



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	03.02.2022
PRONOUNCED ON	25.02.2022

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.NOS.21027 & 21854 OF 2021

AND

W.M.P.NOS.23032 & 23035 OF 2020

(Through Video Conferencing)

Shri Durai Murugan Kathir Anand

... Petitioner in both the W.Ps.

Vs.

1. Additional Commissioner of Income Tax,
Central Range - 1,
Chennai - 600 034.
2. Deputy / Assistant Commissioner of Income Tax,
Central Circle - 1(3),
Chennai - 600 034.

... Respondents in both the W.Ps.

PRAYER in W.P.No.21027/2021:- Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file respondents including the appraisal report in passing the impugned order in ITBA/AST/F/167/2021-22/1035883599(1), dated 25.09.2021, for the Assessment Year 2019-20 and quash the same as illegal, arbitrary and devoid of merit and consequently, direct the first respondent to pass a fresh order under Section 144A of the Income Tax Act, 1961, after considering the petitioner's submissions and granting the petitioner sufficient opportunity.

PRAYER in W.P.No.21854/2021:- Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file second respondent in passing the impugned order in ITBA/AST/S/153A/2021-22/1035920667(1), dated 27.09.2021, for the



Assessment Year 2019-20 and quash the same as illegal, arbitrary and devoid of merit and consequently, direct the assessment to be done afresh by the second respondent in an independent manner after considering the petitioner's submissions and granting sufficient opportunity.

For Petitioner : Mr.P.S.Raman
(in both the W.Ps.) Senior Counsel
for Mr.R.Sivaraman

For Respondents : Mr.A.P.Srinivas
(in both the W.Ps.) Senior Standing Counsel

COMMON ORDER

In W.P.No.21027 of 2021, the petitioner has challenged order dated 25.09.2021 passed under Section 144A of the Income Tax Act, 1961 (hereinafter referred to as 'the IT Act'). In W.P.No.21854 of 2021, the petitioner has challenged the consequential Assessment Order dated 27.09.2021 passed under Section 153A of the IT Act, 1961.

2.The case of the petitioner is that a sum of Rs.11,48,51,800/- was seized on 01.04.2019 from the residence of one Mr.Damodaran and Mrs.Vimala Damodaran, Karigiri Road, Pallikuppam Railway Gate, Katpadi. It is the case of the petitioner that the cash recovered from the house of above couple did not belong to him and therefore, it cannot be added to his total taxable income as undisclosed income contrary to the return filed.

3.Learned Senior Counsel for the petitioner submits that pursuant to the aforesaid seizure, a Show Cause Notice, dated 08.09.2021, was issued by the second respondent to the petitioner, to which the petitioner replied and also moved an application dated 21.09.2021 under Section 144A of the IT Act, 1961 before the first respondent Additional Commissioner of Income Tax, Chennai, for the following reliefs:-

(i) It is submitted and prayed that the Hon'ble Additional Commissioner of Income-Tax, Central Range-1, Chennai, may be pleased to call for and examine the records, from the Assessing Officer, i.e., Deputy/Assistant Commissioner of Income-Tax, Central Circle 1(3), Chennai, (including the various submissions and material evidences submitted by the petitioner during the course of Post-Search



Proceedings and Assessment Proceedings), pertaining to the petitioner, relevant to the Assessment Year 2019-2020.

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(ii) Further, to issue appropriate direction (i.e., to conduct an independent inquiry in the light of the detailed submissions furnished), to the Deputy/Assistant Commissioner of Income-Tax, Central Circle 1(3), Chennai, (who is predominantly guided by the appraisal report of the case) for the guidance of the Assessing Officer to enable him to complete the Assessment on the basis of the detailed grounds furnished above.

(iii) In the event, if any direction is to be issued prejudicial to the interest of the petitioner, the same may be given after affording a reasonable opportunity of being heard to the petitioner.

(iv) In view of the detailed background narrated as above, it is prayed that the Hon'ble Additional Commissioner of Income-Tax, Central Range-1, Chennai may be pleased to consider this petition judicially and render justice."

4.Learned Senior Counsel for the petitioner submits that the aforesaid petition was disposed in a peremptory manner without any discussion by the first respondent accepting the views in the Show Cause Notice issued by the second respondent on 08.09.2021 and the views expressed by the Investigating Officer.

