IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2022

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Writ Appeal Nos. 1682, 1846, 1847, 1848, 1850, 1851, 1853, 1873, 1878, 1890, 1894, 1941, 1990, 1991, 2022, 2130, 2134, 2150, 2165, 2179, 2184, 2185, 2189, 2191, 2205, 2224, 2231, 2232, 2244, 2305, 2350, 2353, 2403, 2405, 2410, 2411, 2416, 2418, 2422, 2428, 2434, 2502, 2504, 2506, 2507, 2508, 2509, 2510, 2675, 2686, 2697, 2701, 2706, 2707, 2715, 2716 and 2717 of 2021
and
CMP.Nos.10696, 11685, 11694, 11700, 11710, 11712, 11722, 13456, 13518, 13566, 13668, 13765 and 13866 of 2021

WA No. 1682 of 2021

1. The Adjudicating Authority
   under the Prohibition of Benami Property Transactions Act, 1988
   Room No.26, 4th Floor
   Jeevan Deep Building
   Parliament Street
   New Delhi - 110 001

2. Deputy Commissioner of Income Tax
   (Benami Prohibition)
   Room No.104, 1st Floor
   Income Tax Investigation Wing Building
   New No.46, M.G. Road
   Nungambakkam
   Chennai - 600 034 .. Appellants

Versus

M/s. Anuttam Academic Institutions
represented by its Director
Nawal Kishore
MARG Axis
4/318, Old Mahabalipuram Road
Kottivakkam, Chennai - 41

Current Address at
Sai Subhodaya Apartments
No.57/2B, East Coast Road
Thiruvanmiyur
Chennai - 600 041 .. Respondent

Writ Appeal No. 1682 of 2021:- Appeal filed under Clause 15 of The Letters Patent against the Order dated 09.04.2021 passed by the learned Judge in WP No. 2340 of 2021.

For Appellants : Mrs.M.Sheela,
Special Public Prosecutor (Income Tax)
assisted by Mr.H.Siddharth and Ms.M.Prathana
in all the writ appeals

For Respondent : Mr. AL. Somayaji, Senior Advocate
for Mr. R. Sivaraman in all the Writ Appeals

COMMON JUDGMENT

R. MAHADEVAN, J.

For the sake of convenience, the judgment is divided into the following heads:

A.	FACTS & NARRATION OF PLEADINGS	PARAGRAPHS 1-8
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A. FACTS & NARRATION OF PLEADINGS

1. Questioning the correctness and legality of the order dated 09.04.2021 passed by the Learned Judge in WP.Nos.35256 of 2019 etc. batch, these intra-court appeals are filed by the appellants / Department. By the order impugned herein, the writ petitions filed by the respondents herein were allowed and thereby the orders dated 26.08.2019, 27.08.2019 and 28.08.2019 passed by the first appellant / Adjudicating Authority in terms of Section 26(3) of the Prohibition of Benami Property Transactions Act, 1988 (hereinafter shortly referred to as 'the Act') were quashed.

2. To determine the issue involved in this batch of cases, it would be necessary to briefly narrate the facts, which are common in all the matters. For the easy reference, this court proposes to discuss the facts in WP.No.35256 of 2019 as done by the learned Judge, which would run thus:

2.1 During the year 2017, a search was conducted in the premises of Marg Group of companies and its related entities, which resulted in seizure of various documents allegedly indicating the prohibited transactions as per clause A of section 2(9) of the Act. Therefore, a show cause notice dated 26.04.2018 under section 24(1) of the Act was issued by the second appellant to the respondent herein, calling upon them to show cause as to why they should not be treated as benamidar of the parent company called M/s.Marg

Limited, who is the beneficial owner of the land measuring about 17.702 acres at Muttam Village, Nagore Vattam, having been purchased in the years 2009 and 2010 by availing loan from M/s.Great Meera Finlease Private Limited, a Non-banking financial company incorporated solely for the purpose of routing the funds of Marg group of companies and such fund was also flown from the another shell company viz., M/s.Arohi Infrastructure Pvt.Ltd., which is incorporated as subsidiary of M/s.Marg Limited.

2.2 On receipt of the show cause notice, the Managing Director of the respondent company appeared before the second appellant and submitted that the group companies are not the benamidars, as alleged. It was further submitted that the land was purchased in the name of group companies legitimately from and within their internal resource accrued / borrowings. The property so purchased was also mortgaged with the lenders to raise funds to complete the running projects. It was also submitted that several subsidiaries and associate enterprises were formed only with the intention to procure land for the purpose of overcoming the ceiling limit fixed under the Land Ceiling Act, 1961; and the subsidiaries were duly registered with the Registrar of Companies and complying with the filing of Income Tax Returns. Since the funds are flowing from the legitimate group companies, it will not fall within the purview of the Act. Therefore, according to the respondent company, it is

not fictitious transaction, as portrayed by the Department and the same is *bona fide*.

2.3 Notwithstanding the reply of the respondent, the second appellant passed an order dated 20.07.2018 provisionally attaching the property of the respondent company under Section 24(4)(b)(i) of the Act pending adjudication by the first appellant.

2.4 Upon receiving the reference under section 24(5) of the Act from the second appellant, the first appellant issued a show cause notice dated 14.08.2018 under Section 26 (1) of the Act. The first appellant, after affording sufficient opportunities to the respondent and considering the material evidence placed, passed an order dated 26.08.2019 in terms of Section 26 (3) of the Act, confirming the provisional order of attachment passed by the second appellant *inter alia* holding that the subject matter of the property is a benami property and the transaction is a benami transaction, in which the respondent is the benamidar of the beneficial owner M/s. Marg Limited.

3. Similar orders were passed by the first appellant confirming the attachment orders passed by the second appellant in the references registered in respect of the other properties belonging to the respective respondent companies, on the same day i.e., on 26.08.2019 and also on 27.08.2019 and

28.08.2019. Challenging the said orders passed by the first appellant, the respondents herein preferred 57 writ petitions before the Learned Judge.

4. Before the Learned Judge, it was mainly contended on behalf of the respondents that the orders dated 26.08.2019, 27.08.2019 and 28.08.2019 passed by the first appellant are barred by limitation. It was further canvassed that according to section 26(7) of the Act, an order of adjudication has to be passed within a period of one year from the end of the month, in which the reference under section 24(5) is received by the Adjudicating Authority. In the present case, the second appellant made references under Section 24 (5) of the Act on 27.07.2018 and the same were taken on file by the first appellant on 01.08.2018. In such an event, as per Section 26(7) of the Act, an order of adjudication ought to have been passed on or before 31.08.2019. On the other hand, the first appellant though heard the matters finally on 17.07.2019, did not pass orders prior to 31.08.2019 and that, only on 29.10.2019, the respondents were informed through the second appellant to collect the certified copies of the orders said to have been passed on 26/27/28.08.2019, which were made ready on 04.09.2019 and 11.09.2019 and the same were booked for despatch on 12.09.2019 and 13.09.2019. Thus, according to the respondents, the orders passed on 26/27/28.08.2019, are absolutely beyond the period of limitation as prescribed under section 26(7) of the Act.

5. The appellants herein filed a common counter affidavit before the Learned Judge opposing the relief sought in the writ petitions filed by the respondents. According to them, the adjudication orders were passed within the period of limitation and hence, the same do not call for any interference by this court. It was further averred that as per section 24(5), references were sent by the Initiating Officer / second appellant to the Adjudicating Authority / first appellant on 27.07.2018 and the same were taken on file by the Adjudicating Authority on 01.08.2018. As per Section 26 (7) of the Act, the orders under Section 26 (3) are required to be passed within one year from the end of the month in which the references are received by the Adjudicating Authority. In consonance with the same, the orders were passed by the first appellant / Adjudicating Authority on 26/27/28.08.2019 within the time limit as prescribed under Section 26 (7) of the Act. It was also submitted that the first appellant has passed elaborate orders running to more than 100 pages dealing with all the contentions raised by the respondents herein. The dates on which the certified copies were made ready on 04.09.2019 and 11.09.2019 and booked for despatch on 12.09.2019 and 13.09.2019, cannot be construed as the dates of passing of the orders under section 26(3) of the Act. Therefore, the orders dated 26/27/28.08.2019 were passed by the first appellant strictly in

accordance with Section 26(7) of the Act and the same cannot be barred by limitation.

6. After hearing the submissions of the learned counsel for both sides, the Learned Judge allowed the writ petitions on the ground that the orders passed by the first appellant will take effect only from the date of communication of the same to the parties. It was also observed that on 17.07.2019, the orders were reserved, but only on 04.09.2019 and 11.09.2019, the copies of the same were certified by the Administrative Officer-cum-Registrar, which would suggest that the orders have not been passed within the time limit as prescribed under Section 26 (7) of the Act. In effect, the Learned Judge, on perusal of the registers maintained by the authorities, held that the orders passed by the first appellant, have not been passed on the dates indicated thereof and accordingly, allowed the writ petitions filed by the respondents herein and set aside the adjudication orders passed by the first appellant. Therefore, the appellants are before this court with these intra court appeals.

