

[2021] 438 ITR 671 (Mad)

[IN THE MADRAS HIGH COURT]

NAVKAR ELECTRONICS

v.

INCOME-TAX OFFICER (NO. 1)

DR. MS. ANITA SUMANTH J.

July 1, 2021.

Section(s): Income-tax Act, 1961, ss. 132, 147, 153C

Assessment Year: 2016-17 , 2017-18

Favouring: Department/Department of State/Union Government, and/or the State/ Union/ Financial Corporations/Institutions of State/Union

SEARCH AND SEIZURE — ASSESSMENT OF THIRD PERSON — REASSESSMENT — VALIDITY — ASSESSING OFFICER TO DETERMINE PROPER AND APPROPRIATE METHOD OF PROCEEDING — WRIT PETITION DISMISSED AND ASSESSEE PERMITTED TO FILE APPEALS BEFORE COMMISSIONER (APPEALS) — INCOME-TAX ACT, 1961, ss. 132 , 147 , 153C

The provisions of section 153C and section 147 of the Income-tax Act, 1961 are separate, distinct and independent measures that apply to different situations. The provisions of section 153C apply notwithstanding anything contained in other provisions including section 147 . The provisions of section 153C can be invoked irrespective of whether a regular or reassessment order had been framed originally. Nowhere in section 147 are the provisions of section 153C excluded. The Assessing Officer must, in choosing the provision to apply, bear in mind the statutory conditions set out and arrive at a decision having regard to the logistics and the efficacy of the provision chosen. The procedure under section 153C requires the satisfaction of certain parameters. Satisfaction cannot be thrust upon the Assessing Officer. The requirement of recording of “satisfaction” requires independent application of mind by the officer upon his detailed examination of all relevant material. If the law offers multiple options to an officer as to how to proceed in a matter, it is for that officer to determine and come to a conclusion as to the proper, appropriate and simplest method of proceeding further.

Pursuant to a search proceedings under section 132 in the case of one LRIPL the assessing authority of LRIPL found that the assessee’s name appeared along with 500 other entities in the inventory management system database of LRIPL and forwarded the information in regard to the assessee’s engagement with LRIPL. The Assessing Officer initiated reassessment proceedings against the assessee under section 147 for the

assessment years 2016-17 and 2017-18. On writ petitions contending that it was only jurisdiction under section 153C that should have been assumed and not under section 147 :

Held, dismissing the petitions, that the Assessing Officer had arrived at the proper conclusion to invoke the provisions of section 147 bearing in mind the interests of the Revenue, to share the information found during the search under section 132 of the searched party with the Assessing Officer of the third party assessee. He was in no position to arrive at statutory "satisfaction" as to whether the name of the third party in the IVMS data was genuine or germane or otherwise. Satisfaction could not be thrust upon the Assessing Officer. The requirement of recording of "satisfaction" under section 153C required independent application of mind by the officer upon his detailed examination of all relevant material. The assessee was permitted to file appeals, if so desired, before the Commissioner (Appeals) who could take up the appeals without referring to limitation.

W. P. Nos. 481 and 482 of 2020 and W. M. P. Nos 561 , 562 , 564 , 565 , 3181 , 3183 , 3554 , 3555 of 2020.

Ms. G. Vardini Karthik for the petitioner.

Mrs. Hema Muralikrishnan, Senior Standing Counsel, for the respondent.

JUDGMENT

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1. Dr. Ms. Anita Sumanth J.—Heard Ms. G. Vardini Karthik, learned counsel for the petitioner and Mrs. Hema Muralikrishnan, learned senior standing counsel for the Income-tax Department.

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2. The petitioner is a company and challenges two orders of reassessment both dated December 24, 2019, passed under the provisions of the Income-tax Act, 1961 (in short "Act") for the assessment years 2016-17 and 2017-18. The legal issue argued before me is the assumption of jurisdiction by the assessing authority under section 147 of the Income-tax Act, 1961 which deals with reassessment.

3. According to the learned counsel for the petitioner, the reassessments have emanated out of search proceedings in the case of one Laxmi Remote India Pvt. Ltd. (LRIPL), under section 132 of the Act. In such case, the only recourse would, according to her, be the provisions of section 153C of the

Act and not section 147.

4. Laxmi Remote India Pvt. Ltd. (LRIPL) had been subject to search by the Income-tax Department and the assessing authority of Laxmi Remote India Pvt. Ltd. had found the petitioner's name appearing along with 500 other entities in the Inventory Management System database of Laxmi Remote India Pvt. Ltd. That officer thus, forwarded the information in regard to this petitioners' engagement with Laxmi Remote India Pvt. Ltd., under the cover of communication dated May 21, 2018. The aforesaid communication as well as subsequent communications, exchanged between that Assessing Officer and the Assessing Officer of this petitioner, constitute internal communications that have been provided in a sealed cover for the benefit of the court.

5. The documents reveal that a search was conducted on Laxmi Remote India Pvt. Ltd., that was found to maintain two parallel softwares, i. e., IVMS and Enterprise Resources Personnel (ERP) software for recording transactions. It was only the details in the Enterprise Resources Personnel that was disclosed to Government agencies whereas, according to that Assessing Officer, the IVMS was used as a second set of accounts to record cash sales. It was in the IVMS that this petitioner's name figured along with details of sales of varying amounts for the periods 2015-16, 2016-17 and 2017-18. A statement had also been recorded in the course of that search wherein reference was made to the IVMS. This, according to that Assessing Officer, constituted "information" which he shared with his counterpart in Chennai, the respondent herein.

