

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

WRIT PETITION No.22111 of 2022

Between:-

Vijay Nathulal Sharma,
S/o.Nathulal Sharma, Occ:Nil,
Aged about 75 Years,
R/o.Indian Inhabitant 83-A, Anita Building
8th Floor, Mt.Pleasant Road, Malabar Hill,
Mumbai, Maharashtra – 400006.

Petitioner

And

1. Deputy Commissioner of Income Tax,
Central Circle-I, Guntur,
Lakshmipuram Main Road, Guntur,
Andhra Pradesh – 522006.

2. Union of India,
Represented by its Secretary,
Ministry of Finance, North Block,
New Delhi – 110001.

Respondents

DATE OF ORDER PRONOUNCED :

21.10.2022

SUBMITTED FOR APPROVAL:

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE JUSTICE Dr.V.R.K.KRUPA SAGAR

1. Whether Reporters of Local Newspapers
may be allowed to see the order? Yes/No
2. Whether the copy of order may be
marked to Law Reporters/Journals? Yes/No
3. Whether Their Lordships wish to
see the fair copy of the order? Yes/No

C.PRAVEEN KUMAR, J

Dr.V.R.K.KRUPA SAGAR, J

*** HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND**

*** HON'BLE JUSTICE Dr.V.R.K.KRUPA SAGAR**

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Represented by its Secretary,
Ministry of Finance, North Block,
New Delhi – 110001. --- Respondents.

! Counsel for the Petitioner : Sri Nerella S V Raviteja

^ Counsel for Respondent No.1 : Ms.M.Kiranmayee
(Senior Standing Counsel for
1st Respondent Income Tax
Department)

< Gist:

> Head Note:

? Cases referred:

1. [2014] 52 taxmann.com 220
2. [2021] taxmann.com 177 (Orissa)
3. (2020) 4 SCC 581
4. [2013] 36 taxmann.com (SC)

This Court made the following:

THE HON'BLE SRI JUSTICE C.PRAVEEN KUMAR
AND
THE HON'BLE JUSTICE Dr.V.R.K.KRUPA SAGAR
WRIT PETITION NO.22111 OF 2022

ORDER: (Per Hon'ble Justice Dr.V.R.K.Krupa Sagar)

An assessee filed this writ petition under Article 226 of the Constitution of India, seeking for a Writ of Mandamus or other direction seeking to declare the action of the Respondent No.1/Deputy Commissioner of Income Tax, Central Circle-1, Guntur of Andhra Pradesh in issuing impugned Orders dated 27.03.2022 and 11.03.2022, demand notices dated 27.03.2022 and 11.03.2022 and notice under Section 274 r/w. Section 271(1)(c) dated 27.03.2022 as illegal, arbitrary and violative of Article 14 and Article 21 of the Constitution of India and consequently direct the respondent authorities to decide the proceedings in accordance with law under the Income Tax Act.

02. Having found that cash receipts by writ petitioner amounting to Rs.3,05,00,000/- were not reflected in his books of account, after notice under Section 142(1) of the Income Tax Act, Respondent No.1 passed the impugned orders of assessment. In this writ petition, the challenge is on the assessment orders as well as demand notices and penalty notices, passed by respondent No.1 for the assessment years 2013-2014 to 2020-2021.

03. This court has heard the submissions of Mr.Nerella S.V.Raviteja., learned counsel for the writ petitioner and Ms.M.Kiranmayee., Learned Senior Standing Counsel for Respondent No.1 Income Tax department.

