IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE M. DHANDAPANI

W.P.Nos. 5679 to 5683 of 2006 and
M.P.Nos.6162 to 6166 of 2006

1. M/s. Lakshmi Marketing
   represented by its Partne
   ...Petitioner in WP 5679/2006

2. M/s. Uma Enterprises,
   represented by its Partner ...Petitioner in WP 5680/2006

3. M/s. Universal Marketing Syndicating,
   represented by its Managing Partner
   ...Petitioner in WP 5681/2006

4. M/s. Enterprising Trade Lines,
   represented by its Partner
   ...Petitioner in WP 5682/2006

5. M/s. Amutham Enterprises,
   represented by its Managing Director
   ...Petitioner in WP 5683/2006

Vs.

1. Union of India,
   Represented by its Secretary,
   Ministry of Finance,
   Government of India, North Block,
   New Delhi - 110 001.

2. Central Board of Direct Taxes,
   Represented by its Secretary,
   Government of India, North Block,
   New Delhi - 110 001.

3. The Chief Commissioner of Income Tax,
   Race Course Road,
   Coimbatore - 641 018.

... Respondents
(in all WPs)

Common Prayer :

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Declaration to declare that the Sections 115 WA (2) and 115 WB (1) and 115 WB (2) of the Income Tax Act, 1961 as introduced by the Finance Act, 2005 unconstitutional validity of Article 15, 19(1) (g) and 265 of the Constitution of India and contrary to basis structure of Income Tax Act, 1961.

For Petitioners (in all WPs)	:	Mr.S. Sivanandam
For Respondents (in all WPs)	:	Mr.A.N.R.Jayaprathap Senior Counsel (Income Tax)

C O M M O N   O R D E R

Heard learned counsel for the parties.

2. The petitioners in all these Writ Petitions have come forward with these Writ Petitions for issuance of Writ of Declaration to declare Sections 115 WA(2) and 115 WB(1) and 115 WB (2) of the Income Tax Act, 1961 as introduced by the Finance Act, 2005 ultra vires of Article 14, 19(1)(g) and 265 of the Constitution of India and as beyond the legislative competence of Parliament in so far as the petitioners are concerned.

3. The learned counsel for the petitioners as well as the learned counsel for the Revenue submitted that the declaration sought for in all these Writ Petitions have been now seized of by the Hon'ble Supreme Court and similar Writ Petitions have been transferred to the Hon'ble Supreme Court from the other High Courts as well.

4. Thus, considering the fact that the matter is now seized of by the Hon'ble Supreme Court, these Writ Petitions can be disposed of with appropriate directions, leaving it open to the parties i.e. the petitioners as well as the Revenue to abide by the decision of the Hon'ble Supreme Court.

5. The learned counsel for the Revenue expressed an apprehension that in the event the Hon'ble Supreme Court uphold the provisions as being a valid piece of legislation, then the assessees like the petitioners should not plead that the action that may be initiated by the Department or in the process of being initiated, is barred by limitation.

6. The Revenue need not have any apprehension in this regard, as the Court proposes to safeguard the interest of the Revenue by passing the following orders:

"The petitioners are directed to abide by the decision of the Hon'ble Supreme Court where the challenge to the impugned provisions are pending. It is made clear that in the event the Hon'ble Supreme Court upholds the impugned legislation and the Department initiates action or proceeds with the action already initiated, the petitioners/assessees are not entitled to plead limitation and the period during which these Writ Petitions are pending as well as the period till the matter is decided by the Hon'ble Supreme Court, shall stand excluded for computation of limitation".

7. The Writ Petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

msm
To

1. The Secretary, The Union of India,
Ministry of Finance,
Government of India, North Block,
New Delhi - 110 001.

2. The Secretary, Central Board of Direct Taxes,
Government of India, North Block, New Delhi - 110 001.

3. The Chief Commissioner of Income Tax,
Race Course Road, Coimbatore - 641 018.

+5ccs to Mr.S.Sivanandam, Advocate, S.R.No.29773
+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.28775

W.P.Nos. 5679 to 5683 of 2006

ppa(co)
cs/17/05/18