IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1965 of 2021

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Amit Kumar alias Amit Sarraf Son of Mr. Amarnath Saraf resident of Amar Madhuri Bhawan, Road No. 4 Kazipur, P.O. Bankipore, P.S. Kadamkuan, in the district and Town of Patna - 800004.

... ... Petitioner/s

Versus

1. The Union of India
2. The Income Tax Officer, Ward - 5 (3), Patna, Loknayak Jai Prakash Bhawan, Patna.
3. The Deputy Director of Income Tax (Investigation), Unit -2, Aaykar Bhawan, Maqbul Alam Road, Varanasi - 221002.
4. The Director General of Income Tax (Investigation), 16/116, Bhargava Estate, Civil Lines, Kanpur- 208001.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 17372 of 2021

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Amit Kumar alias Amit Sarraf Son of Mr. Amarnath Saraf, resident of Amar Madhuri Bhawan, Road No. 4, Kazipur, P.O. Bankipore, P.S. Kadamkuan, in the Town and District of Patna-800004.

... ... Petitioner/s

Versus

1. Principal Commissioner of Income Tax-1, Patna Central Revenue Building, Beer Chand Patel Marg, Patna.
2. Joint/Additional Commissioner of Income Tax, Range-4, Lok Nayak Jai Prakash Bhawan, Patna.
3. The Income Tax Officer, Ward-5(1), Patna, Lok Nayak Jai Prakash Bhawan, Patna.

... ... Respondent/s

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Appearance :
(In Civil Writ Jurisdiction Case No. 1965 of 2021)

For the Petitioner/s	:	Mr.Ajay Kumar Rastogi, Sr. Advocate
	:	Mr.Parijat Saurav, Advocate
		Ms. Smriti Singh, Advocate
		Ms. Shilpi Keshri, Advocate
For the Respondent/s	:	Dr. K. N. Singh, ASG
		Mr. Anshuman Singh, Advocate
		Mrs.Archana Sinha @ Archana Shahi, Sr. S.C.
		Mr. Alok Kumar, Advocate

(In Civil Writ Jurisdiction Case No. 17372 of 2021)

For the Petitioner/s	:	Mr.Ajay Kumar Rastogi, Sr. Advocate
	:	Mr.Parijat Saurav, Advocate
For the Respondent/s	:	Mrs.Archana Sinha @ Archana Shahi, Sr. S.C.
		Mr. Alok Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 28-07-2023

Two writ petitions are filed against proceedings arising from a requisition made under Section 132 of the Income Tax Act 1961(for brevity, 'the Act').

2. CWJC No. 1965 of 2021 seeks release of cash amounting to Rs. 98,50,000/- requisitioned and seized by the Income Tax Department on 02.06.2017, which was originally seized from the petitioner on 01.06.2017 by the Directorate of Revenue Intelligence. The petitioner contends that withholding of the seized cash without any demand raised, tantamount to violation of statutory provisions contained in Section 132B(3) of the Act. A declaration is sought, as to the expiry of limitation of

21 months, as prescribed under Section 153B(a) of the Act, from the end of the financial year, in which the last of the authorizations was executed. There is also a claim for interest on the amounts withheld so far.

3. CWJC No. 17372 of 2021, on the very same ground of limitation, seeks a writ of certiorari against the notices issued under Section 148 of the Act for assessment years 2013-14 to 2018-19, which is also based on the recovery of cash, which is the subject matter of the earlier writ petition.

4. On 01.06.2017, the Department of Revenue Intelligence intercepted the petitioner while he was travelling in a train and found cash of Rs. 98.50 lacs on his person. The DRI handed over the cash to the Deputy Director of Income Tax (Investigation), Varanasi and the Additional Director of Income Tax (Investigation), Varanasi recorded the statement on oath of the petitioner, under Section 131(1A). The petitioner asserted that the cash belongs to his brother, who, however, gave a statement disowning the cash. On 06.06.2017, an authorization was issued under Section 132A of the Act, which is the last of the authorization based on which the requisition of cash was made. The matter was transferred on the request of the ITO, Ward-5(3), Patna to the Benami Cell. A notice was issued under

