



W.P.(MD) No.12123 of 20_.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On	25.06.2024
Pronounced On	03.01.2025

Coram:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

**W.P.(MD) No.12123 of 2024
and W.M.P(MD) Nos.10766 & 10768 of 2024**

Shree Basaveshwar Sugars Limited,
Represented by its Managing Director,
Thiru S.Kathiravan S/o.A.Srinivasan,
Aged 50 years,
No.218, Karjol Village, Kalgurki B.O.
Bijapur – 586 121.
Registered Office at:
No.6, Mallikarjun Badavane,
Manguli Road, Ganesh Nagar,
Vijayapura (Bijapur),
Karnataka – 586 109.

...Petitioner

Versus

- 1.The Deputy Commissioner of Income Tax,
Central Circle – 2,
No.44, Main Building, Williams Road,
Cantonment, Trichy – 620 001.
- 2.The Assistant Commissioner of Income Tax,
Central Circle – 1,
No.44, Main Building, Williams Road,
Cantonment, Trichy – 620 001.
- 3.The Director General of Income Tax (Investigation),



W.P.(MD) No.12123 of 20_.

New Building, 2nd Floor,
No.46, Old No.108,
Mahatma Gandhi Road,
Chennai – 600 034.

...Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records in DIN & Notice No.ITBA/AST/F/148A/2024-25/1064375123(1) dated 25.04.2024 u/s.148A(d) of the Income Tax Act on the file of the 1st respondent relating to A.Y.2018-19, quash the same.

For Petitioner : Mr.G.Baskar

For Respondents : Mr.N.Dilip Kumar,
Standing Counsel

ORDER

The petitioner is aggrieved by the impugned order dated 25.04.2024 passed by the first respondent under Section 148A(d) of the Income Tax Act, 1961 (hereinafter referred to as “IT Act”) for the Assessment Year 2018-2019.

2. The impugned order precedes a notice dated 30.03.2024 issued under Section 148A(b) of the IT Act. The petitioner has replied to the same by a reply dated 18.04.2024.



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3. The dispute pertains to the deduction claimed towards interest of Rs.16.24 Crores without having actually paid to the lender namely, Andra Bank who had assigned a debit note with the petitioner to CFM Asset Reconstruction Private Limited (CFM) under a Private Agreement dated 08.05.2018.

4. In the notice that was issued to the petitioner on 30.03.2024 under Section 148A(b) of the IT Act, it has been stated as follows:-

“3. Further, you had claimed deduction of interest on such loan which was never paid and now, the liability has ceased to exist. Hence, the cessation of liability of interest to you to the tune of Rs.16.24 lakhs have been ceased to be payable.

4. Hence the cessation of liability of interest shall attract the provision of section 41(1) of the I.T. Act and waiver of loan shall attract the explanation – 1(b) to section 115JB(2) as the liability of yourself to the tune of 16.24 Crores has been ceased to be payable and there is discount in respect of principal amount also. Hence there is information for treating the haircut value as deemed profits and gains of your for this A.Y. 2018-19.”

5. In the impugned order, the discussion relating to the above deduction is in paragraph 7.2 onwards which reads as under:-

“7.2. Disallowance of outstanding interest u/s 43B:

Further as per information in the Insight portal there is an outstanding interest liability of Rs.16.24 crores in the books of the



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assessee as on 31/03/2018 which attracts violation of Section 43B. In this regard, in the show cause notice issued u/s 148A(b) of the Act to the assessee company on 30.03.2024 the assessee was required to show-cause, why the sum of Rs.16.24 cr should not be disallowed U/s. 43B as the same is outstanding and not actually paid. However, the assessee has not offered any explanation regarding the issue of disallowance u/s 43B in respect of the outstanding interest of Rs.16.24 crores.

As per Section 43B,

"Notwithstanding anything contained in any other provision of this Act, a deduction otherwise allowable under this Act in respect of-

.....

(d) any sum payable by the assessee as interest on any loan or borrowing from any public financial institution or a State financial corporation or a State industrial investment corporation, in accordance with the terms and conditions of the agreement governing such loan or borrowing, or

.....

shall be allowed (irrespective of the previous year in which the liability to pay such sum was incurred by the assessee according to the method of accounting regularly employed by him) only in computing the income referred to in section 28 of that previous year in which such sum is actually paid by him:

Provided that nothing contained in this section [except the provisions of clause(h)] shall apply in relation to any sum which is actually paid by the assessee on or before the due date applicable in his case for furnishing the return of income under sub- section (1) of section 139 in respect of the previous year in which the liability to pay such sum was incurred as aforesaid and the evidence of such payment is furnished by the assessee along with such return.