5.Learned Senior Counsel submits that the first respondent Additional Commissioner of Income Tax abdicated his function under Section 144A of the IT Act, 1961 while passing the impugned order dated 25.09.2021, which has been challenged/impugned in W.P.No.21027 of 2021.

6.It is submitted that before disposing the petition under Section 144A of the IT Act, the Officer concerned exercising jurisdiction under Section 144A of the IT Act was required to apply his mind independently. However, the said Officer has rejected the application on suspicions, conjectures and surmises based on the report of Jurisdictional Investigating Officer.

7.In this connection, the learned Senior Counsel for the petitioner has relied on the following decisions:-

- i. Omar Salay Mohamed Sait Vs Commissioner of Income-tax, [1959] 37 ITR 151 (SC).



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- ii. Umacharan Shaw & Brothers Vs Commissioner of Income-tax, [1959] 37 ITR 271 (SC).
- iii. Lalchand Bhagat Ambica Ram Vs Commissioner of Income-tax, [1959] 37 ITR 288 (SC).
- iv. Commissioner of Income-Tax, Faridabad Vs Anupam Kapoor, [2008] 166 Taxman 178 (Punjab & Haryana).

8. Learned Senior Counsel for the petitioner further submits that under Section 132(4A)(1) of the IT Act, where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it is to be presumed that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person. It is submitted that presumption cannot be rebutted in the absence of evidence to the contrary as the owner of cash Mr. Srinivasan has claimed ownership.

9. It is further submitted that one Mr. S. Srinivasan, the brother-in-law of Mr. Damodaran and brother of Mrs. Vimala [from whose residence the cash was recovered], has given a voluntary statement on the date of seizure that the cash belonged to him and he has also approached the Settlement Commission to settle the case.

10. It is therefore submitted that the cash recovered from the premises of Mr. Damodaran and Mrs. Vimala cannot be treated as undisclosed income of the petitioner under Section 69A of the I.T. Act.

11. It is further submitted that the said Srinivasan claimed to be a party worker and has categorically stated that the money was sourced by him as a party worker to ensure the victory of the petitioner in the Parliamentary Election and kept it in his sister's house and has given a sworn statement and has also approached the Settlement Commission and has paid the admitted tax on the cash recovered from the premises of his brother-in-law and sister, namely, Mr. Damodaran and his wife Mrs. Vimala.

12. It is therefore submitted that impugned proceeding also results in double taxation as the additional liability has been fastened under Section 69 A of the IT Act, 1961 on the petitioner while the same income is being taxed in the hands of the Mr. S. Srinivasan who claimed to be the owner of the money.

13. Learned Senior Counsel further submits that in view of the abolition of the Settlement Commission in the Finance Act, 2021 with effect from 01.02.2021, the case was not taken up for hearing and therefore Mr. S. Srinivasan filed W.P.No.5463 of



2021. It is submitted that the said writ petition along with a batch of writ petitions came up for admission before this Court on 05.03.2021 and the said Writ Petition is pending as on date.

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14. Learned Senior Counsel for the petitioner incidentally submits that the Central Board of Direct Taxes has now issued a clarification to the effect that the applications filed before the Settlement Commission to settle the case before 30.09.2021 will be entertained and heard by the Settlement Commission and therefore in the light of the admission of Mr.S.Srinivasan that the amount recovered from the premises of Mr.Damodaran and Smt.Vimala cannot be treated as the amount of the petitioner merely because the statements were obtained on 01.04.2019 from Mr.Damodaran. It is therefore submitted that the impugned order passed under Section 144A of the IT Act is unsustainable.

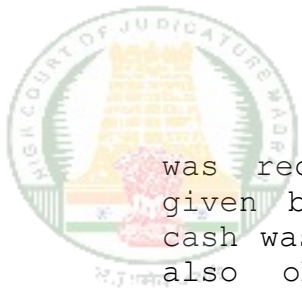
15. It is submitted that after the Show Cause Notice was issued, a specific prayer was made to the first respondent so as to give guidance to the second respondent Assessing Officer to complete the assessment which has been rejected without proper reasoning. It is submitted that the first respondent has merely extracted the report of the Investigating Officer and rejected the application filed by the petitioner under Section 144-A of the Income Tax Act, 1961.

16. Learned Senior Counsel for the petitioner further submits that while passing an order under Section 144A of the IT Act, 1961, the Officer has to exercise a discretion as is contemplated under the aforesaid provision and cannot simply rely on the report of the Investigating Officer.

