IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :22.06.2023

PRONOUNCED ON: 28.06.2023

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P. Nos.24407, 24410, 24413, 24415, 24420, 24423, 24426 & 24430 of 2021
and
WMP.Nos.25722, 25724, 25726, 25730, 25731, 25733, 25734, 25738, 25741, 25743, 25744, 25749, 25750, 25755, 25756, 25761 & 25759 of 2021

W.P. Nos.7372, 7376 & 7382 of 2022 and
WMP.Nos.7388, 7389, 7393, 7395, 7399 & 7400 of 2022

W.P.Nos.25342, 25347, 25345, 25350, 25352, 25357, 25360, 25366, 25368 & 25370 of 2021 and

WMP.Nos.26762, 26763, 26765, 26770, 26771, 26774, 26775, 26766, 26767, 26776, 26777, 26782, 26784, 26788, 26790, 26793, 26794, 26796, 26797, 26798 & 26799 of 2021

W.P.Nos.8079, 8082, 8085, 8087, 8090, 8094 & 8097 of 2022 and
WMP.Nos.8049, 8050, 8052, 8053, 8056, 8057, 8059, 8061, 8064, 8065, 8067, 8068, 8074 & 8080 of 2022
W.P.Nos.20114, 20116, 20119, 20125, 20127 & 20130 of 2020 &

WMP.Nos.24820, 24823, 24828, 24830, 24837, 24839, 24844, 24845, 24847, 24848, 24852 & 24853 of 2020

W.P. Nos.27154, 27157, 27168, 27166, 27181, 27160, 27184, 27186 & 27178 of 2021 and

WMP.Nos.28643, 28645, 28646, 28648, 28649, 28660, 28662, 28656, 28657, 28674, 28677, 28652, 28653, 28679, 28682, 28686, 28687, 28669 & 28672 of 2021
W.P. Nos.25826, 25830, 25832, 25835, 25840, 25843, 25845 and 27078, 27083, 27085, 27092, 27096 & 27100 of 2021
and
WMP.Nos.27303, 27305, 27309, 27310, 27312, 27313, 27314, 27315, 27322, 27323, 27325, 27326, 2327, 27328 and 28543, 28548, 28545, 28553, 28555, 28566, 28567, 28569, 28572, 28560, 28561, 28574 & 28576 of 2021

**W.P.No.24407 of 2021:**

Agni Vishnu Ventures Pvt. Ltd.
Represented by its Director Mr.S.Santhoskumar,
No.76, Temple Towers,
North Mada Street, Mylapore,
Chennai-600 004.
Tamil Nadu, India. ... Petitioner

Vs

1.Deputy Commissioner of Income Tax,
Central Wing Central Circle 2 (1),
1st Floor, Investigation Building,
New No.46, Old No.108,
Mahatma Gandhi Road,
Chennai -600 034, Tamil Nadu.

2.Additional Commissioner of Income Tax,
Central Range -2, Investigation Wing,
1st Floor, No.46, M.G.Road,
Nungambakkam, Chennai -600 034. ... Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari, to quash the Impugned Order dated 25.09.2021 and bearing Number ITBA / AST / M / 153C / 2021-22 / 1035891640 (1) for the Assessment Year 2012-2013 and the consequential Demand Notice dated 25.09.2021 issued under Section 156 of the Act, issued by the 1st Respondent.

**W.P.No.25342 of 2021:**

Rajan Narasimulu Jayaprakash ... Petitioner

Vs

1.Deputy Commissioner of Income Tax,
Central Wing, Central Cir 2(1),
Investigation Wing, Room No.B3,
Ground Floor, No.46, M.G.Road,
Chennai - 600 034.

2.Additional Commissioner of Income Tax,
Central Range-2, Investigation Wing, 1st Floor,
No.46, M.G.Road, Nungambakkam,
Chennai - 34. ... Respondents

**Prayer:** Writ Petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records and quash the Impugned Order passed by the 1st Respondent dated 30.09.2021 bearing Number ITBA/AST/M/153C/2021-22/1036066951(1) for the Assessment Year 2009-2010 and consequential Demand

Notice dated 30.09.2021 issued under Section 156 of the Act, for the Assessment Year 2009-2010 issued by the 1st Respondent.

**W.P.No.27154 of 2021:**

Vishnusurya Projects and Infra Pvt. Ltd.
Represented by its Director Mr.S.Santhosh Kumar,
No.76, Temple Towers, 2nd Floor,
North Mada Street, Mylapore,
Chennai-600 004.
Tamil Nadu, India. ... Petitioner

Vs

1.Deputy Commissioner of Income Tax,
Central Circle 2 (1),
Investigation Building, 1st Floor,
New No.46, Old No.108,
Mahatma Gandhi Road,
Chennai -600 034, Tamil Nadu.

2.Additional Commissioner of Income Tax,
Central Range -2, Investigation Wing,
1st Floor, No.46, M.G.Road,
Nungambakkam, Chennai -600 034. ... Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari, calling for the records and quashing the Impugned Orders passed by the 1st Respondent under Section 153C of the Income Tax Act, 1961, dated 27.09.2021 and bearing Number ITBA / AST / M / 153C / 2021-22 / 1035940723 (1) for the Assessment Year 2011-2012 and the consequential Demand Notice dated

27.09.2021 issued by the 1st Respondent under Section 156 of the Income Tax Act, 1961.

**W.P.No.25826 of 2021:**

Sri Balaji Charitable and Educational Trust
Represented by its Trustee Mr. Dhilip Kumar
76 Temple Tower, North Mada Street,
Mylapore Chennai 04. ... Petitioner

Vs

1.Deputy Commissioner of Income Tax,
Central Wing Central Circle 2 (1),
New Income Tax Building,
46 MG Road, Nungambakkam, Chennai 34.

2.Additional Commissioner of Income Tax,
Central Range -2, Income Tax Investigation Wing Building,
1st Floor No.46, M.G.Road,
Nungambakkam, Chennai 34. ... Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari, calling for the records of the 1st Respondent and quashing the Assessment Order dated 30.09.2021 bearing Number ITBA / AST / M / 153C / 2021-22 / 1036088041 (1) for the Assessment year 2013-2014 and the consequential Demand Notice dated 30.09.2021 bearing DIN ITBA / AST / M / 153C / 2021 -22 /

1036088041(1) for the Assessment year 2013/2014 issued under sec. 156 of the Income tax Act 1961 by the 1st Respondent.

**W.P.No.27078 of 2021:**

Fourth Force Surveillance Indo Pvt. Ltd.
Represented by its Authorized Signatory – R.J.Gokulram
76 Temple Towers, Third Floor,
North Mada Street,
Mylapore Chennai 04. ... Petitioner

Vs

1.Deputy Commissioner of Income Tax,
Central Wing Central Circle 2 (1),
New Income Tax Building,
46 MG Road, Nungambakkam, Chennai 34.

2.Additional Commissioner of Income Tax,
Central Range -2, Income Tax Investigation Wing Building,
1st Floor No.46, M.G.Road,
Nungambakkam, Chennai 34. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari, calling for the records of the 1st Respondent and quashing the Assessment Order dated 25.09.2021 bearing Number ITBA / AST / S / 153C / 2021-22 / 1035893197 (1) for the Assessment year 2014-2015 passed under Sec.153C of the Income Tax Act, 1961, and the consequential Demand Notice dated 25.09.2021 bearing number ITBA / AST / S / 156 / 2021 -22 / 1035893221(1) for the Assessment year 2014-2015 issued under sec. 156 of the Income tax Act 1961.

| WP.Nos. | For Petitioners | For Respondents |
|---|---|---|
| WP.Nos.24407, 24410, 24413, 24415, 24420, 24423, 24426, 24430, 20114, 20116, 20119, 20125, 20127 & 20130 of 2020 and 25342, 25347, 25345, 25350, 25352, 25357, 25360, 25366, 25368, 25370, 25826, 25830, 25832, 25835, 25840, 25843 & 25845 of 2021 and 7372, 7376, 7382, 8079, 8082, 8085, 8087, 8090, 8094 & 8097 of 2022 | Mr.R.V.Easwar, Senior Counsel for Mr.M.V.Swaroop | Mr.A.P.Srinivas, Senior Standing Counsel |

| | | |
|---|---|---|
| WP.Nos.27078, 27083, 27085, 27092, 27096 & 27100 of 2021 | Mr.P.S.Raman,<br>Senior Counsel<br>for Mr.M.V.Swaroop | |
| WP.Nos.27154, 27157, 27168, 27166, 27181, 27160, 27184, 27186 & 27178 of 2021 | Mr.AL.Somayaji,<br>Senior Counsel<br>for Mr.M.V.Swaroop | |

## COMMON ORDER

This common order is passed in the cases of Agni Vishnu Ventures Pvt. Ltd., Rajan Narasimulu Jayaprakash, Vishnusurya Projects and Infra Pvt. Ltd., Sri Balaji Charitable and Educational Trust and Fourth Force Surveillance Indo Pvt. Ltd. as all challenges emanate from a search conducted in the premises of Agni Estates and Foundations Private Limited between 5th and 9th of July, 2018 and search in related locations, such as residential premises of the employees and Directors of the Agni group of companies.

***I. Facts and rival contentions in the matter of M/s. Agni Vishnu Ventures Pvt Ltd.***

2. The challenge is to orders of assessment dated 25.09.2021 passed in terms of Section 153C read with Section 143(3) of the Income Tax Act, 1961 (in short

'Act') for assessment years (A.Y.) 2013-14 to 2018-19 as well as connected proceedings such as the notices itself u/s 153C of the Act and penalty orders.

3. The main grounds of challenge are:-

(i)That procedure established under Rule 112(13) of the Income Tax Rules, 1962 (in short 'Rules') for examination of electronic records was not followed.

(ii)The last of the authorizations for search under Section 132(9A) of the Act was on 04.09.2018 and the Deputy Director of Income Tax (Investigation) ought to have handed over the seized materials within a period of 60 days therefrom. The 60 day period ended on 04.11.2018.