From the ITR filed u/s 139(1) for AY 2018-19 on 27.10.2018 it is seen from the Profit & Loss account that the assessee has debited an amount of Rs. 67.56 Crores under the head "Interest to others" but the details/bifurcation of the same is not available. In the assessee's reply dated 18.04.2024 the assessee failed to submit any details and documentary evidence to show that the outstanding interest payable to CFM ARC has not been debited in its Profit & Loss account nor attracts the provision of Section 43B of the Act.



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8. *In view of the above, it is evident that the information based on the material on record is with the Assessing officer which suggests that the income (arising out of disallowance of interest expenditure for a sum of Rs.16.24 crores u/s 43B) represented in the form of "expenditure in respect of a transaction" as per section 149(1)(b)(ii), amounts to more than fifty lakh rupees which has escaped assessment in the case for the AY 2018-19.*

9. *Therefore, this is a fit case for issuance of notice u/s 148 for the AY 2018-19.*

10. *This order is passed with the prior approval of the Director General of Income Tax (Inv.), Chennai."*

6. The case of the petitioner is that the petitioner had filed return of income under Section 139(1) of the IT Act on 27.10.2018. It is submitted that along with return, the petitioner had also filed Audit Report which ultimately culminated in the assessment order dated 25.12.2019 under Section 144 read with Section 153C of the IT Act.

7. A search proceedings had been initiated against M/s.Dhanalakshmi Srinivasan Group of Trust on 15.02.2018. The learned counsel for the petitioner would submit that against the order of the Assessing Officer under Section 144 read with Section 153(C) of the IT Act dated 25.12.2019, the petitioner had filed an appeal before the Commissioner of Income Tax (Appeals) in I.T.A.No.991/21-22. The Commissioner of Income Tax (Appeals) by an order dated 28.11.2022



dismissed the appeal. Aggrieved by the same, the petitioner filed further appeal before the Income Tax Appellate Tribunal along with following appeals for the following Assessment Years:-

Sl.No.	Assessment Year	Appeal No.
1	2012-2013	ITA No.1005/CHNY/2022
2	2013-2014	ITA No.1006/CHNY/2022
3	2014-2015	ITA No.1007/CHNY/2022
4	2015-2016	ITA No.1008/CHNY/2022
5	2016-2017	ITA No.1009/CHNY/2022
6	2017-2018	ITA No.1010/CHNY/2022
7	2018-2019	ITA No.1017/CHNY/2022

8. It is submitted that after detailed consideration of the case, the Income Tax Appellate Tribunal by its common order dated 18.01.2023 allowed the above-mentioned appeals for statistical purpose by setting aside the orders of the Assessing Officers as also the orders of the Commissioner of Income Tax (Appeals) and remitting the case back to the Assessing Officer to pass fresh orders.

9. Pursuant to the aforesaid order dated 18.01.2023 of the Income Tax Appellate Tribunal, the Assessing Officer has also passed an assessment order dated 25.03.2024 under Section 144 read with Section 153C read with Section 254 of the IT Act.



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10. It is submitted that there are no fresh materials available warranting invocation of Section 148A(b) of the IT Act as it is *sine qua non* that an assessee can be called upon to show cause as to why a notice under Section 148 of IT Act on the basis of information which suggests that the income chargeable to tax has escaped assessment. It is submitted that all the informations were available and no fresh material has been gathered by the Department to issue a notice under Section 148A(b) of the IT Act to warrant the impugned order under Section 148A(d) of the IT Act. It is therefore submitted that the impugned order is liable to be set aside.

11. The learned counsel for the petitioner would submit that the Show Cause Notice dated 30.03.2024, the impugned order dated 25.04.2024 and the Notice under Section 148 of the IT Act dated 25.04.2024 are all illegal as the first respondent did not possess the necessary jurisdiction to issue the notices and to pass the impugned order as by way of application of provisions of Section 151A of the IT Act and Notification Nos.15/2022 [F.No.370142/13/2022-TPL] dated 28.03.2022 and 18/2022 [F.No.370142/16/2022-TPL (Part1)] 29.03.2022 issued by the Central Board of Direct Taxes (CBDT) on powers conferred under Section



151A of the IT Act, the proceedings under Sections 148A, 148 and 147 of the IT Act are to be carried out only in a Faceless Manner on and from 29.03.2022.