17. It is further submitted that as a consequence of the order dated 25.09.2021 under Section 144-A of the Income Tax Act, 1961, Assessment Order dated 27.09.2021 for the Assessment Year 2019-2020 was presented as a fait accompli even though there is a clear presumption under law under Section 134-A read with Section 292C of the Income Tax Act.

18. It is further submitted that the order passed under Section 144A of the IT Act, 1961 on 25.09.2021 impugned in W.P.No.21027 of 2021 has to therefore go and therefore the consequential Assessment Order passed on 27.09.2021 under Section 153A of the IT Act, 1961 impugned in W.P.No.21854 of 2021 also has to go.

19. Opposing the prayer in the present writ petitions, the learned standing counsel for the respondents submits that not only statements were obtained from the persons from whom cash



was recovered, but also from the petitioner. The statement given by Mr.Srinivasan, voluntarily claiming ownership of the cash was not satisfactory. It is submitted that statements were also obtained from the petitioner. It is submitted that Mr.Srinivasan is a person of no means as neither he has shown any genuine source of such huge amount nor filed any returns.

20.It is submitted that a notice under Section 153 A of the IT Act, 1961 was issued to the petitioner on 17.08.2020 and thereafter, a notice under sub-section 1 to Section 142 of the IT Act, 1961 was issued to the petitioner on 13.01.2021.

21.In this connection, reference was made to Annexure attached to notice under Section 142(1) of the IT Act, 1961, wherein it has been clearly stated as follows:-

"3. You have been made aware that cash of Rs.11.50 crores was found in packets marked as Alangayam, Pallikonda, etc., with marking of Municipal Wards falling under Vellore Parliamentary Constituency and containing details of number of men and women voters, therein, from the residence of Shri. Damodaran and Smt.Vimala, karigiri Road, Pallikuppam Railway Gate, Katpadi. Since, you were the contesting candidate for Vellore Parliamentary Constituency, please explain as to how the packets indicating that the cash meant for distribution in Vellore constituency was found in the residence of Shri.Damodaran and Smt.Vimala.

4. Please explain your relationship with Shri.Poonjolai Srinivasan, who claimed in the course of his sworn statement dated 01.04.2019 that he had kept cash of Rs.11.50 crores for distribution to voters in Vellore Parliamentary constituency, to secure the success of the DMK candidate in the Parliamentary election, 2019, and you were the DMK candidate."

22.It is submitted that it is only thereafter a Show Cause Notice was issued on 08.09.2021 to which the petitioner has replied and thereafter filed a petition under Section 144A of the IT Act, 1961 on 25.09.2021.

23.Learned Standing Counsel for the respondents submits that the submission of the petitioners were considered before passing of the Impugned Order dated 25.09.2021 under Section 144A of the IT Act, 1961. The Officer has directed the Assessing Officer to proceed with the assessment in accordance with law and therefore, there is no reason to interfere with the impugned order.



24.It is submitted that the Assessing Officer namely, the second respondent has thereafter proceeded in accordance with law and an Assessment Order has been passed on 27.09.2021 with the approval of the first respondent, who passed the order under Section 144-A of the IT Act, 1961.

25.Learned Senior Standing Counsel for the respondents further submits that the Officer namely, the first respondent has considered the submissions/statements and has come to a conclusion that the order has to be passed by the second respondent in accordance with law and therefore, the petitioner cannot challenge the order passed under Section 144A of the IT Act, 1961.

26.Learned Senior Standing Counsel for the respondents further submits that W.P.No.21027 of 2021 has to be dismissed as infructuous in view of the assessment order passed by the second respondent.

27.It is therefore submitted that there is no merit in these writ petitions as the petitioner has an alternate remedy before the Appellate Commissioner under Section 246A of the IT Act, 1961.

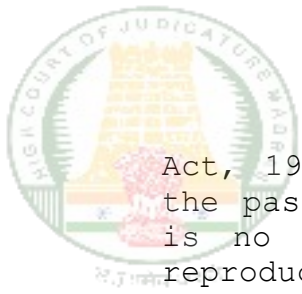
28.It is further submitted that the petitioner has an alternate remedy by way of appeal against the Assessment Order passed under Section 153A of the IT Act, 1961 and therefore, on this count also, W.P.No.21854 of 2021 has to be dismissed.

