



WEB COPY



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.06.2023

PRONOUNCED ON: 19.09.2023

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. Nos.1498, 1504, 1508, 1514, 1510, 1515, 1517, 1519, 1522, 2017, 2015, 2018,
2019, 2021, 2022, 2020, 2023, 2016, 21248, 21252, 21256, 21259, 21285, 21288,
21292, 21296, 21331, 21336, 21341, 21346, 21351, 21371, 21381, 21385, 21388 &
21396 of 2022

and

WMP.Nos.1645, 1649, 1651, 1653, 1652, 1656, 1659, 1660, 1662, 2173, 2175,
2169, 2172, 2174, 2176, 2177, 2179, 2180, 2182, 2183, 2184, 2178, 2181, 2185,
2186, 2170, 2171, 20245, 20246, 20251, 20253, 20255, 20256, 20263, 20264,
20289, 20290, 20294, 20295, 20300, 20302, 20303, 20304, 20335, 20336, 20337,
20338, 20340, 20342, 20345, 20348, 20352, 20353, 20368, 20369, 20375, 20376,
20377, 20378, 20389, 20391, 20395 & 20398 of 2022

W.P.No.1498 of 2022:

M/s.Agni Estates and Foundations Private Limited.

Represented by its Authorized Signatory,

Mr.T.G.Balaji,

No.76, Temple Towers, North Mada Street,

Mylapore, Chennai-600 004.

... Petitioner

Vs

Deputy Commissioner of Income Tax,

Central Circle 2 (1), New Income Tax Building,

No.46, MG Road, Nungambakkam,

Chennai -600 034.

... Respondent



WEB COPY

W.P.No.21248 of 2022:

M/s.Agni Estates and Foundations Private Limited.
No.76, Temple Towers, 3rd Floor,
North Mada Street, Mylapore,
Chennai-600 004.
Represented by its Director
Mr.Santosh Kumar Sridharan

... Petitioner

Vs

Deputy Commissioner of Income Tax,
Central Circle 2 (1), New Income Tax Building,
No.46, MG Road, Nungambakkam,
Chennai -600 034.

... Respondent

Prayer in W.P.No.1498 of 2022: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Prohibition, to prohibit the Respondent from proceeding further with the Income Tax Assessment for Assessment year 2011-12 in respect of the Impugned Notice dated 22.12.2021, bearing Identification No.ITBA/AST/F/17/2021-22/1038032687(1), in the case of the Petitioner.

Prayer in W.P.No.21248 of 2022: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorari, calling for the records and quashing the Impugned Order dated 27.07.2022 and bearing DIN:ITBA/PNL/F/271(1)(c)/2022-23/1044143822(1) for the Assessment Year 2011-2012, passed by the Respondent under Section 271(1)(c) of the Income Tax Act, 1961, and the consequential Notice of Demand dated 27.07.2022 bearing DIN:



ITBA/PNL/S/156/2022-23/1044143810(1) for the Assessment Year 2011-12 issued by the Respondent under section 156 of the Income Tax Act, 1961.

(In all WPs)

For Petitioner : Mr.R.V.Easwar
Senior Counsel
For Mr.M.V.Swaroop

For Respondents : Mr.A.P.Srinivas
Senior Standing Counsel

COMMON ORDER

This batch of Writ Petitions has been filed by Agni Estates and Foundations Private Ltd. The following Writ Petitions challenge notices, all dated 22.12.2021 issued under the provisions of the Income Tax Act, 1961 (in short 'Act') and seek a prohibition as against the Income Tax Department from passing orders of assessment.

Sl.No.	W.P.No.	A.Y.
1.	1498 of 2022	2011-12
2.	1504 of 2022	2012-13
3.	1508 of 2022	2013-14
4.	1510 of 2022	2015-16
5.	1514 of 2022	2014-15



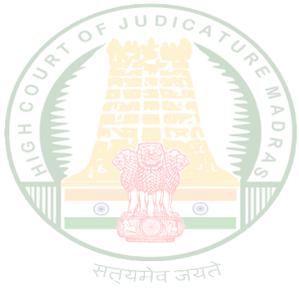
WEB COPY

6.	1515 of 2022	2016-17
7.	1517 of 2022	2017-18
8.	1519 of 2022	2018-19
9.	1522 of 2022	2019-20

