

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5888 OF 2013
(@ SPECIAL LEAVE PETITION (CIVIL) NO.8947 OF 2011)

COMMISSIONER OF INCOME TAX, GUJARAT APPELLANT

VERSUS

VIJAYBHAI N. CHANDRANI RESPONDENT

WITH C.A.NO.5896 OF 2013 @ S.L.P.(C)NO.29038/2011

WITH C.A.NO.5897 OF 2013 @ S.L.P.(C)NO.29039/2011

WITH C.A.NO.5898 OF 2013 @ S.L.P.(C)NO.29040/2011

WITH C.A.NO.5899 OF 2013 @ S.L.P.(C)NO.31248/2011

WITH C.A.NO.5900 OF 2013 @ S.L.P.(C)NO.32912/2011

WITH C.A.NO.5901 OF 2013 @ S.L.P.(C)NO.34009/2011

WITH C.A.NO.5902 OF 2013 @ S.L.P.(C)NO.34010/2011

WITH C.A.NO.5889 OF 2013 @ S.L.P.(C)NO.113/2012

WITH C.A.NO.5890 OF 2013 @ S.L.P.(C)NO.114/2012

WITH C.A.NO.5903 OF 2013 @ S.L.P.(C)NO.8502/2012

WITH C.A.NO.5891 OF 2013 @ S.L.P.(C)NO.12900/2012

WITH C.A.NO.5892 OF 2013 @ S.L.P.(C)NO.19991/2012

WITH C.A.NO.5893 OF 2013 @ S.L.P.(C)NO.21295/2012

WITH C.A.NO.5894 OF 2013 @ S.L.P.(C)NO.21340/2012

WITH C.A.NO.5895 OF 2013 @ S.L.P.(C)NO.24322/2012

O R D E R

1. Delay in filing and refiling Special Leave Petitions is condoned.

2. Leave granted.

C.A.No.5888 of 2013 @ S.L.P.(C)No.8947 of 2011:

3. This appeal is directed against the judgment and order passed by the High Court of Gujarat in S.C.A. No.13787 of 2009, dated 30.03.2010, whereby and whereunder the High Court has set aside the Show Cause Notices issued by the Assessing Authority under Section 153C of the Income Tax Act, 1961 (for short 'the Act, 1961'), dated 07.10.2009.

4. Brief facts of the case are:

The respondent-assessee purchased a plot of land from "Samutkarsh Co-operative Housing Society" (for short 'the Society') being developed by one Savvy Infrastructure Ltd. In 2008, a search was conducted under Section 132 of the Act, 1961 in the premises of the Society and also at the office of Savvy Infrastructure Ltd. During the search certain documents were seized under Section 132A of the Act, 1961. Upon scrutiny, it was found that the seized documents reflected names of certain individuals including the assessee. Accordingly, for further proceedings the Assessing Authority had transmitted the seized documents to the jurisdictional Assessing

Authority in whose jurisdiction the assessee was being assessed. After receipt of the said information/documents, the Assessing Authority has recorded a satisfaction note dated 06.10.2009, that, he has reason to believe that a case of escapement of income may exist and therefore the assessee's case requires to be reassessed for assessment years 2001-2002 to 2006-2007 under Section 153C of the Act, 1961. The relevant paragraphs of the said satisfaction note read as under:

**"SATISFACTION NOTE FOR INITIATION OF PROCEEDINGS
U/S.153C OF THE INCOME TAX ACT, 1961**

Name of the assessee : Shri Vijay H.Chandrani

**AY : 2001-02 to 2006-07
U/s.153C and 2007-08 U/s.143(3).**

The DCIT Central Circle 1(1) Ahmedabad, vide his letter DCIT/CC.1 (1)/Vijay Chandrani/Samutkarsh dated 30.03.2009 had intimated ITO Ward 7(4) Ahmedabad that the above mentioned assessee is one of member of the Co-op. Society namely Samutkarsh Co-op.Housing Society, the case of Samutkarsh Co-op.Housing Society as well as in the case of Sa' Infrastructure Ltd., Ahmedabad, proceedings U/s.132 were carried out by department. During the course of search, certain incriminating document pertaining to the assessee were also found....."

5. Accordingly, the Assessing Authority has issued six Show Cause Notices under Section 153C of the Act, 1961 to the assessee for reassessment of income of the aforesaid six assessment years and directed him to furnish return of income in respect of the said

assessment years in prescribed form within thirty days of the receipt of the said notices, dated 07.10.2009.

6. Upon receipt of the said notice, the assessee by letter dated 11.11.2009 requested the Assessing Authority to furnish him with the copies of seized documents on the basis of which the said notices were issued. The Assessing Authority had provided the said documents to the assessee, whereafter the assessee has approached the High Court in a Writ Petition questioning the six Show Cause Notices dated 07.10.2009.

7. The High Court has elaborately examined the case at hand and delved into the statutory scheme for assessment in case of search and requisition as prescribed under Sections 153A, 153B and 153C of the Act, 1961 and reached the conclusion that the documents seized by the Assessing Authority under Section 132A do not belong to the assessee and therefore the condition precedent for issuance of the notice under Section 153C is not fulfilled. Accordingly the High Court has allowed the Writ Petition filed by the assessee and quashed the said notices issued by the Assessing Authority by the impugned judgment and order.

8. Aggrieved by the aforesaid judgment and order passed by the High Court, the Assessing Authority is before us in this appeal.

