IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2015

CORAM:

The Hon'ble Mr.Justice SATISH K. AGNIHOTRI
and
The Hon'ble Mr.Justice M.VENUGOPAL

W.A.Nos.58 to 61 of 2015
and
M.P.Nos.1 to 1 and 2 to 2 of 2015

1. The Assistant Commissioner of Income Tax,
   Large Taxpayer Unit-1.
   1775, Jawaharlal Nehru Inner Ring Road,
   Annanagar Western Extension,
   Chennai – 600 101

2. Union of India
   Rep. By its Secretary,
   Ministry of Finance,
   Department of Revenue
   New Delhi ...Appellants/Respondents in all the Appeals

Vs.

Sundaram Asset Management Co., Ltd.,
(Formerly known as Sundaram
BNP Paribas Asset Management
Company Limited)
rep. By its Chief Principal Officer,
Sundaram Towers, I Floor,
No. 46, Whites Road,
Chennai – 600 014 ...Respondent/Petitioner in all the Appeals

Prayer: Writ Appeals filed under Clause 15 of the Letter Patent Appeal against the Orders of this Court dated 18.11.2014 made in W.P. Nos. 15939 of 2014, 21478 of 2014, 21479 of 2014 and 21480 of 2014 respectively.

Prayer in W.P.No.15939 of 2014 : To issue a writ of Mandamus or any other appropriate Writ, Order or Direction, in the nature of a Writ directing the 1st respondent to grant refund of the amount due for AY 2008-09 as sanctioned vide order dated 22.4.2014 passed by the 1st respondent giving effect to the order of the Income Tax Appellate Tribunal in ITA No.1774/Mds/2012 dated 19.7.2013

Prayer in W.P.No.21478 of 2014 : To issue a Writ of Certiorari or any other appropriate Writ, Order of Direction, in the nature of Writ, calling for the records of adjustment of refund in terms of order dated 22.4.2014 for assessment year 2009-10 against tax demanded under the Order dated 24.03.2014 issued under Section 143 (3) of the Income Tax Act, 1961 for the Assessment Year 2011-12, quash the same.

Prayer in W.P.No.21478 of 2014 : To issue a Writ of Certiorari or any other appropriate Writ, Order or Direction, in the nature of Writ, calling for the records of adjustment of refund in terms of order dated 22.4.2014 for assessment year 2010-11 against the tax demanded under the Order dated 24.03.2014 issued under Section 143 (3) of the Income Tax Act, 1961 for the Assessment Year 2011-12, quash the same.

Prayer in W.P.No.21480 of 2014 : To issue a Writ of Certiorari or any other appropriate Writ, Order or Direction, in the nature of Writ, calling for the records of adjustment of refund in terms of the intimation dated 29.03.2014 for assessment year 2012-13 issued under Section 143(1) of the Income Tax Act, 1961 against the tax due under the Order dated 24.03.2014 issued under Section 143(3) of the Income Tax Act, 1961 for the Assessment Year 2011-12, quash the same.

For Appellants : Mr.T.Pramod Kumar Chopda

For Respondent : Mr.S.Lakshmikumaran

C O M M O N J U D G M E N T

[Judgment of the Court was Delivered By
M.VENUGOPAL, J.]

The Appellants / Respondents have focused the present intra court Writ Appeals as against the (i) Order dated 18.11.2014 in W.P.No.15939 of 2014 relating to the Assessment Year 2008-2009 (ii) as against the Order dated 18.11.2014 in W.P.No.21478 of 2014 relating to the Assessment Year 2009-2010 (iii) as against the Order dated 18.11.2014 in W.P.No.21479 of 2014 relating to the Assessment Year 2010-2011 (iv) as against the Order dated 18.11.2014 in W.P.No.21480 of 2014 relating to the Assessment Year 2012-2013 passed by the Learned Single Judge respectively.

