IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **14.06.2024**

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THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

Writ Petition No.14914 of 2024 and
W.M.P.Nos.16177 & 16179 of 2024

Chandrasekaran Shenbagamoorthy .. Petitioner

-vs-

The Assistant Commissioner of Income Tax,
Central Circle-2(4),
1st floor, Investigation Building,
New No.46, Old No.108,
Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034. ... Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records in DIN.ITBA/AST/S/147/2023-24/1063711375(1) dated 30.03.2024 on the file of the Respondent relating to A.Y 2019-20 and quash the same.

For Petitioner : Mr.G.Baskar
Mr.I.Dinesh

For Respondent : Mr.A.P.Srinivas, Senior Standing Counsel

ORDER

An assessment order dated 30.03.2024 is assailed in this writ petition primarily on the ground that digital evidence was relied upon without complying with the Digital Evidence Investigation Manual issued by the Central Board of Direct Taxes.

2. Pursuant to a search and seizure operation relating to M/s. Integrated Services Private Limited, incriminating materials relating to the petitioner were allegedly found. On such basis, a notice under Section 148 of the Income Tax Act, 1961 (the Income Tax Act) dated 23.03.2023 was issued to the petitioner. This was followed by notices under Section 142(1). The petitioner replied to notice dated 06.01.2024. Eventually, proceedings culminated in the impugned assessment order dated 30.03.2024.

3. Learned counsel for the petitioner submits that the procedure prescribed under Section 148A was not applicable to the petitioner's assessment since it was based on a search. Nonetheless, he submits that it was necessary for the sanctioning authority to be satisfied that the search operation was conducted in accordance with the Digital Evidence Investigation Manual. In this case, learned counsel submits that digital evidence was not collected in accordance with the manual. By relying on a judgment of this Court in *Saravana Selvarathnam Retails (P) Ltd. v. Commissioner of Income-Tax Appeals, [2024] 160 taxmann.com 287 (Madras),* learned counsel submits that this Court held that the manual referred to above falls within the scope of Section 119 of the Income Tax Act and is, therefore, binding on the officers of the Income Tax Department. As a consequence, learned counsel submits that the impugned assessment order should have recorded as to how digital evidence was collected and the chain of custody maintained in accordance with Digital Evidence Investigation Manual. He points out that the impugned assessment order does not contain any indication that the Digital Evidence Investigation Manual was adhered to or even that Section 65B of the Indian Evidence Act, 1872 (the Indian

Evidence Act) was followed. Therefore, learned counsel submits that interference is warranted.

4. Mr.A.P.Srinivas, learned senior standing counsel, accepts notice for the respondent. He submits that principles of natural justice were complied with in as much as the petitioner was provided opportunities to respond to notices and was heard before the impugned assessment order was issued. He further submits that the impugned assessment order was based on appraisal of evidence and that no case is made out for interference under Article 226 of the Constitution of India.

5. While the petitioner asserts that the respondent did not adhere to the Digital Evidence Investigation Manual or to Section 65B of the Indian Evidence Act, the petitioner is unable to point out any specific instances of the respondent having breached the manual or Section 65B. It also does not appear that such objections were raised in course of the assessment proceedings. In these circumstances, this does not appear to be an appropriate case for the exercise of discretionary jurisdiction under Article

226. Put differently, in order to test the contentions of learned counsel for the petitioner, reappraisal of evidence may be necessary and the appropriate forum for such reappraisal is the appellate authority.

6. For reasons aforesaid, W.P.No.14914 of 2024 is disposed of by permitting the petitioner to carry a statutory appeal. If such statutory appeal is presented within ten days from the date of receipt of a copy of this order, the appellate authority is directed to receive and dispose of the same on merits without going into the question of limitation. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

14.06.2024

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

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SENTHILKUMAR RAMAMOORTHY,J

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To

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