



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.28836 & 28837 of 2014
and M.P.Nos.1 and 1 of 2014

M/s.Pentamedia Graphics Limited,
'TAURUS' No.25, First Main Road,
United India Colony,
Kodambakkam,
Chennai 600 024.
Rep. By its Chief Financial Officer,
Sri V. Venkataramanan,
Son of N.Vedakrishnan ..Petitioner in both W.Ps.

Vs.

The Assistant Commissioner of Income Tax,
Media Circle-1,
Room No.311, New Block III, 3rd Floor,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai 600 034. ..Respondent in both W.Ps.

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records in PAN AAACP1647B dated 21.10.2014, relating to the Assessment Years 2005-06 and 2006-07, respectively on the file of the respondent and quash the same.

(In both W.Ps.)

For Petitioner : Mr.G.Baskar

For Respondents : Mr.D.Prabhumukunth Arunkumar
(Standing Counsel for IT)

C O M M O N O R D E R

The relief sought for in these Writ Petitions are to set aside the orders of assessment dated 21.10.2014 with reference to two Assessment Years 2005-06 and 2006-07. The petitioner is a Company registered under the provisions of the Indian Companies



Act, 1956. The petitioner is engaged in the development of computer software and exports the same to various parts of the globe. The petitioner filed return of income and the same was scrutinised and the petitioner submitted all the documents, books of accounts, etc., and the assessing authority, having satisfied, passed the orders of assessment.

2. Surprisingly, the notices under Section 148 was issued for the Assessment Years 2005-06 and 2006-07 on 28.03.2012. The writ petitioner filed W.P.Nos.34985 and 34986 of 2012 and this High Court admitted the Writ Petitions and granted interim stay of all further proceedings on 21.12.2012. The period of limitation, under Section 153 (2) of the Income Tax Act, 1961 (hereinafter referred to as, 'the Act'), to pass a re-assessment order ended on 31.03.2013. However, on 12.04.2013, the interim stay granted was extended until further orders. Thereafter, the two Writ Petitions filed by the petitioner were dismissed by this Court on 04.07.2014.

3. In this context, the learned counsel for the petitioner made a submission that the period of limitation, prescribed under Section 153 (2), to pass an order of re-assessment expired on 12.10.2014. However, the impugned order of re-assessment, under Section 143 (3) read with Section 147 of the Act, was passed by the respondent/assessing authority, on 21.10.2014 i.e., beyond the period of limitation and thus, the impugned orders are liable to be set aside. The learned counsel for the petitioner states that the Writ Petitions were dismissed on 04.07.2014 and including that, 100 days of stay granted by this Court is to be reckoned. Accordingly, the last date for passing an order of re-assessment falls on 12.10.2014.

4. The learned counsel for the petitioner, in support, relied on Sub Clause (ii), Explanation 1 to Section 153 of the Act, which contemplates "period during which the assessment proceeding is stayed by an order or injunction of any court". Relying on the said explanation, it is reiterated that the period during which the assessment proceedings is stayed alone is excluded and there is no stipulation that the date of receipt of copy of the order of the Court must be taken into consideration for the purpose of reckoning the period of limitation. In the absence of any specific provision, the learned counsel for the petitioner reiterated that the Sub Clause (ii) to Explanation 1 is to be considered in its straight language and therefore, the last day for passing an order of re-assessment in the present case was 12.10.2014. The learned counsel for the petitioner referred the other provisions of the Income Tax Act, wherein the date of receipt is stipulated. However, under Section 153, there is no such stipulation and therefore, the period of stay means that the date of expiry of



stay is to be taken into consideration. As far as the communication of the order is concerned, the learned counsel for the Income Tax Department was very much present while the stay was vacated and he had the knowledge and in normal circumstances, the learned counsel appearing on behalf of the department communicates such orders to the department and thus, the contention that the date of receipt of copy of the order is to be taken is not contemplated under the provisions of the Income Tax Act.

5. In support of the said contention, the learned counsel for the petitioner relied on the judgments of the High Court of Allahabad in the case of Commissioner of Income Tax Vs. DRS. X-ray and Pathology Institute Pvt. Ltd., reported in [2013] 358 ITR 27 (All). The Allahabad High Court held as follows:

"In the present case, the stay was vacated by the High Court on August 26, 2009. The Assessing Officer took the date of vacation of the interim order to be the date, when it was received by him on November 9, 2009, and passed the assessment order on June 22, 2010, which was clearly beyond two years as limitation would restart from August 26, 2009, and ended on April 15, 2010.

