

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

MONDAY, THE 16TH DAY OF OCTOBER 2023 / 24TH ASWINA, 1945

WP(C) NO. 33771 OF 2023

PETITIONER/S:

M/S. SOUTH COAST SPICES EXPORTS PVT. LTD, AGED 59 YEARS
BUILDING #18/253, THEMBADATH BUILDING GROUND FLOOR, NEAR
KSRTC GARAGE, METRO PILLAR NO 94, ALUVA, ERNAKULAM
KERALA.REPRESENTED BY ITS DIRECTOR SALIM THEMBADATH
HYDROSE, PIN - 683106

BY ADV PREETHA S.NAIR

RESPONDENT/S:

- 1 PRINCIPAL COMMISSIONER OF INCOME TAX
INCOME TAX DEPARTMENT REVENUE BUILDING, I.S.PRESS ROAD,
KOCHI., PIN - 682018
- 2 ASSISTANT COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE, KOLLAM, PIN - 690001

BY JOSE JOSEPH SC IT

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
16.10.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

The present writ petition has been filed impugning Exts. P1 to P6 notices under Section 153C of the Income Tax Act 1961 (for short, 'IT Act') for the Assessment Years 2015-16 to 2020-21; Exts.P7 to P11 Assessment Orders dated 28.03.2023 for the Assessment Years 2015-16 to 2019-20; and Exts.P12 and P13 Assessment Orders dated 29.03.2023 for the Assessment Years 2020-21 and 2021-2022 whereby the petitioner's total income has been assessed as Rs.92,87,317/-, loss of Rs.33760/-, loss of Rs.35,402/-, loss of Rs.3,25,893/-, loss of Rs.1,23,311/-, Rs.10,00,000/- and Rs.5,10,00,000/- respectively for the Assessment Years from 2015-16 to 2021-22.

2. Learned Counsel for the petitioner submits that the petitioner has approached this Court against the Assessment Orders because the proceedings in issuing the notices under

Section 153C of the IT Act for the Assessment Years 2015-16 to 2020-21 require them to file return of income for the concerned years on the basis of the provisions of Section 153C of the IT Act and that the Assessment Orders for the said Assessment Years in Exts.P7 to P13 are without jurisdiction and against law. Therefore, the petitioner has not approached the Appellate Authority and approached this Court invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India.

2.1 Learned Counsel for the petitioner further submits that the Assessing Officer is required to record satisfaction note before issuing notice under Section 153C of the IT Act to a person other than the searched person. Notice issued under Section 153C has not mentioned/specified the satisfaction note recorded by the 2nd respondent of the searched person. It is also submitted that the satisfaction notes supplied to the petitioner in pursuance of the e-mail sent by the petitioner on

06.07.2023 do not bear the DIN number, and therefore, the whole proceedings are without jurisdiction and illegal.

2.2 Learned Counsel for the petitioner has placed reliance on the judgment of the Bombay High Court in the case of *Ashok Commercial Enterprises v. Assistant Commissioner of Income Taxation Central Circle*¹ in support of his submissions.

3. The petitioner had filed its return of income voluntarily for the Assessment Years up to 2021-22. In respect of Assessment Year 2021-22, a net loss of Rs.6,54,555/- was claimed. A search operation under Section 132 of the IT Act was carried out on 23.03.2021 at the business premises as well as the residential premises of Civil Contractor - Sri K N Madhusoodanan Nair, his Company - M/s Mavalan Granites Pvt Ltd and connected entities (Mavalan Group). During the search, certain incriminating documents showing the unaccounted income of Sri K N Madhusoodanan and his

¹ Judgment dated 21.07.2023 in Writ Petition No.2595/2021 and connected Writ Petitions.

concerns about the diversion of business funds to evade taxation were noticed. It was further noticed that by diverting the funds, they had been expending unaccounted payments for investment in landed properties. Based on evidence gathered during the course of the search, the assessments under Section 153A of the IT Act were completed in the case of Sri K N Madhusoodanan, his concerns and connected persons.

3.1 In the course of the search under Section 132 of the IT Act, a document with the title of 'Palakkad Land' was seized from the residence of Sri K R Unnikrishnan, Accountant at M/s Mavanal Granites Pvt Ltd. This document was a folder containing signed cash receipts of two persons, Mr Salim and Mr Asgar. Sri K R Unnikrishnan, in his sworn statement recorded on 24.03.2021, had stated that Sri K N Madhusoodanan was trying to buy 100 acres of land at Nelliampathy, Palakkad, from M/s South Coast Spices Exports Pvt Ltd (the petitioner), and paid Rs.5 crores, out of which

Rs.10 lakhs was by cheque and the balance in cash paid on various dates to one Asgar M S and one Salim from 21.10.2020 to 12.02.2021 amounting to Rs.4.90 crores. These transactions were not accounted. Therefore, it was a case of clear evasion of tax and escapement of income in the hands of the receiver - M/s South Coast Spices Exports Pvt Ltd. In accordance with the provision of Section 153C of the IT Act, the Assessing Officer, after recording satisfaction, issued notices under Section 153C of the IT Act to the petitioner for the Assessment Years 2015-16 to 2020-21 on 27.01.2022 requiring them to file the return of income.

