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W.P.Nos.18281 & 18285 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	07.08.2023
Pronounced On	31.10.2023

CORAM

THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.Nos.18281 & 18285 of 2022
and W.M.P.Nos.17631 & 17637 of 2022

St.Antony Educational and Social Society,
Represented by its President,
D.Prakash Mull Cordia

.. Petitioner in
W.P.No.18281 of 2022

D.Prkashmull Chordia

.. Petitioner in
W.P.No.18285 of 2022

vs.

- 1.The Central Board of Direct Tax,
Represented by its Chairman,
North Block, Secretariat Building,
New Delhi.
- 2.The Director General of Income Tax (Investigation),
No.46, Mahatma Gandhi Road,
Chennai 600 034.
- 3.The Commissioner of Income Tax,
(Appeals)-18, Aayakar Bhavan,
Mahatma Gandhi Road,
Chennai 600 034.



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4.The Deputy Commissioner of Income Tax,
Central Circle-1(3), Investigation Wing,
Room No.312, 3rd Floor,
Mahatma Gandhi Road,
Chennai 600 034.

... Respondents in both W.Ps.

Prayer in W.P.No.18281 of 2022 : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records of the second respondent in ITBA/COM/F/17/2021-22/1041684063(1) dated 26.03.2022 and quash the same.

Prayer in W.P.No.6553 of 2020 :Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari calling for the records of the second respondent in ITBA/COM/F/17/2021-22/1041682025(1) dated 26.03.2022 and quash the same.

In both W.Ps.

For Petitioner : Mr.N.R.S.Ganesan

For Respondents : Mr..A.P.Srinivas
Senior Standing Counsel
Mr.A.N.R.Jayaprathap
Junior Standing Counsel



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COMMON ORDER

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By this common order, both the writ petitions are being disposed of.

2. In W.P.No.18281 of 2022 has been filed by the petitioner Society, W.P.No.18285 of 2021 filed by the president of the said Society.

3. The petitioner in W.P.No.18281 of 2022 is aggrieved by the impugned order dated 26.03.2022 bearing Reference Nos.ITBA/COM/F/17/2021-22/1041684063(1) passed by the second respondent, the Director General of Income Tax (Investigation), Chennai. In W.P.No.18285 of 2022, the petitioner is aggrieved by the impugned order dated 26.03.2022 bearing Reference Nos. ITBA/COM/F/17/2021-22/1041682025(1) passed by the second respondent, the Director General of Income Tax (Investigation), Chennai. Both the impugned orders have been passed by the second respondent under Rule 112(F) of the Income Tax Act, 1962.



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4. These impugned orders have been passed pursuant to an applications both dated 25.02.2022 filed by the respective petitioners under Rule 112(F) of the I.T.Act,1962. Both the impugned orders passed by the second respondent under Rule 112 of Income Tax Rules, 1962 read identically.

5. Relevant portion of the impugned order, reads as under:-

In this regard attention is drawn to the Circular No.10/2012 [FNo.282/22/2012-IT (INV.V)] dated 31.12.2012, issued by the CBDT on this issue wherein it has been stated that

“4. In such cases, the officer investigating the case, with the approval of the Director General of Income Tax, Shall certify that-

i.the search is conducted under Section 132 or the requisition is made under Section 132A of the Act in the territorial area of an assembly or parliamentary constituency in respect of which a notification has been issued under Section 30, read with Section 56 of the Representation of the People Act, 1951; or

ii. the assets seized or requisitioned are connected in any manner to the ongoing election process in an assembly or parliamentary constituency; and



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iii. no evidence is available or investigation is required for any assessment year other than the assessment year relevant to the previous year in which search is conducted or requisition is made”.

