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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No. 5139 of 2024 (O&M)

Reserved on : 19.04.2024
Date of Decision: 13.05.2024

Misty Meadows Private Limited …Petitioner

Versus

Union of India and others …Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA**

Present: Mr. Akshay Bhan, Senior Advocate assisted by
Mr. Rana Gurtej Singh, Mr. Shantanu Bansal,
Mr. Mayank Goel and Mr. Vijay Aggarwal, Advocates,
for the petitioner (through VC).

Ms. Urvashi Dugga, Senior Standing counsel
for Income Tax Department.

SANJEEV PRAKASH SHARMA, J.

The petitioner by way of this writ petition seeks quashing of the search proceedings and consequent *panchnama* dated 24.07.2016 and 19.09.2016 drawn against it by respondent nos. 2 and 3; further prayer to quash the notice dated 05.01.2018 issued by respondent no.4; and the assessment order and notice of even dated 07.02.2024 issued by the respondents raising a demand for the assessment year 2011-2012 of a sum of ₹ 3,29,49,65,089/- under Section 156 of the Income Tax Act, 1961 (hereinafter to be referred as 'the Act').

2. Brief facts which have been culled out from the pleadings are that against the petitioner company search and seizure operation was conducted under Section 132 of the Act on 30.06.2011. Pursuant to the search proceedings, the assessments for A.Y. 2006-07 to 2012-13 were framed. Notice under Section

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153A of the Act was issued on 28.12.2012 and the petitioner company was asked to furnish the return of total income including the undisclosed income. Final assessment was framed under Section 153A of the Act vide Assessment Order dated 28.02.2014. The returned income of ₹ 70,15,770/- was accepted.

3. It is submitted that thereafter in 2016 a search and seizure operation was conducted against M3M India Limited company at its office at Paras Twin, Tower-B, 6th Floor, Golf Course Road, Sector-54, Gurgaon, which was its registered office and business premises. However, while preparing *panchnama* drawn at the Paras Twin Tower-B, Gurgaon, name of the petitioner company was also added although it is asserted that no authorization for search and seizure under Section 132 of the Act was issued in the name of the petitioner nor any search or seizure was conducted at the premises or registered office of the petitioner company, which was situated at Shop No.4/36, DDA Market, Dakshin Puri Extension, New Delhi-110062 with effect from 02.05.2011. It is stated that the office premises were known to the respondent authorities as it was existing from A.Y. 2011-2012 at the time of search and seizure conducted against the petitioner.

4. The petitioner has asserted in pleadings that it owned 75 acres of land at Bhiwadi (Rajasthan). In AY 2011-12, it had entered into separate development agreement dated 07.09.2010 with five independent companies and raised a security deposit of ₹ 2 crores from each company towards the development of the land, these facts were recorded by the petitioner in its book of accounts and disclosed in its annual financial statements and were noticed at the time of search and seizure conducted against the petitioner. At the time of assessment order dated 28.02.2014, no adverse remarks pertaining to transaction

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for development of land at Bhiwadi was mentioned. It is stated further that search and seizure of residential premises of promoters of M3M India Limited at different places was also conducted in 2016 but no search of premises of the Director of the petitioner company was conducted.

5. In the *panchnama* dated 24.07.2016 and 19.09.2016, which was prepared for search at Paras Twin Tower (supra), the name of the petitioner company was mentioned and it was alleged by revenue that there were incriminating documents found during the search and also in an independent search of one Gaurav Jain, who had been earlier Ex-Vice President of the company and had resigned and disassociated from the company on 12.11.2014, where certain details were found relating to the petitioner on cloning of his laptop. On the said basis a notice under Section 153A of the Act was issued for AY 2011-12 on 05.01.2018 and a questionnaire dated 27.08.2018 was also issued. Another questionnaire was issued on 29.10.2018 for AY 2011-12 wherein queries were raised with regard to development of land situated at Bhiwadi (Rajasthan). It is stated that five companies, which have entered into development agreement with the petitioner company, had subsequently entered into separate agreements with ten other companies and had received a total amount of ₹ 396 crores and therefore, SCN under Section 153A was issued to show cause as why the amount of ₹ 10 crores and entry of ₹ 396 crores should not be assessed as undisclosed income in the hands of the petitioner.

6. Reply was filed and the petitioner raised objections relating to issuance of notice to it under Section 153A of the Act. The petitioner thereafter also moved settlement application before Interim Board for Settlement but it rejected the application on 29.03.2023 under Section 245D(4) of the Act.

