



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.04.2019

DELIVERED ON : 30.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE
W.P.[MD]Nos.25314, 25315, 25317 & 25318 of 2018

M/s.Dalmia Power Limited,
Represented by its Authorised Signatory Shri.R.Gururajan,
Dalmiapuram, Tiruchirapalli - 621 651.
: Petitioner in W.P.[MD]Nos.25314 & 25315/18

M/s.Dalmia Cement (Bharat) Limited,
Represented by its Deputy Executive Director (Finance),
and authorised signatory Shri R.Gururajan,
Dalmiapuram, Tiruchirapalli - 621 651.
: Petitioner in W.P.[MD]Nos.25317 & 25318/18

Vs.

Assistant Commissioner of Income-Tax Circle 1,
Trichy,
No.44, Williams Road, Cantonment,
Tiruchirapalli - 620 001. : Respondent in all Writ Petitions

PRAYER in W.P.[MD]No.25314 of 2018: Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus, calling for the records on the file of the respondent in PAN:AAJCS2658E/Circle 1/TRY/2016-17 dated 05.12.2018, recalling the notice issued by the respondent pursuant to the revised return filed by the petitioner and quash the same and direct the respondent to complete the assessment for the assessment year 2016-17 taking into account the revised return of income filed by the petitioner on 27.11.2018 and also the orders of the National Company Law Tribunal approving the scheme of arrangement and amalgamation.

PRAYER in W.P.[MD]No.25315 of 2018: Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus, calling for the records on the file of the respondent in PAN:AAJCS2658E/Circle 1/TRY/2016-17 dated 17.12.2018 for the Assessment Year 2015-16, rejecting the revised return of income filed by the petitioner, quash the same and direct the respondent to recompute the income of the petitioners, in respect of AY 2015-16 based on revised return of income filed by the petitioner 27.11.2018 pursuant to the orders of the National Company Law Tribunal, approving the schemes of arrangement and amalgamation.



PRAYER in W.P.[MD]No.25317 of 2018: Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus, calling for the records on the file of the respondent in PAN:AADCA9414C/Circle 1/TRY/2016-17 dated 05.12.2018, recalling the notice issued by the respondent pursuant to the revised return filed by the petitioner and quash the same and direct the respondent to complete the assessment for the assessment year 2016-17 taking into account the revised return of income filed by the petitioner on 27.11.2018 and also the orders of the National Company Law Tribunal approving the scheme of arrangement and amalgamation.

PRAYER in W.P.[MD]No.25318 of 2018: Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus, calling for the records of the first respondent in order number PAN:AADCA9414C/Circle 1/TRY/2016-17 dated 17.12.2018 for the Assessment Year 2015-16, rejecting the revised return of income filed by the petitioner, quash the same and direct the respondent to recompute the income of the petitioners in respect of AY 2015-16 based on revised return of income filed by the petitioner on 27.11.2018 pursuant to the orders of the National Company Law Tribunal, approving the schemes of arrangement and amalgamation.

For Petitioner : Mr.N.Venkatraman,
Senior Counsel for Mr.N.V.Balaji
For Respondent : Mr.G.Rajagopalan,
Additional Solicitor General of India
assisted by MR.N.Dilip Kumar

[In all the Writ Petitions]

COMMON ORDER

The points for consideration in these Writ Petitions are as follows:

a) Whether the scheme of amalgamation approved by the National Company Law Tribunal under Section 391 of the Companies Act permitting the respective petitioners to file a revised return of income, even beyond the prescribed period is binding on the income tax authorities if the revised return of income has been filed beyond the prescribed period as stipulated under Section 139 (5) of the Income Tax Act, 1961.

b) Whether the circular issued under Section 119(2)(b) of the Income Tax Act namely Circular No.9 of 2015 overrides the scheme of amalgamation approved by the National Company Law Tribunal under Section 391 of the Companies Act, permitting the respective petitioners to file the revised return of income after the due dates as prescribed under Section 139(5) of the Income Tax Act, 1961.

c) Whether Rule 12(3) of the Income Tax Rules, which requires filing of revised return of income electronically is



mandatory and whether there can be exceptions to the said Rule.

2. These batch of Writ Petitions have been filed challenging the impugned orders of the respondent, recalling the notice under Section 143(2) of the Income Tax Act, for the following reasons:

a) The revised return of income was filed by the respective petitioners after the due date for filing of revised return of income without obtaining condonation of delay in filing the revised return from the appropriate authority as per Section 119(2)(b) read with CBDT Circular No.9 of 2015

b) The revised return of income was filed in manual form.

3. Brief facts leading to the filing of these Writ Petitions are as follows:

3.1. Dalmia Cement (Bharath) Limited has filed W.P.[MD] No.25318 of 2018 for the assessment year 2015-2016 and W.P.[MD] No.25317 of 2018 for the assessment year 2016-2017.

