

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 18.11.2020
DELIVERED ON : 24.11.2020

CORAM

THE HONOURABLE MR. JUSTICE **ABDUL QUDDHOSE**

W.P.(MD)Nos.9877, 9878, 10120,10140,10147,10150 & 10156 of 2020
and

W.M.P.(MD)Nos.8849, 8851, 8850, 8853, 9013, 9014, 9023, 9026,
9031, 9034, 9036, 9039, 9042 and 9043 of 2020

W.P.(MD)No.9877 of 2020:-

M.Vivek

: Petitioner

Vs.

The Deputy Commissioner of Income Tax,
Central Circle-2 (i/c),
No.44, Williams Road, Cantonment,
Trichy

: Respondent

PRAYER:- Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, to call for the entire records relating to the impugned assessment order for the financial years 2012-13, dated 25.12.2019 and consequential impugned demand notice for the final assessment years 2012-13 vide PAN:AGLPM5567H/A/Y. 2012-13, dated 25.12.2019 are liable to be quashed as illegal and consequentially to direct the respondent herein to conduct proper enquiry after affording sufficient opportunity to the writ petitioner.

For Petitioner :Mr.VR.Shanmuganathan

For Respondent :Mr.N.Dilip Kumar
Standing Counsel

COMMON ORDER

(These petitions were heard through Video Conferencing)

These Writ Petitions have been filed challenging the impugned assessment orders passed by the respondent for the financial assessment years 2012-13, 2013-14, 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19 passed under Section 153A of the Income Tax Act, 1961.

2.Since the issues involved in all these Writ Petitions are one and the same, with the consent of the learned Counsel for the petitioner as well as the learned Standing Counsel for the respondent, all these Writ Petitions are taken up together for hearing and are disposed of by this common order.

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3.The petitioner's late father, Mr.K.Murugesan, was a partner in various firms. During the life time of K.Murugesan, the respondent, on

10.08.2017, conducted search under Section 132 of Income Tax Act, 1961, in all the concerns run by him, namely, M/s.Cholan Auto Finance, M/s.Cholan Finance Corporation, M/s.No.1 Auto Finance, M/s.Helpline Motor Finance and M/s.Vivek Associates.

4.It is the case of the petitioner that statements were obtained from the petitioner's late father continuously for three days and he was kept in confinement in the search premises. According to him, during the search, certain loose sheets were confiscated by the respondent and incomplete data was also retrieved from the newly installed software. It is the case the petitioner that he is not fully aware of the business transactions of his deceased father. It is the further case of the petitioner that the statements were obtained by the respondent in printed question answer format on 10.08.2017, 12.08.2017, 26.03.2018 and 08.05.2018 and the copies of those statements were furnished to him only later.

5.According to the petitioner, the statements obtained from the petitioner's late father could not be retracted, as he had died, due to the

harassment of the respondent, on 13.12.2017 within three months from the date of the search. It is the case of the petitioner that the statements recorded by the respondent from him was retracted by him on 22.08.2019. According to the petitioner, the statements obtained from the petitioner's late father under intimidating circumstances cannot be used against the petitioner for passing any orders against him.

6.It is the case of the petitioner that the sworn statement recorded by the respondent from the petitioner's late father in typed format does not have any legal sanctity and is non-est in law, as according to him, it was obtained through coercion. It is the case of the petitioner that the impugned assessment orders were passed by the respondent in violation of principles of natural justice. According to him, without affording adequate opportunity of hearing, the respondent has passed the impugned assessment orders under Section 153A of Income Tax Act, 1961, for the financial assessment years 2012-13, 2013-14, 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19 in a mechanical manner vide their impugned assessment orders, dated 25.12.2019 and the

consequential impugned demand notices, dated 25.12.2019, for the financial assessment years 2012-13, 2013-14, 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19.

7.The respondent has filed a counter affidavit before this Court. They have raised the following contentions:

(a)The Writ Petitions are not maintainable in view of the availability of alternative statutory appellate remedy under Section 246A of the Income Tax Act, 1961. According to them, principles of natural justice has not been violated by the respondent, while passing the impugned assessment orders.

