IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.07.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.15125, 15129, 15695, 15713, 15717 & 15720 of 2021
and
W.M.P.Nos.16028, 16031, 16594, 16595, 16616, 16617,
16613, 16615, 16621 & 16622 of 2021

KARTI.P.CHIDAMBARAM AGED ABO
UT 49 YEARS S/O.P.CHIDAMBARAM,
NO.16 PYCROFTS GARDEN ROAD,
NUNGAMBAKKAM,
CHENNAI- 600 006. ...PETITIONER IN W.P.NOS.15125, 15695, 15713, 15717 AND 15720 OF 2021

SRINIDHI KARTI CHIDAMBARAM
W/O KARTI.P.CHIDAMBARAM,
NO.16, PYCROFTS GARDEN ROAD,
NUNGAMBAKKAM, CHENNAI-600 006.
...PETITIONER IN W.P.NO.15129 OF 2021

Vs

1 THE ADDITIONAL COMMISSIONER OF INCOME TAX,
CENTRAL RANGE-2,
NO.46( OLD NO.108),
MAHATMA GANDHI ROAD, NUNGAMBAKKAM,
CHENNAI- 600 034.

2 THE DEPUTY COMMISSIONER OF INCOME TAX,
OFFICE OF THE DEPUTY COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE 2 (1)
INVESTIGATION WING,
ROOM NO. B3 GROUND FLOOR,
NEW NO.46 (OLD NO.108),
MAHATMA GANDHI ROAD, NUNGAMBAKKAM,
CHENNAI-600 034.

3 MR.M.VIVEKANANDAN IRS.
DEPUTY COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE 2 (1),
INVESTIGATION WING ROOM NO. B3 GROUND FLOOR,
NEW NO.46 (OLD NO.108),
MAHATMA GANDHI ROAD, NUNGAMBAKKAM,
CHENNAI 600 034. ...RESPONDENTS IN ALL WPS

PRAYER: WP No.15125 of 2021:-

Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, Calling for the records of the 2nd Respondent relating to the Assessment order dated 15.07.2021 having Ref. No.ITBA/ AST/ M / 153C/ 2021-22/ 1034237897 (1) for the assessment year 2014-15 issued under Section 153C of the Income Tax Act in the case of the petitioner and quash the same as arbitrary, in gross violation of the principles of natural justice, illegal and violative of the fundamental rights of the petitioner under Articles 14 and 21 of the Constitution of India.

PRAYER: WP No.15129 of 2021:-

Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, Calling for the records of the 2nd Respondent relating to the Assessment order dated 15.07.2021 having Ref. No.ITBA/ AST/ S / 153C/ 2021-22/ 1034247502 (1) for the assessment year 2015-16 issued under Section 153C of the Income Tax Act in the case of the petitioner and quash the same as arbitrary, in gross violation of the principles of natural justice, illegal and violative of the fundamental rights of the Petitioner under Articles 14 and 21 of the Constitution of India.

PRAYER: WP No.15695 of 2021:-

Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, Calling for the records of the 2nd Respondent relating to the Assessment order dated 15.07.2021 having Ref. No.ITBA/ AST/ S / 143(3)/ 2021-22/ 1034241359 (1) for the assessment year 2019-20 issued under Section 143(3) of the Income Tax Act and the consequential notice of demand dated 15.07.2021 having Ref.No.ITBA/AST/S/156/2021-22/1034241423 (1) under Section 156 of the Income Tax Act and the show cause notice dated 15.07.2021 having Ref.No.ITBA/PNL/S/271AAC (1)/2021-22/1034244002 (1) issued under Section 271 AAC (1) of the Income Tax Act the in the case of the Petitioner and quash the same as arbitrary, in gross violation of the principles of natural justice, illegal and violative of the fundamental rights of the Petitioner under Articles 14 and 21 of the Constitution of India.

PRAYER: WP No.15713 of 2021:-

Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, Calling for the records of the 2nd Respondent relating to the Assessment order dated

15.07.2021 having Ref. No.ITBA/ AST/ S / 153 C/ 2021-22/ 1034241239 (1) for the assessment year 2017-2018 issued under Section 153 C of the Income Tax Act and the consequential notice of demand dated 15.07.2021 having Ref.No.ITBA/AST/S/156/2021-22/1034241312 (1) under Section 156 of the Income Tax Act and the show cause notice dated 15.07.2021 having Ref.No.ITBA/PNL/S/271AAC (1)/2021-22/1034243356 (1) issued under Section 271 AAC (1) of the Income Tax Act the in the case of the Petitioner and quash the same as arbitrary, in gross violation of the principles of natural justice, illegal and violative of the fundamental rights of the Petitioner under Articles 14 and 21 of the Constitution of India.