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Addendum order was issued on 31.03.2023 whereafter the assessing officer issued letter to the petitioner on 09.09.2023 and subsequent letters for re-assessing their income.

7. The petitioner has filed response on 27.11.2023 asking to provide incriminating material revealing undisclosed income. The respondents informed stating about the search conducted at the house of Gaurav Jain on 16.07.2016 where incriminating material was found from his laptop and also at the office where the *panchnama* was prepared.

8. The petitioner company submitted its response on 24.01.2024, 29.01.2024 and 30.01.2024 raising objections regarding the proceedings initiated under Section 153A of the Act to be without jurisdiction and without authority in law. The petitioner has been served with a show cause notice dated 30.01.2024 for addition of income of ₹ 400/- crores for AY 2011-12 as payment made to entities from undisclosed sources and an order has been passed on 07.02.2024 concluding assessment proceedings under Section 153A read with Section 153D of the Act.

Submissions of the Petitioner

9. Learned counsel for the petitioner submits that action of the respondents in entering the name of the petitioner in the *panchnama* dated 24.07.2016 and 19.09.2016 was wholly illegal, unjustified and without any authorization as there was no material to form an opinion to initiate a fresh search for AY 2011-12 against the petitioner-assessee, after the final assessment order had been passed under Section 153A of the Act, though sanction and authorization to conduct search under Section 132 can be said to have been issued nor any such authorization letter has been placed on record. Merely on the

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basis of making entry of name of the petitioner company in the *panchnama* prepared at the registered office of another company, power under Section 153A of the Act could not have been invoked afresh against the petitioner.

10. It is further submitted that the provisions of Section 292CC (1)(ii) of the Act which allow authorization in the name of more than one person cannot be said to have been invoked as there is no authorization available on record. If any incriminating material would have been recovered relating to the petitioner company, the *panchnama* should have mentioned the name of petitioner company only with reference to the material and not as if the search was being conducted against the petitioner. Hence, the proceedings initiated against the petitioner company afresh under Section 153A of the Act are wholly vitiated and deserves to be declared as *void ab initio* and nonest.

11. Learned counsel for the petitioner further submitted that all the material had been disclosed and recorded in the books of accounts after the final return of income submitted in terms of the search and seizure and subsequent proceedings conducted against the petitioner under Section 153A of the Act in 2012. The returned income of ₹ 70,15,770/- was accepted after the assessment order was passed on 28.02.2014. Thus, fresh proceedings under Section 153A of the Act were not permissible. If any new material was found while conducting search, the only procedure available with the respondents to conduct fresh assessment was under Section 153C of the Act. He submits that in fact there was no new material available and the record relating to the land transactions of Bhiwadi were already mentioned in the record and it is a case of mere change of opinion which cannot be allowed to be sustained.

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12. It is further submitted that new material alleged to have been recovered from the cloning of laptop of Gaurav Jain, is without compliance of Section 65B of the Indian Evidence Act and no conclusions can be drawn on the basis of such inadmissible documents. Thus, the action of the respondents is without jurisdiction.

13. Learned counsel for the petitioner further submits that the procedure laid down under Section 153C of the Act was sacrosanct and submits that if a particular procedure has been laid down under the statute, the respondents were obliged to conduct themselves accordingly and a different procedure cannot be adopted. Further submits that the order of imposing ₹ 400/- crores by issuing a fresh assessment order under Section 153A of the Act is based on complete non application of mind. He submits that there is no flow of proceeds of such money traceable to the books of accounts of the petitioner and the addition stands already made on protective basis in the books of accounts of other company. The amount received was only ₹ 10 crores and the remaining amount of ₹ 396 crores was received and assessed separately for the other companies. However, the respondents have put the entire additions on the petitioner company as undisclosed income.

14. Learned counsel for the petitioner relies on judgments of Hon'ble the Supreme Court in ***Income Tax Officer vs Seth Brothers*** (1969) 74 ITR 836 (SC); a Coordinate Bench of this Court in ***Harmel Singh vs Union of India*** (1993) 204 ITR 334 (P&H), Hon’ble the Supreme Court in ***Chandra Kishor Jha vs Mahavir Prasad and others*** 1999 (8) SCC 266, Bombay High Court in ITA No. 581 of 2009 - ***Commissioner of Income Tax vs M/s. J. M. Trading Corporation,*** against which Special Leave Petition (Civil) No. 31208 of 2010