"Dalmia Cement (Bharat) Limited, has entered into schemes of arrangement and amalgamation, with effect from the Appointed Date, i.e., 01.01.2015, which has been duly approved by National Company Law Tribunal [NCLT]. A brief factual matrix for A.Y. 2015-16 & A.Y. 2016-17 is tabulated as under:

Sl.N o.	Particulars	A.Y. 2015-16	A.Y. 2016-17
1.	Filing of original Return of Income	30.11.2015	30.11.2016
2.	Due date for filing revised Return of Income u/s 139(5)	31.03.2017	31.03.2018
3.	Date of order of NCLT, Chennai along with Form CAA-7	20.04.2018 (Form CAA 7 dated 01.05.2018)	20.04.2018 (Form CAA 7 dated 01.05.2018)
4.	Date of filing of certified copy of order of NCLT with Registrar of Companies	30.05.2018	30.05.2018
5.	Date of effectiveness of scheme by the Board of Directors of the company.	30.10.2018	30.10.2018
6.	Date of filing revised Return of Income to give effect to approval of the scheme.	27.11.2018	27.11.2018

3.2. Dalmia Power Limited has filed W.P.[MD] No.25314 of 2018 for the assessment year 2016-17 and W.P.[MD] No.25315 of 2018 for the assessment year 2015-16.

"Dalmia Power Limited has also entered into scheme of amalgamation, with effect from the Appointed Date, i.e., 01-01-2015, which has been duly approved by NCLT, Chennai. A brief

factual matrix for A.Y. 2015-16 & A.Y. 2016-17 is tabulated as under:

Sl. No.	Particulars	A.Y.2015-16	A.Y. 2016-17
1.	Filing of original Return of Income	17-09-2015	30-09-2016
2.	Due date for filing revised Return of Income u/s 139(5)	31-03-2017	31-03-2018
3.	Date of order of NCLT, Chennai with corrigendum and Form CAA 7	16-10-2017 & 26-10-2017 (Form CAA 7 dated 20-10-2017)	16-10-2017 & 26-10-2017 (Form CAA 7 dated 20-10-2017)
4.	Date of filing of certified copy of order of NCLT with Registrar of Companies	17-11-2017	17-11-2017
5.	Date of effectiveness of scheme	17-11-2017	17-11-2017
6.	Preparation of revised accounts of the petitioner company and duly getting the same audited	25-10-2018	25-10-2018
7.	Date of Tax Audit Report	26-10-2018	23-11-2018
8.	Date of filing revised Return of Income to give effect to approval of the scheme.	27-11-2018	27-11-2018

4. According to the respective petitioners, the above facts were duly brought to the knowledge of the first respondent vide letter dated 25.11.2018, filed on 27.11.2018 for both the assessment years. According to the respective petitioners, although, the scheme of amalgamation was sanctioned for Dalmia Power Limited in November 2017, but only to ensure filing of return of income, the management took the conscious call to file the revised return of the amalgamated company that is Dalmia Power Limited along with Dalmia Cements (Bharat) Limited, at the same time so that proper effect is given to income and expenditure, credit of prepaid taxes. According to the respective petitioners, as per paragraph 64 (c) of the scheme of arrangement and amalgamation duly approved by National Company Law Tribunal, the respective petitioners were entitled to revise its return of income on the basis of the National Company Law Tribunal approved scheme of arrangement and amalgamation, even if the prescribed time limit for revising such returns have lapsed.

5. According to the respective petitioners, the respondent ought to have acted upon the revised returns of the respective petitioners, particularly when the scheme of arrangement and amalgamation approved by the National Company Law Tribunal provides for revision of the returns by the petitioners, even if it is filed beyond the prescribed period. It is their case that the Central



Board of Direct Taxes under Section 119(2)(b) of the Income Tax Act is exercising only an administrative authority and therefore, the Board cannot sit on judgment over the statutory exercise of power by the National Company Law Tribunal.

6. Counter affidavits have also been filed by the respondent in all these batch of Writ Petitions, wherein they have stated that the revised return of income filed by the respective petitioners beyond the prescribed period as stipulated under Section 139(5) of the Income Tax Act, 1961, is invalid. Further, they have reiterated that the revised return of income filed by the respective petitioners manually is contrary to Rule 12(3) of the Income Tax Rules, 1962, which makes it mandatory to file the revised return of income only electronically.

7. It is their case that without condonation of delay, as per the provisions of Section 119(2)(b) read with CBDT Circular No.9 of 2015, (F.No.312/22/2015-OT) dated 09.06.2015, the revised return of income filed by the respective petitioners for the respective assessment years is invalid.

8. Heard Mr.N.Venkatraman, learned Senior Counsel for the petitioners and Mr.G.Rajagopalan, learned Additional Solicitor General for the respondent.

Submissions of the learned Counsels:

9. The learned Senior Counsel for the petitioners drew the attention of this Court to paragraph No.64 (c) of the scheme of amalgamation dated 16.10.2017 approved by the National Company Law Tribunal, Chennai and submitted that the respective petitioners were entitled to file revised return of income even if the prescribed time limit for filing the revised income has lapsed. According to him, notice was issued to the respondent by the National Company Law Tribunal before passing of the amalgamation order under Section 391 of the Companies Act. But, despite service of notice, they failed to raise any objections for the passing of the amalgamation order.

10. The learned Senior Counsel for the petitioners submitted that an order of amalgamation or merger by a Court has a valid statutory force. According to him, the amalgamation order passed by the National Company Law Tribunal gives statutory force to the respective petitioners to file revised return of income and therefore, a revised return of income beyond the prescribed period as stipulated under Section 139(5) of the Income Tax Act, 1961 read with Section 119(2)(b) of the Income Tax Act is not attracted for the instant case. According to him, referring to Section 119(2)(b) of the Income Tax Act, 1961, it deals with cases of genuine hardship whereas the case on hand does not involve such a situation. But, a revised return of income was filed by the respective petitioners for the respective assessment years only pursuant to the scheme of amalgamation approved by the National



Company Law Tribunal which gives statutory force to the respective petitioners to file the revised return of income beyond the prescribed period as stipulated under Section 139(5) of the Income Tax Act, 1961.

