IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.09.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

**W.P.Nos.34213, 34214 & 34218 of 2019 &
W.P.Nos.558, 563 & 566 of 2020 &
WMP.Nos.34845, 34847, 34844, 34846, 34852 & 34853 of 2019 &
WMP.Nos.655, 661 & 663 of 2020 &
WMP.Nos.1673, 1677, 1678, 2034, 2036 & 2038 of 2021**

WP.No.34213 of 2019

Savithri Naidu ... Petitioner

Vs

The Asst. Commissioner of Income Tax,
Central CIR 3(1) Chennai,
3rd Floor, No.46, Old No.108,
Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the impugned order dated 22.11.2019 passed by the Respondent under Section 142(1) of the Income Tax Act, 1961 in Letter No.ITBA/AST/F/142(1)/2019-20/1020947255(1) and the order dated 07.11.2019 in Notice No.ITBA/AST/S/153C/2019-20/1019950665(1) passed by the Respondent under Section 153C of the Income Tax Act, 1961 against the Petitioner for Assessment Year 2015-2016 and quash the same.

(In all WPs)
For Petitioner : Mr.Nithyaesh Natraj
For Respondent : Mr.A.P.Srinivas
Senior Standing Counsel

COMMON ORDER

This batch of six W.P.'s is disposed in two separate sets. The first portion of this order relates to W.P.Nos.34213, 34214 & 34218 of 2019 wherein the petitioners challenge notices issued under Section 142(1) of the Income Tax Act, 1961 (in short 'Act') dated 22.11.2019 (W.P.Nos.34213 & 34214 of 2019) and 20.11.2019 (W.P.No.34218 of 2019), all relating to assessment year (A.Y.) 2015-16.

2.It appears that a regular assessment had been framed in the case of the petitioner in W.P.No.34213 of 2019 on 29.12.2017 relating to A.Y.2015-16. That assessment was challenged by way of a Writ Petition that came to be dismissed by a learned single Judge of this Court on 23.06.2021 as against which Writ Appeal No.2533 of 2021 came to be filed.

3.By way of brief background, I may mention that the main dispute in the assessment touches upon the issue of capital gains arising from a transaction of sale of property at Shollingnallur (‘property’/’property in question’). The agreement between the petitioners and the vendors of the property in question contained a clause for arbitration.

4.By order dated 20.03.2018 in O.P.No.1052 of 2017, a retired judge of this Court had been appointed to act as arbitrator. The award of the arbitrator was in favour of the petitioner but was challenged by way of Section 34 petition before this Court in O.P.No.546 of 2020. The O.P. has come to be dismissed in favour of the petitioner by order dated 09.11.2021.

5.In the meanwhile, the writ appeal came to be disposed on 07.10.2021 directing the petitioner to file an appeal before the Commissioner of Income Tax (Appeals) and pursue the same and seek interim protection if the petitioners were so inclined. In fine, the petitioners were relegated to statutory remedy.

6.In the present writ petitions as well, the matters are at a nascent stage and the challenge is only to notices under Section 142(1) of the Act. Thus, it would be appropriate that the petitioners appear before the assessing authority and furnish all materials in support of the returns filed under Section 153C. Let matters be taken forward and finalised in accordance with law.

7.As far as W.P.No.566 of 2020 is concerned, the challenge is to an order of assessment dated 31.12.2019 passed under Section 153C of the Act. In this case as well, seeing as the regular assessment is stated to be the subject matter of appeal before the first appellate authority and no legal infirmity is made out before me as regards the impugned order of assessment warranting interference under Article 226 of the Constitution of India, it would be appropriate that the petitioner be relegated to statutory appeal.

8.This leaves W.P.Nos.558 & 563 of 2020 where an additional point is raised by the petitioners touching upon the validity of the assessment, as falling outside the block of six years provided under the scheme of block assessment. The argument of the petitioners is that the search was conducted on 15.12.2017 and therefore the block period for assessment should comprise the years 2012-13 to 2017-18 only, whereas the impugned assessment relates to the year 2018-19.

9. In response, learned Standing Counsel relies upon the provisions of Section 153C(2) that, according to him, provide for the inclusion of the year of

search for assessment as part of the block period, in certain situations and subject to the conditions set out therein.