6. Operative portion of para 4 in the respective writ petition read as under:-

W.P.No.18281 of 2022	W.P.No.18285 of 2022
Impugned Order in ITBA/COM/F/17/2021-22/1041684063(1)	Impugned order in ITBA/COM/F/17/2021-22/1041682025(1)
From the above Circular of the CBDT, it is clear that exemption under Rule 112F is to be given in cases where no evidence is available or investigation is required for any Asst.Year other than the A.Y. Relevant to the previous year in which search is conducted or requisition is made. In the case of M/s.St.Antony Educational and Social Society , it is seen that evidences have been found that cash was being received back by M/s.Shri D.Praksh-mull Chordia out of the salary credited in the bank accounts of the employees of the Trust St.Antony Educational and Social Society. Thus, evidences have been found which show that salary ex-penses paid to the employees of the Trust St.Antony Educational And So-cial Society are inflated and are re-ceived back in cash by the assessee	From the above Circular of the CBDT, it is clear that exemption under Rule 112F is to be given in cases where no evidence is available or investigation is required for any Asst.Year other than the A.Y. Relevant to the previous year in which search is conducted or requi-sition is made. In the case of Shri.D.Prakashmull Chordia , it is seen that evidences have been found that cash was being received back by M/s.Shri D.Prakshmull Chordia out of the salary credited in the bank ac-counts of the employees of the Trust St.Antony Educational and Social So-ciety. Thus, evidences have been found which show that salary expenses paid to the employees of the Trust St.Antony Educational And Social So-ciety are inflated and are received back in cash by the assessee Shri



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Shri D.Prakashull Chordia. This issue requires investigations Assessment Years preceding Assessment Year relevant to the previous year in which the search was conducted. Therefore, the case of the assessee is not covered by the above Circular of the CBDT dated 31.12.2012 in view of para 4(iii) of this Circular.

In view of the above discussion, I hold that the case of the assessee is not covered under Rule 112 F and the petition of the assessee seeking relief under this Rule is hereby rejected.

D.Prakashull Chordia. This issue requires investigations for Assessment Years preceding Assessment Year relevant to the previous year in which the search was conducted. Therefore, the case of the assessee is not covered by the above Circular of the CBDT dated 31.12.2012 in view of para 4(iii) of this Circular.

In view of the above discussion, I hold that the case of the assessee is not covered under Rule 112 F and the petition of the assessee seeking relief under this Rule is hereby rejected.

7. In support of the present case, the learned counsel for the petitioner has placed reliance on the decision of the Hon'ble Supreme Court in **Commissioner of Income Tax and Another vs. S.V.Gopala Rao and Others**, (2018) 13 SCC 189, wherein it has been held that a circular cannot amend the rules having statutory force.

8. In para-8 of the affidavit, the petitioner has stated that the petitioner was forced to give a statement that cash was withdrawn from 25 savings bank account of individuals employees of Annai Theresa College of Engineering, Thirunavalur to meet personal expenses of the petitioner



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in W.P.No.18285 of 2021 and on the assurance that there will not any search related scrutinize last 7 years except financial year 2020-21.

Along with typed set , the petitioner has filed affidavit of 19 employees who have given statement that the amount with drawn was paid to them.

9. The specific case of the petitioner is that “one of situation contemplated in Rule 112(F) of the Act were attracted and therefore question of invoking Section 153A/C did not arise for passing assessment orders under 153A & 153C read with Section 143(3) r/w Section 153(1)(b) of the Income Tax Act, 1961.

10. It is submitted that on the date when the cash was seized Tamil Nadu State Assembly Model Code was in operation and therefore Assessing officer cannot issue notice for assessing and reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous years in which search was conducted or requisition was made where the search is conducted or requisition was made in the territorial area of an assembly and parliamentary constituency in respect of which, a notification has been



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issued under Section 30 r/w Section 56 of the Representation of the People Act, 1951(43 of 1951) or where the assets so seized or requisitioned are connected in any manner to the ongoing election in an assembly or parliamentary constituency.

11. It is submitted that the exception provided in provision to Rule 112 F of the Income Tax Rules, 1962 were attracted and therefore invocation of 153A & 153C of the Income Tax Act, 1961 was without jurisdiction. It is submitted that the Assessing Officer ought to have refrained from issuing notices and assessing the petitioner under Section 143(3) r/w 153(b)(1) of the Act, 1961. It is therefore submitted that the application filed under Section 112 of the Income Tax Rules, 1962 ought to have been allowed.

