
(2012) 06 KL CK 0263

In the High Court Of Kerala

Case No : Writ Petition No's. 2881, 2945, 2948, 2952 to 2954 and 2956 of 2011

K.M. Mehaboob

APPELLANT

Vs

Dy. CIT and Another

RESPONDENT

Date of Decision : 13-06-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 5 Rule 15
Income Tax Act, 1961 — Section 131, 132, 132A, 142, 142(1)

Citation : (2012) 06 KL CK 0263

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : A. Abdul Kharim, Lyu V. Stephen, Eby Augustine and Smt. Indu Susan Jacob, for the Appellant; P.K.R. Menon and Jose Joseph, for the Respondent

Final Decision : Dismissed

Judgement

Antony Domnic, J.—This batch of writ petitions have been filed with the prayer to quash the assessment orders passed by the respondent u/s 144 r/w sections 153C and 153A of the IT Act, 1961 (hereinafter referred to as the Act for short) for the assessment years 2003-04 to 2009-10. Issues raised in these writ petitions being connected these cases were heard together and are disposed of by this common judgment treating Writ Petn. (Civil) No. 2954 of 2011 as the leading case and referring to the documents produced therein.

2. According to the petitioner, he had received Ext. P9 summons dated 26-3-2009 issued u/s 131 of the Act from the Asstt. Director of IT (Inv.), Mangalore requiring him to appear at the income tax Officer, Mangalore on the 25-4-2009 with various details and documents. Petitioner submits that thereupon, he made enquiries and came to know that on 17-3-2009, a search was conducted by the IT Department in the premises of Mohtisham Group, Mangalore and that the enquiry for which he was summoned, was with regard to his income, assets and investments. Accordingly, during March, 2009, petitioner

appeared before the Asstt. Director of IT, Mangalore and his statement was recorded.

3. It is his case that subsequently, on 9-11-2010, he received a phone message from the office of the respondent requiring his appearance as his assessments for the years commencing from 2003-04 were being taken up and that on enquiry, he was informed that this was being done based on recovery of certain documents in the search mentioned above. According to him, thereupon he requested the respondent to give him details of the proceedings and documents that were seized during the search, on the basis of which, the assessments were proposed to be taken up and that the respondent did not furnish any of those details or documents. It is stated that while so, Ext. P10 letter dated 25-11-2010 was issued by the respondent stating that by letters dated 27-11-2010 scrutiny proceedings pending against the petitioner for the assessment years 2003-04 to 2009-10 were posted to 9-11-2010 and that neither the petitioner nor his representative were present for the hearing on the appointed day. He was also informed that the assessments for all these years will be barred by limitation on 31-12-2010 and that therefore, the respondent intended to complete the assessment as provided u/s 144 of the Act. Accordingly, petitioner was called upon to appear on 3-12-2010 and to show cause why the assessment should not be completed to the best of his judgment and that his non-appearance will result in ex parte assessment.

4. According to the petitioner, on receipt of this notice, an employee of Moidus Medicare (P) Ltd. was deputed to gather the details and that the respondent declined to entertain him stating that he was not an Authorised Representative of the petitioner. Petitioner further states that thereupon he personally appeared before the respondent, when he reiterated his request for furnishing the documents and materials on the basis of which the proceedings were initiated against him and that in spite of all these, nothing was made available. Petitioner says that the respondent had informed him that proceedings were sought to be initiated against him u/s 153A r/w s. 153C of the Act and that thereupon he informed the respondent that except Ext. P10 letter dated 25-11-2010, he had not received any notice in the matter. It is stated that thereupon, he was shown copy of the notice dated 16-3-2010 issued u/s 153A of the Act, which was addressed to Baywatch, West Hill, Calicut. He was also shown notice dated 30-8-2010 which also was in the aforesaid address and according to the petitioner, both these notices were sent to a wrong address and were not served on him.

5. It is also his case that for all proceedings under the Act, his permanent address was Moidus Medicare (P) Ltd., and to substantiate this contention, Exts. P1 to P8 returns, assessment orders and notices have been produced. It is stated that he again requested the respondent to give him copies of the documents and the records seized from the premises of Mohtisham Group, Mangalore and that he was promised that his request would be considered. It is stated that while

awaiting to get the documents, pursuant to a telephone message from the office of the respondent, he met the respondent on 7-1-2011, when he was served Exts. P11 to P17 assessment orders issued under s. 144 r/w sections 153C and 153A of the Act for the years 2003-04 to 2009-10. It is in these circumstances, this writ petition has been filed seeking to quash Ext. P15 assessment order for the year 2007-08 and the prayer in the other writ petitions is to quash the assessment orders for the remaining years.

6. On behalf of the respondent, a statement and an additional statement have been filed by the standing counsel, clarifying that since the facts in relation to each of the assessment years are similar, the statement is filed with reference to the assessment year 2003-04. According to the respondent, during the course of a search conducted on 17-3-2009 at the premises of M/s. Mohtisham Group, Mangalore certain documents relating to the assessee were seized, which revealed that he had purchased a flat at Mangalore. Subsequently, on the basis of information received from the Dy. CIT, Mangalore, proceedings u/s 153C r/w section 153A of the Act, were initiated against the petitioner for the assessment years 2003-04 to 2009-10 and that notices u/s 153A r/w section 153C of the Act were issued and were served on him. A copy of the notice is Ext. R(A) and this notice addressed to Baywatch, Elathoor, Calicut was accepted by the petitioners accountant, Sri Nithin Raj who acknowledged the notice as per Ext. R(B).

7. However, the assessee did not respond to the notice and therefore, notices under s. 142(1) of the Act were issued to him. These notices were accepted by the petitioners wife, who has also acknowledged the notices. Copies of the notice and its acknowledgement are Exts. R((c) and R(D) respectively. According to the respondent, as in the case of the notices issued u/s 153A r/w section 153C of the Act, there was no response to these notices also and that on account of the change in the incumbent AO, the case was again posted to 9-11-2010, when the petitioner filed Ext. R(E) letter, requesting to make available to him the satisfaction note recorded by the AO at Mangalore.

8. According to the respondent, the assessment was to become time-barred on 31-12-2010 and Since sufficient time and opportunities have already been given, there was no requirement to wait any further, and as it appeared that the petitioner will not co-operate, it was proposed to complete the assessment to the best of his judgment as provided u/s 144 of the Act. Accordingly, Ext. P10 letter dated 25-11-2010 was issued to the petitioner calling for his objections to the proposal to complete the assessment u/s 144 of the Act. Thereupon the petitioners accountant Sri Nithin Raj appeared and requested for further time to furnish details and that though the accountant was not duly authorised to appear on behalf of the petitioner, the case was reposted to 8-12-2010.

9. It is also stated that the copies of the ITS Data available for various years had already been furnished to the assessee earlier. Exhibit R(I), produced along with the additional statement dated 14-3-2011 shows that the petitioners representative acknowledged this document. There was no response to Ext. P10

also and in the circumstances, Ext. R(F), summons dated 8-12-2010 u/s 131 of the Act was issued requiring the petitioner to appear on 14-12-2010, which also was acknowledged by his representative on 10-12-2010 as per Ext. R(G). It is stated that finally the petitioner appeared before the respondent on 18-12-2010 but did not furnish any details and that at his request, though time was granted till 22-12-2010, the petitioner neither responded nor filed the returns or furnished the details.

10. It is stated that in the aforesaid circumstances, the assessments for the years 2003-04 to 2009-10 were completed u/s 144 of the Act, with the prior approval of the Jt. CIT, Calicut, vide his order dated 29-12-2010. According to the respondent, the assessment orders were despatched to the petitioner by speed post on 30-12-2010 but were returned unserved and that therefore these orders were served on him on 7-1-2011 through process server.

11. On the filing of the statement on behalf of the respondent, the petitioner filed an additional affidavit dated 4-2-2011, contradicting the averment in para 6 of the statement that copies of ITS Data were already served on him and asserting that no such data was ever given to him. Petitioner has also filed a reply-affidavit dated 4-2-2011. While in the writ petition, he claimed that the notices were never served on him, in the light of the documents produced by the respondents along with the statement filed by them, petitioner has stated thus about the notices that were served on Nithin Raj and his wife:

The respondent admits in the statement that the notice u/s 153A was not served on me but was served only on Sri Nithin Raj who is not my Authorised Representative nor have I authorised him to receive any notice on my behalf. The respondent admits that Sri Nithin Raj has signed it under the seal of National C.T. Scanner & Diagnostics Centre and not as my Authorised Representative. I further submit that Nithin Raj is not my accountant as alleged by the respondent. Hence the service on Sri Nithin Raj is not a valid service and such service is not binding on me. I state and submit that the said notice u/s 153 was neither given to me nor brought to my notice.

