

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.09.2017

<i>Date of Reserving the Order</i>	<i>Date of Pronouncing the Order</i>
09.08.2017	04.09.2017

CORAM:

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.10599 of 2017
and
W.M.P.No.11537 of 2017

M/s.Bali Trading Pvt., Ltd.,
Rep., by its Director,
Mr.Suchindra Bali,
son of Late Dr.Chaman Bali,
No.80, C.P., Ramaswamy Road,
Alwarpet, Chennai - 600 018.

..Petitioner

Vs.

1.Principal Commissioner of Income-tax, Chennai -1,
Room, No.702, 7th Floor, New Block,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

2.Income Tax Officer,
Corporate Ward-1(2),
Room No.614, 6th Floor, Wanarpathy Block,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

..Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records in C.No.217/1/Pr.CIT-1/2015-16, dated 22.03.2017, on the file of the first respondent relating to the Assessment Year 2012-13, and quash the same and further direct the first respondent to allow the revision petition filed by the petitioner.

For Petitioner : Mr.M.P.Senthilkumar

For Respondents : Mrs.Hema Muralikrishnan

ORDER

The petitioner challenges the order passed by the first respondent, dated 22.03.2017, under Section 264 of the Income Tax Act, 1961, (hereinafter referred to as “Act”) relating to the assessment year 2012-13.

2. The petitioner's case is that their main source of income is rental income offered under the head “income from house property”. For the assessment year 2012-13, the petitioner filed e-return on 11.09.2012, declaring an income of Rs.32,71,620/-. The case was selected for scrutiny by the second respondent under Section 143(2) of the Act. It was pointed out

that the petitioner had in the computation of income attached along with the return had only admitted income from house property to the tune of Rs.23,11,594/-, and income from other sources to the tune of Rs,1,77,393/- and none under the head “business” or “profession”. The petitioner would state that at that juncture, they realized the mistake in keying the details and requested the second respondent to rectify the mistake committed. The petitioner submitted during the assessment proceedings that certain mistakes were committed while filling up return of income in ITR-VI and while filing e-return, which was an inadvertent mistake and the same being apparent on record can be rectified. The second respondent completed the scrutiny assessment under Section 143(3) of the Act on 26.02.2015, on the returned income of Rs.32,71,620/- on the ground that without a revised return under Section 139(4), total income cannot be reduced and that the powers of the Assessing Officer is limited as no alteration in the returned income could be made by him in view of the decision of the Hon'ble Supreme Court in the case of *M/s.Goetze India vs. CIT*, reported in **2006 284 ITR 323 (SC)**. Aggrieved by such order of assessment, the petitioner preferred a revision before the first respondent under Section 264 of the Act to revise the order of assessment, dated 26.02.2015. This petition was dismissed by the first respondent by order dated 22.03.2017, which is impugned in this Writ Petition.

3. Mr.M.P.Senthilkumar, learned counsel appearing for the petitioner submitted that the first respondent failed to consider that there is absolutely no “business income” earned by the petitioner during the relevant assessment year other than the income from “house property” and income from “other sources” and the petitioner has furnished sufficient material to prove the same. Further, the first respondent ought to have appreciated that the second respondent rejected the request on the sole ground that the petitioner had not filed revised return, but for which, the second respondent himself would have allowed the petitioner's claim and that the respondents cannot unjustly enrich themselves by taking advantage of mere clerical error committed while filing the electronic income tax return, more so, when the CBTD has issued circular directing the officers to assist the tax payers in arriving at a correct income and tax. That the decision of the Hon'ble Supreme Court in the case of *M/s.Goetze India* (supra), is not applicable to the appellate or revisional authorities under the Act and the first respondent being the revisional authority has vide powers including the power to set aside the assessment, which power had been removed from the Commissioner of Appeals w.e.f., 01.06.2003. In support of his contentions, the learned

counsel relied on the decisions in the case of *Sri Selvamuthukumar vs. Commissioner of Income-tax, Chennai-VI*, reported in *[2017] 79 taxmann.com 113 (Madras)*; *Rajesh Kumar Aggarwal vs. Commissioner of Income-tax, Delhi-VIII*, reported in *[2017] 78 taxmann.com 265 (Delhi)*; *Ramco Cements Ltd., vs. Deputy Commissioner of Income Tax* reported in *373 ITR 146 (Mad)*; *Commissioner of Income Tax vs. Rai Bahadur Bissesswarlal Motilal Malwasie Trust* reported in *(1992) 195 ITR 0825*; and *Commissioner of Income Tax vs. Valli Cotton Traders (P) Ltd.*, reported in *(2007) 288 ITR 0400*.