2. Technically, the above writ petitions are infructuous in so far as they have culminated in orders of assessment, all dated 28.01.2022, passed under Section 153A read with Section 143(3) of the Act, challenged in the following Writ Petitions:

Sl.No.	W.P.No.	A.Y.
1.	2015 of 2022	2011-12
2	2016 of 2022	2012-13
3	2017 of 2022	2013-14
4	2018 of 2022	2014-15
5	2019 of 2022	2015-16
6	2020 of 2022	2016-17
7	2021 of 2022	2017-18
8	2022 of 2022	2018-19
9	2023 of 2022	2019-20

3. The following Writ Petitions challenge penalty orders under Section 271(1)(c) of the Act, all dated 27.07.2022.



WEB COPY

Sl.No.	W.P.No.	A.Y.
1.	21248 of 2022	2011-12
2.	21256 of 2022	2012-13
3.	21285 of 2022	2013-14
4.	21292 of 2022	2014-15
5.	21331 of 2022	2015-16
6.	21341 of 2022	2016-17
7.	21351 of 2022	2017-18
8.	21381 of 2022	2018-19
9.	21388 of 2022	2019-20

4. The following Writ Petitions challenge penalty orders under Section 271B of the Act, all dated 27.07.2022.

Sl.No.	W.P.No.	A.Y.
1.	21252 of 2022	2011-12
2.	21259 of 2022	2012-13
3.	21288 of 2022	2013-14
4.	21296 of 2022	2014-15
5.	21336 of 2022	2015-16
6.	21346 of 2022	2016-17
7.	21371 of 2022	2017-18



WEB COPY

8.	21385 of 2022	2018-19
9.	21396 of 2022	2019-20

5. The premises of the petitioner had been subject to a search u/s 132 of the Act on 05.07.2018 and notices u/s 153A had been issued pursuant to the same. The petitioner challenged those notices in an earlier round of litigation unsuccessfully, and those writ petitions had come to be dismissed on 17.03.2021. Pending those writ petitions, the petitioner had enjoyed interim protection for a substantial length of time. While disposing those writ petitions, this court directed the revenue to proceed to complete the assessments and orders had come to be passed on 29.01.2022 impugned now.

6. The challenge to the assessments raise one legal issue which goes to the root of the matter, relating to the bar of limitation. It would hence be appropriate to decide this issue first as it would determine the validity or otherwise of the assessments as well as other proceedings, such as penalty proceedings that are consequential to the assessments. In fact, no other submissions have been advanced by learned counsel before me, save on the aspect of limitation. Hence, those Writ Petitions are taken up at the first instance.



WEB COPY

7. The main ground challenging orders of assessment for Assessments Years (AYs) 2011-12 to 2019-20 is the bar of limitation and inter alia, the batch of 9 assessment years can be divided into two. AY 2011-12, 2012-12 and 2019-20 constitute the first batch, as in these years, there was no challenge by way of writ petitions initially. It is only in the other cases that writ petitions were filed and interim protection granted, being AYs 13-14 to AY 18-19, constituting the second batch.

8. Limitation is to be computed in terms of Section 153B, read with the Explanation thereunder and the extension provided by the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 (in short 'TOLA'). Section 153B and the Explanation, to the extent to which it is relied upon by the revenue, are extracted below:

Time limit for completion of assessment under section 153A

153B. (1) Notwithstanding anything contained in section 153, the Assessing officer shall make an order of assessment or reassessment-
(a) in respect of each assessment year falling within six assessment years ⁶⁴[and for the relevant assessment year or years] referred to in clause (b) of sub-section (1) of section 153A, within a period of twenty-one months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed;



WEB COPY

(b) in respect of the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A, within a period of twenty-one months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed:

.....
Explanation-In computing the period of limitation under this section-
(i) The period during which the assessment is stayed by an order or injunction of any court; or

.....
(xi) the period (not exceeding one hundred and eighty days) commencing from the date on which a search is initiated under section 132 or a requisition is made under section 132A and ending on the date on which the books of account, or other documents or money or bullion or jewellery or other valuable article or thing seized under section 132 or requisitioned under section 132A, as the case may be, are handed over to the Assessing Officer having jurisdiction over the assessee, in whose case such search is initiated under section 132 or such requisition is made under section 132A, as the case may be, shall be excluded.