29.I have considered the rival submissions and perused the impugned order and the case laws submitted by the learned Senior Counsel for the petitioner.

30.The show cause notice issued to the petitioner elicits contradiction and therefore applying the principle of preponderance of probability, the petitioner was called upon to show cause as to why the aforesaid amount and other amounts totalling to Rs.12,49,99,000/- should not be treated as undisclosed income in the hands of the petitioner in terms of section 69 A of the Income Tax Act, 1961.

31.Though the petitioner had filed a reply dated 17.09.2021 to the show cause notice, within four days, thereafter, the petitioner filed a petition under Section 144A of the IT Act, 1961.

32.The first respondent Additional Commissioner has passed the impugned order dated 25.09.2021 and disposed the application filed by the petitioner under Section 144A of the IT



Act, 1961. The second respondent has thereafter, proceeded to pass the impugned assessment order dated 27.09.2021. There is no discussion in the order dated 25.09.2021. It merely reproduces the content of the petitioner's application filed under Section 144A of the IT Act, 1961 and report of the Investigating Officer. The impugned order dated 25.09.2021 passed by the first respondent Additional Commissioner filed under Section 144A of the IT Act, 1961 however, directs the second respondent to pass orders in accordance with law.

33. Therefore, the issue is to be considered in these writ petitions is, whether the first respondent was bound to necessarily give direction to the second respondent under Section 144A of the IT Act, 1961, as was prayed by the petitioner in the application and whether the order passed under Section 144A of the IT Act, 1961 suffers from any vices of non-application of mind.

34. Section 144A of the IT Act, 1961 deals with the power of Joint Commissioner to issue directions. It reads as under:-

'Power of Joint Commissioner to issue directions in certain cases.

144-A. A Joint Commissioner may, on his own motion or on a reference being made to him by the Assessing Officer or on the application of an assessee, call for and examine the record of any proceeding in which an assessment is pending and, if he considers that, having regard to the nature of the case or the amount involved or for any other reason, it is necessary or expedient so to do, he may issue such directions as he thinks fit for the guidance of the Assessing Officer to enable him to complete the assessment and such directions shall be binding on the Assessing Officer :

Provided that no directions which are prejudicial to the assessee shall be issued before an opportunity is given to the assessee to be heard.

Explanation.-For the purposes of this section no direction as to the lines on which an investigation connected with the assessment should be made, shall be deemed to be a direction prejudicial to the assessee.'



35.A direction under Section 144A of the IT Act, 1961 can be issued ''where such officer considers it necessary or expedient to do so having regard to the nature of the case or the amount involved or for any other reason''.

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36.A direction under Section 144A of the IT Act, 1961 can be issued to the Assessing Officer, either on his own motion suo motu or a on reference by the jurisdictional Assessing Officer or on an application of an assessee. The above-mentioned power of the Joint Commissioner/ Additional Commissioner to issue pre-assessment directions to the Income-tax Officer in individual cases is in addition to the general power conferred on him by section 119(3) to issue instructions which stood up to 01.04.88.

37.Directions once issued is binding on the Income-tax Officer. Where, however, any directions prejudicial to interest of the assessee is to be issued, it shall be only after the assessee has been given an opportunity of being heard. Any direction issued by the Inspecting Assistant Commissioner in regard to the lines on which investigation may be made in an assessment, shall not be treated as a direction prejudicial to the assessee. In this case, the first respondent has directed the second respondent to complete the assessment in accordance with law.

38.Sections 144A and 144B were inserted in the IT Act, 1961 by the Taxation Laws (Amendment) Act, 1975. They were inserted pursuant to the recommendations of the Wanchoo Committee. The recommendations which lead to the incorporation of Section 144A are as follows:

''We recommend that the law should authorise the Inspecting Assistant Commissioner to call for the records of a case on his own motion or on a reference by the Income-tax Officer or a petition made by the assessee before the assessment is finalised and issue such directions as he considers fit in the circumstances of the case for completion of the assessment. The directions given will be legally binding on the Income-tax Officer. The law should provide for an opportunity to the assessee of being heard by the Inspecting Assistant Commissioner before any directions prejudicial to him are issued.''

