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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.16686, 16758, 16689, 16692, 16693, 16695, 16698, 16710, 16716, 16719, 16760 and 16764 of 2020
and
W.M.P.Nos.20690, 20691, 20730, 20733, 20774, 20775, 20701, 20703, 20713, 20721, 20728, 20693, 20685, 20694, 20695, 20737, 20768, 20770, 20771, 20772, 20687, 20696, 20698 & 20699 of 2020

W.P.No.16686 of 2020

Karti P.Chidambaram ..Petitioner

vs

1.The Principal Director of Income Tax
(Investigation)
Income Tax Investigation Wing Building,
No.108, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

2.The Deputy Director of Income Tax, (Investigation)
Unit 3(2), Chennai,
Income Tax Investigation Wing Building,
No.108, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

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3.The Deputy Commissioner of Income Tax,
Central Circle, 2(1),
New Income Tax Building,
No.46, (Old No.108), Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, Calling for the records of the 3rd Respondent pertaining to the notice dated 16.12.2019 having Ref Notice No. ITBA/AST/S/153C/2019-20/1022454092 (1) issued under Section 153C r/w 153A of the Income Tax Act 1961 for the Assessment Year 2014-15 to the petitioner and the consequential show Cause Notice dated 21.10.2020 having reference No.DIN and Notice No. ITBA/AST/F/153C(SCN)/2020-21/1028361585(1) for the Assessment Years 2014-15 and 2015-16 issued by the 3rd Respondent to the petitioner and quash the same as illegal, without jurisdiction, arbitrary, ab initio void and violative of Article 14 of the Constitution of India.

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FOR PETITIONERS

W.P.No.16686 of 2020	:	Dr.Abhishek Singhvi Senior counsel Assisted by Mr.N.R.R.Arun Natarajan and Mr.Amit Bhandari
W.P.No.16689 of 2020	:	Mr.K.V.Viswanathan Senior counsel Assisted by Mr.N.R.R.Arun Natarajan
W.P.No.16692 of 2020	:	Mr.R.V.Easwar Senior counsel Assisted by Mr.N.R.R.Arun Natarajan and M/s.Rubal Bansal
W.P.Nos.16693, 16695 and 16698 of 2021	:	Mr.N.R.R.Arun Natarajan
W.P.Nos.16710, 16716, 16719, 16758, 16760 and 16764 of 2020	:	Mr.AR.L.Sundaresan Senior Counsel Assisted by M/s.C.Uma

FOR RESPONDENTS IN ALL WRIT PETITIONS

For Respondents	:	Mr.R.Sankaranayanan Additional Solicitor General of India Assisted by Mr.A.P.Srinivas and Mr.A.N.R.Jayaprakash

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COMMON ORDER

THE FACTS IN BRIEF SUBMITTED BY THE PETITIONER

The facts in detail presented by the petitioners are that the petitioner / assessee filed his return of income for the Assessment Year [hereinafter referred to as 'AY'] 2014-15, disclosing fully and truly his income including the “capital gains” arising out of a sale of land in the Financial Year 2013-14. The capital gains could be assessed only in AY 2014-15 by virtue of Section 45 of the Income Tax Act, 1961 [hereinafter referred to as 'Act']. The return was taken up for scrutiny assessment under Section 143 of the Act and the Assessing Officer completed the assessment under Section 143(3). Accordingly, the return of income was accepted in *toto* by the Assessing Officer, including the disclosed capital gains.

2. On 31.01.2014, 27.03.2014 and 27.03.2014 in Financial Year 2013-14 pertaining to AY 2014-15, the petitioner sold his land measuring 5.11 acres by three sale deeds to M/s.Agni Estates and Foundations Private Limited at the rate of Rupees three Crore per acre and received the entire consideration of Rs.15.33 crore by cheque, registered the sale deeds and

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delivered possession of the land to the buyer. The transaction was completed. The petitioner states that there were many encroachments on the lands sold in favour of M/s.Agni Estates by local fishermen of that locality and thus, the price was negotiated and the buyer undertook the responsibility of settling with the fishermen for further development of the property. The guideline value of the property was Rupees Three Crore per acre and the buyer had not agreed to pay a higher price in view of the encroachments.

3. On 05.07.2018 and 09.07.2018, Search was conducted by the Deputy Director of Income Tax (investigation) [hereinafter referred to as "DDIT (Inv)"] / the second respondent, at the premises of the buyer M/s.Agni Estates. It is stated that "small note books" were seized and statements were recorded from R.N.Jayaprakash, K.Narayanan and Dhileep Kumar. On 10.08.2018, the Assessing Officer of the petitioner received informations from DDIT (Inv) about the search and seizure operation conducted under Section 132 of the Income Tax Act on 05.07.2018 in the case of M/s.Agni Estates and Foundations Private Limited. Consequently,

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on 20.08.2018, the Assessing Officer initiated proceedings against the petitioner under Section 148 of the Act and re-opened the assessment for AY 2014-15, with an allegation that a sum of Rs.6,38,75,000/- (Rupees Six Crore Thirty Eight Lakh and Seventy Five Thousand only) had escaped assessment in AY 2014-15. In response, the petitioner filed a fresh return, reiterating the original return filed by him. Even before the time allowed for filing a fresh return had expired, the DDIT (Inv) filed a compliant on 12.09.2018 in EOC.No.266 of 2018, renumbered as CC No.15 of 2019 before the Special Court, alleging that the petitioner had contravened Section 271C and Section 277 of the Act. The petitioner states that the limitation for passing an order, re-opening the assessment under Section 148 was 31.12.2019. On 12.10.2018, the Assessing Officer furnished the "reasons" for re-opening the assessment for AY 2014-15 recorded by him on 14.08.2018 and the "Satisfaction note" recorded by the Additional Commissioner on 20.08.2018. The "reasons" referred to the statements recorded and the evidences that were found during the search and also specified the alleged amount that was undisclosed income of a sum of Rs.6,38,75,000/-.

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4. The petitioner filed an application on 26.11.2019 in Crl.M.P.No.25634 of 2019 under Section 245 of Cr.P.C. before the Special Court and sought for discharge of the petitioner from CC No.15 of 2019. Under these circumstances, the Assessing Officer on 16.12.2019, issued the impugned notice under Section 153C to the petitioner and directed the petitioner to file returns for a block of six assessment years AY 2013-14 to AY 2018-19.

5. The petitioner states that he sought for information from the Assessing Officer on 27.12.2019 and the said letter was not responded. It is contended that on 31.12.2019, proceedings under Section 148 lapsed due to expiry of the time allowed without any order of re-assessment. On 06.01.2020, the Assessing Officer furnished the reasons for initiating proceedings under Section 153C recorded by him. The reasons referred to the "Satisfaction note". He also stated that he was furnishing the copies of the "Sworn statements" and the seized materials. On 07.01.2020, the Special Court dismissed the Crl.M.P.No.25634/2019 filed by the petitioner for

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discharge. However, on 09.01.2020, the Chartered Accountant of the petitioner reiterated his request for information and the same had not been provided. On 14.01.2020, without prejudice, the petitioner filed his returns for six Assessment Years, returning the same income for each year as in the original returns filed by the petitioner. The subsequent letter dated 17.01.2020 by the petitioner's Chartered Accountant, seeking information was also not responded. On 31.01.2020, the Assessing Officer issued six notices under Section 143(2), seeking further information in connection with the six returns for the Assessment Years AY 2013-14 to AY 2018-19 and directed the petitioner to attend his office on 11.02.2020. On 03.02.2020 and 11.02.2020, the Chartered Accountant of the petitioner reiterated the request for information that had been sought earlier, but not provided by the Assessing Officer. Challenging the order dated 07.01.2020, passed in Crl.M.P.No.25634 of 2019, the petitioner filed Cr.R.C.No.510 of 2020 before the High Court of Madras on 18.05.2020. The petitioner states that without responding to the requests for information or without holding an enquiry, the Assessing Officer issued the impugned Show Cause Notice dated 21.10.2020, directing the petitioner to show cause why a sum of

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Rs.6,38,75,000/- should not be brought to the tax in AY 2014-15 and AY 2015-16.

6. On 03.11.2020, the petitioner filed the present writ petitions, praying for various reliefs including the prayers to quash the Impugned First Notices dated 16.12.2019 and the Impugned Show Cause Notice dated 21.10.2020 for the Assessment Years AY 2014-15 and AY 2015-16.

7. This Court passed an interim order on 07.12.2020, directing the respondents to file their counter affidavits. This Court directed the petitioner to file reply to the Show Cause Notice without prejudice to the contentions in these writ petitions and an order of Status quo as existing on that day was also granted. On 11.02.2020, the High Court allowed the Crl.R.C.No.510 of 2020 and held that the complaint filed by DDIT (Inv) was premature.

8. The petitioner filed his reply to the Show Cause Notice dated 21.10.2020 on 17.12.2020. On the same day, the Assessing Officer permitted the Chartered Accountant of the petitioner to inspect the files.

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After inspection, the Chartered Accountant wrote to the Assessing Officer and recorded that the material in the file to initiate proceedings under Section 148 was the same as the material in the file to initiate proceedings under Section 153C. However, during the pendency of the present writ petitions, on 18.03.2021, the Assessing Officer referring to the proceedings under Section 153C, issued another Show Cause Notice, reiterating the proposal to tax Rs.6,38,75,000/- in AY 2014-15 and proposing to tax

Rs.2,00,00,000 in AY 2015-16,

Rs.35,00,000 in AY 2017-18,

Rs.64,00,000 in AY 2018-19 and

Rs.21,00,000 in AY 2019-20

Total **Rs.3,20,00,000**

9. On 20.03.2021, the petitioner through his Chartered Accountant, requested the Assessing Officer to await the outcome of the pending writ petitions before this Court.

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THE FACTS IN BRIEF AS PER THE RESPONDENTS:

10. The writ petitioner has sold three parcels of land (total extent of 5.11 acres) belonging to him through three sale deeds dated 31.01.2014, 27.03.2014 and 27.03.2014 to M/s.Agni Estates and Foundation Private Limited at the price of Rupees Three Crore per acre. However, in respect of the contiguous piece of land owned by Smt.Nalini Chidambaram, the land was sold at Rs.4.25 Crores per acre. The writ petitioner had filed his return of income for the AY 2014-15 on 29.07.2014, declaring a total income of Rs.45,18,430/- The case was selected for scrutiny under **CASS** and an order under Section 143(3) was passed on 30.12.2016. The Assessing Officer, ACIT, Non-Corporate Circle-3, Chennai, assessing an income of Rs.70,36,366/- on account of income from the sale of coffee and pepper. An appeal was preferred against CIT (A)-4 and the said appeal was allowed vide order dated 26.09.2017. The said order was accepted by the Department, in view of the low tax effect. Subsequently, a search was conducted in the premises of M/s.Advantage Strategic on 01.12.2015 and in the premises of M/s.Agni Estates and Foundation Private Limited from

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05.07.2018 till 09.07.2018. Certain evidences were procured in the form on small note books numbered from 1 to 175 seized vide Annexure ANN/ARS/AP/B&D/S-1 during the search conducted under Section 132 in the premises of M/s.Agni Estates and Foundations Private Limited. Pursuant to the search, the second respondent communicated information relating to the search to the third respondent. It was intimated that the writ petitioner had arranged for cash payments in addition to the sale consideration in respect of the aforesaid three sale deeds.

11. The second respondent, who was the officer, who conducted the search, vide two communications on 10.08.2018 and 20.08.2018, intimated the aforesaid communication to the third respondent. The third respondent had, based on the information so received, issued a notice dated 20.08.2018 under Section 148 of the Act, stating that he has "reasons to believe" that income had escaped assessment within the meaning of Section 147. Subsequently, the seized materials were received by the third respondent i.e., the Assessing Officer having jurisdiction over the searched person i.e., M/s.Agni Estates and Foundations Private Limited on 22.08.2019. On

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28.11.2019, satisfaction was recorded in the case of the petitioners and show cause notice was issued on 16.12.2019 in the case of the petitioner for assessment under Section 153C. The proceedings initiated was reassessment proceedings under Section 147/148 of the Act for AY 2014-15 and the proceedings for Search assessment under Section 153C for AY 2013-14 to AY 2018-19.

12. **The issues mainly raised by the writ petitioners are that**:

(a) The Assessing Officer, on receipt of informations and materials, elected to initiate proceedings under Section 148 of the Act. Thus, he has no jurisdiction to allow the said proceedings to lapse and initiate further proceedings under Section 153C of the Act. Thus, the action lacks jurisdiction and amounts to legal malice.

(b) The alleged materials seized pertains to Rs.6,38,75,000/- received allegedly as 'on money' in respect of the lands sold in Financial Year 2013-14. The amount is to be taxed as 'capital gains'. Under Section 45 of the Act, capital gains can be taxed only in the relevant Assessment Year, which, in this case, is admittedly AY 2014-15. The materials seized has no “bearing

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on the total income" in respect of any other Assessment Year. Thus, the Assessing Officer has no jurisdiction to re-open the assessment in respect of any other Assessment Year and consequently, the impugned notices issued under Section 153C of the Act is beyond the scope of re-opening proceedings.

(c) The proceedings under Section 148 of the Act admittedly lapsed on 31.12.2019. On such lapsing, in the absence of an order of re-assessment, the original return of income for AY 2014-15 is deemed to have been accepted and no further tax can be demanded for the said Assessment Year.

(d) Allowing the proceedings under Section 148 to lapse on 31.12.2019 and initiation of proceedings under Section 153C on 16.12.2019 (barely 15 days before limitation set in) was a colourable exercise of power. The Assessing Officer did not take any steps for nearly 16 months after the notice under Section 148 was issued on 20.08.2018. Realizing that he could not hold a proper enquiry and pass a reasoned order in 15 days (before 31.12.2019), the Assessing Officer, in a hurried manner, issued the show cause notice dated 16.12.2019 under Section 153C. The oblique purpose was to extend the limitation because under Section 153C read with Section

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153B, the time limit was 30.09.2020 (at that time) which has been subsequently extended owing to the pandemic until 30.06.2021.

(e) The same materials allegedly seized during the search of the buyer's premises, the Assessing Officer has three mutually contradictory cases:

(i) that the alleged 'on money' of Rs.6,38,75,000/- should be taxed in AY 2014-15;

(ii) that the alleged 'on money' of Rs.6,38,75,000/- should be taxed in two Assessment Years, AY 2014-15 and AY 2015-16;

(iii) that the alleged 'on money' of Rs.6,38,75,000/- should be taxed in AY 2014-15 and further, a total sum of Rs.3,20,00,000/- (part of Rs.6,38,75,000/-) should be taxed in four Assessment Years, namely, AY 2015-16, AY 2017-18, AY 2018-19, and AY 2019-20.

An Assessing Officer has no jurisdiction to issue multiple notices containing contradictory cases and ask the noticee to answer them. A notice to show cause cannot be vague or contain contradictory allegations. The assessee will not know what is the allegation / case that he has to answer.

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Thus, the proceedings will be in violation of the Principles of Natural Justice.

ARGUMENTS ON BEHALF OF THE PETITIONERS

13. Raising these issues commonly in respect of the writ petitions, the respective learned Senior counsels appearing in respective writ petitions elaborated their arguments.

14. With reference to W.P.No.16686 of 2020, the learned Senior counsel Dr.Abhishek Singhvi, contended that the last date for passing of reassessment order under Section 148 of the Act in the present case falls on 31.12.2019. Perusal of the materials relied on by the Assessing Officer for initiation of proceedings under Section 148 of the Act and the impugned Show Cause Notice issued under Section 153C of the Act are one and the same and the materials are relating to the alleged payment of on cash by the buyer to the petitioner amounting to a sum of Rs.6,38,75,000/-. When the materials and informations relied on for the purpose of initiation of re-opening proceedings under Section 147 and notice under Section 148 and

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the impugned Show Cause Notice under Section 153C of the Act are same and such materials were within the knowledge of the Assessing Officer even at the time of initiation of re-opening proceedings under Section 148 of the Act. Thereafter, the Assessing Officer cannot reprobate and initiate further proceedings under Section 153C of the Act. It is contended that the limitation lapses on 31.12.2019 and knowing the fact that after the expiry of limitation, the return of income scrutinized and the assessment order deemed to became final, the Assessing Officer issued the impugned Show Cause Notice with an intention to extend the period of limitation and thus, the actions are nothing, but legal malice and amounts to tax terrorism.