4. Mrs.Hema Muralikrishnan, learned Standing counsel for the respondents submitted that since the petitioner did not rectify the so called mistakes of keying error either at the time of filing of return or filing a revised return within the time allowed under Section 139(5) of the Act, the request of the petitioner was not entertained. It is further submitted that as regards the averments in para No.3 of the affidavit, it is submitted that in column No.3, the petitioner mentioned income receipts credited to profit and loss account considered under the heads of income to the tune of Rs.16,81,399/-, consequently, petitioner also admitted in column No.7 of the BP expenses debited to the profit and loss account considered under further heads of income to the tune of Rs.24,88,967/- after allowing allowable

depreciation under the Act to the tune of Rs.3,32,944/- from the adjusted profit, the income from business or profession arrived at Rs.17,67,595/- which was reflected in the Schedule Part B T1 (Computation of Total Income) in column No.2(iv) a Rs.17,67,595/-. Referring to the reasons assigned in the order under Section 264 of the Act, impugned order, it is submitted that the case of the petitioner that no business income was earned, is not acceptable. It is further submitted that as per the decision in the case of *M/s.Goetze India* (supra), an error in a return can be rectified through a revised return only and therefore, the second respondent has no power to make assessment with respect to any figures that are variant with the return filed by the assessee. Further, the claim of the petitioner is on the supposition that it did not earn any business income during the year, but there was no proof for the same. The case laws relied on by the petitioner is for the proposition that correct tax has to be levied and collected by the respondents. In the instant case, the income has been assessed and the tax determined based on the admission of the petitioner himself about its income in the return of income filed for the assessment year 2012-13.

5. Further, it is submitted that the factual position is clear that there was no conclusive evidence furnished by the petitioner to establish that there was no business activity in the context of claims of increased expenditure

incurred and additions to fixed assets admitted by the petitioner. Therefore, the first respondent rightly held that the income reported under the head “business income” could very well be income from business. Thus, in the absence of any material evidence to prove that there was no business activity and the admission of the income under the head 'business' was a pure inadvertence cannot be believed.

6. Heard the learned counsels appearing for the parties and perused the materials placed on record.

7. The questions which arise for consideration are

(i) Whether the Principal Commissioner of Income Tax, the first respondent was right in rejecting the Revision Petition filed by the petitioner under Section 264 of the Act against the order passed by the Assessing Officer, the second respondent, who rejected the petitioner's request to rectify the assessment for the assessment year 2012-2013 ?

(ii) whether the Assessing Officer was right in relying on *M/s.Goetze India* (supra), to reject the request for rectification?

(iii) What are the powers of the Commissioner under Section 264 of the Act ?

(iv) Whether, on the grounds canvassed by the petitioner the impugned order passed by the Commissioner under Section 264 of the Act calls for interference?

8. To answer the above questions, it is necessary to note the legal position which have been neatly summarised in the following decisions. In *M/s.Goetze India vs. CIT*, the question raised was whether assessee could make a claim for deduction other than by filing a revised return. In the said case, the Assessing Officer held that there is no provision in the Income Tax Act to make amendment in the return of income by modifying an application at the assessment stage without revising the return. This was affirmed by the Supreme Court making it clear that the issue in the said case is limited to the power of the Assessing Authority and does not impinge on the power of Income Tax Appellate Tribunal under Section 254 of the Act.

9. In *Sri Selvamuthukumar vs. Commissioner of Income-tax, Chennai-VI*,(supra), the Hon'ble Division Bench of this Court discussed the power of the Commissioner under Section 264 of the Act. It was held that the

power under Section 264 of the Act is, in fact as wide a power, and one that is intended to prevent miscarriage of justice. Courts have consistently taken a view that the conferment of powers under Section 264 of the Act is to enable the Commissioner to provide relief to an assessee, where the law permits the same.

