



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on	01.08.2024
Order pronounced on	28.10.2024

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.Nos.18605, 18610, 18619, 18620, 18623, & 18627 of 2023

&

WMP Nos.17843, 17844, 17849, 17857, 17860, 17861, 17863, 17868, and 17869 of 2023

Smt. Pavithra Sugichandran
No.C-164, Kalpataru Sparkle,
Gandhi Nagar, Bandra East,
Mumbai

... Petitioner in all WPs

-VS-

1.Office of the Deputy Commissioner of Income Tax,
Central Circle 1 (4),
Chennai-600 034.

2.The Additional Commissioner of Income Tax,
Central Range-1, Chennai.

... Respondents in all WPs

Prayer in W.P.No.18605 of 2023: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the records pertaining to the assessment order in PAN:CNPPS5755N having DIN and Notice No.ITBA/AST/S/153C/2022-23/1051722390(1) dated 31.03.2023 for Asst. Year 2015-16 issued by the respondents and quash the same as illegal.

Prayer in W.P.No.18610 of 2023: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the records pertaining to the assessment order in PAN:CNPPS5755N having DIN and Notice No.ITBA/AST/M/153C/10517246521(1) dated 30.03.2023 for



Asst. Year 2020-21 issued by the respondents and quash the same as illegal.

Prayer in W.P.No.18619 of 2023: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the records pertaining to the assessment order in PAN:CNPPS5755N having DIN and Notice No.ITBA/AST/S/153C/2022-23/1051724473(1)) dated 30.03.2023 for Asst. Year 2018-19 issued by the respondents and quash the same as illegal.

Prayer in W.P.No.18620 of 2023: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the records pertaining to the assessment order in PAN:CNPPS5755N having DIN and Notice No.ITBA/AST/S/153C/2022-23/1051722707(1) dated 31.03.2023 for Asst. Year 2016-17 issued by the respondents and quash the same as illegal.

Prayer in W.P.No.18623 of 2023: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the records pertaining to the assessment order in PAN:CNPPS5755N having DIN and Notice No.ITBA/AST/M/153C/2022-23/1051725066(1) dated 30.03.2023 for Asst. Year 2019-20 issued by the respondents and quash the same as illegal.

Prayer in W.P.No.18627 of 2023: Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the records pertaining to the assessment order in PAN:CNPPS5755N having DIN and Notice No.ITBA/AST/S/153C/2022-23/1051722701(1) dated 31.03.2023 for Asst. Year 2017-18 issued by the respondents and quash the same as illegal.

In all WPs:

For Petitioner

: Mr.Ravi Kannan
Mr.Varun Ranganathan

For Respondents

: Mr.A.P.Srinivas
Senior Standing Counsel &
A.N.R.Jeyapratap, Junior Standing
Counsel



COMMON ORDER

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Background

By these six writ petitions, the petitioner challenges assessment orders relating to assessment years 2015-16, 2016-17, 2017-18, 2018-19, 2019-20 and 2020-21, respectively. The petitioner's husband, Mr. Ram Prasath Reddy, was a director of a company called Gateway Office Parks Limited (GOPL). Based on a complaint by GOPL that the petitioner's husband had siphoned off substantial amounts from the company, a First Information Report was registered against the petitioner's husband on 23.11.2020.

2. Pursuant to a search and seizure operation relating to Mr. Ram Prasath Reddy, the seized materials, which are said to relate to the petitioner herein, were handed over to the jurisdictional assessing officer on 20.11.2021. Initially, pursuant to notices under section 153A of the Income-Tax Act, 1961 [the I-T Act], assessment orders in respect of assessment years 2018-19, 2019-20 and 2020-21 were issued to the petitioner. Upon challenge, those assessment orders were quashed by common order dated 23.02.2023 by granting liberty to the respondent therein to proceed afresh against the



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petitioner in accordance with law. Thereafter, satisfaction notes were recorded on 24.02.2023, and notices under Section 153C of the I-T Act were also issued on the same date. Pursuant thereto, the impugned assessment orders were issued after a hearing on 09.03.2023. While the income returned by the assessee for assessment years 2015-16, 2016-17 and 2017-18 was accepted, additions were made in assessment years 2018-19, 2019-20 and 2020-21 on the basis of unexplained credits in the bank accounts.

Counsel and their contentions

3. Oral arguments on behalf of the petitioner were advanced by Mr.Ravi Kannan, learned counsel; and on behalf of the respondents by Mr.A.P.Srinivas, learned senior standing counsel.

4. Learned counsel for the petitioner opened his submissions by pointing out that assessments relating to assessment years 2018-19, 2019-20 and 2020-21 were made against the petitioner under section 153A of the I-T Act. Upon challenge, by common order dated 23.02.2023, the assessment orders were quashed. He next submitted that the satisfaction notes were issued on 24.02.2023, shortly after this order was issued, and that, at that juncture, notices under section 153A had been issued to the petitioner for assessment years 2015-16, 2016-17 and 2017-18. Learned counsel pointed out



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that the seized materials purportedly relating to the petitioner were handed over to the assessing officer only on 20.11.2021, whereas the notices under section 153A were issued prior thereto on 04.08.2021. According to learned counsel, this indicates complete non-application of mind inasmuch as notices were issued under section 153A without even being in possession of the seized materials.