15. The learned Senior counsel elaborated the scope of implications of Section 153A and 153C of the Act. Section 153A of the Act applies to the searched person himself. However, Section 153C applies to the other persons, having any bearing in respect of the transactions identified consequent to the search conducted under Section 132 of the Act.

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16. The learned Senior counsel solicited the attention of this Court with reference to the contradictions in initiation of proceedings both under Section 148 and in the impugned Notices under Section 153C of the Act.

17. Admittedly, the return of income filed for the AY 2014-15 on 29.07.2014 and the final assessment order under Section 143(3) was passed on 30.12.2016. The learned Senior counsel reiterated that the search and seizer materials were very well within the knowledge of the Assessing Officer. Based on the said materials and informations, notice under Section 148 of the Act was issued, stating that the Assessing Officer has "reason to believe" that the income chargeable to tax for the AY 2014-15 has escaped assessment. The reasons for re-opening of assessment was furnished on 12.10.2018 and the attention of this Court is drawn with reference to the remarks of the Additional Commissioner of Income tax on the reasons recorded by the Assessing Officer is relied upon, wherein it is stated that it is a fit case for issue of notice under Section 148 on the reason that "information in the possession of the "AO" reveals that the assessee had received 'on money' payment in cash over and above the registered value,

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which was not disclosed in the "ROI" filed or during the course of 143(3) proceedings. It is a failure on the part of the assessee in not disclosing fully and truly all material facts which has a bearing on the taxable income of the assessee. Hence, it is a fit case for re-opening under Section 148. Therefore, on the date of re-opening i.e., Section 148 notice dated 20.08.2018, the Assessing Officer had the knowledge about the 'on money' payment in cash allegedly received by the petitioner with reference to the sale of land in favour of the buyer M/s.Agni Estates.

18. The learned Senior counsel pointed out the reasons found in 'Annexure to the reasons' for re-opening of assessment under Section 147 of the Act in the case of the petitioner for the AY 2014-15. The said reasons unambiguously establishes that the informations received from the DDIT (Inv) letter vide order dated 10.08.2018, revealed that a search and seizure operation was conducted under Section 132 of the Act on 05.07.2018 in the case of M/s.Agni Estates and Foundation Private Limited. Thus, the Assessing Officer was aware of the search and seizure operations in the premises of the buyer M/s.Agni Estates on 05.07.2018. Further, the

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informations were also received from DDIT (Inv) on 10.08.2018, the sale price and the alleged on cash transactions were also within the knowledge of the Assessing Officer. This apart, the statements recorded from Mr.R.N.Jayaprakash (Director of M/s.Agni Estate and Foundation Private Limited) and the note book as referred and all other materials in connection with the search and seizure operations were available and within the knowledge of the Assessing Officer and based on the materials, the Assessing Officer formed an opinion that he has "reason to believe" that the tax chargeable escaped assessment and accordingly, issued Notice under Section 148 of the Act. Even the statements of the Director of M/s.Agni Estates namely Mr.R.N.Jayaprakash was extracted in the order dated 12.10.2018, furnishing reasons for re-opening. Thus, the Assessing Officer ought to have proceeded with 148 proceedings and complete within the period of limitation prescribed under the Act. Contrarily, he slept over the matter for a considerable length of time without any action and woke up one fine morning and issued the impugned Notices under Section 153C of the Act, knowing the fact that the last date for completion of 148 proceedings was 31.12.2019. Such an action is not only legal malice, but without

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jurisdiction. Once a re-opening proceedings under Section 148 of the Income Tax Act is initiated on receipt of certain informations and materials from the Investigation Wing of the Income Tax Department, relying on the said materials, further actions were taken, forwarded for completion of proceedings under Section 147 of the Act, but suddenly, the Assessing Officer cannot turn around and switch over to Section 153C for continuation of the reassessment proceedings beyond the expiry date i.e., 31.12.2019. The action results in clutching of jurisdiction and is impermissible.

19. The very intention and the manner in which the impugned notices issued are self-evident that the action was without jurisdiction and is a classic case of legal malice.

20. The learned Senior counsel for the petitioners reiterated that the impugned notices are issued to extend the period of limitation, more specifically, in the absence of any tangible materials. The materials relied upon for initiation of 148 proceedings and the materials from which, the "Satisfaction Note" is prepared with the Assessing Officer for issuing the

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impugned notices under Section 153C of the Act are one and the same and thus, the Assessing Officer to cover up his misdeeds converted the proceedings, which amounts to legal malice. Thus, the impugned notices are issued beyond the scope of jurisdiction under the Act. The mandatory requirements as contemplated under the procedures were not followed and the materials and informations relied on for the purpose of initiation of 148 proceedings as it cannot be relied upon for the purpose of issuing the Show Cause Notice under Section 153C of the Act and in such an event, the very purpose of Section 153C would be defeated. Once 147 proceedings are initiated, the Assessing Officer is bound to conclude the same by following the procedures. In between, he cannot change his mind and convert the proceedings to 153C and the very action indicates that the authorities have done it with a motive and amounts to legal malice.

21. The learned Senior counsel regarding the abatement Clause contemplated under Section 153-A said that, the abatement is an inapplicable concept as far as the facts of the case on hand is concerned. The Doctrine of abatement in the present case is alien, in view of the fact that the

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materials relied upon for re-opening of assessment under Section 148 forms the same basis for issuance of impugned Show Cause Notices under Section 153C of the Act. Thus, the abatement clause has no application.

22. The learned Senior counsel relied on the judgment of the Constitution Bench of the Hon'ble Supreme Court of India in the case of ***Calcutta Discount Company Limited Vs. Income Tax Officer***, reported in ***AIR 1961 SC 372*** and the relevant paragraphs are extracted hereunder:

> *"**27.** Mr Sastri mentioned more than once the fact that the Company would have sufficient opportunity to raise this question viz. whether the Income Tax Officer had reason to believe that underassessment had resulted from non-disclosure of material facts, before the Income Tax Officer himself in the assessment proceedings and if unsuccessful there before the appellate officer or the Appellate Tribunal or in the High Court under Section 66(2) of the Indian Income Tax Act. The existence of such alternative remedy is not however always a sufficient reason for refusing a party quick relief by a writ or order prohibiting an authority acting without jurisdiction from continuing such action.*
>
> ***28.** In the present case the Company contends that the*

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conditions precedent for the assumption of jurisdiction under Section 34 were not satisfied and come to the court at the earliest opportunity. There is nothing in its conduct which would justify the refusal of proper relief under Article 226. When the Constitution confers on the High Courts the power to give relief it becomes the duty of the courts to give such relief in fit cases and the courts would be failing to perform their duty if relief is refused without adequate reasons. In the present case we can find no reason for which relief should be refused.

29. *We have therefore come to the conclusion that the Company was entitled to an order directing the Income Tax Officer not to take any action on the basis of the three impugned notices.*

30. *We are informed that assessment orders were in fact made on March 25, 1952, by the Income Tax Officer in the proceedings started on the basis of these impugned notices. This was done with the permission of the learned Judge before whom the petition under Article 226 was pending, on the distinct understanding that these orders would be without prejudice to the contentions of the parties on the several questions raised in the petition and without prejudice to the orders that may ultimately be passed by the Court. The fact that the assessment orders have already been made does not therefore affect the Company's right to obtain relief under*

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Article 226. In view however of the fact that the assessment orders have already been made we think it proper that in addition to an order directing the Income Tax Officer not to take any action on the basis of the impugned notices a further order quashing the assessment made be also issued."

23. Relying on the said judgment, the learned Senior counsel for the petitioner asserted the maintainability of the writ petition, and emphasized that the existence of an alternative remedy is not however sufficient reason for refusing a litigant quick relief by a writ or order prohibiting an authority acting without jurisdiction from continuing such action. The Constitution Bench made an observation that when the Constitution confers on the High Courts the power to give relief it becomes the duty of the courts to give such relief in fit cases and the courts would be failing to perform their duty if relief is refused without adequate reasons.

24. Relying on the said observations, the learned Senior counsel made a submission that the point of maintainability raised by the respondents deserves no merit consideration as it is a classic case of legal

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malice and without jurisdiction and applying the principles of Constitution Bench cited, the writ petition is maintainable.

25. The Constitution Bench judgment of the Hon'ble Supreme Court of India is followed in the case of ***Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others***, reported in ***(1998) 8 SCC 1*** and the relevant paragraphs are extracted hereunder:

> *"**14.** The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".*
>
> ***15.** Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not*

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to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

19. *Another Constitution Bench decision in Calcutta Discount Co. Ltd. v. ITO, Companies Distt. I [AIR 1961 SC 372 : (1961) 41 ITR 191] laid down:*

> *"Though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts will issue appropriate orders or directions to prevent such consequences. Writ of certiorari and prohibition can issue against the Income Tax Officer acting without jurisdiction under Section 34, Income Tax Act."*

20. *Much water has since flown under the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the*

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alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation."

26. The Hon'ble Supreme Court of India in the said case observed that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. The observations in paragraph 15 reiterates that the alternative remedy cannot be a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

27. Relying on the above principles, the learned Senior counsel is of an opinion that the case on hand is a classic case of no jurisdiction, legal malice and violation of the provisions of the Income Tax Act and therefore, the writ petition is maintainable and the impugned orders are to be set aside.

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28. In the case of ***Commissioner of Bhopal Vs. Shelly Products and another***, reported in ***(2003) 5 SCC 461***, the Hon'ble Supreme Court of India made significant observations in Paragraphs 35 and 36 and the same are extracted hereunder:

> *"**35**. What then is the effect of the failure to make an order of assessment after the earlier assessment made is set aside or nullified in appropriate proceedings? If the Assessing Authority cannot make a fresh assessment in accordance with the provisions of the Act it amounts to deemed acceptance of the return of income furnished by the assessee. In such a case the Assessing Authority is denuded of its authority to verify the correctness and completeness of the return, which authority it has while framing a regular assessment. It must accept the return as furnished and shall not in any event raise a demand for payment of further taxes. Accepting the income as disclosed in the return of income furnished by the assessee, it must refund to the assessee any tax paid in excess of the liability incurred by him on the basis of income disclosed. Even if the tax paid is found to be less than that payable, no further demand can be made for recovery of the balance amount since a fresh assessment is barred. In other words, the tax paid by the*

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assessee must be accepted as it is, and in the event of the tax paid being in excess of the tax liability duly computed on the basis of return furnished and the rates applicable, the excess shall be refunded to the assessee, since its retention may offend Article 265 of the Constitution.

***36**. We cannot lose sight of the fact that the failure or inability of the Revenue to frame a fresh assessment should not place the assessee in a more disadvantageous position than in what he would have been if a fresh assessment was made. In a case where an assessee chooses to deposit by way of abundant caution advance tax or self-assessment tax which is in excess of his liability on the basis of return furnished or there is any arithmetical error or inaccuracy, it is open to him to claim refund of the excess tax paid in the course of assessment proceeding. He can certainly make such a claim also before the authority concerned calculating the refund. Similarly, if he has by mistake or inadvertence or on account of ignorance, included in his income any amount which is exempted from payment of income tax, or is not income within the contemplation of law, he may likewise bring this to the notice of the Assessing Authority, which if satisfied, may grant him relief and refund the tax paid in excess, if any. Such matters can be brought to the notice of the authority concerned in a case when refund is due and payable, and the authority concerned, on being satisfied, shall*

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grant appropriate relief. In cases governed by Section 240 of the Act, an obligation is cast upon the Revenue to refund the amount to the assessee without his having to make any claim in that behalf. In appropriate cases therefore, it is open to the assessee to bring facts to the notice of the authority concerned on the basis of the return furnished, which may have a bearing on the quantum of the refund, such as those the assessee could have urged under Section 237 of the Act. The authority concerned, for the limited purpose of calculating the amount to be refunded under Section 240 of the Act, may take all such facts into consideration and calculate the amount to be refunded. So viewed, an assessee will not be placed in a more disadvantageous position than what he would have been, had an assessment been made in accordance with law."

29. Relying on the above paragraph 35, the learned Senior counsel reiterated that in the present case, the Assessing Officer miserably failed to conclude the re-opening of assessment proceedings initiated under Section 148 of the Act by passing orders before the last date on 31.12.2019 and therefore, the return of income assessed and the assessment orders passed, amounts to deemed acceptance of return of income filed by the assessee. Thus, there is no scope for further initiation of action under Section 153C of

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the Act and the Hon'ble Supreme Court of India ruled that the the Assessing Authority is denuded of its authority to verify the correctness and completeness of the return, which authority it has while framing a regular assessment. It must accept the return as furnished and shall not in any event raise a demand for payment of further taxes. The Hon'ble Supreme Court of India barred the fresh assessment in the said case on the principles that it was a case of deemed acceptance of return of income furnished by the assessee. Similarly, in the present case, 148 proceedings initiated was allowed to be lapsed and consequently, the original assessment order issued under Section 143(3) became final and to be construed as deemed acceptance of return of income. Thus, any fresh assessment or reassessment under Section 153C of the Act is barred with reference to the principles settled. Admittedly, in the present case, the assessment was made in accordance with law and by following the procedures contemplated. After scrutiny assessment, the return of income was admitted and final assessment order was passed and tax paid. Thus, the assessment became final and any further action must be strictly in accordance with the provisions contemplated. However, in the present case, 147 proceedings were initiated,

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148 notice was issued, but the Assessing Officer allowed the proceedings to lapse by not pursuing the action for a longer period and knowing the fact that time limit would expire on 31.12.2019, invoked Section 153C of the Act and issued the impugned Show Cause Notice and thus, the entire actions are without jurisdiction and, bad in law.

30. The learned Senior counsel Mr.K.V.Viswanathan, appearing on behalf of the writ petitioner in W.P.No.16689 of 2020, while adopting the arguments of the learned Senior counsel Dr.Abhishek Singhvi, in addition, submitted that, the actions of the respondents are colourable exercise of power. The capital gains are defined under Section 45 of the Act. Admittedly, the sale transaction occurred during the Financial Year 2013-14, the Assessment Year falls on 2014-15. Therefore, the Show Cause Notice issued for the Assessment Year 2015-16 is directly in violation of Section 45 of the Act. The capital gains pertaining to the sale transaction of the Financial Year 2013-14 falls under the AY 2014-15 and thus, the Show Cause Notice issued for AY 2015-16 is without jurisdiction.

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31. The learned Senior counsel referred the ***Calcutta Discount Company Limited (cited supra)*** again and pointed out that the writ petition is maintainable. The learned Senior counsel referred the ***Shelly Products (cited supra)*** case and reiterated the contentions raised by the learned Senior counsel Dr.Abhishek Singhvi. Apart from the said judgments, the learned Senior counsel Mr.Viswanathan cited the judgment of the High Court of Delhi in the case of ***South Asian Enterprises Ltd., and another Vs. Commissioner of Income Tax and another, in W.P.(C).No.4623 of 2001*** and the relevant paragraphs are extracted hereunder:

> *"**19.** The facts of the case as already noted show that the impugned notices under Section 147 of the Act were issued to the Petitioners consequent upon the search and seizure operations and subsequent to the issuance to them of the notices under Section 158BC of the Act. In other words, the impugned notices under Section 147 of the Act were issued by the Department even while it was seized of the block assessment proceedings. Notices under Section 158BC (a) of the Act had already been received by the Petitioners on 26th July 1999. They had filed their returns pursuant thereto for the block period 1st April 1988 to 22nd June 1998 on 10th September 1999. The subject matter of the block assessment proceedings,*

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as noted in the order dated 3rd August 2016 of the ITSC, was on the alleged bogus transactions in respect of the cinematographic films and the claim of depreciation. Further, the issue was additional income attributable to the business in cinematographic films.

***21.** It is not in dispute that the reasons for reopening of the assessment under Section 147 of the Act are more or less on the same grounds viz., the claim of depreciation on cinematographic films and income from lease rentals etc. In Ramballah Gupta v. ACIT (supra), it was held by the Madhya Pradesh High Court, that once a search was undertaken and a notice under Section 153A issued, then the question of issuing notice thereafter under Section 148 of the Act on the strength of the same material collected during the search did not arise.*

***25.** In the facts and circumstances of the present case, the Court is satisfied that reopening of the assessment for AYs 1994-95 to 1996-97 by the impugned notices dated 31st May 2001 under Section 148 of the Act during the pendency of the block assessment proceeding was impermissible in law. Having initiated the proceeding under Section 158BC for the block assessment, there was no justification to issue the aforementioned notice under Section 147 of the Act as that would undoubtedly result in parallel proceedings. They are based on the same materials which form subject matter of the*

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block assessment. The impugned notices dated 31stMay 2001 are hereby quashed."

