



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.03.2021

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD) Nos. 22213 to 22224 of 2018 and

W.M.P. (MD) Nos. 20142 to 20153 of 2018 and 17657 to 17660, 17662, 17663
& 17665, 20199 to 20201, 20203 & 20205 of 2019

M/s.S.R.Trust,
Rep. by its Managing Trustee,
Dr.S.Gurushankar,
No.1, Melur Road, Lake Area,
Madurai - 625 107.

... Petitioner in W.P.(MD)No.22213 to 22217 of 2018

Dr.S. Gurushankar,
S/o. Dr. Sethuraman,
No.2/47, Melur Road, Uthangudi,
Madurai-625 107.

... Petitioner in WP(MD). 22218 to 22224 of 2018

Vs.

1. The Assistant Commissioner of Income Tax,
Central Circle-1,
Kulamangalam Main Road, Meenambalpuram,
Madurai - 625 002.

2. The Deputy Commissioner of Income Tax,
Central Circle-1,
Income Tax Staff Quarters Campus,
Kulamangalam Main Road, Meenambalpuram,
Madurai - 625 002.

... Respondents W.P.(MD)No.22213 to 22217 of 2018

The Assistant Commissioner Of Income Tax,
Central Circle-1, Income Tax Valuation Wing,
Additional Office Building, Kulamangalam Main Road,
Meenambalpuram, Madurai-625002.

... Respondent in WP(MD). 22218 to 22224 of 2018

Prayer in WP(MD). 22213 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, calling for the records on the file of the Respondents pertaining to the impugned Notice issued u/s. 153C of the Income Tax Act, 1961 in Notice No.ITBA/AST/S/153C/2018-19/1011914284(1) dated 04.09.2018 of the 1st Respondent along with consequent satisfaction recorded for initiating the above proceedings through communication for



PAN:AACTSO376F/CC-1/MDU/2018-19 dated 20.09.2018 issued by the 2nd Respondent for the assessment year 2012-13 and quash the same as illegal.

Prayer in WP(MD). 22214 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue Writ of Certiorari under Article 226 of the constitution of india calling for the records on the file of the Respondents pertaining to the impugned Notice issued u/s.153C of the Income Tax Act, 1961 in Notice No.ITBA/AST/S/153C/2018-19/1011914292 (1) dated 04.09.2018 of the 1st Respondent along with consequent satisfaction recorded for initiating the above proceedings through communication for PAN: AACTSO376F/CC-1/MDU/2018-19 dated 20.09.2018 issued by the 2nd Respondent for the assessment year 2013-2014 and quash the same as illegal.

Prayer in WP(MD). 22215 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, calling for the records on the file of the Respondents pertaining to the impugned Notice issued u/s. 153C of the Income Tax Act, 1961 in Notice No.ITBA/AST/S/153C/2018-19/1011914300(1) dated 04.09.2018 of the 1st Respondent along with consequent satisfaction recorded for initiating the above proceedings through communication for PAN:AACTSO376F/CC-1/MDU/2018-19 dated 20.09.2018 issued by the 2nd Respondent for the assessment year 2014-15 and quash the same as illegal.

Prayer in WP(MD). 22216 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, calling for the records on the file of the Respondents pertaining to the impugned Notice issued u/s. 153C of the Income Tax Act, 1961 in Notice No.ITBA/AST/S/153C/2018-19/1011914310(1) dated 04.09.2018 of the 1st Respondent along with consequent satisfaction recorded for initiating the above proceedings through communication for PAN:AACTSO376F/CC-1/MDU/2018-19 dated 20.09.2018 issued by the 2nd Respondent for the assessment year 2015-16 and quash the same as illegal.