Apart from the fact that the Assessing Officer had sufficient time the Tribunal has held that there is no procedure in the High Court to communicate the order to the party to make it effective. The provisions of the income tax Act for filing of the appeal from the date of service of the order will not be attracted to calculate the period of limitation to complete the assessment.

In the present case, we are not concerned with limitation for any particular act to be performed, but the arrest of the limitation by an interim order passed by the High Court. As soon as the order was vacated, the limitation will restart and will exhaust itself on the period of limitation provided under the Act."

6. In the case of Commissioner of Income Tax-1, Agra Vs. Chandra Bhan Bansal, reported in [2014] 46 taxmann.com 108 (Allahabad), the High Court of Allahabad held as follows:

"9. The aforesaid writ petitions having been dismissed on 01/8/1995, as per proviso to Explanation 1 to [Section 153](#), the assessment was to be completed by 30/9/1995, but in the present



WEB COPY

case the assessment was completed on 04/1/1996 i.e. beyond 30/9/1995. The submission of Shri Shambhu Chopra, learned counsel appearing for the Revenue to save the assessment from being beyond the period of limitation is that the period of 60 days is to be computed from the date of communication of the order. He submits that the order of the High Court dated 01/8/1995, dismissing the writ petitions could be received by the office of the ACIT (Investigation) on 18/12/1995. There are two reasons due to which the said submission cannot be accepted. Firstly, the order of the High Court dated 01/8/1995, dismissing the writ petitions was passed in the presence of the learned counsel for the revenue, hence the submission that it was communicated on 18/12/1995 has no relevance, and secondly the provision of Explanation 1 (ii) of [Section 153](#) of the Act, 1961 which is to the following effect:

"Explanation 1- In computing the period of limitation for the purposes of this Section
-(i)

(ii) the period during which the assessment proceeding is stayed by an order or injunction of any Court, or shall be excluded".

10. The above statutory scheme clearly indicates that for computing the period of limitation the period during which the assessment proceedings is stayed shall be excluded. In excluding the above period, the concept of communication of the order of the Court cannot be imported. The exclusion of the period has been provided because of stay or injunction by any Court during which the assessment proceedings are stayed. The intention is clear that when the limitation for assessment has started it can be stayed only by an order or injunction of any Court and as soon as the order or injunction of the Court is vacated, the period of limitation shall re-start since after the vacation of the order of the Court, there is no embargo on the authorities to proceed with the assessment. The submission of Shri Shambhu Chopra learned counsel appearing for the Revenue that the limitation will start again only when the order is communicated to the Department thus cannot be accepted. The other



WEB COPY

reason for not accepting the above submission is also equally potent. Explanation 1 (v) and (vi) to [Section 153](#) of the Act, 1961 are also part of the same statutory scheme. In Explanation 1 (v) and (vi) to [Section 153](#) of the Act, 1961 the statutory scheme provides for computing the period of limitation from the date when the order under sub-section (1) of [Section 245D](#) and [245Q](#) is received by the Commissioner. Thus, the legislature has provided for excluding the period from the date of communication of the order where they so intended. The use of concept of communication of receiving the order in the same provision which is absent in Explanation 1 (ii) concerned clearly indicates that for the purposes of Explanation 1 (ii), the communication of the order of the Court vacating the stay order or injunction is not contemplated."

7. In the case of A.P. Shanmugaraj Vs. Deputy Commissioner of Income Tax, reported in [2020] 424 ITR 347, the Hon'ble Division Bench of the Madras High Court made an observation as under:

"6. On a bare perusal of the provisions of the Act quoted above, it is very clear that the period of limitation prescribed in [Section 158BE](#) of the Act excludes the period commencing from the date on which the Assessing Officer directs the Assessee to get his accounts audited viz., the date of the order under [Section 142\(2A\)](#) of the Act. The date of order or direction to get the accounts audited is important and not the date on which such order or direction under [Section 142\(2A\)](#) of the Act is served on the Assessee or received by the Assessee. In the present case, the order under [Section 142\(2A\)](#) of the Act was made by the Assessing Authority on 17.04.2000 directing the Assessee to get the special audit completed and furnished the report on or before 31.07.2000. The difference between these two dates is 105 days. If these 105 days are added to the last date before which the Audit Report was furnished viz., 31.07.2000, the date of assessment will get extended upto 13.11.2000. The assessment for block period in the present case was made by the Assessing Authority admittedly on 13.11.2000 itself and therefore apparently the said assessment is within limitation.



