


HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No. 2148/2014

B & B Mercantile Pvt. Ltd., D-32/112, Pataleshwar, Bengalitola, Varanasi, Uttar Pradesh - 221001, through its Authorised representative Shri Ranjeet Kumar.

----Petitioner

Versus

1. Director Of Income Tax (INV), Chandigarh, Aaykar Bhawan, Sector-2, Panchkula - 134112
2. Commissioner of Income Tax (Central), Jaipur, 2nd Floor New Central Revenue Building (Annexe), Statue Circle, Jaipur - 302005.
3. Deputy Commissioner of Income Tax - Central Circle, Moti Dungari, Alwar.
4. Assistant Commissioner of Income Tax, Central Circle-II, New CGO Complex, NH-IV, NIT, Faridabad - 121001.

----Respondents

For Petitioner(s)	:	Mr. Sachit Jolly, Sr. Adv. assisted by Ms. Rubal Bansal Maini and Mr. Satvik Sareen
For Respondent(s)	:	Mr. Siddharth Bapna with Ms. Tanushka Saxena

HON'BLE THE ACTING CHIEF JUSTICE MR. SANJEEV PRAKASH SHARMA

HON'BLE MRS. JUSTICE SANGEETA SHARMA

Judgment

Date of conclusion of Arguments	: 12th February, 2026
Date on which judgment was reserved	: 12th February, 2026
Whether the full judgment or only the operative part is pronounced	: Full judgment
Date of pronouncement	: <u>6th</u> March, 2026

(Per Hon'ble the Acting Chief Justice)

1. The petitioner-company, by way of this writ petition, has prayed as under:

"(a) A Writ of Certiorari or Writ, Order or Direction in the nature of Certiorari, or any other appropriate Writ, Order or Direction under Article 226/227 of the Constitution of India, calling for records of the case, declare that warrant of authorization under section 132 of the Income tax Act, 1961

issued in the name of the Petitioner was illegal, bad in law and without jurisdiction.

(b) A writ of Certiorari or Writ, Order or Direction in the nature of Certiorari, or any other appropriate Writ, Order or Direction under Article 226/227 of the Constitution of India, calling upon Respondent No.1 to transmit and certify the records relating to warrant of authorization of search on Petitioner so that the said search warrant and proceedings initiated thereunder may be set aside and/or quashed and conscionable justice may be rendered;

(c) A Writ of Certiorari or Writ, Order or Direction in the nature of Certiorari, or any other appropriate Writ, Order or Direction under Article 226/227 of the Constitution of India, quashing the impugned order dated 17.12.2013 (Annexure 'A') passed under section 127 of the Act transferring the case of the Petitioner from Respondent No.3 to Respondent No.4;

(d) A Writ of Certiorari or Writ, Order or Direction in the nature of Certiorari, or any other appropriate Writ, Order or Direction under Article 226/227 of the Constitution of India, quashing impugned notices dated 18.12.2013 (Annexure 'B') issued under section 153A of the Act for assessment years 2006-07 to 2011-12;

(e) A Writ of Prohibition or Writ, Order or Direction in the nature of Prohibition, or any other appropriate Writ, Order or Direction under Article 226/227 of the Constitution of India restraining the Respondent No.4 from taking any further proceedings pursuant to impugned notices dated 18.12.2013 for the assessment years 2006-07 to 2012-13.

(f) To grant the petition such further or other relief as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. On 24.02.2014, this Court passed following order:

"Issue notice, returnable within two weeks. Notices may be given dasti, as prayed. In the meanwhile, petitioner would not be insisted upon to file return to the office where his case has been transferred."

3. The petitioner-company is carrying on business of real estate investments and has been filing regular returns under Section 139 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') in time. The Income Tax returns filed by the petitioner-company for the Assessment Years 2006-2007 to 2011-2012 as mentioned in the written submissions is reproduced as under:

Relevant AYS	ITRs filed on
2006-07	30.11.2006
2007-08	30.10.2007
2008-09	29.09.2008
2009-10	30.09.2009
2010-11	15.10.2010
2011-12	30.09.2011
2012-13	28.09.2012

4. A notice under Section 127(1) of the Act was issued to the petitioner on 23.10.2013, *inter alia*, stating that a search and seizure operation under Section 132 of the Act was carried out in the M3M India Limited Group of cases, Gurgaon on 03.08.2011 by the Investigation Wing of Chandigarh including the premises of the petitioner and the petitioner was asked to show cause as to why its case be not transferred from DCIT, Central Circle, Alwar to ACIT, Central Circle-2, Faridabad.

5. Another notice was served on 09.12.2013 under Section 127(1) of the Act mentioning that the date of search was 30.06.2011 and not 03.08.2011. The petitioner submitted reply objecting to the proposed transfer as there was no search conducted on 03.08.2011 and demanded the warrant of authorisation. On 17.12.2013 another order was passed under Section 127(2) of the Act, whereby the petitioner's case was transferred based on a search conducted on 30.06.2011 giving out reason that a coordinated investigation was required to be carried out. Vide another notice dated 18.12.2013 issued under Section 153A(1)(a) of the Act, petitioner was asked to submit a true and correct returns of total income for Assessment Years 2006-2007 to

2011-2012. Aggrieved of the said notices, the instant petition has been filed before this Court.