Prayer in WP(MD). 22217 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue Writ of Certiorari under article 226 of the constitution of India calling for the records on the file of the Respondents pertaining to the impugned Notice issued u/s.153C of the Income Tax Act, 1961 in Notice No.ITBA/AST/S/153C/2018-19/1011914305(1) dated 04.09.2018 of the 1st Respondent along with consequent satisfaction recorded for initiating the above proceedings through communication for PAN:



AACTSO376F/CC-1/MDU/2018-19 dated 20.09.2018 issued by the 2nd Respondent for the assessment year 2016-2017 and quash the same as illegal.

Prayer in WP(MD). 22218 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, calling for the records on the file of the Respondent pertaining to the impugned Notice issued u/s. 153A of the Income Tax Act, 1961 in Notice No.ITBA/AST/S/153A/2017-18/1007473260(1) dated 30.10.2017 of the Respondent for the assessment year 2010-11 as illegal without jurisdiction.

Prayer in WP(MD). 22219 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, calling for the records on the file of the Respondent pertaining to the impugned Notice issued u/s. 153A of the Income Tax Act, 1961 in Notice No.ITBA/AST/S/153A/2017-18/1007473259(1) dated 30.10.2017 of the Respondent for the assessment year 2011-12 as illegal and without jurisdiction.

Prayer in WP(MD). 22220 of 2018 :

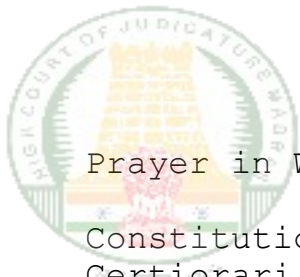
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue Writ of Certiorari under Article 226 of the constitution of India calling for the records on the file of the Respondents pertaining to the impugned Notice issued u/s.153A of the Income Tax Act, 1961 in Notice No.ITBA/AST/S/153A/2017-18/1007473258(1) dated 30.10.2017 of the Respondent for the assessment year 2012-13.

Prayer in WP(MD). 22221 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, calling for the records on the file of the Respondent pertaining to the impugned Notice issued u/s. 153A of the Income Tax Act, 1961 in Notice No.ITBA/AST/S/153A/2017-18/1007473257(1) dated 30.10.2017 of the Respondent for the assessment year 2013-14 as illegal and without jurisdiction.

Prayer in WP(MD). 22222 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, calling for the records on the file of the Respondent pertaining to the impugned Notice issued u/s. 153A of the Income Tax Act, 1961 in Notice No.ITBA/AST/S/153A/2017-18/1007473256(1) dated 30.10.2017 of the Respondent for the assessment year 2014-15 and quash the same as illegal and without jurisdiction.



Prayer in WP(MD). 22223 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue Writ of Certiorari under Article 226 of the constitution of India calling for the records on the file of the Respondents pertaining to the impugned Notice issued u/s.153A of the Income Tax Act, 1961 in Notice No.ITBA/AST/S/153A/2017-18/1007473252(1) dated 30.10.2017 of the Respondent for the assessment year 2015-16.

Prayer in WP(MD). 22224 of 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, calling for the records on the file of the Respondent pertaining to the impugned Notice issued u/s. 153A(a) of the Income Tax Act, 1961 in PAN: ADSPG8325M dated 05.02.2018 for the assessment year 2016-17 and quash the same as illegal and without jurisdiction.

(in all W.Ps.)

For Petitioner : Mr.R.Sivaraman

For Respondents : Mr.T.R.Senthilkumar,
Senior Standing Counsel,
Assisted by,
Mrs.K.G.Usharani,
Junior Standing Counsel.

* * *

C O M M O N O R D E R

In these writ petitions, notices issued under Sections 153A and 153C of the Income Tax Act, 1961 are under challenge.

2. Notices under Section 153A of the Income Tax Act, 1961 have been issued against Dr.S.Gurushankar, while notices under Section 153C of the Act have been issued against M/s.S.R.Trust. In the case of Dr.S.Gurushankar, the assessment years pertain to ; 2010-11 to 2016-17, while in the case of M/s.S.R.Trust, the assessment years pertain to 2012-13 to 2016-17.