WEB COPY

7.The contention of the learned counsel for the Assessee is that the period of exclusion should be computed from the date on which the order under [Section 142\(2A\)](#) of the Act was served upon the Assessee viz., on 20.04.2000 till 31.07.2000 which will give the exclusion period of 102 days only and therefore, the Assessment Order passed on 13.11.2000 will be hit by the bar of limitation. This contention in our considered opinion is misconceived and contrary to the clear and bare language of the provisions of the Act which employed the word "directs the Assessee to get his accounts audited". These words are in contra distinction to the words employed in [Section 142\(2A\)](#) proviso where the extension of period by 180 days will become effective from the date when the order of extension is received by the Assessee. The proviso to [Section 142\(2A\)](#) quoted above, clearly uses the words "received by the Assessee" and not "directs the Assessee". This distinction of two different phrases at two different places cannot be intermixed or confused with each other."

8.The High Court of Madras, in the case of R.V.Sarojini Devi Vs. I.A.C., reported in [2000] 242 ITR 329 (Madras), held as follows:

"Learned counsel for the appellant submitted that the consequence of a proceeding under this Chapter are rather drastic and, therefore, a liberal construction which would enable the parties to the transaction to preserve the property should be adopted. Though the consequence is severe inasmuch as a property which was purchased voluntarily at a time when there was no treat of any acquisition, is sought to be acquired immediately after and by virtue of the sale itself, that is a consequence which the transferee suffers and not the transferor, who has executed and registered the sale deed and has received the consideration. The appellant is the transferor. Having regard to this fact also, it is not possible to agree with the submission that the appellant would be exposed to grave injustice, if she is not allowed to prefer the appeal which admittedly was preferred 26 days after the expiry of the period of limitation."



9. The High Court of Delhi, in the case of Saheb Ram Om Prakash Marketing (P.) Ltd., Vs. Commissioner of Income Tax, reported in [2017] 398 ITR 292 (Delhi), made an observation as follows:

"19. Even otherwise, the assertion that the Revenue was aware of the order only on 2nd December 2016 does not appear to be correct. The Revenue has been unable to dispute the fact that, on 30th November 2016, a notice was issued by the AO to the Assessee under [Section 142](#) (1) of the Act and this was pursuant to the order passed by this Court on 9th November 2016. Clearly, therefore, on the date that such notice was issued, the AO was aware of the order dated 9th November 2016 of this Court. Also, the order dated 9th November 2016 was passed in the presence of counsel for the Revenue and, therefore, the Revenue clearly was aware of the said order on that date itself.

20. For all of the aforementioned reasons, the Court is unable to accept the plea of the Revenue that, since it became aware of the order of this Court only on 2nd December 2016, the period of 60 days in terms of the first proviso to Explanation 1 to [Section 153](#) of the Act should begin to run from that date."

10. Relying on these judgments, the learned counsel for the petitioner reiterated that the learned counsel appearing on behalf of the Income Tax Department was very much aware and had knowledge about vacating of the interim order by the High Court and they communicate those orders to the Income Tax Department. Thus, the period of limitation is to be reckoned from the actual date of vacating the order of interim stay by the High Court and not from the date on which the order is communicated to the department.

11. The learned Standing Counsel appearing on behalf of the respondents disputed the contentions raised by the petitioner, by stating that the impugned orders of re-assessment were passed within the period of limitation, as contemplated under the Act and the calculation of period of limitation made by the petitioner is not correct. The Income Tax Officials are expected to act only on receipt of the order copy from the High Court and not based on the oral informations provided by the learned counsel or in writing by the learned counsels. The order of the Court, in its letter and spirit, must be understood by the Income Tax Officials for the purpose of its implementation.



Therefore, mere vacating the stay order by the Court cannot be a ground to reckon the period of limitation and the date of communication of the order to the department would be appropriate for the purpose of reckoning the period of limitation with reference to Sub Clause (ii) of Explanation 1 to Section 153 of the Act.