7.1 Mrs.M.Sheela, learned Special Public Prosecutor (Income Tax) appearing for the appellants would vehemently contend that while passing the orders of provisional attachment dated 20.07.2018, the second appellant made

references to the first appellant within 15 days of passing such orders, as per Section 24(5) of the Act. On receipt of the references from the second appellant, the first appellant issued show cause notices dated 14.08.2018 to the respondent companies. As per Section 26(7) of the Act, the first appellant is bound to pass orders under Section 26(3) of the Act within a year from the end of the month in which the references under Section 24 (5) of the Act are received from the second appellant. It is in compliance with the mandate as provided under Section 26 (7) of the Act, within a period of one year, the first appellant passed the orders on 26.08.2019, 27.08.2019 and 28.08.2019. However, the certified copies of the same were made ready and were attested by the Administrative Officer-cum- Registrar on 04.09.2019 and 11.09.2019, in view of the fact that the preparation of such copies in triplicate was time consuming as each order contains more than 100 pages and the same has to be despatched to 69 addressees. In any event, the dates on which the certified copies of the orders were made ready or the dates on which the same were booked for despatch, cannot be construed as the dates of passing of the orders by the first appellant. Therefore, according to the learned counsel, when the first appellant passed the orders dated 26/27/28.08.2019 within the time as specified under Section 26 (7) of the Act, the order impugned herein deserves to be set aside.

7.2 The learned Special Public Prosecutor would also contend that if the respondents are aggrieved by the orders passed by the Adjudicating Authority, there is an alternative remedy of appeal as provided under Section 46 of The Act. However, they circumvented the statutory procedure and invoked the writ jurisdiction under Article 226 of The Constitution of India. The Learned Judge also grossly ignored this aspect, while allowing the writ petitions. In order to buttress the said submission, the learned Special Public Prosecutor placed reliance on the decision of the Honourable Supreme Court in **CIT v. Chhabil Dass Agarwal [(2014) 1 SCC 603]** and **The Authorised Officer, State Bank of India vs. Mathew KC [(2018) 3 SCC 85]** to drive home the point that when there is a statutorily in-built remedy, which is also an efficacious remedy, the aggrieved party has to only exhaust such remedy and the remedy of writ should be very sparingly invoked.

7.3 It is also contended by the learned Special Public Prosecutor that the writ petitions were filed by the respondents after the expiry of maximum time limit of 45 days as prescribed under Section 46 of the Act for filing statutory appeals. Admittedly, the certified copies of the orders of the Adjudicating Authority / first appellant were served on the respective respondents on 29.10.2019, however, without preferring any statutory appeals as prescribed under Section 46 of the Act, the respondents preferred the writ

petitions before this Court from 17.12.2019 onwards and hence, the writ petitions filed after the expiry of 45 days of service of the copies of the orders, ought not to have been entertained by the Learned Judge. In this regard, the learned Special Public Prosecutor referred to the decision of the Honourable Supreme Court in **Assistant Commissioner (CT) LTU, Kakinada and others v. Glaxo Smith Kline Consumer Health Care Limited [2020 SCC Online SC 440]** wherein it was held that "*if the writ petitioner choses to approach the High Court by filing a Writ Petition under Article 226 of The Constitution of India, after the expiry of the maximum limitation period as prescribed for preferring a statutory appeal, then, the High Court cannot disregard the statutory period for redressal of the grievance and entertain the writ petition of such a party as a matter of course*".

7.4 The learned Special Public Prosecutor further proceeded to contend that during the pendency of the writ petitions as directed by this Court, the first appellant produced the records pertaining to the adjudication proceedings, which include the order sheets and other registers maintained by them and substantiated that the orders challenged in the writ petitions, were passed within the limitation period as specified under the Act. However, the Learned Judge, without proper consideration of the materials placed, allowed the writ petitions filed by the respondents herein.

7.5 The learned Special Public Prosecutor also invited the attention of this Court to Section 11 of the Act and contended that as per Section 11, the Adjudicating Authority is empowered to regulate his own procedure and shall not be bound by the procedure as laid down under the Code of Civil Procedure, but shall be guided by the principles of natural justice. It is in exercise of such power, the first appellant has passed the orders impugned in the writ petitions. But, the Learned Judge set aside the said orders merely on technicalities.

7.6 The learned Special Public Prosecutor placed reliance on the decision of this Court in **Murugappa Chettiar v. Thirumalai Nadar and others [(1947) 2 MLJ 310]** and contended that the first appellant had discharged his quasi-judicial functions in passing the adjudication orders on 26/27/28.08.2019. However, the Learned Judge recorded a finding that the orders of adjudication were not passed on 26/27/28.08.2019, but on some other dates. According to the learned Special Public Prosecutor, when a particular judicial or official act has been performed and there is no other evidence on record to suggest that such act has not been performed, then, it may reasonably be presumed under S.114, Illustration (e) of the Evidence Act that such particular act was regularly performed. The observation of this Court in the above-referred judgment can usefully be quoted below:

> "The fact that an order for attachment has been passed is not sufficient to establish the factum of attachment. An attachment cannot be said to have been made unless and until the provisions of both the sub-rules of O.21 R.54 have been complied with. When several properties are sought to be attached in pursuance of an order for attachment, there must be proof of affixture on every one of the properties. The mere fact that in pursuance of an order for attachment in respect of a house and lands there was an affixture of the order on the house does not lead to any presumption that the order has been affixed on the lands also. No doubt, when the only evidence is that a particular judicial or official act has been performed and there is no other evidence on record, it may be presumed under S.114, Illustration (e) that that particular act was regularly performed. But when the dispute is whether that act was performed or not, there is nothing in law which enables a Court to presume that that act was a matter of fact performed. It may also be mentioned that it is not obligatory on the part of the Court to draw a presumption under Section 114 always, irrespective of what the facts of any particular case may be. A Court may refuse to draw the presumption under S.114, Illustration (e), to assist a plaintiff who comes to Court long after the material evidence necessary to establish his case had ceased to be available and then seeks to rest his case entirely on presumptions".

7.7 Reliance was also placed by the learned Special Public Prosecutor upon the decision of the Division Bench of this Court in **R.M.P.R. Viswanathan Chettiar v. Commissioner of Income-tax, Madras [1953 SCC Online Mad 285]** wherein it was held thus:

> "6. In - AIR 1951 Mad 204 (B) *Rajamannar C.J.* explained the principle underlying - 34 Mad 151 (D) and - AIR 1930 Mad 490 (A)
>
> ".....the rule laid down .... is based upon a salutary and just principle, namely, that if a person is given a right to resort to a remedy to get rid of an

> adverse order within a prescribed time, limitation should not be computed from a date earlier than that on which the party aggrieved actually knew of the order or had an opportunity of knowing the order and therefore must be presumed to have had knowledge of the order."

7. That was the principle which the learned Judges applied in - AIR 1951 Mad 204 (B) to construe the expression "an order made" as it was used in sub-section (2) of Section 33-A of the Income Tax Act

8. .....

9. In - 34 Mad 151 (D) itself at p.154, the learned Judges dealt with the contention based upon Section 24 of the Madras Act 4 of 1897, which required that the decision should be recorded in writing with its reasons and should also be communicated to the parties. The learned Judges pointed out:

> "Though, therefore, this provision supports the Government Pleader to the extent that it shows that the date of the order and the date of communication may, in the contemplation of the legislature, be different dates, still it does not support the more important inference that the Act contemplates the starting of limitation before the communication of the order to the parties."

10. As explained by Rajamannar C.J. in - AIR 1951 Mad 204 (B) it was for the limited purpose of computing the period of limitation that the expression "the date on which the order was made" was construed in - '34 Mad 151 (D)' as the date on which it was communicated to the parties affected. In - 'AIR 1951 Mad 204 (B)' the learned Judges negatived the contention, that the provision in sub-section. (2) of Section 33-A of the Income Tax Act was not really a provision prescribing the time limit for the exercise of the right of the party aggrieved, but that it imposed only a limit for the exercise of revisional powers by the Commissioner. Sub-section (1) of S.33-A provided that the Commissioner could on his own motion exercise his revisional powers, provided the order had not been made more than one year previously. Sub-section (2) of S.33-A provided for the application by an assessee to the

Commissioner the date of the order. The learned Judges explained in - 'AIR 1951 Mad 204 (B)' that the date of the order for purposes of sub-sec (2) of S.33-A."