(b)Several issues raised by the petitioner relate to determination of question on fact, as he has challenged the additions made in the impugned assessment orders on factual premise. Therefore, the statutory appeal provided under the Income Tax Act is the only remedy.

(c)The petitioner had himself admitted to the additions of income made by the respondent in the impugned assessment orders under some heads. He is only disputing the additions made to some of the heads of income.

(d)There is no violation of principles of natural justice, while passing the impugned assessment orders. The petitioner was afforded with opportunity of hearing at every stage. A notice under Section 153A of the Income Tax Act 1961 was issued on 01.03.2019 and after the filing of return of income by the petitioner (assessee), a notice under Section 143(2) of Income Tax Act 1961, was issued on 22.08.2019. A detailed proposal listing out the various issues involved in the case along with the additions proposed on those issues was sent to the petitioner (assessee) on 08.11.2019. The scanned images of the relevant seized materials were also sent as attachments. The petitioner (assessee) was provided time till 21.11.2019. The petitioner (assessee) requested time of another one week and he submitted his objection only on 02.12.2019.

(e)The petitioner never made any specific request for cross examination. The addition made by the respondent under the impugned assessment orders is not solely on the basis of the statement of a person without any supporting document. There are solid evidences in the form of seized documents and sufficient reasons have been recorded in the impugned assessment orders.

(f)The search was conducted by the respondent only under Section 132 of the Income Tax Act, 1961 and it is not a survey under Section 133A of the Income Tax Act, 1961. The statements recorded from the petitioner's late father, Mr.K.Murugesan, and other persons under Section 132(4) of the Income Tax Act, 1961, have evidentiary value and it cannot be equated with the statement under Section 133A of the Income Tax Act 1961.

(g)The loose sheets picked up during the search under Section 132 of the Income Tax Act 1961, are documents within the meaning of Section 2 of Indian Evidence Act 1872. This principle is supported by

the decision of a Division Bench of the Madras High Court in the case of the *Commissioner of Income Tax vs Rangroopchand Chordia*, reported in *2016 SCC Online Mad 4297*.

(h)According to the respondent, the decision of the Honourable Supreme Court in the case of *CBI vs V.C.Shukla and others* reported in *1998 (3) SCC 410*, relied upon by the petitioner does not arise in the context of proceedings under the Income Tax Act, 1961, and hence, not applicable to the case on hand.

(i)Though there was retraction of statements made by the petitioner (assessee) on the date of search, the respondent rejected the same on the appreciation of the returns, where, admittedly, a particular amount is shown as undisclosed income. Therefore, the retraction is no way in the light of Section 132 and its explanation.

(j)They have followed the due procedure contemplated under Section 132 of the Income Tax Act, 1961, while conducting search. The

statement, dated 10.08.2017 from the petitioner's late father, K.Murugesan, is handwritten and other statements, dated 10.08.2017, 12.08.2017, 26.03.2018 and 08.05.2018 are typed statements and are not pre-printed statement. They contain specific questions, based on seized materials (Exs-A1, A2, A3 and A4). Therefore, it is false to allege that all statements were obtained in printed format.

(k) During the course of search or subsequently, during the assessment proceedings, the issue of harassment and consequential death was never raised by the petitioner. From a perusal of the Panchanama (EX-B) for the search conducted at the residence of K.Murugesan, the petitioner's father, it is seen that “nothing untoward happened during the course of search”. Therefore, the allegation that only due to the harassment by the respondent, the petitioner's father died, is false.

(l) Each of the statement contains the deposer's own handwriting, a declaration to the effect that the sworn statement was given “voluntarily and without any force, threat or coercion”. Therefore, it is

false to allege that the statements are obtained by intimidation. In the absence of evidence to the contrary, sworn statement is admissible in evidence.

(m)As per the procedure laid down for search under Section 132 of the Income Tax Act 1961, the copies of sworn statements are provided only when they are applied for. The fact that the petitioner's father did not apply for copies of sworn statements before his demise, cannot be held against the department.