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was dismissed on 29.10.2010, judgment of Delhi High Court in ITA No. 943 of 2015 - ***Commissioner of Income Tax III vs Sarvmangalam Builders & Developers Private Limited;*** and ITA No. 60 of 2017 ***Principal Commissioner of Income Tax, Central-2, New Delhi vs Subhash Khattar;*** judgment of Hon'ble the Supreme Court in ***OPTO Circuit India Limited vs Axis Bank and others*** 2021 (6) SCC 707, judgment of Gujarat High Court in ***Principal Commissioner of Income Tax vs Hitesh Ashok Vaswani*** (2023) 459 ITR 610 (Gujarat); and Hon'ble the Supreme Court in ***Principal Commissioner of Income Tax vs Abhisar Buildwell Private Limited*** (2023) 454 ITR 212 (SC).

Submissions of the Respondents

15. Learned counsel for the respondents has supported the action of the revenue and submits that apart there being an alternative remedy available and the petitioner having already preferred an appeal during the pendency of the present appeal, the petitioner should be relegated to the appellate forum. She asserts that as the name of the petitioner company was mentioned in the *panchnama* prepared on 24.07.2016 and 19.09.2016, it would be presumed that there was authorization for search under Section 132 of the Act as against the petitioner. She submits that the respondents have reasons to believe that there had been non-disclosure on the part of the petitioner and, therefore, they only chose to search the premise of registered office of M3M India company even for locating the incriminating material against the petitioner company. She submits that conditions enumerated of clause (a) (b) and (3) of Section 132 of the Act were satisfied. The search operation ought not to be interfered with by this Court as the same denies opportunity to the revenue to derail the layering money as the same ought not to be entertained after passing of the assessment order.

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16. It is further submitted that the petitioner cannot be allowed to question the search after participation in pursuance to the search under Section 132 of the Act and submits that the petitioner had moved an application under Section 245C (1) of the Act before the Income Tax Settlement Commission, which was rejected on 29.03.2023 on the ground that the disclosure is not full and true and there is a deficiency in explaining the facts gathered by the department. The order of assessment is, thus, also appealable and on that count the respondents have objected to.

17. Learned counsel for the respondents further submitted that as the *panchnama* mentioned the name of the petitioner upon search if any documents are received, the proceedings were required to be conducted under Section 153A(1) of the Act alone and there was no occasion to resort to provisions of Section 153C of the Act. It is further submitted that the petitioner has filed return on 29.01.2018 and notices along with questionnaire under Section 143 (2) and 143 (1) of the Act were initiated whereafter the petitioner approached the Income Tax Settlement Commission. Another notice was issued on 04.01.2024 along with documents. The petitioner did not submit its reply on merits of the case. The Assessing Officer held that the accommodation entries were provided by the companies, which were accepted by the operators as well as the Directors, whose statements were recorded, which too provided to the petitioner. The incriminating documents reflected that the companies were clearly linked and the transactions were cleared through the paper companies after affording opportunity to the petitioner, the assessment order was passed, which does not warrant any interference.

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18. Learned counsel for the respondents relies on ***Dr. Partap Singh and another vs Director of Enforcement Foreign Exchange Regulation and others*** 1985 (3) SCC 72; ***Banda Development Authority, Banda vs Moti Lal Agarwal and others*** 2011 (5) SCC 394; ***Union of India and others vs M/s Agarwal Iron Industries*** 2014 (15) SCC 215; ***Principal Director of Income Tax (Investigation) and others vs Laljibhai Kanjibhai Mandalia*** 2022 (10) SCALE 100; judgment of Orissa High Court in ***M/s Shiva Cement Limited and others vs Director of Income Tax (Inv.), Bhubaneswar and others*** 2021 (439) ITR 92 and Civil Appeal arising out of SLP (C) No. 8867 of 2022 - ***PHR Invent Educational Society vs UCO Bank and others*** decided on 10.04.2024.

19. We have heard learned counsel for the parties and have carefully gone through the judgments cited by learned counsel for the petitioner as well as learned counsel for the respondents.

