WMP.Nos.8759, 9472, 9475 and 9477 of 2024
in WP.Nos.9761, 9753, 9757 and 11176 of 2023

KRISHNAN RAMASAMY, J.

1. These WMPs have been filed by the Writ Petitioners to clarify the order of this Court dated, 23.02.2024 passed in the above Writ Petitions, which have been filed, challenging the four assessment orders of the Respondent Department and the applicability of electronic evidence.
2. This Court heard the learned counsel on either side and considered their submissions.
3. The learned senior counsel for the Petitioners submits that already this Court has passed the above order dated, 23.02.2024, in respect of the four assessment orders issued under Section 147 of the Income Tax Act by the Respondent Department and that again they have issued as many as 17 similar fresh show cause notices under Section 144 of the Income Tax Act for the same assessment year and hence, clarification on the process and the procedures to be followed and also with regard to the time limit to be followed as stated in the said notices, is necessary for the assessment proceedings to be completed in a manner as contemplated in the order dated, 23.02.2024.
4. The learned counsel for the Respondent Department would submit that whatever the orders passed by this Court would be complied with strictly in all aspects.
5. It is seen that the Respondent Department have issued fresh similar 17 show

cause notices for the assessment year, for which they already issued show cause notices and this Court also passed the above order. Since limitation is over by 31.03.2024 for all the proceedings, again they have issued the similar show cause notices. However, it is made clear that whatever the orders passed by this Court with regard to corroborative evidence and all other aspects is applicable to the fresh notices also.

6. This Court, while passing the order dated, 23.02.2024, has observed and directed as follows:-

> "i) The four assessment orders in DIN.Nos.ITBA/AST/M/143(3)/2022-23/1048382622(1), ITBA/AST/M/143(3)/2022-23/1048382560(1) and ITBA/ AST/M/143(3)/2022-23/1048382654(1) dated 31.12.2022 and DIN.No.ITBA/ AST/S/147/2022- 23/1051677092(1) dated 30.03.2023 passed by the 2nd respondent is hereby set aside;
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> ii) While setting aside the said assessment orders, this Court remits the matter back to the Authority concerned for re-consideration.
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> iii) The Digital Evidence Investigation Manual has been issued by the CBDT by virtue of powers available under Section 119 of the IT Act and hence, the Income Tax Authorities and all the other persons employed in the execution of this Act are bound to observe and follow such orders, instructions and directions issued by CBDT. In the case of ***Commissioner of Customs*** (referred supra), the Hon'ble Apex Court had culled out the principles, which has to be followed while conducting search and seizure of evidences and the same has been extracted at paragraph No.50 of this order. Hence, it is mandatory for the respondents to follow the Digital Evidence Investigation Manual issued by CBDT while conducting search and seizure and it is not optional.
>
> iv) The electronic data have been collected in .txt files in violation of the provisions of Digital Evidence Investigation Manual.
>
> v) Though the procedures have not been followed while collecting the electronic data in .txt files, the data collected by the respondents can be relied upon only if the said data are supported by the corroborative evidences.

vi) The 2nd respondent is directed to provide all the documents relied upon by them in the Show Cause Notice as requests by the petitioner. Further, the 2nd respondent is also directed provide a period of 21 days to the petitioner to file their reply and thereafter, if any request is made by the petitioner for further time, a reasonable time may be provided after considering the reasons assigned by them.

vii) If any oral/documentary evidence is relied upon to corroborate the electronic data, the 2nd respondent is directed to allow the Assessee to cross-examine the witnesses, whose oral evidence is relied upon to corroborate the electronic data collected by the respondents.

viii) After completion of the cross-examination and before passing the final assessment order, the 2nd respondent is directed to provide an opportunity of personal hearing to the petitioner to put forth their case before the Assessing Officer;

ix) Thereafter, the Assessing Officer is directed to pass the assessment order in detail taking into consideration of the deposition of the witnesses, during the cross-examination, whose statements are relied upon by the 2nd respondent to corroborate the electronic data collected by them.

x) The Assessing Officer is directed to follow the above procedures in the event of issuance of any further show cause notices in connection with the present search and seizure relating to other assessment years.

7. It is crystal clear from the paragraph 77 of the above order that the Respondent Department has to follow the procedures as ordered by this Court in the said order in the event of issuance of any further show cause notices in connection with the present search and seizure relating to other assessment years. Therefore, though similar fresh 17 other show cause notices have been issued, the Respondent Department has to follow the directions and procedures as stated in paragraph 77 of the above order for completing the assessment proceedings and that apart, whatever the time

limit they provided for the purpose of complying with the said show cause notices have to be fulfilled by the Petitioners and thereafter, opportunity of personal hearing, oral evidence, cross examination, etc. as stated in the above order shall be strictly followed by the Respondent Department in cases where the notices are issued for the regular assessment under Section 144 or under Section 147 of the Act and in any event, the order of this Court has to be strictly followed by the Respondent Department on the electronic evidence and in all other aspects.

8. The learned senior counsel for the Petitioner has relied on the decisions of the Honourable Supreme Court reported in **2018 11 SCC 490 (Commissioner of Income Tax Vs. Sinhgad Technical Education Society) and 2023 454 Income Tax Return 212 (Principal Commissioner of Income Tax Vs. Abhisar Buildwell P Limited).** It is also needless to say that the ratio laid down by the Honourable Supreme Court in the above said decisions is squarely binding on the Respondent Department, apart from adhering to the order of this Court, which is now sought to be clarified.

9. With the above clarifications, these WMPs are closed.

26.03.2024

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KRISHNAN RAMASAMY, J.

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