(n)The respondent in his capacity, as quasi-judicial authority, has carried out his duty of verifying whether the deposer has been made aware of the consequences of false testimony. The questions and answers of the sworn statements could not have been pre-determined. The mere fact that the statements are in typed format than in manuscript can in no way undermine their evidentiary value.

(o)Insofar as the contention of the petitioner that the respondent

did not consider his written submission and merely passed pre-determined assessment orders is factually incorrect. From a perusal of the pre-assessment notice, dated 08.11.2019 issued by the assessing officer (Ex-C), the written statement of the petitioner, dated 08.11.2019 (Ex-D), further submission of the petitioner (assessee), dated 02.12.2019 (Ex-E), further letter to the petitioner (assessee), dated 05.12.2019 (Ex-F) and the assessment order (Ex-G), it can clearly be seen that the assessing officer has considered all facts and material evidence placed by the petitioner and has given him a sufficient opportunity and only thereafter, has passed the impugned assessment orders.

(p)The written representation of the petitioner, dated 08.11.2019, clearly shows that the petitioner has sufficient knowledge about both the business of his late father and the seized materials. The only request from the petitioner for cross examination was with reference to an addition in respect of loan given to one Shri.Seetharaman. The assessing officer has denied the request on the ground that the proposed addition was not merely based on the oral evidence of third party,

Shri.Seetharaman, but was based on materials seized from the premises of the petitioner (assessee).

(q)Section 153A of the Income Tax Act provides for passing orders of assessment for six assessment years, immediately preceding the assessment year relevant to the previous year, in which such search is conducted and of the relevant assessment year. The relevant assessment year, for the search held on 10.08.2017, is 2018-19. Hence, the contention of the petitioner that the respondent cannot pass assessment orders for the year 2018-19 is incorrect.

8.Heard Mr.VR.Shanmuganathan, learned Counsel for the petitioner and Mr.N.Dilip Kumar, learned Standing Counsel for the respondent.

9.The learned Counsel for the petitioner would submit that the loose sheets confiscated by the respondent from the petitioner's father would not have any evidentiary value. To substantiate his submission,

he relied upon the decision of Honourable Supreme Court in the case of ***CBI vs V.C.Shukla and others*** reported in ***1998 (3) SCC 410***.

According to him, as per the aforesaid decision, unbound sheets of paper in whatever quantity will not come within the purview of Section 34 of Indian Evidence Act, 1872, and hence, it is not admissible in evidence. According to him, the Authorised Officer, who seized the loose sheets from the petitioner's father, was not subjectively satisfied with regard to the genuineness of the same. Therefore, according to him, the contents of the loose sheets without subjective satisfaction has been erroneously accepted under the impugned assessment orders.

10.It is the contention of the learned Counsel for the petitioner that the operation performed by the respondent on 10.08.2017, is only a survey under Section 133A of the Income Tax Act, as materials seized by them from the petitioner's father and the statements obtained from him do not have any evidentiary value. He referred to Section 133A of Income Tax Act, which deals with power of survey, to substantiate his submission and compared Section 133A with Section 132(4) of the

Income Tax Act.

11.The learned Counsel for the petitioner submitted that the respondent do not have the power to pass an assessment order under Section 153A of the Income Tax Act for the assessment year 2018-19, since the search was conducted only on 10.08.2017 and as on that date, the assessment for the assessment year 2018-19 was not completed. The learned Counsel for the petitioner after referring to Section 133A of the Income Tax Act, relied upon a decision of learned Single Judge of the Madras High Court in the case of *M/s.A.Thangavel Nadar Stores vs The Income Tax Officer*, passed in W.P.Nos.21919 to 21921 of 2018 on 25.02.2019, and would submit that a statement recorded under Section 133A of the Income Tax Act does not have any evidentiary value, obviously for the reason that the Officer is not authorised to administer oath and to take any sworn statement, which alone, has evidentiary value, as contemplated under Law.