11. According to the learned Senior Counsel, CBDT circular No.9/2015 issued under Section 119(2)(b) of the Income Tax Act is not applicable for the instant cases as in the instant cases, revision of returns have not been filed on the ground of genuine hardship but has been filed only pursuant to the amalgamation order passed by the National Company Law Tribunal. According to him, the Central Board of Direct Taxes exercising powers to issue circulars under Section 119(2)(b) of the Income Tax Act cannot sit on the judgment of the National Company Law Tribunal which has passed the amalgamation order permitting the respective petitioners to file revised return of income even if it is beyond the prescribed time limit.

12. The learned Senior Counsel for the petitioner also submitted that Section 139(3) of the Income Tax Act is also not applicable to the case on hand. According to him, as per the provisions of Section 139(3) of the Income Tax Act, business loss or capital loss shall not be carried forward unless the return is filed within the time limit prescribed under Section 139(1) of the Act. However, according to him, in the present case, the original return of income for assessment year 2015-2016 and for assessment year 2016-2017 has been filed well within the time limit as prescribed under Section 139(1) of the Act.

13. According to the learned Senior Counsel for the petitioners, the provisions of Rule 12(3) of the Income Tax Rules, 1962, which requires filing of return electronically could not be complied with since the Income Tax website does not permit filing of the revised return electronically beyond the due date prescribed under Section 139(5) of the Income Tax Act. He also submitted that the petitioner had filed the grievance petition before the Centralised Processing Center (CPC), Bengaluru, regarding the inability to file the return electronically. In response, the Centralised Processing Center, Bengaluru has also categorically communicated to the petitioner that since the e-filed original return has already been transferred to the jurisdictional assessing officer and hence, for processing the revised return filed manually, the jurisdiction lies with the jurisdictional assessing officer and Centralised Processing Center has no role to play for processing revised return filed manually.

14. In support of his submissions, the learned Senior Counsel for the petitioner drew the attention of this Court to the following authorities:

<https://hcservices.ecourts.gov.in/hcservices/>

a) **Marshall Sons & Co. (India) Ltd. Vs. ITO** reported in **(1997) 223 ITR 809 (SC)** :



Relying upon the said judgment, the learned Senior Counsel submitted that once the scheme of amalgamation is sanctioned by Court, it comes into effect retrospectively from the appointed date. Appointed date is the date on which assets and liabilities of the transferor company vest in and has been transferred to the transferee company. In particular, he referred to paragraph Nos.7 and 8 of the said judgment.

b) Pentamedia Graphics Ltd. Vs. ITO reported in (2010) 236 CTR 204 (Mad):

The learned Senior Counsel would submit that in an identical matter, following the judgment of the Hon'ble Supreme Court in the case of **Marshall Sons & Co. (India) Ltd.**, referred to supra, the learned Single Judge of this Court has held that the revenue will have to act as per the scheme of amalgamation approved by the High Court and return filed beyond the due date of filing revised return of income cannot be ignored by applying Section 139(5) of the Income Tax Act, 1961.

c) JK Bombay (P) Ltd. Vs. New Kaiser-I Hind Spinning & Weaving Co. reported in AIR 1970 10414 (SC):

Relying upon the said judgment, the learned Senior Counsel would submit that once the scheme of arrangement and amalgamation has been approved by the Court, the same does not operate as a mere arrangement, but it becomes a statutory force.

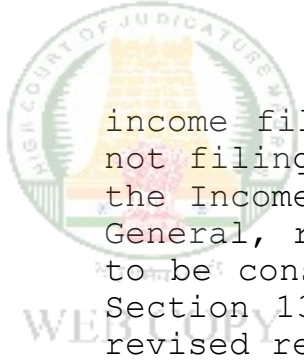
d) In Re: Telesound India Ltd., [Company Petition No.54 of 1980 dated 05.12.1980, Delhi High Court:

Relying upon the said judgment, the learned Senior Counsel would submit that a scheme of amalgamation approved by the High Court by virtue of the provisions of Section 391 to 394 of the Companies Act has a statutory genesis and character and it is effective and binding by virtue of statutory power.

e) Hindustan Aeronautics Ltd., Vs. Commissioner of Income Tax reported in (2000) 243 ITR 808 (SC):

The learned Senior Counsel would submit that when the Supreme Court or the High Court has declared the law on the question arising for consideration, it will not be open to Court to direct that a circular should be given effect to and not the view expressed in a decision of the Supreme Court or the High Court. According to him, the amalgamation order passed by the National Company Law Tribunal overrides the CBDT circular, as per the aforesaid decisions.

15. Per contra, Mr. G. Rajagopalan, learned Additional Solicitor General, would submit that the amalgamation order has been passed under the Companies Act, whereas the impugned order was passed rejecting the revised return of Income under the Income Tax Act on the ground that approval for condonation of delay for filing revised return of income beyond the prescribed period is required under Section 119(2)(b) of the Income Tax Act read with CBDT Circular No.9 of 2015. According to him, the revised return of



income filed by the respective petitioners were also returned for not filing the same electronically in accordance with Rule 12(3) of the Income Tax Rules. According to the learned Additional Solicitor General, revenue statutes like that of the Income Tax Act will have to be construed strictly. He drew the attention of this Court to Section 139(5) of the Income Tax Act, 1961 and submitted that the revised return of income will have to be filed before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier. According to him, in the instant case, admittedly, the revised return of income has been filed beyond the prescribed period as stipulated under Section 139(5) of the Income Tax Act, 1961 and hence, the respondent under the impugned orders have held the revised return of income to be invalid.

