

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.09.2020

PRONOUNCED ON : 16.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NOS.12510 & 12511 OF 2004, 12255 OF 2006,
3830 OF 2007, 1054 OF 2008 & 2629 OF 2009

AND

WMP.NOS.132825 OF 2006, 14637 & 14636, 1725 & 1726 OF 2004 &
M.P.NOS.1 OF 2007, 1 OF 2008 & 1 OF 2009

M/s.Ponni Sugars (Erode) Ltd.,
No.13, Seevaram Village,
Perungudi, Chenna-600 096.

...Petitioner in All WPs

Vs.

1.The Assistant Commissioner of Income-Tax,
Company Circle V(2),
Chennai-600 034.

... Respondent in WP.Nos.12510 & 12511 of 2004,
12255 of 2006

1.The Income Tax Officer (OSD),
Company Circle V (2)
121, Nungambakkam High Road,
Chennai-600 034.

... Respondent in WP.No.3830 of 2007, 1054 of 2008

1.Additional Commissioner of Income Tax,
Company Range V,
121, Nungambakkam High Road,
Chennai-600 034.

... Respondent in WP.No.2629 of 2009

Prayer:

WP.Nos.12510 & 12511 of 2004:-

Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records in PAN/GIR.No.AACCP2779A/52564-P, dated 23.03.2004 relating to the Assessment Year 2000-01, 2001-02 respectively on the file of the respondent and to quash the same.

WP.No.12255 of 2006:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records in PAN.No.AACCP2779A/52564-P dated 27.03.2006 relating to the Assessment Year 2002-2003 on the file of the respondent and quash the same.

WP.No.3850 of 2007:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records in P.A.No.AACCP2779A, dated 28.12.2006 relating to the Assessment year 2004-05 on the file of the respondent and quash the same.

WP.No.1054 of 2008:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records in P.A.NO.AACCP2779A, dated 28/12/2007 relating to the Assessment year 2005-06 on the file of the respondent and quash the same.

WP.No.2629 of 2009:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records in PAN.AACCP2779A, dated 20.01.2009 relating to the Assessment year 2006-07 on the file of the Respondents and quash the same.

For Petitioner : Mr.A.L.Somayaji, Sr. Advocate
for M/s.Mallika Srinivasan &
Mr.N.Muthukumar

For Respondent : Mrs.Hema Muralikrishnan
Standing counsel for IT

COMMON ORDER

With the consent of both parties, the Writ Petitions are taken up and heard through Video Conferencing.

2. The brief facts of the case are as follows:

M/s.Ponni Sugars & Chemicals Limited (PSCL) had set up Erode

Sugar Mill in Tamil Nadu in the year 1984. Subsequently, another Sugar Mill was set up in Orissa in 1994. In view of the losses to the Sugar Mill at Orissa, PSCL became a 'sick industrial company'. Consequently, a Scheme of Arrangement for demerging Erode Unit by spinning it off to Ponni Sugars (Erode) Limited (PEL) was conceived in order to restructure the operations and revive the prospects of PEL. Accordingly, a Scheme of Arrangement was arrived and in accordance with the provisions of Sections 391 to 394 of the Companies Act, 1956, Company Petition Nos.118 and 119 of 2000 was filed before this Court and on 10.09.2001, the Scheme was sanctioned by the Company Court. Some of the salient features of the scheme sanctioned by the Company Court are as follows:-