12.The learned Counsel for the petitioner would further contend

that the impugned assessment orders and the consequential demand notices have to be quashed, since the search was conducted on 10.08.2017 and subsequently, even before the petitioner's father could retract the statement made during search, he died. According to him, no sufficient opportunity was granted to the petitioner's father to retract his submission made during the time of the search and therefore, principles of natural justice has been violated by the respondent, while passing the impugned assessment orders.

13.The learned Counsel for petitioner drew the attention of this Court to the impugned assessment orders and would submit that the petitioner, who is the legal representative of his deceased father (assessee), has been denied the right of cross examining the records relied upon by the respondent to come to the conclusion that the original assessee had concealed his income. According to him, denial of cross examination amounts to violation of principles of natural justice.

14.The learned Counsel for the petitioner also contended that the

petitioner's father was interrogated by the respondent and they have obtained his signature in a typed question and answer format. According to him, due to the mental trauma and stress, the petitioner's father died even before, he could receive the copies of statements made by him before the respondent on the date of search. According to him, the petitioner was not having full knowledge of the statements made by the petitioner's father on the date of search and that is the reason for the petitioner requesting for cross examination with regard to the documents of evidence relied upon by the respondent. According to him, no sufficient opportunity was granted to the petitioner to dispute the contentions of the respondent. It is contended by the learned Counsel for the petitioner that the impugned assessment orders have been passed in a pre-determined manner relying upon the diary notes and loose sheets, which do not have any evidentiary value. Therefore, according to him, principles of natural justice has been violated by the respondent, while passing the impugned assessment orders as well as while issuing the consequential demand notices. Therefore, according to him, the Writ Petitions are maintainable and the impugned assessment orders as

well as the consequential demand notices will have to be quashed.

15.It is also submitted by the learned Counsel for the petitioner that no action has been initiated against the beneficiary of the petitioner's father during the course of his business activities. According to him, the action of the respondent to initiate proceedings for concealment of income against the petitioner's father is not without *bona fides*.

16.Per contra, the learned Standing Counsel for the respondent would submit that the impugned assessment orders are well considered and have considered all the objections raised by the petitioner on merits and in accordance with law and therefore, these Writ Petitions are not maintainable and the only remedy available to the petitioner is to file the statutory appeal under Section 246A of the Income Tax Act. In support of his submission, the learned Standing Counsel for the respondent relied upon a decision of Honourable Supreme Court in the case of ***Commissioner of Income Tax and others vs Chhabil Das Agarwal***

reported in *(2014) 1 SCC 603*.

17.The learned Standing Counsel for the respondent drew the attention of this Court to the respective affidavits filed by the petitioner in support of the respective Writ Petitions and submitted that the only for the first time, during the course of the arguments made by the learned Counsel for the petitioner, it is pointed out that the respondent had only conducted a survey under Section 133A of the Income Tax Act and not conducted search under Section 132 of the Income Tax Act. The learned Standing Counsel for the respondent pointed out that nowhere in the pleadings, the petitioner has stated that the operation of the respondent on 10.08.2017 is only a survey and not a search.

18.The learned Standing Counsel for the respondent would submit that the loose sheets seized from the petitioner's father during the search are admissible in evidence under Section 34 of Indian Evidence Act, 1872, and in support of his submission, he relied upon a decision rendered by a Division Bench of the Madras High Court in the case of

Commissioner of Income Tax vs T.Rangroopchand Chordia, reported in ***2016 SCC Online Mad 4297*** and would submit that the loose sheets seized from the petitioner's father comes within the definition of “document” under Section 132(4) of the Income Tax Act and hence, it is admissible in evidence.