5. With this preamble, learned counsel advanced the contention that the assessment orders are barred by limitation. In order to substantiate this contention, he relied upon section 132(9A) of the I-T Act, which stipulates that when books of account or other documents, or any money, bullion, jewellery or other valuable article or thing are seized under clauses (a), (b) and (c) of sub-section (1) of section 132(seized assets), such assets are required to be handed over to the assessing officer having jurisdiction over such person within a period of 60 days from the date on which the last of the authorizations for search was executed. By pointing out that the last warrant of authorization of search was executed on 02.01.2021, learned counsel pointed out that the 60 day period expired on 03.03.2021, whereas the seized materials were handed over to the assessing officer much later on 20.11.2021.

Learned counsel next submitted that this provision is mandatory and that



any other construction would cause grave prejudice to the assessee, as would be clear if the provision is read with section 153B.

6. As regards cases where the last authorisation for search was executed during a financial year commencing on or after 01.04.2019, such as in this case, learned counsel submitted that clauses (a) and (b) of sub-section (1) of section 153B read with the third proviso thereto provide for a limitation period of 12 months from the end of the financial year in which the last of the authorizations for search under section 132 was executed. As regards a person to whom section 153C applies, he submitted that the limitation period is modified in clause (ii) of the third proviso as 12 months from the end of the financial year in which the last of the authorisations for search was executed or twelve months from the end of the financial year in which the seized assets were handed over to the assessing officer having jurisdiction, whichever is later.

7. If the seized materials had been handed over within 60 days from 02.01.2021, he submitted that the end of the financial year would be 31.03.2021 and, consequently, the limitation period would expire on 31.03.2022. On account of the seized materials being handed over about eight



months beyond the 60 day time limit under section 132(9A), he submits that the respondents cannot be permitted to claim that the end of the relevant financial year is 31.03.2022 instead of 31.03.2021 and that, consequently, the time limit for completing the assessment is 31.03.2023 and not 31.03.2022. Put differently, learned counsel contended that the Income-Tax Department should not be permitted to take advantage of its default in handing over the seized materials within the 60 day time limit prescribed in section 132(9A). Therefore, he contended that such time limit should be construed as mandatory and not directory.

8. In support of this proposition, he relied upon the judgment of this Court in *K.V.Krishnaswamy Naidu v. CIT* [1987] 166 ITR 244 (Madras), particularly paragraph 7 thereof. He also pointed out that the Hon'ble Supreme Court affirmed this judgment in *CIT v. K. V. Krishnaswamy Naidu & Co.* [2001] 249 ITR 794 (SC). By further submitting that both these judgments were pronounced when section 132(9A) prescribed the time limit of 15 days, he submitted that, *a fortiori*, the time limit of 60 days is undoubtedly mandatory. He also relied upon the judgment of the Kerala High Court in *Dr.R.P.Patel v. Assistant Director of Income-Tax*, (2022) 210 DTR 62 (Kerala), wherein it was held that the authorised officer becomes *functus officio* upon



expiry of the 15 day limit. Even if the provision were to be construed as directory, he submitted that the time limit for framing an assessment cannot be extended on the ground that the seized materials were handed over to the jurisdictional assessing officer beyond the 60 day limit.

9. As regards the judgment of this Court in *Agni Estates and Foundations (P) Ltd. v. Deputy Commissioner of Income-tax, Central Circle 2(1), Chennai [2021] 126 taxmann.com 14 (Madras) (Agni Estates)*, he submitted that the subject matter of challenge therein were notices issued under section 153A and not assessment orders. According to learned counsel, the decision in *Agni Estates* only saved the notices issued under section 153A and the assessing officer's power to use the seized materials although handed over beyond the time limit prescribed under section 132(9A), but did not permit such assessing officer to frame assessments beyond the period of limitation.

10. The next contention of learned counsel for the petitioner was that the jurisdiction of the assessing officer under section 153C is confined to the incriminating materials found in course of search. He pointed out that neither the panchnamas nor the assessment orders for assessment years 2018-19 (pages 27 to 43 of the writ papers in W.P.No.18619 of 2023), 2019-20



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(pages 28 to 44 of the writ papers in W.P.No.18623 of 2023) or 2020-21 (pages 28 to 44 of the writ papers in W.P.No.18610 of 2023) refer to any incriminating materials being found in the course of search. By further pointing out that the additions made with regard to the petitioner are in respect of credits in the bank account, learned counsel submitted that the panchnamas do not refer to the seizure of such bank statements. He also pointed out that the said bank statements were not referred to in the satisfaction notes. In support of the proposition that the jurisdiction under section 153C is confined to incriminating materials found in course of search or requisition, learned counsel relied on the judgment of the Hon'ble Supreme Court in *PCIT v. Abhisar Buildwell (P) Ltd.* [2023] 454 ITR 212 (SC) (*Abhisar Buildwell*).