12.The learned counsel submitted legal submissions on behalf of the respondent, wherein the sequence of dates and events are narrated and the same are extracted hereunder:

Sequence of Dates and Events

S. No.	Date	Events
1.	28.03.2012	Notice under S.148 by the department to the petitioner
2.	30.04.2012	Letter from petitioner to the department for reasons for reopening
3.	15.11.2012	Reasons for reopening by the petitioner
4.	04.12.2012	Objection for reopening by the petitioner
5.	13.12.2012	Order by the department overruling the objections of the petitioner
6.	21.12.2012	Interim stay granted in W.P.Nos.34985 and 34986 of 2012
7.	04.07.2014	Final orders passed in W.P.Nos.34985 and 34986 of 2012 by the Division Bench
8.	08.10.2014	SLP Civil was filed by the petitioner as against the common order passed in W.P.Nos.34985 and 34986 of 2012 dated 04.07.2014 and diary No.34647 of 2014 was allotted
9.	10.10.2014	Notice under S.142(1) by the department to the petitioner
10.	10.10.2014	Notice under S.143(2) by the department to the petitioner
11.	16.10.2014	Reply from the petitioner
12.	20.10.2014	Reply from the petitioner
13.	21.10.2014	Impugned order of reassessment



WEB COPY

S. No.	Date	Events
14.	27.10.2014	SLP filed by the petitioner was registered and SLP No. was allotted SLP © No.029005/2014
15.	03.11.2014	Interim order in SLP filed by the petitioner "In the meantime, the reassessment order shall not be framed, if not framed so far"
16.	08.12.2016	Common order passed by the Supreme Court as follows: We may make it clear that this Court has not made any observation on the merits of the cases, i.e., the contentions which are raised by the appellant challenging the move of the Income Tax Authorities to re-open the assessment. Each case shall be examined on its own merits keeping in view the scope of judicial review while entertaining such matters, as laid down by this Court in various judgments. We are conscious of the fact that the High Court has referred to the judgment of this Court in Commissioner of Income Tax and others Vs. Chhabil Dass Agarwal, [(2013) ITR 357 (SC)]. We find that the principle laid down in the said case does not apply to these cases. During the pendency of these appeals, stay of re-assessment was granted, which shall continue till the disposal of the writ petitions before the High Courts. The appeals are allowed in the aforesaid terms.

13. Relying on the above sequence of dates and events, the learned Standing Counsel referred the interim order passed by the Hon'ble Supreme Court in the SLP filed by the petitioner. The interim order dated 03.11.2014 reveals that "in the mean



time, the re-assessment order shall not be framed if not framed so far. However, in the present case, the re-assessment order was passed prior to the interim order on 21.10.2014 itself".

14.To substantiate the said contentions, the learned Standing Counsel referred the assessment order passed in respect of another assessee Madras Race Club, wherein the seal affixed in the order copy by the High Court of Judicature at Madras was also affixed in the order as a part of record, which would reveal that the date of copy made ready and based on the date on which the copy was made ready, the period of limitation, was reckoned by the department. Even, the Income Tax Department is not pressing the date of delivery of the order issued by the High Court. The learned Standing Counsel reiterated that there may be delay on the part of the counsel in taking delivery of the order copy from the registry of the High Court. However, they are reckoning the period of limitation from the date of copy made ready which would be relevant for the purpose of reckoning the period of limitation. Thus, there is no infirmity as such and unless the copy of the order is read and understood, it may not be possible and the authorities are not expected to pass any orders based on any certain presumptions or on assumptions or based on the informations given by the learned counsel appearing on behalf of the department.

15.In support of the said contention, the learned Standing Counsel referred the judgment of the Hon'ble Supreme Court of India in the case of Jeet Singh and another vs. Union of India and others, reported in (2011) 13 SCC 534, wherein the Hon'ble Apex Court made the following observations:

"19.We do not find any fault with the Land Acquisition Collector for not making the award before getting a certified copy of the order dated 23rd July, 2002 on 27th March, 2003 especially when he was not informed about the said fact earlier. There cannot be any doubt that no person would ever think of taking an action when he has been restrained by any interim order of any court from doing so. Once a person has been restrained by a court of competent jurisdiction from doing something, the person concerned is not expected to do anything till he gets communication from the court to the effect that the earlier order was modified or vacated. No officer would ever think of taking a chance upon any unauthentic communication with regard to vacation of interim relief because in that event, if the information is not correct, he might be held guilty under the provisions of the Contempt of Courts Act. In the



WEB COPY

instant case, there is nothing on record that prior to 27th March, 2003, the Land Acquisition Collector had received any communication that the stay granted on 12th February, 1999 had been vacated and, therefore, he was absolutely right in not taking any action for proceeding further for making an award till 27th March, 2003.

