BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	01.12.2022
Pronounced on	:	24.02.2023

CORAM

THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.P.(MD).Nos.12212, 12213, 12214, 12215 and 12216 of 2021
and
W.M.P.(MD).Nos.9608, 9609, 9610, 9612, 9613,
9614, 9615, 9616, 9617 and 9618 of 2021

M/s.Alliance Broadcasting Private Limited,
Represented by its Director,
Mr.V.Subramanian ... Petitioner in all writ petitions

Vs.

The Assistant Commissioner of Income Tax,
Central Circle 2, Madurai,
Income Tax Staff Quarters Complex,
Kulamangalam Main Road,
Meenambalpuram, Madurai - 625 002. ... Respondent in all writ petitions

PRAYER in W.P.(MD)No.12212 of 2021: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records on the file of the Respondent pertaining to the order under Section 144 read with Section 153C of the Income Tax Act, 1961, issued by the Respondent dated 08.07.2021 having DIN and Document

No.ITBA/AST/M/153C/2021-22/1034083235(1) in PAN:AAFCA6981L, Assessment Year 2013-14 and the notice under Section 271(1)(b) dated 09.07.2021 having DIN and Notice No.ITBA/PNL/S/271(1)(b)/2021-22/1034104170(1) in PAN: AAFCA6981L Assessment year 2013-14 and quash the same.

PRAYER in W.P.(MD)No.12213 of 2021: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records on the file of the Respondent pertaining to the order under Section 144 read with Section 153C of the Income Tax Act, 1961, issued by the Respondent dated 08.07.2021 having DIN and Document No.ITBA/AST/M/153C/2021-22/1034083349(1) in PAN:AAFCA6981L, Assessment Year 2014-15 and the notice under Section 271(1)(b) dated 09.07.2021 having DIN and Notice No.ITBA/PNL/S/271(1)(b)/2021-22/1034104326(1) in PAN: AAFCA6981L Assessment year 2014-15 and quash the same.

PRAYER in W.P.(MD)No.12214 of 2021: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records on the file of the Respondent pertaining to the order under Section 144 read with Section 153C of the Income Tax Act, 1961, issued by the Respondent dated 08.07.2021 having DIN and Document No.ITBA/AST/M/153C/2021-22/1034083429(1) in PAN:AAFCA6981L, Assessment Year 2015-16 and the notice under Section 271(1)(b) dated 09.07.2021 having DIN and Notice No.ITBA/PNL/S/271(1)(b)/2021-22/1034104459(1) in PAN: AAFCA6981L Assessment year 2015-16 and quash the same.

PRAYER in W.P.(MD)No.12215 of 2021: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records on the file of the Respondent pertaining to the order under Section 144 read with Section 153C of the Income Tax Act, 1961, issued by the Respondent dated 05.07.2021 having DIN and Document No.ITBA/AST/M/153C/2021-22/1034006119(1) in PAN:AAFCA6981L, Assessment Year 2017-18, demand notice under Section 156 dated 05.07.2021 having DIN and Notice No.ITBA/AST/S/156/2021-22/1034006242(1), notice under Section 274 read with Section 272A(1)(d) dated 05.7.2021 having DIN and Notice No.ITBA/PNL/S/2021-22/1034007061(1) and the notice under Section 274 read with Section 270A(1)(b) dated 05.07.2021 having DIN and Notice No.ITBA/PNL/S/270A/2021-22/1034006268(1) in PAN:AAFCA6981L Assistant Year 2017-18 and quash the same.

PRAYER in W.P.(MD)No.12216 of 2021: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records on the file of the Respondent pertaining to the order under Section 144 read with Section 153C issued by the Respondent dated 05.07.2021 having

DIN and Document No.ITBA/AST/S/153C/2021-22/1034007088(1) in PAN:AAFCA6981L, Assessment Year 2018-19, demand notice under Section 156 dated 05.07.2021 having DIN and Notice No.ITBA/AST/S/156/2021-221/1034007161(1) notice under Section 274 read with Section 272 A(1)(d)/2021-22/1034007284(1) and the notice under Section 274 read with Section 270A(1)(b) dated 05.07.2021 having DIN and Notice No.ITBA/PNL/S/270A/2021-22/1034007231(1) in PAN:AAFCA6981L, Assessment Year 2018-19 and quash the same.