11. The third contention of learned counsel for the petitioner was that the satisfaction notes do not disclose as to how the seized materials would have an impact on the determination of income for the assessment years for which notices were issued under section 153C. After pointing out that the satisfaction notes only state that bogus expenses were recorded in the 16GB pen drive, he contended that the respondent does not state in the satisfaction notes as to how such expenses pertain to the petitioner and are incriminating.



According to learned counsel, the data in the pen drive does not record that expenses mentioned therein were routed to the petitioner. Therefore, learned counsel contended that the satisfaction notes do not contain any objective indication that the seized materials relate to the petitioner or would have a bearing on the determination of her income. In view thereof, he contended that the jurisdictional basis for proceedings under section 153C did not exist.

12. The fourth contention of learned counsel was that notices under section 153C should be issued only in respect of assessment years to which the seized incriminating material pertains. In this regard, he relied on the judgment of this Court in *Agni Vishnu Ventures Pvt. Ltd. v. DCIT, 2023 SCC Online Mad 8017(Agni Vishnu Ventures)*, particularly paragraphs 77 to 84 thereof. He also relied upon the judgment in *Saksham Commodities Ltd. v. ITO [TS-246-HC-2024 (Del)(Saksham Commodities)]*. By referring to the judgment of the Hon'ble Supreme Court in *CIT v. Calcutta Knitweaves [2014] 6 SCC 444*, he submitted that satisfaction should have been recorded immediately after the assessment of Mr. Ram Prasath Reddy was finalised on 31.03.2022. Since satisfaction was only recorded on 24.02.2023, he contended that Circular No.24 of 2015 was contravened. In support of the contention that the CBDT circular is binding on the Income-Tax Department, he relied on the judgment



of the Hon'ble Supreme Court in *Catholic Syrian Bank v. CIT*, (2012) 3 SCC

884. The last contention with regard to the satisfaction notes was that they were recorded mechanically without application of mind.

13. The fifth contention of learned counsel for the petitioner was that the order under section 127 of the I-T Act is bad in law inasmuch as the assessment of the petitioner was transferred from the ACIT, Circle 1, Cuddalore to DCIT, Central Circle-1 (4), Chennai in contravention of the said provision. By pointing out that the ACIT, Cuddalore falls within the jurisdiction of DCIT, Circle 1(4), Chennai and Principal CIT, Pondicherry, learned counsel contended that the assessment should not have been transferred without the consent of/ consultation with the Principal CIT, Pondicherry or the DCIT, Central Circle-1(4), Chennai. Although this ground was not raised in the writ petition, by relying on the judgments of the Hon'ble Supreme Court in *Arunachalam Pillai v. Southern Railways Ltd.*, AIR 1960 SC 1191, and *Anil Kumar Gupta v. State of U.P. and Others*, (1995) 5 SCC 173, learned counsel contended that a new jurisdictional ground can be raised even if not supported by pleadings. By further relying on the judgment of the Hon'ble Supreme Court in *P.N.Eswara Iyer v. Registrar, Supreme Court of India*, (1984) 4 SCC 680, he contended that a new plea cannot



be rejected on technical grounds when the necessary facts are on record. By also relying on the judgment of the Supreme Court in *Ajantha Industries v. CBDT*, (1976) 102 ITR 281, he submitted that the transfer order cannot be construed as a purely administrative order since prejudice is being caused to the assessee as a result thereof.

14. The last contention of learned counsel was that the I-T Act does not create a charge on additions made under section 69 thereof in terms of section 115BBE. Since the additions are in respect of credits in bank statements, learned counsel contended that such credits cannot be treated as unexplained investments and taxed under Section 69 read with 115BBE. In support of this contention, he relied on the judgment of the Bombay High Court in *CIT v. Bhaichand N. Gandhi* [1983] 141 ITR 67 (Bombay) (*Bhaichand Gandhi*) and the judgment of the Hon'ble Supreme Court in *Baladin Ram v. CIT* [1969] 71 IT 427 (SC) (*Baladin Ram*).