19.The learned Standing Counsel for the respondent would also submit that the impugned assessment orders have been passed under Section 153A r/w Section 143(3) of the Income Tax Act, which is consequential to a search made under Section 132(4) of the Income Tax Act. According to him, the contention of the learned Counsel for the petitioner that the operation of the respondent on 10.08.2017 is only a survey and not a search, is legally incorrect, since the assessment orders under Section 153A of the Income Tax Act are passed only pursuant to a search under Section 132 of the Income Tax Act and not pursuant to a survey conducted under Section 133A of the Income Tax Act. The learned Standing Counsel for the respondent also referred to Section 153A of the Income Tax Act and would submit that the assessment

under Section 153A of the Income Tax Act can be done for six assessment years, immediately preceding the assessment year relevant to the previous year, in which such search is conducted and for the relevant assessment year or years.

20. The learned Standing Counsel for the respondent also pointed out that the assessment orders have been passed under Section 153A r/w Section 143(3) of the Income Tax Act and assessment has been made for the assessment years 2018-19, which is the current assessment year as on the date of the search, ie., on 10.08.2017, which is in accordance with Section 153A(1)(b) of the Income Tax Act. Insofar as the rejection of the petitioner's request for cross examination is concerned, the learned Standing Counsel for the respondent drew the attention of this Court to the impugned assessment orders and would submit that as seen from the written representation of the petitioner, dated 08.11.2019 before the respondent, it will clearly reveal that the petitioner had sufficient knowledge about the business of his father as well as about the seized materials. Further, as seen from the impugned assessment orders, it is

clear that the petitioner had only made a request for cross examination only with reference to an addition of income in respect of loan granted to one Shri.Seetharaman.

21.The learned Standing Counsel for the respondent after referring to the impugned assessment orders, would submit that the Assessing Officer denied the request of the petitioner for cross examination on the ground that the proposed addition was not merely based on the oral evidence of Shri.Seetaraman, but, based on materials seized from the premises of the assessee. Since the assessee has accepted to have given these loans in the sworn statement and since the oral evidence of 3rd party was used only as a corroborated evidence, there was no need for the petitioner to cross examine the 3rd party, Shri.Seetharaman.

22.The learned Standing Counsel for the respondent also referred to a decision of the Honourable Supreme Court in the case of ***Income Tax Officer vs M.Pirai Choodi***, reported in ***(2010) 15 SCC 283***, and would submit that the rejection of request for cross examination by the

Assessing Officer will not entitle the assessee to file a Writ Petition without availing the statutory appellate remedy under the Income Tax Act before the Commissioner of Income Tax (Appeals). Therefore, according to him, these Writ Petitions are not maintainable even in cases, where, the right of cross examination was rejected by the Assessing Officer.

Discussion:-

23.The primary ground raised by the petitioner for filing these Writ Petitions is that principles of natural justice has been violated by the respondent, while passing the impugned assessment orders. The learned Counsel for the petitioner, for the first time, has also made a submission before this Court that the impugned assessment orders have been passed without authority under the Law. According to him, the operation conducted by the respondent on 10.08.2017 is not a search conducted under Section 132 of the Income Tax Act, but, it is a survey conducted under Section 133A of the Income Tax Act. Having raised the said contention for the first time, though it is not maintainable to

raise the same without any pleading to that effect, being a legal submission, this Court is constrained to give its findings on this contention also.

24.Insofar as the primary contention raised by the learned Counsel for the petitioner that the impugned assessment orders have been passed in violation of principles of natural justice are concerned, this Court will have to first consider the meaning of “principles of natural justice” in order to get an answer to the said contention.

25.Principles of natural justice is a very old concept. Natural justice is an expression of English Common Law and involves a procedural requirement of fairness. The principles of natural justice originated from Common Law in England and it is based on two *latin maxims* and they are (a) *Nemo Judex in causa sua* or *Nemo debet esse judex in propria causa* or Rule against bias (No man shall be a judge in his own cause) and (b) *Audi Alteram parterm* or the rule of fair hearing (hear the other side). In the case on hand, the petitioner has raised the

second ground, namely, no fair hearing was given to him by the Assessing Officer.

26.This Court shall now examine as to whether the respondent has afforded a fair hearing to the petitioner in the assessment proceedings and whether the objections raised by the petitioner were considered by the respondent.