2.The Learned Single Judge after examining the entire facts and circumstances of the case on record had ultimately allowed the Writ Petition by observing that the Respondent/Petitioner (In four

Appeals) had made a request in their petition dated 28.03.2013 that the adjustment should not have been made, that too, simultaneously while sanctioning refund, which should have been sanctioned as early as in January, 2014. Further, the Learned Single Judge had directed the 1st Appellant/1st Respondent to restore the refund claims and sanction refund to the 1st Respondent/Petitioner within a period of two weeks from the date of receipt of copy of this Order etc.,

3.Moreover, the Learned Single Judge had further added that the 1st Appellant/1st Respondent shall take up for consideration, the Petition dated 28.03.2013, hear the 1st Respondent/Petitioner in person and pass Orders on merits and in accordance with Law within a period of two weeks thereafter.

4.The Learned Counsel for the Appellants (in four Writ Appeals) submits that the Orders of the Learned Single Judge dated 18.11.2014 passed in W.P.Nos.15939, 21478, 21479 and 21480 of 2014 are against probabilities and evident of the facts placed before him and also contrary to the well settled principles with regard to "Law on Taxation".

5.The Learned Counsel for the Appellants urges before this Court that the Learned Single Judge proceeded on the basis that refunds were to be granted to the Respondent/Assesse in respect of Assessment Years 2008-2009, 2009-2010, 2010-2011 and 2012-2013 notwithstanding the statutory mandate enjoined under Section 245 of the Income Tax, 1961.

6.Advancing his arguments, the Learned Counsel for the Appellants emphatically projects an argument that Section 245 of Income Tax Act provides that where under any circumstances refund becomes due to an assesse, the Assessing Officer is expected to adjust the same as against other outstanding dues pending under the Act. Furthermore, in the present case, although the aforesaid Assessment Years resulted in refund, there is a subsistence demand in regard to the Assessment Year 2011-2012 and therefore, the Assessing Officer is entitled to adjust the subsisting demand for 'Assessment Year' 2011- 2012 with the refunds available after intimation.

7. Expatiating his contention, the Learned Counsel for the Appellants strenuously submits that the Learned Single Judge had committed an error by adopting a narrow reasoning to the effect that refunds had accrued for earlier Assessment Years based on earlier Appellate Orders, which was binding the Department in so far as Assessment Year 2011-2012 is an erroneous one more particularly for the reason that those proceedings had not attained finality, as the same is under challenge by the Revenue before the Higher Forums.

8.Continuing further, it is represented on behalf of the Appellants that the Learned Single Judge should have flourished the issue in a wholesome manner taking into account that finality on the merits of Assessment Years were still pending, on Statutory Appeals and Section 245 of the Income Tax Act adopted by the 'Assessing Officer' was only a means of maintaining the balance of inconvenience in safeguarding the interest of the Revenue.

9.The Learned Counsel for the Appellants invites the attention of this Court by pointing out that Section 245 of the Income Tax Act is an inbuilt mechanism to take note of the outstanding dues, if any pending, while processing the refund claim and in such a situation, it is incumbent upon the Assessing Officer to intimate such adjustment of the refund in lieu of the subsisting demand which has been scrupulously followed by the 1st Appellant.

10.The core argument advanced on behalf of the Appellants is that when the Respondent/Writ Petitioner sought for a purported Stay under Section 220(6) of the Income Tax Act in terms of its letter dated 28.03.2014 for the Assessment Year 2011-2012, no appeal in respect of the said 'Assessment Year' was even filed and pending and as such, the issue for considering the stay petition did not arise.

11.The Learned Counsel for the Appellants submits that the Learned Single Judge had failed to take note of an important fact that the disposal of Stay Petition under Section 220(6) of the Income Tax Act by the 'Assessing Officer' could be carried out only in circumstances where a Statutory Appeal in respect of Assessment Years were filed and pending on the said date.

12.In the present case, the Statutory Appeal before the Appellate Authority) (CIT-A) itself was filed only on 25.04.2014 and as such the question of Assessing Officer being able to consider the Stay Application atleast before the said date does not arise.

