

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN**

MONDAY, THE 3RD DAY OF OCTOBER 2016/11TH ASWINA, 1938

ITA.No. 31 of 2016 ()

ITA. NO.434/COCH/2014 OF INCOME TAX APPELLATE TRIBUNAL,COCHIN BENCH.

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APPELLANT/RESPONDENT IN ITA:

**E.N. GOPAKUMAR,
EDATHIPARAMBIL HOUSE, PALISSERY,
ANNAMANADA P.O., THRISSUR -680 741.**

BY ADV. SRI.O.K.NARAYANAN

RESPONDENT/APPELLANT IN ITA:

**COMMISSIONER OF INCOME TAX (CENTRAL),
CENTRAL REVENUE BUILDING,
I.S. PRESS ROAD, ERNAKULAM,
KOCHI -682 018.**

**BY SRI.P.K.R.MENON, SENIOR SC,
ADV. SRI.JOSE JOSEPH, SC.**

**THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD
ON 03-10-2016, ALONG WITH I.T.A. NO. 38 OF 2016 AND
CONNECTED CASES, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S ANNEXURES:-

- | | |
|-------------------|---|
| ANNEXURE A | COPY OF THE ASSESSMENT ORDER DATED 30/12/2011 U/S. 143(3) READ WITH SEC. 153A FOR THE ASSESSMENT YEAR 2004-05 ISSUED BY THE DEPUTY COMMISSIONER OF INCOME TAX. |
| ANNEXURE B | COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX (APPEALS) DATED 30/05/2014. |
| ANNEXURE C | COPY OF THE COMMON ORDER OF THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH DATED 26TH OCTOBER 2015. |

RESPONDENT'S ANNEXURES:- **NIL.**

//TRUE COPY//

P.S. TO JUDGE

rs.

**THOTTATHIL B.RADHAKRISHNAN
&
ANU SIVARAMAN, JJ.**

I.T.A.Nos.31, 38, 53, 60, 63 and 64 of 2016

Dated this the 3rd October, 2016

JUDGMENT

Thottathil B.Radhakrishnan, J.

These six income tax appeals filed under Section 260A of the Income Tax Act, 1961, hereinafter referred to as, 'the Act', for short, are by an individual assessee. The appeals relate to different consecutive years.

2. We have heard the learned counsel for the appellant and the learned Senior Standing Counsel for the Department of Income Tax.

3. The assessee, an individual, has different sources of income either relating to trade and commerce or otherwise. For the relevant years, he voluntarily filed returns under Section 139 of the Act. The assessments were completed. Thereafter, on 19.2.2010, there was a search and seizure operation under Section 132 of the Act in the residential premises of the assessee. Consequent thereto, notice was issued under Section 153A(1)(a) of the Act calling upon the assessee to furnish return of income for the different consecutive years. Returns were filed. Assessment concluded on the basis of those returns leading to various additions etc. The CIT (Appeals) came to the rescue of the

assessee by trimming down many of the add-ons. At the instance of the Revenue, the Income Tax Appellate Tribunal reversed the Order of the CIT (Appeals) to a larger extent. This is challenged by the assessee.

4. The learned counsel for the appellant succinctly argued that having regard to the quality of jurisdiction under Section 153A(1)(a), it is imperative that though notice under that provision could be issued following search under Section 132 of the Act, the further assessment proceedings on the basis of the returns filed by the assessee in answer to notice under Section 153A(1)(a) cannot be concluded adversely to the interest of the assessee unless incriminating materials were unearthed in the search which formed the foundation for the issuance of notice under Section 153A(1)(a) of the Act. He further argued that when assessments have been completed under Section 143(3) of the Act and when matters have come to rest for quite a long time, it is not within the domain of further proceedings of assessments on grounds referable to Section 153A that the jurisdiction to do so could be concluded unless incriminating materials are available following the search. These arguments are on the basic foundation that search conducted in residential premises of the appellant on 19.2.2010 did not lead to any material which could be utilised against him. The learned counsel pointed out the judgment of the Bombay High Court in ***Commissioner of Income-tax v. Continental Warehousing***

Corporation (Nhava Sheva) Ltd.[(2015)374 ITR 645], the judgments of the Delhi High Court in **Principal Commissioner of Income-tax v. Kurele Paper Mills P.Ltd.** [(2016)380 ITR 571] and **Commissioner of Income-tax v. Kabul Chawla** [(2016)380 ITR 573] and the decision of the High Court of Karnataka in **Commissioner of Income-tax v. Lancy Constructions** [(2016)383 ITR 168] to argue for the position that in the absence of any incriminating materials having been unearthed in a search under Section 132, it was impermissible to conclude any assessment under Section 153A(1)(a) of the Act against the assessee.