04. From the record and from the submissions of learned counsels on both sides a few undisputed facts need a mention. The writ petitioner is an individual income tax assessee having Pan: No.AGPPS8124-A. He is aged about 75 Years and is a resident of Mumbai of State of Maharashtra. He was regularly filing income tax returns at Mumbai with Assessing Officer Ward 19 (1)(3) at Mumbai. His main source of income is from investments under other income heads and claims to have never been involved in any business. An immovable property at Lancherster Road, Guntur City of Andhra Pradesh is his ancestral property in which he had 1/6th share. He along with his family members/Sharma Group sold their respective shares in that property under a registered sale deed dated 24.07.2012 in which the petitioner, towards his share, got the sale consideration of Rs.2,10,00,000/-. The purchaser of the property was M/s.Bharathi Castles Private Limited represented by its Director Sri Polisetty Somasundaram of Guntur City. While so, on 28.01.2020 at Guntur, a search and seizure operation was conducted by the Income Tax Authorities against M/s. Polisetty Somasundaram Group in terms of Section 132 of Income Tax Act 1961. During that search and seizure operation a pen-drive was recovered and copies of its

contents were recovered. The Income Tax Authorities found various unaccounted cash transactions between M/s.Polisetty Somasundaram Group and this writ petitioner. According to the authorities that material includes cash receipts of the financial year 2012 to 2013 relevant A.Y-2013-2014 to a tune of Rs.3,05,00,000/-. It is in that context of facts the case was centralised with DCIT, Central Circle-1, Guntur by virtue of Orders passed by Principle Commissioner of Income Tax, Vijayawada in F.No.127/Pr.CIT/VJA/2020-21 dated 16.02.2021. That Order was made under Section 127 of Income Tax Act. Thereafter the authorities proceeded under Section 153C and assessments were completed for the years 2013-2014 to 2020-2021 under Section 153C of Income Tax Act.

05. It is in the back drop of the above facts, the controversy has arisen between the assessee and the Revenue. Learned Counsel for the writ petitioner submits certain prime contentions and subsidiary contentions. Learned standing counsel for the Revenue/Respondents refuted the correctness and efficacy of such contentions.

06. The prime contentions raised for the writ petitioner are that the writ petitioner being an assessee at Mumbai, transfer of a case as provided under Section 127 of Income Tax Act could be passed by the Authorities at Mumbai, but that was not done. On the other hand, Principal Commissioner of Income Tax, Vijayawada of Andhra Pradesh

transferred the case. The search and seizure proceedings that took place in the premises of M/s.Polisetty Somasundaram Group, Guntur, if disclosed material concerning writ petitioner, the proceedings for assessment should be taken up by the Authorities at Mumbai. But in this case Respondent No.1/Authorities at Guntur itself proceeded and that is in violation of Section 153C of the Income Tax Act. That the petitioner has no other efficacious alternative remedy except to seek the redressal before this court. Therefore, the impugned notices and orders can not be allowed to survive.

07. In response to the above contentions, the learned standing counsel for Revenue/respondents contended that the material obtained during search and seizure action was incriminating as it pointed out the writ petitioner avoided disclosure of income and therefore the respondent No.1 initiated scrutiny proceedings under Section 153C and this writ petitioner never questioned the jurisdiction of Assessing Officer and submitted himself to the jurisdiction of Assessing Officer and therefore he cannot now turn around and contend that the Assessing Officer had no jurisdiction to pass the Order of assessment in his case. Order under Section 127 of the Income Tax Act passed by the Principle Income Tax Officer, Vijayawada dated 16.02.2021 granted jurisdiction to DCIT, Central Circle-1, Guntur and therefore the scrutiny proceedings are valid. As against the Order of assessment an appeal lies to the Commissioner of Income Tax (Appeals) but the petitioner without

availing that remedy by way of appeal approached this court and therefore this Writ petition is not maintainable.

08. The subsidiary contentions of the writ petitioner are that he had no nexus with M/s.Polisetty Somasundaram Group and there were no cash transaction and the respondents authority did not provide to him the so called seized documents or material so as to enable him to furnish appropriate reply. That the notices issued by the respondent authority are contrary to each other since at one breath they alleged that this writ petitioner paid cash to M/s.Polisetty Somasundaram but at another breath they claim that this writ petitioner received cash from M/s.Polisetty Somasundaram group. That the notices did not disclose the material. Learned counsel for the writ petitioner submits that appropriate opportunities of hearing was never given to him and the principles of natural justice were violated.