COMMON ORDER

The present batch of Writ Petitions are filed challenging the orders of assessment relating to the Assessment Years 2013-2014, 2014-2015, 2015-2016, 2017 -2018 and 2018-2019, primarily on the premise that Section 153 C of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), has been invoked instead of Section 153 A of the Act.

2. BRIEF FACTS:

2.1. The petitioner is a Company incorporated under the Companies Act, 1956, and part of VV Group of Companies. The petitioner / company is engaged in the business of running a TV channel by name “News 7”. There was a search in the petitioner / Company under Section 132 of the Act. There was also a search of VV Group concerns. During the course of search and seizure conducted in VV group concerns on 25.10.2018 incriminating materials relating to the petitioner /company was seized from the residence of one Mr. Kannan, cook to Shri. S.Vaikundarajan's family. On the basis of the materials so seized it was found that there were details of unaccounted cash receipts generated by the Petitioner Company to the tune of Rs. 22 Lakhs for the Assessment Year 2017-18.

2.2. Consequent to the above search and seizure, assessment proceedings were initiated by issuing notices under Section 153C of the Act on 11.03.2021 to the petitioner/ company requiring it to file its return of income. The notice was served on the same day through E-mail registered in the Income Tax Portal. However, the petitioner did not respond to the above notice.

2.3. Thereafter, a notice under Section 142(1) of the Act was sent to the assessee to furnish copy of the return of income filed in response to notice under Section 153C of the Act. A notice under Section 142 (1) of the Act was issued on 02.04.2021 along with a questionnaire calling for assessee's explanation/ objections. The said notice was served on the same day through

E-mail. The petitioner did not respond to the notice nor the questionnaire. The Respondent/Assessing Officer proceeded thereafter to complete the assessment by placing reliance upon the statements recorded during the course of search at the residence of Mr. Subramaniam and on the basis of questions put to Mr. Raja (Office Manager of VV Minerals) and Mrs. Chitra.

2.4. For the assessment year 2018-19, the petitioner filed its original returns disclosing "Nil" income. The case was selected for scrutiny through CASS. The reason for scrutiny being substantial increase in share capital of the Petitioner company. Notice under Section 143(2) of the Act was issued to the petitioner on 23.12.2020 by the Assessing Officer CIT Central Circle 2(4), Bangalore. A notice under Section 142(1) of the Act was issued to the assessee calling for details including the details of increase in share capital. The assessee neither filed any return of income nor furnished the books of accounts and the business income was estimated at 8% of the total receipts i.e. Rs. 10,67,48,620/-. Further, it was found that while the share capital of the petitioner /company increased by Rs.124.6 crores, whereas in the return filed the petitioner / company was shown to be a loss making company for the past several years. In the absence of the relevant details relating to the source for raising the new share capital, the same was added to the total income of the asessee as unexplained cash credit under Section 68 of the Income Tax Act. Notice under Section 142(1) of the Act was issued to the petitioner/ Company on 23.11.2020, 19.12.2020, 23.12.2020 and 02.04.2021. None of which was responded to by the petitioner. The Respondent passed an order under Section 144 r/w Section 153C of the Act.

3. I had dealt with the facts for the Assessment Year 2017-18 and 2018-19 as the petitioner/ respondent submission was with reference to the same. It may be relevant to note that there has been no additions made in respect of the Assessment Years 2013-2014, 2014-2015 and 2015-2016 and the respective impugned orders of assessment had recorded “NIL” income tax liability. The additions were made only in respect of the Assessment Years 2017-2018 and 2018-2019 and those additions are made on the basis of incriminating material and documents seized during the search conducted in respect of other entities belonging to VV Group concerns.

4. These orders of assessments are the subject matter of challenge in this

batch of Writ Petitions as stated above.