10. In ***Rajesh Kumar Aggarwal vs. Commissioner of Income-tax, Delhi-VIII***, (supra), the question of law which arose for consideration before the Hon'ble Division Bench of this Court was whether the ITAT is right in rejecting the additional grounds of appeal filed by the appellant therein before the Commissioner. After taking note of the decision in the case of ***National Thermal Power Co.Ltd., vs. CIT*** reported in (2012) 349 ITR 336 (Bom); ***Goetze (India) Ltd.***, (supra); ***National Thermal Power Co.Ltd., vs. CIT*** reported in (1998) 229 ITR 383; ***Jute Corpn., of India Ltd., vs. CIT*** reported in [1991] 187 ITR 688; ***CIT (Central, Madras vs. Indian Express (Madurai) Pvt., Ltd.***, reported in (1983) 140 ITR 705; and ***Mahalakshmi Textile Mills' case*** reported in [1967] 66 ITR 710(SC), it was held that the Act does not contain any express provision preventing the assessee from raising additional grounds in appeal and there is also no provision in the Act restricting the Appellate Authority to entertain such additional ground in the appeal. That in the absence of statutory bar, the Appellate Authority is

vested with the power, which is co-terminus with that of the Original Authority, to allow the assessee to raise additional ground, if the same is bona fide and not willful or unreasonable.

11. Thus, the legal principle which emerges from the above decisions are:-

(i) The Assessing Officer cannot entertain a claim for deduction otherwise than by filing a revised return. This does not impinge upon the power of the ITAT under Section 254 of the Act.

(ii) The language of Section 264 provides ample power to the CIT to make or cause such inquiry to be made as he thinks fit in dealing with application for revision under Section 264 of the Act.

(iii) Limiting the power of the CIT only to the situation that was existing at the time of making assessment is to make the power of the CIT under Section 263 too restrictive.

(iv) Material which was not available to the ITO when he made the assessment could be taken into considerations by CIT after holding an enquiry, though

such material has come on record subsequent to the making of the assessment.

(v) The power under Section 264 of the Act is a wide power, and one that is intended to prevent miscarriage of justice.

(vi) Powers under Section 264 of the Act is to enable the Commissioner to provide relief to an assessee, where the law permits the same.

(vii) The embargo placed on a assessing Officer in considering a new claim would not impinge on the power of the appellate authority or the revisional authority.

(viii) The phraseology adopted in Section 264 of the Act is of the widest amplitude, unless there is a direct impediment to the said power.

(ix) The Supreme Court in *M/s.Goetze India* (supra), had no occasion to deal with the power of the Commissioner under Section 264 of the Act.

12. Bearing in mind the above legal principles, I proceed to consider the factual matrix. The petitioner during the course of assessment

proceedings for the assessment year 2012-13, submitted a representation to the second respondent on 12.12.2014, stating that the assessee's income is letting out of property and apart from that they do not have any income during the assessment year and in the income memo, the entire income in the profit and loss account has been offered under the head "house property" and "other sources", and there is no other income. However, while filing the return, it has been inadvertently filed against "business income" in addition to income from "house property" and "other sources" and hence, the gross total income shown as Rs.32,71,621/- in the income tax return as against Rs.16,81,400/- is just a keying error and requested the second respondent to accept the figures as appearing in the income memo and complete the assessment under Section 143 (3) of the Act. In continuation of the said representation, another letter dated 07.01.2015, was addressed to the second respondent enclosing the rental agreement and comparison between the details filled up in the income tax return for the assessment year 2011-12 & 2012-13. Subsequently, by another letter dated 06.02.2015, the petitioner reiterated the stand taken by them in their letter dated 12.12.2014 and stated that the mistake is only from the data's keyed in the income tax return and when the mistake is apparent on the record, the same can be rectified. The petitioner relied upon certain decisions and contended that the mistakes apparent from the record are the patent mistakes where there cannot be two

opinions and in their case, the mistakes are apparent and there are no two opinions and requested the second respondent to rectify the same. The second respondent after taking note of the stand taken by the petitioner in the aforementioned communication, passed the assessment order, dated 26.02.2015 and rejected the petitioner's claim to rectify the mistake. The reasons assigned by the second respondent is that if there is any keying mistake, the assessee could have filed a revised return, as allowed under Section 139(4) of the Act, which could have been done on or before 31.03.2014. However, the petitioner did not do so and asked to reduce the total income during the course of assessment proceedings and that being a fresh claim cannot be entertained during the course of assessment proceedings. In support of such stand, the second respondent relied on the decision of the Hon'ble Supreme Court in the case of *M/s.Goetze India* (supra). Thus, the total income admitted as per the return of income was determined as Rs.32,71,620/- and tax payable thereon was intimated to the petitioner in the form of a demand. The reasons assigned by the second respondent is perfect and in order, so also the reliance placed on *M/s.Goetze India* (supra). On the given facts, the second respondent had no jurisdiction to accede to the request of the petitioner in the absence of a revised return, which ought to have been filed on or before 31.03.2014.