3. The facts leading to the issuance of the impugned notices can be summarised as follows:-

i) M/s.S.R.Trust is a public charitable trust enjoying exemption under the Income Tax Act, 1961. It is running a hospital in the name and style of "Meenakshi Mission Hospital and Research Centre (MMHRC)" at Madurai. Both M/s.S.R.Trust as well as Dr.S.Gurushankar are assesseees coming within the jurisdiction of the first respondent.



ii) One C.P.Anbunathan and C.Giridharan, businessmen based in Karur came under the adverse notice of the Income Tax Department. Their residential and business premises were searched in the month of April 2016 by invoking power under Section 132 of the Income Tax Act. Their sworn statements were recorded on various dates. It was revealed that they were involved in money laundering. They had floated shell companies and unaccounted money was routed through them. C.P.Anbanathan was found to charge 5% towards commission for his services while C.Giridharan was found to take 1%. It also came to light that those two individuals had transactions involving MMHRC, Madurai. Based on the materials collected from C.P.Anbunathan and C.Giridharan, Income Tax Department decided to conduct a search operation in the residential and business premises of Dr.S.Gurushankar. On 12.09.2016, the premises of Dr.S.Gurushankar and that of his Personal Assistant Sachithananth were searched.

iii) The search yielded certain incriminating material. Since the material related to MMHRC, Madurai, the assessing officer was satisfied that the proceedings have to be initiated under Section 153C of the Act for the period commencing from the assessment years 2012-13 to 2016-17, against M/s.S.R.Trust which is running MMHRC. Thereupon the impugned notices dated 30.10.2017 under Section 153A of the Act was issued to Dr.S.Gurushankar, while the impugned notices dated 04.09.2018 under Section 153C of the Act were issued to M/s.S.R.Trust. After receiving the notices, noticees applied to the first respondent for copies of the satisfaction note recorded by him and the seized material. Both were furnished to the noticees. Thereafter, instead of taking part in the assessment proceedings, the petitioners invoked the jurisdiction of this Court under Article 226 of the Constitution of India. The writ petitions were admitted and interim stay was also granted on 31.10.2018. To vacate the same, petitions were filed by the assessment authority.

iv) The writ petitions however could be taken up for final disposal only in March 2021.

4. Heard the learned counsel appearing for the writ petitioners and the learned Senior Standing counsel appearing for the Income Tax Department.

5. The learned counsel appearing for the writ petitioners commenced his submissions by contending that unless the department has come across some incriminating material, action cannot lie against the assessee either under Section 153A or under Section 153C of the Act. Though while taking action under Section 153A of the Act, reach of the assessing officer can go anywhere upto ; 6 to 10 years immediately preceding the assessment year relevant to the previous year in which the search was conducted, reassessment has to be confined to the year to which the seized material pertains as far



as action under Section 153C of the Act is concerned. In the case on hand, the material seized by the officials does not incriminate the petitioners herein. In any event, the assessment proceedings of M/s.S.R.Trust other than 2014-15 cannot be reopened. He would also point out that the seized material is a mere bunch of some loose sheets containing invoices, purchase orders and receipts issued pertaining to some four entities. The petitioners' counsel wants to emphasize that all the transactions speak about the purchase of medical equipments for MMHRC. The invoices relate to the period from January to March 2014. He also pointed out that there was a search operation in the premises of Dr.S.Gurushankar in November 2014. That triggered the reopening of the assessments of both M/s.S.R.Trust and Mr.S.Gurushankar, for the previous six assessment years. Dr.S.Gurushankar admitted possessing undisclosed income and offered to pay tax thereon. His explanation was accepted and the issue was closed. As regards M/s.S.R.Trust, orders were passed cancelling the exemption earlier granted. That was challenged by the Trust before the appellate authority which allowed the appeal. The department took the matter before the Income Tax Appellate Tribunal but lost. T.C.A Nos.161 to 167 of 2020 filed by the department before the Madras High Court were also dismissed on 24.11.2020. The contention of the learned counsel appearing for the petitioners is that the assessment of the petitioners herein was pending when the second search took place in September 2016. The earlier assessment order was passed only on 31.12.2016. The argument of the petitioners' counsel is that for reasons best known to the department, reassessment proceedings were not allowed to abate in terms of Second Proviso to Section 153A(1) of the Act. Instead they were allowed to continue and taken to its logical conclusion. Therefore according to him, a concluded assessment cannot be reopened on the strength of alleged incriminating material that was seized well before the conclusion of the re-assessment proceedings.

