

आयकर अपीलीय अधिकरण 'ए', न्यायपीठ चेन्नई में।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'A' BENCH, CHENNAI**

माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य एवं  
माननीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।  
**BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**AND HON'BLE SHRI MANU KUMAR GIRI, JM**

**आयकरअपील सं./ ITA No.668/Chny/2023**  
**(निर्धारणवर्ष / Assessment Year: 2011-12)**

The Deputy Commissioner of  
Income Tax,  
Central Circle 2(1)  
Chennai 600 034.

**Vs.** M/s. Bholenath Merchants Private  
Limited,  
29A, Weston Street,  
Second Floor, R.N. B3,  
Kolkata 700 012.

[PAN AAECB 2899R]

आयकरअपील सं./ ITA No.670/CHNY/2023  
**(निर्धारणवर्ष / Assessment Year: 2011-12)**

The Deputy Commissioner of  
Income Tax,  
Central Circle 2(1)  
Chennai 600 034.

**Vs.** M/s. Devanayagam Finance Private  
Limited,  
3/2, Ground floor, Marcus Square,  
Kolkata 700 007.

[PAN AABCD 0465C]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by  
प्रत्यर्थी की ओर से /Respondent by

: Shri. Nilay Baran Som, IRS, CIT  
: Shri. Y.Sridhar, Advocate

सुनवाई की तारीख/Date of Hearing

: 18.06.2024

घोषणा की तारीख /Date of Pronouncement

: 03.07.2024

**आदेश / O R D E R****PER MANU KUMAR GIRI (Judicial Member)**

The instant appeals filed by the revenue are directed against the orders of even dated 28.03.2023 passed by the Commissioner of Income Tax (A)-19, Chennai [In short 'CIT(A)'] in different assessee's are arising out of the assessment orders of even dated 29.03.2022 passed u/s 143(3) r.w.s.153A of the Income Tax Act, 1961 (hereinafter referred as to 'the Act') by the Deputy Commissioner of Income Tax ('ITO' in short) for Assessment Years 2011-12.

2. The sole admitted common issue for both appeals of Revenue is as regards to the order of the CIT(A) holding that the AO has no jurisdiction to issue notice u/s. 153A of the Act for AY 2011-12, since search on these three assessees was conducted on 05.10.2017 and hence the assessment framed u/s. 143(3) r.w.s.153A of the Act dated 26.02.2021 in all the two cases is bad and illegal. The facts and circumstances are exactly identical in both appeals of Revenue despite the fact that two different assessees, and the grounds raised and issue on jurisdiction are exactly identical. Hence, will take the facts and grounds from ITA No.670/Chny/2023 in the case of Devanayagam Finance Limited ('DFPL' in short) and will decide the issue which is also applied to other appeal No.668/Chny/2023. The sole common issue is as under:

*"The Id. CIT(A) erred in holding that no notice u/s 153A could be issued for the AY 2011-12, since, the search was conducted on 26.02.2021, relying upon the Hon'ble Jurisdictional High Court (Hon'ble Madras High Court) decision in the case of A.R. Saifulla v. ACIT, Centra Circle-1, Trichy [WP (MD) No.4327 of 2021 dated 24.03.2021]"*.

3. Brief facts are that appellant company is a part of M/s KAG India Pvt Ltd and was incorporated in the year 1997. A search u/s 132 of the Act was carried out in the case of the assessee's group on 26.02.2021. Pursuant to search on this group proceeding u/s 153A of the Act was initiated on 03.01.2022. The AO completed the assessment u/s 143(3) r.w.s.153A on 29.03.2022. The assessee before Assessing Officer ('AO'in short) raised the issue on jurisdiction vide reply letters dated 28.01.2022 and 31.01.2022 and the relevant letter is reproduced in the assessment order reads as under:

*"4. In response to the above, the assessee furnished its reply vide letters dated 28.01.2022 and 31.01.2022, the gist of which is given below:*

*(ii) The conditions stipulated u/s 153A of the Act for issue of notice beyond the extended years (upto 10 years) not fulfilled/satisfied in this case. The search was conducted on 26.02.2021. Hence, notice u/s 153A can be issued only up to AY:2012-13*

*(iii) Reference was made to the decision of Hon'ble Madras High Court in the case of A.R.Safiullah Vs the ACIT, Central Circle-1, Trichy in W.P (MD) No.4327 of 2021 dated 24.03.2021, where in it was held that,*

