1999) 238 ITR 177 (AP), wherein it was held that a reading of the provision of Section 132(4) of the Act in the context of discovery of undisclosed income, where no documents or incriminating material is found, the powers under Section 132(4) of the Act cannot be invoked.

35. Defending the impugned order, the learned counsel for the respondent submits that the petitioner had participated in the proceedings initiated pursuant to remand order of the High Court. He submits that there was a reasonable excuse for not implementing the order of the High Court in as much as the respondent had preferred an appeal against the order of the High Court.

36. After the Hon'ble Supreme Court dismissed the SLP on 05.07.2013, the first communication was sent on 19.11.2013 and called upon the petitioner to participate in the proceedings. He therefore prays for dismissal of the present writ petition.

37. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

38. The only question that arises in the present case is whether the delay in implementing the order dated 03.09.2007 of the Hon'ble Division Bench of this Court in T.C.A.No.150 of 2004, after a lapse of six years, on 09.12.2013 can be construed as an unreasonable period and therefore whether the entire proceedings initiated by the respondent was to be quashed.

39. It is the case of the petitioner, that the period covered under the block Assessment order is for the year 1986-1987 to 1996-1997. Block Assessment order was passed on 31.01.1998. The said proceedings were initiated and which culminated in the order of the Hon'ble High Court on 03.09.2007. Therefore it was incriminating on the part of the Income Tax Department to complete the proceedings. The petitioner cannot be accepted to participate in the proceedings by vesting different place of the licensee who had allegedly given the cross examination to the petitioner during the period between 1986-1987 to 1996-1997.

40. It is further submitted that for the seized materials relating to 345 applicants, no dates have been mentioned. In respect of the same, the Assessing Officer totalled the amount and made the additions of Rs.20,31,99,350/- in the year of search, i.e., for the assessment year 1996-1997. The Revenue obtained statement only from 23 applicants and left out 971 applicants who applied for license.

41. It is noted that out of 971 names found in the note book one to one correlation cannot be made. Out of 971 only for 23 persons will be called upon for cross examination. This will not sub serve or comply with the order of remand. The procedure sought to be adopted is also wrong as the assessee cannot be directed to go with his consultant to various part of this country to cross examining any of the witnesses.

42. I have considered arguments advanced by the Senior Counsel for the petitioner and the learned counsel for the Income Tax Department.

43. There are no disputes as far as the facts are concerned. The petitioner was a senior Indian Administrative Service officer and was serving as the Chairman Cum, Managing Director of the Tamil Nadu Minerals Ltd, (TAMIN) Tamil Nadu State Government Undertaking when a search was conducted under section 132 of the Income Tax Act, 1961 in various places of the petitioner and his associates on 19/20.1.1996. He was accused of having amassed wealth beyond his known source of income by receiving bribe while giving mining licence to various applicants.

44. During the search, several incriminating documents and evidence were recovered including unaccounted cash and jewellery. They were seized and recovered. Substantial cash is said to have been recovered from his residential house for a sum of Rs.15.59 lakhs and Rs. 1.48 crore from his office room in TAMIN apart from several valuable goods in the form of jewellery and valuables which were not disclosed by him in any of the returns during any of the preceding assessment years. The petitioner was therefore remanded to judicial custody.

45. Under these circumstances, proceeding under section 158-BC read with Section 158-BB and other provisions of the Income Tax Act, 1961 was initiated against the petitioner for the block period between 1.4.1985 to 20.1.1996 as it stood then under Chapter XIV B of the Income Tax Act, 1961.

46. The said notice was served on the petitioner while he was under incarceration in the central prison. The petitioner thereafter filed his return on 29.11.1996 admitting "nil" undisclosed income.

47. Under these circumstances, a notice dated 13.12.1996 was also issued under section 143(2) of the Income Tax Act, 1961. It was the defence of the petitioner that the cash that were recovered from his office and house belonged to the Tamil Nadu Basketball Association of which he was the president.

48. Records also indicate that the petitioner had attempted to stymie income tax proceedings by filing writ petitions and contempt proceedings.

49. The block assessment order dated 31.1.1997 was thereafter passed by the Assistant Commissioner of Income Tax which records several shenanigans of the petitioner. The petitioner therefore filed an appeal before the Income Tax Appellate Tribunal, at Chennai.