Adverting to para 4, the respondent states that the notice u/s 142(1) was served on me on 7-9-2010 while simultaneously he states that the notice was accepted by my wife on my behalf. I stoutly deny the allegation that my wife had accepted the notice on my behalf; She is not aware of my financial matters and was never attending to my tax or financial matters. She does not also hold any authorisation from me to receive notices on my behalf. I did not respond to the notices referred to in paras 3 and 4 since these notices were not brought to my notice and I was not aware of the same.

Further he also asserted that he appeared before the respondent on 18-12-2010 and complains that since the assessment is made u/s 144 of the Act, show-cause notice should have been issued to him setting out the proposal for the assessment so as to give him an opportunity to rebut the same.

12. There is also another reply-affidavit, which is attested before the Attache (Consular), Embassy of India, Muscat on 13-2-2011 where he says that Ext. R(A) notice was issued only for the assessment years 2003-04 to 2008-09 and therefore there was no notice u/s 153A for the assessment year 2009-10. It is also stated that the six previous years in respect of which assessment could have been made u/s 153A are the assessment years 2003-04 to 2008-09 and that in spite of it, assessment for the year 2009-10 was also made u/s 153A r/w section 153C of the Act, which is patently illegal.

13. In view of the aforesaid contentions raised, an additional statement dated 14-3-2011 has been filed on behalf of the respondent. Insofar as the validity of the assessment for the year 2009-10 is concerned, in the additional statement it has been stated thus:

2. In para No. 3 of the reply-affidavit the petitioner is trying to establish that the assessment made for assessment year 2009-10 is illegal since the assessment should have been made only from assessment year 2003-04 to assessment year 2008-09 i.e. for six assessment years only and not for assessment year 2009-10. This argument is wrong for the following reasons:

(a) As per the provisions of the Act the assessment in such cases shall be made for six assessment years immediately preceding the Assessment year relevant to the previous year in which the search is conducted or requisition is made. The relevant search in this case was conducted in the financial year 2008-09 which is relevant to the assessment year; 2009-10. Hence, the six assessment years will be 2003-04, 2004-05, 2005-06, 2006-07, 2007-08 and 2008-09. Accordingly notices under s. 153A r/w s. 153C were issued for these years.

(b) As per the existing instructions all search and seizure cases have to be compulsorily scrutinized for the relevant assessment year. That means the assessee's assessment for the assessment year 2009-10 had to be completed u/s 143(3). Since the assessee had not filed his return a notice u/s 142(1) was issued calling for his return. The assessee did not respond to this notice nor did he co-operate in completing the assessment which was therefore completed u/s 144. No notice u/s 153A was issued for the assessment year 2009-10. For these reasons the assessee's observation is against facts.

14. Further, insofar as the petitioner's case regarding his address and that in his income tax records, his address is not his residential address are concerned, para 4 of the statement answers the plea as under:

In the opening para the assessee says that he has his office at Moidus Medicare (P) Ltd. It may please be noted that nowhere does he mention anything about his residential address. He has reiterated that he does not reside at Bay Watch, West Hill, Calicut which is the place where he resides. He also forgets that in the sworn statement recorded from him at Mangalore on 15-4-2009 in reply to question No. 1 he has stated as under:

I am Dr. K.M. Mehaboob, aged about 45 years, s/o Dr. K.M. Moidu and residing at Bay Watch, Elathur, Calicut.

Elathur and West Hill are nearby places and does not make much difference for a man of assessee's stature.

15. Regarding the complaint of the petitioner that in spite of requests, the documents relating to him and seized during the search, were not given is concerned, it is stated thus:

Para 4 petitioner stated that copies of the various documents relating to him and seized from the premises of Mohtisham Group were not given to him in spite of his request. This does not appear to be true. The petitioner has not made any such request. He had, however, made a request for a copy of the satisfaction note recorded by the AO assessing the Mohtisham Group by his letter dated 9-11-2010 sent from Bay Watch, West Hill, Calicut which address now he claims to be not known to him.