5. *Per contra*, the learned Senior Standing Counsel for the Department referred to the judgments of this Court in **Commissioner of Income-Tax v. St. Francis Clay Becor Tiles** [(2016)385 ITR 624 (Ker)] and **Commissioner of Income-tax v. Promy Kuriakose** [(2016)386 ITR 597] and argued for the position that the provisions of Section 153A clearly show that notice could be issued calling for filing of return even when no incriminating material has been unearthed as against the assessee or as against any third person during the course of a search under Section 132. He further argued that the Tribunal being the last authority to decide on issues on facts and law and the said authority having considered and decided on all issues of facts, there is no perversity in the findings warranting interference by this

Court in an appeal under Section 260A of the Act.

6. Though different questions have been formulated, we recast them and frame the following as the substantial questions of law, which could be treated as arising for decision in these appeals:

- (i) For the purpose of issuing a notice under Section 153A(1)(a) of the Act calling upon an assessee to file return, is it an imperative that the search under Section 132 of the Act, on the basis of which the notice is sought to be issued, should have resulted in unearthing incriminating material against the assessee?
- (ii) While concluding the assessment following the notice issued under Section 153A(1)(a) of the Act, is it necessary that incriminating materials were unearthed as against the assessee in the search under Section 132 of the Act? Is it legally sustainable to conclude an assessment of such a nature in the absence of any incriminating material having been unearthed in the search? Is it necessary that any incriminating material ought to have been unearthed in the search under Section 132 of the Act to make any additions to the returns filed by the assessee following notice under Section 153A(1)(a)?

7. In so far as the issue as to whether it is necessary that incriminating materials should be unearthed in a search under Section 132 of the Act to sustain a notice issued under Section 153A(1)(a) is

concerned, the issue stands covered in favour of the Department as per the judgment of this Court in ***St.Francis Clay Becor Tiles's case (supra)*** and ***Promy Kuriakose's case (supra)*** though the second among them relates to a third person to the search as well; which cases would fall under Section 153C of the Act. We, therefore, answer the said question stating that for the issuance of a notice under Section 153A(1)(a), it is not necessary that the search on which it was founded should have necessarily yielded any incriminating material against the assessee or the person to whom such notice is issued.

Question No.(ii):

8. Section 153A is a provision which deals with assessment in case of search or requisition. The activation of a search is not something which is regulated by any limit as to period of time. Even if returns are filed and regular assessments are concluded, search on premises could always be made, if the authority concerned is satisfied that action ought to proceed in that line. Once that is done, Section 153A(1)(a) authorises the issuance of notice calling for filing of returns. This has been noted even under the point decided above. Once a return is filed in answer to such a notice, the Explanation to Section 153A provides, among other things, that all provisions of the Income Tax Act will apply to the assessment made under Section 153A of the Act. This is the manner in which the provisions in Sections 153A, 153B

and 153C of the Act would regulate. Once that is done, it is well within the jurisdiction of the assessing authority to proceed with any lawful modes of assessment as prescribed in the Act. The Statute nowhere makes it conditional that the department has to unearth some incriminating material to conclude some method against the assessee in events where the assessment is triggered by a notice under Section 153A(1)(a) of the Act. This means that even when such notice is triggered following a search, the assessment proceedings can be concluded in any manner known to law, including under Section 143(3) or even Section 144 of the Act, if need be. Therefore, the assessment proceedings generated by the issuance of a notice under Section 153A(1)(a) of the Act can be concluded against the interest of the assessee including making additions even without any incriminating material being available against the assessee in the search under Section 132 of the Act on the basis of which the notice was issued under Section 153A(1)(a) of the Act. We answer this issue accordingly.

9. In the case in hand, the assessing authority had, upon receipt of the returns in answer to the notice under Section 153A(1)(a) of the Act, given an opportunity to the assessee to interact with the officer and thereafter he was required to place a cash flow statement. All that followed thereafter is the assessing authority carrying out an exercise of acting on the cash flow statement and concluding the assessment

by determining the amounts on a meaningful and appropriate application of the cash flow statement by rearranging the entries thereof. That activity carried out by the assessing authority, though to a larger extent, was found against by the CIT (Appeals), has found disapproval at the hands of the Tribunal which is the last fact finding authority. We see that the decision of the Appellate Tribunal cannot be criticised as unreasonable, perverse or unavailable on the face of record. Resultantly, these appeals fail.

In the result, these appeals are dismissed.

**THOTTATHIL B.RADHAKRISHNAN
JUDGE**

**ANU SIVARAMAN
JUDGE**

vgs