IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE M.DURAISWAMY

W.P.Nos.18868 and 18869 of 2015

and

M.P.No.1 of 2015 (2 in Nos)

Megatrends Inc represented by
its Partner Mrs.Mita Kalpesh Patel
66, Flat No12, Alsuha Flats,
Spur Tank Road,
Chetpet, Chennai-600 031.
..Petitioner in both the Writ Petitions

Vs.

1. The Assistant Commissioner of Income Tax,
Non Corporate Circle -3 (Previously Business
Range XV), Room No.623-A, VI Floor,
" Wanaparthy Block (New Block)",
Aayakar Bhavan,
No.121, Nungambakkam High Road,
Chennai-600 034.

2. The Commissioner of Income Tax (Appeals)-IV,
No.108, Nungambakkam High Road,
Chennai-600 034.

3. The Ministry of Finance
represented by Revenue Secretary,
Government of India,
North Block, New Delhi.
.. Respondents in both the Writ Petitions

Writ Petitions filed under Article 226 of the Constitution of India to issue Writs of Certioari to call for the records of the impugned notice under Section 148 of the Income Tax Act issued by the first respondent dated 10.02.2015 in PAN AAHFM5300Q (in WP No.18868 of 2015) and 02.07.2014 in PAN AAHFM5300Q (in WP No.18869 of 2015) for the Assessment Year 2010-11 and quash the same.

For Petitioner : Ms.TCA. Sangeetha

For Respondents 1 TO 3 : Mr.T.Pramod Kumar Chopda Sr.Standing Counsel

COMMON ORDER

The petitioner has filed the above writ petitions to issue Writs of Certioari to call for the records of the impugned notice under Section 148 of the Income Tax Act issued by the first respondent dated 10.02.2015 in PAN AAHFM5300Q (in WP No.18868 of 2015) and 02.07.2014 in PAN AAHFM5300Q (in WP No.18869 of 2015) for the Assessment Year 2010-11 and quash the same.

2. Mr.Pramod Kumar Chopda, learned Standing Counsel, appearing for the respondents submitted that since the respondents have withdrawn the impugned notices dated 10.02.2015 and 02.07.2014 for the Assessment Year 2010-11, the prayer sought for in these writ petitions have become infructuous. The learned Standing Counsel also produced a letter dated 26.10.2015, narrating the reasons for dropping the reassessment proceedings, wherein, paragraphs 5, 6 and 7, the 1st respondent has stated as follows:

> " 5. While examining the records, this technical flaw was detected by the undersigned that the second re-assessment proceedings was inadvertently initiated while the first re-assessment proceedings was neither dropped nor terminated. It is trite law that two re-assessment proceedings cannot be kept pending for the same assessment year although the reasons for re-opening are different. The Supreme Court in the case of Trustees of HEH The Nizams Supplemental Family Trust Vs CIT (2000) 242 ITR 381 (SC) has held that no re-assessment proceedings can be initiated so long as assessment proceedings pending on the basis of return already filed are not terminated. In yet another proceedings cannot be started while the first is pending. Since the first re-assessment proceedings were not properly terminated, the issue of notice of re-

opening for the second time is void and hence the same is dropped.

6. Since a technical flaw has crept in mistakenly, even the first re-assessment proceeding is dropped.

7. However, the department reserves the right to re-open the assessment afresh since the procedure of re-assessments has been dropped due to technical deficiency. Both the first and the second re-assessment proceedings are now dropped due to procedural infirmity. Therefore, there is no impediment in re-opening the return of income for the third time based on the reasons of incorrect claim of deduction u/s 35(1)(ii) and also the claim of wrong status as a firm. The perfection to undertake re-assessment proceedings afresh on the same reasons, when such proceedings have been dropped due to technical fault, are strengthened by the following decisions:

3. Since the first respondent has withdrawn the impugned notices dated 10.02.2015 and 02.07.2014, I am of the view that nothing remains for adjudication in these writ petitions. Accordingly, both the writ petitions are dismissed as infructuous. No costs. Consequently, connected Mps are closed.

sr

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

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+ 1 CC TO Mr.T.Pramod Kumar Chopda, ADVOCATE SR 17325

KR/22/3/16

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