16. As regards the petitioner's case regarding the irregularity in serving the notice on Sri Nithin Raj is concerned, the respondent has stated thus:

It is clearly admitted in the writ petition itself that pursuant to Ext. P10 notice, the petitioner deputed an employee to appear before the AO. Accordingly, the employee of the petitioner appeared before the AO on 1-12-2010 and requested for time. The employee appeared before the AO is none other than Sri Nithin Raj who signed in the order sheet also.

Thereafter, on 24-12-2010 the petitioner appeared before the AO along with this person and had discussed the case. The petitioner had himself signed the order sheet wherein he had undertaken to file various details. A copy of the order sheet is produced herewith and marked as Ext. R(H). Thereafter he was not to be seen. He did not file the details which he had undertaken to file and, consequently, the assessments had to be completed ex parte.

17. Insofar as the petitioner's complaint that copy of Ext. R(H), order sheet was not given to him, is concerned, in para 14 of the additional statement, it is stated that:

the petitioner never made a request to give him copies of the order sheet.

18. Insofar as the averment in the additional affidavit dated 4-2-2011 filed by the petitioner complaining that copies of the ITS Data were not given to him is concerned, it is stated thus:

15. With regard to the statements in the additional reply affidavit, it is submitted that the ITS Data relates to various years and copies of it were furnished to the assessee's representative. Copies of these ITS Data bearing the signature of the assessee's representative to whom the data had been supplied are produced herewith and marked as Ext. R(1). He further states that he is maintaining regular books of accounts but he is silent on the point whether he has been

furnishing his IT returns.

19. As far as the plea that before completing the assessment, the petitioner was not given a show-cause notice, the case of the respondent is that no such notice was required to be issued since notice u/s 142(1) of the Act had already been issued.

20. Having thus noticed pleadings, I shall proceed to examine the contentions raised by the learned counsel for the petitioner. The first contention to be answered is whether Exts. R(A) and R(C) notices issued under sections 153C and 142(1) of the Act, respectively were validly served. Case of the petitioner is that Ext. R(A) notice was served on Sri Nithin Raj and Ext. R(C) notice was served on his wife and that both these persons were not his Authorised Representatives as provided in section 288 of the Act. To substantiate the contention, counsel placed reliance on the decisions in FATECHAND AGARWAL Vs. COMMISSIONER OF WEALTH-TAX., , B. Johar Forest Works Vs. Commissioner of Income Tax, , Jayanthi Talkies Distributors Vs. Commissioner of Income Tax, and Addl. Commissioner of Income Tax Vs. Prem Kumar Rastogi, .

21. However, counsel for the Revenue, contended that Ext. R(A) notice was served on Sri Nithin Raj who acknowledged the same by Ext. R(B). According to the Revenue it was Sri Nithin Raj who appeared as the petitioners representative in response to Ext. P10 notice and that therefore the contention that Sri Nithin Raj was not authorised to receive the notice was unsustainable. They also relied on Ext. R(E) letter of the petitioner, where he himself had acknowledged the receipt of Ext. R (A). Insofar as Ext. R(C) notice issued under s. 142(1) of the Act is concerned, the service of this notice was acknowledged by the petitioners wife as per Ext. R(D). They relied on section 282(b) of the Act r/w Order V, r. 15 of the CPC.

22. Having considered the rival submissions, I am of the view that there is considerable force in the contention of the Revenue. Although it is true that the respondent did not produce any document to substantiate that Sri Nithin Raj is a duly Authorised Representative of the petitioner as provided in section 288 of the Act, still it is a fact that in Ext. R(E) letter dated 9-11-2010 issued by the petitioner, the genuineness of which is undisputed, while requesting to make available a copy of the satisfaction note recorded by the AO at Mangalore, the petitioner made reference to Ext. R(A) notice dated 16-3-2010. This letter reads thus:

From

Dr. K.M. Mehaboob, Baywatch, West Hill, Calicut.

To

The Asstt. CIT,

Circle-2(1), Calicut.

Dear Sir,

Sub: income tax assessment years 2003-04 to 2008-09--Notice under s. 153A(1) (a) r/w s. 153C of the IT Act--Regarding.

Ref: Your notice No. ADTPM0486E, dated 16-3-2010.

Kindly refer to your above notice. I shall be much obliged if you make available me a copy of the satisfaction note recorded by the AO assessing the Mohtisham Group.

