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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.5201 & 5203 of 2020
&
W.M.P.Nos.6142 to 6145 of 2020

In both WPs.

M/s.Jaihan Infrastructure,
Represented by its Partner T.Parvadham,
No.184/2, SIDCO Industrial Estate,
Thirumudivakkam,
Chennai-600 044. ...Petitioner

Vs.

The Deputy Commissioner of Income Tax,
Office of the Deputy Commissioner of Income Tax,
Central Circle-1 (4), 3rd floor, Room No.323,
Investigation Building,
No.46, Mahatma Gandhi road, Nungambakkam,
Chennai-600 034. ... Respondent

Prayer in W.P.No.5201 of 2020: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records pertaining to the impugned order passed by the respondent in DIN:20111179897 dated 30.12.2019, issued under Section 144 read with Section 153C of the Income Tax Act, 1961 for the Assessment Year 2011-

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2012 and to quash the same as illegal, unreasonable, arbitrary and contrary to law.

Prayer in W.P.No.5203 of 2020: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records pertaining to the impugned order passed by the respondent in DIN:20121179901 dated 30.12.2019, issued under Section 144 read with Section 153C of the Income Tax Act, 1961 for the Assessment Year 2012-2013 and to quash the same as illegal, unreasonable, arbitrary and contrary to law.

In both WPs.

For Petitioner : Mr.Nithyaesh Natraj
for M/s.Nithyaesh and Vaibhav

For Respondent : Mr.A.P.Srinivas, Senior Standing Counsel
Mr.A.N.R.Jayaprathap, Jr. Standing Counsel

C O M M O N O R D E R

In W.P.No.5201 of 2020, an assessment order relating to assessment year 2011-2012 is under challenge and in W.P.No.5203 of 2020, an assessment order relating to assessment year 2012-2013 is under challenge.

2. The petitioner is a partnership firm represented by Mr.T.Parvadham. The firm was engaged in the business of developing

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real estate. In respect of both the above mentioned assessment years, the petitioner had filed its returns of income. Pursuant to a search conducted at the premises of Mr.K.S.Thirumalaivasan, a partner of the petitioner firm, on 11.10.2012, documents indicating transactions between the petitioner firm and third parties were found. Much later, satisfaction under Section 153C of the Income Tax Act, 1961 (the I-T Act) was recorded in respect of the petitioner on 27.03.2019. A notice under Section 153C was issued thereafter. Eventually, the impugned assessment orders were issued in December 2019.

3. Learned counsel for the petitioner submits that the impugned assessment orders are barred by limitation and that the issue is squarely covered by the judgment of the Hon'ble Supreme Court in *Commissioner of Income Tax 14 v. Jasjit Singh, judgment dated 26.09.2023 in SLP(C) No.6644/2016 and connected cases (Jasjit Singh)*. By referring to paragraph 4 of the said judgment, he points out that the contentions of the assessee and revenue were noticed and recorded therein. By relying on paragraphs 9 and 10 thereof, learned counsel contended that the Supreme Court clarified that the proviso does not deal only with the question of abatement but also fixes the date from which the six year

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period of limitation is to be calculated. If the six year period is calculated in accordance with the judgment of the Hon'ble Supreme Court, he contends that the assessment proceedings relating to assessment years 2011-2012 and 2012-2013 are barred by limitation.

4. Mr.A.N.R.Jayaprathap, learned junior standing counsel, made submissions in response. He relied on an earlier judgment of the Hon'ble Supreme Court in *Commissioner of Income Tax III v. Calcutta Knitwears (2014) 362 ITR 673 SC (Calcutta Knitwears)*, particularly paragraph 44 thereof. He points out that the Supreme Court concluded in paragraph 44 that the essential prerequisite for initiation of action under Section 153 BD is the drawing up of a satisfaction note by the assessing officer. After further submitting that Section 153BD is in *pari materia* with Section 153C, he submitted that the Supreme Court held that the satisfaction note may be prepared at any one of the three stages specified therein, including after assessment proceedings are completed against the searched person. Since satisfaction was recorded in the present case on 27.03.2019, which is much earlier than the date of issuance of assessment orders against the searched person on 20.07.2021, learned counsel contends that proceedings are not barred by limitation.