50. Be that as it may, as mentioned above, the petitioner got a favourable verdict from the Income Tax Appellate Tribunal vide order dated 29.10.2003. The Respondent Income Tax Department thereafter filed Tax Case (Appeal) No. 150 of 2004 before the Division Bench of this Court which came to be disposed on 3.9.2007.

51. As mentioned above elsewhere in this order, a Division Bench of this Court granted substantial relief and remanded the case back to the respondent. In this connection, it will be useful to refer to few passages from the decision of the Division Bench which are reproduced below:-

" Question No. 1-Additions made on account of money received by the assessee from persons seeking mining licences from TAMIN.

9. The most important set of documents seized from the brief cases of the assessee during the search are those numbered NGN/B & D/LS-1 to 18 from the Anna Nagar residence. The documents referred to above were kept in three brief cases and the same is related to grant of mining licences. They contain the names and addresses of various persons who had sought allotment of mining lease, the place (s) of the quarry, survey number of the lands where the quarry was situated, denominations of some currency etc. The documents seized from the brief cases of the assessee, can by and large, be classified into three categories of source material:

"(a) The first category is the slips of paper from the applicants and/or their representatives in the handwriting of either the applicant or a representative containing the name and at times, the address of the applicant, the location of the land for which mining licences is requested (details of such as the name of the village, taluk, district, survey number and extent of land). Some slips contain the quality of granite such as black, paradiso, kashmiri etc. and some slips contain certain denominations of money.

(b) The second category of data is handwritten prima facie, in the handwriting of Shri

Dyaneswaran on his own letter heads and the letter heads of the TAMIN (confirmed to be his handwriting by the Govt. Examiner of questioned documents). Each of the entries contain details such as serial number, name of the applicant, name of the place, survey number and extent and the amount. Generally, this amount is shown in a coded form that too decimal places. Apparently, the whole number stood for lakhs and the decimals stood for thousands. Some of the entries have been rounded off and/or tick-marked. In respect of some others, another coded number is written below that, probably indicating the amount received or receivable.

(c) The third set of documents are typed sheets with details of the name and brief address of the applicant, the details of the mine, viz., the village, taluk and survey number, the nature of granite and extent. These were probably prepared by the staff who prepared papers for consideration of the High Level Committee or those who prepared the minutes of the meetings of the High Level Committee. Against most of the times, in a coded form some handwritten numbers with two decimal places have been recorded. These handwritten numbers are prima facie in the handwriting of Shri. Dyaneswaran. In fact, on some of the typed sheets where some columns are left blank, they are seen to have been filled up by him in his hand. The coded numbers in the last column in their list and the list referred to above at (b) cannot be just wished away as inconsequential or meaningless numbers as they have been totalled and certain calculations have also been made based on such numbers."

52. After discussion, the Court observed as under:-

13. From the above, it is clear that out of the seized materials, only 23 cases were examined as against 994 licensees. In this case, the Assessing Officer selected only 23 mining licensees out of 994 licensees and obtained the statements from the said 23 mining licensees. Based on the statements given by them, he came to the conclusion that the assessee received illegal money and the same is treated as undisclosed income of the assessee. In respect of remaining 971 mining licensees, there was no further enquiry or no statements were obtained by the Assessing Officer, and without further enquiry and investigation into the matter, the

Assessing Officer came to the conclusion that the assessee would have received illegal money and the same is treated as undisclosed income. Here, it is seen that even though he obtained statements from 23 persons, no opportunity was given to the assessee to cross-examine. Further, in respect of others, no statement was obtained or no cross-verification was done. Also, no other evidence were produced by the Revenue. When the assessee asked for cross-examining in respect of 23 persons, the Assessing Officer has not given any opportunity to cross-examine. Besides, no opportunity is given by the Revenue to cross-examine the remaining persons. The papers seized from the brief cases had been divided into three, one prepared by the applicants or their representatives in their handwriting with their addresses, location, etc. in which there is no mention of any of the assessee's alleged handwriting. The second category is written notes, which according to the Revenue, prima facie, by the assessee in his letter head or that of TAMIN, which is in the handwriting of the assessee, which fact had been confirmed by the handwriting expert. These papers contain coded numbers with two decimals which apparently stand for lakhs and thousands, according to the Revenue. In the same papers, another coded number is written below the first coded figures which, according to the Revenue, probably indicate the amount received or receivable and the third set of papers is said to be prepared by the staff who prepare such papers for the High Level Committee for its meeting. Again, in these papers there were coded handwritten number with decimals which again prima facie, according to the Revenue, is in the handwriting of the assessee. From the above, it is clear that regarding first set of papers, there is no claim even by the Revenue that it is written in the assessee's handwriting and only in some papers there is mention of some denominations of money. It is not clear how the Assessing Officer arrived at the conclusion that the coded figures are standing for lakhs and thousands. It is again not certain whether it is a receipt or payment. The Revenue was of the view that it stands for receipt. There is no corroborative evidence to hold that it is actually receipt. But, in this case, the Assessing Officer, in the assessment order, gave illustrations that the slips for the summary of the statements recorded from 23 applicants were seized from the assessee. But no opportunity was