12. It is further submitted that this would mean that it is only a faceless officer who has the necessary jurisdiction to issue notice under Sections 148A(b) and 148 of the IT Act and to pass orders under Section 148 of the IT Act. The notice having been issued by the first respondent (Assessing Officer) is in total contravention to the provisions of law and thus *non-est* and *void ab-initio*. The jurisdiction to conduct the proceedings under Sections 148A, 148 and 147 of the IT Act having not been carried out through an automated allocation system in a faceless manner and therefore, the jurisdiction assumed by the first respondent is illegal.

13. The learned counsel for the petitioner relied on the decision of the Telangana High Court in ***Kankanala Ravindra Reddy vs. ITO, [2023] 156 taxmann.com 178 (TELANGANA)*** and the Bombay High Court in ***Hexaware Technologies Ltd. vs. ACIT, [2024] 162 taxmann.com 225 (Bombay)***. He therefore prayed for setting aside the impugned order.



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14. On the other hand, the learned Senior Standing Counsel for the respondents would submit that this Writ Petition is without any merits. It is submitted that only a notice under Section 148 of the IT Act has been issued pursuant to the impugned order dated 25.03.2024. That apart, it is submitted that there is no finality to the issue. It is further submitted that the proceedings which culminated with the notice under Section 153C of the IT Act has now culminated in the impugned order of the Assessing Officer dated 25.03.2024 on the basis of information that was available pursuant to the search made at the premises of M/s.Dhanalakshmi Srinivasan Group of Trust on 15.02.2018 under Section 132 of the IT Act.

15. It is further submitted that the informations that were gathered during the investigation alone would form part of the assessment order under Section 153C of the IT Act. As far as the non-payment of interest to the borrower is concerned, it came to the light of the Department subsequently. Therefore, the notice has been issued under Section 148A(b) of the IT Act on 30.03.2024. Although, within few days thereafter, the assessment order came to be passed on 25.03.2024 confirming the demand under Section 144 read with Section 153C of the IT Act.



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16. By way of rejoinder, the learned counsel for the petitioner would submit that the petitioner is on appeal against the aforesaid order and therefore, on this count also, the impugned proceedings are liable to be quashed. The learned counsel for the petitioner would further submit that in terms of Section 149(1)(b), no notice under Section 148 of the IT Act, shall be issued for the relevant assessment year, if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to Rs,50 Lakhs or more for that year.

17. The learned Senior Standing Counsel for the respondents, on the other hand, would submit that the issue pertains to expenditure/entry which is to the tune of Rs.16.24 Crores and therefore, the restrictions in the time limit does not apply to the facts of the case. The decision of the Hon'ble Supreme Court in ***Principal Commissioner of Income Tax, Central-3 Vs. Abhisar Buildwell Pvt. Ltd. (2024) 2 SCC 433*** has decided the issue in the context of Section 153A of the IT Act. Limitation and scope is similar to



the proceedings under Section 153C of the IT Act. Relevant portion of the said decision reads as under:-

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“34. If the submission on behalf of the Revenue that in case of search even where no incriminating material is found during the course of search, even in case of unabated/completed assessment, the AO can assess or reassess the income/total income taking into consideration the other material is accepted, in that case, there will be two assessment orders, which shall not be permissible under the law. At the cost of repetition, it is observed that the assessment under Section 153-A of the Act is linked with the search and requisition under Sections 132 and 132-A of the Act. The object of Section 153-A is to bring under tax the undisclosed income which is found during the course of search or pursuant to search or requisition. Therefore, only in a case where the undisclosed income is found on the basis of incriminating material, the AO would assume the jurisdiction to assess or reassess the total income for the entire six years block assessment period even in case of completed/unabated assessment. As per the second proviso to Section 153-A, only pending assessment/reassessment shall stand abated and the AO would assume the jurisdiction with respect to such abated assessments. It does not provide that all completed/unabated assessments shall abate. If the submission on behalf of the Revenue is accepted, in that case, the second proviso to Section 153-A and sub-section (2) of Section 153-A would be redundant and/or re-writing the said provisions, which is not permissible under the law.

35. For the reasons stated hereinabove, we are in complete agreement with the view taken by the Delhi High Court in Kabul Chawla [CIT v. Kabul Chawla, 2015 SCC OnLine Del 11555 : (2016) 380 ITR 573] and the Gujarat High Court in Saumya Construction [CIT v. Saumya Construction (P) Ltd., 2016 SCC OnLine Guj 9976 : (2016) 387 ITR 529] and the decisions of the other High Courts taking the view that no addition can be made in respect of the completed assessments in absence of any incriminating material.