32. Relying on the said judgment, the learned Senior counsel reiterated that once a search was conducted and a notice under Section 153A issued, then the question of issuing notice thereafter under Section 148 of the Act on the strength of search did not arise. It is contended that in the present case on 10.08.2018, the materials and informations regarding search and seizure operations was very much available with the Assessing Officer. The reasons recorded for re-opening of assessment under Section 148 were furnished to the petitioner and the said reasons clearly indicates that all the materials were made available to the Assessing Officer at the time of initiation of proceedings under Section 147/148 of the Act. Therefore, after initiation of 147/148 proceedings by issuing notice, thereafter the respondents cannot clutch the jurisdiction and initiate further action under Section 153C of the Act, more specifically, based on the same materials relied upon for initiation of re-opening proceedings under Section 147/148 of the Act. Thus, the impugned Show Cause Notice is without jurisdiction and thus, the writ petition is maintainable. Once the assessment became

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final with reference to the Financial Year 2014-15 and the final assessment order was passed, and based on search and seizure information provided by the Investigation Wing of the Department, the re-opening proceedings were initiated under Section 147/148 of the Act, thereafter, the Assessing Officer cannot reprobate and issue Notice under Section 153C of the Act, which is not only impermissible, but without jurisdiction and the manner in which the actions are initiated, establishes colourable exercise of power and the writ petitions are to be entertained and to be allowed.

33. The Calcutta High Court judgment in the case of ***Berger Paints India Limited Vs. Assistant Commissioner of Income Tax***, reported in ***(2009) SCC Online Cal 1906*** is cited and the relevant paragraphs are extracted hereunder:

> "***11.*** *The Assessing Officer did not pass any order under section 154 of the I.T. Act and the proceedings for rectification were dropped. In other words, the Assessing Officer, after considering the submissions of the petitioner, in the reply to the show cause, was of the view that rectification of the Assessment Order was not called for.*
>
> ***12.*** *However, the same officer issued the impugned notice*

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dated 28th August, 2003 under section 148 of the I.T. Act for reassessment of income for the year in question under section 147 of the said Act, and called upon the petitioner to file a revised return. The impugned notice does not disclose the reasons for the belief that income had escaped assessment.

34. *It is patently clear that assessment has been sought to be reopened on the basis of the same materials, on change of opinion. From the reasons, it is apparent that there were no new materials before the Assessing Officer wherefrom it could be deduced that the sum of Rs. 194.61 lacs, claimed as deduction or any part thereof was realized from customers.*

39. *As argued on behalf of the respondents, the Assessing Officer has jurisdiction under section 148 of the I.T. Act to issue notice of reassessment, upon reason to believe that, any income chargeable to tax has escaped assessment.*

41. *The Assessing Officer has not disclosed the reasons for the Assessing Officer to still believe that income that was the subject matter of rectification had still escaped assessment though that was not due to any obvious mistake, borne out from existing records.*

43. *The condition precedent for initiation of reassessment proceedings is, in any case, the formation of the belief, based on new materials that any income had escaped assessment. A notice under section 148 of the I.T. Act may not be issued*

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merely on change of opinion.

50. *The reassessment notice has been issued for virtually the same reasons for which rectification proceedings had earlier been initiated but dropped. The Assessing Officer has not disclosed any new materials for reopening assessment. Assessment cannot be re-opened merely on change of opinion, as has apparently been done in this case. The Assessing Officer on being satisfied that there was no apparent error in computation of income, on the basis of existing records, dropped the rectification proceedings. In the absence of any new and/or fresh materials and in the absence of any reason for formation of belief that even otherwise, income had escaped assessment even though there was no apparent mistake or error, the Assessing Officer lacked jurisdiction to issue the impugned notice."*

34. In the case of ***Khudiram Das Vs. The State of West Bengal and others***, reported in ***(1975) 2 SCC 81***, the Hon'ble Supreme Court of India ruled as follows:

*"**9.** But that does not mean that the subjective satisfaction of the detaining authority is wholly immune from judicial reviewability. The courts have by judicial decisions carved out an area, limited though it be, within which the validity of the*

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subjective satisfaction can yet be subjected to judicial scrutiny. The basic postulate on which the courts have proceeded is that the subjective satisfaction being a condition precedent for the exercise of the power conferred on the Executive, the Court can always examine whether the requisite satisfaction is arrived at by the authority : if it is not, the condition precedent to the exercise of the power would not be fulfilled and the exercise of the power would be bad. There are several grounds evolved by judicial decisions for saying that no subjective satisfaction is arrived at by the authority as required under the statute. The simplest case is whether the authority has not applied its mind at all; in such a case the authority could not possibly be satisfied as regards the fact in respect of which it is required to be satisfied. Emperor v. Shibnath Bannerji[AIR 1943 FC 75 : 1944 FCR 1 : 45 Cri LJ 341] is a case in point. Then there may be a case where the power is exercised dishonestly or for an improper purpose : such a case would also negative the existence of satisfaction on the part of the authority. The existence of "improper purpose", that is, a purpose not contemplated by the statute, has been recognised as an independent ground of control in several decided cases. The satisfaction, moreover, must be a satisfaction of the authority itself, and therefore, if, in exercising the power, the authority has acted under the dictation of another body as the

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Commissioner of Police did in Commissioner of Police v. Gordhandas Bhanji [AIR 1952 SC 16 : 1952 SCR 135] and the officer of the Ministry of Labour and National Service did in Simms Motor Units Ltd. v. Minister of Labour and National Service [(1946) 2 All ER 201] the exercise of the power would be bad and so also would the exercise of the power be vitiated where the authority has disabled itself from applying its mind to the facts of each individual case by self-created rules of policy or in any other manner. The satisfaction said to have been arrived at by the authority would also be bad where it is based on the application of a wrong test or the misconstruction of a statute. Where this happens, the satisfaction of the authority would not be in respect of the thing in regard to which it is required to be satisfied. Then again the satisfaction must be grounded "on materials which are of rationally probative value". Machindar v. King [AIR 1950 FC 129 : 51 Cri LJ 1480 : 1949 FCR 827] . The grounds on which the satisfaction is based must be such as a rational human being can consider connected with the fact in respect of which the satisfaction is to be reached. They must be relevant to the subject-matter of the inquiry and must not be extraneous to the scope and purpose of the statute. If the authority has taken into account, it may even be with the best of intention, as a relevant factor something which it could not properly take into account

in deciding whether or not to exercise the power or the manner or extent to which it should be exercised, the exercise of the power would be bad. Pratap Singh v. State of Punjab [AIR 1964 SC 72 : (1964) 4 SCR 733] . If there are to be found in the statute expressly or by implication matters which the authority ought to have regard to, then, in exercising the power, the authority must have regard to those matters. The authority must call its attention to the matters which it is bound to consider."

35. As laid down, in the present case also, the power is exercised dishonestly and for the improper purpose and thus, the case is to be construed as colourable exercise of power.

36. In the case of ***State of Punjab and another Vs. Gurdial Singh and others***, reported in ***(1980) 2 SCC 471***, the learned Senior counsel relied on paragraph 9 of the judgment, which reads as under:

*"**9.** The question, then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power — sometimes called colourable exercise or*

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fraud on power and oftentimes overlaps motives, passions and satisfactions — is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated: "I repeat . . . that all power is a trust — that we are accountable for its exercise — that, from the people, and for the people, all springs, and all must exist". Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, mala fides or fraud on

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power vitiates the acquisition or other official act."

37. The learned Senior counsel relied on the case of ***Nasir Ahmed Vs. Assistant Custodian General, Evacuee Property, U.P.Lucknow and another***, reported in ***(1980) 3 SCC 1***, wherein the Hon'ble Supreme Court of India in Paragraphs 4 and 5 held as follows:

> *"**4.** Under Rule 6 the notice under Section 7 must be issued in the prescribed form and contain the grounds on which the property is sought to be declared evacuee property. As stated earlier, the notice that was issued in this case merely reproduced the form without mentioning the particulars on which the case against the appellant was based. It was essential to state the particulars to enable the appellant to answer the case against him. Clearly therefore the notice did not comply with Rule 6 and could not provide a foundation for the proceedings that followed.*
>
> ***5.** What is said in the preceding paragraph makes it plain that the authority concerned did not apply his mind to the relevant material before issuing the notice. The same thing is apparent from another fact. It has been stated that on November 29, 1952 the Deputy Custodian, Deoria, dropped the proceeding seeking to declare the appellant an intending*

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evacuee and that on the same day he directed the initiation of a proceeding under Section 7. Section 7 requires the Custodian to form an opinion that the property in question is evacuee property within the meaning of the Act before any action under that section is taken. Also, under Rule 6 the Custodian has to be satisfied from information in his possession or otherwise that the property is prima facie evacuee property before a notice is issued. On November 29, 1952 no evidence was found to support a declaration that the appellant was an intending evacuee. There is no material on record to suggest that on that very day the authority had before him any evidence to justify the initiation of a proceeding to declare the appellant an evacuee and his property as evacuee property. The notice under Section 7 thus appears to have been issued without any basis. The Assistant Custodian General who found no merit in the revisional application preferred by the appellant overlooked these aspects of the case. We are therefore unable to agree with the High Court that the Assistant Custodian General's order did not suffer from any error."

38. In the recent case of ***UMC Technologies Private Limited Vs. Food Corporation of India and another***, reported in ***(2021) 2 SCC 551***, the

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Apex Court referred the said ***Nasir Ahmad case (cited supra)*** and held that if these conditions are not satisfied, the person cannot be said to have been granted any reasonable opportunity of being heard.

39. Importantly, the case of ***Commissioner of Income Tax-III, Pune. Vs. Sinhgad Technical Education Society***, reported in ***(2018) 11 SCC 490***, the Hon'ble Supreme Court of India laid down the principles, which reads as under:

> *"**14.** At the outset, it needs to be highlighted that the assessment order passed by the AO on 7-8-2008 covered eight assessment years i.e. Assessment Year 1999-2000 to Assessment Year 2006-07. As noted above, insofar as Assessment Year 1999-2000 is concerned, same was covered under Section 147 of the Act which means in respect of that year, there were re-assessment proceedings. Insofar as Assessment Year 2006-07 is concerned, it was fresh assessment under Section 143(3) of the Act. Thus, insofar as assessment under Section 153-C read with Section 143(3) of the Act is concerned, it was in respect of Assessment Years 2000-01 to 2005-06. Out of that, present appeals relate to four assessment years, namely, 2000-01 to 2003-04 covered by notice under Section 153-C of the Act.*

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There is a specific purpose in taking note of this aspect which would be stated by us in the concluding paragraphs of the judgment.

15. *In these appeals, qua the aforesaid four assessment years, the assessment is quashed by the ITAT (which order is upheld by the High Court) on the sole ground that notice under Section 153-C of the Act was legally unsustainable. The events recorded above further disclose that the issue pertaining to validity of notice under Section 153-C of the Act was raised for the first time before the Tribunal and the Tribunal permitted the assessee to raise this additional ground and while dealing with the same on merits, accepted the contention of the assessee.*

17. *The ITAT permitted this additional ground by giving a reason that it was a jurisdictional issue taken up on the basis of facts already on the record and, therefore, could be raised. In this behalf, it was noted by the ITAT that as per the provisions of Section 153-C of the Act, incriminating material which was seized had to pertain to the assessment years in question and it is an undisputed fact that the documents which were seized did not establish any co-relation, document-wise, with these four assessment years. Since this requirement under Section 153-C of the Act is essential for assessment under that provision, it becomes a jurisdictional fact. We find this reasoning to be logical and valid, having regard to the provisions of Section*

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153-C of the Act. Para 9 of the order of the ITAT reveals that ITAT had scanned through the Satisfaction Note and the material which was disclosed therein was culled out and it showed that the same belongs to Assessment Year 2004-05 or thereafter. After taking note of the material in para 9 of the order, the position that emerges therefrom is discussed in para 10. It was specifically recorded that the counsel for the Department could not point out to the contrary. It is for this reason the High Court has also given its imprimatur to the aforesaid approach of the Tribunal. That apart, the learned Senior Counsel appearing for the respondent, argued that notice in respect of Assessment Years 2000-01 and 2001-02 was even time-barred.

***18.** We, thus, find that the ITAT rightly permitted this additional ground to be raised and correctly dealt with the same ground on merits as well. Order of the High Court affirming this view of the Tribunal is, therefore, without any blemish. Before us, it was argued by the respondent that notice in respect of Assessment Years 2000-01 and 2001-02 was time-barred. However, in view of our aforementioned findings, it is not necessary to enter into this controversy."*

40. The learned Senior counsel relying on the said judgment,

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contended that as per the provisions of Section 153C of the Act, incriminating material, which were seized pertain to the assessment years in question and it is an undisputed fact that the documents, which were seized, did not establish any co-relation, document wise, with these 4 Assessment Years. In the present case, there was no incriminating material, which was seized, had to pertain to the Assessment Years in question. The search and seizure materials made available to the Assessing Officer on 10.08.2018 was acted upon and 148 proceedings were initiated with reference to the AY 2014-15. Thus, the issuance of the impugned Show Cause Notice under Section 153C of the Act for the AY 2015-16 has no relevance and there is no co-relation between the materials relied upon and the action taken under Section 153C of the Act. Thus, the very initiation *perse* lacks jurisdiction and the manner in which the 148 proceedings were allowed to lapse by the Assessing Officer, knowing the date of expiry i.e., 31.12.2019 and initiation of 153C proceedings is nothing, but colourable exercise of power.

41. The learned Senior counsel Mr.R.V.Easwar appearing for the

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petitioner in W.P.No.16692 of 2020, by supporting the contentions raised on behalf of the writ petitioner, proceeded with by arguing that validity of the Show Cause Notices with reference to the principles laid down by the Hon'ble Supreme Court of India in ***Sinhgad Technical Education Society case (cited supra)*** would provide a clear view that the invocation of Section 153C is beyond the scope of jurisdiction vested on the respondents and the cogent facts would reveal that the actions are legal malice and colourable exercise of power.

42. With reference to the documents, the learned Senior counsel Mr.R.V.Easwar referred the Notice issued under Section 148 of the Act on 20.08.2018 and relied on the reasons furnished in proceedings dated 12.10.2018. The learned Senior counsel vehemently contended that receiving of information from DDIT (Inv) in vide letter dated 10.08.2018 being one aspect of the matter, which provides details regarding search and seizure operations conducted under Section 132 of the Income Tax Act on 05.07.2018 in the case of M/s.Agni Estates and Foundations Private Limited. Importantly, the statements given by the Director of M/s.Agni

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Estates namely Mr.R.N.Jayaprakash was extracted in the said proceedings dated 12.10.2018 and not stopping with that, the respondents elaborated the reasons by stating that the DDIT (Inv), Unit-3(2), Chennai vide letter dated 20.08.2018 has forwarded copy of two excel sheets titled Muttu Agni 2015 and Muttukadu Guide 10012014, which have taken from the cloned copy of Hard Disk and other electronic devices shared by the Enforcement Directorate with Investigation Wing. The said Hard Disk and other electronic devices were seized from the premises of M/s.Advantage Strategic Consulting Private Limited by the Enforcement Directorate during the course of search. The information in excel sheets contains the details of land sold amount of cheque receipt of Rs.15,33,00,000/- and cash component of Rs.6,38,75,000/-, which tallied with the statement of Mr.R.N.Jayaprakash, Director of M/s.Agni Estate & Foundation Private Limited.

43. The above reasons furnished for re-opening of assessment under Section 147 of the Act would reveal that not only the information regarding the search and seizure operation, materials are made available to the

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Assessing Officer, but the Excel sheets as well as the Hard Disk and the other Electronic devices shared by the Enforcement Directorate with Investigation Wing were also made available to the Assessing Officer. Thus, it is apparently clear that the Assessing Officer was in possession of all the materials relating to the Search and seizure operations conducted on 05.07.2018 including the informations and materials. Thus, the actions initiated, if at all, must be concluded before the period of limitation as contemplated and in the present case, 31.12.2019. When the Assessing Officer could not able to complete the reassessment proceedings within the time limit prescribed, the original assessment order became final. Thereafter, based on the very same materials and relying on the informations made available vide letter dated 10.08.2018, estopped from issuing the Show Cause Notice under Section 153C of the Act.