15. Mr.A.P.Srinivas, learned senior standing counsel, made submissions in response and to the contrary. As regards the contention that the time limit specified under section 132 (9A) is mandatory, learned counsel relied on the judgment of this Court in *Agni Estates* to the effect that such



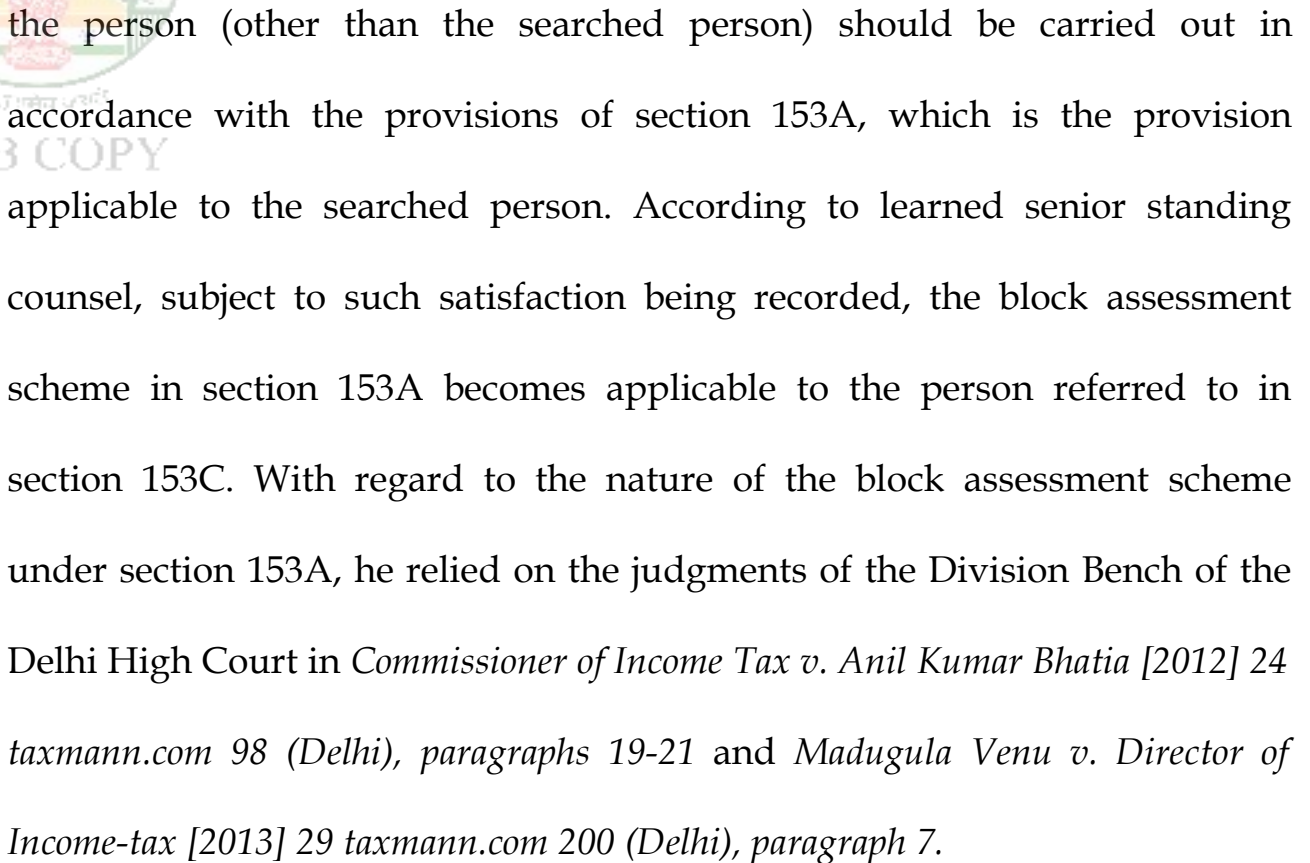
time limit is directory and that breaching the time limit does not vitiate the notices under section 153C or the assessment orders. He further submitted that the consequence of non-compliance with such time limit is not prescribed in sub-section (9A) and that sections 153C and 153A also do not draw reference to the consequences of non-compliance with the 60 day time limit prescribed in section 132(9A). By referring to the fact that the seized materials were handed over to the jurisdictional assessing officer on 20.11.2021, learned senior standing counsel submitted that the relevant financial year ended on 31.03.2022. Consequently, he submitted that the period of limitation under section 153B for concluding the assessment or reassessment is 12 months from the end of the financial year in which the seized assets were handed over to the assessing officer having jurisdiction over the person (other than the searched person). Therefore, he contended that the 12 month period commenced on 31.03.2022 and expired on 31.03.2023. Since the impugned assessment orders were issued on 30.03.2023 or 31.03.2023, learned counsel submitted that such orders are not barred by limitation.

16. As regards the satisfaction notes, by referring to the language of sub-section (1) of section 153C, learned senior standing counsel submitted



that it is sufficient if the satisfaction notes record that the seized assets have a bearing on the determination of the total income of the person (other than the searched person). As regards the time limit for recording such satisfaction, he submitted that section 153C does not stipulate a time limit and that the Supreme Court held in *Commissioner of Income-tax-III v. Calcutta Knitweaves* [2014] 362 ITR 673 (SC)(*Calcutta Knitweaves*), in the context of erstwhile sections 153BC and 153 BD which are analogous to sections 153A and 153C, that it may be done at the time of initiation of proceedings against the searched person; along with assessment proceedings against the searched person; or immediately after the assessment proceedings are completed against the searched person. By also relying on the judgment of the Division Bench of the Gujarat High Court in *Commissioner of Income-tax-II v. Bipinchandra Chimanlal Doshi* [2017] 79 taxmann.com 21 (Gujarat), he pointed out that the Gujarat High Court held that *Calcutta Knitweaves* does not lay down the absolute proposition that the failure to record the satisfaction note immediately after the assessment of the searched person was completed would vitiate proceedings.