given to the assessee to confront the person concerned by way of cross-examining the applicants. There is no dispute that no opportunity was given to the assessee, even though there was a specific request made by the assessee. Hence, the statements taken are only from persons said to have made the payments and they do not establish that the figures mentioned in the seized papers are speaking nothing, nor was the assessee given an opportunity to cross-examine these deponents. It is seen from the statements that most of the persons claim that they have not made direct payment, but it was made through some of their employees. Their statements are not brought on record. The Tribunal had given a finding at paragraph 78 that the assessee was not given an opportunity to contradict the statements of such persons. If the assessee specifically makes such a request, it is imperative that an opportunity should be extended to the assessee which has not been complied with. Therefore, we are of the view that the statements cannot be acted upon. In paragraph 81 of the Tribunal's order, it is stated as follows:

"Another statement recorded is from one Shri P. Rajasundar Singh, partner of M/s. Eagle Granites, Madras. This statement was recorded on December 31, 1996. Answering question No. 4, the deponent says that he made the application to the Collector of the District in the format prescribed and made the deposit required as per the law. The application was forwarded by the Collector to Mining and Geological Department and to the Thasildar and Deputy Director of Mines and Geology, Madras for inspection, and it is the Director of Mining and Geology who will recommend and send the application to the Industries Department. Answering question No. 7, the deponent says 'No', we have not paid any money to anybody apart from the legal fees, etc., for clearing the licence. When the deponent was confronted by the seized material from the assessee's brief case, ultimately he agrees he made some payments in addition to this. Answering question No. 15, he says that he made the payment to the assessee about two months prior to the issuance of the licence. At the end, he expressed his regret for the mistake by not telling the truth first. We are unable to take this statement also at its face value. It is very difficult to attribute the payment to the assessee as for getting the quarry licence. The procedure followed is clear from the answer

to question No. 4. The application was made to the District Collector who in turn forwarded it to the concerned Thasildar for inspection and to report to the Director of Mining and Geology for recommendation for issuance of licence. It is again to be seen that the assessee was never afforded an opportunity to confront the deponent. Revenue says that all the papers were subsequently given to the assessee. It is also the case of the Revenue that it is not relying on these statements. If he is not relying on these statements, then there is no meaning in taking statements and putting them on record. Further, in the absence of any cross-examination of the deponents by the assessee, none of these statements could be used against the assessee. Therefore, we are of the view that the Revenue's case that the seized materials speak voluminously for the collection of illegal receipt by the assessee is not established. There is no corroborative evidence except the slips of papers seized. It is true, the assessee is neither denying nor admitting receipt of payments in connection with the issuance of licence for quarrying. It is established by the Revenue that some of the papers are prepared in the office of High Level Committee for the purpose of High Level Committee. At least the staff who are said to have prepared these papers should have examined to find out the truth of these papers. If the applicant says he paid money to the assessee, then it was very essential to give an opportunity to the assessee to confront the person who claimed to have made the payment to the assessee, the assessee being the affected party or the accused. Even otherwise, we find that the decision of the hon'ble Allahabad High Court reported in Pushkar Narain Sarraf v. CIT, [1990] 183 ITR 388, does not support the case of the Revenue that subsection (4A) of section 132 is a presumption in the Revenue's favour. In this case, the hon'ble High Court held at page 391 that 'Taking the first question first, we are clearly of the opinion that the presumption arising under section 132(4A) is available only in regard to and in the context of search and seizure. Sections 132 to 132B of the Income-tax Act, in our opinion, embody an integrated scheme laying down comprehensively the procedure for search and seizure and the power of the authorities making the search and seizure to order the confiscation of the assets seized under section 132 of the Act, that is, the presumption arising