7.8 The learned Special Public Prosecutor also referred to the decision of the Hon'ble Supreme Court in **Raja Harish Chandra Raj Singh v. Deputy Land Acquisition Officer and another [(1962) 1 SCR 676 : AIR 1961 SC 1500]** wherein it was held that "*date of service of the award has to be reckoned as the date from which the period of limitation commence*". In Paragraph 10, it was held as follows:

> "10. It may, however, be pertinent to point out that the Bombay High Court has taken a somewhat different view in dealing with the effect of the provision as to limitation prescribed by Section 33-A (2) of the Indian Income Tax Act. This provision prescribes limitation for an application by an assessee for the revision of the specified class of orders, and it says that such an application should be made within one year from the date of the order. it is significant that while providing for a similar period of limitation Section 33 (1) specifically lays down that the limitation of sixty days therein prescribed is to be calculated from the date on which the order in question is communicated to the assessee. In other words, in prescribing limitation Section 33 (1) expressly provides for the commencement of the period from the date of the communication of the order, whereas Section 33-A(2) does not refer to any such communication; and naturally the argument was that communication was irrelevant under Section 33-A(2) and limitation would commence as from the making of the order without reference to its communication. This argument was rejected by the Bombay High Court and it was held that it would be a reasonable interpretation to hold that the making of the order implies notice of the said order, either actual or constructive, to the party affected by it. It

would not be easy to reconcile this decision and particularly the reasons given in its support with the decision of the same High Court in the case of *Jehangir Bomanji [AIR 1954 Bom 419]*. The relevant clause under Section 33-A(2) of the Indian Income Tax Act has also been similarly construed by the Madras High Court in *O.A.O.A.M. Muthia Chettiar vs. CIT [ILR 1951 Mad 815]*. "If a person is given a right to resort to a remedy to get rid of an adverse order within a prescribed time", observed Rajamannar, C.J., "limitation should not be computed from a date earlier than that on which the party aggrieved actually knew of the order or had an opportunity of knowing the order and therefore, must be presumed to have the knowledge of the order", In other words the Madras High Court has taken the view that the omission to use the words "from the date of communication" in section 33-A(2) does not mean that limitation can start to run against a party even before the party either knew or should have known about the said order. In our opinion, this conclusion is obviously right".

7.9 Further, the learned Special Public Prosecutor placed reliance on the decision in **The Commissioner of Income Tax, Chennai v. Mohammed Meeran Shahul Hameed** passed in **Civil Appeal No. 6204 of 2021** dated 07.10.2021, in which, the Honourable Supreme Court set aside the order dated 03.07.2019 passed by the Division Bench of this Court in TCA No. 429 of 2019, holding that "*it is not enough that the Authority should pass the order, but it should be communicated to the aggrieved individual in a manner known to law and acknowledgment card should be obtained*". The relevant passage of the said judgment is profitably extracted below:

"4.3 On a fair reading of sub-section (2) of Section 263, it can be seen that as mandated by sub-section (2) of

Section 263 no order under Section 263 of the Act shall be "made" after the expiry of two years from the end of the financial year in which the order sought to be revised was passed. Therefore, the word used is 'made' and not the order 'received' by the assessee. Even the word 'dispatch' is not mentioned in Section 263 (2). Therefore, once it is established that the order under Section 263 was made/passed within the period of two years from the end of the financial year in which the order sought to be revised was passed, such an order cannot be said to be beyond the period of limitation prescribed under Section 263 (2) of the Act. Receipt of the order passed under Section 263 by the assessee has no relevance for the purpose of counting the period of limitation provided under Section 263 of the Income Tax Act. In the present case, the order was made/passed by the learned Commissioner on 26.03.2012 and according to the department it was dispatched on 28.03.2012. The relevant last date for the purpose of passing the order under Section 263 considering the fact that the assessment was for the financial year 2008-09 would be 31.03.2012 and the order might have been received as per the case of the assessee - respondent herein on 29.11.2012. However, as observed hereinabove, the date on which the order under Section 263 has been received by the assessee is not relevant for the purpose of calculating/considering the period of limitation provided under Section 263 (2) of the Act. Therefore, the High Court, as such has misconstrued and has misinterpreted the provisions of Sub-section (2) of Section 263 of the Act. If the interpretation made by the High Court and the learned ITAT is accepted in that case it will be violating the provision of Section 263 (2) of the Act and to add something which is not there in the section. As observed hereinabove, the word used is 'made' and not the 'receipt of the order'. As per the cardinal principle of law, the provision of the statue/Act is to be read as it is and nothing is to be added or taken away from the provision of the statue. Therefore, the High Court has erred in holding that the order under Section 263 of the Act passed by the learned Commissioner was barred by period of limitation, as provided under sub-section (2) of Section 263 of the Act."

Therefore, according to the learned Special Public Prosecutor, the Learned

Judge in paragraph 46 of the order impugned herein, referred to the Division Bench decision of this Court in **CIT v. Mohammed Meeran Shahul Hameed [TCA No.429 of 2019 dated 03.07.2019]** and erroneously concluded that the first appellant has not passed the adjudication orders on the dates, when they were said to have been passed.

With these submissions, the learned Special Public Prosecutor sought to allow these appeals by setting aside the order impugned herein.

8.1 Per contra, Mr. A.L. Somayaji, learned Senior counsel appearing for the respondents would contend that M/s.Marg Limited is a private limited company engaged in the business of real estate and infrastructure development. During the course of such business, a search was conducted in the premises of M/s.Marg Limited and its associated entities. The authorities engaged in such search, recorded the statements of the representative of the respondent companies, besides impounded several documents. Following the search, show cause notices dated 26.04.2018 were issued under Section 24 (1) of the Act by the second appellant alleging that the respondents are benamidars for M/s.Marg Limited, which beneficially owns the properties mentioned therein. It was also alleged in the show cause notices that at the time of purchase of the lands, loans were availed by the respondents from

M/s.Great Meera Finlease Private Limited, a Non-banking finance company (NBFC) incorporated solely for the purpose of routing of the funds of marg group of companies and for the purchase of the assets. In effect, it was alleged that the respondent companies are benamidars of the assets of M/s.Marg Limited, which is the beneficial owner. On receipt of the show cause notices, the respondents submitted their explanation denying the allegations and contended that M/s.Marg Limited is involved in the business of development of real estate and infrastructure projects. It was also stated in the explanation that during 1961, the Urban Land (Ceiling and Regulation) Act, 1976 came into effect limiting the maximum acreage of land that may be held by a company to 30 standard acres, which was further reduced to 15 acres by the 2016 amendment to the Ceiling Act. Being in the business of real estate development, M/s.Marg required extensive land resources and had thus, set up several subsidiaries and associated entities to enable procurement and holding of lands for its use. Admittedly, this attempt was only to get over the ceiling imposed and it cannot be called as benami transaction. It was also further explained that the purchase of the assets during the relevant point of time will not come within the purview of the amended Act 2016, especially when the applicability of the amended Act, whether it would operate prospectively or retrospectively, is pending before the competent court for adjudication.

However, the second appellant herein rejected the explanations offered by the respondents / writ petitioners and passed the orders provisionally attaching the properties under Section 24(4) of the Act. Thereafter, references were made to the first appellant in accordance with Section 24(5) of the Act for confirmation. On the basis of such references made by the second appellant, the first appellant issued show cause notices and commenced the adjudication in terms of Section 26 of the Act.

8.2 Adding further, the learned senior counsel would contend that the representative of the respondent companies appeared before the first appellant, the matters were heard elaborately and orders were reserved on 17.07.2019 and thereafter, the orders were said to have been passed on 26.08.2019, 27.08.2019 and 28.08.2019. However, only on 29.10.2019, the respondents were informed to collect the copies of the orders said to have been passed on 26/27/28.08.2019. Thus, according to the learned senior counsel, the orders impugned in the writ petitions are beyond the time limit as prescribed under section 26(7) of the Act and suffer from procedural impropriety. In this context, the learned senior counsel placed reliance on the decision of the Honourable Supreme Court in **Hindustan Petroleum Corporation Limited v. Darius Shapur Chenai and others [(2005) 7 SCC 627]** wherein in paragraph

8, it was held that "*when the decision making process itself is in question, the power of judicial review can be exercised by the Court in the event the order impugned suffers from well-known principles viz., illegality, irrationality and procedural impropriety*".