17. Upon such satisfaction being recorded, he further submitted that section 153C provides that the assessment or reassessment of the income of



19. On the facts of these cases, if computed from the date of receipt of



the seized materials, he submits that the block of six preceding assessments years would run from the assessment year 2015-16 to the assessment year 2020-21. In other words, his contention is that all these assessments, which were pending as on the date of receipt of the seized materials, abated as a consequence of the second proviso to sub-section (1) of section 153A and, therefore, assessment pursuant to notices under section 153C became necessary to fill the void created by the deemed abatement. When viewed from that perspective, learned senior standing counsel contended that the notices under section 153C were required to be issued in respect of the entire block of six assessment years irrespective of whether the seized materials pertain to each assessment year in that block. Therefore, he contended that it is unnecessary that the satisfaction note or notes should contain separate and distinct findings in respect of each assessment year falling within the block of six assessment years. In support of this contention, he relied on the judgment of the Supreme Court in *Abhisar Buildwell*, especially paragraph 14 thereof. He also submitted that the judgments in *Agni Vishnu Ventures* and *Saksham Commodities* are not in consonance with *Abhisar Buildwell*.

20. Without prejudice, by referring specifically to the satisfaction notes,

he submitted that such satisfaction notes meet the requirements of section



153C because they record that the seized assets have a bearing on the determination of the total income of the petitioner for each assessment year forming the subject of these proceedings. He further contended, in this regard, that alleged insufficiency of reasons in the satisfaction notes cannot be a ground for interference under Article 226 of the Constitution. For this proposition, he relied on the judgment in *Chandran Somasundaram v. Principal Commissioner of Income-tax* [2023] 450 ITR 188 (Madras) (*Chandran Somasundaram*).

21. As regards the order under section 127 of the I-T Act, learned senior standing counsel contended that the assessee did not raise any objections to the transfer, which was intended to consolidate related assessments. He also pointed out that the affidavit and grounds do not contain any indication that the petitioner/assessee was objecting to the transfer. Since mixed questions of fact and law are involved in the transfer, he contended that the petitioner cannot be permitted to raise such ground without supporting pleadings. He also pointed out that a reasonable opportunity was provided to the assessee before the order under section 127 was issued. He concluded his submissions by contending that section 115BBE of the I-T Act provides for a different rate at which income-tax is levied if an addition is made under Section 69 thereof,



and by refuting contentions to the contrary.

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Discussion, analysis and conclusions

22. In light of the rival contentions, the first issue that falls for consideration is whether the assessment orders are barred by limitation. Such contention was advanced on the ground that the seized materials were handed over to the jurisdictional assessing officer of the petitioner about eight months after expiry of the 60 day period prescribed in section 132(9A). It is common ground that the seized materials were handed over to the jurisdictional assessing officer on 20.11.2021; that the last warrant of authorisation for search was issued on 02.01.2021; and that this is the date from which the 60 day period runs. Thus, the time limit of 60 days prescribed in section 132(9A) was not adhered to. This leads to the question: What is the consequence of non-compliance with the time limit?

23. In order to answer this question, it becomes necessary to examine section 132(9A) in the context of clauses (a) to (c) of sub-section (1) thereof. The said provisions are as under:

“Search and Seizure.



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132. (1) *Where the Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Additional Director or Additional Commissioner or Joint Director or Joint Commissioner in consequence of information in his possession, has reason to believe that*

(a) any person to whom a summons under sub-section (1) of section 37 of the Indian Income-tax Act, 1922 (11 of 1922), or under sub-section (1) of section 131 of this Act, or a notice under sub-section (4) of section 22 of the Indian Income-tax Act, 1922 or under sub-section (1) of section 142 of this Act was issued to produce, or cause to be produced, any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of account or other documents as required by such summons or notice, or

(b) any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books of account or other documents which will be useful for, or relevant to, any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act, or

(c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property which has not been, or would not be, disclosed for the purposes of the Indian Income-tax Act, 1922 (11 of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property),

....

[(9-A) Where the authorised officer has no jurisdiction over the



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person referred to in clause (a) or clause (b) or clause (c) of sub-section (1), the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing (hereafter in this section and in sections 132-A and 132-B referred to as ***the assets***) ***seized under that sub-section shall be handed over by the authorised officer to the Assessing Officer having jurisdiction over such person within a period of sixty days from the date on which the last of the authorisations for search was executed and thereupon the powers exercisable by the authorised officer under sub-section (8) or sub-section (9) shall be exercisable by such Assessing Officer.***“
(emphasis added)

The text of sub-section (9A) uses the mandatory word “shall” with reference to the obligation of the authorized officer to hand over the seized assets to the assessing officer having jurisdiction over the person. Sub-section (9A) further provides that the assessing officer shall exercise powers exercisable under sub-sections (8) and (9) upon receipt of the seized materials. Sub-section (9A) does not, however, stipulate or prescribe any consequences for non-adherence to the time limit of 60 days. There is also nothing in the text – such as “not later than 60 days” or “60 days but not thereafter” - to indicate that this 60 day limit is a long-stop date that cannot be extended. In this context, it is necessary to turn to other relevant provisions pertaining to an



assessment or reassessment under section 153C to consider the implications of non-adherence to the time limit under section 132(9A).