(iii)R2 has, vide counters filed in other matters acceded to the position that the seized material was handed over only on 22.08.2019, which is beyond the statutory period.

(iv)Notices under Section 153A were issued on 01.11.2019 to Agni Estates and Foundations. Those notices and proceedings under Section 153A had been the subject matter of challenge in a batch of Writ Petitions in W.P.Nos.35076, 35082, 35086, 35088 and 35090 of 2019, which came to be dismissed on

17.03.2021, as against which Writ Appeals in W.A.Nos.1111, 1112, 1113, 1114, 1116 and 1117 of 2021 have been filed and are stated to be pending.

(v)Notices under Section 153C have been issued on 05.03.2021.

(vi)According to the petitioner, satisfaction notes were not supplied initially. However, in the course of the hearing, since it is mandatory that the satisfaction notes be supplied to the assessee concerned, learned Senior Standing Counsel was so directed and the satisfaction notes have been supplied to the petitioner. This is also recorded in docket sheet noting dated 01.11.2022. Thus, this ground of challenge does not survive.

(vii)The satisfaction note produced before the Court reads as follows:

> *1. There was search in the case of M/s. Agni Estates & Foundation Pvt Ltd, a Chennai based real estate company, on 05.07.2018. The company was incorporated in the year 1992 by Shri.Rajan Jayaprakash Narasimulu, who is a Director and the main person operating Agni group of companies. During the course of search on 05.07.2018, at M/s. Agni Plots, No:30/16, Conron Smith Road, Gopalapuram, Chennal -600086, certain incriminating materials with respect to foreign companies, bank accounts, trusts associated with the Agni Group of companies/ its Managing Director-main person Shri.R.NJayaprakash were found and seized vide annexure ANN/ARS/AGP/LS/S1 to S20. These seized materials pertain to the following entities:*

*(i) M/s.Mine infra Consultants Pte Ltd., Incorporated in Singapore*

*(ii) M/s.Yalova Holding Ltd, incorporated in Seychelles.*

*(iii) M/s.Yarrow Properties Inc., incorporated in British Virgin Islands*

*(iv) M/s Bramerton Investments Pte Ltd., incorporated in Singapore*

*(v) M/s.A.S.Coal Resources Pte Ltd., incorporated in Singapore*

*(vi) M/s.Featherfin Partners Pte Ltd., incorporated in Singapore*
*(vii) M/s.Soach Global Strategic Investments Ltd., incorporated in Mauritius*
*(viii) M/s.Astraea Funds Ltd., incorporated in*
*2. M/s.Mine Infra Consultants Pte Ltd., Incorporated in Singapore. 90% shares of this entity is held by M/s.Agni Estates and Foundations Pvt Ltd, and the balance 10% shares are held by Shri.R.N.Jayaprakash and Shri.Dilip Kumar (en employee of M/s Agni Group). This Singapore entity has no actual operations, has no employees and is a shell company. This Singapore entity entered into an agreement with M/s AFCONS Constructions Middle East Ltd., UAE and several other companies, including M/S.A.S.Coal Resources Pte Ltd., Singapore, M/s.Bramerton Investments Pte Ltd., incorporated in Singapore. M/s.Yalova Holding Ltd, Incorporated in Seychelles, was promoted by Shri.R.N.Jayaprakash and has a bank accounts with Societe Generale Bank & Trust Singapore branch., with Bank J.Safra Sarasin at Singapore.*
*3. During the course of search at at M/s Agni Plots, No:30/16, Conron Smith Road, Gopalapuram, Chennai-600086, a set of loose sheets numbering from 1 to 106 were found and seized vide*

*annexure ANN/ARS/AGP/LS/S-9. In the said loose sheets, pages 88 to 95 were Tax consultation advice, provided by M/s.RAFFLES TAX, 120, Lower Delta Road, #10-05, Cendex Centre, Singapore 169208, addressed to Shri.R.Sundararajan, Managing Partner of M/s.Sundararajan Associates, Chartered Accountants, No:7, Vyasarpadi Gangadharan Street, Numgambakkam, Chennai 600034. M/s.Raffles is a Singapore headquartered corporate solutions provider specialising in company formation, corporate secretarial, accounting, payroll, taxation, and expansion advisory services. Shri. R.Sundararajan,CA is the auditor of the M/s.Agni group. The said consultation provided by M/s.Raffles, had against the date 04.05.2011, as below:*

*"(i) <u>Facts of the case</u>*

*X Ltd, an Indian Company has utilized the services of Mr.A for a contract in India.*

*No payment has been made to A directly for this contract.*

*The subsidiary of X Ltd based outside India is also undertaking projects in Dubai and Jordan.*

*X Ltd has entered into an agreement with a BVI company for the purpose of making payment to A.*

*A owns a company In Singapore which has a bank account in Hongkong.*

*It is proposed that the payment to Mr.A will be made by the BVI company to A's company in Singapore as though the payment were for the project executed by X's subsidiary in Dubai/Jordan.*

*Since the BVI company does not have a bank account, the Singapore company would act as its fund manager for the actual purpose of receiving and remitting funds and for this it will charge fund management fees at 5%.*

*<u>Query:</u>*

*1. What would be the tax implication in Singapore in the case of the Singapore company in respect of the 5% fund management fees.*
*2. Is there any possibility of deeming the entire Income (not 5%) as income of Singapore company.*

*(ii) Facts of the case*

*The common understanding is that taxation in Singapore is receipt based taxation. Therefore only where an income is received in Singapore, taxation would arise in Singapore. In the case of Hongkong, however, taxation is source based. Therefore, if an Income has its source in Hongkong, no matter where it received, the income would be subjected to tax in Hong Kong."*

*The above makes it clear that for the services rendered in India by an individual the payments are being brought through overseas entities in to the Singapore subsidiary of the individual as if they were charges received for the services rendered by overseas companies outside India, for the evasion of taxes payable in India.*

*4. M/s.Soach Global Strategic Investments Ltd and M/s. Astraea Funds Ltd based in Mauritius invested in the shares of M/s.Agni Vishnu Ventures Pvt Ltd a company in India promoted by Shri.R.N.Jayaprakash. There is no credible explanation for the investments in M/s Agni Vishnu Ventures Pvt Ltd., From the information contained in the pendrive seized vide annexure ANN/SBC/RS/ED/S from the premises of Shri.R.Sundararajan, auditor of the Agni group on 19.03.2019 contained income details of Agni group from FYs: 2010-11 to 2017-18 totalling Rs.88,34,30,858/-, which includes Rs.17,39,00,000/- from AFCONS/OLFS during FY:2015- 16, 2016-17 and 2017-18 which were not offered to tax. The sum of Rs.88,34,30,858/-, includes Foreign remittances received by the group during the period*

*FYs: 2010-11 to 2014-15 amounting to Rs.48,34,79,108 (US$ 96,75,000).*

*5. There is no credible income earning activities by the overseas concerns associated/floated by the Shri.R.N.Jayaprakash and for the receipt of foreign remittances into his companies promoted in India, including M/s.Agni Vishnu Ventures Pvt Ltd. The remittances into M/s Agni Vishnu Ventures Pvt Ltd are suspicious in nature. Hence, the seized materials and information found will have a bearing in the computation of the total income of M/s. Agni Vishnu Ventures Pvt Ltd. for AYs: 2013-14 to 2018-19. Hence, this is a fit case for assessment/re-assessment u/s 153C of the Income Tax Act, 1961.*
*Issue Notice u/s 153C of the Income Tax Act, 1961 for AYS:2013-14 to 2018-19.*
*Date:17.09.2020*

*Sd/-*
*(M.Vivekandan)*
*Deputy Commissioner of Income tax*
*Central Circle 2(1), Chennai.*

(viii)The petitioner challenges the prima facie findings in the satisfaction note stating that the entirety of the satisfaction is on the basis of certain loose sheets including a tax consultation advice provided by M/s.Raffles Tax to Shri.R.Sundararajan, Chartered Accountant at Chennai.

(ix)Such information is extracted in the satisfaction note and based on this information, the officer, prima facie, concludes that there have been certain remittances made overseas in respect of the services rendered in India.

(x)He also refers to the investments made by Soach Global Strategic Investments Ltd. and Astraea Funds Ltd., both based in Mauritius, in the shares of the petitioner company and for this purpose refers to information contained in a pen drive that was seized from the premises of the Auditor on 19.03.2019.

(xi)The petitioner points out that the reference to 19.03.2019 relates to a search that had been conducted in another entity forming part of the Vel's group of Institutions. A challenge is laid on the credibility of this information and whether at all it can be invoked to initiate the impugned proceedings, seeing as, in the present case, the proceedings are stated to be based on a search in Agni Foundations which took place in July, 2018.

(xii)Finally, they draw attention to the statement of the Assessing Officer at paragraph 5 to the effect that the remittances made are *'suspicious'* as there was no credible income-earning activities by the concerns warranting such remittances at all.

(xiii)The satisfaction note refers to A.Ys 2013-14 to 2018-19, in common for all years. After an exchange of notices and responses, the impugned assessments have come to be completed on 25.09.2021 and the Writ Petitions instituted thereafter.

4. Common counters have been filed by the respondents denying all averments in the writ affidavit. They would maintain that the assessments have been made in accordance with proper procedure and by officers vested with due authorization and jurisdiction. They also point out that the proper course of remedy would be for the petitioners to approach the appellate authority by way of statutory appeal.

5. As regards the argument relating to delay in handing over the seized material, the respondents point out that there is no delay at all, since the present assessments are under Section 153C of the Act and the timelines set out under the Act for handing over of the seized documents have been adhered to scrupulously.

6. The respondents would further submit that the petitioner was also given sufficient opportunity prior to completion of the proceedings. Hence, the principles

of natural justice have also been adhered to. In fact, the impugned assessments are only protective, as the substantive assessment has been made in the case of R.N.Jayaprakash. For this reason, even the demand has not been pursued.