39.Board Circular No.197, dated April 17, 1976, clarified the scope and effect of Section 144A and 144B of the IT Act, 1961. The Calcutta High Court in Arrah Sasaram Light Railway Co. Ltd. v. Commissioner of Income-Tax, [(1993) 204 ITR 807] at Page 819, has extracted in Para 24, the Board Circular No.197, dated



April 17, 1976. Para 24 from the said judgment is reproduced below:-

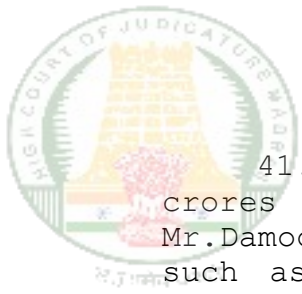
"24. The Board in Circular No. 197, dated April 17, 1976 (see [1977] 110 ITR (St.) 17), explains the scope and effect of the two provisions. It would be useful to refer to them as they afford some clue to the scope and effect and the differentia of the two legislative measures.

"Powers of the Inspecting Assistant Commissioner to issue pre assessment directions [new section 144A].

2. The Amending Act has inserted a new section 144A empowering the Inspecting Assistant Commissioner to issue pre-assessment directions to the Income-tax Officer. It provides that the Inspecting Assistant Commissioner may, either on his own motion or on a reference from the Income-tax Officer or on the application of the assessee, call for and examine the assessment record of any assessee in which an assessment is pending, and issue such directions to the Income-tax Officer as he deems fit so as to enable the Income-tax Officer to complete the assessment. The directions shall be issued only where the Inspecting Assistant Commissioner considers it necessary or expedient to do so having regard to the nature of the case or the amount involved or for any other reason. The directions in question shall be binding on the Income-tax Officer. However, any directions which are prejudicial to the assessee shall be issued by the Inspecting Assistant Commissioner only after the assessee has been given an opportunity of being heard. Any direction issued by the Inspecting Assistant Commissioner in regard to the lines on which investigation may be made in an assessment, shall not be treated as a direction prejudicial to the assessee.

3. The above-mentioned power of the Inspecting Assistant Commissioner to issue pre-assessment directions, to the Income-tax Officer in individual cases is in addition to the general power conferred on him by section 119(3) to issue instructions."

40. A reading of the above provision makes it clear that the decision whether to issue a direction is to be based on objective material available. It is however on a subjective decision of such officer. The power is to be exercised to give a sense of direction to the assessing officer "where such officer considers it necessary or expedient to do so having regard to the nature of the case or the amount involved or for any other reason."



41.As far as the facts of the case are concerned, Rs.11.49 crores in cash was recovered on 01.04.2019 from the house of Mr.Damodaran and Mrs.Vimala Damodaran in packet with markings such as Alangayam, Pallikonda etc. with the marking of the Municipal Wards, falling under the Vellore Parliamentary Constituency from where the petitioner was contesting.

42.The brother of Mrs.Vimala Damodaran namely, Mr.S.Srinivasan came forward and gave a voluntary statement dated 01.04.2019 and stated that the cash belonged to him for distribution to the Voters in the Vellore Parliamentary constituency to secure victory of the petitioner in the parliamentary election and that the amount was earned by him in his real estate business suggesting corrupt practice in the parliamentary election either by the petitioner or his party.

43.However, the record indicate that Mr.S.Srinivasan has no documents to substantiate that he was a man of sufficient means and that the money was either earned by him from his real estate business or was given to him by the party sponsoring the petitioner to contest the election and that the former had given cash to him to corrupt the voters and indulge in corrupt electoral practice.

44.The presumption under Section 132(4A)(i) and Section 292C of the IT Act, 1961 that the books of account, the documents, money, bullion or other valuable article or thing are or is found in the possession or control any person is a rebuttable presumption.

45.Such a presumption under Section 132 (4A)(i) and Section 292C of the IT Act, 1961 can be drawn against Mr.Damodaran and Mrs.Vimala Damodaran from whose premises seizure of the cash was effected.

46.Though such a presumption is a rebuttable presumption, it can be rebutted only if there are adequate evidence by a person claiming ownership that they belong to any other person.

47.The show cause notice issued to the petitioner also suggest that Mr.Damodaran was an employee of the Colleges run by the Trust Durai Murugan Educational Trust in which the petitioner is a Trustee. Along with the cash, details of bus fees/hostel fees/mess fees payable by the students of were found along with the cash of Rs.11.49 crores.