27.A notice under Section 153A of the Income Tax Act was issued to the petitioner on 01.03.2019 and after the filing the return of income by the petitioner, a notice under Section 143(2) of the Income Tax Act was also issued by the respondent on 22.08.2019. A detailed proposal listing out the various issues involved in the case along with the additions proposed on those issues were sent to the petitioner (assessee) on 08.11.2019. The scanned images of the relevant seized materials were also sent as attachments. The petitioner was provided time to reply till 21.11.2019. The petitioner on receipt of the proposal from the respondent, dated 08.11.2019, has also sought for one week time to

reply to the proposal dated 08.11.2019. The petitioner has submitted his objection to the proposal of the respondent, dated 08.11.2019, only on 02.12.2019.

28.As seen from the impugned assessment orders, adequate opportunity of hearing was provided to the petitioner by the respondent and only thereafter, the impugned assessment orders for the seven assessment years have been passed. As seen from the impugned assessment orders, each and every objection raised by the petitioner has been considered by the respondent. In the written representation of the petitioner, dated 08.11.2019, the petitioner has only requested for cross examination with reference to an addition in respect of loan given to one Shri.Seetharaman. He has not made any request for cross examination of any other person, which was the basis for additions, according to the respondent. As seen from the impugned assessment orders, the Assessing Officer has denied the request of the petitioner to cross examine Shri.Seetharaman, on the ground that the proposed additions was not merely based on oral evidence of 3rd party, namely,

Shri.Seetharaman, but, was based on materials seized from the premises of the assessee, who was the petitioner's father, at the time of search.

29.The Honourable Supreme Court in the decision relied upon by the learned Standing Counsel for the respondent, in the case of ***Income Tax Officer vs M.Pirai Choodi***, reported in (2010) 15 SCC 283, has held that the rejection of request for cross examination by the Assessing Officer will not amount to violation of principles of natural justice. The relevant paragraph of the aforesaid decision is extracted hereunder:

“2. In this case, the High Court has set aside the order of assessment on the ground that no opportunity to cross-examine was granted, as sought by the assessee. We are of the view that the High Court should not have set aside the entire assessment order. At the highest, the High Court should have directed the assessing officer to grant an opportunity to the assessee to cross-examine the witness concerned. Be that as it may, we are of the view that, even on this particular aspect, the assessee could have gone in appeal to the CIT (Appeals). The assessee has failed to avail of the statutory remedy. In the circumstances, we are of the view that the High Court should not have quashed the assessment proceedings vide the impugned order.”

30.In the case on hand, reasons have been given by the respondent for rejection of the request made by the petitioner for cross examination of a particular witness, whose statement deals only with a particular

transaction and not the entire transaction, for which additions of income have been made by the respondent. As seen from the impugned assessment orders, each and every objection raised by the petitioner in his written representation, dated 08.11.2019, has been considered by the respondent, who has rejected the same by giving reasons. Whether the reasons for rejection given by the respondent is correct or not cannot be held to be violations of principles of natural justice. If the petitioner is aggrieved, his only remedy is to file the statutory appeal. Therefore, the respondent has adhered to the principles of natural justice by providing a fair hearing and by giving the petitioner sufficient opportunity to raise all the contentions and the respondent has also given reasons for rejecting the objections raised by the petitioner under the impugned assessment orders.

31. Insofar as the new plea raised by the petitioner before this Court that the assessment orders have been passed without authority under Law, since the operation conducted at the premises of the assessee on 10.08.2017, according to him, is only a survey under Section 133A of

the Income Tax Act and not a search under Section 132(4) of the Income Tax Act, is concerned, the said plea taken before this Court is absolutely baseless. Nowhere in the written representation submitted by the petitioner on 08.11.2019 before the respondent, the said plea was taken. In all the representations made during the course of impugned assessment proceedings, the petitioner has admitted that the operation conducted by the respondent on 10.08.2017 is only a search proceeding under Section 132(4) of the Income Tax Act.