9. The details of interim stay granted by this Court and extended by virtue of orders passed by the Division Bench in suo motu proceedings during the Covid-19 pandemic, and the manner in which limitation, according to it, must be computed, have been provided by the petitioner as follows:

ASSESSMENT YEARS 2013-14 TO 2018-19



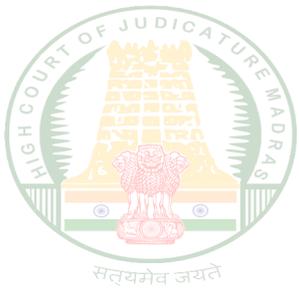
WEB COPY

On 18.12.2019, an interim stay was granted in the writ petitions starting with W.P No. 35076 of 2019. As per Section 153B of the Income Tax Act, 1961, the Respondent had till 30.09.2021 to complete the Assessments in the Petitioner's case.

Sr.No	(A) Date on which interim stay is presumed to expire	(B) No. of days for which the stay is presumed to exist (between 18.12.2019 and the date under Column (A))	(C) Date on which limitation expires (30.09.2020+ No. of days on column(B))	Whether the Relaxation Act will apply to the limitation calculated in Column C?
1.	23.07.2020	218 days	07.05.2021	No
2.	04.11.2020 (Vide Suo-Moto Orders in WP No. 7413 of 2020). However, given the fact that limitation under Section 153B expired on 30.09.2020, the period of stay will be calculated from 18.12.2019 to 30.09.2020	287 days	19.08.2021	No.

10. The details of interim protection granted by this Court between 18.12.2019 and 17.03.2021 have been supplied by the petitioner as below:

LIST OF DATES ON WHICH THE INTERIM STAY GRANTED IN WP Nos. 35076, 13209, 13218, 13368, 35082, 35084, 35086, 35088 & 35090 of 2019, CHALLENGING THE NOTICES U/S 153A IN THE PETITIONER'S CASE FOR AY 2013-14 TO AY 2018-19



WEB COPY

1. 18.12.2019 -Aforementioned Writ Petitions were posted for admission. Interim stay was granted till 02.01.2020.
2. 02.01.2020 - Interim stay was extended till the next date of hearing (30.01.2020).
3. 30.01.2020 - Interim stay extended till the next date of hearing (24.02.2020)
4. 24.02.2020 - Interim stay extended till the next date of hearing (18.03.2020)
5. 18.03.2020 - Interim stay extended till the next date of hearing (16.04.2020).
6. 16.04.2020 - No hearing in light of the first wave of the COVID pandemic.
7. 23.07.2020 - The Writ Petitions were finally taken up. However, no interim stay was granted till the next date of hearing.
8. 29.07.2020 - The matter was adjourned. Interim Orders were not extended or revived.
9. 05.08.2020 - The Writ Petitions reserved for orders. Once again, the interim stay was not extended till the next date of hearing.
10. 17.03.2021 - Final judgement dismissing the Writ Petitions was passed.
11. The break-up of the periods between 26.03.2020 and 06.11.2020 in

W.P.No.7413 of 2020, being the suo motu proceedings is set out below:

1. 26.03.2020 -Suo Moto Order of the Hon'ble Madras High Court extended all interim orders till 30.04.2020
2. 25.04.2020 - Suo Moto Order of the Hon'ble Madras High Court extended all interim orders till 01.06.2020
3. 01.06.2020 - Suo Moto Order of the Hon'ble Madras High Court extended all interim orders till 30.06.2020
4. 29.06.2020 - Suo Moto Order of the Hon'ble Madras High Court extended all interim orders till 31.07.2020



WEB COPY



5. 31.07.2020 - *Suo Moto Order of the Hon'ble Madras High Court extended all interim orders till 04.09.2020*
6. 02.09.2020 - *Suo Moto Order of the Hon'ble Madras High Court extended all interim orders till 30.09.2020*
7. 30.09.2020 - *Suo Moto Order of the Hon'ble Madras High Court extended all interim orders till 09.10.2020*
8. 08.10.2020 - *Suo Moto Order of the Hon'ble Madras High Court extended all interim orders till 04.11.2020*
9. 06.11.2020 - *WP No. 7413 of 2020 was closed by the Hon'ble Madras High Court.*

12. The date of search in this group of cases is 05.07.2018. The limitation for completion of assessment is 18 months in terms of Section 153B commencing from 01.04.2019, being the end of the financial year when the last of the search authorisations was executed and concluding by 30.09.2021, i.e., 18 months or 549 days. This is admitted. The dates of grant of stay, extension and stay granted in suo motu proceedings are also largely admitted, with minor differences between the parties that would not impact the decision of this Court.

