BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 24.03.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)No.4327 of 2021
and
W.M.P.(MD)Nos.3513, 3515 & 3516 of 2021

A.R. Safiullah ... Petitioner

Vs.

The Assistant Commissioner of Income Tax,
Central Circle-1, Trichy. ... Respondent

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent contained in its notice bearing No.TBA/AST/S/153A/2020-21/1028219175(1) issued under Section 153A of the Income Tax Act, 1961, for PAN: AANPS2471E, for the assessment year 2009-10, dated 14.10.2020 and all proceedings in furtherance thereof, including but not limited to the order bearing ITBA/AST/F/17/2020-21/1028427186(1) dated 29.10.2020 passed by the respondent disposing of the petitioner's objections to the issuance of notice under Section 153A of the Income Tax Act, 1961 for the assessment year 2009-10 and to quash the same as arbitrary, unjust and illegal and to consequently forbear the respondent from in any manner assessing/reassessing the petitioner's income u/s.153A of the Income Tax Act, 1961, for the assessment year 2009-10.

For Petitioner : Mr.Suhrith Parthasarathy,
for Mr.K.Govindarajan.
For Respondent : Mr.N.Dilip Kumar

* * *

O R D E R

Heard the learned counsel appearing for the writ petitioner and the learned Standing counsel appearing for the respondent.

2.The petitioner is an income tax assessee. His premises were searched on 10.04.2018. Pursuant to the said search, the respondent issued notices under Section 153 A of the Income Tax Act, 1961 requiring the petitioner to file his return of income for various assessment years. One such notice issued for the AY 2009-10 is impugned in this writ petition. The only question that arises for my determination is whether the assessing officer/respondent herein is possessed of the power to issue the same. The respondent has filed a detailed counter affidavit and the learned standing counsel took me through its contents.

3.The contest between the parties is as regards Explanation-I to Section 153 A (1) of the Act. It reads as under :

> *"For the purposes of this sub-section, the expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made."*

The above explanation assigns a particular meaning to the expression "relevant assessment year". It precedes the assessment year relevant to the previous year in which the search is conducted. The search was conducted on 10.04.2018. According to Section 2(34) of the Act, "previous year" means the previous year as defined in Section 3. As per Section 3, for the purposes of the Act, "previous year" means the financial year immediately preceding the assessment year." "Assessment year" has been defined in Section 2(9) as the period of twelve months commencing on the 1st day of April every year. As per Section 3(21) of the General Clauses Act, "financial year' shall mean the year commencing on the 1st day of April. Since the search had taken place on 10.04.2018, the assessment year will be 2019-20. The previous year would be 2018-19.

4.The learned standing counsel pointed out that prior to the amendment made vide Finance Act, 2017 w.e.f., 01.04.2017, Section 153 A mandated the assessing officer to issue notice for six assessment years immediately preceding the assessment year relevant to the financial year in which the search is initiated. Since the search assessment year is 2019-20, the six assessment years preceding the same would be

1	2018-19
2	2017-18
3	2016-17
4	2015-16
5	2014-15
6	2013-14

Following the changes and insertion made by the Finance Act, 2017 w.e.f., 01.04.2017, the provision reads as under :

> *"153A(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of*

May, 2003, the Assessing Officer shall—

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years and for the relevant assessment year or years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;

(b) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made and for the relevant assessment year or years:

...

...

...

..."

The argument of the standing counsel is that since prior to 01.04.2017, the statutory provision contemplated issuance of notice for six assessment years and w.e.f., 01.07.2017, it has been extended to ten years, it obviously means four more assessment years beyond the six assessment years originally covered under Section 153 A prior to 01.04.2017. Therefore, the remaining four relevant assessment years to be covered would be

7	2012-13
8	2011-12
9	2010-11
10	2009-10

Of course, this extended period would be covered only subject to certain conditions. In the case on hand, the only dispute is as to how the period of ten years is to be computed.

5.The learned standing counsel wants me to look at the explanatory notes (Para 80.4) to Finance Act 2017 (CBDT's Circular No.2/2018 in F.No.370142/15/2017-TPL dated 15.02.2018) to understand Explanation-I. It reads as under :

"However, in order to protect the interest of the revenue in cases where tangible evidence(s) are found during a search or seizure operation (including Section 132A cases) and the same is represented in the form of undisclosed investment in any asset, section 153A of the Income Tax Act relating to search assessments has been amended to provide that notice under the said section can be issued for an assessment year or years

beyond the sixth assessment year already provided up to the tenth assessment year."

The learned standing counsel would point out that in the provision, there are clearly two limbs. The first limb says that the assessing officer shall assess or reassess the total income of six years immediately preceding the assessment year relevant to the previous year in which the search is conducted. The second limb enables the assessing officer to go up to ten assessment years. The stand of the respondent is that the search assessment year should not be included while computing the ten assessment years under Section 153 A. Otherwise, assessment year 2013-14 will come under both ie., under the original category of six years and also under the extended category of ten years. He would strongly urge that the very purpose of introducing the amendment was to extend the reach of the assessing officer by four more years. In other words, apart from the six assessment years already provided for, the long arm of the authority must go up to the four more years. Otherwise, the very purpose of the amendment would be lost.