7. The averments in the Writ Petition relating to improper procedure for conduct of search have not been pursued in the course of hearing. There is also nothing illegal or untoward pointed out in the timeline followed for transfer of seized material in terms of Section 132(9A) and the transfer is seen to have been effected within the time provided.

8. With the procedural aspects of the matter out of the way, one turns to the merits of the matter. The contents of the satisfaction note, the show cause notices and the assessment orders itself involve appreciation of several facts. Though the petitioner has vehemently argued that there is no basis for the prima facie conclusions in the satisfaction note that formed the basis for assessment, the petitioner has not placed any supporting documents in respect of this position before me and rightly so, as this Court would have been disinclined to entertain the same, being questions of fact.

9. In fact, the impugned assessments are protective and would survive only if the substantive assessments in the hands of R.N.Jayaprakash are quashed. Thus, and as the demand raised has not pursued as against the petitioner, there is no difficulty faced by the petitioner on this score either.

***II. Facts and rival contentions in the matter of Vishnu Surya Ltd:***

10. W.P. Nos.27154, 27157, 27168, 27166, 27181, 27160, 27184, 27186 & 27178 of 2021 challenge orders of assessment passed by the Assessing Officer under Section 143(3) read with Section 153 C consequent on the search in the case of Agni Estates and Foundations Pvt. Ltd. Orders of assessment state that in the course of search, certain incriminating materials had been found with respect to foreign companies, bank accounts and trusts associated with the Agni Group of companies and its Managing Director R.N.Jayaprakash. Being of the view that such materials related to the petitioner, satisfaction under Section 153C was drawn and notices issued.

11. Though the affidavit filed in support of the Writ Petition states that the conduct of search in the premises of Agni Estates and Foundation Pvt. Ltd. was itself

in violation of the proper procedure set out under Rule 112(13) of the Income Tax Rules, 1962, for examination of electronic record, this argument was not really pursued in the course of hearing.

12. The contentions raised in these matters are almost identical to those advanced in the case of Agni Vishnu Ventures Pvt. Ltd. and captured in the earlier portions of this order relating to that petitioner.

13. Since the basis of proceedings under Section 153C is the satisfaction note recorded, the note is extracted below:

*Satisfaction Note u/s 153C of the Income Tax Act, 1961 in the case of M/s.Vishnu Surya Projects and Infra Pvt Ltd. (PAN AADCS07354) Formerly Vishnu Surya Logistic Pvt. Ltd.*
*(Notification No.1/2019-20 dated 01.05.2019 of PCIT-3, Chennai.)*

*1. There was a search in the case of M/s. Agni Estates & Foundation Pvt Ltd, a Chennai based real estate company, on 05.07.2018. The company was incorporated in the year 1992 by Shri. Rajan Jayaprakash Narasimulu, who is a Director and the main person operating Agni group of companies. During the course of search on 05.07.2018, at M/s.Agni Plots, No:30/16, Conron Smith Road, Gopalapuram, Chennai-600086, certain incriminating materials with respect to foreign companies, bank accounts, trusts associated with the Agni Group of companies/ its Managing Director- main person Shri.R.N.Jayaprakash were found and seized vide annexure*

*ANN/ARS/AGP/LS/S1 to S20. These seized materials pertain to the following entities:*
*(i) M/s.Mine Infra Consultants Pte Ltd., incorporated in Singapore*
*(ii) M/s.Yalova Holding Ltd, incorporated in Seychelles*
*(iii) M/s.Yarrow Properties Inc., incorporated in British Virgin Islands*
*(iv) M/s.Bramerton Investments Pte Ltd., incorporated in Singapore*
*(v) M/s.A.S.Coal Resources Pte Ltd., incorporated in Singapore*
*(vi) M/s.Featherfin Partners Pte Ltd., incorporated in Singapore*
*(vii) M/s.Soach Global Strategic Investments Ltd., incorporated in Mauritius*
*(viii) M/s.Astraea Funds Ltd., incorporated in*

*2. M/s.Mine Infra Consultants Pte Ltd., incorporated in Singapore. 90% shares of this entity is held by M/s. Agni Estates and Foundations Pvt Ltd., and the balance 10% shares are held by Shri.R.N.Jayaprakash and Shri Dilip Kumar (en employee of M/s.Agni Group). This Singapore entity has no actual operations, has no employees and is a shell company. This Singapore entity entered into an agreement with M/s.AFCONS Constructions Middle East Ltd., UAE and several other companies, including M/s.A.S.Coal Resources Pte Ltd., Singapore, M/s.Bramerton Investments Pte Ltd., incorporated in Singapore. M/s.Yalova Holding Ltd, incorporated in Seychelles, was promoted by Shri.R.N.Jayaprakash and has a bank accounts with Societe Generale Bank & Trust Singapore branch., with Bank J.Safra Sarasin at Singapore.*

*3. During the course of search at at M/s.Agni Plots,No:30/16, Conron Smith Road, Gopalapuram, Chennai-600086, a set of loose sheets numbering from 1 to 106 were found and seized vide annexure ANN/ARS/AGP/LS/5-9. In the said loose sheets, pages 88 to 95 were Tax consultation advice, provided by M/s.RAFFLES TAX, 120, Lower Delta Road, #10-05, Cendex Centre, Singapore 169208, addressed to*

*Shri.R.Sundararajan, Managing Partner of M/s.Sundararajan Associates, Chartered Accountants, No:7, Vyasarpadi Gangadharan Street, Numgambakkam, Chennai 600034. M/s. Raffles is a Singapore headquartered corporate solutions provider specialising in company formation, corporate secretarial, accounting, payroll, taxation, and expansion advisory services. Shri R.Sundararajan, CA is the auditor of the M/s.Agni group. The said consultation provided by M/s. Raffles, had against the date 04.05.2011, as below:*

*"(i) Facts of the case*

*X Ltd, an Indian Company has utilized the services of Mr.A for a contract in India.*

*No payment has been made to A directly for this contract.*

*The subsidiary of X Ltd based outside India is also undertaking projects in Dubai and Jordan.*

*X Ltd has entered into an agreement with a BVI company for the purpose of making payment to A.*

*A owns a company in Singapore which has a bank account in Hongkong.*

*It is proposed that the payment to Mr.A will be made by the BVI company to A's company in Singapore as though the payment were for the project executed by X's subsidiary in Dubai/Jordan. Since the BVI company does not have a bank account, the Singapore company would act as its fund manager for the actual purpose of receiving and remitting funds and for this it will charge fund management fees or 5%*

*Query*

*1. What would be the tax implication in Singapore in the case of the Singapore company in respect of the 5% fund management fees.*

*2. Is there any possibility of deeming the entire income (not 5%) as income of Singapore company* *(ii) Facts of the case*

*The common understanding is that taxation in Singapore is receipt based taxation. Therefore only where an income is received in Singapore, taxation would arise in Singapore.*

*In the case of Hongkong, however, taxation is source based. Therefore, if an income has its source in Hongkong, no matter where it received, the income would be subjected to tax in Hong Kong"*

*The above makes it clear that for the services rendered in India by an individual the payments are being brought through overseas entities in to the Singapore subsidiary of the individual as if they were charges received for the services rendered by overseas companies outside India, for the evasion of taxes payable in India.*

*4. M/s.Soach Global Strategic Investments Ltd and M/s.Astraea Funds Ltd based in Mauritius invested in the shares of M/s. Vishnu Surya Logistics Pvt Ltd a company in India promoted by Shri.R.N Jayaprakash. There is no credible explanation for the investments in M/s. Vishnu Surya Logistics Pvt Ltd., From the information contained in the pendrive seized vide annexure ANN/SBC/RS/ED/S from the premises of Shri.R.Sundararajan, auditor of the Agni group on 19.03.2019 contained income details of Agni group from FYs:2010-11 to 2017-18 totalling Rs.88,34,30,858/-, which includes Rs 17,39,00,000/- received by the group from AFCONS/OLFS during FY 2015-16, 2016-17 and 2017-18 which were not offered to tax. The sum of Rs.88,34,30,858/-, includes Foreign remittances received by the group during the period FYs: 2010-11 to 2014-15 amounting to Rs.48,34,79,108 (US$ 96,75,000). In the said pendrive it was seen that a sum of US$ 13,43,625, that is Rs.6 Crores was received by the assessee on 03.03.2011 and 05.02.2011 (AY:2011-12). The pendrive also contained an entry dated 07.01.2014 for the receipt of US$ 1,32,250, that is Rs.59,05,666/- (AY:2014-15). These receipts have not* *been admitted in the returns of income filed by the assessee for these years.*

*5. There is no credible income earning activities by the overseas concerns associated/floated by the Shri.R.N.Jayaprakash and for the receipt of foreign remittances into his companies promoted in India, including M/s.Vishnu Surya Logistics Pvt Ltd. The remittances into M/s. Vishnu Surya Logistics Pvt Ltd are suspicious in nature. Hence, the seized materials and information found will have a bearing in the computation of the total income of M/s. Vishnu Surya Logistics Pvt Ltd. for AYS: 2013-14 to 2018-19. Hence, this is a fit case for assessment/re-assessment u/s 153C of the Income Tax Act, 1961.*

*Issue Notice u/s 153C of the Income Tax Act, 1961 for AYS 2011-12 to 2018-19.*

*Date:21.01.2021*

*Sd/-*
*(M.Vivekanandan)*
*Deputy Commissioner of Income tax*
*Central Circle 2(1), Chennai.*

14. As can be seen, the satisfaction recorded in the case of both the petitioners aforesaid remains largely one and the same and the satisfaction is premised substantially on the brief for opinion and the opinion of R.Sundararajan, Chartered Accountant on 04.05.2011.