8.3 The learned senior counsel appearing for the respondents also contended that the appellants have not arrived at a subjective satisfaction as regards the transactions alleged to have been benami transactions done by the respondents for and on behalf of the beneficiary namely M/s. Marg Limited; they failed to establish that there is a nexus between the assets held by the respondents and the income generated by M/s. Marg; and in the absence of establishing such nexus, the entire proceedings initiated under the Act by the appellants stand vitiated. In this regard, the learned senior counsel placed reliance on the decision of the Honourable Supreme Court in **Aslam Mohammad Merchant v. Competent Authority and others [(2008) 14 SCC 186 : (2009) 2 SCC (Cri) 793]** wherein it was held that "*the competent authority has to satisfy himself that the property seized has been 'illegally acquired property' within the meaning of Section 3(c) of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976*". It was further held that "*the competent authority must satisfy that there exists a link*

between the so-called acquired property and the income or assets through which such properties have been acquired". Thereafter, the Honourable Supreme Court set aside the show cause notice issued by the Competent Authority as it did not disclose as to how the properties have been acquired and the source for acquisition thereof.

8.4 The learned senior counsel for the respondents placed reliance on the decision of the Division Bench of the Karnataka High Court in **Commissioner of Income Tax and another v. B.J.N. Hotels Limited [2016 SCC Online Kar 8485],** wherein, in an identical situation, it was held that "*the assessment order passed by the Assessing Officer is time barred"*. A useful reference can be made to the observations of the Karnataka High Court in paragraphs 8 to 11, which read as follows:

> "8. Firstly, we are considering the substantial question of law No.4, relating to limitation since it goes to the root of the matter. The undisputed facts are that the assessment orders were required to be issued on or before March 26, 2007, the period prescribed under law considering sixty days from January 27, 2007, due date for special auditor report as specified under Section 142 (2C) of the Act. The Assessment Orders are dated April 27, 2007. Taking the second reference of the Commissioner of Income-Tax, dated December 18, 2006 for special audit report, due date for submission of special audit report being February 28, 2007, the assessment orders would have been issued on or before April 29, 2007. The copies of the assessment orders were served on the assessee on April 30, 2007.
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> 9. However, the learned counsel appearing for the Revenue would contend that the Assessing Officer passed the

orders on April 27, 2007 and the same was dispatched to the assessee. On our direction to produce the original records, the same are placed before us. We have noticed certain over writings in the order sheet as regards date of passing of the order by the Assessing Officer and moreover, a particular page of the order sheet is maintained on a rough sheet (in an unusual manner) different from other pages of the order sheet. Besides this flaw in the records, learned counsel for the Revenue is neither able to point out from the records that the assessment orders were dispatched on April 27, 2007 nor produced the dispatch register to establish that the orders are complete and effective i.e., it is issued, so as to be beyond the control of the authority concerned, within the period of limitation i.e., April 29, 2007. Admittedly, the assessment orders were served on the assessee on April 30, 2007. Hence, we are of the considered opinion that the assessment orders passed are barred by limitation.

10. An identical issue was before this Court in I.T.A. No. 832 of 2008 (dated October 14, 2014) in the case of *Maharaja Shopping Complex v. Deputy CIT*. This Court following the judgment of the Kerala High Court in the case of *Government Wood Works v. State of Kerala, (1988) 69 STC 62 (Ker)* has held that in the absence of dispatch date made available to the Court from the records, to prove that the order is issued within the prescribed period, order passed by the Assessing Officer is barred by limitation. The said judgment squarely applies to the facts of the present case. In the result, substantial question of law No.4 is answered in favour of the assessee and against the Revenue. In view of the above, it is not necessary for us to examine the other questions.

11. Accordingly, appeals are dismissed."

8.5 The learned senior counsel for the respondents would also contend that the orders passed by the first appellant are beyond the period prescribed under Section 26 (7) of the Act. For the purpose of challenging the

said orders of the first appellant, the dates on which the copies of the same were delivered to the respondents will be the criterion and not the date of passing of the same. In support of the same, the learned Senior counsel referred to the decision of the Division Bench of this Court in **Kavanna, Vana, Ena Swaminathan @ Chidambaram Pillai v. Lakshmanan Chettiar and another [1930 Law Weekly Part 12 Page No.487]** wherein, it was observed that *"since the plaint in this case was filed within 30 days after the order of refusal by the Registrar was communicated to him, the suit under Section 77 of The Registration Act, is not time-barred. For the same reasons, I must hold that the application to the Registrar under Section 73 (1) of the Act was also made in time and that the rejection of it by the Registrar as time-barred, was wrong*".

8.6 That apart, the learned senior counsel for the respondents placed reliance on the decision of the Honourable Supreme Court in **Raja Harish Chandra Raj Singh v. Deputy Land Acquisition Officer and another [(1962) 1 SCR 676 : AIR 1961 SC 1500]** wherein it was held as follows:

> "7. In this connection it is material to recall the fact that under Section 12 (2) it is obligatory on the Collector to give immediate notice of the award to the persons interested as are not present personally or by their representatives when the award is made. This requirement itself postulates the necessity of the communication of the award to the party concerned. The legislature recognised that the making of the award under Section 11 followed by its filing under Section 12 (1) would not

> meet the requirements of justice before bringing the award into force. It thought that the communication of the award to the party concerned was also necessary, and so by the use of the mandatory words an obligation is placed on the collector to communicate the award immediately to the person concerned. It is significant that the section requires the Collector to give notice of the award immediately after making it. This provision lends support to the view which we have taken about the construction of the expression "from the date of the Collector's award" in the proviso to Section 18. It is because communication of the order is regarded by the legislature as necessary that Section 12 (2) has imposed an obligation on the collector and if the relevant clause in the proviso is read in the light of this statutory requirements it tends to show that the literal and mechanical construction of the said clause would be wholly inappropriate. It would indeed be a very curious result that the failure of the Collector to discharge his obligation under Section 12 (2) should directly tend to make ineffective the right of the party to make an application under Section 18, and this result could not possibly have been intended by the legislature."

8.7 For the same proposition, as to when an order passed by an authority will take effect, whether from the date of passing the order or the date on which it was communicated, the learned senior counsel referred to the decision of the Division Bench of the Kerala High Court in **Government Wood Works v. State of Kerala [1987 SCC Online Ker 697]** wherein it was held thus:

> "13.The order of any authority cannot be said to be passed unless it is in some way pronounced or published or the party affected has the means of knowing it. It is not enough if the order is made, signed, and kept in the file, because such order may be liable to change at the hands of the authority who

> may modify it or even destroy it, before it is made known, based on subsequent information, thinking or change of opinion. To make the order complete and effective, it should be issued, so as to be beyond the control of the authority concerned, for any possible change or modification therein. This should be done within the prescribed period, though the actual service of the order may be beyond that period. This aspect of the matter had not come up for consideration in the cases of *Viswanathan Chettiar, (1954) 25 ITR 79 (Mad)* and *Laxmidas & Co., (1969) 72 ITR 88 (Bom)* where the only question dealt with was whether service of the order after the prescribed period rendered it invalid. Unless, therefore, the order of the Deputy Commissioner in this case had been so issued from his office within the period prescribed, it has to be held that the proceedings are barred by limitation. This question has not been considered by the Tribunal. The Tribunal, which passed the order, apparently did not have the benefit of the decision in *Malayil Mills Case (T.R.C. Nos. 15 and 16 of 1981 decided on 7th June, 1982 - Kerala High Court)* which, so far as we could see, remains unreported. The matter has therefore to go back to the Tribunal for an examination of the records to ascertain whether the order of the Deputy Commissioner had been issued from his office within the period of four years prescribed in Section 35 (2) of the Act. The Tribunal will adjudicate the matter in the light of the observations contained herein and in the judgment in the case of *Malayil Mills (T.R.C. Nos. 15 and 16 of 1981 decided on 7th June, 1982 - Kerala High Court)* extracted earlier."

8.8 The learned senior counsel for the respondents also relied on the decision of the Division Bench of the Gujarat High Court in **Kanubhai M. Patel (HUF) v. Hiren Bhatt or His Successors to office [(2011) 334 ITR 25 (Gujarat)]** wherein it was held that "*date of issuance of notice under Section 148 Income Tax Act has to be reckoned not from the date when it was issued, but on the date when it was actually delivered on the assessee*" and in

paragraphs 13 to 16, it was held thus:

"13. On a plain reading of Section 149, it is apparent that under the said provision, the maximum time limit for issuance of notice under Section 148 is six years from the end of the relevant assessment year. In the present case, the relevant assessment year in each of the petitions is 2003-2004; the impugned notices are dated 31.03.2010; and the said notices were sent for booking to the Speed Post Centre, Ahmedabad, on 07.04.2010. On behalf of the petitioners, it has been contended that the notices which have been dispatched for service only on 07.04.2010, are clearly time barred inasmuch as the date of dispatch would be the date of issue of the notices. Whereas, on behalf of the revenue, it has been contended that the notices were actually signed on 31.03.2010, hence, the said date would be the date of issue and as such, the impugned notices have been issued within the time limit prescribed under Section 149 of the Act.

14. In the background of the aforesaid facts and contentions, the core issue that arises for consideration is as to when can the notice under Section 148 of the Act be said to have been issued. In this context, it would be necessary to examine the true import of the expression "shall be issued" as employed in section 149 of the Act.