13.Apart from the above, the plea taken on behalf of the Appellants is that the Learned Single Judge while passing the Impugned Order in the Writ Petitions had over looked the material documents submitted by the Revenue at the time of hearing the Writ Petitions which revealed that later, the 1st Appellant had disposed of the Stay Application under Section 220(6) of the Income Tax Act after hearing the Respondent/Assesse on 05.06.2014 which is the correct course adopted, as the Appeal was pending on that date.

14.The Learned Counsel for the Appellants takes a prime stand that the Learned Single Judge was carried away only by the single factor that refunds had accrued to the Respondent/Assesse for various other 'Assessment Years' and the action of the 1st Appellant by resorting to Section 245 of the Income Tax Act and adjusting the same for any new subsisting due could not be validly carried out, which is an erroneous interpretation and would defeat the intent of said Section of the 245 of the Act. That part, positive direction issued by the Learned Single Judge to process the refund claim of the Respondent/Petitioner and to sanction refund within two weeks runs counter to express ingredients of Section 245 of Income tax Act.

15.The Learned Counsel for the Appellants contends that the 1st Appellant had followed the Law under Section 245 of the Income Tax Act by intimating the adjustment as pointed out in the decision of this Court in Cognizant Technology Solutions India (P) Ltd., v. The Deputy Commissioner of Commercial Tax (356 ITR at Page 373).

16.The Learned Counsel for the Appellants forcefully submits that the Learned Single Judge should have seen the ingredients of Section 245 of the Income Tax Act do not contemplate any reasoning to be afforded by the 1st Appellant for resorting to set-off/adjustment as per decision of this Court in Sabena Detergents v. Commissioner of Income Tax reported in (2001) 248 ITR at Page 0385 wherein it is held as follows:-

> "There is nothing in Section 245 of the Act to warrant the conclusion that the task of adjusting the refund towards the arrears of tax payable by the assessee is a quasi-judicial proceeding. Section 215 of the Act in terms does not require any show-cause notice being given, calling upon the assessee to explain as to why the adjustment should not be made, nor does it contemplate any hearing. All that Section 245 of the Act requires the authorities to do is to make a readjustment after giving an intimation in writing to such person of the action proposed to be taken under this Section. The authorities are not required to go beyond that the section itself requires them to do."

17.In response, it is the submission of the Learned Counsel for the Respondent/Writ Petitioner that the Income Tax Appellate Tribunal had decided the issue on merits repeatedly in favour of the Respondent for the last three Assessment Years, viz., Assessment Years 2008-2009, 2009-2010 and 2010-2011 respectively. Furthermore, as against the Orders of the Income Tax Appellate Tribunal, the 1st Appellant's Department had not obtained Stay and therefore, the Orders of the Income Tax Appellate Tribunal still holds the field and binding on the Appellants.

18.The Learned Counsel for the Appellants brings it to the notice of this Court that inspite of the Income Tax Appellate Tribunal's Order in respect of previous years, the Appellant's

Department had not moved Stay of the said Orders, therefore, this Court, had passed the Orders confirming his demand for the Assessment year 2011- 2012 (Subsequent Assessment Year) on the very same issues once again, which is in violation of Doctrine of Judicial Discipline done with a sole motive to deny a refund legitimately due to the respondent.

19.It is further represented on behalf of the Appellants that the Respondent / Petitioner had appealed against the aforesaid Assessment Order to the Commissioner of Income Tax (Appeals) and also filed a Stay Petition/Application with the Department against recovery of taxes pending disposal of the Appeal.

20.The Learned Counsel for the Appellants contends that the Appellant's Department had confirmed and sanctioned the 'Refund' due to the Respondent as per refund order, but, failed to issue the Cheque for the same. Moreover, the Appellant's Department had ignored the Stay Application conveniently against the recovery of taxes and proceeded to Assess Statement which was already sanctioned to the Respondent/Petitioner against the Official demand raised on it. Further, the Learned Single Judge while passing orders in the Writ Petition had only directed the payment of refund already sanctioned and had not passed Orders for sanctioning the refund itself.

21.The Learned Counsel for the Appellants takes a legal plea that the ingredients of Section 245 of Income Tax Act cannot make a legal right of a Assesse under Section 220(6) of the Income Tax Act completely a redundant one.