36. In view of the above and for the reasons stated above, it is concluded as under:

36.1. That in case of search under Section 132 or requisition under Section 132-A, the AO assumes the jurisdiction for block assessment under Section 153-A;

36.2. All pending assessments/reassessments shall stand abated;



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36.3. In case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the “total income” taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and

36.4. In case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132-A of the 1961 Act. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under Sections 147/148 of the Act and those powers are saved.”

18. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Standing Counsel for the respondents. I have also perused the affidavit filed in support of the present writ petition and the documents filed in support of the present writ petition.

19. Earlier, the Return of Income was filed by the petitioner on 27.10.2018. Ultimately, the assessment was completed on 25.12.2019 under Section 144 read with Section 153C of the IT Act.



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20. The aforesaid assessment order dated 25.12.2019 was passed pursuant to search initiated against research person on 15.02.2018 resulting in issuance of notice to the petitioner under section 153C of the IT Act. Further, appeal of the petitioner before the Commissioner of Income Tax (Appeals) was also dismissed by the Commissioner of Income Tax (Appeals) vide order dated 28.11.2022.

21. The petitioner filed further appeal before the Income Tax Appellate Tribunal. The Income Tax Appellate Tribunal by its common order dated 18.01.2023 remitted the case back to the respondent to pass a fresh assessment order for the Assessment Years 2012-13 to 2018-19. Pursuant to the aforesaid order of the Income Tax Appellate Tribunal, assessment order is said to have been passed on 25.03.2024.

22. During the interregnum, the impugned order dated 25.04.2024 has been passed under Section 148A (d) of the IT Act pursuant to the Notice dated 30.03.2024 issued under Section 148A (b) of the IT Act.



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23. As per Section 41(1)(a) of the IT Act, where an element of deduction has been made in the assessment for any assessment year in respect of **loss, expenditure or trading liability** incurred by an assessee and subsequently, during any previous year, if such person obtains any amount in respect of such **loss, expenditure** or some benefit in respect of such **trading liability** by way of remission or cessation thereof, whether in cash or in any other manner whatsoever the amount obtained by such person for the value of such benefit accruing to such person shall be deemed to be profits and gains of business or profession and accordingly, chargeable to income tax has income of the previous year, whether the business or profession in respect of which the elements or deduction has been made is in existence in that year or not.

24. In this context, Section 43B(e) of the IT Act is relevant. It starts with a non-obstante clause. As per Section 43B(e) of the IT Act, notwithstanding anything contained in any other provisions of the Income Tax Act, 1961, a deduction otherwise allowable under the Act in respect of any sum payable by an assessee as interest on any known or advances from a scheduled bank or a cooperative bank other than agricultural and rural



credit Society for a primary cooperatives agricultural and rural development bank in accordance with the terms and conditions of the agreement governing such loan or advances shall be allowed (irrespective of the previous year) in which the liability to pay such sum was actually incurred by such an assessee according to the method of accounting regularly employed by such assessee only in computing the income referred to in Section 28 of that previous year in which such sum is actually paid by such assessee.

25. In the present case, although the petitioner had claimed deduction on account of the interest, fact remains that petitioner had not paid in interest to the bank. The petitioner had not incurred any amount towards interest. Thus, question of the petitioner claiming such deduction on interest for computation of the income for the purpose of determination a book profit under Section 115JB cannot be countenanced. Therefore, income had indeed escaped assessment warranting issuance of notice under Section 148A (b) of the IT Act.

26. The amount that was written off towards interest which was not actually borne by the petitioner cannot be allowed as a deduction. As such,



there is no merits in the present Writ petition. There is no irregularity or illegality in the impugned order overruling the objection of the petitioner. Therefore, the present writ petition is liable to be dismissed.

27. Therefore, I find no merits in the present writ petition challenging the impugned order dated 25.04.2024 passed under Section 148A (d) of the IT Act by the respondent overruling the objection of the petitioner against reopening of the assessment vide Notice dated 30.03.2024 under Section 148A(b) of the IT Act.

28. Since I find no merits in the present writ petition, this writ petition is liable to be dismissed. It is accordingly dismissed. The respondent is however directed to complete the assessment without getting influenced by any of the observation contained herein on merits. There shall however be no order as to costs. Consequently, connected miscellaneous petitions are closed.

03.01.2025

jen/mrr

Index : Yes/No

Neutral Citation: Yes/No

Speaking Order (or) Non-Speaking Order



W.P.(MD) No.12123 of 20_.

To

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jen/mrr

**Pre-Delivery Order in
W.P.(MD) No.12123 of 2024**

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