20. The jurisdiction of this Court under Article 226 of the Constitution of India has wide aptitude. However, time and again Hon'ble the Supreme Court and various High Courts have refused to entertain the petitions where we find that there is an efficacious remedy or considering that the questions complicate examination of facts, we are relegating the petitioner to appeal. However, this would not mean that the remedy under Article 226 is ousted. In a recent judgment ***Godrej Sara Lee Limited vs Excise and Taxation Officer-cum-Assessing Authority*** 2023 AIR (SC) 781, while considering the case travelling from this Court, Hon'ble the Supreme Court has held as under:-

> *"5. A little after the dawn of the Constitution, a Constitution Bench of this Court in its decision reported in 1958 SCR 595 (State of Uttar Pradesh vs. Mohd. Nooh) had the occasion to observe as follows:*

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*"10. In the next place it must be borne in mind that there is no rule, with regard to certiorari as there is with mandamus, that it will lie only where there is no other equally effective remedy. It is well established that, provided the requisite grounds exist, certiorari will lie although a right of appeal has been conferred by statute, (Halsbury's Laws of England, 3rd Edn., Vol. 11, p. 130 and the cases cited there). The fact that the aggrieved party has another and adequate remedy may be taken into consideration by the superior court in arriving at a conclusion as to whether it should, in exercise of its discretion, issue a writ of certiorari to quash the proceedings and decisions of inferior courts subordinate to it and ordinarily the superior court will decline to interfere until the aggrieved party has exhausted his other statutory remedies, if any. But this rule requiring the exhaustion of statutory remedies before the writ will be granted is a rule of policy, convenience and discretion rather than a rule of law and instances are numerous where a writ of certiorari has been issued in spite of the fact that the aggrieved party had other adequate legal remedies. ***"*

*6. At the end of the last century, this Court in paragraph 15 of the its decision reported in (1998) 8 SCC 1 **(Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Others)** carved out the exceptions on the existence whereof a Writ Court would be justified in entertaining a writ petition despite the party approaching it not having availed the alternative remedy provided by the statute. The same read as under:*

(i) where the writ petition seeks enforcement of any of the fundamental rights;

(ii) where there is violation of principles of natural justice;

(iii) where the order or the proceedings are wholly without jurisdiction; or

(iv) where the vires of an Act is challenged.

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8. That apart, we may also usefully refer to the decisions of this Court reported in (1977) 2 SCC 724 (State of Uttar Pradesh & ors. vs. Indian Hume Pipe Co. Ltd.) and (2000) 10 SCC 482 (Union of India vs. State of Haryana). What appears on a plain reading of the former decision is that whether a certain item falls within an entry in a sales tax statute, raises a pure question of law and if investigation into facts is unnecessary, the high court could entertain a writ petition in its discretion even though the alternative remedy was not availed of; and, unless exercise of discretion is shown to be unreasonable or perverse, this Court would not interfere. In the latter decision, this Court found the issue raised by the appellant to be pristinely legal requiring determination by the high court without putting the appellant through the mill of statutory appeals in the hierarchy. What follows from the said decisions is that where the controversy is a purely legal one and it does not involve disputed questions of fact but only questions of law, then it should be decided by the high court instead of dismissing the writ petition on the ground of an alternative remedy being available.

9. Now, reverting to the facts of this appeal, we find that the appellant had claimed before the High Court that the suo motu revisional power could not have been exercised by the Revisional Authority in view of the existing facts and circumstances leading to the only conclusion that the assessment orders were legally correct and that the final orders impugned in the writ petition were passed upon assuming a jurisdiction which the Revisional Authority did not possess. We find, the orders impugned were passed wholly without jurisdiction. Since a jurisdictional issue was raised by the appellant in the writ petition questioning the very competence of the Revisional Authority to exercise suo motu power, being a pure question of law, we are of the considered view that the plea raised in the writ petition did deserve a consideration on merits and the

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appellant's writ petition ought not to have been thrown out at the threshold."

Thus, in view of the above, this Court under Article 226 of the Constitution of India would be well within its jurisdiction to entertain the petitions where it has to examine whether the power exercised for conducting search and seizure is by duly competent authority. This Court would also entertain petitions where the challenge is to the jurisdiction exercised by the authority also in cases where there is interpretation of the provisions of the Income Tax Act. In the appeal, even if a final order has been passed and provisions of appeal is available, since the appellate authority would not be able to examine the aforesaid aspect, writ petitions would still lie and the concerned assessees cannot be ousted merely because final order has been passed.

21. Keeping in view the exceptions carved out in ***Whirlpool Corporation vs Registrar of Trade Marks, Mumbai and others*** (1998) 8 SCC 1, we reject the submissions of the respondents and proceed to examine the contentions of the petitioner on merits.