24. Sub-section (1) of section 153C prescribes that assessment or reassessment under section 153C is required to be carried out in accordance with section 153A. Section 153B prescribes the time limit for completion of assessment under sections 153A and 153C. Section 153C(1) and section 153B(1), in relevant part, are as under:

“Section 153C(1)

(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 :

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



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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 :

(emphasis added)

153B. Time limit for completion of assessment under section 153A.

(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 the 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 as 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:

Provided further that in the case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed during the financial year commencing on the 1st day of April, 2018, —

- (i) the provisions of clause (a) or clause (b) of this sub-section shall have effect, as if for the words "twenty-one months", the words "eighteen months" had been substituted;*
- (ii) the period of limitation for making the assessment or reassessment in case of other person referred to in section 153C, shall be the period of eighteen 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*



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132A was executed or twelve 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:

Provided also that in the case where the last of the authorisations for search under section 132 or for requisition under section 132A was executed during the financial year commencing on or after the 1st day of April, 2019,—

(i) the provisions of clause (a) or clause (b) of this sub-section shall have effect, as if for the words "twenty-one months", the words "twelve months" had been substituted;

(ii) the period of limitation for making the assessment or reassessment in case of other person referred to in section 153C, shall be the period of twelve 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 or twelve 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:" (emphasis added)

25. As discussed earlier, the last authorisation for search was executed in this case on 02.01.2021, which falls within financial year 2021-22. Since financial year 2021-22 is after the financial year commencing on 01.04.2019, the limitation period prescribed in the third proviso to sub-section (1), which is emphasised above in bold font, becomes applicable. As regards the person referred to in section 153C, the period of limitation is 12 months from the end of the financial year in which the last of the authorizations for search under section 132 was executed or 12 months from the end of the financial year in which the seized assets were handed over to the assessing officer having



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jurisdiction over the person concerned, whichever is later. Conspicuous by its absence in section 153B is any reference to the time limit prescribed in section 132(9A). The admitted factual position is that the seized materials were handed over to the assessing officer on 20.11.2021. Consequently, the end of the financial year in which the seized materials were handed over would be 31.03.2022. As per the second limb of clause (ii) of the 3rd proviso to section 153B(1), the time limit of 12 months would run from 31.03.2022 to 31.03.2023. The assessment orders were admittedly issued on 30.03.2023 or 31.03.2023. Therefore, the said assessment orders were issued within the period of limitation.

26. Learned counsel for the petitioner relied on the judgment of the Division Bench of this Court in *K.V.Krishnaswamy Naidu* to contend that this Court held that retention of the seized materials beyond the 15 day period prescribed earlier was illegal. On such basis, he contended that the time limit is mandatory. In *K.V.Krishnaswamy Naidu*, the Division Bench of this Court was concerned with the retention of seized assets by the officer without jurisdiction over the person to whom the seized assets belong/pertain. By contrast, the material question in this case is whether the non-adherence to the 60 day time limit vitiates further proceedings by the jurisdictional



assessing officer. Hence, the said judgment does not advance the cause of the petitioner.

27. The settled legal position is that the use of the peremptory word “shall” in a statutory provision is not conclusive with regard to the mandatory nature of the provision. Various other factors such as the statutory context in which the word is used, the object and purpose of the provision, the consequences of non-compliance and whether such consequences are specified become relevant. Reference may be made, in this regard, to the judgment of the Division Bench of this Court in *C. Bright v. The District Collector, Nagercoil and others*, 2020 (2) CTC 68. As regards non-compliance with the 60 day time limit under section 132(9A), in the absence of any indication that the time limit is mandatory, including by prescribing consequences in respect of non-adherence thereto, section 132(9A) can be construed as mandatory only to the limited extent of imposing a mandatory obligation on the authorized officer to hand over the seized materials to the jurisdictional assessing officer but not with regard to time limit. Besides, in the absence of any reference or link between section 132(9A) and sections 153A to 153C, such non-compliance cannot be construed as vitiating the subsequent assessment proceedings.



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28. The assessment orders were then assailed on about three grounds relating to the satisfaction notes. Since these grounds are largely inter-related, they are dealt with collectively. The grounds were that the jurisdiction under section 153C is confined to materials seized during search; that the satisfaction notes do not record as to how the seized materials have a bearing on the determination of the income of the assessee; and that such satisfaction was not recorded in respect of each assessment year forming part of the block of six assessment years. As stated earlier and as is evident from the text of section 153C, the assessment under section 153C is required to be undertaken in accordance with the provisions of section 153A. Section 153A (1) provides, in relevant part, as under:

“153A. Assessment in case of search or requisition.

