

W.P.(MD)Nos.10728, 27713 and 27714 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Orders reserved on : 15.04.2026

Orders pronounced on : **01.06.2026**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.(MD)Nos.10728, 27713 and 27714 of 2024
and W.M.P.(MD).Nos.9599, 9600, 23519, 23520, 23521 and 23522 of 2024

Seyadu Beedi Company
Represented by its Partner,
T.E.S. Fathu Rabbani

.. Petitioner
(in all W.Ps)

Versus

Assistant Commissioner of Income Tax,
Central Circle 1,
Income Tax Department,
Kulamangalam Main Road,
Meenambalpuram,
Madurai – 625 002.

.. Respondent
(in all W.Ps)

Prayer in W.P.(MD).No.10728 of 2024 : Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari, calling for the records of the Respondent contained in its assessment order bearing DIN & Order No.ITBA/AST/S/143(3)/2023-24/1063493463(1), passed by the Respondent under Section 143(3) of the Income Tax Act, 1961, dated 27.03.2024 and all



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proceedings in furtherance thereto including but not limited to the notice of demand bearing DIN & Notice No.ITBA/AST/S/156/2023-24/1063493580(1), issued by the Respondent under Section 156 of the Income Tax Act, 1961, dated 27.03.2024, for Assessment Year 2022-23, for PAN: AACFS5706R, and to quash the same as arbitrary, unjust and illegal.

Prayer in W.P.(MD).No.27713 of 2024 : Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari, calling for the records of the Respondent contained in its penalty order bearing DIN: ITBA/PNL/F/270A/2024-25/106927122(1), passed by the Respondent under Section 270A of the Income Tax Act, 1961, dated 30.09.2024, for the AY 2022-23, for PAN: AACFS5706R, and to quash the same as arbitrary, unjust and illegal.

Prayer in W.P.(MD).No.27714 of 2024 : Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari, calling for the records of the Respondent contained in its penalty order bearing DIN: ITBA/PNL/F/271AAC(1)/2024-25/1069271726(1), passed by the Respondent under Section 271AAC(1) of the Income Tax Act, 1961, dated 30.09.2024, for the AY 2022-23, for PAN: AACFS5706R, and to quash the same as arbitrary, unjust and illegal.

For Petitioner : Mr.Suhrith Parthasarathy
(in all cases)

For Respondent : Mr.N.Dilip Kumar
(in all cases) Senior Standing Counsel



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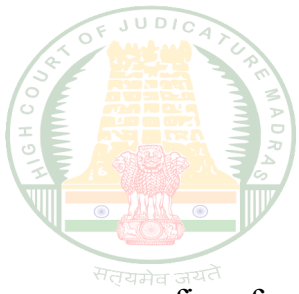
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COMMON ORDER

These three Writ Petitions are connected and, as such, are taken up and disposed of by this common order.

2. The petitioner is a registered partnership firm, namely Seyadu Beedi Company, represented by its partner, *T.E.S.Fathu Rabbani*. In W.P.(MD).No. 10728 of 2024, the order of assessment dated 27.03.2024 passed under the provisions of the Income-Tax Act, 1961 (hereinafter referred to as ‘the Act’) for the Assessment Year 2022-23 is challenged. In W.P.(MD).Nos.27713 and 27714 of 2024, the consequential penalty orders issued under Sections 270A and 271AAC of the Act are challenged.

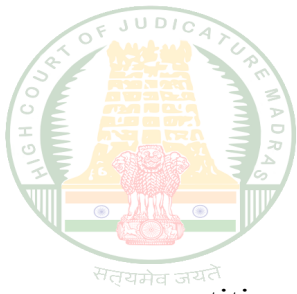
3. For the Assessment Year 2022-23, the petitioner firm filed returns declaring an income of Rs.23,37,05,400/-. The case was selected for scrutiny through Computer-Assisted Scrutiny Selection (CASS). A notice under Section 143(2) of the Act was issued on 31.05.2023. On 04.01.2024, a notice under Section 142(1) of the Act was issued, requiring the production of the information contained in the Annexure. From that day, through several e-mails, the petitioner



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firm furnished the required information. Another notice under Section 142(1) of the Act was issued on 07.02.2024, seeking the information mentioned in the Annexure and noting certain discrepancies. The petitioner firm provided the information/explanation. Again, on 14.02.2024, yet another notice under Section 142(1) of the Act was issued, calling for the information required in the Annexure thereto. In the Annexure, among other things, under paragraph No.3, in respect of the seven properties mentioned in the table (valued at Rs.3,60,65,028/-), the petitioner firm was required to furnish a copy of the purchase deed, the mode of payment, etc.