6. Learned senior counsel appearing for the petitioner submits that neither notice under Section 127 of the Act has been issued stating reasons as to why coordinated investigation is required for the relevant Assessment Years, nor the respondents have stated any link to the alleged incriminating material. Learned senior counsel has submitted that merely for coordinated investigation, the transfer of case under Section 127 of the Act cannot be done. He also invited attention to the notice under Section 127(1) of the Act issued on 09.12.2013 wherein the date of 30.06.2012 is mentioned whereas in the written submissions and in the reply it has been stated that search was carried out on 30.06.2011. Learned senior counsel submits that thus, there was no search conducted on 30.08.2012 or 30.06.2012 and for the search, which may be conducted on 30.06.2011, no notice under Section 127(1) of the Act has been given, which is required. He has submitted that the reply was given to the show cause notice and it was pointed out that no search was conducted at the registered office of the petitioner, which was located at D-32/112, Pataleswar, Bengali Tola, Varanasi. It was also pointed out that no coordinated search investigation was conducted, nor any incriminating documents were found in the search. It is further submitted that neither any warrant of authorization was drawn with regard to petitioner-company. Learned senior counsel has submitted that under Section 132 of the Act, search can be authorised on the satisfaction of one of the three conditions

enumerated therein and the transfer from DCIT, Central Circle, Alwar was made mechanically without due application of mind. Learned senior counsel has relied on judgments in **Kamal Varandmal Galani vs. CIT¹**, **Anuben Lalabhai Bharwad vs. Principal Commissioner of Income Tax²**, **Dollar Gulati vs. PCIT³**, **Varun Raj Pillai vs. PCIT⁴** and **Advantage Strategic Consulting Pvt. Ltd. vs. PCIT⁵**.

7. It has been further submitted that no factual or actual search was conducted under Section 132 of the Act and the impugned notice under Section 153A was therefore, wholly unjustified. It is submitted that in the counter affidavits, respondents have informed that a survey was conducted under Section 133A of the Act at A-503, Ansal Chambers, Bhikaji Cama Place, New Place ("Ansal", which is the alleged petitioner's premises), but the same was closed and locked and therefore, no search could actually or factually take place. As per the counter affidavit, learned senior counsel has invited attention to that paragraph of the counter affidavit, wherein it has been stated that the premises of petitioner was found to be closed and locked. On receipt of the report of the authorised officer, the survey was converted into the search. During search of the said premises, stamps and seals of B & B Mercantile Pvt. Ltd. were found in the said office. Learned senior counsel has submitted that the stamps and seals cannot be said to be sufficient incriminating articles and documents, on which notice under Section 158 of the Act could be issued. Further

1 (2024) 460 ITR 380 (Bom)

2 2016 SCC OnLine Guj 2426 (Gujarat)

3 (2024) 162 taxmann.com 348 (Del)

4 (2022) 134 taxmann.com 86 (Gauhati)

5 (2021) 430 ITR 1 (Mad)

he relied on the judgment passed by the Punjab and Haryana High Court in **Misty Meadows Private Limited vs. Union of India**⁶ to submit that as the premises did not belong to the petitioner-company and even if any incriminating articles or documents were found, then a notice under Section 153C of the Act was required to be issued to the petitioner keeping in view the law laid down in the case of **PCIT vs. Abhisar Buildwell Pvt. Ltd.**⁷. Learned senior counsel has further submitted that the order under Section 127 of the Act does not mention the date of the alleged search at the petitioner's premises and is *ex facie* arbitrary and ambiguous.

8. Learned senior counsel has further argued that the statutory period of limitation to pass an assessment order under Section 153B read with Section 143(3) of the Act has expired and no assessment can be made beyond expiry of the period and, therefore, the impugned notices are liable to be quashed by this Court. He has submitted that although the Court passed an interim order on 24.02.2014 granting only protection to the petitioner that he shall not be compelled to file return at the transferred jurisdiction during the pendency of writ petition, but the order neither stay the assessment proceedings nor it prohibited the respondents from framing the assessment in terms of Section 144 of the Act and therefore, even if the petitioner did not file the return pursuant to the order dated 24.02.2014, the assessing officer was fully competent to frame the assessment, which has not been done. He relied on the judgment passed by

6 CWP No.5139 of 2024 (O&M), decided on 13.05.2024

7 (2023) 454 ITR 212 (SC)

the Delhi High Court in **Digvijay Jain & Ors. vs. Union of India**⁸ wherein in similar circumstances, the proceedings initiated under Section 153 of the Act were quashed as having become time barred.

9. *Per contra*, learned counsel appearing for the Revenue has submitted written submissions and asserts that the order dated 17.12.2013 is valid, legal and has been passed in conformity with the provisions of the Act and after following the principles of natural justice. It is stated that the search warrant was issued and more than 20 companies connected with M3M were subjected to search on 30.06.2011 and all other companies mentioned in the search warrant have already been centralised with the office of ACIT, Central Circle-2, Faridabad. The order was required to be passed for coordinated investigation after following the provisions of the Act. It was done because the entire materials with respect to search and relevant information were available in one office. He has further submitted that even the petitioner-company had requested for transfer of their headquarter to Delhi circle from Alwar. Therefore, there would be no inconvenience or prejudice caused. No allegation of *mala fide* or arbitrariness has been alleged in the petition. Therefore, the order impugned does not warrant interference.

