

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 7614 of 2022
 With
 R/SPECIAL CIVIL APPLICATION NO. 7655 of 2022
 With
 R/SPECIAL CIVIL APPLICATION NO. 7624 of 2022
 With
 R/SPECIAL CIVIL APPLICATION NO. 7629 of 2022
 With
 R/SPECIAL CIVIL APPLICATION NO. 7623 of 2022
 With
 R/SPECIAL CIVIL APPLICATION NO. 7627 of 2022
 With
 R/SPECIAL CIVIL APPLICATION NO. 7626 of 2022

=====

MANISHKUMAR TULSIDAS KANERIYA

Versus

ASSISTANT COMMISSIONER OF INCOME TAX, CENTRAL 1, RAJKOT

=====

Appearance:

DARSHAN R PATEL(8486) for the Petitioner(s) No. 1

MR.VARUN K.PATEL(3802) for the Respondent(s) No. 1

=====

CORAM:HONOURABLE MR. JUSTICE N.V.ANJARIA

and

HONOURABLE MR. JUSTICE NIRAL R. MEHTA

Date : 02/03/2023

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE N.V.ANJARIA)

All these Special Civil Applications involve similar facts and identical issues, except that the petitions relate to different assessment years, in that view, they were heard together to be treated for final disposal by this common order.

1.1 Heard learned advocate Mr. Darshan R. Patel for the petitioner and learned advocate Mr. Varun K.

Patel for the respondent Assistant Commissioner of Income Tax, Central 1, Rajkot, in each of the petitions.

2. What is prayed in the respective petitions is to set aside assessment order dated 29.09.2021 passed by the Assessing Officer under Section 153C read with Section 144 of the Income Tax Act, 1961. Also under challenge are the orders dated 06.01.2022 as well as dated 09.02.2022 passed under Section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), whereby the penalty came to be imposed on the petitioners.

3. As stated, while the petitioner is common in all the petitions, the impugned orders pertain to different assessment years, the details of which are given in the tabular form,

Sr. No.	Special Application No.	Civil	Assessment year	Order date
1.	7614 of 2022		2013-14	29.09.2021
2.	7655 of 2022		2019-20	29.09.2021
3.	7624 of 2022		2018-19	29.09.2021
4.	7629 of 2022		2017-18	29.09.2021
5.	7623 of 2022		2016-17	29.09.2021
6.	7627 of 2022		2015-16	29.09.2021
7.	7626 of 2022		2014-15	29.09.2021

3.1 Noticing the basic facts from the pleadings of Special Civil Application No. 7614 of 2022 as representative facts, it is the case of the petitioner that the petitioner had been regularly

assessed to tax by the Income Tax Office, Rajkot for the assessment year 2013-14, to which the said petition relate to. The petitioner had filed return of income.

3.2 On 29.09.2021, the respondent Assessing Officer passed assessment order under section 153C read with Section 144 of the Act. Thereafter, orders dated 06.01.2022 and 09.02.2022 under section 271(1)(c) of the Act was passed levying penalty for the year under consideration.

3.3 It is the case of the petitioner that the assessment order as well as orders of penalty were never served upon him. It was sated that on 25.03.2022, the petitioner received an email communication from the income tax authorities with demand for assessment year 2021-22 was raised in his case. The petitioner averred that when he opened the portal to check the demand for the said assessment year 2021-22, he came to know that the assessment order under section 153C read with section 144 of the Act as well as penalty orders, as above were passed in respect of assessment year 2013-14 and other assessment years.

3.4 The facts in each case are similar. Therefore, not repeated.

4. The main plank of submission of learned advocate for the petitioner has been that the assessment

orders under section 153C read with section 144 of the Act in respect of different assessment years as above came to be passed straightway without serving any notice to the petitioner. It was submitted that the petitioner had no opportunity to meet with the case of the department. There was open breach of natural justice, it was urged.

4.1 Learned advocate for the respondent was at his receiving end when confronted with the aspect that the assessment orders against the petitioner came to be passed without extending opportunity to the petitioner.

5. Section 153C of the Act under which the assessment orders came to be passed deals with the assessment of income of any other person. It provides that notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, if the assessing officer is satisfied with (a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to (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, in that event, 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. It is provided

that the assessing officer shall proceed against each such person and issue notice and assess or re-assess the income in accordance with the provisions of Section 153A.

5.1 Looking at the provisions of section 144, it deals with the best judgment assessment. Section 144 reads as under,

"(1) If any person—

(a) fails to make the return required under sub-section (1) of section 139 and has not made a return or a revised return under subsection (4) or sub-section (5) of that section, or

(b) fails to comply with all the terms of a notice issued under subsection (1) of section 142 or fails to comply with a direction issued under sub-section (2A) of that section, or

(c) having made a return, fails to comply with all the terms of a notice issued under sub-section (2) of section 143,

the Assessing Officer, after taking into account all relevant material which the Assessing Officer has gathered, shall, after giving the assessee an opportunity of being heard, make the assessment of the total income or loss to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment:

Provided that such opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the assessment should not be completed to the best of his judgment:

Provided further that it shall not be necessary to give such opportunity in a case where a notice under sub- section (1) of section 142 has been issued prior to the making of an assessment under this section.

(2)"

5.2 As per the above provision, it contemplates providing the assessee an opportunity of being heard before making assessment. The First Proviso mentions that such opportunity shall be given by the assessing officer by serving notice to the assessee, mentioning date and time for completion of the assessment to the best of his judgment. As per the Second Proviso, the opportunity will not be necessary in a case where the notice under section 142(1) has been issued prior to making of the assessment in this section.

5.3 In all the aforesaid cases, the undisputed fact situation obtained is that while passing the assessment orders, no notice was served upon the petitioner assessee in respect of any assessment years nor any notice was served before the competent authority proceeded to pass penalty order under section 271 of the Act. In none of these case Notice under Section 142(1) has been issued prior to the assessment.

5.4 As section 144B (6)(ii) of the Act contemplates, every notice or order or any other electronic communication shall be delivered to the

addressee being the assessee by way of placing an authenticated copy in the registered account of the assessee or by sending authenticated copy or by uploading the authenticated copy on the mobile app of the assessee.

5.5 It is the case of the petitioner that in neither of the modes above, any notice was received by him. It was only when the petitioner opened the portal to check the demand for assessment year 2021-2022, he knew about the impugned orders of re-assessment and the consequential penalty orders.

6. When the assessment under section 153 read with section 144 of the Act have been done by the assessing officer without giving the petitioner assessee an opportunity of being heard in terms of and within the meaning of section 144 of the Act, the orders are liable to be set aside on the said ground of not giving of opportunity and resultant breach of principles of natural justice. The proper course would be to remit back the cases to the assessing officer to be proceeded with from the stage of notice which shall be served upon the petitioner in each case.

6.1 In the aforesaid view, all the petitions are allowed. The impugned order dated 29.09.2021 passed in respect of assessment year 2013-14 in case of first captioned petition and in respect of other such

years in the other respective petitions under section 153C read with section 144 of the Act are set aside. Also set aside are the orders dated 06.01.2022 and 09.02.2022 in each cases imposing penalty.

6.2 The Assessing Officer shall undertake the exercise afresh of giving opportunity of hearing to the petitioner assessee in respect of each cases as contemplated under section 144 of the Act and shall complete the assessment proceedings right from the stage of issuing notice within a period of three months from the date of receipt of this order.

7. All the petitions are allowed in the aforesaid terms.

(N.V.ANJARIA, J)

(NIRAL R. MEHTA, J)

BIJOY B. PILLAI