6. The learned counsel appearing for the petitioners further contended that these aspects constitute a jurisdictional fact. If the jurisdictional fact itself is absent, it is not open to the respondents to initiate the proceedings under Sections 153A and 153C of the Act. Though the petitioners have alternative remedies available under the statute, when the jurisdictional fact itself is absent, it is certainly open to the assesseees to knock the doors of this Court by filing writ petitions. The learned counsel appearing for the petitioners placed reliance on the Judgments of the Hon'ble Supreme Court reported in AIR 1961 SC 372 (Calcutta Discount Co. Ltd., V. Income Tax Officer, Companies District I Calcutta and Another), (1973) 1 SCC 633 (Raza Textiles Ltd., V. Income Tax Officer, Rampur, (1998) 8 SCC 1 (Whirlpool Corporation V. Registrar of Trade Marks, Mumbai and others), (2007) 1 SCC 732 (Arun Kumar and others V. Union of India and others) and (2014) 52 taxmann.com 220 (Delhi) (Pepsi Foods (P) Ltd., V. Assistant Commissioner of Income-tax) for his proposition that even at the notice stage, it is open



to the petitioner to move this Court.

7. Per contra, the learned Senior Standing counsel submitted that the impugned action was rightly initiated and that no case has been made out for interference at the notice stage. According to him, enough and more incriminating materials are available warranting reopening of the assessments of the petitioners herein. The learned Senior Standing counsel took me through the entire contents of the counter affidavit filed by the respondents. His primary contention is that the writ petitions have been pre-maturely filed and that they warrant a summary disposal. The learned Senior Standing counsel placed particular reliance on the decision reported in (2013) 14 SCC 661 (Commissioner of Income Tax, Gujarat V. Vijaybhai N. Chandrani)

8. I carefully considered the rival contentions and went through the materials on record.

9. Before going into the factual matrix, the legal position deserves to be taken note of. Sections 153A and 153C of the Income Tax Act, 1961 read as follows:-

"153A. Assessment in case of search or requisition.-

(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:

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years and for the relevant assessment year or years:



Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years and for the relevant assessment year or years referred to in this sub-section pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate:

Provided also that the Central Government may by rules made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second proviso), specify the class or classes of cases in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years.

Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless—

(a) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years;

(b) the income referred to in clause (a) or part thereof has escaped assessment for such year or years; and

(c) the search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017. "

"153C.Assessment of income of any other person.—

(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to, a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or



reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of section 153A.

Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to sub-section (1) of section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person.

Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years as referred to in sub-section (1) of section 153A except in cases where any assessment or reassessment has abated.

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A and in respect of such assessment year—

(a) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or

(b) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or

(c) assessment or reassessment, if any, has been made, before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such



Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A."

10. The above provisions came up for consideration in quite a few decisions. The Hon'ble Division Bench of Delhi High Court in the decision reported in (2015) 61 taxmann.com 412(Delhi) (Commissioner of Income-tax (Central)-III V. Kabul Chawla) held that the assessment can be made under Section 153A of the Act only on the basis of the material seized during the course of search or other post-search material or information available with the assessment officer which can be related to the evidence found. Completed assessments can be interfered with by the AO while making the assessment under Section 153A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment.