22.The Learned Counsel for the Respondent relies on the following decisions:-

(a) In the decision UTI Mutual Fund V. Income-Tax Officer and Others reported in (2012) 345 ITR - at pages 71 and 72 it is observed and held as under:-

> "Administrative directions for fulfilling recovery targets for the collection of revenue should not be at the expense of foreclosing remedies which are available to assessees for challenging the correctness of a demand. The sanctity of the rule of law must be preserved. The remedies which are legitimately open in law to an assessee to challenge a demand cannot be allowed to be foreclosed by a hasty recourse to coercive powers. Assessing Officers and appellate authorities perform quasi-judicial functions under the Income-tax Act, 1961. Application for stay requires judicial consideration. Rejecting such applications without hearing the assessee, considering the submissions and indicating at least brief reasons is impermissible.
>
> The following are important: (1) No recovery of tax

should be made pending (a) expiry of time limit for filing an appeal; (b) disposal of a stay application, if any, moved by the assessee and for a reasonable period thereafter to enable the assessee to move a higher forum, if so advised. Coercive steps may, however, be adopted where the authority has reason to believe that the assessee may defeat the demand, in which case brief reasons may be indicated. (2) The stay application, if any, moved by the assessee should be disposed of after hearing and bearing in mind the guidelines in KEC International Ltd., V. B.R.Balakrishnan (2001) 251 ITR 158 (Bom). (3) If the Assessing Officer has taken a view contrary to what has been held in the preceding previous years without there being a material change in facts or law, that is a relevant consideration in deciding the application for stay. (4) When a bank account has been attached, before withdrawing the amount, reasonable prior notice should be furnished to the assessee to enable the assessee to make a representation or seek recourse in law. (5) In exercising the powers of stay, the Income-tax Officer should not act as a mere tax gatherer but as a quasi judicial authority vested with the public duty of protecting the interests of the Revenue while at the same time balancing the need to mitigate hardship to the assessee. Though the Assessing Officer has made an assessment, he must objectively decide the application for stay considering that an appeal lies against his order: the matter must be considered from all its facets, balancing the interest of the assessee with the the protection of the Revenue..."

(b) In the decision Maruti Suzuki India Ltd., V. Deputy Commissioner of Income Tax reported in (2012) 347 ITR at Page 43 (Delhi) at Special Pages 44 and 45, it is observed and held as follows:-

"Each assessment year is treated as separate and independent under the Income-tax Act, 1961. Section 245 of the Act permits the Revenue to recover the demand of one year which is pending by adjusting the refund due for another year. The term "refund" has not been defined in the Act and, therefore, it has to be understood and interpreted in the manner in which it is understood in day-to-day life. The term "recovery" in common parlance includes adjustments. The word "recovery" is comprehensive and includes both coercive steps to recover the demand and adjustment of refund to recover the demand. Adjustment under section 245 of the Act is a method of recovery.

Section 220(6) which permits the Assessing Officer to treat the assessee as not in default is not applicable when an appeal is preferred before the Tribunal, as it applies only when an assessee has filed an appeal under section 246 or section 246A. As per Circular No.1914, dated December 2, 1993, the Assessing Officer may reserve a right to adjust, if the circumstances so warrant. In a given case, the Assessing Officer may not reserve the right to refund. Further, reserving a right is different from exercise of right or justification for exercise of a discretionary right/power. Moreover, the circular is not binding on the Tribunal.