13. Against the assessment order, dated 26.02.2015, the petitioner filed a revision under Section 264 of the Act. In the revision petition, the petitioner reiterated the stand taken before the Assessing Officer, apart from furnishing other details to support the stand that in the return forms, the “business income” has been keyed wrongly and requested the first respondent to exercise his revisional powers. This stand was reiterated in the written submissions made by the Chartered Account of the petitioner, dated 11.06.2015. As noted, power under Section 264 of the Act, exercisable by the Commissioner, is a wide power to provide relief to the assessee wherever law permits. It provides ample power to make or cause such enquiry to be made as he thinks fit. Materials which were not available before the Assessing Officer, though has come on record subsequently could be taken into consideration by the Commission. The first respondent considered the matter and held that the stand taken by the petitioner, does not stand the test of scrutiny and proceeded to assign reasons in support of such conclusion. It was observed that the petitioner contended that it has not earned business income for the assessment year 2012-13 and the receipts earned during the year are from letting out of 5th floor space measuring 4174 sq.ft., in Bali Towers at Saidapet, Chennai and letting out of a flat at Mumbai and if such is the case, as to why the petitioner has reported the additions to plant and machinery during the year to the tune of Rs.1,96,469/- in its fixed assets

schedule and this is beyond comprehension. Thus, the fact that there has been purchase of new plant and machinery indicates that, the submission that there was no business activity, is not true. To arrive at the factual position, a comparative analysis of the return filed for the earlier financial year 2010-11 relevant to assessment year 2011-12 with the return filed for the assessment year 2012-13 was done and this is given in a tabulated format in the impugned order. On a comparative study, the first respondent noted that expenses have been incurred for business activities also other than expenses, which would have incurred for the activity of letting out of building on rent. Thus, the first respondent stated that a company which is claiming no business activity with no receipts other than rental receipts and interest income, have claimed expenditure on repairs to plant & machinery and this is in an increasing manner will indicate the factual position otherwise. Thus, on facts, the first respondent found that the nature of the expenses indicates the presence of some business activity during the relevant previous year.

14. Thus, taking note of the contrary stand taken by the petitioner in reporting its return of income amounts, in respect of business income and expenses which have been incurred by the petitioner during the last two years and on the other hand, making a contrasting claim that there is no business activity relatable to those expenses/income and that the figures

reported in the return of income are not inadvertent errors. Thus, the first respondent held that the petitioner has not been able to prove with evidence that there has been no business activity during the impugned assessment year. That apart, the first respondent noted that the petitioner has come forward with the theory of an error being committed while filing the income tax return only during the scrutiny assessment proceedings, despite the fact that the petitioner undergo statutory financial audit as per the provisions of the Act and having resources to engage the best professionals in the field to handle its mandatory obligations under the Act. Thus, the first respondent has considered the materials, examined the correctness of the stand taken by the petitioner in an independent manner and assigned reasons for not accepting the case of the petitioner.

15. In the preceding paragraphs, the Court has taken note of the stand taken by the petitioner before the Assessing Officer. Admittedly, the time within which the petitioner could have filed a revised return had expired long back and the petitioner appears to have woken up after notice was issued under Section 143(1) of the Act. During the course of the assessment proceedings, when a personal hearing was offered, the petitioner for the first time took a stand that an inadvertent error had occurred while filing the income tax returns for the relevant year namely, 2012-13 and that error is a

keying error. Such contention was raised by the petitioner stating that except the income from “house property” and “other sources”, they have no other income and there is no “business income” and therefore, it is a keying error. If such is the stand taken by the assessee, he is duty bound to prove that there was no other income except the income under the head “house property” and “other sources”. On a perusal of the factual position, it is clear that this was not established by the petitioner before the Assessing Officer or before the first respondent, the Revisional Authority. The petitioner's case is that it is an inadvertent error, a mistake which is apparent and needs to be rectified. The Assessing Officer after taking note of the stand taken by the petitioner rightly held that the petitioner had time to file revised returns upto 31.03.2014 and did not do so, and only during the scrutiny assessment proceedings, such a plea was raised which cannot be considered and rightly relied on the decision of the Hon'ble Supreme Court in the case of *M/s.Goetze India* (supra) stating that he had no jurisdiction to entertain the petitioner's plea. The Revisional Authority considering the scope of his power under Section 264 of the Act went a step ahead to examine as to the bonafides of the stand taken by the petitioner alleging that it was an inadvertent keying error. On a comparative analysis of the returns filed for the assessment year 2011-12, with that of the returns filed for the assessment year 2012-13, the first respondent noted that for repairs to