16. The learned Additional Solicitor General also drew the attention of this Court to Section 119(2)(b) of the Income Tax Act and submitted that the income tax authority can admit an application or claim for any exemption, deduction, refund or any other relief under the Income Tax Act after the expiry of the period only after getting approval from the Central Board of Direct Taxes. He also drew the attention of this Court to the Circular No.9 of 2015, issued by the Central Board of Direct Taxes in exercising of its statutory powers under Section 119(2)(b) of the Income Tax Act.

17. According to him, the said circular governs the procedure to deal with applications for condonation of delay in filing returns under Section 119(2)(b) of the Income Tax Act, claiming to carry forward losses and set-off. According to him, since the petitioner has not followed the mandatory procedure as per the CBDT circular No.9 of 2015, by obtaining approval from the Board for filing the revised return of income beyond the prescribed period, the respondent under the impugned orders has rightly held the revised return of income filed by the respective petitioners as invalid.

18. The learned Additional Solicitor General then drew the attention of this Court to the following authorities in support of his submissions:

a) Commissioner of Customs Vs. Indian Oil Corporation Limited reported in **(2004) 267 ITR 272 (SC)**:

Referring to the said judgment, the learned Additional Solicitor General submitted that the Hon'ble Supreme Court after considering the judgment of the Hon'ble Supreme Court in the case of **Collector of Central Excise Vs. Dhiren Chemical Industries** reported in **(2002) 254 ITR 554**, **Collector of Central Excise Vs. Dhiren Chemical Industries** reported in **(2002) 10 SCC 64** and **Simplex Casting Ltd. Vs. Commissioner of Customs** reported in **(2003) 5 SCC 528**, has held that the circulars issued by the CBDT under the Income Tax Act, 1961, are held to be binding upon the revenue.



b) Para Marketing Co-operative Society Vs. Union of India reported in (2008) 167 Taxman 238 (Kerala):

Referring to the aforesaid decision of the Kerala High Court, the learned Additional Solicitor General would submit that only after the delay in filing the revised return of income is obtained from the Board under Section 119(2)(b) of the Income Tax Act, the return filed belatedly becomes a valid return and can be validly processed under Section 139(1) or 139(4) of the Income Tax Act.

c) Commissioner of Income Tax-I, Chandigarh Vs. Harjinder Kaur reported in (2009) 180 Taxman 23 (Punjab and Haryana):

Referring to the aforesaid decision, the learned Additional Solicitor General would submit that the petitioners revised return of income filed manually is an invalid return and no assessment can be made based on an invalid return. According to him, only because of the invalid return, the respondent recalled the notice under Section 143(2) of the Income Tax Act, in respect of the revised returns of Income filed by the respective petitioners.

d) Casby CFS (P) Ltd., In Re., reported in (2015) 56 Taxmann.com 263:

Referring to the aforesaid decision, the learned Additional Solicitor General would submit that it is well settled that there is no estoppel against statute and consequently it is always open to the income tax department to point out that the scheme of amalgamation is contrary to the provisions of the Income Tax Act. Hence, according to him, any income tax issue arising out of the scheme of amalgamation shall be subject to the final decision of the income tax authority and the approval of the scheme by the National Company Law Tribunal will not deter the income tax authority from scrutinising the income tax returns filed by the respective petitioners and the decision of the income tax authority is binding on the petitioners.

19. According to the learned Additional Solicitor General, insofar as the learned Senior Counsel for the petitioners' reliance on the decision of the Hon'ble Supreme Court in the case of **Marshall Sons & Co. (India) Ltd., Vs. ITO** reported in (1997) 223 ITR 809 (SC) and the decision of the High Court of Madras in the case of **Pentamedia Graphics Ltd., Vs. ITO** reported in (2010) 236 CTR 204 (Mad), is concerned, he would submit that the said decisions are not applicable for the facts of the instant case since the respective petitioners have filed invalid revised return of income seeking to carry forward current year losses which is not in accordance with the provisions of Section 139(5) and 139(3) of the Income Tax Act and also not in accordance with Rule 12(3) of the Income Tax Rules, 1962 and the respective petitioners have also not complied with the procedural requirements in accordance with Section 119(2)(b) read with CBDT Circular No.9 of 2015 dated 09.06.2015 which according to the learned Additional Solicitor General is mandatory. In particular, he referred to paragraph 21 of the judgment in the case of **Pentamedia Graphics Ltd., Vs. ITO**



reported in (2010) 236 CTR 204 (Mad), wherein it has been observed that the merits or otherwise on the returns filed, however is a matter of assessment for the authorities to consider and pass order in accordance with law.

20. Concluding his submissions, the learned Additional Solicitor General would submit that since the revised returns of income have been filed beyond the prescribed period as stipulated under Section 139(5) of the Income Tax Act and condonation of delay was not obtained from the Board in accordance with Section 119(2) (b) of the Income Tax Act read with CBDT Circular No.9 of 2015 and further the petitioner having not complied with Rule 12(3) of the Income Tax Rules by filing the revised returns electronically, the respondent has rightly held the revised returns of income as invalid.