48.The evidence gathered by the respondent during the course of investigation prima facie appears to be overwhelmingly against petitioner. The first respondent could possibly come to



no different conclusion while passing the impugned order, dated 25.09.2021, on the application filed by the petitioner under Section 144A of IT Act, 1961.

49.The statement of Mr.S.Srinivasan claiming that the cash belonged to him does not satisfy the test of preponderance of probability that the cash indeed belongs to him. Mr.S.Srinivasan has not produced any records to substantiate that the cash belonged to him. The show cause notice also indicates that Mr.S.Srinivasan has not filed any income tax returns to justify his version. Mr.Srinivasan has also not given any satisfactory explanation to substantiate his claim. On the other hand, there is a preponderance of probability that the cash belonged to the petitioner.

50.Since preponderance of probability indicate that the seized cash was an undisclosed income of the petitioner and was kept at the residence of Mr.Damodaran and Mrs.Vimala Damodaran by the petitioner. These facts suggest that Mr.S.Srinivasan, Mr.Damodaran and Mrs.Vimala Damodaran are trusted person of the petitioner.

51.Merely, because Mr.S.Srinivasan came forward and gave a sworn statement claiming ownership over seized money does not mean that the liability which can be fastened on the petitioner under the IT Act, 1961 can to be shifted on Mr.S.Srinivasan. Merely, because Mr.S.Srinivasan has filed application to settle case before the the Settlement Commission, by declaring the seized cash to his cash is of no relevance.

52.The subsequent engineering of an application of settling the dispute before the settlement commission by Mr.S.Srinivasan appears to be a mere ploy, ruse to divert attention. It was filed to detract the assessment proceedings. The application under Section 144A of the IT Act itself appears to be an afterthought. Instead of giving attention to the show cause notice and participating in the adjudication, the petitioner appears to have been illadvised to venture out in filing the above application.

53.Further, the cash was not found under the control and the possession of the said Mr.S.Srinivasan. It was found in the residence of Mr.Damodaran and Mrs.Vimala Damodaran with packet markings as Alangayam, Pallikonda etc. with the marking of the Municipal Wards, falling under the Vellore Parliamentary Constituency from where the petitioner was contesting. The presumption under Sections 132(4A) and 292C of the IT Act though a rebuttable presumption, is to be presumed against the petitioner.



54. Mere voluntary sworn statement on the same day by Mr.S.Srinivasan claiming that the seized cash were his, is not sufficient. Mr.S.Srinivasan has not shown himself to be a man of substantial means. On the other hand, the fact that the documents pertaining to the College/Trust of the Petitioner were found along with the seized cash as indicated above show that cash belonged to the petitioner which was not disclosed by the petitioner in his regular return.

55. Further, the decision under Section 144A of the IT Act, 1961 is based on the subjective satisfaction of the first respondent based on objective material available. An Officer exercising jurisdiction under the aforesaid provision, has to rely only on the information that are available to give a sense of direction to the Assessing Officer. Disposal of application under Section 144A of the IT Act does not warrant a detailed reasoning. In this case, the Officer has directed the second respondent to complete the assessment in accordance with law. As mentioned above, discretion can be exercised where such officer considers it necessary or expedient to do so having regard to the nature of the case or the amount involved or for any other reason.

56. The power under Section 144A of the IT Act is to be exercised when such an Officer deems it expedient so to enable the assessing officer to complete assessment. In this case, the rejection was based on the report of the jurisdiction assessing officer which is quite damaging. Therefore, I do not find any reasons to interfere with the order rejecting the request of the petitioner under Section 144A of the IT Act as non speaking or suffering from non application of mind.

57. Instead of defending himself in the Show Cause Notice proceedings, the petitioner attempted to divert the attention to prolong the longevity of the litigation both before the respondents and now before this Court. It was unwarranted.

58. It is also noticed that the impugned assessment order dated 27.9.2021 was passed immediately after the impugned order dated 25.09.2021 was passed referring to Section 144A of the Act. Relevant portion of the Assessment order reads as under:-

''4.4 In this regard, it may also be noted that the person who claimed ownership of the case (S.Srinivasan) did not have the wherewithal to own such a huge cash, on account of factors highlighted supra. It would also be pertinent to note that cash of Rs.11,48,51,800/- (Rs.10,48,52,800/- in 200 rupee denomination and remaining Rs.99,99,000/- in



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denominations of 500 and 2000 rupees) was found in packets marked as Alangayam, Pallikonda, etc., with marking of Municipal wards falling under Vellore Parliamentary constituency and containing details of number of men and women voters, therein. This also reveals that the cash belongs to the assessee, Shri. D.M.Kathir Anand, who was the DMK (Dravida Munnetra Kazhagam party candidate for the 2019 Vellore Parliamentary constituency.