15. The expression 'issue' has been defined in *Black's Law Dictionary* to mean "To send forth; to emit; to promulgate; as, an officer issues orders, process issues from court. To put into circulation; as, the treasury issues notes. To send out, to send out officially; to deliver, for use, or authoritatively; to go forth as authoritative or binding. When used with reference to writs, process, and the like, the term is ordinarily construed as importing delivery to the proper persons, or to the proper officer for service etc,

15.1 In *P. Ramanathan Aiyer's Law Lexicon* the word 'issue' has been defined as follows:-

> "Issue. As a noun, the act of sending or causing to go forth; a moving out of any enclosed place; egress; the act of passing out; exit, egress or passage out (*Worcester Dict.);* the ultimate result or end.
>
> As a verb, "To issue" means to send out, to send

out officially; to send forth; to put forth; to deliver, for use, or unauthoritatively; to put into circulation; to emit; to go out (*Burrill); to go forth as a authoritative or binding, to proceed or arise from; to proceed as from a source (Century Dict.)*

Issue or process: Going out of the hands of the clerk, expressed or implied, to be delivered to the Sheriff for service. A writ or notice is issued when it is put in proper form and placed in an officer's hand for service, at the time it becomes a perfected process.

Any process may be considered 'issued' if made out and placed in the hands of a person authorised to serve it, and with a bona fide intent to have it served"

16. Thus, the expression to issue in the context of issuance of notices, writs and process, has been attributed the meaning, to send out; to place in the hands of the proper officer for service. The expression "shall be issued" as used in section 149 would therefore have to be read in the aforesaid context. In the present case, the impugned notices have been signed on 31.03.2010, whereas the same were sent to the speed post centre for booking only on 07.04.2010. Considering the definition of the word issue, it is apparent that merely signing the notices on 31.03.2010, cannot be equated with issuance of notice as contemplated under Section 149 of the Act. The date of issue would be the date on which the same were handed over for service to the proper officer which in the facts of the present case would be the date on which the said notices were actually handed over to the post office for the purpose of booking for the purpose of effecting service on the petitioners. Till the point of time the envelopes are properly stamped with adequate value of postal stamps, it cannot be stated that the process of issue is complete. In the facts of the present case, the impugned notices having been sent for booking to the speed post centre only on 07.04.2010, the date of issue of the said notices would be 07.04.2010 and not 31.03.2010, as contended on behalf of the revenue. In the circumstances, impugned the notices under Section 148 in relation to assessment year 2003-04, having been issued on 07.04.2010, which is clearly beyond the period of six years from the end of the relevant assessment year, are clearly barred by limitation

and as such, cannot be sustained."

Thus, the learned senior counsel for the respondents would ultimately, contend that the Learned Judge, by referring to the various decisions on the field, has categorically held that "*the prohibition imposed by the provisions of Section 26(7) will apply squarely in this case and the impugned orders cannot be said to have been passed within the period of limitation, as provided"* and rightly set aside the adjudication orders of the first appellant, which does not call for any interference at the hands of this court.

B. ANALYSIS

9. This court carefully considered the submissions made by the learned counsel on either side and meticulously perused the documents available on record.

10. At the first instance, pertinently, it is to be pointed out that the core issue involved in this batch of cases is relating to the aspect of limitation, inasmuch as the learned Judge allowed the writ petitions filed by the respondents challenging the adjudication orders passed by the first appellant under section 26(3) of the Act, only on the ground that the same are barred by limitation as per section 26(7) of the Act.

11. In order to appreciate the rival contentions of the parties on the question for determination, it would be profitable to take note of the relevant

provisions of the Prohibition of Benami Property Transactions Act, 1988, which is a penal enactment with the object of prohibiting benami transactions and to provide for the right of the Government to recover the property held as benami. Section 5 provides for confiscation of any property which is the subject matter of benami transaction by the Central Government. While an Adjudicating Authority is appointed under section 7, the proceedings for confiscation are initiated by the Initiating Officer under section 24. If the Initiating Officer passes a provisional order of attachment of the property, he draws up a statement of the case and refers it to the Adjudicating Authority under section 24 (5) of the Act. The Adjudicating Authority then issues a show cause notice under section 26 (1). The said show cause notice has to be issued within a period of 30 days upon the reference being received. Thereafter 30 days time is given for filing of the reply and furnishing of the information and after affording an opportunity of being heard, the Adjudicating Authority has to pass appropriate orders under section 26(3) in accordance with section 26(7), in which, it has been specifically mentioned that '*No order under sub-section 3 shall be passed after the expiry of one year from the end of the month in which the reference under sub-section 5 of section 24 was received'*. Thus, it is vivid that the enquiry and the adjudication are time-bound as per the statute. Once the adjudicating authority passes the order under section 26(3),

an appeal remedy has been provided under section 46. A further remedy of appeal has also been provided before the High Court under section 49 on a substantial question of law.

12. In the order impugned herein, the Learned Judge has not explained as to why the writ petitions were entertained at the first instance, when the grounds of attack could have been canvassed in the statutory appeal itself. Only if the appeal was not entertained by the appellate authority on the ground that it was after the limitation period, then, the issue would have been arisen for consideration of this Court. Such a scenario never arose and the writ petitions were filed on the basis of mere apprehension. Notwithstanding the issue of maintainability of the writ petitions on the ground of an efficacious appeal remedy available in the statute, this Court will traverse into the other major plank of the case, i.e. the orders of the Adjudicating Authority have not been passed within the period as specified under Section 26 (7) of the Act.

13. Admittedly, the second appellant made the references to the first appellant on 27.07.2018, i.e., within 15 days from the date of the provisional orders dated 20.07.2018 as mandated under section 24(5) of the Act. Upon receiving the references from the second appellant, the first appellant took the

same on file on 01.08.2018 and issued show cause notices dated 14.08.2018 and initiated proceedings under section 26(1) of the Act for adjudication. It is apparent from the records that the hearings took place before the first appellant on various dates; the orders were reserved on 17.07.2019; and the same were pronounced in all the references on 26/27/28.08.2019. As per section 26(7) of the Act, the first appellant, i.e. the Adjudicating Authority is mandated to pass an order within one year from the end of the month on the receipt of the reference under section 24(5) from the second appellant. This period of one year commenced on 01.08.2018, when the references were taken on file and expired on 31.08.2019.

14. A plain reading of the provision of law as well as the dates on which the orders were passed by the Adjudicating Authority would reveal that there has been a compliance of the statutory provisions by the appellants. The further event of the original / certified copies of the orders dated 26/27/28.08.2019 being communicated to the respondents / writ petitioners assumes significant, where the delay has been occasioned. It is the case of the appellants that this was a batch of 69 cases in which the beneficial owner was one and the same and the different benamidars are the subsidiary companies of the beneficial owner; and that the preparation of the certified copies was a time-consuming process as each order runs to more than hundred pages and

had to be prepared in triplicate. The certified copies were made ready on 04.09.2019 and 11.09.2019, after getting notarisation from the Administrative officer-cum-Registrar and the same were booked with the postal department on 12.09.2019 and 13.09.2019 for despatching the same to the three parties, i.e., Initiating Officer, writ petitioners and the beneficial owner. It is further submitted that the said orders which were sent through Post to the respondents / writ petitioners, were returned with the remark 'unserved', as the addresses of the 69 subsidiary companies, who are the benamidars, are one and the same. Thereafter, the first appellant sent those orders to the office of the second appellant and directed them to serve the same on the respondents. Accordingly, the second appellant called the respondents on various times over phone and the respondents' authorised officers, after much persuasion, finally came and collected the orders in person and thus, the orders were served on the respondents on 29.10.2019.

15. It is evident from the order sheets register and file movement register maintained in the office of the authority that the adjudication orders were passed on 26/27/28.08.2019 by the first appellant under section 26(3) of the Act. Since the documents of the public authorities are legally valid and are trustworthy, the genuineness of the same cannot be doubted, in the absence of

any conclusive proof to that effect. Therefore, the records produced by the appellants in the form of registers could be taken into consideration for ascertaining the correct state of affairs. In this connection, it may be relevant to refer to Section 35 of the Evidence Act, which states that "an entry in any public or other official book, register or stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, is kept, is itself a relevant fact". Applying the same to the facts of the present case, wherein the orders impugned in the writ petitions were passed on 26/27/28.08.2019, i.e., within the limitation period as prescribed under section 26(7) of the Act and the factum of passing of the orders was also duly recorded in the Register as 'order is passed accordingly' and the movement register also disclosed the same, this court has no hesitation to arrive at a decision that the first appellant complied with the statutory mandate and passed the adjudication orders within the period of one year from the end of the month in which the references were received.

