

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/646/2024

SHIV KUMAR SARAF
VS
PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX- ROOM NO. 6,
KOLKATA AND ORS

BEFORE:

The Hon'ble JUSTICE OM NARAYAN RAI

Date : November 10, 2025.

Appearance :

Mr. Anirban Banerjee, Adv.

Mr. Deep Agarwal, Adv.

...for the petitioner

Mr. AryakDutt, Adv.

...for the respondents

The Court:-This is the second writ litigation impugning assessment proceeding in respect of assessment year 2019-20.

The earlier round was initiated by filing WPO 168 of 2024 assailing an assessment order dated February 01, 2024 passed under Section 147/144B of the Income Tax Act, 1961 on the ground that the order had been passed in derogation of the principles of natural justice. The said writ petition was disposed of by setting aside the assessment order dated February 01, 2024 and remanding the matter to the assessing officer with a direction to pass a fresh assessment order after giving an opportunity of personal hearing through video conferencing.

Pursuant to the said order dated March 22, 2024 passed by this Court, the assessing officer has passed a fresh assessment order dated June 10, 2024 under Section 147 read with Sections 260 and 144B of the said Act of 1961 upon affording an opportunity of hearing to the petitioner as directed by this Court. It is this order that has been challenged in the present writ petition.

The petitioner now seeks to conjure up a jurisdictional issue. He contends that the assessment proceedings ought to have been initiated and concluded under Section 153C of the said Act of 1961 and not under Section 147 of the said Act of 1961. To wit, the petitioner's contention in the writ petition is this:

“10. Your petitioner states that when a search operation is conducted under Section 132 of the Income Tax Act 1961, if there is any incriminating material found during the search operation, the A.O. should complete the assessment under Section 153A and the name of the assessee will be called “persons searched” and the third party against whom the incriminating material is found will be called “other persons”. In such a situation, the provisions of Section 153C of the Income Tax Act, 1961, can be invoked against the “O.P.” if satisfaction is not recorded by the A.O. of the P.S., that documents of the articles seized from the P.S. belong to O.P., the initiation of proceedings under Section 153C against such other person would be a nullity. Further, if satisfaction is recorded by the A.O. of the O.P. but not by A.O. of the PS, assessment under Section 153C will be a nullity. In this instant writ application, the respondent authority has not initiated proceedings under the mandatory Section 153C which is a gross violation of statute and principles of natural justice and is bad in law.”

The petitioner argues that since the assessment order impugned refers to a search and survey operation having been conducted at various spots of

finance brokers, the assessment proceeding should have been initiated under section 153C of the said Act of 1961. This Court is unable to agree with the writ petitioner for the reasons stated hereinbelow:

Section 153 of the said Act of 1961 provides as follows:

“153C. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

a person other than the person referred to in section 153A, then, the books of account or documents 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 that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of section 153A:

Provided that in case of such other person, the reference to the date of initiation of the search under section 132 or making of requisition under section 132A in the second proviso to sub-section (1) of section 153A 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 :

Provided further that the Central Government may by rules made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be

required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years as referred to in sub-section (1) of section 153A except in cases where any assessment or reassessment has abated.

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A and in respect of such assessment year—

(a) no return of income has been furnished by such other person and no notice under sub-section (1) of section 142 has been issued to him, or

(b) a return of income has been furnished by such other person but no notice under sub-section (2) of section 143 has been served and limitation of serving the notice under sub-section (2) of section 143 has expired, or

(c) assessment or reassessment, if any, has been made,

before 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, such Assessing Officer shall issue the notice and assess or reassess total income of such other person of such assessment year in the manner provided in section 153A.”

A meaningful reading of the provisions of section 153C of the said Act would reveal that a notice under section 153C of said Act of 1961 can be issued only when both - the Assessing Officer of the searched person as well as the Assessing Officer of the person other than the searched person are- satisfied that

a) either any property (i.e. money, bullion, jewellery or other valuable article or thing) seized or requisitioned belongs to a person other than the searched person or

b) any books of accounts or document seized or requisitioned pertains to or any information contained therein relates to a person other than the searched person referred to in Section 153A of the Act.

As to how the Assessing Officers of the two persons (i.e. the searched person and the person other than the searched person), are required to act under law has been succinctly summed up by a Division Bench of the Delhi High Court in the case of ***CIT v. Naveen Kumar Gupta*** reported at **(2025) 479 ITR 586 : 2024 SCC OnLine Del 8140 : (2025) 342 CTR 263**. Paragraph 41 of the said judgment is extracted hereinbelow:

“41. As noted above, the jurisdiction of the Assessing Officer to reassess the income under section 153C of the Act is predicated on (a) the Assessing Officer of the searched person being satisfied that the assets and material found during the search proceedings or requisitioned are incriminating in so far as the assessee (other than the searched person) is concerned; (b) recording its satisfaction to the aforesaid effect; (c) transmitting the same to the Assessing Officer of the other person (person other than the searched person); (d) the Assessing Officer of the non-searched person being satisfied that the material information received has a bearing on the determination of the total income; and (e) the Assessing Officer of such non-searched person issuing a notice to commence assessment/reassessment proceedings. Indisputably, if any of the aforesaid conditions are not satisfied, the income of such other person cannot be assessed or reassessed under section 153C of the Act.....”