4.5. Further, it was also noticed during the course of enquiry with Canara Bank currency chest Manager (statement of whom was furnished to Shri. D.M.Kathir Anand, on his A.R.'s requisition) and few other Canara Bank Branch Managers that Rs.11,50,00,000/- was converted into 200 rupee denominations by Shri. Poonjolai Srinivasan from Canara Bank but only Rs.10,48,52,800/- was found in 200 rupee denomination during the search on 01.04.2019 from the residence of Smt. Vimala and Shri. Damodaran. Thus, as against cash converted into 200 rupee denomination of Rs.11,50,00,000/- only Rs.10,48,52,800/- was found, giving the inference that the balance amount of Rs.1,01,47,200/- (Rs. 11,50,00,000-Rs.10,48,52,800) was already expended. The source for the balance expended cash of Rs.1,01,47,200/- also remains unexplained. For the reasons stated supra, it is inferred that the assessee, Shri. D.M.Kathir Anand, and not Shri. Poonjolai Srinivasan, is the owner of the expended sum of Rs.1,01,47,200/- also.

4.6. Thus, in the light of the above aspects, it is inferred that the cash seized (Rs.11,48,51,800) from the residence of Shri. Damodaran and the cash expended (Rs.1,01,47,200) totaling to Rs.12,49,99,000/- is owned by Shri D.M.Kathir Anand. The income returned details of the assessee (Shri. D.M.Kathir Anand) as seen from his income-tax returns reveal that this cash of Rs.12,49,99,000/- has not been disclosed to the department and it has been earned by him from undisclosed sources.

4.7. The assessee was given show cause notice dated 08.09.2021 as to why the aforesaid amount of Rs.12,49,99,000/- ought not to be brought to tax, by highlighting the above factors. The assessee replied to the show cause notice on 20.09.2021 and simultaneously, filed petition u/s.144A to the Range



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Head (Addl.CIT, Central Range-1, Chennai). The range head heard both the assessing officer and the assessee's A.R., Shri. Shunmughasundaram, C.A., on 23.09.2021 and after considering the submissions of both the assessing officer and the assessee, rejected the petitioner u/s.144A, vide order dated 25.09.2021. Now, coming to the reply of the assessee to the show cause notice issued by the assessing officer, the crux of the assessee's objections are enumerated below:

The assessee has no financial or business connection with Shri. S.Srinivasan (alias) Poonjolai Srinivasan and it is unreasonable to pin the actions of Shri. S.Srinivasan on him.

Merely because the assessee is the Chairman of Duraimurugan Educational Trust and the materials pertaining to Duraimurugan Educational Trust were found along with the cash at the residence of Damodaran, it cannot be concluded that the assessee is the owner of the cash.

Section 292C states that any assets, books of accounts, documents, etc. found in possession/control of any person during search may be presumed belong to such person.

4.7.1. On objection marked as (a) hereinabove, Shri. S.Srinivasan has explicitly stated that he was a DMK representative and he wanted to ensure victory of his party's candidate. However, he did not have the wherewithal to possess cash of Rs.12,49,99,000/-. This aspect coupled with the fact that papers pertaining to Duraimurugan Educational Trust (of which the assessee is the Chairman) were found along with the cash and the voters details relating to the Vellore Parliamentary constituency indicate that the cash belongs to Shri. D.M.Kathir Anand only and Shri. S.Srinivasan is only a name lender.

4.7.2. On objection (b), no logical reason has been given by the assessee to explain as how the materials pertaining to Duraimurugan Educational Trust were found alongwith the cash at the residence of Damodaran. Also, the assessee was the DMK candidate for the 2019 Vellore Parliamentary constituency. Hence, at the time of election, the cash found alongwith the Trust papers (of which the assessee is the Chairman) indicate that the cash belongs only to the assessee and not to Shri. S.Srinivasan.