22. In the present case, we find that challenge is to the very initiation of proceedings at the initial stage; search under Section 132 of the Act and jurisdiction of the assessing officer by initiating proceedings under Section 153A of the Act which needs to be examined. The validity of initiating search proceedings cannot be examined by the Appellate Authority as is already held in ***Chandra Kishor Jha; OPTO Circuit India Limited; M/s. J. M. Trading Corporation,*** and ***Sarvmangalam Builders'*** cases (supra).

23. The petitioner has challenged the *panchnama* where its name has been entered and submits that it has already suffered search and seizure earlier

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resulting in an order passed under Section 153A of the Act and, therefore, proceedings again initiated under Section 153A were wholly unwarranted. The exercise of power under Section 153A based on *panchnama* was not available.

24. In ***M/s Seth Brothers***'case (supra), Hon'ble the Supreme Court has held as under:-

> *"The section does not confer any arbitrary authority upon the revenue officer. The Commissioner or the Director of Inspection must have, in consequence of information, reason to believe that the statutory conditions for the exercise of the power to order search exist. He must record reasons for the belief and he must issue an authorization in favour of a designated officer to search the premises and exercise the powers set out therein. The condition for entry into and making search of any building or place is the reason to believe that any books of account or other documents which will be useful for, or relevant to, any proceeding under the Act may be found. If the Officer has reason to believe that any books of account or other documents would be useful for, or relevant to, any proceedings under the Act, he is authorised by law to seize those books of account or other documents, and to place marks of identification therein, to make extracts or copies therefrom and also to make a note or an inventory of any articles or other things found in the course of the search. Since by the exercise of the power a serious invasion is made upon the rights, privacy and freedom of the tax-payer, the power must be exercised strictly in accordance with the law and only for the purposes for which the law authorizes it to be exercised. If the action of the officer issuing the authorization, or of the designated officer is challenged the officer concerned must satisfy the Court about the regularity of his action. If the action is maliciously taken or power under the section is exercised for a collateral purpose, it is liable to be struck down by the court. If the conditions for exercise of the power are not satisfied the proceeding is liable to be quashed. But where power is*

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> *exercised bona fide, and in furtherance of the statutory duties of the tax officers any error of judgment on the part of the officers will not vitiate the exercise of the power. Where the Commissioner entertains the requisite belief and for reasons recorded by him authorises a designated officer to enter and search premises for books of account and documents relevant to or useful for any proceeding under the Act, the Court in a petition by an aggrieved person cannot be asked to substitute its own opinion whether an order authorising search should have been issued. Again, any irregularity in the course of entry, search and seizure committed by the officer acting in pursuance of the authorisation will not be sufficient to vitiate the action taken, provided the officer has in executing the authorisation acted bona fide."*

25. In the present case, we find that there is no authorisation issued to conduct search and seizure relating to the petitioner. The *panchnama* prepared at Gurgaon office of M3M India Limited only reflects the name of the petitioner company.

26. The term *panchnama* is not defined in the Income Tax Act. A *panchnama* is a document prepared in the ordinary course at a site of incident. In ***Mohanlal Bababhai vs Emperor*** 1941 AIR (Bombay) 149, it was observed that "*The panchnama is merely a record of what a panch sees,"*. The search and seizure under the Income Tax Act has to be carried out in the presence of at least two respectable inhabitants of the locality where the search and seizure is conducted. These respectable inhabitants or witnesses to the search and seizure are known as the *panches*. The documentation of what they witness is known the *panchnama.* The word "*nama"* refers to a written document and is usually determined by the word which is combined with as a suffix. Example "*nikahnama"* (marriage certificate), "*hibanama" (*gift deed), "*vasiatnama"*

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*(*will), "*ikrarnama" (*agreement/ contract), "*kaboolnama" (*confession), *"vakalatnama" (*power of attorney). Similarly in ***Vallibhai Ummarjit vs State*** AIR 1963 Gujarat 145, noted that "*panchnama is essentially a document recording certain things which occur in presence of panches and which are seen and heard by them"*. In ***State of Maharashtra vs Kachra Dass D. Balgar*** 1978 (80) Bombay Law Reporter 396 observed that *a panchnama was stated to be 'the memorandum of what happens in the presence of panches as seen by them and of what they hear'.*

Thus, we find that the *panchnama* would be a document which has to be prepared recording articles, material and objects which may be seized as incriminating documents at the time of conducting search of premises. Mentioning of the name of any company in the *panchnama* would only reflect that documents relating to that company were found during the search at the premises. A *panchnama*, therefore, cannot be treated to mean authorization issued to the authorities under Section 132 of the Act.