Section 148 on 29.03.2019 for the assessment year 2012-13 and an order was passed on 28.05.2019 for the said assessment year. The petitioner filed an e-return for the assessment year 2018-19 on 26.03.2019. On December, 2019, the limitation for passing assessment order under Section 153A for the assessment years 2013-14 to 2018-19 expired as per Section 153B. The Benami Cell dropped the proceedings under the Benami Act and forwarded the case, with a report, back to the Assessing Officer. On 31.03.2021, notices were issued under Section 148 for the assessment years 2013-14 to 2018-19, which was first challenged in an interlocutory application in the pending writ petition and then later after withdrawing the interlocutory application, challenged in CWJC No. 17372 of 2021.

5. The question arising in the writ petitions, is identical and is one of limitation, requiring refund of the amounts seized and setting aside of the notices issued under Section 148. The failure of the Assessing Officer to initiate any proceedings under Section 153A would preclude the Assessing Officer from carrying out a regular assessment or a re-assessment under Section 147 read with Section 148 of the Act is the compelling argument.

6. We heard Shri A.K.Rastogi, learned Senior

Counsel for the petitioner and Smt. Archana Sinha learned Senior Standing Counsel for the respondents.

7. The learned Senior Counsel relied on the decisions of the Hon'ble Supreme Court in **Commissioner of Income Tax v. Kabul Chawla; [2016]380 ITR 573 (Delhi), Principal Commissioner of Income Tax v. Abhisar Buildwell P. Ltd.**; **[2023] 454 ITR 212(SC)** and **Union of India v. Exide Industries Ltd.**; **[2020] 425 ITR 1 (SC)**. The first two decisions to bring home the point of limitation under Section 153A & 153B and the last cited, insofar as the rigor brought in with a *non-obstante* clause; which Section 153A is.

8. Section 132 deals with search and seizure; Section 132A with respect to the powers of requisition and Section 132B regarding the application of seized or requisitioned assets. Section 153A was introduced by Act 32 of 2003 superseding Chapter XIVB, 'Special Procedure for Assessment of Search Cases'; as is seen from Section 158BI, insofar as searches conducted after 31.05.2003.

9. Section 153A is a *non-obstante* provision rendering nugatory Sections 147, 148, 149, 151 and 153 in the case of a person, when a search is initiated under Section 132 or books of account, other documents or any assets are

requisitioned under Section 132A; after 31.05.2003. In all such circumstances, the Assessing Officer, as per sub-clause(a), is required to issue notice to such person to file a return in respect of each assessment year falling within six assessment years and for the relevant assessment year or years in which the search was conducted or requisition made. Sub-clause (b) enables the Assessing Officer, who issues notice under sub-clause (a) to assess or re-assess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search was conducted or requisition is made and also of the relevant assessment year or years in which search or requisition was made. The Assessing Officer by the proviso has also been conferred with the power to assess or re-assess the total income in each of the assessment years, as referred to in clause (b). The second proviso statutorily prescribes for abatement of any assessment or re-assessment of the six assessment years referred to earlier; including the relevant assessment year, which abatement would statutorily occur on the date of initiation of the search under Section 132 or making of requisition under Section 132A. The third proviso empowers the Central Government by a Notification to specify a class or classes of cases in which the Assessing Officer is not required to issue such notices. The third proviso restricts such issuance of notice in the relevant assessment year or years unless the Assessing Officer has in his possession of books of accounts or documents on evidence revealing the income represented in the form of asset, which has escaped assessment, to be equivalent to or in excess of Rs. 50 lacs, in the aggregate.

10. The effect of Section 153A and its ramifications and consequences are no longer *res integra*. The High Court of Delhi in **Kabul Chawla** (supra) has held so.

> “**37.** On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:
>
> (i) Once a search takes place under Section 132 of the Act, notice under Section 153A(1) will have to be mandatorily issued to the person searched requiring him to file returns for six assessment years immediately preceding the previous year relevant to the assessment year in which the search takes place.
>
> (ii) Assessments and reassessments pending on the date of the search shall abate. The total income for such assessment years will have to be computed by the Assessing Officers as a fresh exercise.
>
> (iii) The Assessing Officer will exercise normal assessment powers in respect of the six years previous to the relevant assessment year in which the search takes place. The Assessing Officer has the power to assess and reassess the ‘total income’ of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six assessment years “in which both the disclosed and the undisclosed income would be brought to tax”.
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> (iv) 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 only on the basis of seized material."