11. The High Court of Gujarat in the decision reported in (2017) 81 taxmann.com 292(Gujarat) (Principal Commissioner of Income-tax-4 V. Saumya Construction (P.) Ltd.,) also held that if no incriminating material was found during search, no addition can be made on the basis of the material collected after search. The sheet anchor of the petitioner's counsel rests on the decision of the Hon'ble Supreme Court reported in (2017) 84 taxmann.com 290(SC) (Commissioner of Income-tax-III, Pune V. Sinhgad Technical Education Society). In the said case, the Hon'ble Supreme Court while quashing the notice issued under Section 153C of the Act held that the incriminating material must pertain to the assessment years in question and if the documents seized do not establish any correlation, document-wise, with the assessment years, action cannot be taken. It was further held that this requirement under Section 153 C of the Act is essential for assessment under the provision and it becomes a jurisdictional fact. The Hon'ble Division Bench of Delhi High Court reiterated position laid down in Kabul Chawla case and Saumya Construction case in Principal Commissioner of Income Tax (Central)-2 V. Index Securities (P.) Ltd.,) ((2017) 86 taxmann.com 84(Delhi), and following Sinhgad Technical Education Society case, held that in order to justify the assumption of jurisdiction under Section 153 C of the Act, the documents seized must be incriminating and must relate to each of the assessment years whose assessments are sought to be reopened. Since the satisfaction note forms the basis for initiating the proceedings under Section 153 C of the Act, this requirement must be met for the initiation of the proceedings and not subsequent thereto. It was held that it is not enough that the documents in question pertain to assessee but should belong to them.



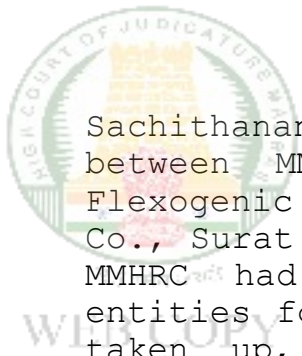
12. In the light of the legal position laid down in the aforesaid decisions, the petitioners' counsel strongly urged that as follows:-

a) The seized material do not incriminate either of the petitioners. The seized materials are commercial documents relating to medical equipments purchased by MMHRC, Madurai. Depreciation was claimed in respect of those equipments and the same was also granted. Therefore, it is not open to the assessing officer to reopen such concluded matters.

b) Without conceding but assuming that the seized materials do incriminate the petitioners, the assessment of M/s.S.R.Trust can be reopened only for the AY 2014-15. This is because admittedly, the seized documents bearing the dates between January, 2014 and March, 2014. The materials were seized only from Sachithananth and not from Dr.S.Gurushankar. The seized material pertain to M/s.S.R.Trust. Therefore, on the strength of such materials, the concluded assessments of Dr.S.Gurushankar cannot be reopened.

13. I am of the view that none of the contentions have substance. The department had of course searched the premises of Dr.S.Gurushankar in November 2014 and reopened the assessment for the previous six years. It is true that the proceedings were initiated under Section 153 C of the Act against M/s.S.R.Trust and final orders were passed on 31.12.2016. The petitioners' counsel tried to make much out of the fact that the assessing officer ought to have aborted the first search assessment proceedings. It is true that the Second Proviso to Section 153A(1) of the Act states that the reassessment relating to any assessment year falling within the period of six years and for the relevant assessment year pending on the date of initiation of search under Section 132 shall abate. It is true that this proviso is worded in an imperative language. The petitioner Dr.S.Gurushankar was the searched person. M/s.S.R.Trust was the connected person. In September 2014, Dr.S.Gurushankar was the Managing Trustee of M/s.S.R.Trust. Search under Section 132 had been again conducted in September 2016. If the assessee wanted to invoke the Second Proviso, they could have filed a memo or an application seeking abatement of the first search assessment proceedings before the assessment officer. They did not do so. They allowed the assessment officer to pass final assessment order on 31.12.2016. In any event, the proviso will only affect the first search assessment and it cannot have any bearing on the Second search assessment.