(1) 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 [but on or before the 31st day of March, 2021], the Assessing Officer shall –

(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the



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return of income in respect of each assessment year falling within six assessment years and for the relevant assessment year or 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;

(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 and for the relevant assessment year or years :

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years and for the relevant assessment year or years :

Provided further that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years and for the relevant assessment year or years referred to in this sub-section pending on the date of initiation of the search under section 132 or making of requisition under section 132A, as the case may be, shall abate :

29. The first proviso to section 153A(1) indicates that the assessing officer is required to assess or reassess the total income in respect of each assessment year falling within the block of six assessment years and for the relevant assessment year/ years. The second proviso thereto provides that the assessment or reassessment, if any, relating to each assessment year within the block of six assessment years and for the relevant assessment year or



years, if pending on the date of initiation of search under section 132, shall abate.

30. As regards the person referred to in section 153C, except to the extent provided otherwise, the provisions of section 153A apply. One of the conditions imposed in sub-section (1) of section 153C is that the jurisdictional assessing officer should be satisfied, upon receipt of the seized materials, that such material would have a bearing on the determination of the income of the assessee for the preceding six assessment years and the relevant assessment year(s). As regards such person, the proviso to section 153C(1) indicates that the reference to six preceding assessment years in the second proviso to section 153A(1) should be reckoned from the date of receipt of seized materials by the jurisdictional assessing officer rather than the date of initiation of search or requisition. Subject to the above caveat, the fallout of the deemed abatement is that *de novo* assessment or reassessment, as the case may be, becomes necessary once a notice is issued either under section 153A or section 153C. Otherwise, the income of the assessee in respect of pending assessments would remain unassessed. Reference may be made to the judgment of the Division Bench of the Delhi High Court in *Anil Kumar Bhatia* for an understanding of the block assessment scheme under section 153A and



how it varies from the earlier scheme which enabled block assessment only in respect of undisclosed income in contrast to the extant total income.

31. On comparing and contrasting sections 153A and 153C, it is noticeable that the issuance of notice under section 153A is triggered by the search or requisition, as the case may be, whereas the notice under section 153C is triggered only upon the occurrence of the following:

- (i) Satisfaction by the assessing officer of the searched person that the seized assets belong/pertain to a person other than the searched person;
- (ii) Handing over of the seized assets by such assessing officer to the assessing officer having jurisdiction over the person to whom the seized assets belong/pertain; and
- (iii) Satisfaction by the latter assessing officer that such assets have a bearing on the determination of the total income of the assessee over whom he has jurisdiction for six assessment years immediately preceding the assessment year relevant to the previous year in which the seized assets were received and for the relevant assessment year or years referred to in sub-section (1) of section 153A.



Once the three conditions specified above are fulfilled, the assessing officer having jurisdiction over the person to whom the seized assets belong/pertain shall proceed against such person, issue notice and assess or reassess the income in accordance with the provisions of section 153A.

32. Does the phrase “in accordance with the provisions of section 153A” mean that all the provisions of section 153A apply to persons referred to in section 153C? As the following first and second provisos to sub-section (1) of section 153C indicate, the deviations from the provisions of section 153A in its application to persons referred to in section 153C are specified expressly:

“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:

Provided further that the Central Government may by rules made by it and published in the Official Gazette specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years as referred to in sub-section (1) of section 153A except in cases where any assessment or reassessment has abated”



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In my view, this is a clear indication that, except to the extent expressly modified in section 153C, all the provisions of section 153A, including the block assessment and abatement of pending assessments, apply to the assessment or reassessment of persons referred to in section 153C subject to the caveat that the three conditions set out above in paragraph 31 are fulfilled. Whether all three conditions and, in particular, the third was satisfied warrants examination next.

33. In the cases at hand, separate satisfaction notes were recorded in respect of each assessment year. These satisfaction notes are in identical terms and contain, in relevant part, the following observations:

“Considering all the above, the books of accounts and other electronic devises, incriminating documents seized from the premises of M/s.GOPL, AMN Earth Movers and Shri. Ram Prasath Reddy pertains to the assessee, Smt. Pavithra Sugichandran, and the same will have a bearing on the determination of the assessee's income (Smt. Pavithra Sugichandran) for the A.Ys.2018-19 to 2021-22 and other earlier years. Further the provisions of section 153C of the IT Act mandates issuance of Notice for six assessment years, immediately preceding the search year. Accordingly Notice u/s.153C of the IT Act



is issued in this case for the A.Ys. from 2015-16 to 2020-21".

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These satisfaction notes were recorded on 24.02.2023 after the seized materials were received by the assessing officer of the petitioner. The satisfaction notes disclose that the assessing officer concluded that the seized materials pertain to the assessee and that they would have a bearing on the determination of her total income for assessment years 2018-19 to 2021-22 and other earlier years.