44. The learned Senior counsel Mr.R.V.Easwar referred the "Satisfaction note" prepared for initiation of assessment proceedings under Section 153C of the Act in the case of the writ petitioner.

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45. Paragraph 7 of the "Satisfaction note", states that "in view of the above, since the assessee, Shri Karti Palaniappan Chidambaram had not disclosed true and full facts in his returns of income especially pertaining to on-money receipts pertaining to the sale of land belonging to him at Muttukadu, I am satisfied that the assessee Shri.Karti Palaniappan Chidambaram has failed to disclose his taxable of income., i.e., receipt of on-money pertaining to the sale of immovable property at Muttukadu. In view of the above, I am satisfied that the seized records also pertain to Shri.Karti Chidambaram and the seized papers have bearing on the taxable income for the AY 2014-15 & 2015-16. The information gathered from seized records, that is on-money receipt of Rs.6,38,75,000/- has not been disclosed by Shri.Karti Palaniappan Chidambaram in his return of income. Hence, this is a fit case for assessment/reassessment under Section 153C of the Income Tax Act, 1961.

46. By drawing contradictions, the learned Senior counsel Mr.R.V.Easwar contended that absolutely there was no "Satisfaction note" for the AY 2016-17, AY 2017-18 and AY 2018-19. When there is no

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"Satisfaction note" with reference to those assessment years, question of invoking Section 153C of the Act does not arise at all and beyond the scope of jurisdiction. Thus, it is to be construed that the mandatory requirement of "Satisfaction" has not been complied with and thus, the Show Cause Notice issued under Section 153C of the Act is liable to be set aside. Satisfactory note being the component incorporated in Section 153C of the Act, the said satisfaction must be based on the materials and informations for the purpose of assessment / reassessment and mere satisfaction is insufficient to meet out the requirement of satisfactory note prepared under Section 153C of the Act. Thus, there was no material for invoking Section 153C of the Act and consequently, exercise of power under Section 153C is colourable exercise and lacking jurisdiction.

47. The learned Senior counsel reiterating the principles laid down in the case of ***Sinhgad Technical Education Society (cited supra)***, said that as per the provisions of Section 153C of the Act, incriminating material, which was seized had to pertain to the assessment years in question and it is an undisputed fact that the documents, which were seized did not establish

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any co-relation, document-wise, with these four assessment years. It is contended that the above principles would squarely apply with reference to the facts of the writs on hand. With reference to the AY 2016-17, AY 2017-18 and AY 2018-19. There is no material available on record and admittedly, the entire sale transaction took place during the Financial Year 2013-14 and the AY is 2014-15. With reference to the said AY 2014-15, 148 proceedings were initiated for re-opening of assessment and the said proceedings was allowed to be lapsed. Thus, there is no material or informations for the purpose of issuing impugned Show Cause Notice under Section 153C of the Act.

48. The learned Senior counsel for petitioner, Mr.AR.L.Sundaresan representing W.P.Nos.16710, 16716, 16719, 16758, 16760 and 16764 of 2020, contended that in the case of the petitioner in the above writ petitions, Smt.Srinidhi Karti Chidambaram, wife of Karti Palaniappan Chidambaram also submitted her return of income on 28.08.2015 for the AY 2015-16. The sale transaction occurred during the Financial Year 2014-15. The scrutiny proceedings were undertaken and the final assessment order under Section

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143(3) of the Act was passed on 29.12.2017. The re-opening of assessment proceedings was initiated under Section 147 of the Act and Notice under Section 148 of the Act was issued on 20.08.2018 for the AY 2015-16. It is contended that the Assessing Officer has "reason to believe" that the income of the petitioner chargeable to tax for the AY 2015-16 has escaped assessment within the meaning of Section 147 of the Act. Pursuant to the 148 Notice dated 20.08.2018, the reasons were furnished. The reasons furnished would reveal that "information in the possession of the "AO" reveals that the assessee had received 'on money' payment in cash over and above the registered value, which was not disclosed in the "ROI" filed or during the course of 143(3) proceedings. It is a failure on the part of the assessee in not disclosing fully and truly all material facts, which has a bearing on the taxable income of the assessee. Hence, it is a fit case for re-opening under Section 148 of the Act".

49. The learned Senior counsel relying on the reasons furnished for re-opening of assessment under Section 148, contended that in the present case also, the Assessing Officer was in possession of the search and seizure

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materials pursuant to the informations provided by DDIT (Inv) vide letter dated 10.08.2018. The letter dated 20.08.2018 would reveal that the Investigation Wing forwarded the copy of two Excel sheets titled Muttu Agni 2015 and the said Excel sheets shows the details of land sold amount of cheque receipt of Rs.15,33,00,000/- and cash component of Rs.6,38,75,000/-, which tallied with the statement of Mr.R.N.Jayaprakash, Director of M/s.Agni Estate & Foundation Private Limited. When those materials were very much available with the hands of the Assessing Officer for initiation of re-opening proceedings under Section 147 of the Act, there is absolutely no reason for issuing the impugned Show Cause Notice under Section 153C of the Act at the later point of time, more so, during the fag end of the expiry of limitation period for completion of re-opening proceedings initiated under Section 148 of the Act i.e., 31.12.2019.

50. Thus, the abatement clause invoked by the respondents are nothing, but the colourable exercise of power, in order to cover up the misdeeds and therefore, the entire actions are motivated and amounts to legal malice.

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51. The learned Senior counsel for the petitioner relied on the "Satisfaction note" and contended that the "Satisfaction note" refers to the same materials, which was in possession of the Assessing Officer at the time of re-opening of assessment under Section 148 of the Act. The amount stated in the "Satisfaction note" resulted in issuance of the impugned Show Cause Notice under Section 153C reveals that the materials for initiation of 147 proceedings and issuance of 153C impugned Show Cause Notice are one and the same. In view of all these reasons, the impugned Show Cause Notices are liable to be set aside.

ARGUMENTS ON BEHALF OF THE RESPONDENTS

52. The learned Additional Solicitor General of India persuaded this Court to look into the conduct of the assessee in all the writ petitions. The materials and its availability on various occasions during different period of time are distinguished and contended that there was absolutely no legal malice or otherwise on the part of the respondents in the present case. The facts, circumstances, conduct and the materials gathered, confiscated

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resulted in initiation of actions under Section 153C of the Act and therefore, the careful analysis of the facts with reference to the materials relied upon and the "Satisfaction note" are important to form an opinion with reference to the alleged ground of legal malice, lack of jurisdiction, violation of Principles of Natural Justice raised on behalf of the writ petitioners. At the outset, it is reiterated none of these grounds are established by the petitioners with reference to the legal principles settled by the Hon'ble Supreme Court, and with reference to the application of facts in the present writ petitions. Thus, it is relevant to consider the dates and events.

53. The writ petitioner sold three parcels of land (total extent of 5.11 acres) belonging to him through three sale deeds dated 31.01.2014, 27.03.2014 and 27.03.2014 to M/s.Agni Estates and Foundation Private Limited at the price of Rupees Three Crore per acre. However, in respect of the contiguous piece of land owned by Smt.Nalini Chidambaram, the land was sold at Rs.4.25 crores per acre. The writ petitioner had filed his return of income for the AY 2014-15 on 29.07.2014, declaring a total income of Rs.45,18,430/- The case was selected for scrutiny under CASS and an order

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under Section 143(3) was passed on 30.12.2016. By this order, The Assessing Officer, ACIT, Non-Corporate Circle-3, Chennai, assessing an income of Rs.70,36,366/- on account of income from the sale of coffee and pepper. An appeal was preferred against CIT (A)-4 and the said appeal was allowed vide order dated 26.09.2017. The said order was accepted by the Department in view of the low tax effect. Subsequently, a search was conducted in the premises of M/s.Advantage Strategic on 01.12.2015 and in the premises of M/s.Agni Estates and Foundation Private Limited from 05.07.2018 till 09.07.2018. Certain evidences were procured in the form on small note books numbered from 1 to 175 seized vide annexure ANN/ARS/AP/B&D/S-1 during the search conducted under Section 132 in the premises of M/s.Agni Estates and Foundations Private Limited. Pursuant to the search, the second respondent communicated information relating to the search to the third respondent / Assessing Officer. It was intimated that the writ petitioner had arranged for cash payments in addition to the sale consideration in respect of the aforesaid three sale deeds.

54. The second respondent, who was the officer, who conducted the

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search, vide two communications on 10.08.2018 and 20.08.2018, intimating the aforesaid communication to the third respondent. The third respondent had, based on the information so received, issued a notice dated 20.08.2018 under Section 148 of the Income Tax Act, stating that he "has reasons to believe" that income had escaped assessment within the meaning of Section 147. Subsequently, the seized material was received by the third respondent i.e., the Assessing Officer having jurisdiction over the searched person i.e., M/s.Agni Estates and Foundations Private Limited on 22.08.2019. On 28.11.2019, satisfaction was recorded and show cause notice was issued on 16.12.2019 in the case of the petitioner for assessment under Section 153C. The case involves two distinct and separate assessments/reassessments. The proceedings initiated was reassessment proceedings under Section 147/148 of the Act for AY 2014-15 and the proceedings for Search assessment under Section 153C for AY 2013-14 to AY 2018-19.

55. Regarding the preliminary issue, the learned Additional Solicitor General of India contended that, whether the existence of alternate remedy would operate as a bar in the instance case. In the instant case, it is

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abundantly clear that the statutory remedy provided under the Income Tax Act would be efficacious and exhaustive, which has the jurisdiction to hear and decide as to all the objections put forth by the writ petitioner. This is made clear by analysing the scheme of assessment provided under Chapter XIV of the Income Tax Act, 1961. In reliance, the Hon'ble Supreme Court of India in the case of ***Commissioner of Income Tax Vs. Vijaybhai N.Chandrani***, reported in ***357 ITR 713(SC)***, categorically states that notice issued under Section 153C cannot be challenged in writ petitions.

56. The learned Additional Solicitor General of India elaborating the scheme of assessment / reassessment, contended that informations and materials available on the particular date are distinguished. M/s.Advantage Strategic Consulting Private Limited is a company owned by the petitioners and therefore, perusal of the informations recorded, materials available are to be distinguished for the purpose of initiation of proceedings under Section 153C of the Act.

57. Referring the reasons furnished for re-opening of assessment

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under Section 148 of the Act in proceedings dated 12.10.2018, the learned Additional Solicitor General of India contended that the reasons relied on by the petitioners regarding Hard Disk and other Electronic Devices shared by the Enforcement Directorate with Investigation Wing. The said Hard Disk and other electronic devices were seized from the premises of M/s.Advantage Strategic Consulting Private Limited by the Enforcement Directorate during the course of search. Thus, the reasons for 148 proceedings would reveal that the Electronic devices seized were from the premises of the petitioner's company by the Enforcement Directorate. The informations at the first instance noticed was that with reference to the connected sale transactions, the mother of the writ petitioner Smt.Nalini Chidambaram had decided to take the entire sale consideration by cheque and her portion of land was registered for Rs.4.25 Crore per acre, whereas the assessee in the present case is accepted the part and parcel of the balance sale consideration i.e., 1.25 Crore per acre. This exactly the informations received by the Enforcement Wing i.e., the Enforcement Directorate, which resulted in initiation of re-opening proceedings under Section 148 of the Act. In view of this reason, the Assessing Officer has “reason to believe”

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that there was a failure on the part of the assessee in not disclosing fully and truly all material facts necessary for completion of assessment. Thus, there was no error or lack of jurisdiction, for initiation of 147 proceedings.

58. The learned Additional Solicitor General of India distinguishing the reasons furnished for re-opening proceedings, drawn the attention of this Court with reference to the "Satisfaction Note" enumerated in proceedings dated 6th January 2020, furnishing of the reasons and copies of the materials relied upon to the assessee. A satisfaction note along with seized materials and copies of sworn statements were received from the Assessing Officer of M/s.Agni Estates and Foundation Private Limited (AAACA7990C), DCIT, Central Circle-2(1) in the case of Shri.Karti Palaniappan Chidambaram (AAAPC54881) regarding receipt of on-money on the sale of immovable property at Muttukadu during the course of search in the case of M/s.Agni Estates & Foundation Private Limited, on 05.07.2018 along with relevant seized materials (small note books) vide annexure:ANN/ARS/AP/B&D/S and loose sheets containing sale agreements vide annexure:ANN/ARS/AGP/LS/S-2 from the premises of M/s.Agni Plots, (of

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Agni group) Old No:30, New No.16, Conran Smith Road, Gopalapuram, Chennai and sworn statements dated 08.07.2018 of Shri.K.Narayanan, Accountant and Cashier of Flame Advertising Company Private Limited of Agni group and the Sworn statements of Shri.R.N.Jayaprakash, dated 09.07.2018, 11.07.2018 and 17.08.2018 and the sworn statement of Shri.S.Dhilip kumar dated 08.07.2018.

59. It is contended that the verification of the satisfaction note and the seized records received, it was noticed that there was a search in the case of M/s.Agni Estates and Foundations Private Limited (AAACA7990C) group of cases on 05.07.2018 under Section 132 of the Income Tax Act, 1961. The company was incorporated in the year 1992 by Shri.Rajan Jayaprakash Narasimulu, who is a Director and the main person operating Agni group of companies. Consequently, there was search at the premises of M/s.Agni Plots, Old No:30, New No.16, Conran Smith Road, Gopalapuram, Chennai from where small note books vide annexure:ANN/ARS/AP/B&D/S and loose sheets containing sale agreements vide annexure:ANN/ARS/AGP/LS/S-2 were seized. During the course of search,

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it was found that M/s.Agni Estates & Foundation Private Limited, had purchased immovable property in Muttukadu from Shri.Karti Chidambaram, Smt.Srinidhi Karti Chidambaram and Smt.Nalini Chidambaram at Rs.4.25 Crore per acre. However, in the case of Shri.Karti Chidambaram and Smt.Srinidhi Chidambaram, the properties were registered at the guideline value of Rs.3 Crore per acre and the balance was paid in cash. In the case of Smt.Nalini Chidambaram, the full consideration at Rs.4.25 Crore per acre was paid by way of cheque.

60. It is contended that the above materials provided a cause to proceed with the action under Section 153C and regarding the contentions raised on behalf of the writ petitioner that the different Assessment Years. The ground raised by the petitioner that the relevant Assessment Year is AY 2014-15 and the impugned notices issued for subsequent Assessment Years are no way connected with the said sale transactions occurred during the Financial Year 2013-14. In this regard, the learned Additional Solicitor General drawn the attention with reference to the "Satisfaction Note" again, wherein Answer to Question No.16 asked with Mr.K.Narayanan,

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Accountant and Cashier of Flame Advertising company Private Limited of Agni Groups.

61. The said Mr.Narayanan deposed that there are regular cash payment entries made to Shri.Karti Chidambaram. He confirms that there are regular cash payments made to Shri.Karti Chidambaram and the details of the same were noted down by him as seen from his answers to Question Nos.11,12 & 13 and also from the notebooks numbered from 1 to 175 seized vide annexure ANN/ARS/AP/B&D/S-1, during the course of search proceedings under Section 132 at Agni Plots, Old No:30, New No.16, Conran Smith Road, Gopalapuram, Chennai on 05.07.2018. The details regarding payment of cash on various dates in favour of Mr.Karti Chidambaram pursuant to the directions of Mr.Jayaprakash, MD of Agni Group of institutions were also relied on by the respondents in order to contend that the "Satisfaction note" complies with the requirements of Section 153C and there were materials on record to initiate assessment/reassessment proceedings even for the subsequent years i.e., AY 2015-16, AY 2016-17, AY 2017-18 and AY 2018-19.