16. In support of the said judgment, the learned counsel for the petitioner drawn the attention of this Court regarding the facts considered by the Hon'ble Supreme Court in para 13, which reads as under:

"13. Looking to the facts of the case we do not accept the said submission because in the instant case the appellants and their father had made all possible efforts to stall the proceedings and only on account of the litigation initiated by them, the acquisition proceedings had been stayed. Ultimately, the stay granted by the High Court had been vacated but intimation of the order, whereby stay was vacated, i.e. dated 23rd July, 2002 was communicated, for the first time, to the Land Acquisition Collector on 27th March, 2003. When the order dated 23rd July, 2002, vacating the earlier stay order was passed, the counsel appearing for respondent no.3, namely, the Land Acquisition Collector or the government was not present and, therefore, intimation of the said order was not given to the Land Acquisition Collector, who was duty bound to make an award as per the provisions of [Section 11 A](#) of the Act within two years from the date of publication of the declaration under [Section 6](#) of the Act. "

17. The learned counsel for the petitioner, on intervention, stated that the said judgment is not in favour of the revenue, but in favour of the petitioner. The facts of that case before the Hon'ble Supreme Court reveals that the counsel for the Land Acquisition Collector did not appear before the Court and the copy of the order itself was communicated after a lapse of about eight months to the Land Acquisition Collector. Therefore, the proposition laid down by the Hon'ble Supreme Court with reference to the facts and circumstances of those cases may not be applicable in the present circumstances.

18. The learned Standing Counsel continued by stating that the principles laid down by the Hon'ble Supreme Court in paragraph No.19 is applicable in all cases and the principles derived are not only with reference to the facts and



circumstances of that case, but also is to be followed in all other cases, for the purpose of reckoning the period of limitation.

19. The learned Standing Counsel for the respondent further relied on the judgment of this Court in the case of M/s. Madras Race Club Vs. Deputy Commissioner of Income Tax, dated 23.04.2012, wherein this Court made the following observations in Paragraph Nos. 25 and 26, which reads as under:

"25. This Court is of the considered opinion that a pragmatic approach is required in such circumstances and the situations prevailing in the High Courts are to be considered. High Court cannot close its eyes in respect of the happenings and the situation prevailing in the matter of dealing with litigations and on hyper-technical grounds, the liability or the opportunity cannot be dispensed with. Even in such circumstances, the law of limitation is to be interpreted in a constructive manner so as to ensure that the purpose and object of the provisions are dealt with in accordance with the objects and reasons of the Act.

26. Undoubtedly, as rightly pointed out, if the date of expiry of the interim stay is taken into consideration, the petitioner may be correct, as the period of limitation contemplated expired. However, the fact remains that the interim order granted initially on 06.02.2013, which was extended up to 08.06.2014 was neither extended nor vacated by the High Court subsequently. Admittedly, the High Court has not passed any orders either vacating the stay or extending the stay. Thus, no order has been passed on the date of expiry. In practice, the cases are not listed on the date of expiry of interim order in all circumstances by the Registry of High Court, for which the litigants should not be made to suffer. In most of the writ petitions, even after the expiry of interim orders, the cases are not listed for various reasons. It is a practical difficulty being faced by the High Courts across the country, as large number of litigations are pending. When the cases are not listed on a particular day more specifically on the day of expiry of an interim order, then the parties cannot be penalised or blamed for non-listing of the matter for hearing, nor parties should be made to suffer for the



21. Constructive interpretation of the provision would be that the period during which the assessment proceedings is stayed. Thus, the date of grant of stay and vacating the order of stay is to be considered for the purpose of reckoning the period of limitation. In both the cases, where the date of stay as well as vacating the order of stay, the authorities of the Income Tax Department is expected and bound to act only if the stay order is communicated or vacating the interim stay order is

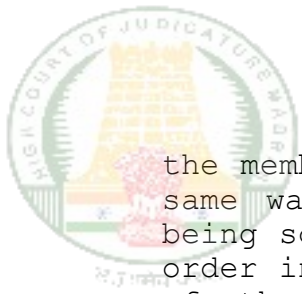


communicated. Neither the stay order nor vacating the stay order can be acted upon in the absence of communication of the order passed by the High Court with its seal. Thus, the importance of the official communication cannot be brushed aside.