4. In response, the petitioner furnished the information and explanation. The petitioner's case is that the properties originally belonged to *T.E.S.Naina Mohamad*. Upon his demise in December 2022, the assets devolved to his legal heirs in accordance with Shariyat. His legal heirs transferred the assets to the petitioner firm. In consideration thereof, the accounts of the respective legal heirs were credited in the books of the petitioner firm. In view of Section 53A of the Transfer of Property Act, 1882, the petitioner firm contends that the transaction constituted a transfer. The same was duly recorded in the books of account. The



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petitioner enclosed the ledger statements of the four legal heirs, a detailed breakup of the valuation of the estate transferred, and the property tax receipts in the name of the erstwhile owner, in evidence of the existence of the assets.

5. A show cause notice was issued to the petitioner firm on 14.03.2024, requiring it to furnish documents relating to the transfer, failing which Rs. 3,60,65,028/- will be treated as unexplained investment under Section 69 read with 115BBE of the Act and added to the total income. The petitioner firm submitted its objections dated 21.03.2024, stating that once the investments are recorded in the books of accounts, Section 69 of the Act cannot be invoked.

6. Thereafter, an order was passed on 27.03.2024. Out of the four legal heirs, two were partners, and the corresponding increase in liability was reflected in the firm's books, while entries were made in the ledger accounts for the amounts due to the other two, who were creditors of the petitioner's firm was taken note of. After considering the explanation to the show cause notice, it was concluded that, since the petitioner firm did not produce any document evidencing transfer or the value of the property, the sum was treated as an



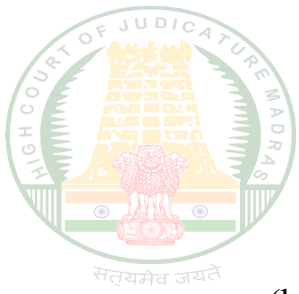
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unexplained credit under Section 68 of the Act and added to tax, as the property was shown as an asset without supporting documents and depreciation was also claimed. It was held that actions for imposing penalties under Sections 271AAC(1) and 270A of the Act are being initiated separately.

7. Thereafter, an order dated 30.09.2024 was passed, calculating the tax payable at Rs.11,06,086/- and imposing a 50% penalty under Section 270A of the Act, amounting to Rs.5,53,043/-. On the same day, an order under Section 271AAC(1) of the Act was passed, imposing a penalty of Rs. 28,12,072/-. Aggrieved by all three orders, these Writ Petitions are filed.

8. *Mr.Suhrith Parthasarathy*, learned for the Petitioner, would submit that:

(a) The conditions for invoking Section 68 of the Act are not satisfied. There must be a sum credited in the assessee's books of account, and the assessee must either fail to offer an explanation regarding the nature and source of such credit or offer an unsatisfactory explanation. Both these conditions are absent in the instant case, and therefore the respondent erred in invoking Section 68 of the Act.



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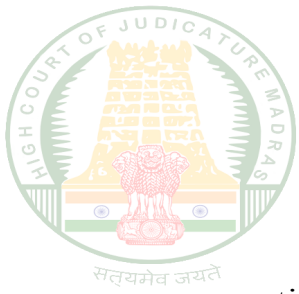
(b) Once the amounts are credited to the accounts of the partners and creditors, they are in the hands of the partners and creditors and cannot be taxed in the hands of the firm. The law on this point has been laid down by the Division Bench of the Bombay High Court in *Narayandas Kedarnath Vs. Commissioner of Income-tax, Central*¹. This position has been consistently followed in the following judgments:-

- *Suganchand Chandamal Vs. ITO* [1976 SCC OnLine Cal 320]
- *CIT Vs. Metachem Industries* [1999 SCC OnLine MP 471]
- *VR Global Energy Pvt. Ltd. Vs. ITO* [TCA No.246 of 2017]
- *Nova Medicare Vs. ITO* [2023 SCC OnLine TS 4540]

Once the credit in the names of the legal heirs of late *T.E.S.Naina Mohammed* is proved and their identity is not in dispute, and their transactions have been specifically reflected in the books and when supporting ledger statements have been furnished, then, thereafter, the authorities have to issue notices to such persons and make an assessment in their hands and not in the hands of the petitioners.

(c) Originally, when the show-cause notice was under Section 69 of the Act, the finding in the impugned order with reference to Section 68 of the Act

¹ (1952) 22 ITR 18



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was entirely different. Unless and until the respondents issue a show-cause notice and call for the petitioner's explanation with reference to treating the income as unexplained under Section 68, the impugned order cannot be passed. The judgment of the Bombay High Court in ***Vivek Jaisingh Asher Vs. Income Tax Officer, Ward 19(3)(1) and Ors. (W.P.No.4370 of 2022)*** is relied upon.