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62. The learned Additional Solicitor General of India relied on the sworn statements of Sri.S.Dhilip kumar, Assistant General Manager of M/s.Agni Estates and Foundations Private Limited, who in turn, in his statement dated 08.07.2018, reply to Question No.6, stated that he was working as Assistant General Manager of M/s.Agni Estates and acting as Secretary looking after Finance related activities of Managing Director of Agni group of companies Shri.R.N.Jayaprakash for the past 24 years. Thus, the reliability of the sworn statements is to be trusted. He confirmed that the cash payments to Shri.Karti Chidambaram and his wife Smt.Srinidhi by M/s.Agni Estates and Foundations Private Limited and the transactions are not reflected in the books of accounts of M/s.Agni Estates and Foundations Private Limited. Further, he has deposed that the cash was handed over by him to Shri.Karti Chidambaram based on the directions of his MD Shri.Jayaprakash. He confirmed that the sale price fixed for the property was Rs.4.25 Crore per acre against the guideline value of Rs.3 Crore. The total consideration was Rs.21,71,75,000/- (5.11 acre, 4.25 Crores per acre) for Shri.Karti Chidambaram; Rs.9,01,00,000/- (2.12 acre, 4.25 Crores per

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acre) for Smt.Nalini Chidambaram and Rs.5,01,50,000/- (1.18 acre, 4.25 Crores per acre) for Smt.Vasanthi Rangarajan. Further, Mr.S.Dhilip kumar has stated that Smt.Nalini Chidambaram desired the entire consideration to be paid in cheque and hence, wanted her portion of land to be registered for Rs.4.25 Crores per acre, while Shri.Karti and Smt.Srinidhi Karti insisted on registering only on the guideline value of Rs.3.00 Crores per acre. Accordingly, Smt.Nalini Chidambaram's portion was registered for Rs.9,01,00,000/-(2.12*4.25 Crores) while Shri.Karti and Smt.Srinidhi's portions were registered for Rs.15.33 Crores (5.11*3 Crores) and Rs.3.54 Crores (1.18*3 Crores) respectively and the balance consideration was paid in cash on various dates.

63. The said Mr.S.Dhilip kumar, Assistant General Manager, on 09.07.2018, has stated in his sworn statements that the cash component paid to Shri Karti Chidambaram on various dates are maintained by his staff name Shri.Dhilip and Shri.K.Narayanan. Based on these materials, the Show Cause Notices under Section 153C of the Act was issued. Thus, there is no violation of Principles of Natural Justice. The authorities applied their mind

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carefully with reference to the facts and circumstances and therefore, the writ petitions are devoid of merits.

64. In respect of the Show Cause Notices issued for various Assessment Years from the Assessment Year AY 2014-15 to AY 2018-19, the learned Additional Solicitor General of India reiterated that the cash components were paid to Mr.Karti Chidambaram from 07.10.2014 to 30.06.2018 on various dates, covering all the above mentioned Assessment Years. The Sale deeds were executed on 31.01.2014 and on 27.03.2014 and the date of cash payment would reveal that the cash payments were made till 30.06.2018.

65. However, the Income Tax Department may not know, whether such cash payments are paid in continuation of the sale transactions, which were completed in the year 2014 or for any other purposes. The respondents have not taken a final decision with reference to the reasons for making such cash payments by M/s.Agni Estates to the petitioners. However, they received informations and the materials were available on record to

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establish that the petitioners have received cash on hand on various dates from 07.10.2014 to 30.06.2018. The sworn statements of Mr.S.Dhilip Kumar and R.N.Jayaprakash would reveal that the payments are made. The purpose of payment is to be explained by the assessee before the respondents. Thus, the respondents have not formed an opinion, whether the cash payments are made on various dates upto 30.06.2018 with reference to the completed sale transactions or for any other purposes. Thus, the details regarding the payments are not disclosed fully and truly by the assessee during the relevant Assessment Years and therefore, the authorities thought fit and invoked Section 153C of the Act in order to assess / reassess the income escaped assessment.

66. The contention raised by the petitioners that these entire sale transactions concluded during the Financial Year 2013-14 and the relevant Assessment year would be AY 2014-15 and the subsequent alleged payment of cash on hand pursuant to the materials seized are no way connected with the sale transactions and it is unbelievable that a buyer will pay cash to the seller after completion of the entire sale transaction is unsustainable. Such

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an inference has no basis, in view of the fact that the respondents have not formed any opinion nor arrived any such conclusion. The materials available on record and its sufficiency were considered by the authorities for invoking the powers under Section 153C of the Act and therefore, such factual inferences formed by the petitioners are mere personal opinions and the authorities have never formed any such opinion and they are open to consider the explanations / objections, if any to be submitted by the petitioners in this regard. The assessee is bound to explain the reasons and the transactions regarding the 'on cash' payments. For this reasons, the notices were issued for the relevant Assessment Years falling upto AY 2018-19 and therefore, there is no infirmity or perversity as such.

67. The contention of the petitioners that the respondents have issued Show Cause Notice dated 18.03.2021 after issuance of the Status quo order is not in violation of the interim order granted by this Court. The learned Additional Solicitor General of India made a reference to the interim order passed by this Court, wherein this Court directed the petitioner to submit their replies to the impugned Show Cause Notice before the respondent

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without prejudice to the contentions in their case. Thus, the subsequent Show Cause Notice dated 18.03.2021, providing the particulars regarding various Assessment Years are not in violation of the interim order passed by this Court and the respondents have not proceeded further and awaiting for the orders of this Court in these writ petitions.

68. The learned Additional Solicitor General of India referred the order dated 17.03.2021 passed by the High Court of Madras in W.P.No.35076 of 2019 & etc., batch filed by M/s.Agni Estates & Foundations Private Limited, challenging the Notice dated 01.11.2019. The said impugned notice was issued under Section 153A of the Income Tax Act. Section 153A was invoked as the search was conducted in the premises of M/s.Agni Estates and Foundations Private Limited. In the said judgment, this Court made the following observations in Paragraphs 7, 8 and 26:

> *"**7.** In a common counter affidavit filed in W.P.Nos.35076, 35082, 35084, 35086, 35088 & 35090 of 2019, all of which are filed by the company and challenge notices issued in terms of Section 153A of the Act, the Deputy Director of Income Tax (Investigation)/R2 gives the background to the*

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entire proceeding. A joint search and survey was conducted by the Income Tax Department and Enforcement Directorate (ED) in the premises of Advantage Strategic Consulting Private Limited and others on 01.12.2015. Upon analysis of the electronic devices seized by the ED in that search and handed over to the Department, transactions of purchase of immovable property inter se the petitioner company and Karthi P. Chidambaram and his family were found. The seized details revealed that unaccounted cash had been paid to the sellers and subsequent enquiries showed that the properties in question had been sold to a company by the name of Handhold Ventures Private limited.

8. *On the basis of the above intel, action under Section 132 was conducted in the case of the petitioner company, its affiliates and connected personnel from 05.07.2018 to 09.07.2018, covering in all, 21 premises. As per the counter, substantial material including 175 small note books indicating unaccounted cash payments and investments in foreign entities and banks in Mauritius, Seychelles, Hong Kong, the British Virgin Islands and Singapore were found. Serious allegation are made in regard to the alleged escapement of income and assets to tax.*

26.*As regards the main contention of the petitioner in regard to delay in handing over the seized materials to R1, R2*

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confirms that the seized materials were handed over by him to R1 on 22.08.2019 and R1 was thus in possession of the same when he issued the notices under Section 153A. This, according to the revenue, satisfies the statutory prescription in this regard."

69. Based on the above findings, the writ petitions filed by M/s.Agni Estates and Foundations Private Limited are dismissed.

70. The learned Additional Solicitor General of India relied on the judgment of the ***High Court of Delhi in the case of Commissioner of Income Tax Vs. Anil Kumar Bhatia***, reported in ***[2012] 24 taxmann.com 98 (Delhi)***, and the relevant paragraphs are extracted hereunder:

*"**16**. We now proceed to discuss the correctness of the conclusion of the Tribunal that the Assessing Officer had wrongly invoked Section 153A of the Act. This Section was introduced into the Act by the Finance Act, 2003 w.e.f. 1.6.2003 along with Sections 153B and 153C. Section 153A provides for 'assessment in case of search or requisition'. It runs as follows: "**153A.** [(1)] Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and*

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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, 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 return of income in respect of each assessment year falling within six assessment 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:

***Provided** that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years.*

***Provided further** that assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years referred to in this [sub-section] pending on the date of initiation of the search under section 132 or making*

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of requisition under section 132A, as the case may be, shall abate.

[(2) If any proceeding initiated or any order of assessment or reassessment made under subsection (1) has been annulled in appeal or any other legal proceeding, then, notwithstanding anything contained in sub-section(1) or section 153, the assessment or reassessment relating to any assessment year which has abated under the second proviso to sub-section (1), shall stand revised with effect from the date of receipt of the order of such annulment by the Commissioner.

***Provided** that such revival shall cease to have effect, if such order of annulment is set aside.] Explanation.- For the removal of doubts, it is hereby declared that-*

(i) save as otherwise provided in this section, section 153B and section 153C, all other provisions of this Act shall apply to the assessment made under this section;

(ii) in an assessment or reassessment made in respect of an assessment year under this section, the tax shall be chargeable at the rate or rates as applicable to such assessment year."

***19**. Under the provisions of Section 153A, as we have already noticed, the Assessing Officer is bound to issue notice to the assessee to furnish returns for each assessment year falling within the six assessment years immediately preceding the assessment year relevant to the previous year in which the*

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search or requisition was made. Another significant feature of this Section is that the Assessing Officer is empowered to assess or reassess the "total income" of the aforesaid years. This is a significant departure from the earlier block assessment scheme in which the block assessment roped in only the undisclosed income and the regular assessment proceedings were preserved, resulting in multiple assessments. Under Section 153A, however, the Assessing Officer has been given the power to assess or reassess the 'total income' of the six assessment years in question in separate assessment orders. This means that there can be only one assessment order in respect of each of the six assessment years, in which both the disclosed and the undisclosed income would be brought to tax.

***20**. A question may arise as to how this is sought to be achieved where an assessment order had already been passed in respect of all or any of those six assessment years, either under Section 143(1)(a) or Section 143(3) of the Act. If such an order is already in existence, having obviously been passed prior to the initiation of the search/requisition, the Assessing Officer is empowered to reopen those proceedings and reassess the total income, taking note of the undisclosed income, if any, unearthed during the search. For this purpose, the fetters imposed upon the Assessing Officer by the strict procedure to assume jurisdiction to reopen the assessment under Sections*

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147 and 148, have been removed by the non obstante clause with which sub section (1) of Section 153A opens. The time-limit within which the notice under Section 148 can be issued, as provided in Section 149 has also been made inapplicable by the non obstante clause. Section 151 which requires sanction to be obtained by the Assessing Officer by issue of notice to reopen the assessment under Section 148 has also been excluded in a case covered by Section 153A. The time-limit prescribed for completion of an assessment or reassessment by Section 153 has also been done away with in a case covered by Section 153A. With all the stops having been pulled out, the Assessing Officer under Section 153A has been entrusted with the duty of bringing to tax the total income of an assessee whose case is covered by Section 153A, by even making reassessments without any fetters, if need be.

***21**. Now there can be cases where at the time when the search is initiated or requisition is made, the assessment or reassessment proceedings relating to any assessment year falling within the period of the six assessment years mentioned above, may be pending. In such a case, the second proviso to sub section (1) of Section 153A says that such proceedings "shall abate". The reason is not far to seek. Under Section 153A, there is no room for multiple assessment orders in respect of any of the six assessment years under consideration.*

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That is because the Assessing Officer has to determine not merely the undisclosed income of the assessee, but also the 'total income' of the assessee in whose case a search or requisition has been initiated. Obviously there cannot be several orders for the same assessment year determining the total income of the assessee. In order to ensure this state of affairs namely, that in respect of the six assessment years preceding the assessment year relevant to the year in which the search took place there is only one determination of the total income, it has been provided in the second proviso of sub Section (1) of Section 153A that any proceedings for assessment or reassessment of the assessee which are pending on the date of initiation of the search or making requisition "shall abate". Once those proceedings abate, the decks are cleared, for the Assessing Officer to pass assessment orders for each of those six years determining the total income of the assessee which would include both the income declared in the returns, if any, furnished by the assessee as well as the undisclosed income, if any, unearthed during the search or requisition. The position thus emerging is that where assessment or reassessment proceedings are pending completion when the search is initiated or requisition is made, they will abate making way for the Assessing Officer to determine the total income of the assessee in which the

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undisclosed income would also be included, but in cases where the assessment or reassessment proceedings have already been completed and assessment orders have been passed determining the assessee's total income and such orders are subsisting at the time when the search or the requisition is made, there is no question of any abatement since no proceedings are pending. In this latter situation, the Assessing Officer will reopen the assessments or reassessments already made (without having the need to follow the strict provisions or complying with the strict conditions of Sections 147, 148 and 151) and determine the total income of the assessee. Such determination in the orders passed under Section 153A would be similar to the orders passed in any reassessment, where the total income determined in the original assessment order and the income that escaped assessment are clubbed together and assessed as the total income. In such a case, to reiterate, there is no question of any abatement of the earlier proceedings for the simple reason that no proceedings for assessment or reassessment were pending since they had already culminated in assessment or reassessment orders when the search was initiated or the requisition was made."

71. Relying on the above findings, it is contended that in order to ensure this State of affairs namely, that in respect of the six assessment

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years preceding the assessment year relevant to the year in which the search took place there is only one determination of the total income, it has been provided in the second proviso of sub Section (1) of Section 153A that any proceedings for assessment or reassessment of the assessee, which are pending on the date of initiation of the search or making requisition "shall abate". Once those proceedings abate, the decks are cleared, for the Assessing Officer to pass assessment orders for each of those six years determining the total income of the assessee, which would include both the income declared in the returns, if any, furnished by the assessee as well as the undisclosed income, if any, unearthed during the search or requisition.

72. Relying on the said judgment, and the scheme of assessment under the Income Tax Act, it is contended that the proceedings under Section 147/148 abated and did not lapse as Section 147 proceedings were pending as on the date of receipt of seized materials by the Assessing Officer having jurisdiction over the petitioner. Regardless of whether the proceedings abated, owing to the Non-Obstante clause contained in Section 153C, upon receipt of seized material, the Assessing Officer could only

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proceed under Section 153C. The date of receipt of seized material, at the time of issuing notice under Section 153C, proceedings under Section 147/148 were not complete and therefore, the proceedings never achieved finality when notice was issued under Section 148. The 60-day time period prescribed under Section 132(9A) has been held in a plethora of cases to only be directory and not mandatory. Further, the said clause is not applicable to the petitioner and the other person assessment under Section 153C is depending upon the date of record of satisfaction and not on the search dates and or handing over of seized materials. The Madras High Court in the case of the very same searched person Agni Estates and Foundations by order dated 17.03.2021 in W.P.Nos.35076, 13209, 13218, 13368, 35082, 35084, 35086, 35088 & 35090 of 2019, held that the handing over of seized materials beyond 60 days will not vitiate the assessment.

73. The petitioner has erred in rushing to this Hon'ble Court through these writ petitions under Article 226, when he could have instead followed the statutory appeal process. The instant writ petition involves complicated question of law and fact and therefore, the exercise of extraordinary writ

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jurisdiction at this stage may not be appropriate. The agitation of the petitioner that only the Assessment Years to which the seized material has any direct nexus must be reopened and other Assessment Years must be quashed ought to be agitated before the Appellate Forum under the Act against the Final assessment order passed by the Assessing Officer. Such a remedy ought not to be granted at this stage by quashing the notice without allowing the Assessing Officer to make a final factual determination.

74. It is contended that the Reassessment proceedings under Section 147/148 was based on information provided pursuant to the search conducted in the premises of M/s.Agni Estates and Foundations Private Limited between 05.07.2018 till 09.07.2018. The information was received by the Assessing Officer in respect of the search was initiated to the Assessing Officer having jurisdiction over the writ petitioner on 10.08.2020 and 20.08.2020. Pursuant to the same, a notice was sent under Section 148 on 20.08.2018. This was, however, prior to the receipt of seizure of material which was received by the 2nd respondent on 22.08.2019 and satisfaction under Section 153C recorded on 28.11.2019 and 16.12.2019. The Assessing

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Officer received these documents from the 2nd respondent much later and therefore, it is clear that at the time of issuing notice under Section 148, the Assessing Officer had not received the material seized pursuant to the search. Consequently, the Assessing Officer, at that juncture, could not have issued a notice under Section 153C read with Section 143(2). By extension, it is clear that the proceedings initiated 147 abated upon issuance of notice under Section 153C on 16.12.2019.