under sub-section (4A) of section 132 applies only in relation to the provisional adjudication which is contemplated under sub-section (5) of section 132. Sub-section (5) of section 132 provides for estimation of the undisclosed income or the calculation of the amount of tax on the income so estimated and the determination of the amount of interest payable or the amount of penalty imposable in a summary manner. For this limited purpose, the Legislature has provided under section 132(4A) that the books of account, other documents, money, bullion, jewellery or other valuable articles seized from the possession of the assessee shall be presumed to belong to the assessee if they are found in the possession or control of the assessee in the course of the search. A similar presumption may also be made as to the correctness of the contents of the books of account so seized. So also the signature and every other part of the books of account may be assumed to be in the handwriting of the person by whom it is purported to have been written'."

14. Further, in the absence of any cross-examination of the deponents by the assessee, none of these statements could be used against the assessee. Therefore, we are of the view that the Revenue's case that the seized materials speak voluminously for the collection of illegal receipt by the assessee, is not established. There is no corroborative evidence except the slips of papers seized. It is true that the assessee is neither denying or admitting receipt of payments in connection with the issuance of licence for quarrying. From a reading of the above, it is clear that the Assessing Officer had not given any opportunity to the assessee. In the assessment order, it is clearly stated that it is humanly impossible to correlate. It is further stated in paragraph 3.61 as follows: "Otherwise if one were to concede the assessee's demand one should have gone about and examined the 1000 and odd parties, allowed opportunity of cross-examination to the assessee and based on results of such examination and cross-examination, re-examine all of them for completion of the exercise and add up such payments to arrive at the undisclosed income from this source. Anybody can imagine that such a procedure is not pragmatic and not rational. The slips of papers in parties handwriting giving denomination of the amounts, assessee's

own letter-head showing in his own handwriting and identical details in a typed list where again such details tally in a number of instances and the meticulous way they were carefully preserved by the assessee cannot be brushed aside as inconsequential and irrelevant, the way the assessee would like them to be dealt with. They have to be taken to a logical end, because they are not without a meaning or a significance. Their significance is crystal clear already with circumstantial evidences, such as getting the quarry lease licence within a short time from the date of payment (mentioned in the party's slips)."

15. Further, it is seen in this case that notice under section 158BC was issued on June 26, 1996. Later notice under section 143(2) was issued on December 13, 1996. Further, the statements were taken only from 23 applicants on various dates and the last one was taken only on January 27, 1997. The assessment was completed on January 31, 1997, i.e., the last due date for completing the assessment. From the above, it is clear that there is a paucity of time to call for the statements from other applicants and also no opportunity has been given to the assessee to cross-examine the applicants. Obviously, the reason is that the Assessing Officer had to make the assessment on or before January 31, 1997, under section 158BE of the Act. The said provision deals with time limit for completing the assessment which says that the Assessing Officer has to complete the assessment within one year from the end of the month in which the last of the authorisations for search under section 132 or for requisition under section 132A, as the case may be. One of the main reasons given by the Tribunal for disregarding the statements and documents relied on by the Revenue is that, no opportunity was given by the Assessing Officer to the assessee to cross-examine the same. Taking into consideration all the above factors, we are of the view that the assessments were completed without giving proper opportunity to the assessee to cross-examine the applicants. In this case, the Assessing Officer has called only 23 persons and obtained the statements. The balance of the seized materials related to several applicants and the Assessing Officer did not make any attempt to correlate or verify or try to obtain the statements from the other applicants, as has been done for 23 cases. On the basis of the statements given by the 23

persons, the Assessing Officer presumed that whatever figures appearing in the seized material would represent the undisclosed income of the assessee. Also, it is seen that for the seized materials relating to 345 applicants, no dates have been mentioned. In respect of the same, the Assessing Officer totalled the amount and made the addition of Rs. 20,31,99,350 in the year of search, i.e., for the assessment year 1996-97. The said huge addition is made without verification from 345 persons. The fact whether really the amounts have been paid or not is not mentioned. Even if we assume that the said amounts were paid, the details regarding the dates of payment are also not mentioned. Without considering the above aspects, the Assessing Officer made this addition without basis and justification. There are procedural irregularities, defects and infirmities, which are as follows:

(a) No opportunity was given to the assessee to cross-examine.