(d) The respondent did not offer the petitioner an effective personal hearing. The judgment in ***Sona Builders Vs. Union of India and Ors.***² is relied upon.

(e) The contention on behalf of the respondent department, based on the decision of the Hon'ble Supreme Court of India in ***Commissioner of Income-tax Vs. Chhabil Dass Agarwal***³, should be rejected in view of the fact that in ***Jeans Knit Pvt. Ltd. Vs. Deputy Commissioner of Income Tax Bangalore and Ors.***⁴, the Hon'ble Supreme Court of India had expressly recognized the inapplicability of the said dictum in cases involving jurisdictional challenges. The judgment of the Hon'ble Supreme Court of India in ***Godrej Sara Lee Ltd., Vs. Excise and Taxation Officer-cum-Assessing Authority and Ors.***⁵, where it has been held that writ jurisdiction can be exercised notwithstanding the availability of an

² (2001) 10 SCC 280

³ (2014) 1 SCC 603

⁴ (2018) 12 SCC 36

⁵ 2023 SCC OnLine SC 95



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alternative remedy in cases involving pure questions of law and not requiring adjudication of disputed facts, is cited.

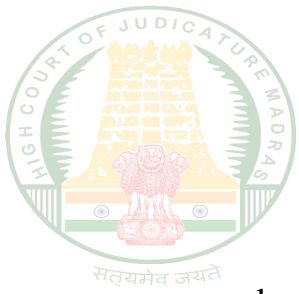
(f) Consequently, the penalty orders should also be set aside. Those orders were passed even when the interim stay order was in force.

9. Per contra, *Mr.N.Dilip Kumar*, the learned Senior Standing Counsel for the respondent, would submit that:

(a) Repeated notices, correspondence and the show cause notice put across the substance of the matter under consideration by the assessing authority. Therefore, a repeat show-cause notice need not be issued for the purpose of ultimately treating income under Section 68 of the Act or any other provision.

(b) Once the transfer of assets is not proved and the value of the assets booked is also considered bogus, the source of the liability booked by the assessee firm against the asset is to be treated as an unexplained credit. Thus, it is rightly brought to tax under Section 68 read with Section 115BBE of the Act.

(c) Once the order has been duly passed, the dictum of the Hon'ble Supreme Court of India in *Chhabil Dass Agarwal*'s case (cited *supra*) renders the Writ Petition not entertainable, as the petitioner has an effective alternative



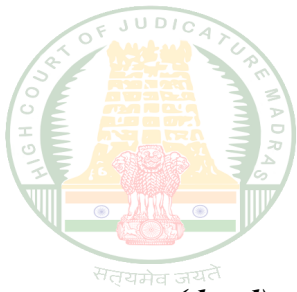
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remedy under Section 246A of the Act.

10. I have considered the case of the parties.

11. The petitioner has filed returns, treating the seven properties mentioned in the show cause notice as ‘assets’ and claiming depreciation. Admittedly, the properties were not in the firm's name. It is contended that the property was acquired from the legal heirs of the deceased partner, *T.E.S.Naina Mohammed*. Of the four legal heirs, two are currently claimed as partners and two are not. When the assessing authority sought an explanation and documents, no document of transfer of title was produced. It is stated that the amounts have been credited to the respective accounts of the Transferors, and thus, transfer of title is claimed in view of Section 53A of the Transfer of Property Act, 1882.

12. The law relating to claims under Section 53-A of the Transfer of Property Act, 1882 is no longer *res integra*. A claim under Section 53-A does not relate to the transfer of title or ownership; it is only a shield to safeguard possession against the owner of the property. The judgment of the Hon’ble Supreme Court of India in ***Rambhau Namdeo Gajre Vs. Narayan Bapuji Dhotra***



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(dead) through LRs.⁶, shall be referred to. To claim any benefit, a written contract with certain terms is necessary. The judgment of the Hon'ble Supreme Court of India in ***Mool Chand Bakhru Vs. Rohan and Ors.*⁷**, lays down the same. Post-2001, unregistered contracts have no effect in relation to any claim under Section 53-A. The judgment of the Hon'ble Supreme Court of India in ***Commissioner of Income Tax Vs. Balbir Singh Maini*⁸** makes this clear. Only registered conveyance transfers title, and Section 53-A is only a limited defence. Useful reference in this regard can be made to the judgment of the Hon'ble Supreme Court of India in ***Suraj Lamp & Industries (P) Ltd. Tr. Dir Vs. State of Haryana*⁹**.