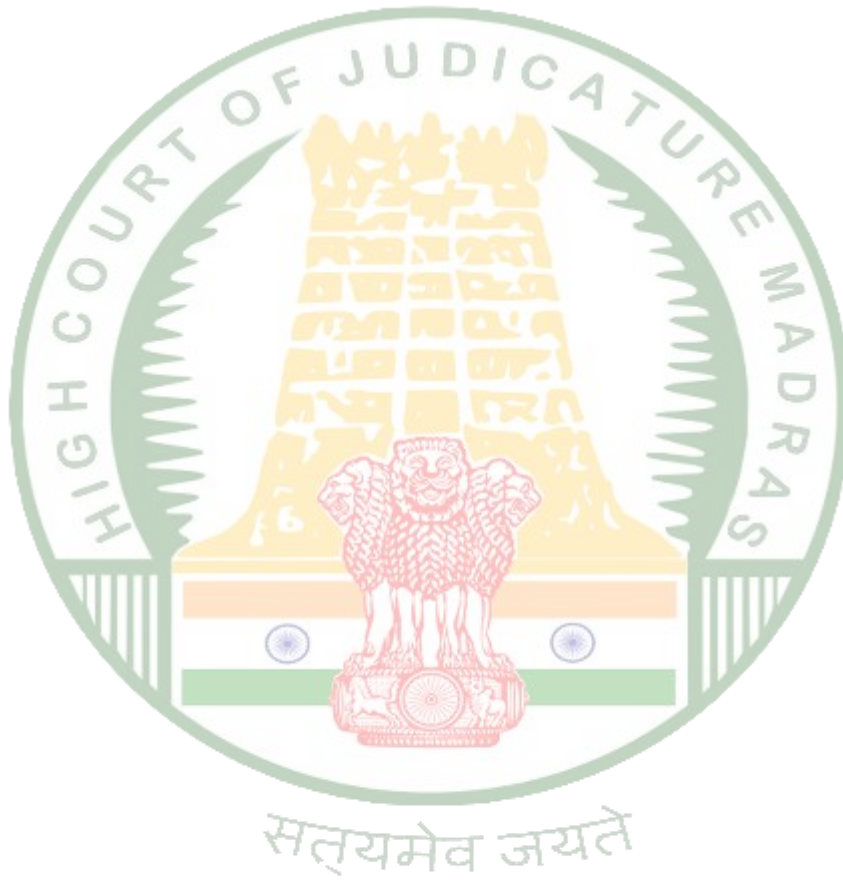
machinery, telephone expenses, salary and other expenses, depreciation have been incurred and debited to P&L account, which is a clear indicator that business activity is being carried out by the assessee. When that being the factual position, the assessee would not have debited the expenses in its P&L account.

16. Thus, on facts, the first respondent found that a company, which is claiming no business activity with no other income other than rental income and interest income claiming expenditure on repairs to plant and machinery that too in an increasing manner, clearly indicates a position otherwise. Further, on facts, the first respondent found that the assessee has not been able to prove with evidence that there has been no business activity during the impugned assessment year. Thus, the first respondent having done a factual exercise, in exercise of his power under Section 264 and on facts, found that the theory as propounded by the petitioner as a keying error to be not proved conclusively. In such fact situation, the order passed by the first respondent calls for no interference.

For all the above reasons, Writ Petition fails and it is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