WEB COPY

22. The limitation period contemplated under the Income Tax Act are of paramount importance. More specifically, in Chapter XIV of the Income Tax Act, time limits are prescribed under various provisions for completion of proceedings by the competent authority of the Income Tax Department. When the time limit contemplated are mandatory and binding on the authority, then, the recognition of official communication is also equally mandatory and has got certain significance. It is not as if a competent authority is permitted to act based on certain unrecognised communications or the communications by the respective learned counsels. No doubt, such communications can be taken into consideration for the purpose of acting or initiating action. However, those performance of duties done by the competent authority pursuant to the communication given by the respective learned counsels would not be a point for reckoning of the period of limitation under the provisions of the Income Tax Act. Thus, two circumstances are to be considered. The knowledge or intimation to the competent authority through the respective learned counsels appearing on behalf of the parties to the lis is one aspect of the matter, which can be construed as non-official communications and cannot be taken into account for the purpose of reckoning the period of limitation under the provisions of the Act. Only when an official communication is effected with the seal of the Court concerned, then alone the period of limitation should reckon and not otherwise. If this administrative procedure is not consistently followed, then there is a possibility that every litigant or the department would take undue advantage of any such unofficial communications, which would lead to confusion and chaos and the sanctity of the period of limitation contemplated is diluted. Therefore, knowledge and oral communications or private communications would not be taken into consideration for the purpose of reckoning the period of limitation as contemplated under the provisions of the statute and only if such communications are officially effected, the said point is to be taken into account for the purpose of reckoning the period of limitation.

23. In the case of Housing Board Haryana Vs. Housing Board Colony, reported in 1995 SCC (5) 672, the Hon'ble Supreme Court of India made an observation that "the date of pronouncement of the order in the open Court by itself cannot be the starting point of the determining the period of implementation under Section 15 of the Act. It has also to be shown that the order of the District Forum so pronounced was duly signed and dated by



WEB COPY

the members of the District Forum constituting the Bench and the same was communicated to the parties free of the charge. That being so, it has to be appreciated that mere pronouncement of an order in the open Court will not be enough, but under the scheme of the Rules, a copy of the said order has also to be communicated to the parties affected by the aid order, so that the party adversely affected therefrom may have a fair and reasonable opportunity of knowing that text, reasons and contents thereof, so as to formulate grounds of attack before the appellant or the higher forums. In the absence of such communication of signed and dated order the party adversely affected will have no means of knowing the contents of the order, so as to challenge the same and get it set aside by the appellate authority or the higher Forums".

24.The above Supreme Court judgment will have an apt application with reference to the facts on hand. It is not as if the orders pronounced in the open Court, which was communicated to the parties to the lis through their counsels or through their representative would not be considered as a point for reckoning the period of limitation. It is the order which is signed by the authority and appropriately sealed by the Court concerned, which was communicated to the party alone must be the date on which the period of limitation commences and not from the date on which the parties have the knowledge by themselves or through their counsels or otherwise.

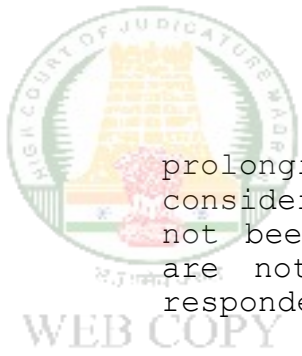
25.As far as the judgments cited by the learned counsel for the petitioner is concerned, two judgments are from the High Court of Allahabad and other two judgments are from the Madras High Court and one judgment from the High Court of Delhi. However, the judgment relied on by this Court, cited supra, would throw light on the issue in the matter of reckoning the period of limitation which would have the binding effect and therefore, as per the judgment of the Constitution Bench of the Hon'ble Supreme Court of India, in the case of National Insurance Co. Ltd., Vs. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), the judgment of the Hon'ble Supreme Court of India is to be followed as precedent. Moreover, in the case cited supra, the Hon'ble Apex Court, in clear terms, held that mere pronouncement of the order would not be sufficient. The order must be signed, sealed, dated and communicated to the parties, enabling them to understand the reasons and the spirit of the order. This being the principles to be followed, there is no reason whatsoever to accept the contentions raised on behalf of the petitioner and the judgments relied on by the petitioner are of no avail, as the Hon'ble Apex Court, in clear terms, held the manner in which the period of limitation is to be reckoned. This being the factum established and principles to be followed, this Court has no hesitation in arriving a conclusion that the



case of the petitioner deserves no appreciation.