5. The primary grounds on which the orders of assessments for the assessment years 2013-14, 2014-15, 2015-16, 2017-18 and 2018-19 have been challenged are as under:

a. That the impugned orders of assessment have been issued invoking section 153C of the Income Tax Act, 1961 (herein after referred to as “Act”) instead of Section 153A of the Act.

b. That the procedure prescribed under Section 127 of the Act has not been complied with and consequently all further proceedings are void-ab-initio.

c. That the notices had not been served in the manner contemplated under the Income Tax Act.

6. To the contrary, it was submitted by the learned counsel for the Respondent that the Writ Petitions are not maintainable in view of availability of an alternate /statutory appellate remedy under Section 246A of the Income Tax Act. In this regard, reliance was placed on the judgement of the Hon'ble

Supreme Court in the case of*"CIT vs. Chhabil Dass Agarwal 2014 (1) SCC 603*". The Respondent submits that the search under Section 132 of the Act was carried out at the premises of the petitioner at Chennai on 25.10.2018 based on the warrant issued by the Principle Director of Income Tax. During the course of the search of the petitioner/ Company premises admittedly, there was no seizure as would be evident from the panchanama drawn on 20.10.2020 which was handed over to the representative of the petitioner who acknowledged the same.

7. There was another search in VV group concerns, of which the petitioner was also a part. Pursuant to the searches made in the premises of the VV group concerns, materials were seized. Assessment was made for the Financial years 2013-14, 2014-15, 2015-16, 2017-18 and 2018-19 on the basis of the materials seized during the search of VV Group concerns. In other words, the materials which formed the basis for the assessment where those seized pursuant to the search warrant issued in the name of VV group concerns. It is thus submitted that the respondents were justified in issuing notices under Section 153C of the Act and the submission of the petitioner/

Company that notices must be issued under Section 153A of the Act is misplaced.

8. In the above background question arises as to the maintainability of the present Writ Petitions. This court is not inclined to entertain the present Writ Petitions in view of the following reasons:

i. The Writ Petitions have been filed on the premise that the notice under Section 127 of the Act has not been issued to the petitioners, however in the Written Submissions the above submission has not been made. In any view, whether Section 127 of the Act would apply or not itself is debatable in view of the fact that the petitioner's registered place of business was shifted from Bangalore to Tamil Nadu and it was intimated by the Petitioner to the Department vide letter dated 13.06.2017. Section 127 of the Income Tax Act would apply only to those cases where there is transfer of a case from one jurisdiction to other and not a transfer of jurisdiction of the assesseee from one place to the other, as in the present case.

ii. Secondly, the question whether notice ought to be issued under section 153A or 153C of the Act would depend upon whether the assessment proceedings are initiated/ made pursuant to a search under Section 132 of the petitioner premises or on the basis of materials seized pursuant to a search of an entity different from that of the petitioner viz., VV Group concerns. A bare perusal of the impugned orders of assessment would reveal that the assessments have been made on the basis of incriminating materials/documents allegedly seized pursuant to a search of the premises of VV Group of concerns an entity different/ distinct from the premises of the petitioner. If so, the question as to whether the assessments are made on the basis of the search pursuant to a warrant issued in the name of the petitioner or on the basis of a search pursuant to a warrant issued in the name of any other entity is essentially a question of fact.

iii. With regard to the submission that the petitioner was not served with notices the averments contained in the affidavit filed in support of the Writ Petition proceeds on the basis that notices ought to be served on the individual/ person representing the petitioner/ company in the affidavit. The above submission is misconceived inasmuch as the Writ Petitioner/Assessee is a company incorporated under the Companies Act and is just a juristic person and thus the averments which are completely personal and which are on the basis of alleged family disputes cannot have a bearing as to whether the petitioner have been properly served or otherwise. The averments from the affidavit of the petitioner reads as under:

> *"8. I am advised that in search proceeding, seizure happends only in respect of some important material and therefore, I must have copy of all seized material before I embark on responding to the show cuase notices issued by the respondent...*
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> *9. I state that we were able to collect copies of panchanama's only in respect of 11 premises that were searched. My father, Mr. S. Vaikundarajan ha dmany times requested the Respondent to give the details of the 63 premises search in relation to VV group and to give the copies of all seized material, which will be evident from the letters/e-mails my father had sent to the respondent and to his higher authorities. ...*
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> *10. I state that till date the respondent has not made available the details of premises searched in relation VV Group and the copies of material seized therefrom.*
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> *11. The absense of entire seized material and the dispute between my father's family and my uncle's family has made responding to notices from the respondent in the group cases which are under the control of my father's family, all the more difficult.*