15. It is also the petitioner's case that the satisfaction notes are concocted and have absolutely no basis in reality. The petitioner points out that in the covering letter dated 11.02.2020, the Deputy Commissioner of Income Tax, Central Circle 2(2), being the Assessing Officer of the searched entity had forwarded to the Deputy Commissioner of Income Central Circle (2)(1), his satisfaction note and seized material in the case of the petitioner. The last paragraph of the aforesaid letter reads as follows:

> *On analysis of the electronic device seized vide annexure SBC/RS/ED/S from the residence of Sunder Rajan at B/9, Ceedeeyes Greenjade Apartments, No.33, Voc Main Road, Kodambakkam, Chennai-24, it is seen that material seized pertains to the M/s Agni Estates & Foundations Pvt Ltd and have bearing on the determination of the total income of M/s Vishnu Surya Projects & Infra Pvt Ltd. Since the jurisdiction of the case pertains to you, seized material vide annexure No.SBC/RS/ED/S is handedover.*

16. As can be seen from the extract, the name of the petitioner, i.e., M/s. Vishnu Surya Projects and Infra Pvt. Ltd. is in a different font and hence according to them, this belies the credibility of the very document. They point out that the

satisfaction note recorded by the Assessing Officer of the searched entity also contains the same flaw.

17. The proforma of recording satisfaction as well as the satisfaction recorded by the officer of the entity searched are both extracted below:

*<u>Proforma for recording satisfaction under section 153C</u>*

*(To be filled by the Assessing Officer of the person referred to Section 153A)*

| | | |
|---|---|---|
| 1. | *Name of the Group searched* | *Shri.Ishari K Ganesh, Smt.Arthi Ganesh, M/s.Vels Educational Trust and M/s. Vel Ganesh Educational Trust and M/s.Vels Institute of Science, Technology and Advanced Studies* |
| 2. | *Name and PAN of the person referred to in section 153A* | *Shri Ishari K Ganesh*<br>*PAN:AAAPI4538D*<br>*Smt.Arthi Ganesh;*<br>*PAN:AANPG0641E*<br>*M/s.Vels Educational Trust;*<br>*PAN: AAAAV0064G;*<br>*M/s.Vel Ganesh Educational Trust;*<br>*PAN:AAATV9803C* |

| | | |
|---|---|---|
| | | *M/s.Vels Institute of Science, Technology and Advanced Studies;*<br><br>*PAN:AAATV9804F* |
| 3. | *Date of initiation of search in the case of the person referred to in section 153A* | *19.03.2019* |
| 4. | *Name, address and PAN No. of the person whose case action under section 153C is proposed* | *M/s Vishnu Surya Projects & Infra Pvt Ltd*<br><br>*PAN:AADCS0735L* |
| 5. | *Specific details of the seized material on the basis of which under section 153C is proposed:*<br><br>*(m) Nature of the seized material (money/bullion/jewellery/other valuable article or thing/books of account/documents)*<br><br>*(n)Description of the seized material*<br><br>*(o) Address of premise/place from where such material was seized.* | *Incriminating evidences seized vide annexure ANN/SBC/RS/ED/S vide panchanama dated 20.03.2019 from the residence of Sunder Rajan at B/9, Ceedeeyes Greenjade Apartments, No.33, Voc Main Road, Kodambakkam, Chennai-24.* |

***M/s.Vishnu Surya Projects & Infra Pvt. Ltd.***

*Search operation U/s.132 of the Income Tax Act was carried out in the case of Shri.Ishari.K.Ganesh, Smt.Arthi Ganesh, M/s. Vels Educational Trust, M/s.Vel Ganesh Educational Trust and M/s. Vels Institute of Science, Technology and Advanced studies on 19.03.2019.*

*During the course of search operation, various electronic devices were found & seized vide annexure No.SBC/RS/ED/S from the residence of Sunder Rajan at B/9, Ceedeeyes Greenjade Apartments, No.33, Voc Main Road, Kodambakkam, Chennai-24.*

*On being satisfied that the materials seized vide annexure **ANN/SBC/RS/ED/S** from the residence of Sunder Rajan at B/9, Ceedeeyes Greenjade Apartments, No.33, Voc Main Road, Kodambakkam, Chennai-24, have a bearing on the determination of the total income of M/s Vishnu Surya Projects & Infra Pvt Ltd for the various Assessment Years from A.Y. 2009-10 to A.Y.2019- 20 and this case is fit case for issuing of noice u/s 153C.*

*Sd/-*
*(G.AJAY ROBIN SINGH)*
*Deputy Commissioner of Income tax*
*Central Circle 2(2), Chennai*

18. While the searched officer records satisfaction on the basis of materials seized in the course of search in Vel's Educational Trust, the satisfaction note recorded by the Assessing Officer of the petitioner only refers in general, to material seized during the search in the case of Agni Estates and Foundation Pvt. Ltd. There is thus a contradiction pointed out by the petitioner as to whether the satisfaction

emanates from the material found in Agni Estates and Foundation Pvt. Ltd. or in Vel's group.

19. According to them, there is no clarity in this matter. As the satisfaction recorded by the two Assessing Officers of the entity searched as well as the Receiving Officer fasten a serious liability on the assessee, it is incumbent upon the Assessing Officers to be clear and categoric on the basis upon which they initiate the proceedings. In light of the contradictions that they have pointed out they would urge that this Court eschew the satisfaction note that would, consequently vitiate the proceedings in full.

20. In this context, they rely upon the decision of the Patna High Court in the case of *Chandreshwari Prasad Narain Deo and Others V. State of Bihar and another*[1]. In that case, the Court held that it was well established that where the jurisdiction of administrative authority depends upon a preliminary finding of fact, the High Court is entitled in a proceeding for a Writ of Certiorari to determine whether or not that finding of fact was correct. The Court, quoting *Farewell L.J. in R. V. Shoreditch Assessment Committee*[2] held as follows:

1 AIR 1956 Patna 104
2 (1910) 2 KB 859

*25. It is well established that where the jurisdiction of an administrative authority depends upon a preliminary finding of fact, the High Court is entitled in a proceeding for a writ of certiorari to determine upon its independent judgment whether or not that finding of fact is correct. The matter has been very well put by Farwell L.J. in – 'R.v. Shroreditch Assessment Committee', (1910) 2 KB 859 at p.879 (A):*
*"The existence of the provisional list is a condition precedent to their jurisdiction to hear and determine, and as the claimant is entitled to require them to hear and determine, they cannot refuse to take the steps necessary to give ??? to such jurisdiction; if they do, their refusal may be called in question in the High Court, No tribunal of inferior jurisdiction can by its own decision finally decide on the question of the existence or extent of such jurisdiction: such question is always subject to review by the High Court, which does not permit the inferior tribunal either to usurp a jurisdiction which it does not possess, whether at all or to the extent claimed, or to refuse to exercise a jurisdiction which it has and ought to exercise.*

21. Thus, according to them, the very initiation of the impugned proceedings has been shaken by virtue of the inconsistencies and flaws in the satisfaction note. They also point out that the satisfaction note refers only to materials found pertaining to assessment years 2011-12 and 2014-15, whereas in conclusion, the Assessing Authority issues notices for AYs 2013-14 to 2018-19. This is contrary to the dictum of the Hon'ble Supreme Court in the case of *Commissioner of Income Tax V. Sinhgad Technical Education Society*[3].

3 397 ITR 344

22. In that case, the Hon'ble Supreme Court affirmed the position that the assessment under Section 153C could only be made, if seized material was found relating to that year. Both satisfaction notes are expected to be concise and pointed with regard to the searched materials and to which year they relate in respect of which incriminating materials have been found and hence, it is only in respect of those years that notices under Section 153C that may be issued.

23. In the absence of any material being found or referred to in the satisfaction note to support that the investments of the foreign entities constitute income in the hands of the petitioner that would have a bearing on the determination of income as per the provisions of Section 153C, the impugned proceedings are wholly bad in law.

24. They also rely upon, in this context, a judgment in the case of *Barium Chemicals Ltd. and another V. Company Law Board and others*[4] for the same proposition, particularly paragraphs 28 and 29 thereof as well as the decision of the Delhi High Court in the case of *Pepsi Foods (P) Ltd. V. Assistant Commissioner of Income Tax*[5].

4 AIR 1967 SC 295
5 ((2014) 52 taxmann.com 220 (Delhi)

25. On the issue of principles of natural justice, the petitioner points out that show cause notices had been issued only for two AYs., i.e., 2011-12 and 2014-15 and not other years. They also point out to gross lapses in the procedure, such as notices under Section 143(2) being incomplete. For instance, notice under Section 143(2) dated 22.01.2021 for AY 2019-20 contains the heading '*S.No. Issues',* but there are no serial numbers or issues enumerated therein. A notice of this sort is a farce and militates against being the basis for further adjudication proceedings.

26. In the present case, orders of assessment have been passed for A.Ys.2011-12 to 2013-14 under Section 143(3) read with Section 153C and for AYs.2014-15 to 2019-20 under Section 143(3).

27. Though notices under Section 153C have been issued in all cases, the satisfaction note refers only to two years (AYs. 2011-12 and 2014-15) and show cause notices have been issued only for those two years. Hence, the orders of assessment for the other years must go.

28. Prior to completion of proceedings, the petitioner has also specifically sought an opportunity of cross examination that has not been granted to it. This request is vide submission dated 29.03.2021, which is, admittedly, been received by

the officer on 31.03.2021. Despite this request being on record, the officer has proceeded to pass the impugned orders dated 27.09.2021 ignoring the same.

***III. Facts and rival contentions in the cases of Balaji and Fourth Force:***

29. Sri Balaji Charitable and Educational Trust (in short 'Trust') is stated to be running a Engineering College in Chennai. At the relevant point in time, it held registration under Sections 12AA as well as exemptions in terms of Sections 10(23C) and 11 of the Act.

30. Fourth Force Surveillance Indo Pvt. Ltd. (in short 'Fourth Force') is stated to be in the business of conducting due diligence and providing screening and verification services.