(b) The Revenue obtained statements only from 23 applicants and left out 971 applicants who applied for licence.

(c) In respect of 345 applicants, no dates are mentioned in the seized materials. The Assessing Officer, simply totalled the amounts and made an addition of Rs. 20,31,99,350 for the assessment year 1996-97.

(d) The Assessing Officer himself stated that it is impossible to correlate and obtain statements from the licensees.

(e) Paucity of time to complete the assessment. Notice given under section 143(2) of the Act on December 13, 1996. The statement taken from one of the 23 mining licensees was only on January 27, 1997, and immediately the assessment was completed on January 31, 1997.

16. In the present case, the Tribunal allowed the appeal of the assessee mainly on three grounds:

(a) There is no examination on the deponent by the assessee and hence none of the statements can be used against the assessee.

(b) There is no corroborative evidence except the slips of papers seized.

(c) Merely because these slips of papers were found in the assessee's residence, the entire papers cannot be attributed to the assessee without getting elucidated from the parties concerned.

17. From a reading of the above, it is clear that the assessment was made without proper enquiry and in this case, the assessment order passed by the Assessing Officer suffers from procedural irregularities, defects and infirmities. The Tribunal ought to have remitted the matter to the Assessing Officer for further investigation. In view of the above procedural irregularities, defects and infirmities in the order of the Assessing Officer, especially in the interest of justice, we set aside the order of the Tribunal and remit the matter to the Assessing Officer with a direction to consider the matter afresh, keeping in view of the discussions made above, and pass orders after giving opportunity to the assessee in accordance with law".

53. There were about 994 mining licenses issued by the petitioner as Chairman cum Managing Director of TAMIN. The Income Tax Department had obtained statements only from 23 persons to whom such mining license were issued and that even those 23 persons were not made available for cross examination.

54. From a reading of the above passages of the Division Bench of this court in Tax Case (Appeals) No. 150 of 2004, the reasoning is predicated on the assumption that the Income Tax Department is required to extend the benefit of cross examination of witnesses who gave statement against the petitioner to prove undisclosed income.

55. Under section 158BC of the Income Tax Act, 1961, in respect of search initiated or books of account of the documents or any other assets requisitioned after the date of June, 1995 before the first day of January, 1997, the assessing officer is required to serve a notice requiring them to furnish such time not being less than 15 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 subsection (1) of section 142, setting forth his total income including the undisclosed income of the block.

56. An assessing officer is required to proceed to determine the undisclosed income for the block period in the manner laid down in section 158 BB and the provisions of section 142, sub-sections (2) and (3) of section 143, 144 and 145 shall apply, so far as may apply.

57. The assets requisitioned under section 132 or seized under section 132 A shall be dealt in accordance with the provisions of section 132 B of the Income Tax Act, 1961 as it stood then.

58. Thus, the assets seized or retained from the petitioner were to be dealt in the following manner as per the provision as it stood then prior to it being substituted with effect from 1.6.2002 vide Finance Act, 2002:-

132B. Application of retained assets:

(1.) The assets retained under sub-section (5) of section 132 may be dealt with in the following manner, namely:-

(i) The amount of the existing liability referred to in clause (iii) of the said sub-section and the amount of the liability determined on completion of the regular assessment or reassessment for all the assessment years relevant to the previous years to which the income referred to in clause (i) of that sub-section relates ¹ (including any penalty levied or interest payable in connection with such assessment or reassessment)] and in respect of which he is in default or is deemed to be in default may be recovered out of such assets.

(ii) If the assets consist solely of money, or partly of money and partly of other assets, the ² Assessing] Officer may apply such money in the discharge of the liabilities referred to in clause (i) and the assessee shall be discharged of such liability to the extent of the money so applied.

(iii) The assets other than money may also be applied for the discharge of any such liability referred to in clause (i) as remains undischarged and for this purpose such assets shall be deemed to be under distraint as if such distraint was effected by ³ the Assessing Officer or, as the case may be, Tax Recovery Officer] under authorisation from the ⁴ Chief Commissioner or Commissioner] under sub-section (5) of section 226 and ³ the Assessing Officer or, as the case may be, Tax Recovery Officer] may recover the amount of such liabilities by the sale of such assets and such sale shall be effected in the manner laid down in the Third Schedule.