75. The conduct of the petitioner post issuance of notice under Section 148 must also to be considered. The writ petitioner undertook earnest efforts in order to ensure the proceedings under Section 147/148 could not be completed. The petitioner periodically sought adjournments throughout the proceedings and the details and nature of the same are also elaborated in the counter filed by the respondents, more specifically, in Paragraph 15 of the counter affidavit of the third respondent, which reads as under:

> "15. I submit in reply to para 17, that, the petitioner's representative sought adjournment periodically referring to the

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non-receipt of copies of marked documents from the Additional Chief Metropolitan Magistrate Court, EO-II, Egmore, Chennai referring to the trial In E.O.C.No.266 of 2018 filed against the Petitioner under Sections 276C and 277 of the Act. The petitioner sought not to proceed further on the re-assessment proceedings vide various letters as below:

(i) The petitioner's representative vide letter dated 19.09.2018 filed on 24.09.2018, sought copy of the “reasons” and the "satisfaction" on the basis of which proceedings u/s 148 were initiated, to respond to the notice u/s 148. The reasons were furnished on 12.8.2018.

(ii) The petitioner’s representative vide letter dated 09.11.2018, filed on 12.11.2018, stated that his client is perusing the reasons recorded for the reopening of assessment as well as the certified copy of the voluminous documents that were marked as prosecution documents and made available to his client by the Additional Chief Metropolitan Magistrate, Egmore, Chennai. Further, the petitioner's representative stated

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as below:

> "*Also, since the notice under section 148 was issued on 20.08.2018, i.e. FY 2018-19, the time limit for passing the reassessment order under section 153 of the Income Tax Act is 31st December 2019, viz. 9 months from the end of the financial year in which the notice under section 148 was issued.*
>
> *It is therefore requested that you kindly await my client's response to your letter referred to above and not pass any reassessment order until receipt of my client's response"*

(iii) The petitioner's representative vide letter dated 26.11.2018, stated that, referring to the letter dated 09.11.2018 filed on 12.11.2018 seeking time to peruse the voluminous documents given to his client by the Additional Chief Metropolitan Magistrate, Egmore, Chennai and frame their response, stated as below:

> *"We have received only part Information from court and court hearing is pending for*

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Wednesday 28.11.2018. In view of the above, I request you to defer the said matter by four weeks and oblige."

The hearing was adjourned to 17.12.2018 at 11:30 A.M.

(iv) The petitioner's representative vide letter dated 17.12.2018, stated as below:

"I am furnishing this letter under instructions of my client Mr.Karti P Chidambaram, residing at No.16, Pycrofts Garden Road, Chennai - 600006. On 12.12.2018, the economic offence case EOC No.266 of 2018 that was filed by the Income Tax Department against my client came up for hearing before the Ld' Additional Metropolitan Magistrate, Allikulam Complex, Chennai. On the said date, the Income Tax department had sought for time until 02-01-2019 to produce further documents for submission and marking. Copies of these documents would be made available to my client only after marking and approval by the said Hon'ble Court.

Since these documents may have a direct

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bearing on my client's assessment proceedings, we wish to peruse the same before making any further submissions before this authority. It is therefore requested that the hearing scheduled for 17th December 2018 be adjourned to any date during the third week of January, 2019, pending receipt of the marked documents by my client".

(v) The petitioner's representative vide letter dated 04.10.2019, stated that,

"Vide letter dated 26.11.2018, my client had informed you that we were yet to receive all the documents from the Hon'ble Court of the Addl Chief Metropolitan Magistrate, Egmore, Chennai and sought an adjournment of 4 weeks. The case was posted for hearing on 17.12.2018. On 17.12.2018, we had informed you that the Income Tax Department had sought time till 02.01.2019 to produce further documents before the Hon'ble Court and that such documents would be made available to my client only after marking and approval by the Hon'ble Court. We had requested that the hearing be adjourned by 4 weeks, pending receipt of marked documents. We are yet to receive

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the prosecution documents marked and approved by the Court"

Further, the petitioner's representative sought copies of the information received from DDIT(lnvestigation) dated 10.08.2018, 20.08.2018, Statements of Shri.K.Narayanan. R.N.Jayaprakash. and copies of two alleged excel sheets, which were furnished vide this office letter 05.11.2019.

Thus, it could be seen that the delay in the conclusion of the re-opened assessment proceedings was solely on account of the time sought by the petitioner referring to the court proceedings time and again. Presumption of conclusion of the assessment proceedings before any order being passed without any adverse findings is not factually and legally tenable. Hence, the assertions of the petitioner are deliberate misleading of this writ proceedings before this Hon'ble Court."

76. In view of the fact that the petitioner through his conduct adopted

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delay tactics by getting frequent adjournments throughout the proceedings and finally on initiation of proceedings under Section 153C of the Act raising a point that the authorities, there was a legal malice. When the petitioner himself contributed for the delay in completion of 148 Proceedings, he is estopped from stating that the respondents contributed for the reasons for delay.

77. The Assessing Officer upon the receipt of the seized material had to open assessment under Section 153C of the Act. There are various rulings of different forums that the Assessing Officer cannot maintain proceedings under Section 147/148 after receipt of seized material pertaining to a search operation under Section 132. The ITAT Delhi in Sushil Gaur & Shelly Agarwal Vs. ITO I.T.A.No.1500/Del/2017 held that proceedings under Section 147/148 were not maintainable upon receipt of seized material pertaining to a search and that only proceedings under Section 153A or Section 153C must be initiated. Thus, it is clear that the officer did not have any choice but to proceed under Section 153C, and in any event, the proceeding pending under Section 147/148 stood abated.

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78. It is reiterated by the learned Additional Solicitor General of India that the instance case involves complicated question of fact and the law and the said facts cannot be adjudicated in the writ petitions and therefore, the impugned Show Cause Notices must be allowed to be proceeded with by following the procedures and thus, the writ petitions are liable to be dismissed.

SCHEME OF ASSESSMENT UNDER THE INCOME TAX ACT

79. The scheme for filing of returns and procedure for conduct of assessment are contained in Chapter XIV of the Income Tax Act, 1961. Chapter XIV is titled "Procedure of Assessment" and comprises of all sections starting from Section 139, which deals with return of income till Section 158, which deals with "Intimation of assessment of Firm".

80. An assessee will have to file their return in the manner and form prescribed under Section 139. The filing of returns must be done prior to the due date or under any extended period of time permitted under Section 139.

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Assessment procedure is contained in Section 143 and from AY 1989-90, the return filed under Section 139 can be accepted without any strict scrutiny under Section 143(1). The return filed by the assessee under Section 139(1) can be accepted subject to certain adjustments that have been specifically provided for under Section 143 by the Assessing Officer. Alternatively, the return filed under Section 139 can be subject to scrutiny assessment under Section 143(3) by issuing a notice under Section 143(2). The CBDT released certain parameters based on which the Assessing Officer may decide to take up cases for scrutiny and the Assessing Officer may make suitable additions or disallowances based on the scrutiny assessment. Alternatively, if the assessee did not furnish return under Section 139 or did not respond to a notice under Section 143(2) or 142(1) or fails to comply with a direction under Section 142(2A), the Assessing officer may make a best judgment assessment under Section 144 based on materials available to the Assessing Officer.

81. Section 147/148 provides for a mechanism for assessment or reassessment in cases, where the assessing officer has a “reason to believe”

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that any income chargeable to tax has escaped any assessment from any assessment year. There is a further caveat given under the 1st Proviso to Section 147, wherein any assessment made under Section 143(3) cannot be reopened after expiry of 4 years from the date of assessment unless it is shown that the assessee did not fully and truly disclose all material facts for his assessment for that assessment year. An assessing Officer may issue a notice under Section 148 in relation to assessments under Section 143(1) or 143(3) or 144 or even in cases, where no return has been filed under Section 139. The key jurisdictional fact necessary for Section 147/148 is that there must be some information, based on which, the Assessing Officer is able to formulate an opinion as to non-disclosure of material facts or that any income chargeable to tax has escaped assessment. There is no requirement that there must be a search conducted or any material seized in pursuance to such search. These provisions broadly contain the procedure for filing returns or making assessment/reassessment in all cases, where there not involving any search or seizure operations.

82. As opposed to this general procedure, there are specific provisions

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contained in Section 153A to Section 153C, which deal with assessments that commence after a search has been conducted under the provisions of Section 132 or requisition has been made under Section 132A. Sections 153A to Section 153C start with a non-obstante clause that specifically excludes the applicability of Section 147/148. Where, pursuant to a search conducted under Section 132, the Assessing Officer has in his possession books of account or other documents or evidence, which reveal that income, represented in the form of asset, or any part of such income generally, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate over the relevant assessment years then the Assessing Officer may either assess/reassess for each of the preceding 6 Assessment Years immediately preceding the Assessment Year, in which, search has been conducted and for the relevant Assessment Year / years. Section 153C shall apply to cases where, pursuant to a search or requisition under Section 132 & 132A, the assessing Officer is satisfied that any money bullion jewellery or other valuable article or thing seized or requisitioned, belongs to or any books of accounts or documents pertains or pertain to a person other than the person

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referred to in Section 153A, then the material must be handed over the Assessing Officer having jurisdiction over such "***other person***" and the Assessing Officer may issue a notice along the same lines as under Section 153A if he is satisfied that such material has a bearing on the determination of total income of such persons. Apart from the Section containing a non-obstante clause, Section 153A and 153C also provides for a mechanism whereby all pending proceedings and assessments, as on date of receipt of materials seized by the Assessing Officer, shall stand abated.

83. Therefore, upon a conspectus of the relevant provisions, it is clear that the recourse under Section 153A and Section 153C is a special procedure that gets triggered upon receipt of incriminating material post any search or requisition. The normal course of assessment and reassessment is fundamentally altered when a search or requisition takes place under Section 132/132A and the moment, the seized materials are received by the Assessing Officers, the special procedure laid out under Section 153A or Section 153C shall come into effect. The use of the non-obstante clause coupled with the abatement mechanism contained in the provisions makes it

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clear that the legislative intent was for Assessing Officers to proceed only under Section 153A or Section 153C upon receipt of material seized or requisitioned. This special procedure is a derogation from the regular procedure for assessment or reassessment and only some immunity has been carved out for completed assessments. Therefore, the concerned jurisdictional Assessing Officer, upon receipt of material seized or requisitioned, can only proceed under Section 153A or 153C and they cannot proceed with any other pending assessment or proceeding.

PROCEDURES FOR SEARCH, SEIZURE AND ASSESSMENT / REASSESSMENT UNDER THE INCOME TAX ACT

84. In order to ascertain the jurisdiction for invocation of Section 153C in the present case, it is necessary to understand the procedures contemplated in Chapter XIV of the Income Tax Act.

85. Section 132 of the Act enumerates 'Search and Seizure'. The procedure for search and seizure are elaborately contemplated. Once the power under Section 132 is invoked, then under Sub-Section (4) of Section 132, the authorised officer may, during the course of the search or seizure,

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examine on oath any person, who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Act.

86. Sub-Section (4A) to Section 132 contemplates procedures to be followed with reference to the seized materials, where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search, it may be presumed -

(i) that such books of account, other documents, money, bullion-jewellery or other valuable article or thing belong or belongs to such person;

(ii) that the contents of such books of account and other documents are true; and

(iii) that the signature and every other part of such books of account and other documents, which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed

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by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

87. Section 132(9A) contemplates procedure for handing over of the materials seized to the Assessing Officer having jurisdiction over such person within a period of 60 days from the date on which the last of the authorisations for search was executed.

88. Keeping in mind the search procedures contemplated under the Act under Section 132 of the Act, let us now consider the further procedures to be followed under Section 153A and 153C.

89. In the present case, the authorities concerned after conducting search in the premises of M/s.Agni Estates and Foundations Private Limited, handed over the seized materials to the Assessing Officer of the searched person i.e., M/s.Agni Estates. Under Section 153A of the Act, at

the first instance, the searched materials must be handed over to the Assessing Officer of the searched person. Once, the materials seized are handed over to the Assessing Officer of the searched person (in the present case M/s.Agni Estates), then the Assessing Officer has no option, but to issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years. Thus, the procedures are cogent and after completion of search and seizure within a period of 60 days, (under Section 132(9A), all such materials shall be handed over to the Assessing Officer of the searched person and the Assessing Officer shall issue notice to such person. Issue of notice is mandatory under Section 153A. On receipt of notice, the assessee has to submit return of income in respect of each assessment year falling within six assessment years. Thereafter, under Sub Clause (b) to Section 153A, the Assessing Officer shall 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.

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90. Second Proviso to Section 153A enumerates "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". Mainly the above Proviso clause is to be read along with Section 153A (1), which contemplates non-obstante clause with reference to Sections 139, 147, 148, 149, 151 and 153. Therefore, Section 153A shall be invoked consequent to the search and seizure conducted under Section 132 of the Act. If any proceedings are pending on the date of initiation of search under Section 132, then all such pending proceedings shall stood abated.

91. The very purpose and object of the non-obstante clause as well as the abatement clause is to ensure that no parallel proceedings are allowed with reference to the same cause of action. In the event of two actions in respect of the same allegations of income escaping assessment, then such an

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action would hit the principles of 'double-jeopardy' and therefore, the Statute provides an abatement clause, so as to nullify the pending proceedings as the proceedings under Section 153A is comparatively stringent than that of the reassessment proceedings under Section 147 of the Act.

92. The procedures contemplated under Chapter XIV of the Act is holistic. The Income Tax Act trusts every assessee unless contrary facts are made available to the Income Tax Department. The assessee is expected to file return of income truly and fully. The return of income filed by the assessee is scrutinized and assessment orders are passed. Thus, the procedures under Chapter XIV trusts the assessee at the first instance at the time of filing of return of income. Thereafter, if any information is received by the Department, the Department is initiating re-opening proceedings under Section 147 of the Act. Even under Section 147 of the Act, the assessee by mistake, omission or commission, left out any income chargeable to tax at the first instance, gets an opportunity to rectify the same in a true and genuine manner. On initiation of 147 proceedings, second

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opportunity is given to the assessee to file the return of income. Even at that point of time, an assessee gets an opportunity to file return of income truly and fully and with further details, if any. If the return of income filed on re-opening of assessment is found to be true and full, then the authorities would pass reassessment order and determine the tax payable.

93. Beyond these two procedures contemplated for the benefit of the assessees and trusting the conduct of the assessees, the third set of procedures are contemplated, wherein the Department has strong informations regarding the concealment of facts and materials by the assessee, then search operations are conducted. Once search is conducted, then the procedures contemplated are different and thereafter, the assessment and reassessment is to be made only in accordance with Section 153A or Section 153C of the Act, as the case may be.

94. This exactly is the reason why the non-obstante clause is provided under Section 153A (1) and an abatement clause is also contemplated under Second Proviso to Section 153A of the Act. The scope of Section 147 for re-

opening of assessment is not akin to Section 153A and Section 153C for assessment / reassessment. The assessment / reassessment under Section 153A or 153C is to be done, if any search and seizure is made under Section 132 of the Act. Thus, the scope of Section 153A or Section 153C cannot be compared with the re-opening of proceedings under Section 147/148 of the Act.

95. Section 147 of the Act may be invoked by the Assessing Officer, if he has "reason to believe" that any income chargeable to tax has escaped assessment. However, there is no such "reason to believe" clause or otherwise under Section 153A or Section 153C. These two provisions shall be invoked by the Assessing Officer based on the materials seized during search operations conducted under Section 132A of the Act, and handed over to the jurisdictional Assessing Officer.

DISTINCTION BETWEEN SECTIONS 147, 153A and 153C

96. Section 147 contemplates "If the Assessing Officer "has reason to believe" that any income chargeable to tax has escaped assessment, he can

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reopen the assessment". The term "has reason to believe" is wider enough to cover various circumstances including informations, materials under assessment etc. Thus, Section 147 may be invoked, if the Assessing Officer "has reason to believe".

97. Section 153A contemplates where a search is initiated under Section 132 or books of account, other documents or any assets seized or requisitioned under Section 132A, the Assessing Officer shall issue notice to such person, requiring him to furnish within such period may be specified in the notice, the return of income. Thus, based on the search, the Assessing Officer shall issue notice to such person (i.e., Searched person). As far as the searched persons are concerned, Section 153A contemplates that search and seizure would be sufficient to issue notice to the assessee. Once search is conducted and notice is issued, then all pending proceedings initiated under Section 147/148 shall stood abated, in view of the Second Proviso Clause.