10. Learned counsel for the Revenue has also submitted that quashing of the search and seizure proceedings and warrant of authorisation ought not be done based on the judgment passed in **Misty Meadows Private Limited** (supra) as the said judgment

8 W.P.(C) No.4586/2020 & CM Appls. No.16573/2020, decided on 22.03.2022

could not be applicable to the facts and circumstances of the case. It is submitted that in the present matter, there is a warrant of authorisation to search and the same was shown to the assessee during pre-decisional hearing. Therefore, copy of the warrant of authorisation is also be shown to the Court. It is submitted that the legality and validity of the search and seizure proceedings are not amenable to the writ jurisdiction of this Court and the respondents have relied on the judgment of the Delhi High Court in **Pavel Garg vs. Income-tax Department**⁹, which has been upheld by Hon'ble Supreme Court in its order dated 20.06.2025. He also relied on the judgment passed by the Calcutta High Court in **Dia Gold Jewels (P.) Ltd. vs. Principal Commissioner of Income-tax**¹⁰. He has also pointed out that the search and seizure have been carried out beyond the territorial jurisdiction of this Court and therein, this Court ought not to examine whether the search and seizure action was legal or not.

11. As regards the premises where the search was conducted is a disputed question of fact. Learned counsel has also submitted in the written submissions that the search and seizure under Section 132 of the Act were undertaken after forming reasons to believe. The premises of the petitioner, *inter alia*, at A-503, Ansal Chambers, Bhikaji Cama Place, New Place was subjected to search and during the course of search financial involvement of the petitioner with evidence of tax evasion has been found and further seal of the petitioner-company has been recovered and seized during the course of search and seizure and the search and

9 [2025] 175 taxmann.com 1082 (Delhi)

10 [2025] 174 taxmann.com 1004 (Calcutta)

seizure are not only required to be carried out at the registered premises of the petitioner-company and cannot be necessarily restricted to the registered office, but can be carried out at any of the places where the incriminating evidence can be said to be lying.

12. As regards the assessment proceedings having become time barred, it is submitted that the mandate under Section 153A of the Act is to first issue notice to the assessee requiring the assessee to furnish return of income in respect of assessment falling within six assessment years and for the relevant year or years. Upon filing of such returns, the assessing officer can proceed to the next stage provided under Section 153A(1)(b) of the Act and without filing of the return, assessment proceedings cannot be completed. The provisions of Section 144 of the Act cannot be applied in the facts and circumstances of the case and no party should suffer due to the act of the Court. The interim protection was granted to the petitioner. However, the petitioner cannot take advantage of the said interim protection. The Revenue has relied on following judgments:

Sr. No.	Case title
1	Dollar Gulati vs. Principal Commissioner of Income-Tax [2024] 162 taxmann.com 348 (Delhi)
2	Mark Gulati vs. Principal Commissioner of Income-Tax [2024] 164 taxmann.com 604 (SC)
3	Advantage Strategic Consulting (P.) Ltd. vs. Principal Commissioner of Income Tax, Chennai [2021] 124 taxmann.com 511 (Madras)
4	Varun Raj Pillai vs. Principal Commissioner of Income-Tax [2022] 134 taxmann.com 86 (Gauhati)
5	Kamlesh Rajnikant Shah vs. Principal Commissioner

	of Income-Tax [2022] 138 taxmann.com 59 (Gujarat)
6	Alliance Broadcasting (P.) Ltd. vs. Assistant Commissioner of Income-Tax [2023] 152 taxmann.com 292 (Madras)
7	Kusum Ingots & Alloys Ltd. vs. Union of India & Anr. (2004) 6 SCC 254
8	Shiva Cement Ltd. vs. Director of Income-Tax (Inv.) Bhubaneswar [2021] 132 taxmann.com 286 (Orissa)
9	Director General of Income-Tax (Inv.) vs. Spacewood Furnishes (P.) Ltd. [2015] 57 taxmann.com 292 (SC)
10	Dia Gold Jewels (P.) Ltd. vs. Principal Commissioner of Income Tax [2025] 174 taxmann.com 1001 (Calcutta)
11	Pavel Garg vs. Income-Tax Department [2025] 176 taxmann.com 307 (SC)
12	Pavel Garg vs. Income-Tax Department [2025] 175 taxmann.com 1082 (Delhi)
13	Alta Vista Info Solutions (P.) Ltd. vs. Principal Commissioner of Income Tax [2025] 181 taxmann.com 172 (Delhi)
14	Bhupinder Singh vs. Principal Commissioner of Income Tax [2025] 181 taxmann.com 912 (Punjab & Haryana)

13. We have heard the arguments at length and considered the written submissions filed by both the parties.

14. Before dealing with the submissions, it would be apposite to quote the provisions of Sections 127, 132, 153A, 153C and 144 of the Act as under:

“Power to transfer cases.

127.(1) *The [Principal Director General or] Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, transfer any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him.*

(2) *Where the Assessing Officer or Assessing Officers from whom the case is to be transferred and the Assessing Officer or Assessing Officers to whom the case is to be transferred are not subordinate to the same [Principal Director General*

or] Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner,—

(a) where the [Principal Directors General or] Directors General or [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioners or] Commissioners to whom such Assessing Officers are subordinate are in agreement, then the [Principal Director General or] Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner from whose jurisdiction the case is to be transferred may, after giving the assessee a reasonable opportunity of being heard in the matter, wherever it is possible to do so, and after recording his reasons for doing so, pass the order;

(b) where the [Principal Directors General or] Directors General or [Principal Chief Commissioners or] Chief Commissioners or [Principal Commissioners or] Commissioners aforesaid are not in agreement, the order transferring the case may, similarly, be passed by the Board or any such [Principal Director General or] Director General or [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner as the Board may, by notification in the Official Gazette, authorise in this behalf.