31. Consequent upon search and seizure action under Section 132 in the case of Agni Estates & Foundations Pvt. Ltd., notices under Section 153C of the Act dated 26.10.2020 and 22.09.2020 had been issued to the Trust and Fourth Force respectively. Upon request, the copies of the seized material had been supplied to both the petitioners. The materials, accompanied by letter dated 28.10.2020 addressed to the Trust, reveal allegations of collection of cash donation/fee from

students of the educational institution run by the Trust that had been undisclosed for the purposes of taxation.

32. As far as Fourth Force is concerned, vide letter dated 27.10.2020, the seized material including sworn statement dated 13.08.2018 containing certain averments relating to Fourth Force, were supplied.

33. In the case of the Trust, the satisfaction that has been recorded on 17.09.2020 reads thus:

*Satisfaction Note u/s 153C of the Income Tax Act, 1961 in the case of M/s.Balaji Charitable and Educational Trust (M/s.Agni College of Technology) (PAN:AABTS7300Q)*

*(Notification No: 01/2019-20 dated 26.04.2019 of CIT(Exemptions), Chennai)*

*During the course of search at, M/s Agni Plots, Gopalapuram, Chennai, on 05.07.2018 consequent to search action on 05.07.2018, M/s Agni Estates and Foundations Pvt Ltd., group of cases loose sheets vide ANN/ARS/AGP/LS/S-6 were seized. These seized materials revealed details of cash (donations/fees) collected from the students of M/s.Agni College of Technology, Old Mahabalipuram Road, Thalambur, Chennai-130 being run by M/s.Balaji Charitable and Educational Trust and payments made out of the cash collections. In Loose sheet number 38 of ANN/ARS/AGP/LS/S-6, under the title "cash payments made from college collections from 17.06.2017 to*

*30.06.2017" amounts were mentioned against various dates which totalled to Rs.1,31,75,000/-. These cash payments were not reflected in the Tally books of accounts seized during the course of search. The purposes and the entity on behalf of which the payments were made are not disclosed.*

*2. Further, it was seen from loose sheet no: 36 of ANN/ARS/AGP/LS/S-6, that, during the period 16.05.2017 to 24.06.2017 a total sum of Rs.2,89,13,103/- was mentioned. The sheet also had a noting "cash deposited" on 22/6, 27/6, 28/6, 29/6 & 30/6 totalling 150.00 meaning Rs.1,50,00,000/-. Further, vide loose sheet no: 35 of ANN/ARS/AGP/LS/S-6, a sum of Rs.4,64,83,103/- was written against various dates starting from 27.06.2017 to 12.07.2017. Vide loose sheet no:37 of ANN/ARS/AGP/LS/S-6 payments totaling Rs.1,86,18,750/- on various dates ranging from 01.07.2017 to 12.07.2017 were written. These cash transactions were not reflected in the Tally books of accounts seized during the course of search.*

*3. These transactions will have bearing in the determination of the total income of the assessee M/s.Balaji Charitable and Educational Trust (M/s.Agni College of Technology) (PAN: AABTS7300Q) for AY: 2018-19. Hence, I am satisfied that this is a fit case for assessment/reassessment u/s.153C of I.T.Act, 1961 for AYs: 2013-14 to 2018-19.*

*Issue Notice u/S.153C of the Income Tax Act, 1961 for AYs:2013-14 to 2018-19.*

*Date: 17.09.2020*

*(M.Vivekanandan)*

*Deputy Commissioner of*
*Income tax,*
*Central Circle 2(1),*
*Chennai*

34. The satisfaction note dated 17.09.2020 in the case of Fourth Force reads thus:

*Satisfaction Note u/s 153C of the Income Tax Act, 1961 in the case of M/s. Fourth Force Surveillance Indo Pvt Ltd., (PAN: AAMCA1036H)*

*(Notification No: 02/2019-20 dated 26.04.2019 of PCIT, Chennai-2)*

*There was a search in the case of M/s. Agni Estates & Foundation Pvt Ltd, a Chennai based real estate company, on 05.07.2018. The company was incorporated in the year 1992 by Shri.Rajan Jayaprakash Narasimulu, who is a Director and the main person operating Agni group of companies. In connection with the search in the case of M/s Agni Estates and Foundations Pvt Ltd., a search was conducted on 05.07.2018, at the residential premises of Shri.Thummala Gangatharam Balaji at No:22/10, Balaji Nagar, 4th Street, Royapettah, Chennai-600014.*

*2. During the course of search at the residence of Shri.T.G.Balaji, which was initiated on 05.07.2018, loose sheets numbering 1 to 159 were found and were later seized vide annexure ANN/SC/LS/S on 13.08.2018 (during the course of continuation of the search proceedings). Shri.T.G.Balaji is the CEO of M/s.Agni Estates and Foundations Pvt Ltd., since 1996-97. He is also the director in M/s. Vishnu Surya Logistics Pvt Ltd. another Agni group company. Shri.T.G.Balaji, vide his sworn* *statement dated 05.07.2018, in reply to question number21, stated, that, pages 1 to 26 of the loose sheets numbering 1 to 159 (which were later seized on 13.08.2018 during continuation of the search proceedings), relate to his assessment of a company called Fourth Force Pvt Ltd (that is, M/s. Fourth Force Surveillance Indo Pvt Ltd) to give an opinion on the conduct of the business. Shrl.T.G.Balaji, confirmed the same vide his sworn statement dated 13.08.2018.*

*3. In the loose sheet no:9 of the said bunch of loose sheets numbering 1 to 159 seized vide annexure ANN/SC/LS/S, monthwise billing amounts pertaining to various zones - South 1, South 2, West, North, Central 1, Central 2 and East - for the period April-2016 to March-2018 were found. The total for April-2016 to March-2017 was Rs. 1,44,37,837/--and for the period April-2017 to March-2018 was Rs.5,22,28,923/-.*

*4. It was seen from the ITR of M/s.Fourth Force Surveillance, Indo Pvt Ltd. the total sales reported, for AY:2018-19 was Rs.4,66,23,794/-. Hence, there is a shortfall of Rs.56,05,129/- for AY:2018-19 in the admission of total income.*

*5. These details of entries will have a bearing in the determination of the total income of the assessee for AY: 2018-19. Hence, I am satisfied that this is a fit case for assessment/reassessment u/s.153C of I.T. Act, 1961 for AYs: 2013-14 to 2018-19.*

*Issue Notice u/s 153C of the Income Tax Act, 1961 for AYs:2013-14 to 2018-19.*

*Date: 17.09.2020*

*(M.Vivekanandan)*

Deputy Commissioner of
Income tax,

Central Circle 2(1), Chennai

35. Both satisfaction notes reveal the existence of seized material relatable to Assessment Year (AY) 2018-19 alone. This forms the crux of the petitioners' challenge to the orders of assessment that were subsequently framed for the block period 2013-14 to 2018-19.

36. The Trust and Fourth Force would point out that the provisions of Section 153C required the satisfaction of the Assessing Authority to the effect that seized material had been found in relation to each of the assessment years comprised in the block of 6 years.

37. In both the cases, while the satisfaction note is common to the block and makes reference to AYs 2013-14 to 2018-19, it is only with respect to assessment year 2018-19 that prima facie incriminating material had been found and seized.

38. That apart, in the case of Fourth Force, no show cause notice had been issued prior to completion of the assessments, whereas, in the case of the Trust, show cause notice had been issued for AY 2017-18, 2018-19 and 2019-20, wherein

reference is made to '*note books*' and thus the impugned assessment orders in the case of the Trust have proceeded on the basis of both the seized material relatable to AY 2018-19 as well as note books. For AYs 2016-17 and 2017-18, the seized material comprises only the note books which do not form part of the satisfaction note, which figured in the show cause notice.

39. A comparison of the reference to the seized material in the orders of assessment for AYs 2013-14 to 2017-18 reveal that only seized record referred to as '*loose sheets Nos.35, 36, 37 and 38 of ANN/ARS/AGP/LS/S-6*', all relatable to cash payments made on various dates in the financial year relating to AY 2018-19 alone, figure therein. In addition, in the show cause notices preceding the assessment orders and in the orders of assessment itself, there is no reference to '*small note books'* containing material utilised in the assessment.

40. Per contra, learned Senior Standing Counsel, for his part, would argue that the assessments have been made following due process of law. The search in the premises of Agni Estates and Foundation Pvt. Ltd. yielded sufficient materials that had incriminated the petitioners and such materials had been transferred to their Assessing Officers.

41. Thereafter, show cause notices were issued. In the course of adjudication proceedings, all the statements that had been recorded from connected as well as unconnected entities had been placed before the petitioner to afford due opportunity. The petitioner was unable to support the investments made or to prove the source for the investments. In fact, in response to notice under Section 153C dated 26.10.2020, the petitioner files returns of income only on 20.03.2021 leaving the Assessing Officer very little time to take the matters up for hearing and complete the same.

42. However, and despite this, all efforts have been made by the officers to ensure adherence to principles of natural justice and legal principles involved. There is thus, no legal flaw in the assessments made. Moreover, the assessments are only protective and the substantive assessments have been made in the case of R.N.Jayaprakash and it is for the petitioners to challenge the same by way of statutory appeals.

43. The common legal submissions made relate to the validity of the notices under Section 153 of the Act. The petitioners would argue that the statutory prescription of Section 153C itself calls for the existence of incriminating material specifically relatable to each assessment year.

44. In the satisfaction note relating to the some of the years, the satisfaction notes do not reveal any incriminating material found relatable to the petitioners and hence, in such instance, the notices and all proceedings thereafter are liable to be quashed. For this purpose, they rely upon the judgment of the Hon'ble Supreme Court in the case of *Commissioner of Income Tax V. Sinhgad Technical Education Society*[6].

45. The challenge in that case was by way of statutory appeal where orders of assessment had been impugned through the hierarchy of appellate authorities. One of the grounds that had been taken related to whether at all assessments can be framed under Section 153 C, since the satisfaction that had been recorded by the officers at the first instance did not reveal the existence of any incriminating material for some of the years comprised in the block. The years in question were 2000-01 to 2003-04.