16. Then, the ancillary question that arises for consideration herein is, as to whether the delay in the communication of the said orders to the

respondents, can be said to be non-compliance of the provisions under section 26 (7) of the Act and thereby the same would adversely affect the validity of the orders passed under section 26(3) by the adjudicating authority.

17. As a matter of fact, it is to be pointed out that the learned Judge examined the issue of limitation, from the point of view of the respondents / writ petitioners and not from the point of the authority being required to exercise power within the prescribed time limit. There are different tests to be applied for reckoning the limitation.

18. A perusal of the records would reveal that after the references were taken on file by the first appellant on 01.08.2018, there were as many as nine hearings and during the ninth hearing i.e., on 17.07.2019, orders were reserved. The orders thereafter came to be passed on 26/27/28.08.2019, which fact was duly recorded by the first appellant in the register as 'Order is passed accordingly'. Thus, the same would show that the adjudicating authority has exercised his jurisdiction in a manner as to comply with the timeline as prescribed under the Act. As such, the delay in the communication of the order copies to the respondents, which is essentially a delay of about two weeks from the date of passing of the orders on 26/27/28.08.2019 to the dates on

which the Registry had booked the order copies for despatch on 12.09.2019 and 13.09.2019, can at best be deemed to be a procedural delay. In this connection, this Court would apply the doctrine of 'substantial compliance' to the facts and circumstances of the case. In the decision of the Hon'ble Supreme Court in **Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal and others [(2011) 1 SCC 236]**, it was held as follows:

> "Doctrine of substantial compliance and "intended use"
>
> 32. The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably be expected of it, but failed or faulted on some minor or in consequent aspects which cannot be described as the "essence" or the "substance" of the requirements. Like the concept of "reasonableness", the acceptance or otherwise of a plea of substantial compliance depends upon the facts and circumstances of each case and the purpose and object to be achieved in the context of the prerequisites which are essential to achieve the object and purpose of the rule or regulation. Such a defence cannot be pleaded if a clear statutory prerequisite which effectuate the object and the scope of the statute has not been met. Certainly, it means that the court would determine whether the statute has been followed sufficiently so as to carry out the intent for which the statute was enacted and not a mirror image type of strict compliance. Substantial compliance means "actual compliance in respect to the substance essential to every reasonable object of the statute" and the court should determine whether the statute has been followed sufficiently so as to carry out the intent of the statute and accomplish the reasonable objectives for which it was passed.
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> 33. A fiscal statute generally seeks to preserve the need to comply strictly with regulatory requirements that are important, especially when a party seeks the benefits of an exemption clause that are important. Substantial compliance with an

> enactment is insisted, where mandatory and direct recruitment requirements are lumped together, for in such a case, if mandatory requirements are complied with, it will be proper to say that the enactment has been substantially complied with notwithstanding the non-compliance of directory requirements. In cases where substantial compliance has been found, there has been actual compliance with the statute, albeit procedurally faulty. The doctrine of substantial compliance seeks to preserve the need to comply strictly with the conditions or requirements that are important to invoke a tax or duty exemption and forgive non-compliance for either unimportant and tangential requirements or requirements that are so confusingly or incorrectly written that an earnest effort at compliance should be accepted.
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> 34. The test for determining the applicability of the substantial compliance doctrine has been the subject of a myriad of cases and quite often, the critical question to be examined is whether the requirements relate to the "substance" or "essence" of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance. In other words a mere attempt at compliance may not be sufficient, but actual compliance with those factors which are considered as essential."

19. That apart, it could be seen from the order impugned herein that the fact that the appeal time of 45 days as mentioned under section 46 of the Act, has to be from the date of orders, whereas the orders were actually communicated/received by the respondents only on 29.10.2019, seems to have weighed in the mind of the Learned Judge to observe that "this fact will also have a bearing on the order being passed within the period of limitation as stated in section 26(7)". For a moment, a scenario may be visualized, where an order which is well within the period of limitation, is passed within 10 months

of reference, but same is communicated/received by the party concerned after 45 days from the date of passing of the order, albeit within the period of the said one year statutory limit as imposed by the provisions of the Act. In such an event, in order to give effect and meaning to the provision, it would only have to be interpreted that the appeal period would start running only from 'the date of receipt of the order' and not from 'the date of the order'. Except the same, any other interpretation would result in incongruity and absurdity and thus, the same ought to be avoided. This illustration would expose the fallacy in the reasoning rendered by the Learned Judge and would sufficiently clarify that in cases where 'the date of the order' and 'the date of receipt of the order' are separated by considerable time, it is only the date of receipt of the order, which would be material for the purpose of calculating the limitation for appeal and this factor cannot have any bearing on the validity of the orders impugned in the writ petitions.

20. There cannot be any disagreement over the proposition that the limitation for filing an appeal would start running only from the date of communication of the order to be appealed against. In **Chhattisgarh State Electricity Board v. Central Electricity Regulatory Commission & others [(2010) 2 SCC 79]**, the Hon'ble Supreme Court, while considering the issue

relating to date of passing and communication of orders in the background of the law of limitation in filing appeals, held as follows:

> "20.In **Raja Harish Chandra Raj Singh v. Deputy Land Acquisition Officer** MANU/SC/0386/1961 : AIR 1961 SC 1500, this Court considered whether an award made under the Land Acquisition Act, 1894 can be treated to have been communicated on the date of its making. The application filed by the respondent for making reference under Section 18 of the Land Acquisition Act was rejected by the Collector on the ground that the same had been made after more than six months from the date of award i.e., 25.3.1951. The High Court dismissed the writ petition filed by the appellant. This Court noted that no notice of the award was given to the appellant as per the requirements of Section 12(2) and it was only on or about January, 1953 that he received the information about making of the award. He then filed application on 24.2.1953 for reference. This Court considered the nature of the award made by the Collector under Section 12(2) and held that the period of six months prescribed for making application would commence from the date the award was made known to the party. Paragraph 6 of the judgment which contains discussion on the issue of communication of award reads as under:
>
> > There is yet another point which leads to the same conclusion. If the award is treated as an administrative decision taken by the Collector in the matter of the valuation of the property sought to be acquired it is clear that the said decision ultimately affects the rights of the owner of the property and in that sense, like all decisions which affect persons, it is essentially fair and just that the said decision should be communicated to the said party. The knowledge of the party affected by such a decision, either actual or constructive, is an essential element which must be satisfied before the decision can be brought into force. Thus considered the making of the award cannot consist merely in the physical act of writing the award or signing it or even filing it in the office of the Collector; it must involve the

> communication of the said award to the party concerned either actually or constructively. If the award is pronounced in the presence of the party whose rights are affected by it can be said to be made when pronounced. If the date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced the award is said to be communicated to the said party even if the said party is not actually present on the date of its pronouncement. Similarly if without notice of the date of its pronouncement, an award is pronounced and a party is not present the award can be said to be made when it is communicated to the party later. The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fairplay and natural justice the expression "the date of the award" used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words "from the date of the Collector's award" used in the proviso to Section 18 in a literal or mechanical way.
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> (emphasis supplied)

21. In **Assistant Transport Commissioner, Lucknow v. Nand Singh** [**MANU/SC/0380/1979 : (1979) 4 SCC 19**], the Hon'ble Supreme Court dealt with a similar question in the context of filling an appeal under Section 15 of the U.P. Motor Vehicles Taxation Act, 1935. The Allahabad High Court held that *"the date of communication of the order will be the starting point for limitation of filing an appeal"*. While approving the view taken by the High Court, it was observed as under:

> "In our opinion, the judgment of the High Court is right and cannot be interfered with by this Court. Apart from the reasons given by this Court in the earlier judgment to the effect that the order must be made known either directly or constructively to the party affected by the order in order to enable him to prefer an appeal if he so likes, we may give one more reason in our judgment and that is this: It is plain that mere writing an order in the file kept in the office of the Taxation Officer is no order in the eye of law in the sense of affecting the rights of the parties for whom the order is meant. The order must be communicated either directly or constructively in the sense of making it known, which may make it possible for the authority to say that the party affected must be deemed to have known the order. In a given case, the date of putting the order in communication under certain circumstances may be taken to be the date of the communication of the order or the date of the order but ordinarily and generally speaking, the order would be effective against the person affected by it only when it comes to his knowledge either directly or constructively, otherwise not. On the facts stated in the judgment of the High Court, it is clear that the respondent had no means to know about the order of the Taxation Officer rejecting his prayer until and unless he received his letter on October 29, 1964. Within the meaning of Section 15 of the U.P. Motor Vehicle Taxation Act that was the date of the order which gave the starting point for preferring an appeal within 30 days of that date."
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> (emphasis supplied)

