IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2021

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.NOS.23069 OF 2021
&
WMP.NO.24274 OF 2021

Mr. Raju Sugumaran

... Petitioner

Vs

1. The Assistant Commissioner of Income Tax,
DC/AC, Central Circle- 1(2),
3rd Floor, Investigation Wing,
Investigation Building,
No.46 (Old No. 108), Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

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

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records in DIN: ITBA/AST/S/153C/2021-22/1036031359(1) dated 29.09.2021 on the file of the 1st Respondent relating to A.Y.2018-19.

For Petitioner : Mr.G.Baskar

For Respondent : Mr.A.P.Srinivas
Sr.Standing Counsel
[Income Tax]

ORDER

Captioned main writ petition has been filed assailing an 'assessment order dated 29.09.2021 made under Section 153C read with Section 144 of 'The Income-tax Act, 1961 (43 of 1961)' [hereinafter 'IT Act' for the sake of brevity] pertaining to Assessment Year 2018 - 19 qua writ petitioner (hereinafter 'impugned order' for the sake of convenience and clarity).

2. Mr.G.Baskar, learned counsel for writ petitioner, adverting to the impugned order submits that there was a search in the residential/business premises of two entities on 16.10.2019 under Section 132 of the IT Act. Owing to the short point on which captioned writ petition is to be disposed of by this Court, it is not necessary to delve further into facts or dilate much on details. Suffice to say that the impugned order has been made on the basis of some search and seizure on 16.10.2019 in the business/ residential premises of two entities and therefore, as alluded to supra, the impugned order invokes Section 153C of IT Act.

3. The notice under Section 153C of IT Act dated 22.09.2021 issued to the writ petitioner is as follows:

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX
DCIAC CENTRAL CIR 1(2) CHENNAI

To: RAJU SUGUMARAN No 10 ,2nd Street,Telephone Colony Adambakkam CHENNAI 600088 , Tamil Nadu India	

PAN:	AY:	Dated:	DIN & Notice No :
ALZPS9851P	2018-19	22/09/2021	ITBA/AST/S/153C/2021-22/1035815186(1)

Notice under Section 153C Of The Income Tax Act, 1961

Sir/ Madam/ M/s,

In pursuance of provisions of section 153C r.w.s. 153A of the Income Tax Act, 1961, you are hereby required to prepare true and correct return of your total income for the Assessment year 2018-19 in the prescribed form and manner as per Rule 12 of Income Tax Rules 1962 setting forth such other particulars as may be prescribed by the Income Tax Act, 1961.

The return for the said assessment year verified in accordance with the provisions of section 140 of the Income Tax Act, 1961 should be furnished within 7 days from the service of this notice.

K SARAVANAN
DCIAC CENTRAL CIR 1(2) CHENNAI

In case the document is digitally signed please refer Digital Signature ... of this document.

Note: If digitally signed, the date of digital signature may be taken as date of document.
ROOM NO. 3RD FLOOR, INVESTIGATION BUILDING, INVESTIGATION BUILDING, NO.46 (OLD NO 108), MAHATMA GANDHI ROAD, CHENNAI, Tamil Nadu, 600034
Email: CHENNAI.DCIT.CENT1.2@INCOMETAX.GOV.IN, Office Phone: [illegible]
Note: [illegible]
* DIN-Document Identification No.

This document is digitally signed
Signed: [illegible]
Date: Thursday, September 23, 2021 [illegible]
Location: [illegible] India

4. Adverting to the aforementioned notice, learned counsel submits that the same has been digitally signed at 30 minutes past 09.00 am on 23.09.2021 and it was emailed to the writ petitioner at 20 minutes past 2.00.pm. The notice gives two days time to the writ petitioner to respond. This Court refrains itself from expressing any opinion in this order on whether two days time is reasonable, much less adequate or ample as it is not necessary for disposal of the captioned writ petition, which is on hand. The reason is, even before the expiry of these two days, notice under Section 142 (1) of IT Act came to be issued on 23.09.2021 and the same is as follows:

4

10/1/2021, 1:25 PM Yahoo Mail - [ITBA]Notice u/s 142(1)of Income Tax Act 1961.

[ITBA]Notice u/s 142(1)of Income Tax Act 1961.

From: chennai.dcit.cen1.2@incometax.gov.in

To: bskumar_99@yahoo.com

Date: Thursday, 23 September, 2021, 02:20 pm IST

Dear RAJU SUGUMARAN,

Please find attached the Notice u/s 142(1) for PAN:ALZPS9851P and AY:2018-19.

Please quote your PAN in all future correspondences.

Note:
- This communication is computer generated and may not contain signature.
- This communication may be treated as compliant with the requirements of Income Tax Rules 127 and 127A.
- Signed copy may be sent separately if not already digitally signed.
- Please quote your PAN in all communications.
- Income Tax Department does not seek any taxpayer information like user name, password, details of ATM, credit cards, etc. Taxpayers are advised not to part with such information on the basis of emails.

ALZPS9851P_Notice us 142(1)_1035927524(1)_23092021.pdf
160.3kB

5. Along with Section 142(1) notice, a show cause notice was issued, which is as follows:

4 7

1/2021, 1:25 PM Yahoo Mail - [ITBA]Show Cause Notice for Proceedings u/s 153Cof Income Tax Act 1961

[ITBA]Show Cause Notice for Proceedings u/s 153Cof Income Tax Act 1961.

From: chennai.dcit.cen1.2@incometax.gov.in

To: bskumar_99@yahoo.com

Date: Thursday, 23 September, 2021, 02:20 pm IST

Dear RAJU SUGUMARAN,

Please find attached the Show Cause Notice for Proceedings u/s 153C for PAN:ALZPS9851P and AY:2018-19.

Please quote your PAN in all future correspondences.

Note:
- This communication is computer generated and may not contain signature.
- The communication may be treated as compliant with the requirements of Income Tax Rules 127 and 127A.
- Signed copy may be sent separately if not already digitally signed.
- Please quote your PAN in all communications.
- Income Tax Department does not seek any taxpayer information like user name, password, details of ATM, credit cards, etc. Taxpayers are advised not to part with such information on the basis of emails.

ALZPS9851P_Show Cause Notice for Proceedings us 153C_1035827569(1)_23092021.pdf
172.6kB

6. Mr.A.P.Srinivas, learned Senior Standing Counsel accepts notice on behalf of both the respondents. Learned Revenue counsel submits that there is no infirmity qua notice under Section 153 C of IT Act and the writ petitioner ought to have filed returns.

7. Learned counsel for writ petitioner submits that it is not a case of infirmity but it is a case of violation of Principles of Natural Justice (NJP) and a jurisdictional issue as the procedure ingrained in Statute qua a Section 153C legal drill under IT Act has been completely by-passed.

8. In the light of the above narrative and more particularly the trajectory the impugned Assessment Order has taken, this Court has no difficulty in accepting the submissions turning on NJP and the legal drill not being in accordance with the procedure ingrained in the Statute without even going into the question of adequacy or otherwise of two days time.

9. Therefore, captioned writ petition is disposed of by making the following orders:

(a) Impugned order, being Assessment Order dated 29.09.2021 bearing reference No. ITBA/AST/S/153C/2021-22/1036031359(1) is set aside;

(b) All notices, post 22.09.2021 notice under Section 153C of IT Act are also set aside/effaced. This is solely on the ground that 142(1) notice and show cause notice were issued even before the expiry of two days time granted in Section 153C notice;

c) Owing to the above limb of this order, though obvious it is made clear that this Court has not expressed any view on the merits of the matter;

(d) The first respondent shall now re-commence the proceedings from 22.09.2021 notice to writ petitioner under Section 153C of IT Act and do the legal drill de novo on merits of the matter in accordance with law and complete the legal drill as expeditiously as his business would permit and in any event within 8 weeks from today i.e., on or before 24.12.2021;

Captioned main writ petition is disposed of on above terms. Consequently captioned writ miscellaneous petition is disposed of as closed. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

gpa/nst

To

1. The Assistant Commissioner of Income Tax,
   DC/AC, Central Circle- 1(2),
   3rd Floor, Investigation Wing,
   Investigation Building,
   No.46 (Old No. 108), Mahatma Gandhi Road,
   Nungambakkam, Chennai - 600 034.

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

+1cc to M/s.G.Baskar, Advocate, S.R.No.56379

+1cc to M/s.A.P.Srinivas, Senior Standing Counsel, S.R.No.56120

W.P.Nos.23069 of 2021
&
WMP.No.24274 of 2021

KSM(CO)
RLP(22/11/2021)