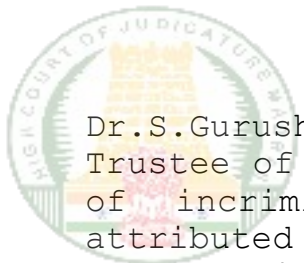
14. It must be noted that after the conclusion of the first search, the petitioners were not at all in the radar of the department. When the money laundering activities of C.P.Anbunathan and C.Giridharan were investigated, their operations with the MMHRC came to light. It was that which triggered the search operation of Dr.S.Gurushankar and his Personal Assistant Sachithananth. On 12.09.2016, a bunch of documents were seized from the premises of



Sachithananth. Those documents purported to reflect the transactions between MMHRC and one M/s.Vimal Trading Co. Mumbai, M/s.Das Flexogenic Technologies Pvt. Ltd., West Bengal, M/s.Kundan Trading Co., Surat and M/s.Pabitradhara Vyapar Private Limited, West Bengal. MMHRC had ostensibly purchased medical equipments from those entities for valuable consideration. When further investigation was taken up, it turned out that all those entities are either fictitious entities or letterpad companies. In other words, the transactions reflected in those documents are not genuine transactions. The counter affidavit filed by the respondents mentions the statement taken from a number of persons connected with those transactions. Summon under Section 131 of the Act was issued on 06.06.2017 to Dr.K.Vijayalakshmi, Medical Officer, MMHRC, Madurai. She deposed that no medical instrument was installed in their sub- centre other than three pieces of very old instrument. Some of the transactions were funded by banking institutions. One such institution was Union Bank of India, IFB, Chennai. Shri.Renjith Swaminathan, AGM, Union Bank of India, IFB, Chennai, deposed that the prescribed procedure was not followed and instead of issuing the demand drafts directly to the suppliers, the demand drafts were given to the staff of the MMHRC. Shri.Dilep Kumar, one of the Directors of M/s.Das Flexogenic Technologies Pvt. Ltd., West Bengal, deposed on 13.04.2017 that there was no supply of any equipment/instrument to MMHRC. He further stated that he disowned the bills attributed to their company. The counter affidavit filed is replete with reference to such material. C.Giridharan, Chennai, also deposed that there was no supply of equipments/instruments to MMHRC by M/s.Pabithra Dhara Vyapar Pvt. Ltd., and M/s.Das Flexogenic Technologies and that the advance received from Dr.S.Gurushankar was returned by way of pre-signed open cheque. He also admitted that for the money laundering service, C.P.Anbunathan used to take 5% commission of the total value on the demand draft which was exchanged for cash. C.Giridharan also got sub-commission of 1%. There is abundant damning material.

15. The learned Senior Standing counsel asserted before this Court that he is ready to produce the original file for perusal. If this cannot be called as incriminating material, I fail to understand what else can be.

16. Once I come to the conclusion that the materials seized by the department incriminate the petitioners herein, notices issued to Dr.S.Gurushankar for six assessment years have to necessarily be sustained. Of course, one other contention of the petitioners' counsel deserves to be considered. The petitioners' claim that nothing was seized from the residence of Dr.S.Gurushankar. The material was seized only from the residence of Sachithananth. Sachithananth was not an assessee. But this argument has to be stated only to be rejected. Sachithananth is not someone who is alien to the transaction. He is the Personal Assistant to



Dr.S.Gurushankar. Dr.S.Gurushankar is none other than the Managing Trustee of M/s.S.R.Trust which runs MMHRC. Therefore, the possession of incriminating material by Sachithananth can certainly be attributed to both the petitioners herein. The principle of constructive possession can very well be applied to the case on hand. If such an approach is not adopted, then it will be very easy for an assessee to evade the provisions of the Act by utilizing the services of third parties. In a case arising under the Prevention of Corruption Act, the Hon'ble Supreme Court applied the principle of constructive receipt. The Hon'ble Supreme Court in the decision reported in (2015) 12 SCC 348 (D.Velayutham vs. State), held as follows:-