3.2 Both Sri K R Unnikrishnan and Sri K N Madhusoodanan, the leading persons of Mavanal Group, had confirmed that the payments reflected in the seized documents were actually made. Signed receipts evidencing the cash payments and copies of cheques issued were available in the seized folder. Several other incriminating documents

were discovered showing that huge cash transactions were entered into by the petitioner with Sri K N Madhusoodanan, which were not reflected in the books of accounts. The Assessment Orders were therefore finalised after following the procedure under Section 153C of the IT Act.

4. The satisfaction notes recorded by the Assessing Authority, which have been placed on record in Exts.P19 to P24, would suggest that the Assessing Authority has examined the documents and recorded satisfaction for issuing notices under Section 153C of the IT Act. The petitioner has demanded the satisfaction note, and the letter issued by the Assistant Commissioner of Income Tax in Ext.P18, whereby the satisfaction notes have been provided to the petitioner on his demand, would disclose that the letter bears the DIN number. The satisfaction note need not bear the DIN number, and this Court does not find any substance in the submission of the learned Counsel for the petitioner that since the satisfaction

notes do not bear the DIN number, whole proceedings are invalid.

4.1 The judgment cited by the learned Counsel for the petitioner in the of *Ashok Commercial Enterprises* (supra) is of no help to the petitioner as the facts of the said case are distinguishable. In that case, the Bombay High Court has taken note of Circular No.19/2019 issued by the CBDT in the exercise of power under Section 119(1) of the IT Act dated 14.08.2019 providing that no communication shall be issued by any Income Tax Authority *inter alia* relating to assessment orders, statutory or otherwise, inquiries, approvals to an assessee or any other person on or after 1st October 2019 unless a computer generated DIN has been allotted. The said Circular is extracted hereunder:

“CIRCULAR NO.19/2019 (F. NO.225/95/2019-ITA.II),

DATED 14-8-2019

With the launch of various e-governance Initiatives, Income Tax Department is moving toward total computerization of

its work. This has led to a significant improvement in delivery of services and has also brought greater transparency in the functioning of the tax-administration. Presently, almost all notices and orders are being generated electronically on the Income Tax Business Application (ITBA) platform. However, it has been brought to the notice of the Central Board of Direct Taxes (the Board) that there have been some instances in which the notice, order, summons, letter and any correspondence (hereinafter referred to as "communication" were found to have been issued manually, without maintaining a proper audit trail of such communication.

2. In order to prevent such instances and to maintain proper audit trail of all communication, the Board in exercise of power under section 119 of the Income-Tax Act, 1961 (hereinafter referred to as "the Act"), has decided that no communication shall be issued by any income-tax authority relating to assessment, appeals, orders, statutory or otherwise, exemptions, enquiry. investigation, verification of information, penalty, prosecution, rectification, approval etc. to the assessee or any other person, on or after the 1st day of October, 2019 unless a computer- generated Document Identification Number (DIN) has been allotted and is duly quoted in the body of such communication.

3. In exceptional circumstances such as,

(i) when there are technical difficulties in

generating/allotting/ quoting the DIN and issuance of communication electronically; or

(ii) when communication regarding enquiry, verification etc. is required to be issued by an income-tax authority, who is outside the office, for discharging his official duties: or

(iii) when due to delay in PAN migration. PAN is lying with non-jurisdictional Assessing Officer; or

(iv) when PAN of assessee is not available and where a proceeding under the Act (other than verification under section 131 or section 133 of the Act) is sought to be initiated; or

(v) when the functionality to issue communication is not available in the system, the communication may be issued manually but only after recording reasons in writing in the file and with prior written approval of the Chief Commissioner/ Director General of income-tax. In cases where manual communication is required to be issued due to delay in PAN migration, the proposal seeking approval for issuance of manual communication shall include the reason for delay in PAN migration. The communication issued under aforesaid circumstances shall state the fact that the communication is issued manually without a DIN and the date of obtaining of the written approval of the Chief Commissioner/ Director General of Income-tax for issue of manual communication in the following format-

“..... This communication issues manually without a DIN on account of reason/reasons given in para3(i)/3(ii)/3(iii)/3(iv)/3(v) of the CBDT Circular No dated (strike off those which are not applicable) and with the approval of the Chief Commissioner/Director General of Income Tax vide number dated

4. Any communication which is not in conformity with Para-2 and Para-3 above, shall be treated as invalid and shall be deemed to have never been issued.

5. The communication issued manually in the three situations specified in para 3- (i), (ii) or (iii) above shall have to be regularised within 15 working days of its issuance, by

i. uploading the manual communication on the System.

ii. compulsorily generating the DIN on the System;

iii. communicating the DIN so generated to the assessee/any other person as per electronically generated pro forma available on the System.