Discussion:

21. Paragraph 64 (c) of the scheme of arrangement and amalgamation approved by the National Company Law Tribunal permits the respective petitioners to file revised returns of income beyond the prescribed period without incurring any liability on account of interest, penalty or any other sum. The relevant portion of paragraph No.64(c) of the scheme approved by the National Company Law Tribunal is extracted hereunder:

"Amalgamated Company and Transferee Company shall be entitled to, amongst others, file/or revise its income tax returns, TDS/TCS returns, wealth tax returns, service tax, excise duty, sales tax, value added tax, entry tax, cess, professional tax or any other statutory returns, if required, credit for advance tax paid, tax deducted at source, claim for sum prescribed under section 43B of the Income Tax Act on payment basis, claim for deduction of provisions written back by Amalgamated Company and Transferee Company previously disallowed in the hands of Amalgamating Company and Transferor Company (relating to the Transferred Undertaking) respectively under the Income Tax Act, credit of tax under section 115JB read with section 115JAA of the Income Tax Act, credit of foreign taxes paid/withheld, if any, pertaining to Amalgamating Company and Transferor Company (relating to the Transferred Undertaking) as may be required consequent to implementation of this Scheme and wherever necessary to give effect to this Scheme, even if the prescribed time limits for filing or revising such returns have lapsed without incurring any liability on account of interest, penalty or any other sum. Amalgamated Company and Transferee Company shall have the right to claim refunds, tax credits, set-offs and/or adjustments



relating to the income or transactions entered into by them by virtue of this Scheme with effect from Appointed Date."

22. It is the case of the respondent that since the revised return of income was filed beyond the prescribed period as stipulated under Section 139(5) of the Income Tax Act, 1961, the revised returns of income filed by the petitioners are invalid. Section 139(5) of the Income Tax Act, reads as follows:

"Return of income:

139(5). If any person, having furnished a return under sub-section (1) or sub-section (4), discovers any omission or any wrong statement therein, he may furnish a revised return at any time before [the expiry of one year from] the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.]"

23. As seen from Section 139(5) of the Income Tax Act, 1961, they relate to cases where the assessee discovers any omission or any wrong statement in the original return of income. But in the case on hand, the revised returns of income have been filed pursuant to the scheme of arrangement and amalgamation approved by National Company Law under Section 391 of the Companies Act, 2013. Therefore, the submission made by the learned Additional Solicitor General, that any revised return of income will have to be filed before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier is not correct as Section 139(5) of the Income Tax Act, 1961 is not applicable for the case on hand.

24. In the case on hand, as seen from paragraph 64 (c) of the scheme approved by the National Company Law Tribunal, the petitioners are permitted to file revised returns of income beyond the prescribed period. Further, the appointed date under the scheme is 01.01.2015, which means the scheme of amalgamation approved by the National Company Law Tribunal is effective from 01.01.2015 for both the companies. It is also seen that in the merger and demerger proceedings before the National Company Law Tribunal, Chennai, notice was sent to the respondent by the respective petitioners in Form No.CAA 3, pursuant to Section 230 (5) of the Companies Act, read with Rule 8 of the Company Court Rules which was also duly acknowledged by the respondent. Section 230(5) of the Companies Act, 2013 reads as follows:

"230(5). A notice under sub-section (3) along with all the documents in such form as may be prescribed shall also be sent to the Central Government, the income-tax authorities, the Reserve Bank of India, the Securities and Exchange Board, the Registrar, the respective stock exchanges, the Official Liquidator, the Competition Commission of



India established under sub-section (1) of section 7 of the Competition Act, 2002, if necessary, and such other sectoral regulators or authorities which are likely to be affected by the compromise or arrangement and shall require that representations, if any, to be made by them shall be made within a period of thirty days from the date of receipt of such notice, failing which, it shall be presumed that they have no representations to make to the proposals."

25. Eventhough notice was served on the respondent in the merger and de-merger proceedings before the National Company Law Tribunal, Chennai, the respondents failed to object to the scheme of arrangement and amalgamation and subsequently the said scheme of arrangement and amalgamation came to be approved by the National Company Law Tribunal on 16.10.2017 and 26.10.2017 for Dalmia Power Limited and on 20.04.2018 for Dalmia Cement (Bharat) Limited.

26. It is also an admitted fact that the scheme of arrangement and amalgamation which enables the respective petitioners to file revised returns of income beyond the prescribed period has attained finality as no appeal has been filed as against the amalgamation order passed by the National Company Law Tribunal, Chennai.

27. In the case of **Marshall Sons & Co. (India) Ltd. Vs. ITO** reported in **(1997) 223 ITR 809 (SC)**., relied upon by the learned Senior Counsel for the petitioners, the Hon'ble Supreme Court has held as follows:

"a) Once the scheme is sanctioned by Court, it comes into effect retrospectively from the Appointed Date. The Appointed Date is the date on which assets and liabilities of the transferor company vest in and stand transferred to the transferee company.

b) Appointed Date is the date which is relevant for the purpose of assessment of income of the transferor and transferee companies.

c) Transferor Company ceases to exist from Appointed Date and Transferee Company would be assessed to tax on the merged income from the Appointed Date."