09. As against the above subsidiary contentions the learned standing counsel for the respondents submit that the relevant material was furnished through notices under Section 142(1) of the Income Tax Act and petitioner though submitted written explanation did not submit any relevant documents such as bank statements etc and despite summons issued to the petitioner on 23.03.2022 he did not appear before the Assessing Officer either personally or through an authorised representative to present his case and except submitting written

explanations devoid of any supporting documents in evidence of his defence. Based on the seized pen-drive and the material contained in it, satisfaction was drawn and therefore proceedings under Section 153C of the Income Tax Act were initiated.

10. The rival contentions indicate that the writ petitioner challenges the legal competence of the orders and proceedings passed under Section 153C by Respondent No.1 as well as the legality of transfer orders passed under Section 127 based on which the proceedings under Section 153C were taken up by Respondent No.1.

11. In view of the rival contentions the following prime questions fall for consideration before us:-

(1) Whether the Order dated 16.02.2021 of learned Principal Commissioner of Income Tax, Vijayawada transferring the Income Tax jurisdiction of writ petitioner from Mumbai of Maharashtra State to Guntur of A.P.State enabling Respondent No.1 to pass the impugned orders is arbitrary and is in violation of Section 127 of Income Tax Act?

(2) Whether Respondent No.1 had no jurisdiction against the writ petitioner under Section 153C to initiate scrutiny proceedings against the writ petitioner and pass assessment Orders?

(3) Whether transfer of a case under Section 127 of Income Tax Act cannot be questioned after initiation of scrutiny proceedings under Section 153C since writ

petitioner did not question the jurisdiction at that time and submitted himself to the jurisdiction of Respondent No.1?

(4) As against the Orders of assessment which are impugned only an appeal lies to the Commissioner of Income Tax (Appeals) and this writ petition is not maintainable?

POINT Nos.1 to 4:-

12. Respondent No.1 gained input about the alleged un-accounted cash transactions between the writ petitioner and M/s.Polisetty Somasundaram Group on 28.01.2020 during the course of said search and seizure proceedings conducted at Guntur. It was then, Respondent No.1 initiated proceedings under Section 153C of the Income Tax Act. By then the writ petitioner was not within the jurisdiction of Respondent No.1 and he was an assessee at Mumbai. For convenience, Section 153C of the Income Tax Act is extracted here:

“153C. Assessment of income of any other person- (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 of 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 of 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 section 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.

Thus the operating field of Section 153C of Income Tax Act is that where during the course of search if any material is found pertaining to a person other than the persons searched, the Assessing Officer who found such material is ordained to hand over the material to that Assessing Officer who holds the jurisdiction over such other person and thereafter the other Assessing Officer shall proceed against such other person and issue notices to such other person and assess or re-assess the income of such other person in accordance with provisions of Section 153(A) of the Income Tax Act, 1961.

Explaining about this principle the ruling of Delhi High Court in **Pepsi Foods (P) Ltd. Vs Assistant Commissioner of Income Tax**¹ was reiterated and followed by the High Court of Orissa in **Sri Sai Cahsews Vs Chief Commissioner of Income Tax, Bhubaneswar**². Para 12 of it, to the extent relevant is, as below:

"On a plain reading of Section 153C, it is evident that the Assessing Officer of the searched person must be "satisfied" that *inter alia* any document seized or requisitioned "belongs to" a person other than the searched person. It is only then that the Assessing Officer of the searched person can handover such document to the Assessing Officer having jurisdiction over such other person (other than the searched person). Furthermore, it is only after such handing over that the Assessing Officer of such other person can issue a notice to that person and assess or re-assess his income in accordance with the provisions of Section 153A. Therefore, before a notice under Section 153C can be issued two steps have to be taken. The first step is that the Assessing Officer of the person who is searched must arrive at a clear satisfaction that a document seized from him does not belong to him but to some other person. The second step is - after such satisfaction is arrived at - that the document is handed over to the Assessing Officer of the person to whom the said document "belongs....."