6. An intimation of issuance of manual communication for the reasons mentioned in para 3(v) shall be sent to the Principal Director General of Income-tax (Systems) within seven days from the date of its issuance.

7. Further, in all pending assessment proceedings, where notices were issued manually, prior to issuance of this Circular, the Income-tax authorities shall identify such cases and shall upload the notices in these cases on the Systems by

31st October 2019.”

4.2 The satisfaction note is a document prepared by the Assessing Authority which is kept in the file, and unless an assessee demands the satisfaction note, it is not required to be provided to the assessee. Therefore, there is no requirement to have a DIN number in the satisfaction note recorded by the Assessing Authority. When the satisfaction notes have been provided to the petitioner, the communication in Ext.P18 bears DIN, and therefore, I find that the judgment cited by the learned Counsel for the petitioner has no application to the facts of the present case.

5. Considering the facts and circumstances of the case, it cannot be said that the impugned notices and assessment orders are without jurisdiction as submitted by the learned Counsel for the petitioner. Therefore, this Court would not like to entertain the writ petition in the exercise of the writ jurisdiction. The petitioner may avail the remedy of appeal

against the impugned assessment orders if so advised.

Thus, the writ petition, with the aforesaid observation, is hereby dismissed.

Sd/-

DINESH KUMAR SINGH

JUDGE

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APPENDIX OF WP(C) 33771/2023

PETITIONER EXHIBITS

Exhibit P1	TRUE COPY OF THE NOTICE UNDER SECTION 153C FOR THE ASSESSMENT YEAR 2015-16 DATED 27-01-2022
Exhibit P2	TRUE COPY OF THE NOTICE UNDER SECTION 153C FOR THE ASSESSMENT YEAR 2016-17 DATED 27-01-2022
Exhibit P3	TRUE COPY OF THE NOTICE UNDER SECTION 153C FOR THE ASSESSMENT YEAR 2017-18 DATED 27-01-2022
Exhibit P4	TRUE COPY OF THE NOTICE UNDER SECTION 153C FOR THE ASSESSMENT YEAR 2018-19 DATED 27-01-2022
Exhibit P5	TRUE COPY OF THE NOTICE UNDER SECTION 153C FOR THE ASSESSMENT YEAR 2019-20 DATED 27-01-2022
Exhibit P6	TRUE COPY OF THE NOTICE UNDER SECTION 153C FOR THE ASSESSMENT YEAR 2020-21 DATED 27-01-2022
Exhibit P7	TRUE COPY OF ASSESSMENT ORDER FOR THE ASSESSMENT YEAR 2015-16 DATED 28-03-2023
Exhibit P8	TRUE COPY OF ASSESSMENT ORDER FOR THE ASSESSMENT YEAR 2016-17 DATED 28-03-2023
Exhibit P9	TRUE COPY OF ASSESSMENT ORDER FOR THE ASSESSMENT YEAR 2017-18 DATED 28-03-2023
Exhibit P10	TRUE COPY OF ASSESSMENT ORDER FOR THE ASSESSMENT YEAR 2018-19 DATED 28-03-2023
Exhibit P11	TRUE COPY OF ASSESSMENT ORDER FOR THE ASSESSMENT YEAR 2019-20 DATED 28-03-2023
Exhibit P12	A TRUE COPY OF THE ASSESSMENT ORDER FOR THE ASSESSMENT YEAR 2020-21 DATED 29-03-2023

- Exhibit P13 A TRUE COPY OF THE ASSESSMENT ORDER FOR THE ASSESSMENT YEAR 2021-22 DATED 29-03-2023
- Exhibit P14 TRUE COPY OF THE BANK STATEMENT FOR THE PERIOD 01-04-2020 TO 31-03-2021 DATED 19-10- 2022
- Exhibit P15 TRUE COPY OF THE LETTER DATED 29-05-2023
- Exhibit P16 TRUE COPY OF THE LETTER DATED 19- 06-2023
- Exhibit P17 TRUE COPY OF THE EMAIL DATED 06-07-2023
- Exhibit P18 TRUE COPY OF THE LETTER DATED 27-07-2023
- Exhibit P19 A TRUE COPY OF THE SATISFACTION NOTE FOR THE ASSESSMENT YEAR 2015-16 DATED 27-01-2022
- Exhibit P20 A TRUE COPY OF THE SATISFACTION NOTE FOR THE ASSESSMENT YEAR 2016-17 DATED 27-01-2022
- Exhibit P21 A TRUE COPY OF THE SATISFACTION NOTE FOR THE ASSESSMENT YEAR 2017 -18 DATED 27-01-2022
- Exhibit P22 A TRUE COPY OF THE SATISFACTION NOTE FOR THE ASSESSMENT YEAR 2018 -19 DATED 27-01-2022
- Exhibit P23 A TRUE COPY OF THE SATISFACTION NOTE FOR THE ASSESSMENT YEAR 2019 -20 DATED 27-01-2022
- Exhibit P24 A TRUE COPY OF THE SATISFACTION NOTE FOR THE ASSESSMENT YEAR 2020-2021 DATED 27-01-2022