32. Insofar as the contention of the petitioner that all the statements recorded by the respondent from his father are in typed format and have been prepared by the respondent to their whims and fancies is concerned, it cannot be a ground for filing these Writ Petitions, as the said objections were not raised by the petitioner during the course of the assessment proceedings. Even if such a plea is taken, this Court under Article 226 of Constitution of India, cannot decide the said plea and it is only the statutory appellate authority concerned to decide the same based on the material and evidence available on record. The appellate

authority is also a fact finding authority and therefore, the petitioner can get redressal from the statutory appellate authority and this Court under Article 226 of Constitution of India, is not the correct forum.

33. With regard to the contention raised by the petitioner that if the statements of copies were provided to the petitioner's father before his demise, he could have retracted his statements is concerned, the said contention will have to be necessarily rejected, in view of the fact that under Section 132(A) of the Income Tax Act, a request will have to be made by the person from whose custody any books of account or other documents were seized. In the case on hand, as seen from the documents filed along with the typed set of papers, this Court does not find any such request made by the petitioner's father during his life time seeking for copies of sworn statements given by him at the time of search under Section 132(A) of the Income Tax Act.

34. With regard to the evidentiary value of loose sheets is concerned, Section 132(4) of the Income Tax Act, permits the

authorised officer to seize books of accounts and other documents. The judgment relied upon by the learned Counsel for the petitioner in the case of ***CBI vs V.C.Shukla and others*** reported in ***1998 (3) SCC 410***, has no bearing for the case on hand, as that case was dealing with a criminal proceeding involving criminal conspiracy under Section 120-B of IPC and further, it was dealing with “books of accounts”. Whereas, in the case on hand, it is an income tax proceeding before a quasi-judicial authority. A Division Bench of the Madras High Court, in the case of ***Commissioner of Income Tax vs Rangroopchand Chordia***, reported in ***2016 SCC Online Mad 4297***, relied upon by the learned Standing Counsel for the respondent, while dealing with Section 132 of the Income Tax Act, similar to the case on hand, has held that loose sheets picked up during search under Section 132 of the Income Tax Act, falls within the definition of “document”, mentioned in Section 132(4) of the Income Tax Act and therefore, it has got evidentiary value. Therefore, the contention raised by the learned Counsel for the petitioner that loose sheets seized during the search under Section 132 of the Income Tax Act does not have any evidentiary value, is rejected by this

Court.

35.Insofar as the contention raised by the learned Counsel for the petitioner that the respondent has passed the impugned assessment orders for the year 2018-19 without any authority under law, the said issued is answered in Section 153A of the Income Tax Act itself. Section 153(A)(1)(b) of the Income Tax Act reads as follows:

“153A.(1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and 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 and for the relevant assessment year or 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 and for the relevant assessment year or years.”

36.As seen from Section 153(A)(1)(b) of the Income Tax Act, it is clear that the Assessing Officer shall pass order of assessment for six assessment years, immediately preceding the assessment years relevant to the previous year, in which search is conducted and of the relevant assessment year. In the case on hand, the search was conducted on 10.08.2017 and the relevant six assessment years immediately preceding the assessment year relevant to the previous year, in which search was conducted, are 2012-13, 2013-14, 2014-15, 2015-16, 2016-17, 2017-18 and relevant assessment year for the date of the search is 2018-19. Therefore, the contention of the learned Counsel for the petitioner that the assessment orders have been passed by the respondent for the year 2018-19 without authority under Law under Section 153A of the Income Tax Act, is rejected by this Court.

37.For the foregoing reasons, there is no merit in these Writ Petitions, as principles of natural justice has not been violated by respondent, while passing the impugned assessment orders and the consequential demand notices. Therefore, the only remedy available to

the petitioner is to file the statutory appeal under Section 264A of the Income Tax Act, which he has failed to exercise till date. The decision relied upon by the learned Standing Counsel for the respondent in the case of *Commissioner of Income Tax and others vs Chhabil Das Agarwal* reported in (2014) 1 SCC 603, while dealing with the alternate statutory remedy, is squarely applicable for the facts of the instant case.