46. The Apex Court interpreted Section 153C to state that documents seized would have to establish a co-relation with the relevant assessment year for which notices have been issued under that provision and in the absence of this, the

6 397 ITR 344

commencement of proceedings was itself bad in law. The existence of incriminating material qua each year was thus an essential requirement constituting a jurisdictional fact.

47. In that case, the Tribunal, the final fact finding authority, had rendered a finding after perusing the satisfaction note, that the materials on the basis of which satisfaction was recorded and notice under Section 153C issued, belonged to AY 2004-05 or thereafter. There was thus no material at all that had been found with respect to any assessment year prior to AY 2004-05. The petitioners rely on these observations and conclusions as being applicable on all fours to their cases as well.

48. Learned Senior Standing Counsel takes me through the statutory provisions of Section 153C from the time of its introduction in 2005 till the latest amendment in the year 2017. The provision, as introduced in 2005, reads as follows:

> *Assessment of income of any other person.*
>
> *153C. [(1)] Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or*

*requisitioned belongs or belong to a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of section 153A*

……….

52. It was amended in 2014 to read thus:

*Assessment of income of any other person.*

*153C.[(1)] Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A, then the books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person [and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of section 153A …………*

49. A substantial amendment took place in 2015 where the scope was widened to encompass satisfaction in relation to money, bullion, jewellery or other valuable article or thing seized or requisitioned, that belonged to a third person or any books of accounts or documents, seized or requisitioned, that pertained to, or any information contained therein, that related to a third person.

50. The provision as amended in 2015 reads thus:

*Assessment of income of any other person.*

*153C. [(1)] [Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—*

*(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or*

*(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,*

*a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person] [and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or* *documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for the relevant assessment year or years referred to in sub-section (1) of section 153A*

*……….*

51. In 2017, there was a further amendment, by virtue of which, the provision was amended to read as follows:

*Assessment of income of any other person.*

*153C. [(1)] [Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—*

*(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or*

*(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,*

*a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person] [and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person [for six* *assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and] for the relevant assessment year or years referred to in sub-section (1) of section 153A.*

………

52. What is relevant to the present case is Section 153C as it stood post the amendment in 2017. The interpretation of the revenue is that upon recording of satisfaction by the Assessing Officer that the books of accounts/documents/assets, seized or requisitioned have a bearing on the determination of total income of the other person, he is mandated to issue a notice for the entirety of the block of 6 assessment years and there is no discretion that has accorded to him in this regard.

53. Thus, the reference to '*6 assessment years'* in Section 153C is as a block and the existence of seized material for any one year would not just validate but would require statutorily the Assessing Officer to issue notice for all 6 years. He has not been given the discretion to pick and choose any year within the block for the issuance of notice.

54. As regards the judgment in *Sinhgad* (supra) he points out that the search in that case took place in July, 2005, whereas the search in the present case was in

July, 2018. With the amendment in Section 153C over the years, the observations and conclusions in that judgment are not applicable to the present case and must be understood to be confined only to apply to Section 153 C till its amendment in 2015 and not thereafter.

55. He relies on the decisions of the Delhi High Court in the cases of *SSP Aviation Ltd. V. Deputy Commissioner of Income Tax*[7] and *Commissioner of Income Tax V. Anil Kumar Bhatia*[8] and of the Kerala High Court in the cases of *Commissioner of Income-tax, Thichur V. ST. Francis Clay Décor Tiles*[9] and *E.N.Gopakumar V. Commissioner of Income-tax (Central)*[10].

56. The decision of the Kerala High Court decision has been rendered in the context of 153A and concluded that assessments may be framed under that provision even without there being any incriminating material available as against those assessees.

7 346 ITR 177

8 352 ITR 493

9 385 ITR 624

10 390 ITR 131

57. Detailed rival submissions of all learned counsel have been heard and case-law studied. The scheme of assessment under Section 153A and 153C have been introduced in place of the erstwhile system of block assessment for a period of 10 years under Chapter XIV-B of the Act, under Sections 158BC and 158BD thereunder. The provisions had been inserted by Finance Act, 2003, with effect from 01.06.2003, and draw their sustenance from the conduct of a search under Section 132 of the Act or requisitioning of assets under Section 132A.

58. Section 153A provides for assessment in the case of the searched/requisitioned entity, whereas 153C deals with the assessment of income of any other person in respect of whom valuable assets were found in the course of the search. Both the provisions commence with a non-obstante clause, notwithstanding the provisions of Sections 139, 147, 148, 149, 151 and 153 and relate to a period of 6 assessment years immediately preceding the assessment year relevant to the previous year in which the search was conducted or requisition made and operates simultaneously with both Sections 153A and 153C.

59. In addition, in the case of such other person, since satisfaction has to be recorded by two Assessing Officers (of the searched entity as well as third party) and

there may be some elapse in time for the transfer of records from the first officer to the second, Section 153C(2) provides for the framing of the assessment for an additional year, ie., the year of search as well, in certain demarcated situations. Since that situation does not arise in the present case, I desist from elaborating further in this regard.

60. With the amendment of the provisions in 2017 by Finance Act, 2017, with effect from 01.04.2017, the Department was also entitled to extend the block period for a further period of 4 years in addition to the 6 years originally provided, though for the 4 years brought within the ambit of the block period, an additional condition has been imposed, being the availability of material revealing that income that has escaped assessment exceeds 50 lakhs or more.

61. The scheme of a block assessment includes both assessment as well as re-assessment and is a scheme different and distinct from all the other modes of assessment as well as re-assessment already available under the Act including re-assessment under Section 147.

62. The premise of this scheme of assessment is a search/requisition, although the scope of assessment extends to *'total income'*. This view finds support

from the recent judgment of the Hon'ble Supreme Court in *Principal Commissioner of Income Tax, Central -3 V.Abhisar Buildwell P. Ltd.*[11] confirming the decision in *Commissioner of Income Tax V. Kabul Chawla*[12].

63. Assessments made either under Section 153A or 153C can be sustained only if those assessments are based upon incriminating materials found in the course of search indicating concealed assets/taxable income that have escaped assessment. The scheme of assessment under Sections 153 A and 153C is available to the Department in addition to all other methods of assessment, revision and re-assessment and each scheme has its distinct set of conditions and stipulations, that must be strictly adhered to.

64. The cases that have been cited at the Bar are a mix of Writ Petitions as well as statutory appeals. As a rule of thumb, however, what emerges is that an assessments under Sections 153A and 153A must be based on seized material. The distinction between an assessment under Sections 153A and 153C is that in the former, the question of '*recording of satisfaction*' does not arise, as the Assessing

11 Civil Appeal No.6580 of 2021 dated 24.04.2023

12 380 ITR 573

Officer *'shall'* issue notice to the searched person calling for the filing of returns for the block period. The availability or otherwise of incriminating material can thus be tested only after the process of assessment is gone through and an order is framed.

65. In the case of Section 153 C assessment, however, there has to be a recording of satisfaction even at the first instance by the Assessing Officer of the person searched and thereafter, the Assessing Officer of the third party who must record satisfaction that the seized material have a bearing on the determination of total income for 6 assessment years preceding the year of search.

66. My attention has also been drawn specifically to the use of the word *'if'* that figures prior to the recording of satisfaction. The word *'if'* is a conjunction and is understood to introduce a condition. The Advanced Law Lexicon of P.Ramanatha Aiyar's 5th Edition (volume 2 D-I) defines the word *'if'* to say that '*the word 'if' in a stipulation generally creates a condition precedent.*'

67. Thus the petitioners argue that the condition precedent for issuance of notice is the recording of satisfaction that the seized material must relate to specific years comprised in the block, whereas the counter of the Department is that, though

a condition precedent, it would suffice that the materials relate to one year which would then open up the avenue of assessment for the entirety of the block period.

68. The search in the case of *Sinhgad* was in 2005 when Section 153 C as it stood then, did not specifically make reference to 'recording of satisfaction' in the context of the 'period' for which notices will be issued. Despite this, the Hon’ble Supreme Court has understood the scheme of block assessment under Section 153 C to mean that notice under Section 153C can be issued only where the satisfaction note draws a nexus between the incriminating material and the specific year to which it relates.

69. Furthermore, every assessment year for the purpose of the Income Tax Act, is a separate and distinct year. No doubt, the scheme of assessment under Sections 153A and 153 C envisage creation of a block. But that creation does not efface the first principles in the framing of an assessment itself. To summarise, the ratio of the judgment in *Sinhgad* (supra) is that an assessment under Section 153 C to survive, must be premised on seized material only.

70. Great reliance has been placed by the petitioner on the decision of the Delhi High Court in the case of *Commissioner of Income Tax, Central – III, V. Kabul Chawla*[13]. An SLP filed by the Department as against that decision was taken up for hearing along with a batch of other appeals involving similar issues and finally disposed vide judgment dated 24.04.2023 in the case of *Principal Commissioner of Income Tax, Central -3 V.Abhisar Buildwell P. Ltd.*[14].

71. In that judgment, the core issue has been determined in paragraph 2, being the scope of assessment under Section 153A of the Act. The rival contentions have also been recorded in that paragraph. The revenue's contention was that the Assessing Officer was competent to consider all materials available on record including that found during search and make an assessment of the total income.

72. The assessee's contention was that if no assessment proceeding was pending on the date of initiation of search, the Assessing Authority may consider

13 380 ITR 573

14 Civil Appeal No.6580 of 2021 dated 24.04.2023

only the incriminating material found during the search and would be precluded from considering any other material derived from any other source.

73. This issue does not arise in the Writ Petitions before me. What has relied upon by the Department before me is the conclusion of the High Court as extracted in paragraph 7.1 of the judgment of the Hon'ble Supreme Court and the affirmation thereof. To clarify, the summary of legal position as affirmed by the Hon'ble Court is as follows:

> *38. 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 AYS immediately preceding the previous year relevant to the AY in which the search takes place.*
> >
> > *ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYS will have to be computed by the AOS as a fresh exercise.*
> >
> > *iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO 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 AYS "in which*

*both the disclosed and the undisclosed income would be brought to tax".*

*iv. Although Section 153 A 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 AO 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 153 A is relatable to abated proceedings (i.e.. those pending on the date of search) and the word 'reassess' to 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 AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.*

*vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A 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.*

74. The Department has argued that the issuance of notice for all 6 years preceding the previous year, relevant to the assessment year in which the search takes place is mandatory, irrespective of whether the satisfaction note reveals the seizure of any incriminating material in the case of the assessee concerned.