The Tribunal has power to grant stay as an inherent power vested in the appellate authority as well as under section 254 and the rules. The Tribunal is competent to stay recovery of the demand and if an order for "stay of recovery" is passed, the Assessing Officer should not pass an order of adjustment under section 245 to recover the demand. In such cases, it is open to the Assessing Officer to ask for modification or clarification of the stay order to enable him to pass an order of adjustment under section 245 of the Act. Different parameters and considerations can be applied when a stay order is passed, against use of coercive methods for recovery of demand and when adjustment is stayed. Therefore, the Tribunal can stay adoption of coercive steps for recovery of demand but may permit adjustment under section 245. When and in what cases, adjustment under section 245 of the Act should be stayed would depend upon the facts and circumstances of the case. The discretion is to be exercised judiciously. The nature of additional resulting in the demand is a relevant consideration. Normally, if the same addition/disallowance/issue has already been decided in favour of the assessee by the appellate authority, the Revenue should not be permitted to adjust and recover the demand on the same ground. In exceptional cases, which include the parameters stated in Section 241 of the Act, adjustment can be permitted/allowed by the Tribunal.

The petitioner was entitled to refund of Rs.122.57 crores and Rs.107.42 crores for the assessment years 2003-04 and 2005-06 respectively. In normal course, the refunds should have been paid by the authorities to the petitioner but for the adjustment against the demand for the assessment year 2006-07. An application for stay was dismissed."

23.At this stage, it is to be borne in mind that Section 245 of the Income Tax Act does not either in express terms or by necessary implication require that the assesse should be in default either within the ordinary meaning of that expression or as that expression has been defined by Section 220 of the Act as per decision (S.RM.AR.RM.Ramanathan Chettiar V. Additional I.T. Officer (1956) 29 ITR at Page 683 (Mad)).

24.As a matter of fact, the procedure enunciated under Section 245 of the Income Tax Act is mandatory, just and fair and the assesse in question cannot be made to suffer for the incorrect or wrong uploading of arrears and wrong and incorrect adjustment of refund on the part of the respondents (Court on its own Motion v. CIT: All India Federation of Tax Practitioners v. Union of India reported in (2013) 352 ITR 273 (Del))

25.Furthermore, in the decision Cognizant Technology Solutions India P.Ltd., V. Deputy CIT reported in (2013) 356 ITR at page 373 (Madras), it is held that,

"Where there being no intimation in writing to the assessee before making adjustment of refund and the Deputy Commissioner had not followed the prescribed procedures while adjusting the refund against the outstanding amount, the order was vitiated in law".

26.The following are the conditions to be satisfied in order to set off a refund under Section 245 of the Act:-

(a) A refund is found due to a person under any provision of the Income-Tax Act, 1961.

(b) The amount of refund is set off against another sum which is payable by that person under that Act.

(c) The refundable amount is set off after intimation, in writing, of such proposed action to that person. Indeed all these three conditions are cumulative in character. Therefore, the non-fulfillment of any of these conditions would not entitle the authority concerned to invoke the ingredients of Section 245 for setting off of refunds against tax balance payable.

27.In this connection, it may not be out of place for this Court to make a significant mention that in the decision Suresh B.Jain V. A.N.Shaikh, 16th Income-Tax Officer and others reported in 1987 Vol. (165) ITR at Page 151 at Special Page 153, it is among other things observed and held as follows:-

> ".... Shri Joshi further submits that, in any event, it is not permissible for the Income-tax Officer to adjust the amount of refund due in respect of the earlier assessment order without giving prior notice and an opportunity of being heard to the petitioner. Shri Joshi relies upon the provisions of Section 245 of the Income-tax Act, 1961, which reads as under:-
>
> "245. Where under any of the provisions of this Act, a refund is found to be due to any person, the Income-tax Officer, Appellate Assistant Commissioner, Commissioner (Appeals) or Commissioner, as the case may be, may, in lieu of payment of the refund, set off the amount to be refunded or any part of that amount, against the sum, if any, remaining payable under this Act by the person to

whom the refund is due, after giving an intimation in writing to such person of the action proposed to be taken under this Section."

A mere perusal of this Section makes it clear that the Income-Tax Officer may, in lieu of payment of refund, set off the amount to be refunded against the sum payable by the person, but only after giving intimation in writing to such person of the proposed action. Shri Devadhar, learned counsel appearing on behalf of the respondents, had to concede that the Income-tax Officer did not give any intimation to the petitioner before making adjustment while passing the assessment order for the assessment year 1983 -84. In my judgment, the action of the Income-Tax Officer is wholly illegally and the respondents were clearly in error in not refunding the amount of Rs.4,26,090 to the petitioner forthwith.