13. On the date of grant of stay first by this Court, i.e., on 18.12.2019, limitation of 288 days remained. Post dismissal of the Writ Petitions on 17.03.2021, Writ Appeals were filed in W.A.Nos.1111 of 2022 and batch and a stay was granted for a period of 53 days from 15.04.2021 to 07.06.2021.



WEB COPY

14. The impugned orders of assessment dated 28.01.2022 rely upon the extension under the TOLA of one year from 30.09.2020 to 30.09.2021. The provisions of Section 3 of the TOLA read as follows:

CHAPTER II

RELAXATION OF CERTAIN PROVISIONS OF SPECIFIED ACT

3. (1) *Where, any time-limit has been specified in, or prescribed or notified under, the specified Act which falls during the period from the 20th day of March, 2020 to the 31st day of December, 2020, or such other date after the 31st day of December, 2020, as the Central Government may, by notification, specify in this behalf, for the completion or compliance of such action as—*

(a) completion of any proceeding or passing of any order or issuance of any notice, intimation, notification, sanction or approval, or such other action, by whatever name called, by any authority, commission or tribunal, by whatever name called, under the provisions of the specified Act; or

b) filing of any appeal, reply or application or furnishing of any report, document, return or statement or such other record, by whatever name called, under the provisions of the specified Act; or

(c) in case where the specified Act is the Income-tax Act, 1961,

—

(i) making of investment, deposit, payment, acquisition, purchase, construction or such other action, by whatever name called, for the purposes of claiming any deduction, exemption or allowance under the provisions contained in—



WEB COPY



(I) sections 54 to 54GB, or under any provisions of Chapter VI-A under the heading "B.—Deductions in respect of certain payments" thereof; or

(II) such other provisions of that Act, subject to fulfilment of such conditions, as the Central Government may, by notification, specify; or

(ii) beginning of manufacture or production of articles or things or providing any services referred to in section 10AA of that Act, in a case where the letter of approval, required to be issued in accordance with the provisions of the Special Economic Zones Act, 2005, has been issued on or before the 31st day of March, 2020, and where completion or compliance of such action has not been made within such time, then, the time-limit for completion or compliance of such action shall, notwithstanding anything contained in the specified Act, stand extended to the 31st day of March, 2021, or such other date after the 31st day of March, 2021, as the Central Government may, by notification, specify in this behalf:

15. According to the Department, the period for which stay was granted pending Writ Petitions is 14 months and 28 days and pending Writ Appeals one month and 24 days. Thus, the total period of stay is 16 months and 24 days. The Department has excluded the period of stay granted pending Writ Petitions and Writ Appeals, (288 + 53 days), as per Explanation (i) of Section 153B and 180 days being the period of handing over of seized materials as per Explanation (xi) to Section 153B of the Act, but after availing the benefit of extension under TOLA.



WEB COPY

16. The statutory date for completion of assessments is 30.09.2020. Thus the benefit under TOLA is available to the revenue and by such application, the period is extended to 30.09.2021. Taking note of the period of stay of 16 months and 24 days thereafter, the date gets extended to 20.04.2023, whereas, the orders in these cases have been passed on 28.01.2022, well within time.

17. Per contra, the petitioners argue that effect is first to be given to the exclusion under the Explanation to Section 153B and in such an event, the resultant date would fall on 07.05.2021/19.08.2021, both dates falling outside the range stipulated in the TOLA. Thus the benefit of TOLA would be unavailable to the revenue.

18. All learned counsel agree that the only question that arises for consideration is as to whether the extension of time under TOLA is to be given effect, prior to exclusion of the period mentioned under Section 153B, or after. Section 3 of the TOLA states '*Where, any time-limit has been specified in, or prescribed or notified under, the specified Act which falls during the period from the 20th day of March, 2020 to the 31st day of December, 2020, or such other date after the 31st day of December, 2020, as the Central Government may, by*



WEB COPY

notification, specify in this behalf, , the period is extended to 30.09.2020. Vide

subsequent Notifications, the date has been extended to 30.09.2021.