Hon'ble Supreme Court of India interpreted and explained Section 153C of Income Tax Act in **Super Malls Private Limited v. Principal**

¹ [2014]52 taxmann.com 220

Commissioner of Income Tax, 8, New Delhi³ and laid down the law, which is as below:

“7. This Court had an occasion to consider the scheme of Section 153-C of the Act and the conditions precedent to be fulfilled/complied with before issuing notice under Section 153-C of the Act in *Calcutta Knitwears (CIT v. Calcutta Knitwears)* (2014) 6 SCC 444) as well as by the Delhi High Court in *Pepsi Food (P) Ltd. (Pepsi Food (P) Ltd. v. CIT, 2014 SCC Online Del 4029 : (2014) 367 ITR 112)*. As held, before issuing notice under Section 153-C of the Act, the assessing officer of the searched person must be “satisfied” that, inter alia, any document seized or requisitioned “belongs to” a person other than the searched person. That thereafter, after recording such satisfaction by the assessing officer of the searched person, he may transmit the records/documents/things/papers, etc. to the assessing officer having jurisdiction over such other person. After receipt of the aforesaid satisfaction and upon examination of such other documents relating to such other person, the jurisdictional assessing officer may proceed to issue a notice for the purpose of completion of the assessment under Section 158-BD of the Act and the other provisions of Chapter XIV-B shall apply.”

In the case at hand, the notice under Section 153C of the Income Tax Act 1961 having DIN and Notice No.ITBA/AST/S/153C/2021-22/1039508432(1) dated 08.02.2022 for the assessment year 2013-2014 and for subsequent assessment years were issued by Respondent No.1 calling upon the writ petitioner to prepare true and correct return

² [2021]131 taxmann.com 177 (Orissa)

of total income in the prescribed forms. Thus the material discovered during search proceedings were not forwarded by the search authority to the Assessing Officer holding jurisdiction over the writ petitioner. Instead, Respondent No.1 took up the proceedings by itself.

13. Originally the writ petitioner is assessed for income tax at Mumbai and is a resident of Mumbai and he was submitting income tax returns for quite a long time. His case was transferred from Mumbai to Guntur and this was done by the learned Principal Commissioner of Income Tax, Vijayawada by Orders dated 16.02.2021 passed under Section 127 of Income Tax Act. By the said date it is un-disputed, the writ petitioner was an assessee at Mumbai. The question arose is as to which is the competent authority to pass order of transfer of cases. Section 127 of the Income Tax Act, 1961 provides for transfer of cases. This provision indicates the authority which is competent to pass the order of transfer and the procedure which is to be followed for making an order of transfer of case from one assessing authority to another assessing authority. For better appreciation, Section 127 of the Income Tax Act is extracted here:

“127. Power to transfer cases- (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

³ (2020) 4 SCC 581

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 Commissioners or Chief Commissioners 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 Commissioner 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 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 Officers 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.”

According to Section 127(2) of the Income Tax Act, power to transfer of cases is vested with the authority in whose jurisdiction the assessee is situated. That authority shall give 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 cases from one Assessing Officer to other Assessing Officer not subordinate to him.