28. In the case on hand, for both the companies, as per the scheme approved by the National Company Law Tribunal, the appointed date is 01.01.2015. Therefore, necessarily for the assessment years 2015-2016 and 2016-2017, revised return of income will have to be filed as the amalgamation order for Dalmia Power limited came to be passed on 16.10.2017 and 26.10.2017 and for Dalmia Cement (Bharat) Limited, it came to be passed on 20.04.2018. Immediately after the approval of the scheme of arrangement and amalgamation by the



National Company Law Tribunal, the respective petitioners filed the revised return of income on 27.11.2018 for the assessment years 2015-2016 and 2016-2017.

29. The original return of income was filed by Dalmia Power Limited for the assessment year 2015-2016 on 17.09.2015 and for the assessment year 2016-2017, was filed on 30.09.2016. Similarly, the original return of income was filed by Dalmia Cement (Bharat) Limited for the assessment year 2015-2016 on 30.11.2015 and for the assessment year 2016-2017 was filed on 30.11.2016. The appointed date for both the petitioners under the scheme of arrangement and amalgamation approved by the National Company Law Tribunal is 01.01.2015. Therefore, when the original return of income was filed by the respective petitioners for the assessment year 2015-2016, as per the scheme of arrangement and amalgamation approved by the National Company Law Tribunal, the transferor company ceased to exist as the appointed date is 01.01.2015, which is the relevant date for the purpose of assessment of income of the transferor and transferee companies as held by the Hon'ble Supreme Court, in the case of **Marshall and sons & Co. (India) Ltd. Vs. ITO** reported in **(1997) 223 ITR 809 (SC)**.

30. The respective petitioners cannot be made remediless on the basis of Section 139(5) of the Income Tax Act, 1961. The said provision is not applicable for the facts of the instant case as the revised return of income has been filed pursuant to the scheme of arrangement and amalgamation approved by the National Company Law Tribunal and not a case where there was discovery of any omission or any wrong statement under the original return of income filed for the assessment years 2015-2016 and 2016-2017. The Madras High Court following the judgment of the Hon'ble Supreme Court in the case of **Marshall and sons** referred to supra, held in the case of **Pentamedia Graphics Ltd., Vs. ITO** reported in **(2010) 236 CTR 204 (Mad)**, that the only course open to the revenue would be to act as per the scheme of amalgamation approved by the High Court effective from the appointed date and the taxing authorities are bound to take note of the state of affairs of assessee as on the appointed date and the return filed beyond the due date of filing revised return of income cannot be ignored on the strength of Section 139(5) of the Income Tax Act.

31. The learned Single Judge of this Court in the aforesaid decision in the case of **Pentamedia Graphics** referred to supra rejected the contention of the revenue that filing of revised return of income pursuant to a scheme of arrangement approved by the Court beyond the prescribed period stipulated under Section 139(5) of the Income Tax Act, 1961 is non-est in the eye of law. In the case on hand also, only based on the scheme of arrangement and amalgamation approved by the National Company Law Tribunal, the revised return of income was filed by the respective petitioners beyond the normal prescribed period. As observed earlier, Section 139(5) of the Income Tax Act, 1961, is not applicable for the facts of the instant case as there is no discovery of omission or any



wrong statement under the original return of income filed by the respective petitioners, but the revised return of income was necessitated only due to the approval of the scheme of arrangement and amalgamation by the National Company Law Tribunal.

32. This Court is in agreement with the decision of the learned Single Judge of this Court in the case of **Pentamedia Graphics** referred to supra and therefore, is of the considered view that Section 139(5) of the Income Tax Act, 1961 is not applicable for filing of revised return of income pursuant to a scheme of arrangement and amalgamation approved by the Court and in the instant case, it is the National Company Law Tribunal.

33. The approval of the scheme of arrangement and amalgamation under Section 391 of the Companies Act does not operate as a mere arrangement but it becomes a statutory force. The Hon'ble Supreme Court in the case of **J.K. Bombay (P) Ltd., Vs. New Kaiser-I Hind Spinning & Weaving Co.** reported in **AIR 1970 1041 (SC)**, has held as follows:

"The principle is that a scheme sanctioned by the court does not operate as a mere arrangement between the parties: it becomes binding on the company, the creditors and the shareholders and has statutory force, and therefore, the joint-debtor could not invoke the principle of accord and satisfaction. By virtue of the provisions of sec. 391 of the Act, a scheme is statutorily binding even on creditors, and shareholders who dissented from or opposed to its being sanctioned."

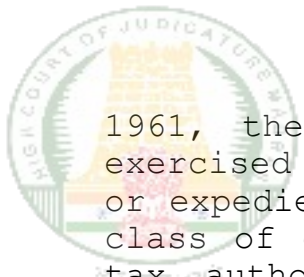
34. The approved scheme of arrangement and amalgamation having a statutory force will necessarily override any circular issued by the Central Board of Direct Taxes prior to the amalgamation order. Further, the circular No.9 of 2015 dated 09.06.2014 issued by the Central Board of Direct Taxes relied upon by the respondent is issued under Section 119(2)(b) of the Income Tax Act, 1961, which reads as follows:

"Instructions to subordinate authorities:

119(2)(b). the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorise [any income-tax authority, not being a Commissioner (Appeals)] to admit an application or claim for any exemption, deduction, refund or any other relief under this Act after the expiry of the period specified by or under this Act for making such application or claim and deal with the same on merits in accordance with law;"

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35. As seen from Section 119(2)(b) of the Income Tax Act,



1961, the discretionary power under Section 119(2)(b) is to be exercised by the Board only in cases where it considers desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorise any income tax authority not being a Commissioner (Appeals) to admit an application or claim for any exemption, deduction, refund or any other relief under the Income Tax Act after the expiry of the period specified by or under the Income Tax Act for making such application or claim and deal with the same on merits in accordance with law.