12. The learned counsel for the petitioner further submitted that the Central Board of Direct Tax, has issued Circular No.10/2012 dated 31.12.2012 bearing Reference [F.No.272/22/2012-17 (INV-V)]for the purpose of Rule 112 (F) of the Income Tax Act,1962



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13. It is therefore submitted that in such cases, the officer investigating the case, with the approval of the Director General of Income Tax, shall certify that-

- (i) the search is conducted under Section 132 or the requisition is made under Section 132A of the Act in the territorial area of an assembly or parliamentary constituency in respect of which a notification has been issued under Section 30, read with Section 56 of the Representation of the People Act, 1951; or
- (ii) the assets seized or requisitioned are connected in any manner to the ongoing election process in an assembly or parliamentary constituency ; and
- (iii) no evidence is available or investigation is required for any assessment year other than the assessment year relevant to the previous year in which search is conducted or requisition is made.

14. It is further submitted that in view of second limb of the CBDT circular, only if the money seized or requisitioned are connected in any manner to the ongoing election, the Investigating Officer may certify to that effect.



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15. It is submitted that the second limb of the CBDT Circular is against the intention of the parliament and contrary to Rule 112 F.

16. On behalf of the respondent, it is submitted that statements were recorded from the petitioner in W.P.No.18285 of 2022 on 10.03.2021 and 11.03.2021 under Section 131 of the Income Tax Act, 1961 as mentioned above. It is submitted that the facts are clear and there is an admission that the amount was being siphoned after crediting the amount towards salary to the respective employees account by withdrawing it later without proper accounting.

17. It is submitted that Rule 112 (F) was specifically inserted by clauses 64 & 66 of the Finance Act, 2012. It is submitted that under Rule 112(F) of the Income Tax Rules, 1962 no notice can be issued to a class or classes of cases by an Assessing Officer for assessing or reassessing an assessee for the assessment years immediately preceding the assessment year relevant to the previous year in which search was conducted or requisition made, where such search or requisition was made in a territorial area of an assembly or Parliamentary constituency in



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respect of which a notification has been issued under Section 30 read with Section 56 of the Representation of the People Act, 1951 (43 of 1951). It is submitted that the exception will apply only **where the assets so seized or requisitioned are found in any manner connected with the ongoing election in an assembly or Parliamentary constituency.**

18. It is submitted that amendment was made with a view to reduce infructuous and unnecessary proceedings under the Income Tax Act, 1961 in cases where a search is conducted under Section 132 or requisition is made under Section 132 or requisition is made under Section 132A and cash or other assets are seized during the election period, generally on a single warrant, and no evidence is available, or investigation required, for any assessment year other than the assessment year relevant to the previous year in which search is conducted or requisition is made.

19. It is submitted that Circular No.10/2012 dated 31.12.2012 bearing Reference (F.No.282/22-2012-IT(INV.V) is clear and therefore no interference called for.



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WEB COPY 20. I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the respondents.

21. Rule 112F of the Income Tax Rules, 1962, reads as under:-

112F. 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 years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made, shall be the cases-

- (i) Where, as a result of a search under Sub-Section(1) of Section 132 of the Act or a requisition made under Section 132A of the Act, a person is found to be in possession of any money, bullion, jewellery or other valuable articles or things, whether or not he is the actual owner of such money, bullion, jewellery etc; and
- (ii) Where, such search is conducted or such requisition is made in the territorial area of an assembly or Parliamentary constituency in respect of which a notification has been issued under Section 30 read with Section 56 of the Representation of the People Act, 1951 (43 of 1951) of **where the assets so seized or requisitioned are connected in any**



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manner to the ongoing election in an assembly or Parliamentary constituency.

Provided *that this rule shall not be applicable to cases where such search under section 132 or such requisition under section 132A has taken place after the hours of poll so notified:*

Provided further *that this rule shall not be applicable to cases where any assessment or reassessment has abated under the second proviso to section 153A and where any assessment or reassessment has abated under section 153C.]*

22. To implement the said above Rules, the Central Board of Direct Taxes has also issued Circular No.10/2012 dated 31.12.2012 bearing Ref.No.(F.No.282/22-2012-IT(INV.V). The tax of the said Circular reads as under:-

“2. In consequence of the powers conferred by clauses (64) and (66) of the Finance Act, 2012 the Central Government amended the Income Tax Rules, 1962, to insert a new Rule 112 F after the existing Rule 112E, specifying the class or classes 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



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relevant to the previous year in which search is conducted or requisition is made.