"15.Though this Court has stressed the need and significance of phenolphthalein as a trap device in corruption cases, so as to allay doubts about the actual receiving of bribes by accused persons, there may be cases where there are multiple demanders in a common or conjoint bribe demand, and for whatsoever reason, only one receives the sum on their behalf, and is entrapped in consequence. Depending on strength of the remainder of evidence, in these cases, constructive receipt by co-accused persons is open to establishment by the prosecution, in order that those who intermediately obtain bribes be latched with equal culpability as their co- accused and entrapped receivers. ... If the receipt and handling of bribe money by Accused 2 so convincingly and inexorably points towards his custodianship of part of the same bribe amount on behalf of his superior officer, namely Accused 1, then Accused 1 cannot rely on mere non- handling/ non-receipt of the bribe money, as his path to exculpation. This Court's construal of anti-corruption cases is sensitive even to these byzantine methods of bribetaking, and where an evader escapes a trap, constructive receipt has to be an alternate means of fastening criminal culpability."

The case on hand warrants a similar approach. If incriminating material was seized from the personal assistant of the assessee, then constructive possession must be attributed to the assessee.

17. The learned counsel appearing for the petitioners took immense pains to drive home his contention that since the documents in question pertain only to the AY 2014-15, the assessment order of M/s.S.R.Trust cannot be reopened in respect of other years. This contention appears to be very attractive. However, on a deeper scrutiny, I am not able to accept the same. It is true that the seized material bears the dates for the period from January 2014 to March 2014. But again these dates cannot be taken at their face value. Only after enquiry one can come to the conclusion regarding the actual period to which they relate. I may refer to 'chaos theory' in this regard. The hypothesis of Edward Lorenz is that the mathematical models for weather systems can be extremely sensitive



to initial conditions and that small changes in these initial conditions can result in big effects. The flapping of butterfly in Toronto can cause a typhoon in Tokyo. Correspondence between the two is revealed only with the benefit of hindsight. It is true that while taking action under Section 153C of the Act, the assessments can be reopened only for the period that correspond to the seized material. The question of correspondence with the assessment period has to be borne in mind when final order is passed. At the initial stage, the correspondence cannot be formulated with precision. Things may appear fuzzy at the beginning. Only an enquiry can unearth the entire truth. At the initial stage, certain leeway has to be given to the authorities. The statute itself prescribes the ceiling limit. The long arm of the department cannot extend beyond a point. I am therefore of the view that it would be against public interest to abort the efforts taken by the department to unearth the escaped income.

18. Thus, looked at from any angle, I have to hold that initiation of the impugned action cannot be said to be without basis. They are grounded on solid material. In fact, immediately after the seizure of the material, the impugned action was not taken. The officials examined many other persons and statements were also recorded. Only after fully satisfying himself, the assessing officer chose to issue the impugned notices. If the petitioners have nothing to fear, they can as well place all the materials before the assessing authority for consideration. I am satisfied with the jurisdictional facts exist for assumption of jurisdiction under Section 153A as well as Section 153C of the Act. I do not find any illegality or infraction of procedure in the action initiated by the respondents. The writ petitions lack merit.

19. These writ petitions stand dismissed and the interim orders earlier granted in these writ petitions stand vacated. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(P & A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PMU

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.

<https://hcservices.ecourts.gov.in/hcservices/>



To:

1. The Assistant Commissioner of Income Tax,
Central Circle-1,
Kulamangalam Main Road, Meenambalpuram,
Madurai - 625 002.

2. The Deputy Commissioner of Income Tax,
Central Circle-1,
Income Tax Staff Quarters Campus,
Kulamangalam Main Road, Meenambalpuram,
Madurai - 625 002.

3. The Assistant Commissioner Of Income Tax,
Central Circle-1, Income Tax Valuation Wing,
Additional Office Building, Kulamangalam Main Road,
Meenambalpuram, Madurai-625002.

W.P. (MD) No. 22213 of 2018 & batch
12.03.2021

SSS (CO)

TR(30.03.2021) 15P 4C