36. Section 119(2)(b) of the Income Tax Act has no relevance to the facts of the instant case as the circular No.9 of 2015 issued by the Central Board of Direct Taxes under Section 119(2)(b) of the Income Tax Act, 1961 has been issued only to avoid genuine hardship in any case or class of cases. But, in the instant case, the revised returns of income have been filed by the respective petitioners pursuant to the orders passed by the National Company Law Tribunal approving the scheme of arrangement and amalgamation which permits the respective petitioners to file the revised returns of income beyond the prescribed period.

37. As observed earlier, following the decision of the Hon'ble Supreme Court in the case of **J.K. Bombay (P) Ltd.**, referred to supra, the approval of the scheme of arrangement and amalgamation by the National Company Law Tribunal gives statutory force to the said scheme.

38. The judgment relied upon by the learned Additional Solicitor General for the respondent in the case of **Para Marketing Co-operative Society Vs. Union of India** reported in (2008) 167 Taxman 238 (Kerala), has no bearing for the facts of the instant case since in that case, there was no amalgamation order approving the scheme of arrangement. Similarly, in the case of **Commissioner of Income Tax-I, Chandigarh Vs. Harjinder Kaur** reported in (2009) 180 Taxman 23 (Punjab and Haryana) also relied upon by the learned Additional Solicitor General for the respondent there was no amalgamation order approving the scheme of arrangement and it was a case of a normal filing of revised return of income.

39. Insofar as the decision of the Bombay High Court in the case of **Casby CFS (P) Ltd., In Re.**, reported in (2015) 56 Taxmann.com 263, relied upon by the learned Additional Solicitor General is concerned, the said decision is also not applicable for the instant case. In the said case, the Bombay High Court held that revised return of income pursuant to the scheme of amalgamation could be filed only if the condition stipulated under Section 139(5) of the Income Tax Act, has been satisfied only due to the fact that the assessee company had agreed to delete the clause of the scheme which provided for filing of revised return beyond the stipulated time limit prescribed under the Income Tax Act, 1961. Further, in that decision, the Court was satisfied that the scheme was framed with the intention of contravening the provision of law. But, in the case on hand, it is not the case of the respondent that



the scheme of arrangement and amalgamation approved by the National Company Law Tribunal is contrary to law and the respective petitioners have misused the approved scheme for contravention of any law. The only ground for rejection of the revised return of income filed by the respective petitioners by the respondent is that it has been filed beyond the prescribed period without obtaining condonation of delay from the Central Board of direct taxes as per Circular No.9 of 2015 and the returns have been filed manually. Therefore, the decision of the Bombay High Court relied upon by the learned Additional Solicitor General for the respondent, is not applicable for the facts of the instant case.

40. Insofar as Rule 12(3) of the Income Tax Rules, 1962, which requires filing of returns electronically is concerned, the petitioner cannot be rendered remediless just because the income tax website did not allow a window to the respective petitioners for filing returns of income electronically as the revised returns of income were filed beyond the prescribed period as stipulated under Section 139(5) of the Income Tax Act, 1961.

41. As observed earlier, the revised return of income has not been filed due to omission or wrong statement in the original return of income, but has been filed only pursuant to the scheme of arrangement and amalgamation approved by the National Company Law Tribunal.

42. The Hon'ble Supreme Court in the case of **Kailash Vs. Nanhku** reported in **(2005) 4 SCC 480**, held as follows:

"28. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice."

43. V.R. Krishna Iyer, J., in a landmark decision, in the case of **Sushil Kumar Sen Vs. State of Bihar** reported in **1975 (1) SCC 774**, observed as follows:

"5. ...The mortality of justice at the hands of law troubles a Judge's conscience and points an angry interrogation at the law reformer.

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procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in Judges to act *ex debito justitiae* where the tragic sequel otherwise would be wholly inequitable. ... Justice is the goal of jurisprudence - processual, as much as substantive."

44. Similarly, the Hon'ble Supreme Court in the case of **State of Punjab Vs. Shamlal Murari** reported in (1976) 1 SCC 719, observed as follows:

"Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice."

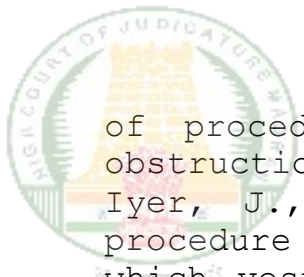
45. In another decision of the Hon'ble Supreme Court in the case of reported in **Ghanshyam Dass Vs. Dominion of India** reported in 1984 (3) SCC 46, the Hon'ble Supreme Court observed as follows:

"the Court reiterated the need for interpreting a part of the adjective law dealing with procedure alone in such a manner as to subserve and advance the cause of justice rather than to defeat it as all the laws of procedure are based on this principle."

46. In a leading English judgment, in the case of **In Re Coles [1907] 1 K.B. 1, 4**, 'while explaining the handmaid of justice', has observed "that a Court cannot conduct its business without a code of procedure, I think that the relation of rules of practice to the work of justice is intended to be that of a handmaid rather than mistress and the Court ought not to be so far bound and tied by rules, which are after all only intended as general rules of procedure, as to be compelled to do what will cause injustice in the particular case".

