

Niral Bharat Modi vs Income Tax Officer Ward 5(3)(4) on 24 June, 2019

Author: J.B.Pardiwala

Bench: J.B.Pardiwala, A.C. Rao

C/SCA/20528/2018

ORDER

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 20528 of 2018

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NIRAL BHARAT MODI
Versus
INCOME TAX OFFICER WARD 5(3)(4)

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Appearance:
DARSHAN R PATEL(8486) for the Petitioner(s) No. 1
NOTICE SERVED BY DS(5) for the Respondent(s) No. 1
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CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA
and
HONOURABLE MR.JUSTICE A.C. RAO

Date : 24/06/2019

ORAL ORDER

(PER : HONOURABLE MR.JUSTICE J.B.PARDIWALA)

1. Rule returnable forthwith. Ms. Mauna Bhatt, the learned Senior Standing Counsel waives service of notice of rule for and on behalf of the respondent.

2. By this writ-application under Article 226 of the Constitution of India, the writ-applicant has prayed for the following reliefs:

"(A) Your Lordships may be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction for quashing and setting aside the impugned notices dated

3.8.2018 u/s 153C of the Income Tax Act, 1961 at Annexure - 'B' and the order dated 10.12.2018

disposing off the objections at Annexure- 'H'. (B) Pending admission, hearing, and disposal of this petition, ad-interim relief be granted and the Respondent be ordered to restrain from enforcing compliance of the impugned notices dated 3.8.2018 at Annexure 'B' and/or taking any other steps in this regard including ex parte order or implementation of Preliminary order dated 10.12.2018 at Annexure 'H'.

(C) Award the cost of this petition.

(D) Grant such other and further reliefs as this Hon'ble Court deems fit."

3. On 26.12.2018, a coordinate bench of this Court passed the following order:

"1. Mr. R.K. Patel, learned advocate for the petitioner, submitted that in this case, in case of the searched person, assessment order came to be passed on 31.12.2016 whereas, the Assessing Officer of the searched person has recorded satisfaction, as required under section 153C of the Income-tax Act, 1961 on 16.03.2018, i.e. after a period of more than one year from the date of the assessment order.

2. Reference was made to the decision of the Supreme Court in case of Commissioner of Income- tax-III v. Calcutta Knitwears, 362 ITR 673 wherein, the Court has held that for the purpose of section 158BD a satisfaction note is sine qua non and must be prepared by the Assessing Officer before he transmits the records to the other Assessing Officer who has jurisdiction over such other person. The satisfaction note could be prepared at either of the following stages: (a) at the time of or along with the initiation of proceedings against the searched person under section 158BC; (b) along with the assessment proceedings under section 158BC; and (c) immediately after the assessment proceedings are completed under section 158BC of the searched person. It was submitted that based upon the above judgment, the Central Board of Direct Taxes has issued Circular No.24 of 2015 dated 31.12.2015 stating that several High Courts held that the provisions of section 153C of the Act are substantially similar / pari materia to the provisions of section 158BC of the Act and therefore, the guidelines of the Supreme Court in Calcutta Knitwears's case (supra) apply to proceedings under section 153C of the Act for the purposes of assessment of income of the person other than the searched person. It was submitted that in this case there is a delay of 15 months from the date when the assessment proceedings have been completed under section 153A of the Act of the searched person, and therefore, the initiation of proceedings under section 153C of the Act is contrary to the CBDT Circular.

3. The attention of the Court was invited to the first proviso of section 153C of the Act to submit that in the case of the person other than the searched person, reference to

the date of initiation of search has to be construed as the date of receiving the books of account or documents seized or requisitioned by the Assessing Officer having jurisdiction over such other person. It was submitted that in this case, since the date of receipt of books of account, etc. is 16.03.2018, the Assessing Officer can proceed to assess the petitioner for six years prior to such date, which would be from the Assessment Year 2013¹⁴ to Assessment Year 2018¹⁹ whereas, in the facts of the present case, the Assessing Officer has issued notice under section 153C of the Act for seven years, i.e. from Assessment Year 2009¹⁰ to Assessment Year 2017¹⁸. It was submitted that the fact that the Assessing Officer has issued notice under section 153C of the Act in respect of seven years indicates nonapplication of mind to the provisions of section 153C of the Act and the fact that such notices have been issued even for Assessment Year 2009¹⁰ to Assessment Year 2012¹³ shows nonapplication of mind to the provisions of the first proviso to section 153C of the Act.

4. It was further pointed out that in this case the impugned notice is issued on 03.08.2018 whereas, the Assessing Officer has recorded satisfaction on 30.08.2018. It was submitted that section 153C of the Act contemplates satisfaction note to precede the notice and hence, the issuance of notice under section 153C of the Act, without recording satisfaction by the Assessing Officer of the petitioner, is invalid. It was further submitted that the Assessing Officer has not independently recorded satisfaction and that the satisfaction note is a reproduction of the satisfaction recorded by the Assessing Officer of the searched person.