PRAYER: WP No.15717 of 2021:-

Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, Calling for the records of the 2nd Respondent relating to the Assessment order dated 15.07.2021 having Ref. No.ITBA/ AST/ S / 153 C/ 2021-22/ 1034241413 (1) for the assessment year 2018-2019 issued under Section 153 C of the Income Tax Act and the consequential notice of demand dated 15.07.2021 having Ref.No.ITBA/AST/S/156/2021-22/1034241504 (1) under Section 156 of the Income Tax Act and the show cause notice dated 15.07.2021 having Ref.No.ITBA/PNL/S/271AAC (1)/2021-22/1034243830 (1) issued under Section 271 AAC (1) of the Income Tax Act the in the case of the Petitioner and quash the same as arbitrary, in gross violation of the principles of natural justice, illegal and violative of the fundamental rights of the Petitioner under Articles 14 and 21 of the Constitution of India.

PRAYER: WP No.15720 of 2021:-

Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, Calling for the records of the 2nd Respondent relating to the Assessment order dated 15.07.2021 having Ref. No.ITBA/ AST/ S / 153 C/ 2021-22/ 1034239868 (1) for the assessment year 2015-2016 issued under Section 153 C of the Income Tax Act and the consequential notice of demand dated 15.07.2021 having Ref.No.ITBA/AST/S/156/2021-22/1034239946 (1) under Section 156 of the Income Tax Act and the show cause notice dated 15.07.2021 having Ref.No.ITBA/PNL/S/271 (1) (c)/2021-22/1034240001 (1) issued under Section 271(1)(c) of the Income Tax Act the in the case of the Petitioner and quash the same as arbitrary, in gross violation of the principles of natural justice, illegal and violative of the fundamental rights of the Petitioner under Articles 14 and 21 of the Constitution of India.

For Petitioner:

In W.P.Nos.15125, 15695, 15713, 15717 & 15720 of 2021: Dr.Abhishek Singhvi
Senior Counsel
For Mr.N.R.R.Arun Natarajan
and
Mr.Amith Bhandari

In W.P.No.15129 of 2021 : Mr.Kapil Sibal
Senior Counsel
and
Mr.AR.L.Sundaresan
Senior Counsel
For Mr.N.R.R.Arun Natarajan
and
Mr.Adith Pujari

For Respondents:

For Respondents [in all W.Ps] : Mr.R.Sankaranarayanan
Additional Solicitor General of India
Assisted by
Mr.A.P.Srinivas
Senior Standing counsel
[For Income Tax]

COMMON ORDER

The orders of assessment dated 15.07.2021 passed under Section 153C of the Income Tax Act, 1961 [hereinafter after referred to as the 'Act'] are under challenge in the present writ petitions.

2. Admittedly, the Show Cause Notices initially issued by the Income Tax Department was challenged by the petitioners/assessees and this Court delivered a judgment on 05.07.2021. The writ petitions filed by the petitioners/assessees were dismissed and consequently, this Court issued directions to the Assessing Authority to proceed with the assessment/reassessment by affording opportunity to the writ petitioners/assessees.

3. The present writ petitions filed by the petitioners/assessees emerged from and out of the opportunity to be afforded to the assessees pursuant to the directions issued by this Court.

4. The respective learned Senior counsels appearing on behalf of the petitioners, Dr.Abhishek Singhvi, Mr.Kapil Sibal

and Mr.AR.L.Sundaresan made their respective submissions mainly on the ground that the directions issued by this Court to afford opportunities to the petitioners had not been complied with by the respondent Assessing Authority. The respondents have taken action in a hurried manner, denying reasonable opportunities to the petitioners and passed the assessment orders, which is to be construed as an order in nullity in the eye of law.