3. The aforesaid amendment was introduced with a view to reduce infructuous and unnecessary proceedings under the Income Tax Act, 1961 in cases where a search is conducted under Section 132 or requisition made under Section 132A and cash or other assets are seized during the election period, generally on a single warrant, and no evidence is available, or investigation required, for any assessment year other than the assessment year relevant to the previous year in which search is conducted or requisition is made.”

23. Facts on record indicate that on 10.03.2021, after the Tamil Nadu State Assembly Election Model Code of Conduct was in force, the Tamil Nadu State Surveillance Team (SST) intercepted two persons namely Mr.R.Unnikrishnan and M.Swaminathan who were found carrying a sum of Rs.19,74,500/- in cash in a vehicle bearing Reg.No.TN.31-BA 9159 The aforesaid cash was seized from the hands of Mr.R.Unnikrishnan and M.Swaminathan. These two persons were working at the Bank of Baroda as Joint Manager and as correspondent. Summons was issued to the said Unnikrishnan on the same date on 10.03.2021. Statement was recorded under Section 131(1A) of the Act.



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In his statement, Sri.R.Unnikrishnan, the Joint Manager of Bank of

Baroda answered as follows:-

Q.5 Kindly explain me in detail regarding the source for the above mentioned cash?

A.5 : One of the college office staff Mr.T.Saravanan, Junior Assistant (Accounts Section) of **Annai Teresa College of Engineering, Thirunavalur** has given me Self cheque of Rs.19,74,500/- bearing the cheque number 000351 of M/s.St.Antony Educational Social Society in the morning signed by Prakashmull Chorida, Chairman of the above mentioned Society. Along with the self cheque, he has given 25 savings Bank accounts . A/c bearer cheques belonging to 25 individuals and a paper containing the names of 25 staff members and their account numbers and their respective net salary details.

On clearing the self cheque of Rs.19,74,500/- (debiting the amount from St.Anthony Educational Social Society No.17640400000093) and credited the amount in the respective accounts mentioned in the list. On clearing 25 A/c bearer cheques, I have withdrawn cash of Rs.19,74,500/- from the list of savings accounts as mentioned in list above and carrying this amount to the Chairman's Shri.Prakashmull Chordia House, Nellikpam.



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24. In his answer to Q.No.3, the said Bank Officer has stated that he was working with the aforesaid Bank from 2nd January 2021 after transfer from Pondicherry Branch.

25. In his reply, Q.No.8, Sri.R.Unnikrishnan, the Joint Manager of Bank of Baroda has given a statement to the effect that the cash was carried to the Chairman of the petitioner's society namely D.Prakash Mull Chorida, the petitioner in W.P.No.18285 of 2020 at the instructions of Branch Manager, Shri.Prabhu Kumar. It was stated that this was the regular practice. To Q.No.9, the said Officer of Bank has answered as under:-

Q.9. Have you ever carried cash amount regularly to the Chairman Shri.Prakashmull Chordia House, Nellikuppam?

A.9 Yes. During the first week of March, 2021 (2nd or 3rd), I have withdrawn around Rs.20 lacs from 60 individual S.B.Accounts and handed over to the Chairman's house. No receipt will be given for handing over the money. From the date of joining at the Anathur Branch, I have been doing this at least once in a month.



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26. On the same day, a statement was also obtained from the petitioner in W.P.No.18285 of 2020, Chairman of the Annai Tersi Engineering College, Tirunavallur . He has stated that as a Chairman of the said , Engineering College, he was also doing the pawn broking business at Nellikuppam, Real Estate business, Finance and also receiving rental income and that he was joint owner of above 10 commercial properties along with his spouse and his son, daughter-in-law etc.

27. In his answer, the petitioner in W.P.No.18285 of 2020 has also stated that consolidated cheque for a sum of Rs.19,74,500/- was drawn for being disbursed towards the salary of 25 different staffs and collected 25 self- cheques were drawn and had withdrawn the aforesaid amount to be handed at his house as he was unable to go to the bank himself.

28. In his answer to Q.No.1, the petitioner in W.P.No.18285 of 2020 has stated that the amount collected would be paid bank in cash as salary of the respective staffs. In his answer to Q.No.7, he has stated hereunder:-



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Q.7 : As you have stated earlier in answer to A5, that salary is directly debited from the Trust O.D.A/c.17640400000093 to the respective staff salary accounts, what is the reason for collecting “Self” cheques from employees and withdrawing from the respective Bank Accounts and in turn give salary in cash to the employees?