75. We have to bear in mind the position that the decision in *Kabul Chawla* as well as other cases considered in the judgment dated 24.04.2023 related to notices under Section 153A of the Act. The petitioners before me are noticees under Section 153C of the Act. There is vast distinction in the language of the two provisions, which are extracted below.

| | |
|---|---|
| *153A. Assessment in case of search or requisition.— Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, in the case of a person where a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A after the 31st day of May, 2003, the Assessing Officer shall—*<br>*(a) issue notice to such person requiring him to furnish within* | *153C. [Notwithstanding anything contained in Section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied , that –*<br>*(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or*<br>*(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates* |

| | |
|---|---|
| *such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b), in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139;*<br>*(b ) assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made :*<br>***Provided** that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years:* | *to,*<br>*a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned, shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if that Assessing Officer is satisfied that the books of account or documents or assets, seized or requisitioned, have a bearing on the determination of the **total income of such other person for the relevant assessment year or years** referred to in sub-section (1) of section 153A* |

76. The ingredients of Section 153A are:

i) Initiation of search or requisition under the applicable statutory provisions,

ii) Such search/requisition being after 31.05.2023 but before 31.05.2021.

iii) A mandate upon the Assessing Officer who '*shall'* issue notice to the person searched.

iv) The notice shall require him to furnish within such period as specified, return of income.

v) Such returns are to be filed in respect of each assessment year falling within six assessment years referred to in that provision duly verified and containing the required particulars.

vi) Upon receipt of the returns, re-assess total income of 6 assessment years immediately preceding the assessment year relating to the previous year that search was conducted/requisition made.

77. The ingredients of Section 153 C are:

i) Satisfaction of the Assessing Officer who is Assessing Officer of the 153A noticee that money/bullion/jewellery/other valuable article or thing/books of accounts or documents (incriminating materials) seized/requisitioned belongs to/pertain to or any information contained, relates to, a third party.

ii) Recording of satisfaction as above.

iii) Handing over of the incriminating material to the Assessing Officer having jurisdiction over the third party.

iv) Recording of satisfaction by the Assessing Officer of the third party that the incriminating material has a bearing on the determination of total income of the third party.

v) Upon condition of recording of the satisfaction of both officers as above, notices be issued to assess/re-assess the income of the third party in accordance with the procedure stipulated under Section 153A.

78. In my considered view, there is a vital distinction between the object, intention as well as the express language of Sections 153A and 153C. Section 153A addresses the searched entity and the procedure set out is evidently a notch higher for

this reason. There is no discretion or condition precedent under Section 153A to the issuance of notice save the conduct of a search under Section 132 or making of a requisition under Section 132A. Upon the occurrence of one of the aforesaid events, it is incumbent upon the officer to issue notice under Section 153A to the searched entity in line with the procedure stipulated.

79. Section 153C however requires the satisfaction of two conditions prior to issuance of notice:

i) Recording of satisfaction by the Assessing Officer of the searched entities that some of the incriminating materials relate to a third party.

ii) Recording of satisfaction by the Assessing Officer of the third party that the incriminating materials have a bearing on the determination of the total income of that third party.

80. Notice under Section 153C would have to be issued only upon the concurrent satisfaction of both conditions as aforesaid. To this extent, there is, in my considered opinion, a clear and marked distinction between the provisions of Section 153A and 153C. The contention of the revenue that a mandate is cast upon the

Assessing Officer of the third party to issue notice under Section 153C for all the years comprising the block, mechanically and automatically, is thus rejected.

81. To clarify, it is only where the satisfaction note recorded by the receiving Assessing Officer, i.e., the Assessing Officer of the third party reflects a clear finding that the incriminating material received has a bearing on determination of total income of the third party for 6 assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made, that such notice would have to be issued for all the years.

82. It thus flows from the provision that the receiving assessing officer must apply his mind to the materials received and ascertain precisely the specific year to which the incriminating material relates. It is only when this determination/ascertainment is complete that the flood gates of an assessment would open qua those particular years. The issuance of a notice cannot be an automated function unconnected to this exercise of analysis and ascertainment by an assessing officer.

83. The construction of Section 153 A and 153 C is consciously different and is seen to apply different yardsticks to an entity searched and a third party, such

yardstick being more exacting in the case of the former. The process of assessment is demanding and an assessee, once in receipt of a notice, is bound by the stringent procedure under the Act, till finalisation of the process.

84. In other words, a Damocles sword appears over the head of an assessee with the issuance of every notice which is laid to rest only upon conclusion of the proceedings; The sword cannot be invoked lightly and except if the statutory condition is satisfied. That is to state, an officer has to analyse and compartmentalise the incriminating material year wise, to arrive at a categoric determination as to the year to which the incriminating material relates and issue notices only for those years.

85. Needless to state these are some situations/issue when the spread of information and the nature of the issue itself might need more, and in-depth probing before such year-wise determination is possible. In such cases, the officer would be well within his right to state the nature of the issue and detail the difficulties that present themselves in precise bifurcation at that stage. This would reflect application of mind and, in my considered view, would serve as sufficient compliance with the statutory condition.

86. If the argument of the petitioners is to be accepted, the assessments for the years 2016-17 and 2017-18 would also have to go, since the satisfaction note does not contain a reference to the *small note book* that have admittedly been seized and are part of the records, though omitted to be mentioned in the satisfaction note.

87. As on date, when the matters are being heard, the assessments have been allowed to be proceeded with till completion of assessment, which gives the Court the benefit of not just the satisfaction note but the show cause notices as well as the orders of assessment. These records reveal the variation between the satisfaction note and the assessment order in terms of the records seized, making it evident that there has been an omission on the part of the officer who has recorded satisfaction to refer to the *small note books* in relation to AYs 2016-17 and 2017-18.

88. The legal issue is hence decided in favour of the petitioners, and would have to be applied to determine the validity or otherwise of each of the orders of assessment passed in the case of each of the petitioners. This Court is not in possession of all satisfaction notes. In some cases, the assessing authority has recorded satisfaction by way of a consolidated note, whereas in some others, this

Court is given to understand that the satisfaction notes are individual relating to a specific year.

89. Thus, rather than go through the factual exercise of verification of the satisfaction notes to arrive at a conclusion as to whether the pre-condition relating to the satisfaction being year-specific, has been complied, by the assessing authority. I leave it to the concerned jurisdictional assessing officer to collate the satisfaction notes relating to each year and apply the conclusion of this Court on the legal issue decided supra.

90. Orders shall be passed giving effect to the conclusion in this order. That is to say that those assessments relating to those years were no incriminating material has been noted by the assessing authority shall stand quashed as a result of this order and a consequential order shall be passed to such effect by the authority.

91. Two charts have been filed in the case of Sri Balaji Charitable and Educational Trust and Fourth Force Surveillance Indo Pvt. Ltd., one relating to each block of appeals wherein the learned Standing Counsel accedes to the position that there is no seized material as far as assessment years 2013-14 to 2015-16 are

concerned in the case of the Trust and 2013-14 to 2019-20 are concerned in the case of Fourth Force. The charts read as follows:

**Trust:**

| S.No. | Assessment Year | Seized Material based on which addition made in Assessment order | Premises from which the material was seized |
|---|---|---|---|
| 1. | 2013-14 | - | - |
| 2. | 2014-15 | - | - |
| 3. | 2015-16 | - | - |
| 4 | 2016-17 | ANN/ARS/AP/B&D/S | M/s.Agni Plots, No:30/16, Conron Smith Road, Gopalapuram, Chennai – 86. |
| 5. | 2017-18 | ANN/ARS/AP/B&D/S | M/s.Agni Plots, No:30/16, Conron Smith Road, Gopalapuram, Chennai – 86. |
| 6. | 2018-19 | ANN/ARS/AGP/LS/S | M/s.Agni Plots, No:30/16, Conron Smith Road, Gopalapuram, Chennai – 86. |
| 7. | 2019-20 | ANN/ARS/AP/B&D/S | M/s.Agni Plots, No:30/16, Conron Smith Road, Gopalapuram, Chennai – 86. |

**Fourth Force:**

| S.No. | Assessment Year | Seized Material based on which addition made in Assessment order | Premises from which the material was seized |
|---|---|---|---|
| 1. | 2013-14 | - | T.G.Balaji, No.22/10, Balaji Nagar, 4th Street, Royapettah, Chennai-600 |

| | | | |
|---|---|---|---|
| | | | 014 |
| 2. | 2014-15 | - | T.G.Balaji, No.22/10, Balaji Nagar, 4th Street, Royapettah, Chennai-600 014 |
| 3. | 2015-16 | - | T.G.Balaji, No.22/10, Balaji Nagar, 4th Street, Royapettah, Chennai-600 014 |
| 4 | 2016-17 | - | T.G.Balaji, No.22/10, Balaji Nagar, 4th Street, Royapettah, Chennai-600 014 |
| 5. | 2017-18 | - | T.G.Balaji, No.22/10, Balaji Nagar, 4th Street, Royapettah, Chennai-600 014 |
| 6. | 2018-19 | ANN/SC/LS/S | T.G.Balaji, No.22/10, Balaji Nagar, 4th Street, Royapettah, Chennai-600 014 |
| 7. | 2019-20 | - | T.G.Balaji, No.22/10, Balaji Nagar, 4th Street, Royapettah, Chennai-600 014 |

92. There is one question that remains to be noticed in the the case of Balaji Educational Trust. The satisfaction note dated 17.9.2020 in this case no doubt reveals the existence of only '*loose papers*' relating to assessment year 2018-19. However, the show cause notice issued on 13.02.2021 revealed seized '*small note books*' as well which contained recording of duly unaccounted cash transactions maintained by the cashier of the Agni group based on the directions of the Managing Director of the Agni group of companies and his Secretary. Cash receipts and

payments for financial years relating to 2016-17, 2017-18 and 2018-19 have been noted and recorded.