5. It is contended that it is a classic case of violation of Principles of Natural Justice as the authorities competent, who is exercising the quasi-judicial power, failed in their duty to provide reasonable opportunity to the assessees in the manner known to law. Thus, the orders impugned are non-est and cannot have its legs to stand under the scrutiny of law. Several judgments of the Hon'ble Apex Court are cited and it is not in dispute that the Principles of Natural justice is an inherent part of Article 14 and therefore, there cannot be any other opinion regarding the opportunity to be granted to the aggrieved persons. The Principles of violation of Natural Justice is well established and this Court has to consider the facts and circumstances to form an opinion, whether the Principles of Natural Justice has been followed or not.

6. The learned Additional Solicitor General of India rebutted the contentions by stating that opportunities were granted to the writ petitioners/assessees. However, they have not utilized the said opportunities in a proper manner and therefore, they have no reason to complain before this Court by stating that the Assessing Officer has passed the orders of assessment hurriedly. The sequence of events would establish that the assessees were granted complete opportunity as contemplated under the provisions of the Income Tax Act. Therefore, the writ petitions are devoid of merits.

7. The earlier writ petitions were filed, challenging the Show Cause Notices issued under Section 153C of the Income Tax Act to the petitioners. The interim order of Status quo was granted by this Court on 07.12.2020 and the final order was passed by this Court on 05.07.2021. Thereafter, on 07.07.2021, the Assessing authority provided final opportunity to the writ petitioners/assessees. Again on 07.07.2021, another letter was communicated to the petitioners/assessees, stating that "one final opportunity to file your replies to establish your case along with complete details and evidences on or before 09.07.2021, failing which, the assessments should be completed based on the materials available on record, without any further opportunity."

8. In response to the said letters issued by the Assessing authority, the representative / Chartered accountants of the

petitioners submitted a letter on 09.07.2021, stating that the assessee is required to furnish his detailed response and further, they want to cross-examine the deponents of the statements, which were relied upon for the purpose of initiating action under Section 153C of the Act. The assessees requested for reasonable time to respond on merits with reference to the allegations raised against the assessees in the show cause notices issued by the authority competent. They have specifically stated that two days time is not at all sufficient for them to defend their case as the allegations involves certain intricacies and they require cross-examination of the persons, who have given statements. In the concluding paragraph, the assessees have contended that they require atleast two weeks time, enable them to engage a counsel / authorized representative to prepare and submit a reply on merits and to appear on the assessee's behalf and orally argue the case. Further, they have demanded for a fair opportunity to cross-examine the three persons, who allegedly made statements relied upon as well as the alleged author or authors of the three pages of three small note books.

9. This apart, a request for personal hearing and to argue the case orally is also sought for.

10. In this backdrop, the respective learned Senior counsels contended that none of the request made by the assessees was considered. Per contra, the Assessing authority had hurriedly proceeded with the assessment and issued the impugned orders of assessment on 15.07.2021.

11. At the outset, it is contended that this Court delivered the judgment on 05.07.2021 and two letters were sent by the Assessing Authority to the assessees on 07.07.2021 and on 09.07.2021 and the assessees requested to grant atleast two weeks time to defend their case properly through their counsel/representative and further, requested for a personal hearing as well as to cross-examine persons, who have given statement against the assessees. However, without any reply to such request made by the assessees, the respondent/Assessing Authority passed the final order of assessment on 15.07.2021.

12. The manner, in which, the orders of assessment were passed by the Assessing Authority itself would establish that reasonable opportunity had not been granted to the petitioners/assessees. Opportunity to be granted is not a mere opportunity and it must be meaningful and reasonable. The assessees must have time to put forth their defense statements, examine the witnesses by engaging a counsel or for personal hearing. Undoubtedly, the allegations against the assessees

emanated from and out of a search conducted in the premises of M/s.Agni Estates and Foundations Private Limited. The assessees are the 'other persons' and therefore, they require opportunity to rebut the contentions raised against them from and out of the materials collected from the premises of the 'searched person'.

13. This being the factum, the respondent could not able to establish that reasonable opportunity has been afforded to the petitioners/assessees to defend their case in the manner known to law. However, the allegations made against the Assessing Authority is not substantiated and became unnecessary. Therefore, such allegations made in the affidavits require no consideration. Though such an allegation is made, the respective learned Senior counsels fairly have not insisted the same. The Learned Senior counsels for the petitioners have reiterated that the petitioners are ready and willing to defend their case and reasonable opportunity is to be given.