Thanking you, Calicut Yours faithfully, Sd/-

Date: 9-11-2010

Thus, in this document petitioner himself has admitted service of Ext. R(A) notice and having acted upon the notice, he cannot now turnaround and contend that Ext. R(A) notice was not properly served on him.

23. Insofar as Ext. R(C) notice issued under s. 142(1) of the Act is concerned, admittedly, that notice was acknowledged by the petitioners wife. Here again, no document is produced by the respondent evidencing that the recipient of the notice is an authorised agent of the petitioner. In this context it is to be noticed that s. 282(b) of the Act provides that service of a notice or summons or requisition or order or any other communication may be made by delivery or transmitting a copy to the person concerned in such manner as provided under the CPC for the purposes of service of summons. Order V, r. 15 of the Code provides that where in any suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on him at his residence and there is no likelihood of his being found at: the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf, service may be made on any adult member of the family, whether male or female, who is residing with him. Even according to the petitioner being a consultant doctor he frequently travels abroad and when the Ext. R(C) notice was delivered he was not available in his residence. He has no case that he would have been available at his residence within a reasonable time or that he had any agent empowered to accept the notice. In such a situation it was open to the Revenue to take recourse to the procedure as permitted in section 282(b) of the Act r/w Order V, r. 15 of the Code. Therefore, service of notice on the petitioners wife is a perfectly valid service. In such a situation, the contention to the contrary cannot be accepted. In the light of these findings I am also of the view that the judgments relied on by the counsel are of no assistance to the petitioner.

24. Insofar as Ext. R(F) summons issued u/s 131 of the Act is concerned, here again petitioner contended that this was served on Sri Nithin Raj who acknowledged the same as per Ext. R (G). According to the petitioner, Sri Nithin Raj being not an authorised agent, summons was also not legally served. As far as this aspect is concerned, in the reply-affidavit dated 4-2-2011, in para 8, the

petitioner has stated thus:

Adverting to para 7, pursuant to summons issued to me on 8-12-2010 for appearance, I did appear on the 18-12-2010 as per the extended date given to me by the assessing authority. Hence the allegation of non-appearance is not correct.

These averments contained in the reply-affidavit show that the petitioner is admitting service of the summons on him and also that in pursuance to the summons, he appeared before the respondents on 18-12-2010. Sec. 292BB of the Act providing deemed validity of service of notice in certain circumstances assumes importance in this context and this section reads as under:

292BB. Notice deemed to be valid in certain circumstances--Where an assessee has appeared in any proceeding or co-operated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was-

- (a) not served upon him; or
- (b) not served upon him in time; or
- (c) served upon him in an improper manner:

Provided that nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment.

25. It was contended that section 292BB was inserted into the Act by Finance Act, 2008 w.e.f. 1-4-2008, and therefore cannot be called in aid to validate the assessments pertaining to the previous years. However, I am unable to agree with the learned counsel for the petitioner. While it may be true that this section does not have retrospectivity, this section will govern all proceedings initiated subsequent to 1-4-2008, even if such proceedings are in relation to assessment years prior to 1-4-2008. Therefore, the petitioner having admitted service of the summons and appeared before the respondent in pursuance to Ext. R(F) summons, cannot now contend that the summons was not duly served on him or that the service upon him was improper for any reason. This reasoning should apply to the service of Exts. R(A) and R(C) also.

26. Another contention raised by the counsel for the petitioner was that for all purposes under the Act, the petitioners address was "M/s. Moidus Medicare (P) Ltd., Indira Gandhi Road, Calicut" and that Exts. R(A), R(C) and Exts. PI 1 to PI7 were wrongly addressed. Petitioner does not have a case that the address indicated in the aforesaid documents was not that of his residence. It is in spite of it, that he was contending as above. It has to be mentioned in this context

that even in Ext. R(E) letter dated 9-11-2010 issued by the petitioner (already extracted above), the petitioner has shown his address as "Bay Watch, West Hill, Calicut". Further, in para 4 of the statement filed by the respondent, they have clearly stated that in his income tax records his address is mentioned as Bay Watch, West Hill, Calicut and that in the sworn statement recorded at Mangalore on 15-4-2009, the petitioner replied to question No. 1 by stating that he is residing at Bay Watch, Elathoor, Calicut. Therefore, the fact that in some of the documents, petitioners address has been shown differently will not invalidate the documents that were served in the residential address, which was mentioned by the petitioner himself in Ext. R(E) and his sworn statement.