Accordingly, the petition succeeds and the rule is made absolute and the respondents are directed to refund the amount of Rs.4,26,090 to the petitioner within a period of two weeks from today. The respondents shall ensure that the refund order is actually handed over to the petitioner before the expiry of two weeks. The respondents shall pay the costs of the petition."

28.That apart, this Court pertinently points out the decision Pankaj Dutta V. Income Tax Officer and Another reported in (2010) 235 CTR (J&K) at Pages 110 and 111 whereby and whereunder in Paragraph Nos.8 to 10, it is observed and held as follows:-

"A close reading of the provision of S.220(6) would clearly indicate that the AO in his discretion only can pass necessary orders till the disposal of the appeal. Since the power to be exercised by the assessing authority is purely discretionary and admittedly the main appeal is also pending before the appellate Court for its disposal, the discretion which was exercised by the assessing authority given in the facts and circumstances of the case, was in accordance with the established principles of law, equity and justice. It was not a fanciful or arbitrary exercise of discretion. It is accepted that exercise of discretionary power can be interfered with by the High Court only if the order passed is violative of some fundamental or basic principles of justice and fair play or suffers from any patent or flagrant error. In view of the fact situation so projected in this appeal, it may be safely held that refusal of granting of stay order as sought for, did not infringe or contravene any legal right or, to say, fundamental right enforceable by the appellant under Article 226 of the Constitution of India. Discretion exercised by the assessing authority directing the assessee to pay 50 percent of the demand pending disposal of the appeal was in accordance with the established principles of law, equity and justice on the facts and circumstances of the case and not fanciful or arbitrary, and hence no interference is warranted."

29. Also in the decision Japson Estates P.Ltd. V. Deputy Commissioner of Income-Tax and Another reported in (2006) 285 ITR at Page 40 at Special Page 44 it is observed and held in Paragraph Nos.8 to 10 as follows:-

"...... 8. In this case, at the footnote of the intimation under section 143(1), it has been inscribed, "Adjusted against demand (partly) for the assessment year 2003-2004 at Rs.45,14,870". By no stretch of imagination, can this intimation be treated as intimation under section 245 of the Act. It has been contended in the counter affidavit that the assessee did not communicate any reason to the Department as to why the adjustment as proposed in the intimation should not be made, but there is no such intimation of any proposed adjustment. It is only a notice under section 143(1) of the Act, in which it has been communicated that the amounts have already been adjusted. Therefore, there was no occasion for the assessee-petitioner to raise an objection to the adjustment. It may be true that section 245 of the Act does not contemplate a show-cause notice or an inquiry, but at the same time, it requires a prior intimation in writing, of the proposed action of adjustment. Admittedly, such a notice was not given to the petitioner.

9.Learned counsel for the petitioner has drawn our attention to various judgments : They are (1) A.N.Shaikh V. Suresh B.Jain (1987) 165 ITR 86 (Bom) J.K.Industries Ltd. V. CIT (1999) 239 ITR 421 (P&H); (3) J.K.Industries Ltd., (2000) 245 ITR 457 (Cal) and (5) Shiv Narain Shivhare v. Asst.CIT (Investigation) (1996) 222 ITR 620 (MP)

10. Since there has been no intimation in terms of section 245 of Act, therefore, the petitioner has been deprived of his right to raise any objections to the order of adjustment. Therefore, the intimation to the extent of adjusting the amount, is quashed...."

30.Besides the above, in the decision of Sitaldas K.Motwani V. Director General of Income-tax (International Taxation), New Delhi (2010) 187 TAXMAN 44 (Bom) at Page 44 at Special Page 50 in Paragraph No.16, it is observed and held as under :

".....16. Whether the refund claim is correct and genuine, the authority must satisfy itself that the applicant has a prima facie correct and genuine claim, does not mean that the authority should examine the merits of the refund claim closely and come to a conclusion that

> the applicant's claim is bound to succeed. This would amount to prejudging the case on merits. All that the authority has to see is that on the face of it the person applying for refund after condonation of delay has a case which needs consideration and which is not bound to fail by virtue of some apparent defect. At this stage, the authority is not expected to go deep into the niceties of law. While determining whether refund claim is correct and genuine, the relevant consideration is whether on the evidence led, it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence....."