*"The terminal point is the tenth year calculated from the end of the assessment year relevant to the previous year in which search is conducted. The long arm of the law can go up to this terminal point and not one day beyond. When the statute is clear and admits of no ambiguity, it has to be strictly construed and there is no scope for looking to the explanatory notes appended to statute or circular issued by the department.."*

Ld.AO rejected the submissions of the appellant and held as under:

*"During the course of the assessment proceedings, the assessee vide its letter dated 28.01.2022 stated, that, the assessment u/s 153A of the Act for this AY:2011-12 was beyond the ten year limit prescribed in the Act in view of the decision of the jurisdictional High Court, Hon'ble Madras High Court's decision in W.P (MD) No.4327 of 2021 dated 24.03.2021. However, an SLP filed by the Income Tax department before the Hon'ble Supreme Court of India is still pending and the matter has not reached finality. In view of this, the above assessment order is subject to the final outcome of the decision of the Hon'ble Supreme Court of India in the above and similar writs. Till such time, the*

*assessment is treated as a protective assessment in the interests of the Revenue”.*

4. Aggrieved, assessee preferred appeal before the CIT(A). The CIT(A) relying on the decision of the Hon'ble Madras High Court in W.P(MD) No. 4327 of 2021 in the case of A.R. Safiulla vs the ACIT, Central Circle-1, Trichy order dated 24.03.2021 wherein Id.CIT(A) held the assessment not legally tenable. Hence, both assessees are in appeal before us.

5. In this context, our attention has been drawn to the first proviso appended to the Section 149(1) of the Act, in addition to Section 153A(1)(b) and Explanation 1 appended thereto and pleaded that no notice u/s 153A could be issued for the AY 2011-12. In support of this submission, Ld.AR relies upon the judgment dated 24.03.2021, passed by the Madurai Bench of the Madras High Court in *W.P. (MD) No. 4327/2021 and W.M.P. (MD) Nos. 3513, 3515 & 3516 of 2021, titled A.R. Safiullah vs. The Assistant Commissioner of Income Tax, Central Circle-1, Trichy.*

6. We have gone through the Hon'ble Jurisdictional High Court (Hon'ble Madras High Court) decision in the case of *A.R. Saifulla v. ACIT, Centra Circle-1, Trichy [WP (MD) No.4327 of 2021 dated 24.03.2021]* wherein Hon'ble High Court has considered the position of law, especially Explanation 1 inserted by the Finance Act, 2017 and categorically held that in respect of a search conducted on 10.04.2018, no notice u/s 153A could be issued since it falls beyond ten assessment years counted

from the end of the assessment year relevant to the previous year in which the search was conducted.

7. Similarly, in the present case, the search was made in this case on 26.02.2021 hence, the AY is 2021-22. The end of the assessment year 2021-22 is 31.03.2022. The computation of ten years has to run towards the back from the said date i.e; 31.03.2022. The ten years will be as follows:

1 <sup>st</sup> year	2021-22
2 <sup>nd</sup> year	2020-21
3 <sup>rd</sup> year	2019-20
4 <sup>th</sup> year	2018-19
5 <sup>th</sup> year	2017-18
6 <sup>th</sup> year	2016-17
7 <sup>th</sup> year	2015-16
8 <sup>th</sup> year	2014-15
9 <sup>th</sup> year	2013-14
10 <sup>th</sup> year	2012-13

8. In instant case, the tenth assessment year counted from this assessment year 2021-22, is AY 2012-13. Hence, following the analogy of the decision of the Hon'ble High Court (Supra), no notice u/s 153A could be issued for the AY 2011-12 and accordingly, the Id. CIT(A) is right in holding that no notice u/s 153A could be issued for the AY 2011-12 relying upon the Hon'ble Jurisdictional High Court (Hon'ble Madras High Court) decision in the case of *A.R. Saifulla v. ACIT, Centra Circle-1, Trichy [WP (MD) No.4327 of 2021 dated 24.03.20214*. In conclusion, we upheld the impugned order of Ld.CIT(A). This order is equally apply to other assessee in ITA No.668/Chny/2023.

9. In the result, both appeals filed by the Department in ITA Nos. 668 & 670/Chny/2023 stand dismissed.

Pronounced in open court on 3rd day of July, 2024 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(**MANOJ KUMAR AGGARWAL**)

लेखा सदस्य / **ACCOUNTANT MEMBER**

Sd/-

(मनु कुमार गिरि)

(**MANU KUMAR GIRI**)

न्यायिक सदस्य / **JUDICIAL MEMBER**

चेन्नई Chennai:

दिनांक Dated :03-07-2024

KV

आदेश की प्रतिलिपि अग्रेषित /Copy to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai/Kolkata.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF