IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2021

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.Nos.22829, 23073 and 23066 of 2021

&

WMP.Nos.24051,24284 and 24269,24268, 24280 of 2021

W.P.No.22829 of 2021:

Mr. Raju Sugumaran ...Petitioner

Vs.

1. The Deputy Commissioner of Income Tax
   Central Circle -1 (2)
   Investigation Wing, Room No.311
   3rd Floor, New No.46, 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 No: ITBA/COM/F/17/2021-22/1036000636(1) dated 28.09.2021 on the file of the 1st Respondent relating to A.Y.2020-21 and quash the same.

W.P.No.23073 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 No: ITBA/AST/S/153C/2021-22/1036031441(1) dated 29.09.2021 on the file of the 1st Respondent relating to A.Y.2019-20 and quash the same.

W.P.No.23066 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 No: ITBA/AST/S/153C/2021-22/1036031261(1) dated 29.09.2021 on the file of the 1st Respondent relating to A.Y.2017-18 and quash the same.

For Petitioner : Mr.G.Baskar
For Respondent : Mr.A.P.Srinivas
Senior Standing Counsel for Income Tax

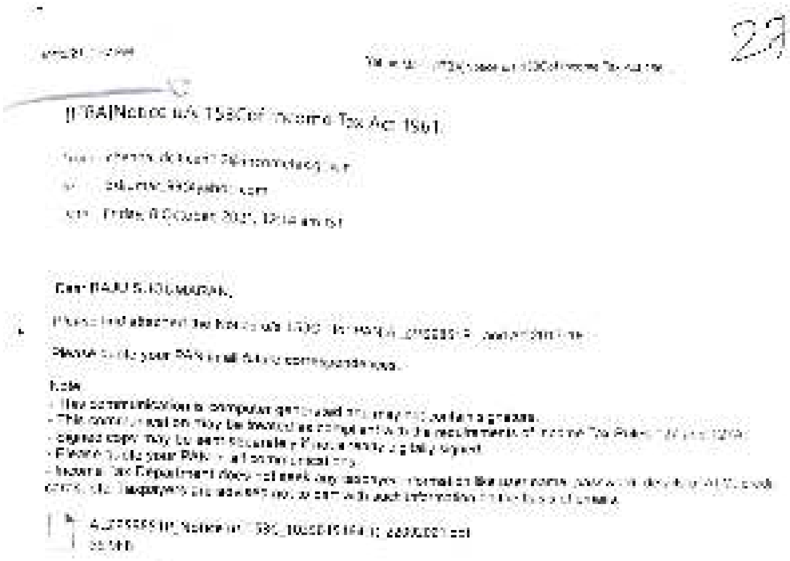
COMMON ORDER

In the captioned writ petitions, three separate Assessment Orders, one dated 28.09.2021 and other two 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 three different Assessment Years, namely, 2017-18, 2019-20 and 2020-21 qua writ petitioner have been called in question/assailed.

2. Mr. A.P.Srinivas, learned Senior Standing Counsel accepts notice on behalf of both the respondents.

3. As the captioned writ petitions turn on a extremely acute legal angle, with the consent of learned counsel on both the sides, main writ petitions were taken up. For the same reason i.e., captioned writ petitions turning on a very narrow compass, it is not necessary to set out facts in detail. Suffice to say that a search under Section 132 of IT Act i.e., search and seizure operation was carried out at the residential/business premises of two entities (two entities other than writ petitioner, to be noted, writ petitioner is a natural person) and on the allegation that some materials were seized in such search and seizure, the impugned assessment orders came to be passed. This is the reason why the impugned assessment orders have invoked Section 153C of IT Act, as already alluded to supra.


29

Note

4. The short point is, notice was issued to the writ petitioner for the first time on 08.10.2021 at 14 minutes past 12 noon (12:14A.M). The cover e-mail qua notice is as follows:

5. In this case, learned Revenue counsel submitted that notice is in order, but this is not a question of notice being

in order, but it is a question of NJP violation and complete by-passing of statutory mechanism for legal drill under Section 153 C of IT Act, which becomes a jurisdictional issue.

6. Interestingly and intriguingly, the impugned orders i.e., impugned assessment orders have been made even prior to this notice i.e., on 29.09.2021. This is not only a case of putting the cart before the horse, but it is also a clear case of violation of Principles of Natural Justice (NJP) and a complete abrogation of the assessment mechanism adumbrated and built into the Statue as impugned order has to be necessarily preceded by notice followed by notice under Section 142 (1) show cause notice, but this Court deems it appropriate to not to embark upon an exercise of setting out those details as this is a case where the impugned assessment order precedes the first of the notices to the writ petitioner and this is good enough reason to dislodge the three impugned orders on this short point qua NJP and jurisdictional issue of by-passing the statutory mechanism.

7. The following order is passed:

(a) All the three impugned orders being (i) order dated 28.09.2021 bearing reference No.ITBA/COM/F/17/2021-22/1036000636(1) pertaining to assessment year 2020-21, (ii) order dated 29.09.2021 bearing reference No.ITBA/AST/S/153C/2021-22/1036031441(1) pertaining to assessment year 2019-20 and (iii) order dated 29.09.2021 bearing reference No.ITBA/AST/S/153C/2021-22/10360331261(1) pertaining to assessment year 2017-18, qua the writ petitioner are set aside on the sole ground that the notice under Section 153C of IT Act, which should precede impugned orders, came to be served after passing of impugned orders on 08.10.2021.

(b) In the light of the above limb of this order, though obvious, it is made clear that this Court has not expressed any view or opinion on the merits of the matter.

(c) The first respondent shall commence the legal drill from 153C notice already served on the writ petitioner on 08.10.2021 and complete the legal drill de novo as expeditiously as the business of the first respondent would permit and in any event within 12 weeks from today i.e., on or before 21.01.2022 on the merits of the matter and by following the procedures and principles.

Captioned three writ petitions are disposed of with the above directives. Consequently WMPs are also disposed of as closed. There shall be no order as to costs.

s/d-
Assistant Registrar(CS-VIII)

//True Copy//

Sub-Assistant Registrar

nst/gpa
To

1. The Deputy Commissioner of Income Tax
Central Circle -1 (2)
Investigation Wing, Room No.311
3rd Floor, New No.46, Mahatma Gandhi Road
Nungambakkam, Chennai – 600 034.

2. 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.

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

+3 Ccs to Mr.G.Baskar, Advocate sr 56376, 56378, 56380
+3 Ccs to Mr.A.P.Srinivas, Advocate sr 56118.

W.P.Nos.22829, 23073 and 23066 of 2021 &
WMP.Nos.24051, 24284 and 24269, 24280, 24268 of 2021

AJS(CO)
SP(16/12/2021)