(2) Nothing contained in sub-section (1) shall preclude the recovery of the amount of liabilities aforesaid by any other mode laid down in this Act.

(3) Any assets or proceeds thereof which remain after the liabilities referred to in clause (i) of sub-section (1) are discharged

shall be forthwith made over or paid to the persons from whose custody the assets were seized.

(4) (a) The Central Government shall pay simple interest at the rate of fifteen] per cent per annum on the amount by which the aggregate of money retained under section 132 and of the proceeds, if any, of the assets.

(b) Such interest shall run from the date immediately following the expiry of the period of six months from the date of the order under sub- section (5) of section 132 to the date of the regular assessment or reassessment referred to in clause (i) of sub- section (1) or, as the case may be, to the date of last of such assessments or reassessments.

59. As per section 158 BE of the Income Tax Act, 1961, an order has to be passed within a period of one year from the end of the month in which the last of the authorisations for such under section 132 or requisition under Section 132 A, as the case may be, was executed in case where a search is initiated or books of account or other documents or assets position after the 30th day of June, 1995, but before the first day of January 1997.

60. In this case admittedly the assessment order who had been passed within the limitation prescribed by 31.1.1997 by the assessing officer. The assessing officer was not only required to issue notice within 15 days of such requisition/authorization but also required to complete the assessment procedures within a period of one year. Thus, as the provisions as they read do not allow any elaborate cross examination of witnesses by an assessee.

61. However, the Division Bench of this court has extended such a benefit to the petitioner and the appeal which was filed belatedly before the Honourable Supreme Court which came to be dismissed the year 2013 on account of delay.

62. Thus, the respondent Income Tax Department has been not only careless in not pursuing and defending case of the revenue either before the Tribunal but also in pursuing the appeal before the Supreme Court and allowed the appeal against the order dated 3.9.2007 of the Division Bench of this court in Tax Case (Appeal) No. 150 of 2004 to be dismissed on

account of delay.

63. However, there is no dispute that unaccounted cash and jewellery and valuables were recovered during the course of search conducted at the premises of the petitioner and the petitioner's associates on 19/20.1.1996.

64. These assets have to be taxed in the hands of the petitioner. To assess tax on the assets seized from the petitioner, there is no necessity for extending the petitioner the benefit of cross examination of witnesses.

65. Also, no useful purpose would also be served at this distant point of time to summons witnesses to come for cross examination who allegedly gave statements against the petitioner for licenses issued when the petitioner was the Chairman, Managing Director of the Tamil Nadu Minerals Ltd and this distant point of time. It will neither serve any useful purpose to the petitioner nor to the Income Tax Department. However, to the extent undisclosed income in the form of assets viz cash, jewellery and valuable assets were recovered/seized from the petitioner and his associates, the petitioner is liable to pay tax.

66. Therefore, notwithstanding failure on the part of the assessing officer extend the benefit of cross examination of persons who have given statements against the petitioner during investigation, the petitioner is required to discharge income tax liability on the assets viz. undisclosed cash, jewellery and the valuables recovered from his possession from various premises.

67. Under these circumstances, this Court is inclined to dispose the writ petition by directing the respondent to complete the assessment insofar as the assets recovered from the petitioner and his associates during the search conducted on 19/20.1.1996 within a period of three months from date of receipt of a copy of this order.

68. The Petitioner may file additional representation, if any, before the respondent before fresh orders are passed by the respondent. Needless to state that such proceedings shall be completed after giving the petitioner an opportunity of being heard.

69. The Writ Petition is disposed of with the above observations. No Costs. Consequently, connected miscellaneous petition is closed if any.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Jas/Lbm

To:

1.The Commissioner of Income Tax,
Central Circle, II(4),
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Mahatma Gandhi Road, Nungambakkam,
Chennai 600 034.

2.The Deputy Commissioner of Income Tax,
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+1cc to Mr.B.Sathish sundar , Advocate SR.No. 22875

+1cc to Mr.A.P.Srinivas, Advocate SR.No. 23137

W.P.No.34571 of 2013

A.SK(20.04.2021)

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