(3) Nothing in sub-section (1) or sub-section (2) shall be deemed to require any such opportunity to be given where the transfer is from any Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) to any other Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) and the offices of all such officers are situated in the same city, locality or place.

(4) The transfer of a case under sub-section (1) or sub-section (2) may be made at any stage of the proceedings, and shall not render necessary the re-issue of any notice already issued by the Assessing Officer or Assessing Officers from whom the case is transferred.

Explanation.—In section 120 and this section, the word "case", in relation to any person whose name is specified in any order or direction issued thereunder, means all proceedings under this Act in respect of any year which may be pending on the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year.

Search and seizure.

132.(1) Where the [Principal Director General] or Director General or [Principal Director or] Director] or the [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner] [or Additional Director or Additional Commissioner] [or Joint Director or Joint

Commissioner] in consequence of information in his possession, has reason to believe that—

(a) any person to whom a summons under sub-section (1) of section 37 of the Indian Income-tax Act, 1922 (11 of 1922), or under sub-section (1) of section 131 of this Act, or a notice under sub-section (4) of section 22 of the Indian Income-tax Act, 1922, or under sub-section (1) of section 142 of this Act was issued to produce, or cause to be produced, any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of account or other documents as required by such summons or notice, or

(b) any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, any books of account or other documents which will be useful for, or relevant to, any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act, or

(c) any person is in possession of any money, bullion, jewellery or other valuable article or thing and such money, bullion, jewellery or other valuable article or thing represents either wholly or partly income or property [which has not been, or would not be, disclosed] for the purposes of the Indian Income-tax Act, 1922 (11 of 1922), or this Act (hereinafter in this section referred to as the undisclosed income or property),

[then,—

(A) the [Principal Director General or] Director General or [Principal Director or] Director] or the [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner], as the case may be, may authorise any [Additional Director or Additional Commissioner or] [Joint Director], [Joint Commissioner], [Assistant Director] [or Deputy Director], [Assistant Commissioner] [or Deputy Commissioner] or Income-tax Officer], or

(B) such [Additional Director or Additional Commissioner or] [Joint Director], or [Joint Commissioner], as the case may be, may authorise any [Assistant Director] [or Deputy Director]], [Assistant Commissioner] [or Deputy Commissioner] or Income-tax Officer],

(the officer so authorised in all cases being hereinafter referred to as the authorised officer) to—]

(i) enter and search any [building, place, vessel, vehicle or aircraft] where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept;

(ii) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers

conferred by clause (i) where the keys thereof are not available;

[(iia) search any person who has got out of, or is about to get into, or is in, the building, place, vessel, vehicle or aircraft, if the authorised officer has reason to suspect that such person has secreted about his person any such books of account, other documents, money, bullion, jewellery or other valuable article or thing;]

[(iib) require any person who is found to be in possession or control of any books of account or other documents maintained in the form of electronic record as defined in clause (t) of sub-section (1) of section 2 of the Information Technology Act, 2000 (21 of 2000), to afford the authorised officer the necessary facility to inspect such books of account or other documents;]

(iii) seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found as a result of such search:

[Provided] that bullion, jewellery or other valuable article or thing, being stock-in-trade of the business, found as a result of such search shall not be seized but the authorised officer shall make a note or inventory of such stock-in-trade of the business;]

(iv) place marks of identification on any books of account or other documents or make or cause to be made extracts or copies therefrom;

(v) make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing:

[Provided] that where any building, place, vessel, vehicle or aircraft referred to in clause (i) is within the area of jurisdiction of any [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner], but such [[Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner] has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c), then, notwithstanding anything contained in section [120], it shall be competent for him to exercise the powers under this sub-section in all cases where he has reason to believe that any delay in getting the authorisation from the [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner] having jurisdiction over such person may be prejudicial to the interests of the revenue:]

[Provided further] that where it is not possible or practicable to take physical possession of any valuable article or thing and remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature, the authorised officer may serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it, except with the previous permission of such authorised officer and such action of the authorised

officer shall be deemed to be seizure of such valuable article or thing under clause (iii):]

*[**Provided also** that nothing contained in the second proviso shall apply in case of any valuable article or thing, being stock-in-trade of the business:]*

*[**Provided also** that no authorisation shall be issued by the Additional Director or Additional Commissioner or Joint Director or Joint Commissioner on or after the 1st day of October, 2009 unless he has been empowered by the Board to do so.]*

[Explanation.—For the removal of doubts, it is hereby declared that the reason to believe, as recorded by the income-tax authority under this sub-section, shall not be disclosed to any person or any authority or the Appellate Tribunal.]

[(1A) Where any [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner], in consequence of information in his possession, has reason to suspect that any books of account, other documents, money, bullion, jewellery or other valuable article or thing in respect of which an officer has been authorised by the [[Principal Director General or] Director General or [Principal Director or] Director] or any other [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner] or [Additional Director or Additional Commissioner] [or Joint Director or Joint Commissioner] to take action under clauses (i) to (v) of sub-section (1) are or is kept in any building, place, vessel, vehicle or aircraft not mentioned in the authorisation under sub-section (1), such [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner] may, notwithstanding anything contained in section [120], authorise the said officer to take action under any of the clauses aforesaid in respect of such building, place, vessel, vehicle or aircraft.]

[Explanation.—For the removal of doubts, it is hereby declared that the reason to suspect, as recorded by the income-tax authority under this sub-section, shall not be disclosed to any person or any authority or the Appellate Tribunal.]