10.Detailed submissions have been heard on this point. The provisions of Section 153C(2) are extracted below:

> *"Section 153C(2) - (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."*

11. The explanatory notes to the provisions in Circular No.3 of 2006, particularly paragraph No.3.26 dealing with rationalization of the provisions

relating to assessment of income in search and seizure cases, explain the provisions of Section 153C(2) in the following terms:

> *‘**3.26 Rationalisation of the provisions relating to assessment of income in search and seizure cases***
>
> *A new sub-section (2) has been inserted in section 153C providing that in case of such other person for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A, where-*
>
> *(a) no return of income has been furnished by such 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 person but no notice under sub section (2) of section 143 has been served and the limitation of serving the notice under sub-section (2) of section 143 has expired, or*
>
> *(c) assessment or re-assessment, if any, has been made, before the date of receiving of 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 re-assess total income of such other person for such assessment year in the manner provided in 153A. The provisions of the newly inserted sub-section (2) would apply where books of account or documents or assets seized or requisitioned referred to in sub-section (1) of the said section 153C, have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income under sub-section (1) of section 139 for the assessment year relevant to the previous year in which search is conducted u/s 132 or requisition is made under section 132A.’*

12.The proviso to Section 153B provides for the limitation for framing of assessments upon other persons in regard to whom materials have been found in the course of the search and reads as follows:

> *'Provided that in case of other person referred to in section 153C, the period of limitation for making the assessment or reassessment shall be the period as referred to in clause (a) or clause (b) of this sub-section or nine months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later:'*

13. The time frame for framing of an assessment in terms of Section 153C has been fixed bearing in mind the practical consideration that, assimilation of materials relating to the third person to whom those assessments relate, is bound to take some time. More often than not, it is only upon completion of the primary assessments (under S.153A) that the Assessing Officer even comes to a reasoned conclusion as to whether proceedings are to be initiated against such other person or not.

14. Thus, the transmission of seized materials/books/financials relating to the third person could take place at some distance of time from the framing of

the Section 153A assessments. It is for this reason that Section 153C(2) provides for the framing of the assessment in respect of the year of search as well, subject to the seized materials being received by the Assessing Officer after the due date for furnishing of the return of income for the year of search.

15. In the present case, the materials have been handed over on 27.08.2019 and 28.08.2019 in the case of the writ petitioners in W.P.Nos.558 and 563 of 2020 respectively. Thus, the handing over of the materials is before the due date for filing of returns which, in both cases, is 31.08.2018. In addition, the applicability of the situations adumbrated under clauses (a), (b) and (c) must be tested. The three conditions operate on a stand-alone basis, separated by the conjunction 'or', and not concurrently and the satisfaction or otherwise of any one of the three conditions would suffice to decide the question of jurisdiction.

16. The second and third conditions are inapplicable since both petitioners have filed returns of income and no assessments have been framed. Condition (b) reads as follows, *'(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,....'. In the case of the petitioner in W.P.No.558 of 2020, the return has been filed on 26.09.2018 under Section 139(4), and is thus a valid return. Notice under Section 143(2) has been issued on 27.08.2019, also within time. Condition (b) is thus not satisfied and no proceedings may be initiated under Section 153C. The impugned order of assessment is set aside and this Writ Petition is allowed.

17. In the case of the petitioner in W.P.No.563 of 2020, original return was filed on 30.03.2019 which is a valid return as Section 139(4), as it stood at the relevant point in time, permitted returns to be filed in the following terms:

> *"Section 139(4) - Any person who has not furnished a return within the time allowed to him under sub-section (1), may furnish the [21][return for any previous year at any time before three months prior to] the end of the relevant assessment year or before the completion of the assessment, whichever is earlier."*
> ....
> *"21. Substituted for "return for any previous year at any time before" by the Finance Act, 2021, w.e.f. 01.04.2021."*

18. However, notice under Section 143(2) was issued to the petitioner on 07.11.2019, beyond time and hence condition (b) thus stands satisfied. The

impugned order of assessment dated 31.03.2019 is confirmed. Incidentally, reference to date of handover of the seized material as '06.11.2019' in the assessment order, appears to be an inadvertent typographical error as records produced in the Court indicate that the handover of the material is on 27.08.2019 only.

19. As far as W.P.No.563 of 2020 is concerned, petitioner is relegated to first appeal. Appeal, if filed within a period of four (4) weeks from date of receipt of this order, will be taken on file without reference to limitation but ensuing compliance with all other statutory conditions. Learned counsel also seeks leave to move the appellate authority for interim stay and prays for continuance of the interim protection that the petitioner enjoys now.

20. Acceding to the request, petitioner is permitted to file applications for interim relief along with the appeal and such applications, if filed, shall be disposed after hearing the petitioner, within four (4) weeks from date of their institution. Till such time, no coercive action shall be taken.

21. W.P.Nos.34213, 34214 and 34218 of 2019 and W.P.Nos.563 and 566 of 2020 are disposed with liberty and W.P.No.558 of 2020 is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

16.09.2022

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Index : Yes / No
Speaking Order / Non Speaking Order

To

The Asst. Commissioner of Income Tax,
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DR.ANITA SUMANTH, J.

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