14. This being the factum, the Assessing Authority is bound to afford reasonable opportunity, enabling the petitioners/assessees to defend their case in the manner prescribed. This being the factum established, this Court is inclined to pass following orders:

(1) (a) W.P.No.15125 of 2021: The assessment order passed by the second respondent dated 15.07.2021 having Ref.No.ITBA/AST/M/153C/2021-22/1034237897 (1) for the assessment year 2014-15 is quashed.

(b) W.P.No.15129 of 2021: The assessment order passed by the second respondent dated 15.07.2021 having Ref.No.ITBA/AST/S/153C/2021-22/1034247502 (1) for the assessment year 2015-16 is quashed.

(c) W.P.No.15695 of 2021: The assessment order passed by the second respondent dated 15.07.2021 having Ref.No.ITBA/AST/S/143 (3)/2021-22/1034241359(1) for the assessment year 2019-20, the Consequential notice of demand having Ref.No.ITBA/AST/S/156/2021-22/1034241423(1) and Show Cause Notice having Ref.No.ITBA/PNL/S/271AAC(1)/2021-22/1034244002(1) are quashed.

(d) W.P.No.15713 of 2021: The assessment order passed by the second respondent dated 15.07.2021 having Ref.No.ITBA/AST/S/153C/2021-22/1034241239(1) for the assessment year 2017-18, the Consequential notice of demand having Ref.No.ITBA/AST/S/156/2021-22/1034241312(1) and Show Cause Notice having Ref.No.ITBA/PNL/S/271AAC(1)//2021-22/1034243356(1) are quashed.

(e) W.P.No.15717 of 2021: The assessment order passed by the second respondent dated 15.07.2021 having Ref.No.ITBA/AST/S/153C/2021-22/1034241413(1) for the assessment year 2018-19, the Consequential notice of demand having Ref.No.ITBA/AST/S/156/2021-22/1034241504(1) and Show Cause

Notice having Ref.No.ITBA/PNL/S/271AAC(1)/2021-22/1034243830(1) are quashed.

(f) W.P.No.15720 of 2021: The assessment order passed by the second respondent 15.07.2021 having Ref.No.ITBA/AST/S/153C/2021-22/1034239868(1) for the assessment year 2015-16, the Consequential notice of demand having Ref.No.ITBA/AST/S/156/2021-22/1034239946(1) and Show Cause Notice having Ref.No.ITBA/PNL/S/271(1)(c)/2021-22/1034240001(1) are quashed.

(2) The matters are remanded back to the Assessing Authority / second respondent for fresh consideration and for providing reasonable opportunity to the writ petitioners/assessees and thereafter pass order of assessment(s) on merits and in accordance with law.

(3) Regarding the opportunity to be granted, the Assessing authority is directed to permit the petitioners/assessees/counsel/the authorised representative to represent the case of the petitioners/assessees and an opportunity to cross-examine the persons, who have given statement against the assessees is to be provided. The Assessing Authority is also entitled to have the assistance of legally trained departmental representative, if required.

(4) The petitioners/assessees are directed not to seek any unnecessary adjournments and to co-operate for the early disposal of the assessment/reassessment proceedings. In the event of any such unnecessary adjournment, the same shall be recorded by the Assessing Authority in the proceedings and proceed accordingly.

(5) The said exercise is directed to be completed by the Assessing Authority / second respondent and pass assessment / reassessment orders within a period of four weeks from the date of receipt of a copy of this order. If the petitioners are aggrieved thereafter, they are at liberty to approach the appellate authority under the Act.

15. With these directions, all the writ petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Kak
To

1.The Additional Commissioner of Income Tax,
Central Range - 2,
No.46, (Old No.108), Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

2.The Deputy Commissioner of Income Tax,
Office of the Deputy Commissioner of Income Tax,
Central Circle 2 (1)
Investigation Building, Room No.B3, Ground Floor,
New No.46, (Old No.108)Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

3.The Deputy Commissioner of Income Tax,
Central Circle 2(1),
Investigation Building, Room No.B3, Ground Floor,
New No.46, (Old No.108)Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

+2cc to M/s.A.P.Srinivas, Advocate Sr.36360 & 36361

W.P.Nos.15125, 15129, 15695,
15713, 15717 & 15720 of 2021

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srg 25/08/2021