47. In the case on hand, as observed earlier, Section 139(5) of the Income Tax Act is not applicable in cases where revised returns of income have been filed pursuant to the scheme of arrangement and amalgamation approved by the National Company Law Tribunal. The circular No.9 of 2015 issued by the Central Board of Taxes under Section 119(2)(b) of the Income Tax Act, 1961, is not applicable in cases where revised returns of income have been filed pursuant to the scheme of arrangement and amalgamation approved by the Court.

48. There is also no statutory bar under the Income Tax Act, to disable the assessee from filing revised returns of income pursuant to the scheme of arrangement and amalgamation approved by the Court under Section 391 of the Companies Act. As rightly held by the Hon'ble Supreme Court in the aforesaid decisions, the rules



of procedure are handmaid of justice. It should not be an obstruction in the aid of justice. As rightly observed by Krishna Iyer, J., in the case of **Sushil Kumar** referred to supra, the procedure should be the handmaid, not the mistress of legal justice which vests with residuary power in the Judges to act *ex debito justitiae*, where the tragic sequel otherwise would be wholly inequitable.

49. Further, it is settled law that while dealing with the taxing provision, when two interpretations are possible, the Court would interpret the provisions in favour of the tax payer and against the revenue. In cases of doubt or dispute, the construction should be made in favour of the tax payer and against the revenue. In the case on hand, there is no express statutory bar in cases where revised returns of income have been filed belatedly pursuant to the scheme of arrangement and amalgamation approved by the Court. When there is no such express bar under the Income Tax Act, 1961 or its Rules, the respondent cannot override the approved scheme of arrangement and amalgamation which has a statutory force by rejecting the revised returns of income filed by the respective petitioners as invalid.

50. Further, just because the website of the Income Tax Department does not entertain revised returns of income after the prescribed period, as stipulated under Section 139(5) of the Income Tax Act, the respective petitioners cannot be rendered remediless. Procedures are handmaid of justice. They have to be interpreted to carry forward the objects of the enactment. If not for the website of the Income Tax Department's refusal to accept revised returns of income beyond the prescribed period as stipulated under Section 139(5) of the Income Tax Act, 1961, the respective petitioners in the normal circumstances would have been able to file the revised returns of income, pursuant to the approval of the scheme of arrangement and amalgamation by the National Company Law Tribunal. Procedures aid the effective implementation of the Act of the legislature.

51. Rule 12(3) of the Income Tax Rules stipulates that returns of income can be filed only electronically. But the case on hand is an exceptional case where it has necessitated the respective petitioners to file the revised returns of income manually since the website of the income tax department refuses to accept the returns of income which has been filed beyond the prescribed period under Section 139(5) of the Income Tax Act, 1961. As already observed, Section 139(5) of the Income Tax Act, is not applicable for the facts of the instant case.

52. As per the Heydon's Rule of interpretation, the construction of procedural provisions are to be construed in a manner that advances and does not subvert the cause of justice. Therefore, this Court is of the considered view that the respondent ought not to have rejected the filing of the revised return of



income by the respective petitioners on the ground that the same has been filed manually instead of electronically. Therefore, Rule 12(3) of the Income Tax Rules, 1962 will not bar the respective petitioners to file the revised returns of income manually as the revised returns of income have been filed only pursuant to the scheme of arrangement and amalgamation approved by the National Company Law Tribunal.

53. For the foregoing reasons, this Court answers the points for consideration framed at the outset in these Writ Petitions in the following manner:

a) The scheme of arrangement and amalgamation approved by the National Company Law Tribunal under Section 391 of the Companies Act gives statutory force to enable the respective petitioners to file the revised returns of income beyond the prescribed period and Section 139(5) of the Income Tax Act, 1961 is not applicable for cases where revised returns of income have been filed pursuant to approval of scheme of arrangement and amalgamation by the Competent Court.

b) The Circular issued under Section 119(2)(b) of the income tax act, namely, Circular No.9 of 2015 is not applicable for filing of revised returns of income pursuant to a scheme of arrangement and amalgamation approved by the Court under Section 391 of the Companies Act.

c) Rule 12(3) of the Income Tax Rules which requires filing of revised returns of income electronically is not applicable to cases where revised return of income has been filed by the assessee pursuant to scheme of arrangement and amalgamation approved by the Court.

54. In the result, the impugned orders in all the writ petitions are hereby quashed and the respondent is directed to receive the revised returns of income filed by the respective petitioners pursuant to the scheme of arrangement and amalgamation approved by the National Company Law Tribunal, Chennai and complete the assessment for the assessment years 2015-2016 and 2016-2017 in accordance with law within a period of twelve [12] weeks from the date of receipt of the revised returns of income from the respective petitioners.

55. Accordingly, the Writ Petitions are allowed. However there shall be no order as to costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS)



To
Assistant Commissioner of Income-Tax Circle 1,
Trichy,
No.44, Williams Road, Cantonment,
Tiruchirapalli - 620 001.

+2CC TO MR.N.DILIP KUMAR, Advocate Sr. No.64785
+4CC TO MR.N.V.BALAJI, Advocate Sr. No.64172 TO 64175

COMMON ORDER MADE IN
W.P.[MD]Nos.25314, 25315,
25317 & 25318 of 2018
30.04.2019

MR(CO)
TR (10.05.2019) 20P 8C