In the case at hand, there is nothing on record to demonstrate that any of the two the Assessing Officers had reached such satisfaction. There is nothing on record to demonstrate that any incriminating material had been found against the petitioner in the search and seizure operation. In fact, the assessment order reveals that the assessment proceeding is based on information received from ADIT(Inv), Unit 2(4), Kolkata as available in insight

portal as also evidences collected not only during the search proceedings but also post-search proceedings. It is settled law that if incriminating material during a search and seizure procedure is not found, then in that case assessment is to be completed under Section 147 and not under Section 153A or 153C of the said Act of 1961. Reference in this case may be made to the recent judgment of the Hon'ble Supreme Court in the case of **CIT v. AbhisarBuildwell (P) Ltd., (2024) 2 SCC 433**. In paragraph 33 of the report the Hon'ble Supreme Court observed thus

“33. As per the provisions of Section 153-A, in case of a search under Section 132 or requisition under Section 132-A, the AO gets the jurisdiction to assess or reassess the “total income” in respect of each assessment year falling within six assessment years. However, it is required to be noted that as per the second proviso to Section 153-A, the assessment or reassessment, if any, relating to any assessment year falling within the period of six assessment years pending on the date of initiation of the search under Section 132 or making of requisition under Section 132-A, as the case may be, shall abate. As per sub-section (2) of Section 153-A, if any proceeding initiated or any order of assessment or reassessment made under sub-section (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 revived with effect from the date of receipt of the order of such annulment by the Commissioner. Therefore, the intention of the legislation seems to be that in case of search only the pending assessment/reassessment proceedings shall abate and the AO would assume the jurisdiction to assess or reassess the “total income” for the entire six years' period/block assessment period. The intention does not seem to be to reopen the completed/unabated assessments, unless any incriminating material is found with respect to assessment year concerned falling within last six years preceding the search. Therefore, on true interpretation of Section 153-A of the 1961 Act, in case of a search under Section 132 or requisition under Section 132-A and during the search any incriminating material is found, even in case of

unabated/completed assessment, the AO would have the jurisdiction to assess or reassess the “total income” taking into consideration the incriminating material collected during the search and other material which would include income declared in the returns, if any, furnished by the assessee as well as the undisclosed income. However, in case during the search no incriminating material is found, in case of completed/unabated assessment, the only remedy available to the Revenue would be to initiate the reassessment proceedings under Sections 147/48 of the Act, subject to fulfilment of the conditions mentioned in Sections 147/148, as in such a situation, the Revenue cannot be left with no remedy. Therefore, even in case of block assessment under Section 153-A and in case of unabated/completed assessment and in case no incriminating material is found during the search, the power of the Revenue to have the reassessment under Sections 147/148 of the Act has to be saved, otherwise the Revenue would be left without remedy.”

The petitioner’s objection to the initiation of the assessment proceeding is therefore sans substance.

It is noted that the petitioner did not raise this issue at any point prior to the institution of the present writ petition although the point was available to the petitioner at the stage of issuance of notice under Section 148A(b) as well as upon issuance of the order dated March 27, 2023 under Section 148A(d) of the said Act of 1961. Although jurisdictional issues, which go to the root of the matter can be raised at any point of time, yet raising of such issue for the first time in the second round of writ proceeding before this Court, gives an impression that the petitioner only seeks to avoid the statutory forum of appeal and delay final adjudication of the matter.

The factual disputes that may fall for determination can very well be raised before the appellate authority available to the petitioner under section 246 of the said Act of 1961. Since the jurisdictional issue raised by the

petitioner has failed to withstand scrutiny of this Court under Article 226 of the Constitution of India and the petitioner has an alternative and efficacious remedy before the Appellate Authority under Section 246 of the said Act of 1961, the instant writ petition cannot be entertained. W.P.O646 of 2024 stand dismissed.

However, this order shall not prevent the petitioner to prefer appeal before the appellate authority under section 246 of the said Act of 1961. Since the petitioner has approached this Court within the statutory period of limitation provided for preferring appeal under section 246 of the said Act of 1961, if an appeal is filed by the petitioner within 15 days from date, the Appellate Authority shall consider such appeal on merits and dispose of the same in accordance with law, without raising the issue of limitation.

(OM NARAYAN RAI, J.)