IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2308 OF 2019

Underwater Services Company Ltd. ... Petitioner

Vs.

Assistant Commissioner of Income Tax
Central Circle – 5(3) & Others ... Respondents

Mr.Dinesh Kukreja i/b. Mr.Balkrishna V. Jhaveri for Petitioner.
Mr.P.A.Narayanan for Respondents – Revenue.

CORAM : DHIRAJ SINGH THAKUR &
ABHAY AHUJA, JJ.

DATE : 21st JUNE, 2022

P.C. :

1. The Petitioner herein is impugning a notice dated 29th November, 2018 issued under Section 153A of the Income Tax Act, 1961 ("the Act") as well as notice dated 4th June, 2019 under Section 92CA(2)/92(D)(3) of the Act for the assessment year 2016-2017, on the ground that there is no incriminating material in possession of the Assessing Officer and any notice under this Section can be issued only on the basis of incriminating material discovered during the course of the search.

2. In connected matters viz., in Writ Petition No. 3015 of 2019 as well as Writ Petition No. 2838 of 2019 with Writ Petition No.2052 of 2019 with Writ Petition No.2138 of 2019 with Writ Petition No.2160 of 2019 with Writ Petition No.3056 of 2019 with Writ Petition No.3061 of 2019 with Writ Petition No.3059, on 21st October, 2021, this Court has passed the following order:

> *"2 We have considered the notice dated 29th November 2018 which is impugned in this petition. The notice is very very brief and is bereft of any particulars. The same reads as under :*
>
> | *PAN* | *AY :* | *Dated :* | *Notice No.:* |
> |---|---|---|---|
> | *AAACS9177M* | *2012-13* | *29/11/2018* | *ITBA/AST/S/153 A/2018 – 2019/10 13898034(1)* |
>
> *Sir/Madam/M/s.,*
> *In pursuance of provisions of section 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 2012-13 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 30 days from the service of this notice.*
>
> *3 According to Mr. Chhotaray, Section 153A is couched in mandatory language which implies that once there is a search, the assessing officer has no option but to call upon the assessee to file the returns of the income for the earlier six assessment years. According to Mr. Chhotaray, it is not merely the undisclosed income that will be brought to tax in such*

assessments, but the total income of the assessee, including both the income earlier disclosed and income found consequent to the search, would be brought to tax. Mr. Chhotaray in support of this submission relied upon ***Madugula Venu V/s. Director of Income Tax***[1]*,* ***Commissioner of Income Tax – II, Thane V/s. Continental Warehousing Corporation (Nhava Sheva) Ltd.***[2]*,* ***Commissioner of Income Tax (Central) – III V/s. Kabul Chawla***[3] and ***Commissioner of Income Tax V/s. Anil Kumar Bhatia***[4]*.*

4 We have no quarrel with the proposition submitted by Mr.Chhotaray. Section 153A is couched in mandatory language once there is a search, the assessing officer has no option but to call upon the assessee to file the returns of the income for the earlier six assessment years. Although Section 153A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the assessing officer which can be related to the evidence found, it does not mean that the assessment can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section 153A only on the basis of seized material.

5 Issuance of a show cause notice is the preliminary step which is required to be undertaken. The purpose of show cause notice is to enable a party to effectively deal with the case made out by respondent ***(Om Shri Jigar Association vs Union Of India***[5] ***)****.*

6 Because Section 153A provides that an assessment has to be made under the said Section only on the basis of seized material, the notice dated 29th November 2018, which is impugned in this petition, should have mentioned whether the seized material was under Section 132 or books of account, other documents or any assets are requisitioned under Section 132A. The notice is absolutely silent as could be seen from above. The notice says "you are required to prepare true and correct return of income" and "setting forth such other particulars". Petitioner had filed their returns for the Assessment Year in question, which they thought was the true and correct return of income and that it contained all other particulars as prescribed. If respondent felt that was not enough and petitioner should file a fresh true and correct *return of income because of the search, then respondent should certainly indicate in its notice what were the seized material under Section 132 or books of accounts or other documents or any assets requisitioned under Section 132A. Otherwise an assessee would file a copy of what it had filed earlier, which respondent anyways had in its file. Petitioner has also been seeking from respondent to make available copy of the alleged incriminating material found/seized during the search based on which the notice has been issued. Mr. Chhotaray states that such material has been given later. We are not going into that aspect at this stage because what we find is that the notice issued under Section 153A is bereft of any material. Nothing prevented respondent from mentioning in the notice the basis for issuing the notice under Section 153A so that petitioner could comply with the same as prescribed.*

7 In the circumstances, the notice dated 29th November 2018 impugned in this petition is quashed and set aside. We do not make any observation on the merits of the case. Respondent may issue fresh notice under Section 153A and word it suitably, as advised so that petitioner may have some information reading that notice the basis on which such notice has been issued. All rights and contentions of the parties are kept open.

8 Petition disposed."

3. We observe that in this case also, a similar notice dated 29th November, 2018 under Section 153A is under challenge and as such, a similar cause of action would need to be adopted in this case as well.

4. In the circumstances, the notice dated 29th November, 2018 issued under Section 153A of the Act as well as notice dated 4th June, 2019 under Section 92CA(2)/92(D)(3) of the Act for the

assessment year 2016-2017 are hereby quashed and set aside.

5. No observations are made on the merits of the case. The Respondents may issue fresh notices as they may be advised.

6. All rights and contentions of the parties are kept open.

7. Petition stands disposed. No cost.

(ABHAY AHUJA, J.) **(DHIRAJ SINGH THAKUR, J.)**