[(2) The authorised officer may requisition the services of,-

(i) any police officer or of any officer of the Central Government, or of both; or

(ii) any person or entity as may be approved by the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General, in accordance with the procedure, as may be prescribed, in this regard,

to assist him for all or any of the purposes specified in sub-section (1) [or sub-section (1A) and it shall be the duty of every such officer to comply with such requisition.]

(3) *The authorised officer may, where it is not practicable to seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing, [for reasons other than those mentioned in the second proviso to sub-section (1),] serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance with this sub-section.*

[Explanation.—For the removal of doubts, it is hereby declared that serving of an order as aforesaid under this sub-section shall not be deemed to be seizure of such books of account, other documents, money, bullion, jewellery or other valuable article or thing under clause (iii) of sub-section (1).]

(4) *The authorised officer may, during the course of the search or seizure, 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 Indian Income-tax Act, 1922 (11 of 1922), or under this Act.*

[Explanation.—For the removal of doubts, it is hereby declared that the examination of any person under this sub-section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Indian Income-tax Act, 1922 (11 of 1922), or under this Act.]

[(4A) 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 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.]

(5) [***]

(6) [***]

(7) [***]

(8) *The books of account or other documents seized under sub-section (1) [or sub-section (1A)] shall not be retained by the authorised officer for a period exceeding [one month from the end of the quarter in which the order of assessment or reassessment or recomputation is made] under sub-section (3) of section 143 or section 144 or section 147 or [section 153A or] clause (c) of section 158BC] unless the reasons for retaining the same are recorded by him in writing and the approval of the [[Principal Chief Commissioner or] Chief Commissioner, [Principal Commissioner or] Commissioner, [Principal Director General or] Director General or [Principal Director or] Director] for such retention is obtained:*

Provided that the [[Principal Chief Commissioner or] Chief Commissioner, [Principal Commissioner or] Commissioner, [Principal Director General or] Director General or [Principal Director or] Director] shall not authorise the retention of the books of account and other documents for a period exceeding thirty days after all the proceedings under the Indian Income-tax Act, 1922 (11 of 1922), or this Act in respect of the years for which the books of account or other documents are relevant are completed.

[(8A) *An order under sub-section (3) shall not be in force for a period exceeding sixty days from the date of the order.*]

(9) *The person from whose custody any books of account or other documents are seized under sub-section (1) [or sub-section (1A)] may make copies thereof, or take extracts therefrom, in the presence of the authorised officer or any other person empowered by him in this behalf, at such place and time as the authorised officer may appoint in this behalf.*

[(9A) *Where the authorised officer has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c) of sub-section (1), the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing (hereafter in this section and in sections 132A and 132B referred to as the assets) seized under that sub-section shall be handed over by the authorised officer to the Assessing Officer having jurisdiction over such person within a period of sixty days from the date on which the last of the authorisations for search was executed and thereupon the powers exercisable by the authorised officer under sub-section (8) or sub-section (9) shall be exercisable by such Assessing Officer.*]

[(9B) *Where, during the course of the search or seizure or within a period of sixty days from the date on which the last of the authorisations for search was executed, the authorised officer, for reasons to be recorded in writing, is satisfied that for the purpose of protecting the interest of revenue, it is necessary so to do, he may with the previous approval of the Principal Director General or Director General or the Principal Director or Director, by order in writing, attach provisionally any property belonging to the assessee, and for the said purpose, the provisions of the Second Schedule shall, mutatis mutandis, apply.*

(9C) Every provisional attachment made under sub-section (9B) shall cease to have effect after the expiry of a period of six months from the date of the order referred to in sub-section (9B).

(9D) The authorised officer may, during the course of the search or seizure or within a period of sixty days from the date on which the last of the authorisations for search was executed, make a reference to,-

(i) a Valuation Officer referred to in section 142A; or

(ii) any other person or entity or any valuer registered by or under any law for the time being in force, as may be approved by the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General, in accordance with the procedure, as may be prescribed, in this regard,

who shall estimate the fair market value of the property in the manner provided under that section and submit a report of the estimate to the said officer within a period of sixty days from the date of receipt of such reference.]

(10) If a person legally entitled to the books of account or other documents seized under sub-section (1) [or sub-section (1A)] objects for any reason to the approval given by the [[Principal Chief Commissioner or] Chief Commissioner, [Principal Commissioner or] Commissioner, [Principal Director General or] Director General or [Principal Director or] Director] under sub-section (8), he may make an application to the Board stating therein the reasons for such objection and requesting for the return of the books of account or other documents 7[and the Board may, after giving the applicant an opportunity of being heard, pass such orders as it thinks fit].

(11) [***]

(11A) [***]

(12) [***]

(13) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches and seizure shall apply, so far as may be, to searches and seizure under sub-section (1) or sub-section (1A).]

(14) The Board may make rules in relation to any search or seizure under this section; in particular, and without prejudice to the generality of the foregoing power, such rules may provide for the procedure to be followed by the authorised officer—

(i) for obtaining ingress into [any building, place, vessel, vehicle or aircraft] to be searched where free ingress thereto is not available;

(ii) for ensuring safe custody of any books of account or other documents or assets seized.

[Explanation 1.—For the purposes of sub-sections (9A), (9B) and (9D), the lat of [authorisations] for search shall be deemed to have been executed,-

(a) in the case of search, on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorisation has been issued; or

(b) in the case of requisition under section 132A, on the actual receipt of the books of account or other documents or assets by the authorised officer.]