22. In **Muthiah Chettiar v. I.T. Commissioner, Madras [AIR 1951 Mad 2004]**, a two-Judge Bench of Madras High Court considered the question whether the limitation of one year prescribed for filing revision under Section 33A(2) of the Income Tax Act, 1922 is to be computed from the date when the order was signed by the Income-tax Commissioner or the date on which the petitioner had an opportunity of coming to know of the order. It

was argued on behalf of the department that other provisions of the Act have been amended to provide for appeal within specified time to be counted from the date of the receipt of the order sought to be appealed against, but no such amendment was made in Section 33A and therefore, the period of limitation will start from the date of order. While rejecting the argument, Rajamannar, C.J., referred to earlier decisions in **Secretary of State v. Gopisetti Narayanasami 34 Mad 151 and Swaminatha v. Lakshmanan [MANU/TN/0442/1929 : AIR 1930 Mad 490]** and observed as under:

> "...The only question that we have to decide is as to whether there is anything in the reasoning of the learned Judges in *Secretary of State v. Gopisetti Narayanasami* 34 Mad. 151 : 8 I.C. 398 & *Swaminatha v. Lakshmanan* 53 Mad. 491 : A.I.R. 1930 Mad. 490 which makes the application of the rule laid down by them dependent on the provisions of a particular statute. We think there is none. On the other hand, we consider that the rule laid down by the learned Judges in the above two decisions and we are taking the same view - is based upon a salutary and just principle, namely that, if a person is given a right to resort to the remedy to get rid of an adverse order within a prescribed time, limitation should not be computed from a date earlier than that on which the party aggrieved actually knew of the order or had an opportunity of knowing the order & therefore, must be presumed to have had knowledge of the order".

23. In **Collector of Central Excise, Madras v. M.M. Rubber and Co., Tamil Nadu [MANU/SC/0550/1992 : (1992) Supp 1 SCC 471]**, a three-Judge Bench highlighted a distinction between making of an order and

communication thereof to the affected person in the context of Section 35E(3) and (4) of the Central Excise Act, 1944. The Bench noted the scheme of Section 35, distinction between Sub-sections (3) and (4) thereof and held that "*in case where the order is subject to appeal, the same is required to be communicated to the affected person*". The relevant portions of that judgment are extracted below:

> "5. Before we discuss the arguments of the learned Counsel, it is necessary to set out some relevant provisions in the Act. Section 35 of the Act provides for an appeal by a person aggrieved by any decision or order passed under the Act by a Central Excise Officer lower than a Collector of Central Excise and that such an appeal will have to be filed "within three months from the date of the communication to him of such decision or order". Sub-section (5) of Section 35A requires that on the disposal of the appeal, the Collector (Appeals) shall communicate the order passed by him to the appellant, the adjudicating authority and the Collector of Central Excise. Section 35B provides for a right of appeal to any person aggrieved by, among other orders, (1) an order passed by the Collector (Appeals) under Section 35A and (2) a decision or order passed by the Collector of Central Excise as an adjudicating authority. Such an appeal will have to be filed "within three months from the date on which the order sought to be appealed against is communicated to the Collector of Central Excise or as the case may be the other party preferring the appeal". The Appellate Tribunal also is required to send a copy of the order passed in the appeal to the Collector of Central Excise and the other party to the appeal....
>
> 8. At this stage itself we may state that Sub-section (4) of the Act provides that the adjudicating authority shall file the application before the Tribunal in pursuance of the order made under Sub-section (1) or Sub-section (2) "within a period of three months from the date of communication of the order

under Sub-section (1) or Sub-section (2) to the adjudicating authority".

9. The words "from the date of decision or order" used with reference to the limitation for filing an appeal or revision under certain statutory provisions had come up for consideration in a number of cases. We may state that the ratio of the decisions uniformly is that in the case of a person aggrieved filing the appeal or revision, it shall mean the date of communication of the decision or order appealed against. However, we may note a few leading cases on this aspect.

10. Under Section 25 of the Madras Boundary Act, 1860 the starting point of limitation for appeal by way of suit allowed by that section was the passing of the Survey Officer's decision and in two of the earliest cases, namely, Annamalai Chetti v. Col. J.G. Cloete and Seshama v. Sankara it was held that the decision was passed when it was communicated to the parties. In Secretary of State for India in Council v. Gopisetti Narayanaswami Naidu Garu construing a similar provision in the Survey and Boundary Act, 1897 the same High Court held that a decision cannot properly be said to be passed until it is in some way pronounced or published under such circumstances the parties affected by it have a reasonable opportunity of knowing what it contains. "Till then though it may be written out, signed and dated, it is nothing but a decision which the officer intends to pass. It is not passed so long it is open to him to tear off what he has written and write something else." In Raja Harish Chandra Raj Singh v. Deputy Land Acquisition Officer construing the proviso to Section 18 of the Land Acquisition Act which prescribed for applications seeking reference to the court, a time-limit of six weeks of the receipt of the notice from the Collector under Section 12(2) or within six months from the date of the Collector's award whichever first expires, this Court held that the six months period will have to be calculated from the date of communication of the award. In Asstt. Transport Commissioner, Lucknow v. Nand Singh construing the provision of Section 15 of the U.P. Motor

Vehicles Taxation Act, it was held that for an aggrieved party the limitation will run from the date when the order was communicated to him.

11. The ratio of these judgments were applied in interpreting Section 33A(2) of the Indian Income Tax Act, 1922 in Muthia Chettiar v. CIT with reference to a right of revision provided to an aggrieved assessee. Section 33A(1) of the Act on the other hand authorised the Commissioner to suo moto call for the records of any proceedings under the Act in which an order has been passed by any authority subordinate to him and pass such order thereon as he thinks fit. The proviso, however, stated that the Commissioner shall not revise any order under that Sub-section "if the order (sought to be revised) has been made more than one year previously". Construing this provision the High Court in Muthia Chettiar case held that the power to call for the records and pass the order will cease with the lapse of one year from the date of the order by the subordinate authority and the ratio of date of the knowledge of the order applicable to an aggrieved party is not applicable for the purpose of exercising suo moto power. Similarly in another decision reported in Viswanathan Chettiar v. CIT construing the time-limit for completion of an assessment under Section 34(2) of the Income Tax Act, 1922, which provided that it shall be made "within four years from the end of the year in which the income, profit and gains were first assessable," it was held that the time-limit of four years for exercise of the power should be calculated with reference to the date on which the assessment or reassessment was made and not the date on which such assessment or reassessment order made under Section 34(2) was served on the assessee.

12..... if an authority is authorised to exercise a power or do an act affecting the rights of parties, he shall exercise that power within the period prescribed therefor. The order or decision of such authority come into force or becomes operative or becomes an effective order or decision on and from the date when it is signed by him. The date of such order or decision is the date on which the order or decision was passed or made: that is to say when he ceases to have any authority to tear it off and draft a different

order and when he ceases to have any locus paetentiae. Normally that happens when it can be said to have left his hand. The date of communication of the order to the party whose rights are affected is not the relevant date for purposes of determining whether the power has been exercised within the prescribed time.

13. So far as the party who is affected by the order or decision for seeking his remedies against the same, he should be made aware of passing of such order. Therefore courts have uniformly laid down as a rule of law that for seeking the remedy the limitation starts from the date on which the order was communicated to him or the date on which it was pronounced or published under such circumstances that the parties affected by it have a reasonable opportunity of knowing of passing of the order and what it contains. The knowledge of the party affected by such a decision, either actual or constructive is thus an essential element which must be satisfied before the decision can be said to have been concluded and binding on him. Otherwise the party affected by it will have no means of obeying the order or acting in conformity with it or of appealing against it or otherwise having it set aside. This is based upon, as observed by Rajmannar, C.J. in Muthia Chettiar v. CIT "a salutary and just principle". The application of this rule so far as the aggrieved party is concerned is not dependent on the provisions of the particular statute, but it is so under the general law.

18. Thus, if the intention or design of the statutory provision was to protect the interest of the person adversely affected, by providing a remedy against the order or decision any period of limitation prescribed with reference to invoking such remedy shall be read as commencing from the date of communication of the order. But if it is a limitation for a competent authority to make an order the date of exercise of that power and in the case of exercise of suo moto power over the subordinate authorities' orders, the date on which such power was exercised by making an order are the relevant dates for determining the limitation. The ratio of this distinction may also be founded on the principle that the government is bound by the proceedings of its officers but persons affected are not concluded by the decision."

(emphasis supplied)

24.In ***Commissioner of Income Tax, Madurai and Others v. Saravana Spinning Mills (p) Ltd. [(2007) 7 SCC 298]*** it was held by the Hon'ble Supreme Court as under:

> "27.An order passed by a competent authority dismissing a government servant from services requires communication thereof as has been held in State of Punjab vs. Amar Singh Harika but an order placing a government servant on suspension does not require communication of that order. What is, therefore, necessary to be borne in mind is the knowledge leading to the making of the order. An order ordinarily would be presumed to have been made when it is signed. Once it is signed and an entry in that regard is made in the requisite register kept and maintained in terms of the provisions of a statute, the same cannot be changed or altered. It, subject to the other provisions contained in the Act, attains finality. Where, however, communication of an order is a necessary ingredient for bringing an end result to a status or to provide a person an opportunity to take recourse to law if he is aggrieved thereby, the order is required to be communicated.