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5. These matters hinge on the interpretation of Section 153C(1) read with Section 153B(1). The said provisions are, in relevant part, as under:

> " ***153B*** *(1) Notwithstanding anything contained in Section 153, the Assessing Officer shall make an order of assessment or reassessment,-*
>
> *(a) in respect of each assessment year falling within six assessment years and for the relevant assessment year or years referred to in clause (b) of sub-section (1) of section 153A, within a period of twenty one months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed;*
>
> *(b) in respect of each assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A, within a period of twenty one months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed:*
>
> *Provided that in case of other person referred to in section 153C, the period of limitation for making the assessment or reassessment shall be the period*

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referred to in clause (a) or clause (b) of this sub-section or nine months from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over under section 153C to the Assessing Officer having jurisdiction over such other person, whichever is later.

"153C.Assessment of income of any other person.—*(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

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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]:]*

[*Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to [sub-section (1)] of section 153A shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person:]"*

6. In *Calcutta Knitwears*, the Supreme Court interpreted Section 158BD. Learned junior standing counsel contended that the said provision corresponds to Section 153C as it stands today**.** Section 158BD is as under:

*"****Section 158BD.Undisclosed income of any other person****.- Where the Assessing Officer is satisfied that any undisclosed income belongs to any person, other*

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than the person with respect to whom search was made under Section 132 or whose books of account or other documents or any assets were requisitioned under Section 132A then, the books of account, other 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 under Section 158C against such other person and the provisions of this Chapter shall apply accordingly."

From the above extract, it follows that the provisions are clearly not identical. More importantly, in paragraph 44 of *Calcutta Knitwears*, the Supreme Court was not directly dealing with the date from which the six year period should be computed. Instead, the Supreme Court indicated the three stages at which the satisfaction note could be prepared. By contrast, in the judgment in *Jasjit Singh*, the Supreme Court interpreted Sections 153A and 153C of the Income Tax Act and recorded the following conclusions in paragraphs 9 and 10 thereof:

"9.It is evident on a plain interpretation of Section 153C(1) that the Parliamentary intent to enact the proviso was to cater not merely to the question of abatement but also with regard to the date from which

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the six year period was to be reckoned, in respect of which the returns were to be filed by the third party whose premises are not searched and in respect of whom the specific provision under Section 153-C was enacted. The revenue argued that the proviso [to Section 153(c)(1)] is confined in its application to the question of abatement.

10.This Court is of the opinion that the revenue's argument is insubstantial and without merit. It is quite plausible that without the kind of interpretation which SSP Aviation adopted, the A.O. seized of the materials – of the search party, under Section 132 – would take his own time to forward the papers and materials belonging to the third party, to the concerned A.O. In that event if the date would virtually "relate back" as is sought to be contended by the revenue, (to the date of the seizure), the prejudice caused to the third party, who would be drawn into proceedings as it were unwittingly (and in many cases have no concern with it at all), is dis-proportionate. For instance, if the papers are in fact assigned under Section 153-C after a period of four years, the third party assessee's prejudice is writ large as it would have to virtually preserve the records for at latest 10 years which is not the requirement in law. Such disastrous and harsh consequences cannot be attributed to Parliament. On

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the other hand, a plain reading of Section 153-C supports the interpretation which this Court adopts."

7. In light of the above conclusions of the Hon'ble Supreme Court, the question as to whether these proceedings are barred by limitation should be addressed with reference to the judgment in *Jasjit Singh*. Effectively, the Supreme Court held that the person, other than the searched person, would be gravely prejudiced if the papers were to be handed over to the jurisdictional assessing officer of such person after about four years. In the case at hand, the search in the premises of Mr. Thirumalaivasan was carried out on 11.10.2012, whereas the satisfaction note was recorded only on 27.03.2019. It is also significant to notice that the assessing officer of the searched person and the petitioner were the same and the recording of satisfaction about seven years after search is unjustified. If the limitation period of six years is reckoned from the date on which satisfaction was recorded, which falls within financial year 2018-2019 or assessment year 2019-2020, the respondent could only have reached back up to assessment year 2013-2014. Therefore, the proceedings in respect of both these assessment years are undoubtedly barred by limitation. It should also be noticed that the periods specified

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in Section 153B for completion of assessment had also lapsed.

8. For reasons set out above, the impugned assessment orders are quashed as being barred by limitation. W.P.Nos.5201 and 5203 of 2020 are allowed. There will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

12.03.2024

Index : Yes / No

Internet : Yes / No

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To

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