04.09.2017

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Index:yes/no

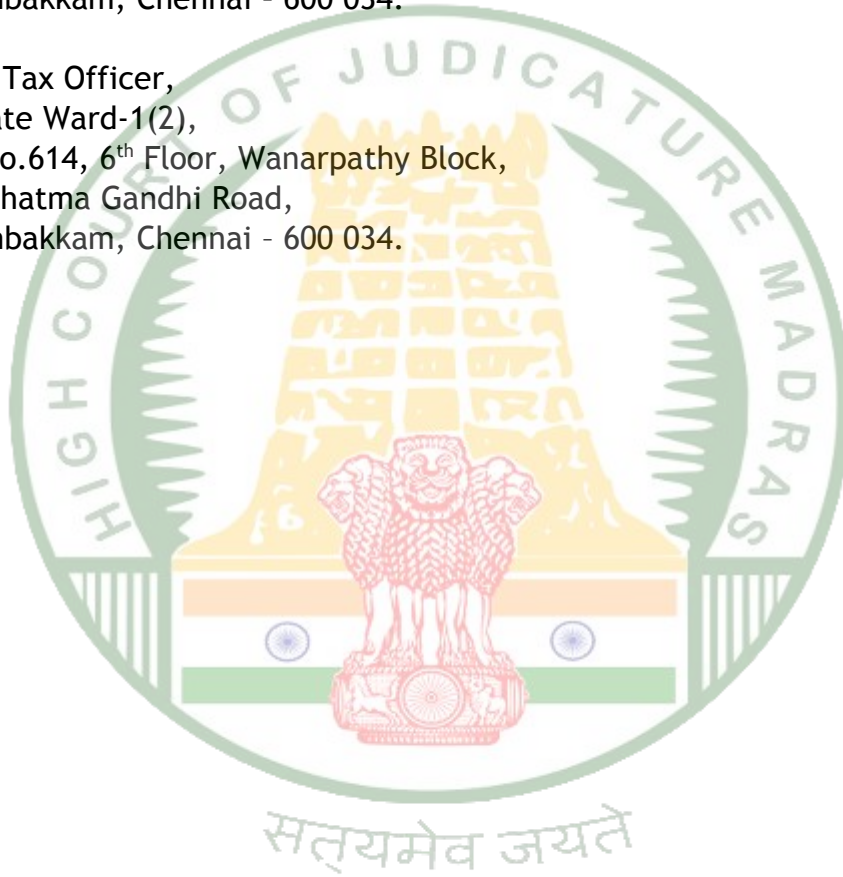


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To

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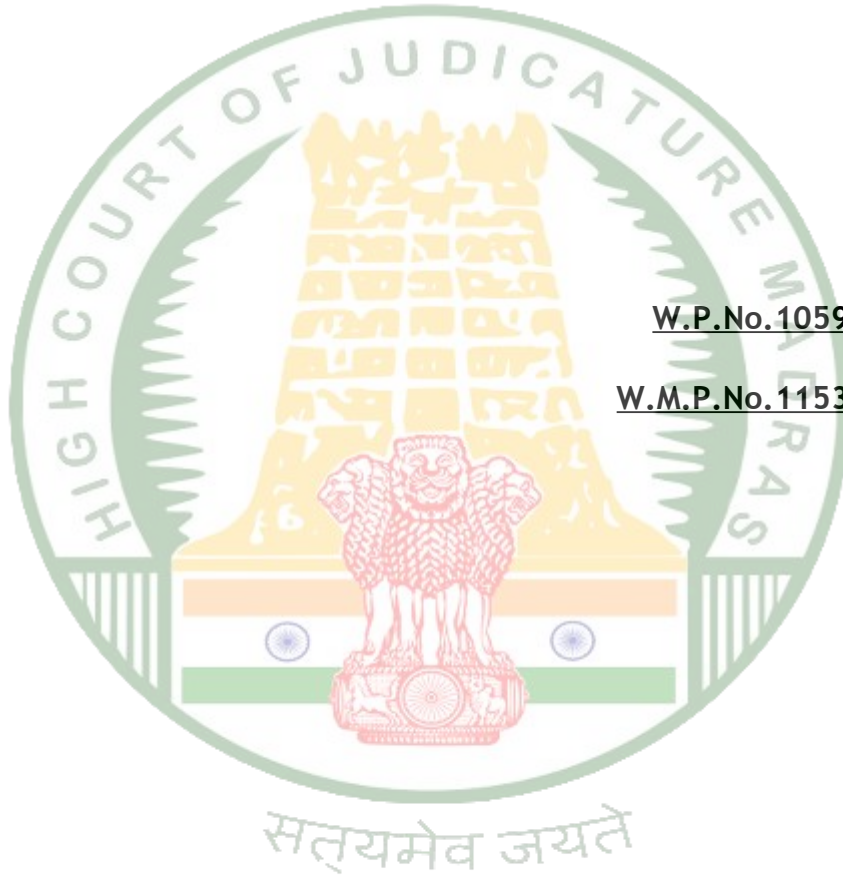
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