14. When that being the mandate of the statute, in the case at hand the order of transfer instead of being made by the authorities at Mumbai

where the writ petitioner was an assessee, the order of transfer was made by the authority at Vijayawada which transferred the case from Mumbai to Guntur. The basis for Respondent No.1 to proceed for assessment against the writ petitioner is that order. It is not the case of respondents that authorities at Mumbai transferred the case. It is also not the case of respondents that the respondents ever granted an opportunity of hearing to the writ petitioner before they transferred the case. It is to be stated here that the Principal Commissioner of Income Tax at Mumbai served a notice dated 02.03.2021 on this writ petitioner for transfer of the jurisdiction for the purpose of coordinated investigation and assessment from Mumbai to Guntur. The said notice is extracted here:

“ OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX -19
 2nd Floor, Matru Mandir, Tardeo Road, Mumbai – 400 007
[Tel:022-23855951](tel:022-23855951)/[FAX:022-23821527](tel:022-23821527)
[Email ID:Mumbai.pcit19@incometax.gov.in](mailto:Mumbai.pcit19@incometax.gov.in)
No.Pr.CIT-19Centralisation/Polisettygrp/2020-21 date:02.03.2021
PAN:AGPPS8124A

To

Shri Vijay Nathulal Sharma,
 83-A, Anita Bldg, 8th Floor,
 Mt.Pleasant Road, Malabar Hill,
 Mumbai-400006.

Sir/Madam,

Sub: Centralisation for income tax assessment in your case-
 Opportunity to make submissions.

Ref: Search action u/s.132 of the Income Tax Act, 1961
 conducted on 28.01.2020 in case of M/s.Polisetty
 Somasundaram Group & Others, Guntur.

Please refer to the above.

2. A search u/Section132 of the Income Tax Act, 1961 was conducted on 28.01.2020 in case of M/s.Polisetty Somasundaram Group

& Others, Guntur. During the course of search proceedings, your case was covered u/s.132/133A. Accordingly a request has been received from the PCIT(Central), Visakhapatnam for transfer of the jurisdiction of the PAN and centralization of your case for the purpose of coordinated investigation and assessment in relation to the search proceedings as per CBDT guidelines. Therefore the jurisdiction of your case is proposed to be transferred from the present jurisdiction of ITO-19(1)(1), Mumbai to the DCIT/ACIT, Central Circle-1, Guntur. The said transfer is being made in the interest of the revenue so as to enable proper and co-ordinated assessments.

3. In this connection as per clause (a) of sub section (2) of Section 127 of the Income Tax Act, 1961 you are hereby given an opportunity of being heard. You may appear in this office as mentioned above either personally or through your representative, duly authorised in this behalf on 04.03.2021 at 12.00 PM or inform your reasons by writing on or before.

4. I am directed to request you to appear before the Pr.Commissioner of Income Tax-19, Mumbai or give reasons in writing on the said date failing which it will be presumed that you have no objection for the proposed transfer.

Yours faithfully,
(Jyotika P Ratanpal)
ITO(HQ)(Tech.) to Pr.CIT-19
Mumbai.”

Thus on one hand action in terms of Section 127 of Income Tax Act, 1961, was in the offing at Mumbai and opportunity of hearing was scheduled on 04.03.2021 at Mumbai. However, much earlier to it the Order dated 16.02.2021 of learned Principal Commissioner of Income Tax Act, Vijayawada transferred the case from Mumbai to Guntur. Be it noted, by 16.02.2021 the competent authority at Mumbai did not even commence the proceedings of transfer as it commenced its proceedings for transfer only on 02.03.2021. In that scenario, even Sub-Section (4) of Section 127 of the Income Tax Act do not come for rescue for the Revenue. As a matter of record the assertions in the writ petition about the above referred notice dated 02.03.2021 issued by the office of the Principal Commissioner of Income Tax, Mumbai remain unquestioned

and was not adverted to in the counter affidavit filed for the respondents. The above facts do indicate that at some point of time the revenue was conscious of statutory position as to which was the competent authority to transfer a case in terms of Section 127 of Income Tax. Yet, the action of transfer was taken up and achieved by the authorities of respondent No.1 which is not provided under law. This action on the part of the authorities of Respondent No.1 can be called as arbitrary as it was done in violation of the mandate in Section 127 of Income Tax Act. Article 14 of the Constitution of India provides for equal protection of laws and in the case at hand the acts of the authorities of Respondent No.1 which are based on Order dated 16.02.2021 by the learned Principal Commissioner of Income Tax, Vijayawada stand against that constitutional mandate.