Ans: As per my own wish and interest, I feel happiness in giving salary to the staff members in cash by my hand to see the cheerful faces of the staff.

29. On the following dates further statements were recorded wherein Q.Nos.16 to 18 , he has stated as follows:-

Q.16 : Am showing you the loose sheets seized ANN/SRN/SAESS/LS-3, which was received from the bank, that salary was already credited on 02.03.2021 to tune 22,71,980/- and also from statements recorded from Mr.Unnikrishnan that salary was credited and followed by withdrawal of cash from 60 individual bank accounts of employees.

A.16: Yes sir. I accept that salary was already credited and followed by withdrawal from the individual savings account as stated.

Q.17 : So from statements recorded from the Mr.Unnikrishnan, Mr.Saravanan as well bank statements, its clearly that salary are credited from trust into individuals and later by receiving self bearer cheque from employees, your are withdrawing cash from individual accounts.



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Q.18: Can you explain why amount to tune of Rs.19,74,500/- which was withdrawn from individual accounts of employees should not be treated as inflation of expenses in books of trust and siphon of the money for personal expenditure. And also why it should not treated as unaccounted income and can be seized?

A.18 : I accept that these are cash withdrawn from individual salary was to meet out some of personal as well college expenses.

30. It appears that the petitioners have also challenged the same order before the Appellate Commissioner and has simultaneously filed these writ petitions challenging the impugned order passed under Rule 112(F) of the Income Tax Act, 1962.

31. After the impugned orders dated 26.03.2022 were passed and the assessment order was passed on 31.03.2022 for the assessment year 2021-22, the petitioner in W.P.No.18285 of 2020 filed an affidavit dated 12.04.2022 retracting the statement given by the petitioner on 10.03.2021 and 11.03.2021 before the Income Tax Officer.



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32. A reading of the facts and statement given by the petitioner on 10.03.2021 and 11.03.2021 and the statements of Bank Officer, Joint Manager, Mr.Unnikrishnan, makes it clear that the practice of the petitioner in W.P.No.18285 of 2022 as the president of the Trust running the college in W.P.No.18281 of 2022 was to credit the salary of staffs/employees into their personal savings account and thereafter withdraw the same by collecting self drawn cheques duly signed by them.

33. The statement that was given by the petitioner in W.P.No.18285 of 2022 was retracted only at a later point of time. The seizure of cash on 10.03.2021 from the possession of Mr.Unnikrishnan and Mr.Swaminathan merely coincided with the implementation of the Tamil Nadu State Assembly Model Code for the ensuring Tamil Nadu Assembly Election.

34. The exception under Rule 112 F (ii) of the Income Tax Rules, 1962 will apply only where the assets so seized or requisitioned are in any manner connected with the ongoing election in an assembly or



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Parliamentary constituency. This exception is not applicable to the facts of the case, as records indicate that it was the practice of the petitioner in W.P.No.18285 of 2022 to withdraw the cash of staffs/employee atleast from January 2021, if not before as is evident from the statement of Mr.Unnikrishnan on 10.03.2021.

35. Merely because, search was conducted or requisition was made when the Tamil Nadu State Assembly Model Code of Conduct from the State Assembly Election in Tamil Nadu was in force could not mean the issuance of notice under Section 153 A or Section 153C would be automatically excluded and exception under Rule 112F(ii) of the Income Tax Rules, 1962 would get triggered. Unless, the cash that was seized was in connection with the assembly election, question of excluding the petitioners from the purview of proceeding under Section 147, 153A/153C of the Income Tax Act, 1961 cannot be countenanced.

36. Therefore, the impugned order does not call for any interference. Therefore, I do not find any merit in these writ petitions.



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37. Therefore, these writ petitions are liable to be dismissed.

Accordingly they are dismissed. No costs. Consequently connected miscellaneous petitions are closed.

31.10.2023

Index : Yes / No

Neutral Citation : Yes/No

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To

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Represented by its Chairman,
North Block, Secretariat Building,
New Delhi.
- 2.The Director General of Income Tax (Investigation),
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C.SARAVANAN,J.

kkd

Pre-Delivery Common Order
in
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