6. After setting out the entire history of the search in the case of Laxmi Remote India Pvt. Ltd., he states that information in regard to 500 Laxmi Remote India Pvt. Ltd. customers, to whom cash sales had been made by Laxmi Remote India Pvt. Ltd. was being passed on to their respective Assessing Officers to examine whether undisclosed income would arise in those cases under section 69C or other applicable provisions of the Act.

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7. The petitioner would argue that the provisions of section 153C constitute a complete code. It commences with a non obstante clause, as it is applicable notwithstanding other statutory provisions, including section 147 of the Act. Section 153C is applicable not just in the case of seized material containing particulars of third parties but also "information" found in the course of search, relatable to third parties. Thus, according to the petitioner, since information has been allegedly found relatable to this petitioner in the course of search of Laxmi Remote India Pvt. Ltd., it is only jurisdiction under section 153C that should have been assumed and not

section 147.

8. She relies on certain decisions of the Tribunal that support this view. Though some of the Tribunal decisions did travel to the High Court, those appeals, filed at the instance of the Revenue, came to be closed on the basis of low monetary effect and thus there is no High Court that has considered this issue thus far. All the decisions cited by learned counsel for the petitioner proceed on the basis that the provisions of section 153C, which replace erstwhile Chapter XIV-B of the Act constitute a complete code and would stand automatically triggered in the course of search of a third party where incriminating material/information has been found.

9. Per contra, the Revenue counsel would argue that the provisions of section 147 are in fact more stringent than the provisions of section 153C, since they require prior sanction to be obtained from a superior officer before issuing a notice for reassessment. The information in this case was not specific to only one or a few individuals but names around 500 individuals/entities to whom cash sales had been made. It was thus not practicable for the Assessing Officer at that end to have invoked the procedure under section 153C in so many cases. Thus, and in order to protect the interests of the Revenue, he proceeded to share the information with his counterparts suggesting that the needful be done to bring to tax any income that might have escaped assessment.

10. Learned Revenue counsel distinguishes the decision relied on by the petitioner stating that those petitions involved only a single or few third parties/entity whereas, the present case involved around 500 such entities.

11. The provisions of sections 153C and 147 are separate, distinct and independent measures that apply to different situations. No doubt, in the present case, the impugned assessment is based upon materials found in the course of search under section 132. Also unquestionably, the provisions of section 153C apply notwithstanding anything contained in other provisions including section 147. This only means that the provisions of section 153C

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can be invoked irrespective of whether a regular or reassessment order had been framed originally.

12. The procedure under section 153C requires the satisfaction of the following parameters :

(a) A search in the premises of an entity/person under section 132.

(b) Incriminating material such as money, bullions, jewellery or other valuable article, which has been seized or requisitioned in the searched premises but belongs to a third party.

(c) Books of account or documents that have been seized or requisitioned which pertains to a third party or which contains information relating to a third party, (b) and (c) collectively referred to as 'materials'.

(d) The recording of satisfaction by the Assessing Officer of the searched entity to the effect that the materials found refer to a specified third party.

(e) The transfer of that incriminating material to the Assessing Officer of the third party.

(f) The recording of a satisfaction by the Assessing Officer of the third party that the material transferred to him has a bearing on the determination of the total income of the third party.

13. If the conditions as set out under (a) to (f) are satisfied, then the Assessing Officer of the third party would proceed to initiate assessment proceedings under section 153C, as against that third party.

14. In this case, the names of around 500 persons/entities figure in the IVMS data and the question of logistics or practicable application of the provisions cannot be lost sight of. If the law offers multiple options to an officer as to how to proceed in a matter, it is for that officer to determine and come to a conclusion as to the proper, appropriate and simplest method of proceeding further.

15. The provisions of sections 147 and 148 provide for assessment of income that have escaped assessment. Nowhere in section 147 are the provisions of section 153C excluded.

16. The Assessing Officer must, in choosing the provision to apply, bear in mind the statutory conditions set out and arrive at a decision having regard to the logistics and the efficacy of the provision chosen. In a case such as the present, the respondent has, in my view, arrived at the proper conclusion, bearing in mind the interests of the Revenue, to share the information found with the Assessing Officers of the third parties. He is in no position to arrive at statutory "satisfaction" in all the cases as to whether

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the name of the third party in the IVMS data is genuine/germane or

otherwise.

17. The decisions relied on by the petitioner proceed on the basis that the use of the non obstante clause in section 153C would limit the choice of the Assessing Officers only to a search assessment.

18. In one of the decisions, in the case of Asst. CIT v. Shri Srinivas Rao Hoskote (I. T. A. Nos. 1154 and 1155/Bang/2015 dated February 21, 2018) at para 3.8 of the order, the Tribunal states that "A satisfaction to the effect that material seized during the search belongs to the appellant ought to have been arrived at and proceedings under section 153C read with section 153A ought to have been commenced against the appellant".

19. Certainly, satisfaction cannot be thrust upon the Assessing Officer. The requirement of recording of "satisfaction" requires independent application of mind by the officer upon his detailed examination of all relevant material.

20. These writ petitions are dismissed. The petitioner is permitted to file appeals, if it so desires, before the Commissioner of Income-tax (Appeals) agitating merits of the matter. If such appeals are filed within a period of four weeks from the date of uploading of this order on the official website of this court, such appeals shall be taken on file by the Commissioner of Income-tax (Appeals) without reference to limitation, heard and disposed on merits and in accordance with law. These writ petitions have been filed within thirty days from the date of impugned assessment orders and hence this liberty. Connected miscellaneous petitions are closed. No costs.