31.Be that as it may, on a careful consideration of respective contentions and this Court taking note of the entire gamut of the attended facts and circumstances of the instant case in an integral manner comes to an inevitable conclusion that Section 245 of the Income Tax Act, 1961 makes it crystalline clear that the Income Tax Officer might, in lieu of payment of refund set-off the amount to be refunded against the sum payable by an individual, but only after furnishing information in writing to him of the proposed action.

32.Admittedly, the 1st Appellant/Department had confirmed and sanctioned the refund due to the Respondent as per Refund Order, but, had not issued the cheque in this regard. One cannot brush aside a primordial fact that ingredients of Section 245 of the Income Tax Act cannot be pressed into service either as a Lever or Premium in favour of the Revenue, in the considered opinion of this Court.

33.Added further, however, on going through the Impugned Order passed by the Learned Single Judge, this Court is of the considered view that the Learned Single Judge had rightly opined that the adjustment was not tenable in the peculiar facts and circumstances of the case. That apart, the fact of the matter is that notwithstanding the fact that the Respondent/Petitioner was entitled to get the refund even as early as in January, 2014 pertaining to four Assessment Years, the refunds were not processed and the matter was pending.

34. As such, this Court to prevent an aberration of justice and to promote substantial cause of justice, quashes the intimation dated 24.03.2014 under Section 245 of the Income Tax Act in respect of Assessment Year 2008-2009 (Against dues of Assessment year 2011-2012) the intimation dated 22.04.2014 for Adjustment of Refund in respect of Assessment Years 2009-2010 and 2010-2011 (Against dues of Assessment Year 2011-2012); the intimation dated 24.03.2014 for adjustment of Refund for Assessment Year 2012-2013 (Against dues of Assessment Year 2011-2012).

35. At this stage, this Court makes it abundantly clear that it has not dealt with the merits of the matter pertaining to the Stay Application against recovery of taxes etc., Also this Court not delved deep into the matter as to whether any Stay Petition is there as on date because of the reason that this Court is not deciding the aspect of Stay Application in the present Writ Appeals.

36.Therefore, this Court disposes of the Writ Appeals only by quashing the Intimation Notices (On the above mentioned dates) issued under Section 245 of the Income Tax Act for Adjustment of Refund in respect of Assessment Years mentioned supra and leaving it open to the respective parties to raise all factual and legal issues in respect of the subject matter in issue, i.e., aspect of payment / Retention of 'Refund etc.,' and it is open to the Concerned Authority / Department to take into consideration of the same, in a fair, just, dispassionate, practical, pragmatic, purposeful and meaningful manner and to pass a fresh speaking orders on merits by outlining the process of reasoning in an objective, qualitative and quantitative fashion in the interest of justice. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssd

To

1. Sundaram Asset Management Co., Ltd.,
(Formerly known as Sundaram
BNP Paribas Asset Management
Company Limited)
rep. By its Chief Principal Officer,
Sundaram Towers, I Floor,
No. 46, Whites Road,
Chennai - 600 014

2. The Assistant Commissioner of Income Tax,
Large Taxpayer Unit-1.
1775, Jawaharlal Nehru Inner Ring Road,
Annanagar Western Extension,
Chennai - 600 101

3. Union of India
   Rep. By its Secretary,
   Ministry of Finance,
   Department of Revenue
   New Delhi

+1cc to Mr.T.Pramod Kumar Chopda, Advocate, S.R.No.29436
+4cc's to Mr.S.Lakshmikumaran, Advocate, S.R.No.29756

W.A.Nos.58 to 61 of 2015
and
M.P.Nos.1 to 1 and 2 to 2 of 2015

AK(CO)
CA(08/07/2015)