25.In ***Ushaben Vs.Kishorbhai Chunilal Talpada and others, [2012 6 SCC 384],*** the Hon'ble Supreme Court held thus:

> "38. From the above, it becomes evident that the order dated 19.07.2011 would be binding on the Chairman-cum-Managing Director for the purposes of working out the limitation, but so far as the petitioner is concerned, the relevant date would be the date when the order is communicated to the petitioner. The order made by a statutory authority or an officer exercising the powers of that authority comes into force so far as the authority/officer is concerned, from the date it is made by the authority/officer concerned. But so far as the affected party is concerned, the order made by the appropriate authority would be the date on which it is communicated. In my opinion, Section 3(2) of the Arbitration and Conciliation Act, 1996 is a mere reiteration of the aforesaid general principal of law."

26. Further, a reading of the provisions would show that the Act does

not envisage an application by the parties for obtaining a certified copy of the order passed by the Adjudicating Authority. This would automatically lead to a presumption that the parties would have to wait for a receipt of the certified copy of the order passed by the Adjudicating Authority and it is only then that they will be in a position to file an appeal. This aspect would also show an inference that the limitation period for filing the appeal would have to start only from 'the date of receipt of the order'. The provisions of the statute cannot be construed in a manner as to infuse or import an absurd meaning to it. It is therefore clear that for the purposes of filing an appeal, the limitation would start running only from the date of receipt of the order. Inspiration may also be drawn from the provisions of section 12 (2) of the Limitation Act which specifically mentions that in computing the period of limitation for filing an appeal, the period of time requisite for obtaining the order to be appealed against, is excluded.

27. All the above-mentioned judgments are in the context of the period of limitation for filing an appeal and every judgment is an authority only in respect of the context, in which, it was made and in respect of the merits of each case. The principle that an order takes effect only on the date of communication of the order and not immediately on passing of the order, if

there is any time lag between the date of passing of the order and the date of actual communication of the order, by itself cannot be understood to have a bearing on the very validity of the orders passed by the Adjudicating Authority under section 26 (3), on the premise that the orders have been passed on 26/27/28.08.2019 within the period as mentioned under sub section 7 of section 26, which was duly recorded in the Register maintained by the authority as 'order is passed accordingly'. Therefore, the delay occurred for preparation of certified copies of the order, after getting notarisation from the Administrative Officer-cum-Registrar, on 04.09.2019 and 11.09.2019 and the same were booked for despatch on 12.09.2019 and 13.09.2019 to the respondents, is only procedural lapse and the same cannot be understood as postponing the date of making the orders so validly passed by the first appellant / Adjudicating Authority, so as to invalidate the same.

28. It is legally correct that if an order remains within the control of an authority beyond the period of limitation stipulated, there is a possibility that such an order might be modified or altered even beyond the stipulated period, thus compromising the limitation prescribed. Whereas in the present case, there was not a single case, but a batch of 69 cases with each order

running to hundreds of pages as contended by the learned counsel for the appellants, the period of 15 days from the date of passing of the orders to the date of dispatch (which period was consumed for preparation of certified copies in triplicate), would certainly appear to be a reasonable period. The assumption that such period would create possibility for modification or alteration of the substance of the orders, can at best be said to be rooted in suspicion and conjecture without having any basis in reality, in the facts and circumstances of the case.

29. That apart, it is an established principle of law that unless there is any glaring discrepancy or any specific averment disputing the statement made by an authority, as borne out by the records, to dispute the date of the order, it may be presumed under Section 114 of the Evidence Act that the official acts have been carried out in a proper manner. The Learned Judge may not have been correct in undertaking such an exercise as there is no strong basis to doubt the fact that the orders were passed on 26/27/28.08.2019. It is beyond the pale of doubt that an order would take effect only on the actual communication of the said order to the party concerned. It is in this context that the appeal provision can be said to run from the date of receipt of the order. However, the fact that an order takes effect only from the date of its

communication, cannot be said to dilute the validity of an order, which is passed well within time as mandated by the statute. Viewing this aspect, it is seen that the period between 17.07.2019 on which the orders were reserved and 26/27/28.08.2019 on which dates, the orders were passed, which was duly recorded in the register as 'order is passed accordingly' and the same were made ready and notarized on 04.09.2019 and 11.09.2019 and booked for dispatch on 12.09.2019 and 13.09.2019, cannot be said to be either prolonged or unexplained delay, as held by the Learned Judge.

30. In the decisions relied upon, particularly, in **Malayil Hills v. State of Kerala rendered** in TRC Nos. 15 and 16 of 1981 dated 07.06.1982, the facts were quite different and the considerable delay of about six months in dispatching the orders was the context, in which, the Bench held that such an unusual delay means that the order will deemed to have been passed only when it has been effectively communicated to the party concerned. However, as already elaborated earlier, in the present case, the proximity of the dates from the date of passing of the orders till their dispatch, especially when the same were in a batch of 69 cases, cannot be said to be an undue delay or that cannot muster the test of legality. Moreover, the intent of the Act and the objects show that it is a penal statute, where the offender cannot be given the

opportunity to take unfair advantage of technicalities, when there has been more than substantial compliance of the provisions of the Act. Otherwise, the the purpose for which the Act was enacted, would be defeated.

C. FINDINGS

31. In view of the above analysis of the facts, in the light of the legal principles as stated in the preceding paragraphs, this Court is of the opinion that the Learned Judge was not correct in entertaining the writ petitions, when there being an efficacious appeal remedy under Section 46 of the Act, where all the contentions, including whether the order has been passed by the Adjudicating Authority in accordance with Section 26 (7) of the Act, could have been raised and decided. As already discussed and delved in detail above, the words "date of the order" appearing in Section 46 can only be interpreted and read to mean "date of receipt of the order" for the purpose of computing the limitation for filing the appeal under Section 46 of the Act.

32. However, the Learned Judge without going into the question of maintainability of the writ petitions, travelled into the case on the ground of limitation raised by the respondents / writ petitioners, as prescribed under

Section 26(7) of the Act and rendered a finding on the same. Therefore, this Court has to necessarily test the said order under appeal in the light of the provisions of the Act and the applicable legal principles. Accordingly, on such application, this Court has reached the firm conclusion that the orders passed by the first appellant do not suffer from infirmity on the ground of alleged violation of Section 26 (7) of the Act. In other words, the orders impugned in the writ petitions are well within the timeline as stated under Section 26 (7) and is immune from attack on this ground.

33. Since the other aspects on the merits of the case are not the subject matter of this batch of appeals and all these intra court appeals have arisen from the order of the Learned Judge, where the only ground taken by the respondents/ writ petitioners was on the limitation as per Section 26(7) of the Act, this Court is not rendering any finding on the merits of the orders passed by the first appellant / Adjudicating Authority under Section 26 (3) of the Act.

34. In such view of the matter, it is therefore left open to the parties to challenge the orders impugned in the writ petitions before the Appellate Authority under Section 46 of the Act, which authority shall entertain the

appeal, if it is filed within 45 days from the date of receipt of this judgment, so as to exclude the time consumed in litigation, in the interest of parties, and in consonance with the general principles of the law of limitation. Except the issue decided by this Court with regard to the validity of the orders passed by the first appellant in accordance with section 26(7) of the Act, all other issues are left open to be decided by the Appellate Authority, in accordance with law.

35. At this juncture, it would also be more appropriate to observe that the appellants should forthwith adopt the practice of uploading the orders passed by the Adjudicating Authority as well as Appellate Authority online in a dedicated website. Such practice of uploading the orders immediately after passing of the same would obviate the situation, such as, the case on hand, and the subsequent procedural delays, after passing of the orders till the communication of the certified copies of the same to the parties, would not in any way affect the validity of the orders of the Adjudicating Authority with regard to the statutory timeline to be followed nor would there be any doubt raised or cast on the actual date of passing of the orders.

D. CONCLUSION

36. Resultantly, the order of the learned Judge is set aside and all the appeals are allowed with the aforesaid observations and directions. No costs.

Consequently, connected miscellaneous petitions are closed.

(R.M.D., J.) **(M.S.Q., J.)**

04.02.2022

Index : Yes / No
Internet: Yes/No

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To

1. The Adjudicating Authority
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R. MAHADEVAN, J

and

MOHAMMED SHAFFIQ, J

rsh

WA Nos. 1682 of 2021 etc. batch

04.02.2022