27. It was contended by the counsel for the petitioner that both under s. 153C and section 158BD of the Act, the AO is required to record his satisfaction before initiating proceeding against "any other person". It was contended that in this case, such satisfaction was not recorded and that in spite of Ext. R(E) request, copy of the satisfaction recorded was not furnished. As already seen the proceedings against the petitioner commenced following the search and seizure in the premises of Mohitsham, Mangalore, which was conducted as per section 132 of the Act. In such a case, section 158BD provides that where the AO is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search was made u/s 132, or whose books of account or other documents or any assets were requisitioned u/s 132A, then, the books of account, other documents or assets seized or requisitioned shall be handed over to the AO having jurisdiction over such other person and that the AO shall proceed for block assessment u/s 158BC against such other person and the provisions of Chapter XIV-B shall apply accordingly. Similarly in section 153C also, the requirement of satisfaction of the AO before handing over the case to the AO having jurisdiction over the other person is incorporated. In support of her contention that the AO should have recorded his satisfaction, learned counsel for the petitioner relied on the apex Court judgment in *Manish Maheshwari Vs. Asstt. Commissioner of Income Tax and Another*, .

28. I have considered this contention also. First of all, the aforesaid provisions of the Act only state that before proceeding any further against any other person, the AO should be satisfied that the undisclosed income or the document unearthed in a search u/s 132 is with, respect to another person. In other words, it is only the clerical satisfaction of the AO that is contemplated. It is true that in the judgment relied on, the Apex Court has held that the satisfaction of the AO should be recorded and therefore this Court is bound to proceed on that basis.

29. However, insofar as this case is concerned, even in Ext. R(E) letter, the petitioner did not have a case that the AO did not record his satisfaction, instead, he only asked for "a copy of the satisfaction recorded by the AO". This request of the petitioner has been answered by the respondent in the statement dated 2-2-2011 by contending that the assessee is not entitled to copy of the note, though the Revenue is bound to produce the same if this Court issues such a

direction. Further in the statement dated 14-3-2011, the respondent has stated that copy of the satisfaction recorded by the AO was not given to the petitioner as it is a confidential correspondence and that the reason why his case was being taken up for scrutiny had already been communicated to the petitioner in the notice issued u/s 153A of the Act. Therefore, it is not the absence of the satisfaction recorded that was contended by the petitioner, instead, during the proceedings, the case of the petitioner was that he is entitled to a copy of the satisfaction recorded. Further, it is the specific case of the respondent that they have received the satisfaction recorded by the AO at Mangalore and they have also stated their reason for not giving copy to the petitioner. In such circumstances, in the absence of anything to hold that satisfaction was not recorded by the AO at Mangalore, the judgment of the Apex Court relied on by the petitioner, will not be of any assistance to him in the facts of the case. Thus, I do not find any substance in the case of the petitioner that the proceedings were initiated against him without the AO at Mangalore recording his satisfaction in terms of sections 153C and 158BD of the Act.

30. Counsel for the petitioner then contended that the assessment u/s 144 of the Act was completed in violation of the principles of natural justice, and without affording the petitioner an opportunity in terms of section 144(1) of the Act. Sec. 144 of the Act provides for best judgment assessment. Section 144(1) provides that the AO, after taking into account all relevant materials which he has gathered, shall, after giving the assessee an opportunity of being heard, make 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. This subsection also provides that such opportunity shall be given by the AO 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.

31. Although the section provides for an opportunity of hearing to the assessee in the manner as stated above, the second proviso to s. 144(1) reads as under:

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.

32. Thus, in view of the second proviso to section 144(1), in a case where notice u/s 142(1) has been issued, it is not necessary for the AO to give an opportunity of hearing to the assessee as provided in section 144(1), prior to making a best judgment assessment. As already seen in the preceding paras, this is a case where notice u/s 142(1) was issued to the petitioner and it has also been found that such notices were properly served. Therefore, this case is covered by the second proviso to section 144(1) of the Act and hence there is no substance in the complaint that best judgment assessment was completed without affording an opportunity of hearing to the petitioner.