5. Lastly, it was submitted that in this case the search took place on 04.12.2014 and the Assessing Officer has recorded satisfaction that the material found during the course of search pertains to the petitioner. It was submitted that the search, having been carried out prior to the amendment in section 153C of the Act, the proceedings under section 153C of the Act are invalid.

6. Having regard to the submissions advanced by the learned advocate for the petitioner, issue Notice returnable on 04.02.2019. By way of adinterim relief, the impugned notices under section 153C of the Act qua Assessment Years 2009¹⁰ to 2012¹³ are hereby stayed. In so far as notices for the remaining periods are concerned, the Assessing Officer may proceed further pursuant to the impugned notices; he, however, shall not pass the final order without the prior permission of this Court.

Direct service is permitted."

4. Ultimately, a batch of writ-applications with regard to the legality and validity of the issue of notice under Section 153C of the Act came to be heard by the coordinate bench. Finally, a batch of writ-applications came to be disposed of by the coordinate bench with a judgment and order dated 02.04.2019. The coordinate bench addressed itself on four questions. First, with regard to the maintainability of the petitions. Secondly, the question was with regard to whether Section 153C of

the Act as amended with effect from 01.06.2015 would be applicable to the case where search is initiated prior to that date. Thirdly, the question was with regard to whether the notice u/s. 153C of the Act was barred by limitation and fourthly, the question was with regard to the relevant Assessment Years contemplated u/s. 153A of the Act.

5. With regard to the first question, the coordinate bench took the view that the writ-applications were maintainable. With regard to the second question, the Court took the view that the Legislature has specifically made the amended provisions of Section 153C of the Act applicable with prospective effect from 01.06.2015. The Court held that if such amended provisions are not made applicable to the searches carried out prior to 01.06.2015, they would affect the substantive rights of the persons who are brought within the ambit of Section 153C of the Act by virtue of such amendment. So far as the third question is concerned with regard to the limitation, the Court took the view that when the statute itself provides for an alternative period of limitation, merely because the period of limitation is provided under the first part has elapsed; it cannot be said that the notices were barred by the limitation on such ground. While answering the last question, the Court held as under:

"21.2 On a plain reading of section 153A of the Act, it is evident that the trigger point for issuance of notice under that section is a search under section 132 or a requisition under section 132A of the Act. Notice is required to be issued to the searched person calling upon him to file return of income for six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made. Thus, insofar as computation of the six assessment years in respect of which notice is required to be issued is concerned, the relevant date is the immediately preceding assessment year relevant to the previous year in which such search is conducted or requisition is made.

21. Accordingly, in terms of clause (b) of sub-section (1) of section 153A of the Act, in case of HN Safal Group, since the search is conducted on 4.9.2013 the previous year in which such search is conducted or requisition made is 1.4.2013 to 31.3.2014 and the assessment year relevant to such previous year would be 2014-15; therefore, the six years assessment years would be the six assessment years preceding assessment year 2014-15 which would be 2013-14, 2012-13, 2011-12, 2010-11, 2009-10 and 2008-09. In case of Barter Group and Venus Group, since the search is conducted on 4.12.2014 and 13.3.2015 respectively, the previous year in which such search is conducted or requisition made is 2014-15 and the assessment year relevant to such previous year would be 2015-16 and therefore, the six assessment years preceding 2015-16 would be 2014-15, 2013-14, 2012-13, 2011-12, 2010-11 and 2009-10. Therefore, in case any notices under section 153C of the Act which have been issued for assessment years beyond the six assessment years referred to hereinabove, such notices would be beyond jurisdiction as the same do not fall within the six assessment years as contemplated under section 153A of the Act."

6. Ultimately, the final order which came to be passed by the Court reads as under:

"In the light of the above discussion, the petitions succeed, and are accordingly, allowed. The impugned notices issued under section 153C of the Income Tax Act, 1961 in each of the petitions are hereby quashed and set aside. In cases where the assessment orders are subject matter of challenge, the impugned assessment orders are hereby quashed and set aside on the ground that the very initiation of proceedings under section 153C of the Income Tax Act, 1961 was without jurisdiction. Rule is made absolute accordingly in each of the petitions, with no order as to cost."

7. The issues involved in the present petition are identical. We propose to apply the very same principles of law as laid down and explained by the coordinate bench in the Special Civil Application No. 12825/2018 and allied matters to the facts of the present case.

8. Consequently, if any Assessment Order has been passed under Section 153C of the Income Tax Act, 1961, the same is also quashed and set aside.

(J. B. PARDIWALA, J) (A. C. RAO, J) MAYA