13. The Hon'ble Supreme Court of India, in ***Commissioner of Income Tax, Bombay and Ors. Vs. Podar Cement Pvt. Ltd. and Ors.*¹⁰**, had considered the question in the context of a determination by the assessing authority that, in the absence of a written instrument conveying title to the assessee, the income that arose to the assessee, pursuant to an agreement, will be treated as income

⁶ (2004) 8 SCC 614

⁷ (2002) 2 SCC 612

⁸ (2017) 398 ITR 531

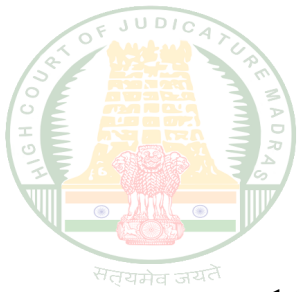
⁹ AIR 2012 SC 206

¹⁰ (1997) 5 SCC 482



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from other sources and not as income from house property. In that context, the Hon'ble Supreme Court of India had referred to the earlier judgments and the purpose of taxation and has held that when there is a clear agreement in putting the assessee in possession and control of the property, the question with reference to taxation has to be decided by considering the actual control and domain over the property, leaving the husk of the legal title behind. In that context, with reference to the position prevailing before the year 2001, a written agreement and putting the party into possession was held enough to claim part performance under Section 53-A of the Transfer of Property Act, 1882 and therefore, it was held that the income should be treated as the rental income to the assessee by considering him as the owner of the house property. Furthermore, by that time, the issue was decided by the Hon'ble Supreme Court of India, Section 22 of the Act itself was amended to specifically include a person in possession of the property in a part performance of a contract of the nature referred to in Section 53A of the Transfer of Property Act, 1882. The Hon'ble Supreme Court of India held that the amendment was declaratory in nature and would be applicable retrospectively.



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14. In this context, in the present case, it is to be noted that, first, there was no written agreement at all, and, more so, registration became mandatory post 2001. Further, what is claimed is depreciation, and Section 32 of the Act does not contain a clause similar to Section 22 of the Act. Therefore, in the present context, where the property is to be treated as an asset and depreciation is to be claimed, the case of the petitioner/assessee, based on Section 53-A of the Act, cannot be accepted. As such, I do not find any fundamental flaw or jurisdictional error on the part of the authorities in issuing notices to the petitioner and proceeding further to pass the order of assessment and consequential orders.

15. The second contention is that when the original show-cause notice was issued, it mentioned only the treatment of the value of the assets, being Rs. 3,60,65,028/-, as unexplained investment under Section 69 read with Section 115BBE of the Act. However, the final order of assessment was passed by treating the same as unexplained credit under Section 68 read with Section 115BBE of the Act, and therefore, without issuing a further show-cause notice, the assessment order could not have been passed.

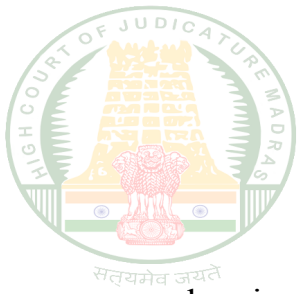


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16. Reliance is placed on the judgment of the Division Bench of the Bombay High Court in *Vivek Jai Singh Asher*'s case (cited *supra*). In this regard, it must be noted that repeated notices under Section 142(1) were issued. In the Annexure to the notice dated 14.02.2024, paragraph No.3 shows that for the Financial Year 2021-2022, relevant to the Assessment Year 2022-2023, the seven properties, tabulated therein at a value of Rs.3,60,65,028/-, were claimed as assets by the assessee. Accordingly, the assessee was called upon to furnish a copy of the purchase deed, mode of payment, details of the contract, and supporting documents. The assessee submitted their explanation through repeated e-mails, claiming that the property devolved on the said four persons as per the shares mentioned therein, as per the Shariat, and produced the ledger accounts showing the credits in respect of the two of the legal heirs who are partners and showing the others as creditors.

17. In this context, since no written instrument or agreement was produced by the assessee, the show-cause notice dated 14.03.2024 was issued. The show-cause notice referred to the details of the properties and the persons concerned. It referred to the capital accounts ledger produced by the assessee and to the



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showing of the other two legal heirs as the firm's creditors. After referring to the same, in paragraph No.3.14, the assessee was once again required to produce the documents mentioned therein, including the basic document, title deed, proof relating to the utilisation of the property, documents of transfer of property, documents relating to the value of the property, and the details of the capital gain/loss account submitted by the said four persons. Finally, the assessee was called upon to furnish the documents mentioned above, and it was further stated that, failing the production of the above documents, the said sum of Rs. 3,60,65,028/- will be treated as an unexplained investment under Section 69 read with Section 115BBE of the Act and added to the total income.