93. The orders of assessment shall be served on the assessee within a period of three (3) weeks from date of uploading of this order with a compliance memo in this regard filed in the Registry. Liberty is granted to the petitioners, i.e. Agni Vishnu Ventures Pvt. Ltd., Vishnusurya Projects and Infra Private Limited, Sri Balaji Charitable and Educational Trust and Fourth Force Surveillance Indo Private Limited to challenge the remaining of the assessment orders, if any and by way of statutory appeal and such appeals, if filed within a period of four (4) weeks from date of receipt of the confirmation from the assessing authority, shall be taken on file by the first appellate authority without reference to limitation and ensuring compliance with other pre-conditions, if any. The appeals shall be heard and disposed in accordance with law.

***V Facts and rival contentions in the case of Rajan Narasimulu Jayaprakash***

94. Challenge has been laid by Rajan Narasimulu Jayaprakash in W.P.Nos.25342, 25347, 25345, 25350, 25352, 25357, 25360, 25366, 25368 and

25370 of 2021 relating to A.Ys. 2009-10, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, 2016-17, 2017-18, 2018-19 and 2019-20. The satisfaction note in this case is extremely detailed and in light of the order that I propose to pass in conclusion, I see no necessity to burden this order with the entirety of the satisfaction note. Suffice it to say that it is premised on a search in the case of Agni Estates and Foundations and refers to seized material that relates to 8 entities incorporated in Singapore, Seychelles, British Virgin Islands and Mauritius.

95. The information of R.Sundararajan, Chartered Accountant referred to in the satisfaction notes extracted in the cases of Agni Vishnu Ventures Pvt. Ltd., and Vishnu Surya Project and Infra Pvt. Ltd. above has been extracted in the present satisfaction note as well. The conclusion is also apposite that there were no services of the nature that would justify the payments made to the overseas concerns.

96. Based on a prima facie application of tax evasion, the remittances made have been brought to tax in this petitioner's hands. In addition, there are cash transactions reflected in small pocket sized note books, seized in the course of searches in other premises, which are alleged to be unaccounted.

97. The petitioner has filed returns in response to notices under Section 153C and has received show cause notices as well. One of the points raised is that the satisfaction note concludes with the officer stating '*this is a fit case for assessment/re-assessment under Section 153C of the Income Tax Act, 1961'*.

98. It is argued that there could be no ambiguity in the satisfaction note and the officer ought to have been clear in his mind as to the procedure and statutory provisions to be invoked. To say that it is fit both for assessment and re-assessment indicates lack of certainty on the part of the officer which itself vitiates the proceedings.

99. To my mind, it appears that the officer has merely adopted the conclusion in a format available with the Department and I would not put much store by this statement, vague as it is. The relevance of the satisfaction note lies in the reference to incriminating material found in the premises of the searched entity and the confirmation by the officer that such materials would have a bearing on the determination of tax in the case of the notice under Section 153C. Seen in this light, the satisfaction is found to comply with the statutory requirement.

100.In response to the show cause notices, the petitioner has filed detailed replies, specifically seeking material, such as the break-up of the amounts specified in the notices and an opportunity to cross examine some persons including one S.Dhilip Kumar, whose statements have been referred to by the officer in the notice.

101.There is also a request dated 25.09.2021 for furnishing copies of sworn statements of K.N.Narayanan, the said Dhilip Kumar and G.S.Kanniappan, the petitioner reiterating that an opportunity of cross examination also be afforded, if those statements are intended to be used against him.

102. Thereafter, the petitioner has filed an application under Section 144A to the Additional Commissioner of Income Tax, Central Range - 2 on 27.09.2021 apprehending a hurried closure of the assessment and urging interference by the officer to direct the Assessing Officer to conduct the proceedings in a proper manner.

103. The Additional Commissioner of Income Tax, Central Range 2, posted the application for hearing on 29.09.2021, but the petitioner was unable to appear and sought re-scheduling of the same, which was declined, the officer passing an order on 29.09.2021 stating that since it was the Additional Commissioner of Income Tax, who is the authority for approval of case as per the provisions of Section 153D

of the Act for cases dealt with under Section 143(3) read with Section 153A/153C, he would not be in a position to consider the application under Section 144A. He points out that in fact all the points that have been raised in the 144A application have been duly considered by him even while granting approval under Section 153D of the Act.

104. The impugned orders of assessment have come to be passed on the last day of limitation, admittedly, without granting an opportunity of cross examination as sought for by the petitioner.

105. Per contra, it is the case of the respondents that additions made did not hinge entirely on those statements, and that there have been other incriminating materials that have been found based on which the additions/disallowances have been made. That may well be the case.

106. However, it is a settled position that once a sworn statement is recorded from an individual which is relied upon in arriving at a decision in the case of an assessee, the assessee be given a copy of the sworn statements and thereafter, an opportunity to cross examine the persons concerned, if sought.

107. In the present case, despite admittedly, there having been requests made for cross-examination, no opportunity has been granted and the impugned orders of assessment have come to be passed denying such an opportunity to the petitioner.

108. Thus, while reiterating the conclusions arrived at by me in the Writ Petitions of the other petitioners, these assessment orders also stand confirmed.

109. It is made clear that the appellate authority shall make good the error committed by the Assessing Authority by ensuring that an effective opportunity of cross examination is granted to the petitioner prior to finalizing the appeal proceedings.

110. The powers of the appellate authority under Section 246/246A are co-terminus with that of the Assessing Officer and hence the aforesaid direction would suffice to protect the interests of the petitioner and to remedy the procedural error committed by the officer while framing the assessment.

111. This petitioner may also approach the appellate authority by way of statutory appeals within a period of four (4) weeks from date of receipt of a copy of

this order, in which case, the appeals shall be entertained without reference to limitation. Thereafter, it is between the petitioner and the appellate authority to take matters forward in accordance with law.

112. The challenge raised in W.P.Nos.20114, 20116, 20119, 20125, 20127 & 20130 of 2020 is to notices dated 22.09.2020 issued under Section 153A of the Income Tax Act, 1961 (in short 'Act') for A.Ys 2013-14, 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19.

113. The challenge is premised on the argument that there has been a delay in handing over seized material by the search officials to the receiving officers, that is, the jurisdictional officer of the third party/petitioner, beyond a period of sixty days from the date on which the last of the authorizations for search was executed.

114.This issue has been decided adverse to the assessee in WP.Nos.35076 of 2019 and batch by order dated 17.03.2021, as against which, W.A.Nos.1111, 1112, 1113, 1114, 1116 and 1117 of 2021 are stated to be pending before the Division Bench of this Court. In light of the aforesaid order, W.P.Nos.20114, 20116, 20119, 20125, 20127 & 20130 of 2020 are dismissed.

115. All Writ Petitions stand disposed in terms of this order. All connected Miscellaneous Petitions are closed. There will be no order as to costs.

**28.06.2023**

Index: Yes
Speaking order
Netural Citation:Yes
Sl/vs

To

1.Deputy Commissioner of Income Tax,
Central Wing Central Circle 2 (1),
1st Floor, Investigation Building,
New No.46, Old No.108,
Mahatma Gandhi Road,
Chennai -600 034, Tamil Nadu.

2.Additional Commissioner of Income Tax,
Central Range -2, Investigation Wing,
1st Floor, No.46, M.G.Road,
Nungambakkam, Chennai -600 034.

**Dr.ANITA SUMANTH, J.**

Sl/vs

W.P. Nos.24407, 24410, 24413, 24415, 24420, 24423, 24426 & 24430 of 2021 and WMP.Nos.25722, 25724, 25726, 25730, 25731, 25733, 25734, 25738, 25741, 25743, 25744, 25749, 25750, 25755, 25756, 25761 & 25759 of 2021 W.P. Nos.7372, 7376 & 7382 of 2022 and WMP.Nos.7388, 7389, 7393, 7395, 7399 & 7400 of 2022 W.P.Nos.25342, 25347, 25345, 25350, 25352, 25357, 25360, 25366, 25368 & 25370 of 2021 and WMP.Nos.26762, 26763, 26765, 26770, 26771, 26774, 26775, 26766, 26767, 26776, 26777, 26782, 26784, 26788, 26790, 26793, 26794, 26796, 26797, 26798 & 26799 of 2021 W.P.Nos.8079, 8082, 8085, 8087, 8090, 8094 & 8097 of 2022 and WMP.Nos.8049, 8050, 8052, 8053, 8056, 8057, 8059, 8061, 8064, 8065, 8067, 8068, 8074 & 8080 of 2022 W.P.Nos.20114, 20116, 20119, 20125, 20127 & 20130 of 2020 &WMP.Nos.24820, 24823, 24828, 24830, 24837, 24839, 24844, 24845, 24847, 24848, 24852 & 24853 of 2020W.P. Nos.27154, 27157, 27168, 27166, 27181, 27160, 27184, 27186 &

27178 of 2021 and WMP.Nos.28643, 28645, 28646, 28648, 28649, 28660, 28662, 28656, 28657, 28674, 28677, 28652, 28653, 28679, 28682, 28686, 28687, 28669 & 28672 of 2021 W.P. Nos.25826, 25830, 25832, 25835, 25840, 25843, 25845 and 27078, 27083, 27085, 27092, 27096 & 27100 of 2021 And WMP.Nos.27303, 27305, 27309, 27310, 27312, 27313, 27314, 27315, 27322, 27323, 27325, 27326, 2327, 27328 and 28543, 28548, 28545, 28553, 28555, 28566, 28567, 28569, 28572, 28560, 28561, 28574 & 28576 of 2021

28.06.2023