27. Thus, we conclude that based on the name being mentioned in the *panchnama* alone cannot be a conclusion that there was authorisation to conduct search against the petitioner under Section 132 of the Act and the authorisation to conduct search was only against M3M India Limited having their registered office.

If during search in their premises any incriminating articles/ documents/ objects or any material relating to the petitioner was recovered, which is found to be sufficient for the purpose of reassessment by the assessing officer, he was required to follow the procedure laid down under Section 153C of the Act.

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28. In ***Nazir Ahmad vs King Emperor*** 63 Indian Appeals 372, wherein the Privy Council held as under:-

> *"The rule which applies is a different and not less well recognized rule- namely, that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden. This doctrine has often been applied to Courts- Taylor v. Taylor (1875) 1 Ch.D 426."*

In ***Rao Shiv Bahadur Singh and another vs State of Vndhya Pradesh*** AIR 1954 SC 322 and ***State of U.P. vs Singhara Singh and others*** AIR 1964 SC 358, the aforesaid principle was again reiterated by Hon'ble the Supreme Court.

29. Section 153C of the Act provides as under:-

> **Section 153C(1) in The Income Tax Act, 1961 -** *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*

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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 rules30 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."

30. Thus, we find that a particular procedure has been prescribed, as above. Following the salutary principles of law as laid down in ***Nazir Ahmad*** and followed in ***Rao Shiv Bahadur Singh*** and ***Singhara Singh***'s cases (supra), we find that the respondents were obliged to compulsorily follow the procedure for reassessment of the petitioner company in the manner as prescribed under Section 153C(1) alone and in no other manner. However, we find that the respondents have invoked and initiated proceedings under Section 153A of the Act, although neither there is any search initiated under Section 132 of the Act as against the petitioner nor it can be said that the search was conducted at its premises. Similar view has been taken by Gujarat High Court in ***Hitesh Ashok Vaswani*** and ***Subhash Khattar***'s cases (supra). Thus, the proceedings initiated under Section 153A are found to be vitiated.

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31. In ***Abhisar Buildwell's*** case (supra), Hon'ble the Supreme Court has held as under:-

> *"12. If the submission on behalf of the Revenue that in case of search even where no incriminating material is found during the course of search, even in case of unabated/completed assessment, the AO can assess or reassess the income/total income taking into consideration the other material is accepted, in that case, there will be two assessment orders, which shall not be permissible under the law. At the cost of repetition, it is observed that the assessment under Section 153 A of the Act is linked with the search and requisition under Sections 132 and 132A of the Act. The object of Section 153A is to bring under tax the undisclosed income which is found during the course of search or pursuant to search or requisition. Therefore, only in a case where the undisclosed income is found on the basis of incriminating material, the AO would assume the jurisdiction to assess or reassess the total income for the entire six years block assessment period even in case of completed/unabated assessment. As per the second proviso to Section 153A, only pending assessment/reassessment shall stand abated and the AO would assume the jurisdiction with respect to such abated assessments. It does not provide that all completed/ unabated assessments shall abate."*

32. In ***J. M. Trading Corporation'***s case (supra), the Bombay High Court held as under:-

> *"The Tribunal has categorically recorded a finding of fact on initiation of the search that non-compliance of the provisions of the Act by the Authorized Officer, such searches are invalid and illegal. No search was conducted against the assessee as the premises occupied by the assessee were not entered upon and searched by the Authorised Officer."*

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33. Thus, when there was no search conducted under Section 132 and 132A of the Act as against the petitioner and only a *panchnama* reflects the name of the petitioner prepared at the registered office of M3M India Limited, the action of the respondents in passing second assessment order on 07.02.2024 on the basis of notice under Section 153A dated 05.01.2018 is held to be unjustified and without jurisdiction. Once the search and seizure was conducted and assessment order dated 28.02.2014 was passed by invoking Section 153A of the Act for the AY 2006-07 to 2012-13, fresh order without conducting search and seizure operation would not be sustainable in law. In view of the aforesaid findings and conclusions, we are satisfied that the entire proceedings initiated under Section 153A of the Act including notice issued on 05.01.2018 are liable to be quashed.

35. Accordingly, the writ petition is allowed and the notice dated 05.01.2018; assessment order and demand notice dated 07.02.2024 are quashed and set aside, and the proceedings are held to be nonest.

36. All pending applications shall stand disposed of.

38. No costs.

(SANJEEV PRAKASH SHARMA)
JUDGE

13.05.2024 **(SUDEEPTI SHARMA)**
vs **JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No

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