98. Section 153C contemplates that a person other than a person

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referred to in Section 153A, then the books of account or document 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. Section 153C contemplates certain conditions to the Assessing Officer for initiation and issuance of notice. Based on the search or seizure, the Assessing Officer cannot proceed against the other persons, who are not connected with the search or seizure operations. In order to initiate proceedings to assess or reassess under Section 153C of the Act, the Assessing Officer mandatorily should possess the seized materials and other books of accounts etc., Section 153C unambiguously stipulates that the assets seized or requisitioned shall be **"handed over"** to the Assessing Officer having jurisdiction over such person. Thus, only after handing over of the materials to the Assessing Officer of the other person, he is empowered to issue notice under Section 153C of the Act and not otherwise.

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99. Thus, the scope of Section 147 for reopening of assessment is not comparable with the reassessment proceedings under Section 153C of the Act. On receipt of certain information from the Investigation Wing, though the Assessing Officer in the present case instituted reopening proceedings under Section 147/148 of the Act. On handing over of the seized or requisitioned materials, the Assessing Officer is bound to issue notice under Section 153C of the Act. Reassessment under Section 153C of the Act is wider enough to cover six assessment years. At each stage, the Income Tax Act provides various procedures, considering the instances and developments in the matter of gathering informations and during the search operations. Unless such powers are contemplated, it would be difficult for the authorities to deal with cases of tax evasions.

100. Section 153C further contemplates that on receipt of the seized materials, assets etc., shall proceed and issue notice and assess or reassess the income, if the Assessing Officer is satisfied. Thus, handing over of material should happen and thereafter, the Assessing Officer shall proceed,

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issue notice, and assess or reassess, if the Assessing Officer is satisfied. Thus, satisfaction of the Assessing Officer is mandatory. Such a satisfaction must be recorded in writing and if the satisfaction recorded is sufficient enough, then the Assessing Officer shall proceed to assess or reassess under Section 153C of the Act. The assessee will get an opportunity during the process of assessment or reassessment to defend their case.

101. The comparative understanding of Section 147/148 and 153A and 153C would reveal that even in case, based on the informations from the Investigation Wing of the Income Tax Department, actions are initiated under Section 147/148 and during the pendency of the reopening proceedings, if the seized materials were handed over to the Assessing Officer, on receipt of the seized materials, he is empowered to proceed, issue notice and assess or reassess, if the Assessing Officer is satisfied. No matter when the search was conducted in such cases against the other persons, in view of the fact that the search is no way connected with the assessee with reference to Section 153C of the Act. In the present case, the search was conducted on 05.07.2018. Informations were provided to the

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Assessing Officer of the petitioner. However, all those materials seized and impounded were not communicated to the Assessing Officer of the petitioner. Admittedly, certain informations were provided by the DDIT (Inv), and based on which proceedings under Section 147/148 was initiated.

102. Even in such circumstances, if at all the Assessing Officer erroneously proceeded under Section 147/148 of the Act, thereafter, on handing over of complete materials seized or impounded during the search operation to the jurisdictional Assessing Officer, he is empowered to invoke Section 153C of the Act as there is an abatement clause contemplated under Section 153A and 153C. The very purpose and object of abatement clause is to ensure that on receipt of materials during the interregnum period, more specifically, during the pendency of reopening proceedings, the Assessing Officer, if satisfied, shall issue notice under Section 153C of the Act and proceed for assessment or reassessment. This being the constructive interpretation to be adopted, even in cases, where there is a mistake in initiation of proceedings under Section 147/148 proceedings, on receipt of complete seizure materials, the Assessing Officer is empowered to invoke

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Section 153C of the Act on satisfaction and by issuing notice.

103. Therefore, initiation of action under Section 153C of the Act would arise only if the seized materials are handed over to the Assessing Officer of such other person, having jurisdiction over the other person. In the present case, admittedly, the search was conducted in the premises of M/s.Agni Estates and Foundation Private Limited. The materials of the searched person was handed over to the assessment officer of the searched person on 28.11.2019. It was forwarded to the Assessing Officer of the other person (petitioner) on 28.11.2019 and thereafter, the Assessing Officer completed the "Satisfaction note" on 16.12.2019 and issued Show Cause Notice, which is mandatory under Section 153C of the Act. Thus, the procedure would be that, the seized materials are to be handed over to the Assessing Officer of the searched person at the first instance for initiation of action under Section 153A of the Act and such materials must be handed over to the jurisdictional Assessing Officer of the other persons and on receipt of the materials, the Assessing Officer shall have no option, but to issue notice under Section 153C of the Act to the other persons, after

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recording satisfaction.

104. The cogent understanding of the procedures contemplated under Chapter XIV of the Income Tax Act would provide a clear picture that the legislatures thought fit that the assessment and reassessment in case of search operations are to be conducted in a different manner and accordingly, Section 153A and Section 153C are enacted. The abatement clause is provided in order to avoid parallel proceedings. Thus, once the seized materials are handed over to the Assessing Officer having jurisdiction, then the Assessing Officer shall have no option, but to issue notice under Section 153A in respect of searched person and 153C in respect of other persons. On the date of receipt of the searched materials by the jurisdictional Assessing Officer, non-obstante clause would come into operation and accordingly, all other proceedings, if any pending on that date under Section 147/148 shall stood abated.

DETAILS AVAILABLE IN THE DEPARTMENT FILE:

105. The original files produced before this Court by the Income Tax Department would reveal that one Shri.K.Rohan Raj, I.R.S., [Deputy

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Director of Income Tax (Inv)] sent a Tapal addressed to DCIT, Central Circle, 2(1), Chennai – 34 on 13.08.2018.

106. The said cover contained the proceedings No.DDIT/Unit3(2)/KPC/2018-19 dated 10.08.2018. The said letter is with the knowledge of the petitioners and they have also submitted the letter. The said letter reveals that search and seizure operations was conducted under Section 132 of the Act on 05.07.2018 in the case of M/s.Agni Estates & Foundations Private Limited. The letter would further reveal that the statement of one Mr.R.N.Jayaprakash, Director of M/s.Agni Estates and Foundation Private Limited was recorded. However, in the said letter, **there is no mentioning regarding the statements obtained from Mr.S.Dhilip Kumar, Assistant General Manager of M/s.Agni Estates.** The letter reveals that the statement was obtained from the Director of M/s.Agni Estates Mr.R.N.Jayaprakash. The Sworn statement recorded under Section 131 of the Income tax Act from Shri.R.N.Jayaprakash is enclosed along with the said letter, which contains questions and answers. Thereafter, the Sworn statement recorded under Section 132(4) of the Act from

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Shri.K.Narayanan is enclosed along with the letter dated 10.08.2018. In the said statement of Mr.K.Narayanan, Question No.11, Question No.12 and Question No.13 contains snapshots of Page No.17 of notebook No.46, Page No.27 of notebook No.60, Page No.51 of notebook No.69 respectively.

107. The above mentioned snapshots reveal about certain payments made and the details were also furnished in the answers. However, no other particulars are found in the first file, which was the basis for issuing a notice under Section 148 of the Income Tax Act on 20.08.2018.

108. With reference to the next file, **the proceedings dated 6th January, 2020 is available, furnishing reasons for re-opening of assessment under Section 153** and the said proceedings were communicated to the petitioners. Further, handing over of search files and seized materials in the case of Mr.R.N.Jayaprakash, Managing Director of M/s.Agni Estates and Foundations Private Limited & Group was communicated to the Deputy Commissioner of Income-tax in proceedings No.DDIT/U-3(2)/Agni/2019-20 dated 22.08.2019. The said letter contains

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numerous materials and the letter states that the Search operations under Section 132 of the Income Tax Act, 1961 were conducted in the case of Mr.R.N.Jayaprakash, Managing Director of M/s.Agni Estates and Foundations Pvt Ltd & Group on 05.07.2018. Since the case has been Centralised to the Deputy Commissioner's jurisdiction vide letter dated 06.05.2019, the materials seized and impounded during the Search operations along with the Search folders, Seized materials and other files as listed are handed over to the Deputy Commissioner of Income tax on 22.08.2019.

109. The said list of materials seized and impounded would reveal that large number of documents and materials were communicated to the Assessing Officer through the said letter dated 22.08.2019.

110. (a) Item No.1 provides 32 documents relating to Agni Estates & Foundations Private Limited, No.76, Temple Towers, 3rd floor, North Mada Street, Mylapore, Chennai – 4.

(b) Item No.2 provides 11 documents of Agni Estates & Foundations

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Private Limited, No.24/46, 1st & 3rd Floor, Agni Business Centre, K.B.Dasan Road, Alwarpet, Chennai – 18.

(c) Item No.3 undertakes 8 documents from Mr.M.Samiappa, Plot No.28A, Agni Fairy Land, 3rd Street, ICL Home Town, Thandalam, Chennai – 77.

(d) Item No.4 provides 25 documents of Vagas Aqua Private limited, Sunnyside, Shafee Mohammed Road, Nungambakkam, Chennai – 6.

(e) Item No.5, 21 documents are enclosed with reference to Mr.R.N.Jayaprakash, No.1, Ranjit Road, Kotturpuram, Chennai – 600 085.

(f) Item No.6 contains 23 documents from Mr.S.Dhilip Kumar, No.110, Old Mahabalipuram Road, West Mambalam, Chennai – 600 033.

(g) Item No.7 indicates 8 documents from Mr.Jayachandran & Padmaja, No.7/9, Diwan Rama Road, Purasaivakkam, Chennai – 7.

(h) Item No.8 contains 18 documents of Mr.S.Santhosh Kumar, No.18, Anna Street, Kanagam, Taramani, Chennai – 600 113.

(i) Item No.9 provides 16 documents from Mr.T.G.Balaji, No.22/10, Balaji Nagar 4th Street, Royapettah, Chennai – 600 014.

(j) Item No.10 contains 6 documents from Mr.P.Jenardhan Menon,

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No.126, F-Block, 6th Street, Anna Nagar East, Chennai – 102.

(k) Item No.11 contains 7 documents from Mr.M.Ashok Kumar, No.14/33, Kothari Ornate Apartments, Tana Street, Purasaivakkam, Chennai – 600 007.

(l) Item No.12 contains 6 documents from Mr.Sathish Kuamr, No.14/19, Appasamy Street, Pattalam, Chennai – 600 012.

(m) Item No.14 contains 10 documents from Agni College of Technology, Old Mahabalipuram Road, Thalambur, Chennai – 600 130.

(n) Item No.15 contains 11 documents from Mr.V.Narayanan, No.3G, Mahalakshmi Apartments, 3RD Main Road, Kasturba Nagar, Adyar, Chennai – 600 020.

(o) Item No.16 contains 4 documents from Shobana Devi, No.15/8, 3rd Street, Venkatesa Puram, Chennai – 600 012.

(p) Item No.19 contains 6 documents from Mr.Sanal Kumar, Flat No.1E, CEEBROS Hariharan Apartments, Lloyd's Road, Royapettah, Chennai – 12.

(q) Item No.20 contains 25 documents from Agni Plots, No.30/16, Conron Smith Road, Gopalapuram, Chennai – 600 086.

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(r) Item No.21 contains 12 documents from Mr.K.L.Narayana, A-3, Sreeshti Srinivasa Vihar, No.161/140, Luz Church Road, Mylapore, Chennai – 4.

(s) Item No.22 contains 20 documents from Mr.K.L.Narayana, 169/73, Surya Apartments, Flat No.15, Luz Church Road, Mylapore, Chennai – 4.

(t) Item No.23 contains 3 documents from Mr.K.L.Narayana, 169/73, Surya Apartments, Flat No.7, Luz Church Road, Mylapore, Chennai – 4.

(u) Item No.24 contains 10 documents from Mr.A.Ganesan, No.2-A, Sundaram Apartments, 5th Avenue, Besant Nagar, Chennai – 600 090.

111. The list of Inventory of Electronic Devices and the materials seized and impounded were also furnished along with the said letter. The said letter constituted a basis for initiation of proceedings under Section 153C of the Income Tax Act. The Assessing Officer, on receipt of the said materials on 22.08.2019, prepared the "Satisfaction Note" in respect of the petitioners and forwarded the "Satisfaction Note" along with the seized materials in proceedings dated 28.11.2019 and thereafter, the Show Cause

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Notice was issued on 16.12.2019.

112. This being the details found in the original files produced by the respondents, this Court is of the considered opinion that the sequences of events and the handing over of the seized materials to the Assessing Officer of the petitioners, the "Satisfaction note" was prepared and thereafter, the impugned Show Cause Notices are issued. Thus, the question of legal malice or otherwise would not arise at all. Even in such circumstances, in the absence of complete materials, if re-opening proceedings under Section 147/148 was initiated and during the pendency of the reopening proceedings, if all the seized materials were communicated to the Assessing Officer of the other person, then the Assessing Officer shall proceed to assess or reassess, if he is satisfied. In such circumstances, the pending proceedings initiated under 147/148 stands abated, in view of the Proviso clause. This being the procedures contemplated in unambiguous terms in Chapter XIV of the Income Tax Act, the cogent reading and constructive interpretation are of paramount importance in order to uphold the very purpose and object of the contemplation of procedures in Chapter XIV

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under the Income Tax Act.

113. Based on certain informations and documents communicated, actions are initiated under Section 147 of the Act. However, handing over of the seized materials to the Assessing Officer of the other person (petitioner) would be the requirement for initiation of proceedings under Section 153C of the Act. Thus, in the present case, the initial informations, details and materials communicated to the Assessing Officer made him to initiate 147 proceedings as he "has reason to believe". However, after handing over of the seized materials in entirety in proceedings dated 22.11.2019, the Assessing Officer formed an opinion that it is a case to be proceeded under Section 153C of the Act and accordingly, recorded the "Satisfaction Note" based on the materials in order to proceed further as it is mandatory. In other words, if the seized materials are handed over to the Assessing Officer, then he shall proceed for assessment or reassessment and issue notice, if he is satisfied. Thus, in the present case, "Satisfaction note" was prepared and notice was issued under Section 153C of the Act. Therefore, the informations and materials communicated to the Assessing Officer and the

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materials in entirety subsequently handed over to the Assessing Officer on 28.11.2019 are different and it cannot be said as identical, though the documents are connected and pertain to the same assessees including the searched person and the other persons.

ANALYSIS

114. The contentions of the petitioners are that, admittedly, the return of income was filed by the petitioners. Final assessment orders were also passed by the Assessment officer. Subsequently, the Assessing Officer received information upon which, he has "reason to believe" that income chargeable to tax has escaped assessment. Thus, he has issued notice under Section 148 of the Act. Upon request, reasons for initiation was provided. The reasons provided by the Assessing Officer for re-opening of assessment under Section 147 are relied upon by the petitioners to establish the informations, materials available for initiation of 147/148 proceedings as well as the materials and informations prompted the respondents to initiate action under Section 153C of the Act are one and the same. Thus, the intention of the respondents was to extend the time limit for the purpose of

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re-assessment as the time limit for completion of 148 proceedings expired on 31.12.2019. However, the impugned notices were issued on 16.12.2019, which is self-evident that the very initiation of action under Section 153C amounts to legal malice.

115. To substantiate the said contentions on behalf of the petitioners, Annexure to the reason for re-opening of assessment under Section 147 of the Act furnished by the respondents in proceedings dated 12.10.2018 were elaborately read over and relied upon. Importantly, the informations received from DDIT (Inv) vide letter dated 10.08.2018, revealed that the search and seizure operation conducted under Section 132 of the Income Tax Act on 05.07.2018 in the case of M/s.Agni Estates and Foundations Private Limited. In the said letter received by the Assessing Officer from the Investigation Wing, provides all informations regarding the sale of property by the petitioners as well as the sale consideration and the payments received. Pertinently, the statement of Mr.R.N.Jayaprakash, Director of M/s.Agni Estate & Foundation Private Limited and the statement of Mr.Narayanan, Cashier were made available before the Assessing Officer at

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the time of initiation of proceedings under Section 147/148.