38. In the result, these Writ Petitions are dismissed. However, liberty is granted to the petitioner to file the statutory appeal under Section 246A of the Income Tax, as against the impugned assessment orders. This Court grants two weeks time from the date of receipt of a copy of this order, to the petitioner to prefer the statutory appeal before the appropriate statutory appellate authority. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes/No

24.11.2020

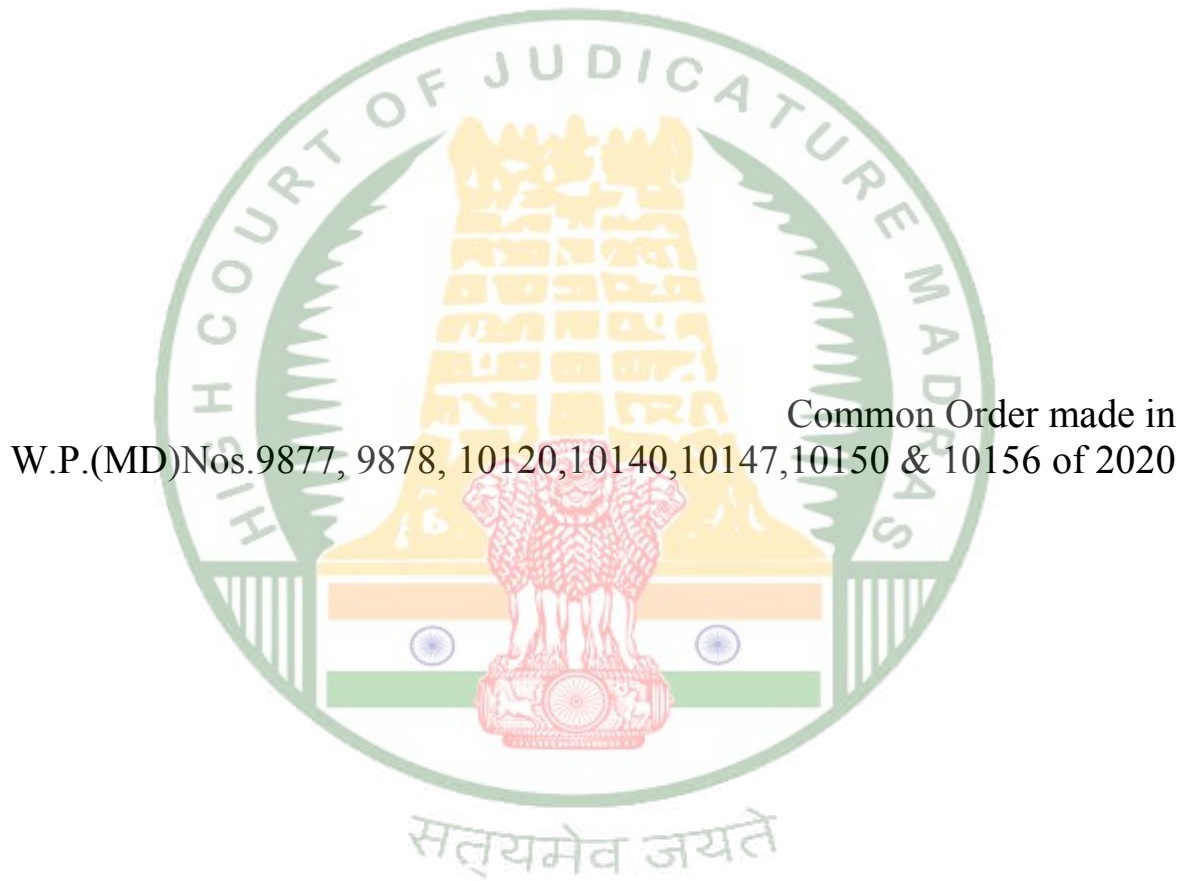
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Note: Issue order copy by 26.11.2020.

W.P.(MD)No.9877 of 2020 batch

ABDUL QUDDHOSE, J.

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Common Order made in
W.P.(MD)Nos.9877, 9878, 10120,10140,10147,10150 & 10156 of 2020

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