15. The upshot of the above discussion would indicate that the Order of transfer of case under Section 127 was without jurisdiction and the proceedings initiated under Section 153C on the part of Respondent No.1 are also without jurisdiction. Therefore, the orders of assessment that were passed by Respondent No.1 on the anvil of the above proceedings under Section 127, 153C shall be held as invalid orders passed without jurisdiction.

16. In such scenario, the contention of the standing counsel for Revenue is that the writ petitioner when received notices and summons from Respondent No.1 did not raise objection concerning jurisdiction before Respondent No.1 and submitted himself to the jurisdiction of Assessing Officer and therefore he cannot now contend that the Assessing Officer had no jurisdiction to pass the order. In affect this argument conveys only the argument of convenience for Respondent No.1, and is not hinged on any principle either in a statute or in the precedent, brought to the notice of this Court by the Revenue to the affect that by mere responding to the notice issued by Respondent No.1 jurisdiction stood vested with Respondent No.1. It is well know that when statute prescribes the authority with whom the power is vested it is only that authority which can exercise that power. By consent of parties the statutory prescription cannot be waived nor vested with another authority. Though the plea of legal competency and jurisdiction was not raised by the writ petitioner before the assessing authority, this being a question of law going to the root of the matter, the same can be raised at any stage of the proceedings. Therefore, this argument of Revenue does not hold merit.

17. The learned standing counsel for respondent urged that the writ petitioner questions order of assessment and the Income Tax Act 1961 provides a provision for preferring an appeal before the Commissioner of

Income Tax (Appeals) and therefore this Writ Court cannot entertain the writ petition.

18. In support of such contention support is taken from **Commissioner of Income Tax Vs Chhabil Dass Agarwal**⁴. In that case, the Assessing Authority passed assessment orders and they were questioned in the Writ without filing an Appeal. The Writ Court quashed the Orders. Aggrieved of it, the Revenue moved the Hon'ble Supreme Court of India. It was in that context their Lordship were pleased to delve into Article 226 of the Constitution of India and at Para 15 it is stated that it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available. At Para 19 their Lordship recorded the exceptions to the rule of alternative remedy and stated that where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice writ lies. In other cases, the assessee is to pursue the statutory mechanism of the appeal. In the context of the above ruling when the case at hand is analysed it is

⁴ [2013]36 taxmann.com36 (SC)

manifestly clear that in this case authority which was not competent to act resorted to Section 153C and resorted to Section 127 of the Income Tax Act. Thus the case at hand falls within the recognised exceptions mentioned in the cited ruling. In that view of the matter an appeal before the Appellate Authority cannot be called as efficacious adequate alternative remedy. Therefore, the contention of the writ petitioner that he has no other adequate and alternative efficacious remedy has to be accepted as correct. In that view of the matter, the contention of the Revenue about the jurisdiction to entertain this Writ cannot be sustained.

19. In view of the above conclusions reached, the subsidiary contentions raised in this writ petition by Respondent No.1 about not affording proper opportunity to him by Respondent No.1 and violation of principles of natural justice of Respondent No.1 and such other contentions do not require any decision.

20. In view of the discussion made above, this Writ Petition is allowed and the impugned Orders of assessment and notices are declared as arbitrary and illegal and therefore they are set aside. Liberty is granted to respondent authorities to commence proceedings afresh in accordance with law. There shall be no order as to costs.

As a sequel, miscellaneous petitions, if any pending, shall stand closed.

C.PRAVEEN KUMAR, J

Dr. V.R.K.KRUPA SAGAR, J

Date: 21.10.2022

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HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

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HON'BLE JUSTICE Dr.V.R.K.KURPA SAGAR

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