34. The satisfaction threshold in section 153C is "have a bearing on the determination of the total income". This phrase indicates that the assessing officer should conclude that the materials are relevant for or warrant consideration for or could play a role in the determination of the total income of the assessee for the block period. Given both the satisfaction threshold and context (i.e. pre-requisite to issue notice and set the ball in motion as regards assessment or re-assessment), at this stage, exhaustive examination of materials is not warranted. Scrutiny cannot, however, be cursory because such scrutiny is likely to be inadequate to determine whether the materials have a bearing on the determination of total income for the relevant assessment periods and, more importantly, would result in needless



hardship to the assessee concerned. Thus, reasonable but non-exhaustive scrutiny is envisaged.

35. Reference is made in the satisfaction notes to seizure of books of account, electronic devices and incriminatory materials in the premises of GOPL, AMN Earth Movers and Mr. Ram Prasath Reddy. The satisfaction notes expressly record that the materials will have a bearing as regards assessment years 2018-19 to 2021-22 but use the expression “and other earlier years” with regard to earlier periods. The inventory provided with the panchnamas mention the seizure of electronic devices, including data storage devices. Eventually, credits in the petitioner's bank accounts formed the basis for additions made in three financial years. By taking into account the satisfaction threshold, context and the block assessment scheme, including the abatement of pending assessments, on balance, I conclude that there is no basis to hold that the seized materials had no bearing on the determination of the total income of the assessee or on the assessments. I also conclude that the satisfaction notes satisfy the requirements of section 153C(1). In this connection, except where there is patent inadequacy, I also concur with the contention of learned senior standing counsel, who relied on *Chandran Somasundaram*, that the sufficiency of reasons recorded in the satisfaction



notes would not ordinarily be a basis for interference under Article 226.

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36. The penultimate issue that falls for consideration is with regard to the order dated 01.03.2021 under section 127 of the I-T Act. Section 127 provides for the power of transfer. Such power is required to be exercised after giving the assessee a reasonable opportunity of being heard, wherever it is possible to do so. In all these cases, the transfer orders were issued after putting the assessee on notice by communication dated 16.02.2021. The admitted position is that the assessee did not raise any objections to the centralisation either by replying to this communication or otherwise in spite of being provided an opportunity to object.

37. Learned counsel for the petitioner contended that the ACIT, Cuddalore falls within the jurisdiction of CCIT-VI, Chennai and Principal CIT, Pondicherry. Consequently, it was contended that the transfer order could not have been issued without the consent of or without consulting the Principal CIT, Pondicherry or CCIT-IV, Chennai. Apart from contending that this issue was not raised in the affidavit or grounds, learned senior standing counsel countered the contention by asserting that the PCIT-III is duly authorised. Even from the above narration, it is evident that mixed questions



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of fact and law are involved in determining whether the order under section 127 was issued after obtaining the consent of or consulting the persons concerned. Although several judgments were cited by learned counsel for the petitioner, the said judgments do not detract from the principle that mixed questions of fact and law cannot be decided in the absence of pleadings. In the absence of any prior objection in this regard coupled with the absence of pleadings/grounds, I am not inclined to examine this objection and record findings.

38. The last issue that falls for consideration relates to the assessment of tax by relying on section 69 of the I-T Act. By relying on *Baladin Ram* and *Bhaichand Gandhi*, learned counsel for the petitioner contended that section 69 could not have been invoked in respect of credits in the petitioner's bank accounts because such accounts do not qualify as the petitioner's books of account. Consequently, it was further contended that section 115BE is not applicable. In both *Baladin Ram* and *Bhaichand Gandhi*, the courts were dealing with section 68, which only applies to cash credits in the books of an assessee. By contrast, in these cases, section 69 was invoked and this provision applies to unexplained investments that are not recorded in books of account, if any, maintained by an assessee. The use of the expression "if any" in section 69



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indicates that that it would also apply to unexplained investments in cases wherein the assessee does not maintain books of account, as in this case. In view thereof, section 69 read with section 115BBE is applicable in this case and the computation of total income and tax liability on such basis, wherever applicable, is in order.

39. For reasons aforesaid, the challenge to the assessments in these writ petitions fails. Therefore, these writ petitions are dismissed without any order as to costs. Consequently, connected miscellaneous petitions are closed.

28.10.2024

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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To



1. Office of the Deputy Commissioner of Income Tax,
Central Circle 1 (4),
Chennai-600 034.

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2. The Additional Commissioner of Income Tax,
Central Range-1, Chennai.

SENTHILKUMAR RAMAMOORTHY J.

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Pre-delivery order made in
W.P.Nos.18605, 18610, 18619, 18620, 18623, & 18627 of 2023
&
WMP Nos.17843, 17844, 17849, 17857, 17860, 17861, 17863, 17868, and 17869
of 2023



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28.10.2024