116. It is further contended by the petitioners that, even the copy of two Excel Sheets, Hard Disk and other Electronic devices shared by the Enforcement Directorate with the Investigation Wing of Income Tax Department were also available. This being the factum, conversion of Section 147 proceedings to Section 153C proceedings is impermissible and the theory of abatement propounded by the respondents are not applicable to the facts of this case. The abatement clause must have certain relevance with reference to the facts as well as the sequences of incidents occurred. In the present case, the entire materials relied upon were made available to the Assessing Officer on 10.08.2018. He allowed the longevity of 147 proceedings for several months and finally, woke up and issued the notice under Section 153C, knowing the fact that the time limit is going to expire on 31.12.2019. Such a conduct of the Income Tax officials are not appreciable is the arguments advanced.

117. Per contra, the learned Additional Solicitor General of India

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rebutted the contentions by stating that the petitioners have blunt the facts in one route and the other aspects and the actual reason for initiation of Section 153C of the Act were not elaborated by the petitioners.

118. In order to repudiate the grounds raised on behalf of the petitioners, the learned Additional Solicitor General of India relied on the "Satisfaction Note", which was communicated to the petitioners on 6th January 2020. The said "Satisfaction Note" reveals that a satisfaction note along with the seized materials were received from the Assessing Officer of M/s.Agni Estates and Foundations Private Limited. In the case of Karti Chidambaram regarding receipt of on-money on the sale of immovable property at Muttukadu during the course of search in the case of M/s.Agni Estates & Foundation Private Limited, on 05.07.2018 along with relevant seized materials were also made available. However, it is contended by the learned Additional Solicitor General that loose sheets containing sale agreements and the question and answers as well as the details regarding the statements from the officials of the M/s.Agni Estates and Foundations Private Limited were received by the Assessing Officer only on 22.08.2019.

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Thus, only after receipt of all those materials upon which the Assessing Officer arrived a satisfaction, recorded satisfaction. In other words, on 28.11.2019, satisfaction was recorded in the case of the searched person for forwarding seized material and satisfaction dated 16.12.2019 in the case of the petitioner for assessment under Section 153C and Notice under Section 153C was issued on 16.12.2019.

119. The learned Additional Solicitor General of India reiterated that the seized materials were received by the Assessing Officer, having jurisdiction over the searched person on 22.08.2019. Thus, the third respondent could initiate proceedings under Section 153C of the Act only thereafter. Any proceedings pending to the assessment year(s) falling within the period of six assessment years, pending on the date of initiation of search shall abate as per the provisions of Section 153A. For the purpose of Section 153C, the proceedings under which shall be in accordance with the provisions of Section 153A of the Act, the date of initiation of search 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

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jurisdiction over such other person, as per the first proviso to Section 153C of the Act. In the above proceedings, the petitioner is "such other person". The "Satisfaction Note" along with the relevant materials from the Assessing Officer of M/s.Agni Estates and Foundations Private Limited was received on 28.11.2019 by the third respondent, under Section 153C of the Act as the Assessing Officer of the petitioner assessee. Hence, all pending proceedings pertaining to the assessment year(s) falling within the period of six assessment years as on 28.11.2019 shall abate. The date of search for the proceedings under Section 153C of the Act in the case of the petitioner assessee is 28.08.2019, on which date, the reopened proceedings under Section 147 of the Act for the AY 2014-15 was pending. Thus, the said proceedings under Section 147 stood abated on initiation of assessment under Section 153C of the Act on 16.12.2019.

120. Admittedly, the informations provided to the Assessing Officer of the petitioner vide letter dated 10.08.2018 and 20.08.2018 contains certain cash payments, spreading over various periods. The petitioners raised a question that even on the day of initiation of 147 proceedings, the

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Assessing Officer had the knowledge about the alleged information regarding the on cash payments beyond the Assessment Year and in spite of that the Assessing Officer initiated 147 proceedings. This Court is of the considered opinion that admittedly the seized and impounded materials of the searched person was not handed over to the Assessing Officer at the time of initiation of 147 proceedings. As per the files, the seized materials in accordance with the provisions of the Act was handed over to the Assessing Officer of the searched person on 22.08.2019 and on 28.11.2019, the Assessing Officer recorded satisfaction and issue notice under Section 153A of the Act to the searched person and subsequently, the materials seized were handed over to the Assessing Officer of the other person namely petitioner herein and thereafter, the "Satisfaction Note" was recorded and the show cause notice was issued on 16.12.2019. Therefore, certain informations made available prior to handing over of the materials would not confer any power on the Assessing Officer to initiate proceedings under Section 153C of the Act. The mandatory requirement under Section 153C of the Act is that on handing over of the seized materials to the Assessing Officer having jurisdiction over such other person, then alone, he is

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empowered to record satisfaction and shall issue notice to the other person. Therefore, in the present case, on receipt of information vide letter dated 10.08.2018 and 20.08.2018, the Assessing Officer initiated 147 proceedings and on receipt of the seized materials as required under Section 153C of the Act, he recorded satisfaction and issued notice under Section 153C of the Act. Ultimately, the opportunities contemplated under the Act is to be availed of by the assessee for the purpose of defending his case. Therefore, the initial materials and informations provided to the Assessing Officer, made him to initiate 147 proceedings and on receipt of the seized materials officially in accordance with Section 153C of the Act, the Assessing Officer recorded satisfaction and issued notice under Section 153C of the Act.

121. The course adopted by the Assessing Officer is that on receipt of informations vide letter dated 10.08.2018 and 20.08.2018, he has “reason to believe” that the tax chargeable to income escaped assessment. Based on the informations, the Assessing Officer initiated re-opening proceedings under Section 147. The Assessing Officer had the knowledge about the search

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conducted in the premises of the buyer in the present case namely M/s.Agni Estates and Foundations Private Limited. However, mere informations about the search and the details provided through letter dated 10.08.2018 and 20.08.2018, made him to act under Section 147 of the Act. But, the seized materials in entirety were not handed over to the Assessing Officer of the petitioner at that point of time. The DDIT (Inv) provided certain informations to the Assessing Officer. But such informations are insufficient to institute action under Section 153C of the Act as the mandatory requirements of handing over of the seized material did not took place on 10.08.2018 or on 20.08.2018. The procedural requirement contemplated under Section 153C of the Act was complied with by handing over of the seized materials to the Assessing Officer of the other person on 28.11.2019 and thereafter, he recorded satisfaction and issued notice on 16.12.2019. Thus, the procedures adopted by the Assessing Officer is to be decided with reference to the procedures contemplated and its purpose and object. Pertinently, for initiation of actions and for its completion, limitations are provided under the Act. Thus, on receipt of information from the DDIT (Inv), the Assessing Officer thought fit to initiate action without prolonging

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the matter and accordingly, initiated proceedings under 147 of the Act. However, the Assessing Officer was not in a position to initiate 153C proceedings at that point of time. Even as per the informations provided to the Assessing Officer in vide letter dated 10.08.2018 and 20.08.2018, the petitioners are the other person and they are not the searched persons. Thus, the initial actions of the Assessing Officer regarding initiation of proceedings under Section 147 of the Act at the first instance cannot be faulted with. However, the handing over of the seized materials by the Assessing Officer of the searched person happened on 22.08.2019 in respect of the other persons / petitioners on 28.11.2019 and thereafter, "Satisfaction Note" was recorded and notice was issued on 16.12.2019. Even before receipt of the searched material, the searched person was centralised with the third respondent on 06.05.2019 vide Notification No.3/19-20 by the Principal Commissioner of Income Tax-I, Chennai. Therefore, the progress made on account of certain facts, events and procedures, which all are otherwise contemplated under the provisions of the Act, cannot be construed as without jurisdiction nor be termed as legal malice. Thus, the third respondent / Assessing Officer could able to initiate actions under

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Section 153C of the Act only after the receipt of the seized materials from the Assessing Officer of the searched person. Thus, the abatement clause contemplated under the Proviso to Section 153A would come into operation and consequently, the third respondent issued notice under Section 153C of the Act pertaining to the assessment year (s) falling within the period of six assessment years.

122. Undoubtedly, the informations communicated to the third respondent through DDIT (Inv) vide letter dated 10.08.2018 and 20.08.2018 were the informations collected pursuant to the search conducted on 05.07.2018 in the premises of M/s.Agni Estates and Foundations Private Limited. However, in the absence of handing over of the searched materials as per the procedures contemplated under the provisions of the Act, it would be improper on the part of the Assessing Officer to initiate proceedings under Section 153C of the Act. Thus, on receipt of the informations from DDIT (Inv), the Assessing Officer has initiated proceedings under Section 147 of the Act, knowing the fact that the informations are collected pursuant

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to the search conducted in the premises of M/s.Agni Estates. However, at that point of time, the Assessing Officer could not able to initiate any action under Section 153C of the Act as the procedure mandates handing over of all seized materials to the Assessing Officer. After handing over and receipt of the entire seized materials, the Assessing Officer could prepare "Satisfaction Note" and initiated Section 153C proceedings. The cogent consideration of facts, circumstances as well as the perusal of original files would reveal that the Assessing Officer has initiated action under Section 147/148 of the Act initially and thereafter on receipt of the entire search and impounded materials, he has prepared a "Satisfaction Note" and issued notice under Section 153C of the Act. The procedural differences between these proceedings are well enumerated in the Act, and established by the respondents through the original files produced before this Court. Certain facts were not available at the initial stage. The complete documents and materials were handed over to the Assessing Officer only on 22.08.2019, after the centralization was done on 06.05.2019. Thereafter, the Assessing Officer prepared the "Satisfaction Note" and issued Show Cause Notice under Section 153C of the Act.

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123. Therefore, the contentions raised on behalf of the petitioners that there is no impediment for the Assessing Officer to proceed under Section 147/148 of the Act and pass an order of reassessment based on the material available on record before the expiry of the limitation on 31.12.2019 in the present stage cannot be accepted and such a course is impermissible, in view of the fact that Section 153A and 153C contemplates handing over of the seized materials to the Assessing Officer of the searched person and thereafter to the other person, and the Assessing Officer has no option but to issue notice. Once the proceedings under Section 153 is initiated, all pending proceedings under Section 147/148 stood abated as per the proviso clause. Thus, the very arguments raised on behalf of the petitioner that the Assessing Officer ought to have passed an order of reassessment based on the re-opening proceedings under Section 147 or in alternate, the Assessing Officer would have passed an order of reassessment under Section 144 of the Act i.e., best judgment assessment, deserves no merit consideration.

124. This Court is of an opinion that the scope of Section 147/148

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and Section 153A and 153C are not comparable. These two sets of provisions contain different set of procedures as contemplated under the Act. Generally, the procedures contemplated for assessment under these provisions may be divided in three parts: for better understanding. The first procedure is return of income filed by the assessee and secondly, in case of availability of any informations or materials, or if any received by the Assessing Officer and he has "reason to believe" that any income chargeable to tax has escaped assessment, he is empowered to proceed under Section 147/148 of the Act. Thirdly, in the event of search operations under Section 132 of the Act, and the searched materials are handed over to the Assessing Officer of the searched person, issue notice to the searched person and if the materials seized are handed over to the Assessing Officer of the other person, issue notice to the other person under Section 153C of the Act.

125. While following these procedures, if any error is committed by the Assessing Officer, Courts are not expected to quash the entire proceedings of assessment / reassessment. Courts are bound to consider,

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whether procedures followed is in consonance with the procedures contemplated under the Act or not and in the event of any error, whether such errors caused any prejudice to the interest of the assessee or not. Rectification of errors are always permissible. However, in the present case, the seized materials were not handed over to the Assessing Officer of the petitioner, as contemplated under Section 153C of the Act. Thus, the informations and materials provided vide letter dated 10.08.2018 and 20.08.2018 are insufficient to proceed under Section 153C of the Act. But, the Assessing Officer initiated Section 147 proceedings. Thus, this Court do not find any procedural irregularity with reference to the actions initiated under Section 147/148 and thereafter, under Section 153C of the Act.

126. No writ against a Show Cause Notice needs to be entertained by the High Court. However, a writ may be entertained, if the Show Cause Notice was issued without jurisdiction or on *malafide* grounds. Even in case of raising a *malafide* against any authority, such an authority must be *impleaded* as party respondent in the writ proceedings in his personal

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capacity. In the present case, the petitioner has raised the point of no jurisdiction and the ground of legal malice. As far as the jurisdiction is concerned, this Court is of an opinion that the lack of jurisdiction was not established by the petitioners. The application and implications of Section 153C of the Act was questioned. In view of the elaborate discussions regarding the facts and circumstances with reference to the provisions made in the aforementioned paragraphs, this Court is of an opinion that no *malafide* or lack of jurisdiction is identifiable nor established and thus, the point raised in this regard stands rejected. Thus, the judgments relied upon in this regard are of no avail to the petitioners. 147 proceedings were initiated for a particular Assessment Year and only after invoking Section 153C, the Assessing Officer could able to prepare "Satisfaction Note" and 5 assessment years are reopened. If at all, the petitioner is disputing the actions in this regard, he has to defend his case before the competent authority in the manner known to law. Such an adjudication with reference to the transactions, seizure and impounded materials cannot be undertaken by the High Court under Article 226 of the Constitution of India. It is for the assessee to defend his case before the competent authority by submitting the

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documents and evidences and establish his case both based on the provisions of the Act and on facts. At the stage of Show Cause Notice, High Court would not enter into the venture of conducting an adjudication of disputed facts. It is the duty of the fact finding authority to adjudicate the facts and arrive a conclusion. Under these circumstances, the ground of legal malice is not established by the petitioners, so as to set aside the impugned Show Cause Notice. This Court has considered the procedures contemplated under the Act. However, the disputed facts are to be adjudicated.

127. In this regard, the purpose of Section 153C, the proceedings under which shall be in accordance with the provisions of Section 153A of the Act, the date of initiation of search 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, as per the first proviso to Section 153C of the Act. In the present case, the petitioner is the "such other person". The "Satisfaction Note" along with the relevant materials from the Assessing Officer of M/s.Agni Estates

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and Foundations Private Limited was received on 28.11.2019 by the third respondent under Section 153C of the Act as the Assessing Officer of the petitioner assessee / other person.

128. The date of search for the proceedings under Section 153C of the Act in the present case, is 28.11.2019, on which date, the reopening proceedings under Section 147 of the Act was pending. Thus, the said proceedings stood abated on initiation of assessment / reassessment proceedings under Section 153C of the Act on 16.12.2019. Under these circumstances, it cannot be construed as a lapse. It stood abated pursuant to the Proviso clause to Section 153C of the Act. Thus, the ground of legal malice is not established by the petitioners.

129. All these writ petitions are filed, challenging the Show Cause Notices issued under Section 153C of the Act. The procedures for assessment / reassessment are yet to commence. The petitioners are expected to avail the opportunity and defend their case in the manner known to law. The scope of judicial review under Article 226 of the Constitution of

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India is to scrutinize the processes and procedures through which a decision is arrived in consonance with the provisions of the Statutes by the competent authority, but not the decision itself. In the present case, the authority competent must be allowed to scrutinize the searched and impounded materials and provide an opportunity to the assessee to defend their case. Such an adjudicatory process alone would provide justice to the parties to the *lis* and therefore, this Court is not inclined to interfere at the stage of 'show cause notice' as far as the present writ petitions are concerned. The factual controversies and intricacies involved are to be adjudicated elaborately for the purpose of culling out the truth and such an adjudication is the dictum of law and thus, this Court has opined that interference at this stage would cause prejudice to the due process of law to be undertaken by the authorities. Thus, the respondents are directed to proceed with the assessment / reassessment by following the procedures as contemplated and by affording opportunity to the petitioners and complete the same as expeditiously as possible.

130. In result, all the writ petitions stand dismissed. No costs.

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Consequently, connected miscellaneous petitions are closed.

05.07.2021

Kak
Internet:Yes/No
Index:Yes/No
Speaking / Non-Speaking order
To
1.The Principal Director of Income Tax
(Investigation)
Income Tax Investigation Wing Building,
No.108, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

2.The Deputy Director of Income Tax, (Investigation)
Unit 3(2), Chennai, Income Tax Investigation Wing Building,
No.108, Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

3.The Deputy Commissioner of Income Tax,
Central Circle, 2(1), New Income Tax Building,
No.46, (Old No.108), Mahatma Gandhi Road,
Nungambakkam, Chennai – 600 034.

S.M.SUBRAMANIAM, J.

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W.P.Nos.16686, 16758,
16689, 16692, 16693,
16695, 16698, 16710,
16716, 16719, 16760 and
16764 of 2020

05.07.2021