9. We have heard Shri Prasad, learned counsel for the Assessing Authority and Shri Amar Dave, learned counsel appearing for the respondent at considerable length.

10. Shri Prasad besides questioning the impugned judgment and order on merits would also submit that the High Court ought not to have entertained the Writ Petition filed by the assessee against the Show Cause Notices issued by the Assessing Authority under Section 153C.

11. *Au contraire* Shri Amar Dave justifies the impugned judgment and order.

12. We have gone through the documents on record including the satisfaction note recorded by the Assessing Authority and the Show Cause Notices. We have also perused the impugned judgment and order of the High Court.

13. In the instant case, it transpires from the record that the jurisdictional Assessing Authority, upon having a reason to believe that the documents seized indicate escapement of income, has issued Show Cause Notices under Section 153C to the assessee for reassessment of his income during the assessment years 2001-2002 to 2006-2007. Thereafter, upon request of the assessee, the Assessing Authority has furnished him with the copies of documents seized under Section 132A. The assessee being dissatisfied with the said documents instead of filing his explanation/reply to the Show Cause Notices, has filed a Writ Petition before the High Court impugning the said notices.

14. In our considered view, at the said stage of issuance of the notices under Section 153C, the assessee could have addressed his grievances and explained his stand to the Assessing Authority by filing an appropriate reply to the said notices instead of filing the Writ Petition impugning the said notices. It is settled law that when an alternate remedy is available to the aggrieved party, it must exhaust the same before approaching the Writ Court. In *Bellary Steels & Alloys Ltd. v. CCT*, (2009) 17 SCC 547, this Court had allowed the assessee therein to withdraw the original Writ

Petition filed before the High Court as the said proceedings came to be filed against the show-cause notice and observed that the High Court should not have interfered in the matter as the Writ Petition was filed without even reply to the show cause notice. This Court further observed as follows:

"3....In the circumstances, we could have dismissed these civil appeals only on the ground of failure to exhaust statutory remedy, but for the fact that huge investments involving the large number of industries is in issue."

15. We are fortified by the decision of this Court in *Indo Asahi Glass Co. Ltd. v. ITO*, (2002) 10 SCC 444, wherein the assessee had approached this Court against the judgment and order of the High Court which had dismissed the Writ Petition filed by the assessee wherein challenge was made to the show cause notice issued by the Assessing Authority on the ground that alternative remedy was available to the assessee. This Court concurred with the findings and conclusions reached by the High Court and dismissed the said appeal with the following observations:

"5. This and the other facts cannot be taken up for consideration by this Court for the first time. In our opinion, the High Court was right in coming to the conclusion that it is appropriate for the appellants to file a reply to the show-cause notice and take whatever defence is open to them."

16. In the present case, the assessee has invoked the Writ jurisdiction of the High Court at the first instance without first exhausting the alternate remedies provided under the Act. In our considered opinion, at the said stage of proceedings, the High Court ought not have entertained the Writ Petition and instead should have directed the assessee to file reply to the said notices and upon receipt of a decision from the Assessing Authority, if for any reason it is aggrieved by the said decision, to question the same before the forum provided under the Act.

17. In view of the above, without expressing any opinion on the correctness or otherwise of the construction that is placed by the High Court on Section 153C, we set aside the impugned judgment and order. Further, we grant time to the assessee, if it so desires, to file reply/objections, if any, as contemplated in the said notices within 15 days' time from today. If such

reply/objections is/are filed within time granted by this Court, the Assessing Authority shall first consider the said reply/objections and thereafter direct the assessee to file the return for the assessment years in question. We make it clear that while framing the assessment order, the Assessing Authority will not be influenced by any observations made by the High Court while disposing of the Writ Petition. If, for any reason, the assessment order goes against the assessee, he/it shall avail and exhaust the remedies available to him/it under the Act, 1961.

18. The appeal is disposed of accordingly. No costs.

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WITH C.A.NO.5894 OF 2013 @S.L.P.(C)NO.21340/2012
AND
WITH C.A.NO. 5895 OF 2013 @S.L.P.(C)NO.24322/2012:

19. These appeals arise from the judgment and orders passed by the High Court of Gujarat in Tax Appeal

Nos.2085 of 2009, 2082 of 2009, 2078 of 2009, 2083 of 2009, 2080 of 2009, 2077 of 2009, 2086 of 2009, 2084 of 2009, 2079 of 2009, dated 27.04.2011 and Tax Appeal No.444 of 2010, 445 of 2010, 2081 of 2009, dated 26.07.2011, 2081 of 2009, dated 27.04.2011, 1498 of 2010, dated 21.12.2011, 449 of 2010, dated 26.07.2011 and 1493 of 2010, dated 21.12.2011 respectively.

20. In these appeals the Tribunal and the High Court, after going through the facts and circumstances of each case, have reached the conclusion that the Assessing Authority was not justified in computing the assessments and thereafter fastening liability on the assessee to pay tax and interest. Since these appeals are primarily decided on facts by the First Appellate Authority, the Tribunal and the High Court, we do not find any substantial question of law which requires to be decided by this Court.

21. We make it abundantly clear that we have not expressed any opinion on the correctness or otherwise of the observations made by the High Court insofar as the interpretation of Section 153C of the Act, 1961 is concerned. The said question is kept open to be agitated in an appropriate matter.

22. Accordingly, all these appeals are disposed of with no order as to costs.

.....J.
(H.L. DATTU)

.....J.
(DIPAK MISRA)

NEW DELHI;
JULY 18, 2013.



JUDGMENT