33. The other contention raised by the counsel for the petitioner was that the assessments were completed without affording the petitioner adequate opportunity to contest his case. It was also complained that repeated requests were made by the petitioner to the respondents for issuance of the copies of the documents that were relied on against him. Insofar as the complaint of the petitioner regarding the non-issuance of the documents sought for by him is concerned, apart from Ext. R(E) produced by the respondent where the petitioner sought copy of the satisfaction note recorded by the AO at Mangalore, petitioner has not produced any document to prove his claim that he sought copies of documents. As far as Ext. R(E) is concerned, I have already referred to the case of the respondent and it is unnecessary to deal with that aspect any further. Answering this complaint, in para 5 of the additional statement dated 14-3-2011 filed on behalf of the respondent, it is stated thus:

The petitioner has not made any such request. He had, however, made a request for a copy of the satisfaction note recorded by the AO assessing the Mohtisham Group by his letter dated 9-11-2010 sent from Bay Watch, West Hill, Calicut which address now he claims to be not known to him.

In the light of these facts it has to be held that the petitioner has miserably failed to prove that any documents were sought for by him or that on account of refusal to furnish the same, any prejudice was caused to him to sustain a plea of violation of the principles of natural justice.

34. As far as the complaint that adequate opportunity was not given is concerned, from the facts pleaded by both sides, it appears that Exts. R(A) and R(C) notices were served on the petitioner on 24-3-2010 and 7-9-2010 respectively. It is also seen that it was only following the service of Ext. P10 notice. Sri Nithin Raj appeared before the respondent on 1-12-2010 and at his request, the proceedings were adjourned to 8-12-2010. It is the case of the respondent that despite the opportunities given and the offer made by the petitioner, the details sought for were not furnished by him. Therefore, Ext. R(F) summons was issued to the petitioner on 8-12-2010 requiring him to appear on 14-12-2010. In response to the summons, petitioner appeared before the respondent on 18-12-2010 and at his request for time, the case was posted to 22-12-2010. On 22-12-2010, there was no representation on behalf of the petitioner and instead the petitioner appeared before the respondent on 24-12-2010 and at his request, time was granted till 26-12-2010. Even on that date documents were not filed and in such circumstances draft assessment order was prepared and was approved by the Jt. CIT on 28-12-2010 and the assessment orders evidenced by Exts. PI to P17 were passed on 29-12-2010. Facts being as above, it has to be concluded that this is not a case where opportunity was not afforded to the petitioner, but in this case, the petitioner did not utilise those opportunities. Consequently, I am unable to accept the case of the petitioner that in finalising the Assessment u/s 144 of the Act, natural justice was violated.

35. Yet another contention that was raised by the counsel for the petitioner was that when assessment is completed u/s 153C of the Act, it has to be in accordance with section 153A. According to the counsel, such assessment can be only of six assessments years immediately preceding the assessment year relevant to the previous year in which the search is conducted. It was argued that violating this statutory mandate, assessment for 2009-10 was also completed.

36. This contention can be answered only with reference to s. 158B(a) which defines block period. This section reads as under:

158B(a): block period means the period comprising previous years relevant to six assessment years preceding the previous year in which the search was conducted u/s 132 or any requisition was made u/s 132A and also includes the period upto the date of the commencement of such search or date of such requisition in the previous year in which the said search was conducted or requisition was made:

Provided that where the search is initiated or the requisition is made before the 1-6-2001, the provisions of this clause shall have effect as if for the words, six assessment years, the words, ten assessment years had been substituted;

A perusal of this section shows that apart from the six assessment years preceding the previous year in which the search u/s 132 was conducted, block period also includes, the period upto the date of the commencement of such search in the previous year in which the search was conducted. In this case, since proceedings for assessment were initiated following a search u/s 132, the special procedure as provided in Chapter XIV-B has to be followed. In such a case, the assessment to be completed has to be for the block period as defined in section 158B(a) and the block period includes the period upto the date of commencement of search, in addition to the six assessment years preceding the previous year in which the search was conducted. Insofar as this case is concerned, apart from contending that the assessment u/s 144 is beyond the six years, petitioner does not have a case that the assessment for 2009-10 has been completed violating section 158B(a) of the Act. Therefore, Writ Petn. (Civil) No. 2953 of 2011, where Ext. P17 is challenged has to be dismissed.

In the result, I do not find merit in any of the contentions raised in these writ petitions. Writ petitions are dismissed. No costs.