(v) In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to the completed assessment proceedings.

(vi) Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each assessment year on the basis of the findings of the search and any other material existing or brought on the record of the Assessing Officer.

(vii) Completed assessments can be interfered with by the Assessing Officer 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 aforesaid decision was also upheld by the Hon'ble Supreme Court in **Abhisar Buildwell P. Ltd.** (supra) and the law was succinctly stated in paragraph 14, which reads as under:-

"14. In view of the above and for the reasons stated above, it is concluded as under:

(i) that in case of search under section 132 or requisition under section 132A, the Assessing Officer assumes the jurisdiction for block assessment under section 153A;

(ii) all pending assessments/reassessments shall stand

abated;
(iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the Assessing Officer would assume the jurisdiction to assess or reassess the "total income" taking into consideration the incriminating material unearthed during the search and the other material available with the Assessing Officer including the income declared in the returns; and
(iv) in case no incriminating material is unearthed during the search, the Assessing Officer cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the Assessing Officer in the absence of any incriminating material found during the course of search under section 132 or requisition under section 132A of the Act, 1961. <u>However, the completed/unabated assessments can be reopened by the Assessing Officer in exercise of powers under section 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under section 147/148 of the Act and those powers are saved</u>."

(emphasis supplied by us)

12. The sum total of the declaration made, as extracted hereinabove, is that, when assessments are pending of the six prior years and the relevant year/years on which search or requisition is made, then such assessments shall abate and it shall be proceeded with under Section 153A. On such assessment being proceeded with under Section 153A, the Assessing Officer would be entitled to look at the disclosed income, any information obtained from sources other than the search and also such information obtained in the search, for the purpose of completing assessment. Insofar as the completed

assessments are concerned, they remain unabated and, in such circumstances, there can be an assessment proceeded with under Section 153A, only if there is incriminating material found which reveals undisclosed income in any of the years as provided under Section 153A. If no such incriminating material is found on search, then there could be no assessment proceeded with under Section 153A. However, if no incriminating material is found or if the incriminating material found is brought to assessment; then the Assessing Officer would not be precluded from proceeding under Section 147 read with 148 of the Act, if it is permissible under the said provisions.

13. We also have to notice that the limitation to proceed under Section 153A, as provided in Section 153B is a period of 21 months from the end of the financial year in which the last of the authorization for search under Section 132 or requisition under Section 132A was executed.

14. In the present case, there is no dispute as to the first and last requisition having been made on 06.06.2017 in the assessment year 2018-19, corresponding to financial year 2017-18. The last of the relevant assessment year in which the requisition was made would be 31.03.2018 and the period of limitation would expire on 31.12.2020. In the present case, no

assessment was initiated on or before the said date under Section 153A. The assessments were initiated that too under Section 148 for the assessment years 2013-14 to 2018-19 on 31.03.2021, long after the assessment period had expired.

15. In this context, we have to also notice that Section 153A was introduced in the Act notwithstanding the provisions, *inter alia*, of Sections 147 and Section 148. Hence, when no proceedings were taken under Section 153A, after the requisition made under Section 132, the Assessing Authority is disabled from proceeding for any assessment. Insofar as assessments pending and abated under Section 153A, after the expiry of 21 months limitation period under Section 153B there can be no proceeding taken under the Act either for regular assessment under Section 143 or under Section 153A or reassessment under Section 147 read with 148.

16. On the above reasoning, writ petitions have to be allowed. Hence, in CWJC No. 1965 of 2021, there shall be a direction to the Department to refund the entire seized cash with interest, as provided under Section 132B(4). The proceedings under Section 147 and 148, as challenged in CWJC No. 17372 of 2021 shall be set aside.

17. The writ petitions are allowed, leaving the

parties to suffer their respective costs.

K. Vinod Chandran, CJ)

Partha Sarthy, J: I agree.

(Partha Sarthy, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	19.07.2023
Uploading Date	31.07.2023
Transmission Date	