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4.7.3. As regards objection (c), it may be noted that section 292C only lays down a presumption of money, jewellery, etc. belonging to a person from whom it was found. In the case on hand, in the light of all the factors discussed supra, the presumption is rebutted with the finding that the amount of Rs.12,49,99,000/- belong to the assessee and not to Shri. S.Srinivasan.

4.8. In the circumstances, the cash of Rs.12,49,99,000/- is to be taxed in the assessee's (Shri D.M.Kathir Anand) hands substantively u/s.69A of the I.T.Act, 1961, for the assessment year 2019-2020 [since, the search and the cash found was on 01.04.2019, the preponderance of probability indicates that the amount of Rs.12,49,99,000/- could not have been earned in the assessment year (2020-2021) relevant to the date of seizure, viz., 01.04.2019].

In the light of the above, the total income of the assessee, Shri.D.M.Kathir Anand, is computed as under :

Total income returned	: Rs.55,17,990/-
Add: As discussed in para 4, addn. u/s.69A	: Rs.12,49,99,000/-

Total income assessed	: Rs.13,05,16,990/-

Demand notice and calculation sheet enclosed.

This order is passed with the prior approval of the Additional Commissioner of IncomeTax, Central Range-1, Chennai as per sec.153D of the Act.

Penalty proceedings u/s.270A of the I.T.Act, 1961 is initiated separately.''

59.Therefore, there is no merit in the challenge to the impugned order dated 25.09.2021 passed by the first respondent under Section 144A of the Income Tax Act, 1961. Hence, W.P.No.21027 of 2021 filed by the petitioner is liable to be dismissed.

60.The impugned assessment order dated 27.9.2021 passed by the second respondent appears to be well reasoned and therefore



does not warrant any interference under Article 226 of the Constitution of India. Therefore, I do not find any reason to quash impugned assessment order dated 27.9.2021. Therefore, W.P.No.No.21854 of 2021 is also liable to be dismissed.

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61.At the same time, I give liberty to the petitioner to file a statutory appeal before the Appellate Commissioner under Section 246A of the IT Act, 1961 against the impugned assessment order dated 27.9.2021 passed by the second respondent within a period of 30 days from the date of receipt of this order. If an such an appeal is filed by the petitioner within such time, the Appellate Commissioner shall pass orders on merits and in accordance with law.

62.The Appellate Commissioner shall pass orders in the proposed appeal to be filed by the petitioner on merits and in accordance with law without getting influenced with the observations in this order. The observation in this order is not intended to influence the appellate Commissioner. He shall pass orders on merits on the proposed appeal.

63.Considering the fact that the petitioner has enjoyed a temporary reprieve during the pendency of these writ petitions, the recovery proceedings shall be kept in abeyance for a period of 60 days from the date of receipt of a copy of this order, provided the petitioner files such statutory appeal against the impugned assessment order dated 27.09.2021, within the time stipulated herein and an application under Section 220(6) of the Income Tax Act, 1961 before the second respondent herein. The second respondent shall endeavour to dispose the same preferably within 60 days from the date of receipt of a copy of this order.

64.Needless to state that the second respondent shall be guided by the principle enunciated by this Court in Kannammal Vs. Income Tax Officer, Ward1(1), Tiruppur [W.P.No.3849 of 2019, dated 13.02.2019] reported in (2019) 413 ITR 390 (Mad) and M/s.Queen Agencies, Rep. by its Managing Director vs. The Assistant Commissioner of Income Tax (Circle-1), Karaikudi and another [W.P.(MD)No.5550 of 2020, dated 08.04.2021] reported in CIT (2021) 18 ITR-OL 120 (Mad) and decision of the Hon'ble Supreme Court in Principal Commissioner of Income Tax and others vs. L.G. Electronics India Private Limited [2018 (18) SCC 447] and the Circulars of the Board while disposing the proposed application under Section 220(6) of the I.T. Act.



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65. In the result, W.P.No.21027 of 2021 and W.P.No.21854 of 2021 are dismissed with the above observations. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

jen/smn2

To

1. The Additional Commissioner of Income Tax,
Central Range - 1,
Chennai - 600 034.
2. The Deputy / Assistant Commissioner of Income Tax,
Central Circle - 1(3), Chennai - 600 034.

+lcc to Mr.A.P.Srinivas, Advocate, S.R.No.12868

W.P.Nos.21027 & 21854 of 2021

SR(CO)

RLP(11/03/2022)