6.The contention of the petitioner's counsel is that the provision talks of two categories, namely, six years and ten years and that different yardsticks have been prescribed for computing the two periods. On the other hand, the learned standing counsel would contend that the statutory provision talks of six years and ten years, the second category "ten years" must be understood as "six plus four years".

7.The principles of interpreting a taxation statute have been authoritatively laid down by the Constitution Bench of the Supreme Court in ***Commissioner of Customs (Import), Mumbai vs. Dilip Kumar and Company and others (2018) 9 SCC 1***. It was held therein that other tools of interpretation such as contextual or purposive interpretation cannot be applied nor any resort be made to look to other supporting material in taxation statutes. There is no room for any intendment. Regard must be had to the clear meaning of the words. Equity has no place. One has to strictly look to the language used. There is no room for searching intendment nor drawing any presumption. Nothing has to be read into nor should anything be implied other than essential inferences while considering a taxation statute. (Para 29). This judgment is now a leading authority for the proposition that in the event a provision of fiscal statute is obscure such construction which favours the assessee may be adopted would have no application to construction of an exemption notification, as in such a case it is for the assesee to show that he comes within the purview of exemption.

8.In fact, I am prepared to sail along with the learned standing counsel and hold that if there is any ambiguity while construing a provision meant for rooting out or investigating evasion of tax, it must be resolved in favour of the revenue and against the assessee. Jurisprudentially speaking, the very object of law is to lay down norms for general behavior and prescribe sanction to ensure their compliance. Unless sanction is strictly enforced, it will incentivise deviation. Even in criminal law, while when it comes to substantive offences, retrospective application is forbidden, contrary approach is adopted in matters of procedure. I agree with the submission that Section 153 A of the Income Tax Act is intended to unearth tax evasion. But I can endorse the stand of the respondent as regards computation of the period of ten years only if there is ambiguity or obscurity in Explanation-I. To me, there is absolutely no ambiguity.

9.Explanation-I is clear as to the manner of computation of the ten assessment years. It clearly and firmly fixes the starting point. It is the end of the assessment year relevant to the previous year in which search is conducted or requisition is made. There cannot be any doubt that since search was made in this case on 10.04.2018, the assessment year is 2019-20. The end of the assessment year 2019-20 is 31.03.2020. The computation of ten years has to run backwards from the said date ie., 31.03.2020. The first year will of course be the search assessment year itself. In that event, the ten assessment years will be as follows :

1st year	2019-20
2nd year	2018-19
3rd year	2017-18
4th year	2016-17
5th year	2015-16
6th year	2014-15
7th year	2013-14
8th year	2012-13
9th year	2011-12
10th year	2010-11

The case on hand pertains to AY 2009-10. It is obviously beyond the ten year outer ceiling limit prescribed by the statute. The terminal point is the tenth year calculated from the end of the assessment year relevant to the previous year in which search is conducted. The long arm of the law can go up to this terminal point and not one day beyond. When the statute is clear and admits of no ambiguity, it has to be strictly construed and there is no scope for looking to the explanatory notes appended to statute or circular issued by the department.

10.In the case on hand, the statute has prescribed one mode of computing the six years and another mode for computing the ten years. Section 153 A(1)(b) states that the assessing officer shall assess or reassess the total income of six years immediately preceding the assessment year relevant to the previous year in which search is conducted. Applying this yardstick, the six years would go up to 2013-14. The search assessment year, namely, 2019-20 has to be excluded. This is because, the statute talks of the six years preceding the search assessment year. But, while computing the ten assessment years, the starting point has to be the end of the search assessment year. In other words, search assessment year has to be including in the latter case. It is not for me to fathom the wisdom of the parliament. I cannot assume that the amendment introduced by the Finance Act, 2017 intended to bring in four more years over and above the six years already provided within the scope of the provision. When the law has prescribed a particular length, it is not for the court to stretch it. Plasticity is the new mantra in neuroscience, thanks to the teachings of Norman Doidge. It implies that contrary to settled wisdom, even brain structure can be changed. But not so when it comes to a provision in a taxing statute that is free of ambiguity. Such a provision cannot be elastically construed.

11.One other contention urged by the standing counsel has to be dealt with. It is pointed out that the petitioner has invoked the writ jurisdiction at the notice stage. Since the petitioner has demonstrated that the subject assessment year lies beyond the ambit of the provision, the respondent has no jurisdiction to issue the impugned notice. Once lack of jurisdiction has been established, the maintainability of the writ petition cannot be in doubt.

12.The notice impugned in the writ petition is quashed. The writ petition stands allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

The Assistant Commissioner of Income Tax,
Central Circle-1, Trichy.

+1 CC to M/s.K.GOVINDARAJAN, Advocate (SR-13446[F] dated 24/03/2021)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-13665[F] dated 25/03/2021)

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