26. The learned counsel appearing for the petitioner made a submission that the principles of natural justice has been violated in the present case, as the petitioner made a request before the Income Tax Department that the petitioner has preferred an appeal before the Hon'ble Supreme Court and till an order is passed by the Hon'ble Supreme Court, the department shall not proceed with further action. The learned counsel for the petitioner reiterated that without even waiting, the respondent has hurriedly acted and passed the impugned orders of re-assessment. Thus, on that ground also, the re-assessment order is to be set aside.

27. This Court is of the considered opinion that it is not the case as if no opportunity was granted to the petitioner. Opportunity was given, but the petitioner has chosen to make a representation to the authorities that they are supposed to wait until the Hon'ble Supreme Court takes up his appeal for hearing. This Court is of the considered opinion that mere filing of an appeal before the High Court or Hon'ble Supreme Court would not preclude the competent authorities from exercising their powers, which is otherwise conferred under the provisions of the Act. Unless any interim order or otherwise is communicated to the authorities, they are bound to proceed under the provisions of the Act, in the manner known to law and therefore, mere filing of the case before the Hon'ble Supreme Court is not a ground to raise that the petitioner was not afforded with opportunity. Even, the petitioner has requested the authorities to wait. The petitioner has no right to make such a request to the Income Tax authorities, stating that they have preferred an appeal and therefore, they should not act under the provisions of the Act. The said submission deserves no merit consideration. The learned Standing Counsel, in this regard, made a submission that the SLP as per the petitioner, was filed on 08.10.2014 and it was taken up for hearing and an interim order was passed on 03.11.2014, after passing of an order of re-assessment by the competent authority on 21.10.2014. This apart, the petitioner has availed the opportunity and submitted their reply on 16.10.2014 and 20.10.2014. However, they made a request to stop all further proceedings till their appeal is taken up for hearing. This Court is of the considered opinion that the processes initiated under any statute need not be stalled unless there is an order from the competent higher authority or by the Court of law. Mere request in this regard is insufficient and if such a request is considered, the very spirit of the Act as well as the power of the authorities to continue the proceedings would be prejudiced and therefore, this Court is of an opinion that the opportunity provided by the respondent to the petitioner was not properly utilised, but they have utilised the same for the purpose of



prolonging the proceedings. Therefore, this Court is of the considered opinion that the principles of natural justice has not been violated in this case, but the opportunities provided are not properly utilised by the petitioner, for which the respondent cannot be faulted.

28. The tactical methods being adopted by the litigants in calculated manner to frustrate the legal or statutory proceedings can never be appreciated, but to be deprecated. Recently, the practices widely prevailing are that the litigants are allowing Court to pass an ex parte order and thereafter, filing a petition to set aside the ex parte order. The Miscellaneous Applications are prolonged and protracted, one way or other way, so as to avoid adjudication of the issues on merits. The Courts are expected to seriously take note all such unethical practices in the Court of Law, and judicial officers are expected to deal with such cases properly. Similarly, in the present case, instead of submitting objections, the petitioner has submitted a reply, stating that he is approaching the Hon'ble Supreme Court and therefore, all further proceedings under the Income Tax Act is to be kept in abeyance. The request itself is opposed to the established principles to be followed. This exactly is the approach made in a calculated manner, so as to frustrate or prolong and protract the issues for certain unjust gains. Any aggrieved person, either before the competent authority or before the Court of law is expected to place the facts straight as well as avail the opportunities in an appropriate manner to establish their case. This being the acceptable approach to be made, the contention of the petitioner that there is violation of principles of natural justice is not established.

Accordingly, both the Writ Petitions are dismissed as devoid of merits. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gsa



To

The Assistant Commissioner of Income Tax,
Media Circle-1,
Room No.311, New Block III, 3rd Floor,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai 600 034.

+2ccs to Mr.G.Baskar, Advocate (SR No.34731)

+1cc to Mr.Prabhu Mukunth Arun Kumar, Advocate (SR No.34768)

W.P.Nos.28836 & 28837 of 2014

GPL (CO)
PR (13/08/2021)