19. In my considered view, it is the statutory time that must be taken into account for the purposes of TOLA, that is, the date as per the main provision of Section 153B only. The Explanation provides for exclusions in various situations. The application of the exclusions will result in expansion of the period taking note of various intervening events and the ultimate date would thus fluctuate depending on the exclusions taken into account and applied. This cannot be equated to statutory prescription and the date of limitation is determined only by the main provision which is inflexible.

20. In the present case, the last date for completion of assessment as prescribed by Section 153B is *within a period of twenty-one months from the end of the financial year in which the last of the authorisations for search under section 132 or for requisition under section 132A was executed.* The last date of the 21 month period as prescribed admittedly falls on 30.09.2020. This date falls within the range of dates as stipulated in the TOLA, extended by virtue of subsequent notifications, to 30.09.2021.



WEB COPY

21. The extension, by taking benefit of the period of interim protection will follow only thereafter. With this, the date stands extended by 16 months and 24 days to 20.04.2023. The orders of assessment have been passed on 29.01.2022, well within time. The differences between the parties in regard to the periods of interim protection are minor and rendered irrelevant in light of my conclusion that it is TOLA Act that is to be taken into account first. The argument on limitation is rejected and the impugned orders of assessment for AYs 13-14 to 18-19 are found to be passed in time.

22. The orders of assessments for AYs 13-14 to 18-19 are thus confirmed as are the impugned orders of penalty and the writ petitions pertaining to those notices, orders of assessments and orders of penalty, are dismissed. The petitioner is permitted to file statutory appeals on merits and such appeals, if filed within a period of four weeks from date of receipt of this order, shall be entertained by the appellate authority without reference to limitation but ensuring compliance with all other statutory requirements.

23. Insofar as the assessments for the period 2011-12, 2012-13 and 2019-20 are concerned, no writ petitions have been filed by the petitioner at the original



WEB COPY

instance. Thus, and applying the limitation under Section 153B, the date for statutory time limit for assessment would expire on 30.09.2020, though extended upto 30.09.2021 by virtue of the TOLA and subsequent extensions.

24. The question of any period available thereafter to the revenue would not arise seeing as no writ petitions have been filed at the original instance, and hence, the last date for completion of assessments for the period 2011-12, 2012-13 and 2019-20 would be 30.09.2021. The impugned assessments have been framed on 29.01.22, beyond the stipulated time and are hence barred by time.

25. As far as the defence of the revenue based upon Clause (xi) to Explanation to Section 153B is concerned, that clause relates to exclusion of the period taken for handing over seized material the assessing officer. The clause has been inserted with effect from 01.04.2021 and hence operates prospectively only, being a substantive provision. The benefit of the exclusion under that clause thus, would not be available to the revenue in the present assessments. The impugned orders of assessment passed on 28.01.2022 in respect of AYs 11-12, 12-13 and 19-20 are hence held to be barred by limitation qua these three assessment years and are set



WEB COPY

aside. The writ petitions challenging those notices, orders of assessment and penalties are allowed.

26. MPs closed with no order as to costs.

Index: Yes
Speaking order

19.09.2023

Sl

To

The Deputy Commissioner of Income Tax,
Central Circle 2 (1), New Income Tax Building,
No.46, MG Road, Nungambakkam,
Chennai -600 034.



WEB COPY

VERDICTUM.IN



W.P. Nos.1498 of 2022 etc. batch

Dr.ANITA SUMANTH, J.

sl

W.P. Nos.1498, 1504, 1508, 1514, 1510, 1515, 1517, 1519, 1522, 2017, 2015, 2018,
2019, 2021, 2022, 2020, 2023 & 2016 of 2022
and
WMP.Nos.1645, 1649, 1651, 1653, 1652, 1656, 1659, 1660, 1662, 2173, 2175,
2169, 2172, 2174, 2176, 2177, 2179, 2180, 2182, 2183, 2184, 2178, 2181, 2185,
2186, 2170 & 2171 of 2022

19.09.2023