Explanation 2.—In this section, the word "proceeding" means any proceeding in respect of any year, whether under the Indian Income-tax Act, 1922 (11 of 1922), or this Act, which may be pending on the date on which a search is authorised under this section or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after such date in respect of any year.]

Best judgment assessment.

144. [(1)] If any person—

(a) fails to make the return required [under sub-section (1) of section 139] and has not made a return or a revised return under sub-section (4) or sub-section (5) of that section, or

(b) fails to comply with all the terms of a notice issued under sub-section (1) of section 142 3[or fails to comply with a direction issued under sub-section (2A) of that section], or

(c) having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of section 143,

the [Assessing] Officer, after taking into account all relevant material which the [Assessing] Officer has gathered, [shall, after giving the assessee an opportunity of being heard, make the assessment] of the total income or loss to the best of his judgment and determine the sum payable by the assessee [***] on the basis of such assessment:

[Provided] that such opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the assessment should not be completed to the best of his judgment:

Provided further that it shall not be necessary to give such opportunity in a case where a notice under sub-section (1) of section 142 has been issued prior to the making of an assessment under this section.]

[(2) The provisions of this section as they stood immediately before their amendment by the Direct Tax Laws (Amendment) Act, 1987 (4 of 1988), shall apply to and in relation to any assessment for the assessment year commencing on the 1st day of April, 1988, or any earlier assessment year and references in this section to the other provisions of this Act shall be construed as references to

those provisions as for the time being in force and applicable to the relevant assessment year.]

Assessment in case of search or requisition.

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 [but on or before the 31st day of March, 2021], 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]:

Provided that the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years [and for the relevant assessment year or years]:

Provided further 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:

[**Provided also** that the Central Government may by rules made by it and published in the Official Gazette (except in cases where any assessment or reassessment has abated under the second proviso), specify the class or classes of cases 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 1[and for the relevant assessment year or years]:

[**Provided also** that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless—

(a) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset,

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 in the relevant assessment years;

(b) the income referred to in clause (a) or part thereof has escaped assessment for such year or years; and

(c) the search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.

Explanation 1.—For the purposes of this sub-section, the expression "relevant assessment year" shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.

Explanation 2.—For the purposes of the fourth proviso, "asset" shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.]

[(2) 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 5[Principal Commissioner or 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.

Assessment of income of any other person.

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.]

(3) Nothing contained in this selection shall apply in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A on or after the 1st day of April, 2021.]”

15. In **Kamal Varandmal Galani** (supra), the Bombay High Court has held as under:

“14. The instructions make it clear that while sending a proposal for centralisation, reasons had to be reflected including the relationship of the petitioner with the main persons of the group. No such sustainable reasons are forthcoming from the records except speculation connecting the Petitioner and the subject material and a request from the Principal Commissioner of Income Tax, Jaipur for centralization of the case. In fact the Deputy Commissioner of Income-tax-19(3), Mumbai ought to have refused to accede to the request for centralization inasmuch as it had not received any cogent material or reasons, which would have formed a basis for the transfer of the case to the Deputy Commissioner of Income-tax, Central Circle-3, Jaipur.”

16. In **Anuben Lalabhai Bharwad** (supra), the Gujarat High Court has held as under:

“9. On plain reading of the aforesaid provision of law, it is emerging that while exercising the jurisdiction under the said statutory provision, a reasonable and effective opportunity is required to be given to a person concerned. This reasonable opportunity would mean that an effective opportunity must be given coupled with an appropriate application of mind and after arriving at a subjective satisfaction on the issue, an appropriate order is required to be passed. Law requires that every administrative order must be in consonance with well recognized principles of natural justice and the natural justice compliance demands not only mere granting of reasonable opportunity but also to assign cogent reasons and assigning of reasons is nothing but a part and parcel of compliance of principles of natural justice and therefore, the authority under a legal obligation to exercise the power in a manner in which the statute demands and here, from the material on record and the contentions raised by the respective counsel it appears that the provision of Section 127 of the Act has not been complied with in true letter and spirit. A bare reading of the order dated 6.1.2016 reflects only one reason which is reflected in Para 1. From the reading of an order, it appears that none of the contentions which have been reflected in the written representation have been considered. Not only that even the authorities which have been cited specifically have also not been dealt with an in addition thereto, most material

aspect which was expected to be considered that the petitioner has specifically contended that there is no life linkage at all with the said group, namely, M/s. HVK International Group, Surat and there is no iota of evidence which would connect even remotely to the said group. Now, when this specific case has been put-forth, it was expected on the part of respondent authority to examine the said issue. Having not done so, the very exercise of jurisdiction is vitiated, suffers from the vice of non-application of mind and since the reasons are not reflected at all, this court is of the opinion that the order cannot be said to be in consonance with the compliance of principles of natural justice and therefore, deserves to be struck down on this ground alone.

11. Even from the material on record, it is merging that the authority has no specific material on record or any independent material to link the petitioner in any manner with M/s. HVK International Group, Surat. The authority appears to have drawn inferences and simply because Shri Sanjay Dhanak had some linkage with M/s. HVK International Group, Surat, the authority presumed that petitioner also must have remove connections and thereby, in casual exercise of power, the provision of Section 127 of the Act is resorted to and transferred the case from Ahmedabad to Surat. Even to examine whether any linkage remotely is found of the petitioner with said M/s. HVK International Group, Surat, this Court has gone through the statements recorded during the course of search which are attached to the memo of petition from Page-49 onwards and from those questions – answers also which are part of the record, it would emerge that by any stretch of imagination, it can be said that the petitioner has any linkage with said M/s. HVK International Group, Surat. This Court found from the statements, material on record as well as from the affidavits filed in a cognate petitions that no connection is emerging except a bare transaction of purchase of flat at Science City Road, Ahmedabad by the husband of the petitioner. Except that solitary circumstance which is no sufficient enough to establish linkage, there is no other cogent material to arrive at a conclusion that even for coordinated investigation and assessment, the case deserves to be transferred from Ahmedabad to Surat. In the absence of any material and in the absence of any circumstance, it is not open for the authority to exercise such statutory power in a routine or casual manner, without application of mind and therefore, even on merits also, the power under Section 127 of the Act is not possible to be resorted to by the authority as found from the material on record.”

17. In **Dollar Gulati** (supra), the Delhi High Court has considered a similar case of transfer of the case by exercising powers under Section 127 of the Act. It relied on a judgment delivered by the Constitution Bench of Hon'ble Supreme Court in

Kashiram Aggarwalla vs. Union of India¹¹, wherein the Hon'ble Supreme Court, while examining the issue of transfer of case, held that such an order is purely in the nature of administrative order passed for considerations or convenience of the department and no possible prejudice can be involved in such transfer. There is hardly any occasion for mentioning any reasons.

18. The Hon'ble Supreme Court in **K.P. Mohammed Salim vs. CIT**¹² has considered the provision of Section 127 of the Act and held as under:

"13. An order of transfer is passed for the purpose of assessment of income. It serves a larger purpose. Such an order has to be passed in public interest. Only because in the said provision the words "any case" has been mentioned, the same, in our opinion, would not mean that an order of transfer cannot be passed in respect of cases involving more than one assessment year.

14. It would not be correct to contend that only because Explanation appended to Section 127 refers to the word "case" for the purpose of the said Section as also Section 120, the source of power for transfer of the case involving block assessment is relatable only to Section 120 of the Act. It is a well-settled principle of interpretation of statute that a provision must be construed in such a manner so as to make it workable. When the Income Tax Act was originally enacted, Chapter XIV-B was not in the statute book. It was brought in the statute book only in the year 1996.

The power of transfer in effect provides for a machinery provision. It must be given its full effect. It must be construed in a manner so as to make it workable. Even Section 127 of the Act is a machinery provision. It should be construed to effectuate a charging Section so as to allow the authorities concerned to do so in a manner wherefor the statute was enacted."

19. We notice that after coming into force the faceless regime, it is apparent that there is no fundamental right of any assessee to be assessed at a particular place. At the same time, we also observe that while under Section 124 of the Act, the assessment

11 1964 SCC OnLine SC 26

12 [2008] 169 Taxman 465/300 ITR 302/(2008) 11 SCC 573

must be carried out at the principal place of business, but when Section 127 of the Act is invoked, the assessment can be done at any other place too. The venue of assessment can be changed for several reasons, which may be necessary for the convenience of the department. One of the ground for transfer of case can be to conduct a coordinated assessment. However, as noticed in **K.P. Mohammed Salim (supra)**, the power must not be exercised capriciously or *mala fidely*. If the venue is changed periodically for no apparent reason, it can be an example of abuse of power, which may also be for the purpose of harassment, while the interest of the Revenue would be supreme, unnecessary inconvenience ought not be caused to the assessee also.

20. In **Sanjay Gandhi Memorial Trust vs. CIT (Exemption)**¹³, the Delhi High Court has held as under:

"45. Almost all the High Courts have held that transfer under Section 127 of the Act for the purpose of coordinated investigation is a sufficient reason for passing of such an administrative order. Consequently, it is settled law that a transfer order under Section 127 of the Act does not affect any fundamental or legal right of an assessee and the Courts ordinarily refrain from interfering with exercise of such power.

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58. Consequently, the transfer of a case under Section 127 of the Act is an altogether different power which continues to exist even after introduction of the E-assessment/Faceless regime. Accordingly, the said Scheme does not in any manner trammel upon or negate the existing powers contained in Section 127 of the Act to transfer the cases as provided for thereunder. Consequently, the power of transfer under Section 127 of the Act is not in any manner denuded by the Faceless Assessment Scheme when the transfer is sought to be made from a Jurisdictional Assessing Officer under one Principal Commissioner of Income Tax to another Assessing Officer under a different Principal Commissioner of Income Tax who are not exercising concurrent jurisdiction over the case."

21. In **Aamby Valley Ltd. vs. CIT¹⁴**, the Bombay High Court has held as under:

"8. We have considered the submissions. The power to transfer cases u/s 127 of the Act is to be undoubtedly exercised after following the principles of natural justice. However, the discretion of the authority to transfer a case has to be examined on the touchstone of the same not being arbitrary and/or perverse and/or mala fide. If there are reasons in the impugned order which indicates due application of mind to reach a view to transfer a case from one jurisdiction to another, then this Court will not interfere with the discretion of the administrative authority who transfers the case. This discretion is vested by the Act in high ranking officer viz. Commissioner of income tax and the necessity to transfer a case from the jurisdiction of one Officer to another Officer for better administration of the Act could be diverse and impossible to enumerate. It is for the above reason that Section 127 of the Act has not limited the exercise of jurisdiction by specifying any circumstances before the authority can exercise his powers to transfer the case. One more fact which cannot be lost sight of is that an assessee cannot choose his Assessing Officer and, therefore, if the transfer order does indicate some valid reasons to justify the transfer and such reasons are neither perverse or arbitrary or mala fide this Court would not interfere with the reasonable exercise of his discretion."

22. Having noticed the law relating to transfer and the facts of the present case, we find that the transfer of the petitioner's case from DCIT, Central Circle, Alwar to ACIT, Central Circle-2, Faridabad is for the reason to conduct a coordinated investigation. Before transferring the case, show cause notice was issued and reasons were assigned in the notice. The department has exercised its administrative powers taking into consideration the overall circumstances, especially with reference to the fact that earlier the assessee himself was seeking transfer of the case to Central Circle-2, Faridabad from Alwar. We do not find any fault in the order of transfer.

14 [2014] 41 taxmann.com 15/221 Taxman 458/2013 SCC OnLine Bom 1962

23. That apart, if the Revenue is of the view that the assessment is to be done of an assessee with reference to the assessment relating to other companies which are allegedly related to, or which can be said to be sister companies, then such a reason would be sound enough and the administrative power so exercised does not warrant further interference by the Court. As has been held in **Aamby Valley Ltd. vs. CIT (supra)**, power of transfer is purely an administrative action and does not require interference unless it suffers from malice or arbitrariness.

24. In our opinion, for the purpose of coordinated investigation, transfer of case cannot be objected to and we, therefore, answer on the first aspect relating to Section 127 of the Act in favour of the Revenue.

25. On the second issue relating to notice issued under Section 153A of the Act, we find that no factual or actual search was conducted under Section 132 of the Act as against the petitioner-company. While the warrants of authorisation under Section 132 of the Act mention of search being conducted against the companies mentioned/includes B & B Mercantile Pvt. Ltd., the same are stated to have been issued on 23.06.2011, 29.06.2011 and 30.06.2011. The show cause notice issued dated 23.10.2013 under Section 127(1) of the Act mentions search carried out on 03.08.2011 while the subsequent notice dated 09.12.2013 mentions about the date of search in the case as 30.06.2011.

26. We agree with the submission of the learned counsel for the Revenue that the search need not to be conducted only at the

registered office but can also be conducted at any other place as per information received with the department. However, before conducting search the conditions laid down under Section 132 need to be satisfied and merely mentioning the names in the warrant would not suffice. In the notice issued under Section 153A of the Act, no reasons have been mentioned for issuing such notice for re-assessment as there was no incriminating material or documents found during search. It has already come on record that during search the premises were closed. During survey, the same was converted into search under Section 132 of the Act, but there is no incriminating material document, no based search enquiry was made from the petitioner nor there is any material, to which the petitioner was confronted merely by issuance of warrant under Section 132 of the Act. An assessee would not be presumed to have submitted wrong returns unless there is an incriminating material found.

27. In **Manish Maheshwari vs. ACIT**¹⁵, Hon'ble Supreme Court has held that the provisions of Section 153A and 153C are drastic in nature and has draconian consequence. The satisfaction of condition under Section 132 of the Act need to be on record and by simply mentioning name in the annexure to the warrant of authorisation would not make a presumption of initiating proceedings under Section 153A of the Act. Therefore, the notice issued to the petitioner under Section 153A of the Act asking for filing revised returns without there being any incriminating material mentioned would be carrying out unjustified and illegal

15 (2007) 289 ITR 341 (SC)

exercise. Therefore, we answer the second issue against the Revenue and hold that the notice under Section 153A is illegal and deserves to be quashed.

28. This Court notices that during the pendency of the petition, the department issued a show cause notice under Section 144 of the Act asking the petitioner-company to appear on 11.11.2019, failing which the assessment on merits in terms of past assessment procedure shall be finalised. An application was moved by the petitioner praying for stay of proceeding but no order was passed.

29. We also notice that while this Court had protected the petitioner to the extent of not being insisted upon to file return to the office where its case has been transferred, there was no restraint on the department to ask the petitioner to file return at their original place. We do not concur with the submissions made by the Revenue that the proceedings be taken to its logical end, if the assessee does not submit its return in spite of notice given to him under Section 153A of the Act. Section 144 of the Act very specifically deals with situation where an assessee may refuse to or fails to make their return for any reason, in that circumstance, the best assessment process would have to be adopted by the department. Therefore, in case the petitioner-company failed to submit returns on account of default on the part of the petitioner, it was incumbent upon the department to proceed further and continue with the best assessment.

30. In spite of having issued notice under Section 144 of the Act, we find that the department did not proceed further and did not make any assessment in terms of provisions of Section 144 of the Act. After 12 years, the time period for making best assessment also has expired. The submission of the learned counsel for the respondent-Revenue that the principle of *actus curiae neminem gravabit* would apply and the department can proceed now, is found to be without any basis. There was no stay granted by this Court, nor there was any restraint order against the Revenue for making any re-assessment. The proceedings cannot be allowed to be continued beyond the time period laid down under the Act.

31. We, therefore, reach to the conclusion that even if we had approved the notice under Section 153-A of the Act, re-assessment proceedings would be time barred and would have lapsed. Accordingly, we find that the writ petition succeeds on both these counts, as above. The proceedings initiated for re-assessment for the Assessment Years 2006-07 to 2011-12, therefore, are found to have been initiated on the basis of illegal notice under Section 153A of the Act and thus, also stand closed having become time barred.

32. In the result, the writ petition is allowed.

33. All pending application(s) stand disposed of.

(SANGEETA SHARMA),J

(SANJEEV PRAKASH SHARMA),ACTING CJ