18. Thus, it can be seen that the show-cause notice clearly sets out the gamut of facts being considered by the assessing authority, i.e., the absence of any agreement or instrument of transfer of title and proof regarding the value of the property, etc., and the mind of the assessing authority to add the said sum to the total income. In this regard, in the explanation submitted, the only plea raised is that, in order to invoke Section 69 of the Act, the second condition, i.e., the investment should not be recorded in the books of account, is absent in the instant



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case, as it is recorded in the books of account of the assessee, and several judgments were also relied upon in the explanation dated 21.03.2024.

19. After considering the explanation, it was first concluded in paragraph Nos.12 to 12.5 that, in the absence of any proof relating to the basic document of title, the document of transfer of ownership, the document relating to utilisation of the property, and the value of the property, the claim of the Company cannot be accepted, as per Section 32 of the Act. Accordingly, it was held that the asset cannot be treated as an asset of the Company, and the depreciation claim for a sum of Rs.31,65,310/- was disallowed. Consequently, penalty proceedings under Section 270-A of the Act were ordered. As a further corollary, in paragraph Nos. 13 to 13.4, more specifically in paragraph No.13.3, it is further held that the assessee, by booking the asset and claiming depreciation on the same, will wipe off the asset in the books; however, the corresponding liability in the books of the partner will remain, which is not correct. Since the value of the asset booked itself is considered to be a bogus transaction, the source for the liability booked by the assessee firm against the said asset was considered to be an unexplained credit and was brought to tax under Section 68 read with Section 115BBE of the Act.



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20. In this regard, it must be noted that the entire Chapter-VI of the Act is about the computation of the total income, and Sections 68 or 69, as the case may be, are the modes by which income is brought to total. Section 115BBE is common to Sections 68, 69A, 69B, and 69C of the Act. Therefore, when the conclusion reached is nothing but a natural corollary and consequence of considering the discrepancy mentioned in the show-cause notice and the explanation offered by the assessee, I am unable to agree with the learned Counsel for the petitioner that a new calculation is made or a completely different stand is taken in the assessment order, thereby mandating the issue of one more show-cause notice. Similarly, a careful consideration of the correspondence between the assessed and revenue, this cannot be said to be without a personal hearing. Thus, I hold that the impugned order of assessment does not suffer from any violation of the principles of natural justice.

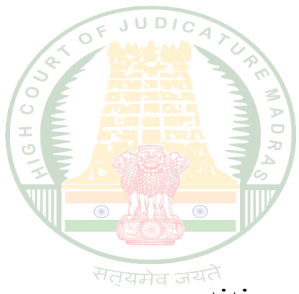
21. The further questions argued by the learned Counsel for the petitioner, namely, whether the said value of the property, disallowed as assets and consequently credited in the books of accounts, can be treated as unexplained credit of amount under Section 68 of the Act, and whether it should be assessed in



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the hands of the firm or the partners and creditors, involve the core exercise of assessment and present a mixed question of fact and law. Once I have answered the questions relating to the lack of jurisdiction and violation of principles of natural justice in favour of revenue, there is no question of entertaining the Writ Petition, as the petitioner has an effective remedy of filing an appeal against the impugned order of assessment under Section 246-A of the Act. Further consideration of the other submissions would be to examine the issue from the armchair of the assessing or appellate authority, which is not the jurisdiction to be exercised under Article 226 of the Constitution of India. Even the judgment of the Bombay High Court in *Narayandas Kedarnath's* case (cited *supra*) arose out of a further appeal to the High Court after exhausting the appellate remedies, and therefore, those questions are left open to be agitated before the appellate authority and are not considered and answered in this order.

22. In view thereof, these Writ Petitions are disposed of, with liberty to the petitioner to approach the appellate authority under Section 246-A of the Act. Considering that the impugned order of assessment was passed on 27.03.2024 and the Writ Petition was filed before this Court on 24.04.2024, if and when the



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petitioner files the appeal within four weeks from today, the appeal shall be treated as within time and considered on its own merits in accordance with law. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

01.06.2026

Neutral Citation : yes
grs

To

The Assistant Commissioner of Income Tax,
Central Circle 1,
Income Tax Department,
Kulamangalam Main Road,
Meenambalpuram,
Madurai – 625 002.



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D.BHARATHA CHAKRAVARTHY, J.

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