In this regard, it may be relevant to refer to the judgment of this Court in the case of *Vodafone International Holdings BV vs. Union of India, (2012) 6 SCC 613*:

> ***".72...*** *Companies and other entities are viewed as economic entities with legal independence vis-à-vis their shareholders/participants.*

9. In this background, this Court is not inclined to entertain this writ petitions as the question raised would require examination of disputed

question of facts which is alien to the writ jurisdiction under Article 226 of the Constitution of India more so when there is an effective alternative remedy. The rule of alternate remedy no doubt is a self imposed restraint by Courts exercising writ jurisdiction. In other words, rule of alternate remedy is not a rule of compulsion, but it is a rule of discretion. In this regard it may be useful to refer to the judgment of Hon'ble Supreme Court in *Authorized Officer, State Bank of Tavancore and Another vs Mathew K.C*, reported in, *(2018) 3 SCC 85* reads as follows:

> *'10. In Satyawati Tondon the High Court had restrained further proceedings under Section 13(4) of the Act. Upon a detailed consideration of the statutory scheme under tine SARFAESI Act, the availability of remedy to the aggrieved under Section 17 before the Tribunal and the appellate remedy under Section 18 before the Appellate Tribunal, title object and purpose of the legislation, it was observed that a writ petition ought not to be entertained in view of the alternate statutory remedy available holding: (SCC pp. 123 & 128, Paras 43 & 55)*
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> *55. It is a matter of serious concern that despite repeated pronouncement of this Court, the High Courts continue to ignore the availability of statutory remedies under the DRT Act and the SARFAESI Act and exercise jurisdiction under Article 226 for passing orders which have serious adverse impact on the right of banks and other financial institutions to recover their dues. We hope and trust that in future the High Courts will*

exercise their discretion in such matters with greater caution, care and circumspection.'

"43. Unfortunately, tine High Court overlooked the settled law that the High Court will ordinarily not entertain a petition under Article 226 of the Constitution if an effective remedy is available to the aggrieved person and that this Rule applies with greater rigour in matters involving recovery of taxes, cess, fees, other types of public money and the dues of banks and other financial institutions. In our view, while dealing with the petitions involving challenge to the action taken for recovery of the public dues, etc., the High Court must keep in mind that the legislations enacted by Parliament and State Legislatures for recovery of such dues are a code unto themselves inasmuch as they not only contain comprehensive procedure for recovery of the dues but also envisage constitution of quasi judicial bodies for redressal of the grievance of any aggrieved person. Therefore, in all such cases, the High Court must insist that before availing remedy under Article 226 of the Constitution, a person must exhaust the remedies available under the relevant statute.

10. In the light of the above, this Court has no hesitation in holding that alternate remedy though a rule of discretion and not a rule of compulsion, has to be applied with utmost rigour when it comes to fiscal law statutes and this Court is not inclined to entertain these writ petitions. Therefore these Writ Petitions stands dismissed. It is made clear that any observations on merits is

only for the limited purpose of examining the maintainability of writ petition and the Appellate Authority shall proceed to hear and dispose of the appeal, if any, filed uninfluenced / unobsessed by the observation / finding made by this Court. It is also made clear that the time spent in these writ petitions shall stand excluded while reckoning limitation, if any. Consequently, connected miscellaneous petitions are closed. No costs.

24.02.2023

Index: Yes/No
Speaking order/Non speaking order
Neutral Citation: Yes/No
mka/shk

MOHAMMED SHAFFIQ, J.

mka/shk

To:

The Assistant Commissioner of Income Tax,
Central Circle 2, Madurai,
Income Tax Staff Quarters Complex,
Kulamangalam Main Road,
Meenambalpuram, Madurai - 625 002.

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