- i. The Erode Undertaking of PSCL was transferred to PEL with effect from 01.04.1999;
- ii. The consideration for transfer shall be for the aggregate value of Rs.7500 lakhs;
- iii. All contingent liabilities shall vest only with PSCL;
- iv. Term debts and bank borrowings are transferred that include transfer of debts specifically contracted for Bolangir unit to the Erode Undertaking of Transferee Company;
- v. A part of debit balance (Rs.923 lakhs) in P&L A/c was transferred to PEL;
- vi. A part of General Reserve (Rs.1004 lakhs) was transferred to PEL;
- vii. Sugar stocks were recorded in PSCL Books at net selling price. This, however, was recorded in the books of PEL as per reinstated value (lower of cost or net selling price) in accordance with Accounting Standard-2 (Inventories) of Institute of Chartered Accountants of India;
- viii. Pursuant to the Scheme, proportionate shares of PEL were issued to the shareholders of PSCL in the ratio of 3:5. In addition, the Scheme also provides for conversion of part of debt (funded interest) contracted for Bolangir Unit but getting transferred to PEL. Accordingly, additional 18,40,000 Equity Shares are issued to FIs besides issue of 0% Optionally Fully Convertible Debentures or Term Loans by PEL to FIs aggregating Rs.1183 lakhs.

3. The statement, as required under Section 393 of the Companies Act states, inter-alia, that the Scheme involving transfer of Erode Unit is not one of 'demerger' within the meaning of Section 2(19AA) or a "slump sale" under Section 2(42C) of the Income Tax Act 1961 and that the Transferee Company, upon transfer of Erode Unit to it at fair value, will be entitled to claim depreciation in its Tax Returns on the basis of fair market value of fixed assets as on 01.04.1999 arrived at on the basis of independent valuation to be undertaken by the Transferee Company. The relevant portion is extracted hereunder:-

"INCOME TAX IMPLICATIONS

14. The information on income-tax implications is given based on the interpretation of Law as prevailing and per legal advice received. This cannot be construed as final and binding.

(a) The Scheme involving the transfer of EU is not one of 'demerger' within the meaning of section 2(19AA) or a "slump sale" under Section 2(42C) of the Income Tax Act, 1961.

(b) the transfer of EU in terms of this Scheme will not give rise to a taxable income or gain in the hands of the TRANSFEROR COMPANY.

(c) The issue and allotment of equity shares by the TRANSFEREE COMPANY to the members of the TRANSFEROR COMPANY and also the concurrent change in the corresponding number of shares for the members in the TRANSFEROR COMPANY will not give rise to any tax liability in the hands of the members. However the members are advised to seek independent tax advice as they would consider relevant and necessary in the matter.

(d) The balance of unabsorbed loss/depreciation as at EFFECTIVE DATE and upon completion of the Scheme shall in entirety vest with the TRANSFEROR COMPANY and continue to enure for its set-off in future as permissible.

(e) The TRANSFEREE COMPANY, upon transfer of EU to it at fair value will be entitled to claim depreciation in its Tax Returns on the basis of fair market value of fixed assets as of EFFECTIVE DATE arrived at on the basis of independent valuation to be undertaken by the TRANSFEREE COMPANY at the appropriate time for this purpose."

4. When PEL filed its returns of income for the assessment year 2000-01, the transfer of Erode undertaking was for an aggregate consideration of Rs.7500 lakhs and the itemised value

of fixed assets comprising land, building and plant & machinery was determined based on the Chartered Engineer's Certificate. Accordingly, it claimed depreciation on buildings, plant & machinery, based on the value of assets so acquired/transferred in terms of the Scheme. The Assessing Officer had disallowed the depreciation claim by treating the Scheme as one of 'demerger' under Section 2(19AA) of the Income Tax Act, thereby restricting the claim for depreciation only on the Written Down Value (WDL) of assets being transferred from PSCL to PEL.

5. The same stand was adopted by the Department for the subsequent years also. All these assessment orders and notices, treating the Scheme as 'demerger' under Section 2(19AA) of the Act and disallowing the claim for depreciation, are put under challenge in these Writ Petitions.

6. Mr.A.L.Somayaji, learned Senior Counsel appearing for the petitioner submitted that the Company Court order sanctioning a Scheme of Arrangement pursuant to Sections 391 to 394 of the Companies Act, 1956 is a code by itself and when the scheme is sanctioned with effect from a particular date, it is binding on everyone, including the statutory authorities. According to the learned Senior Counsel, since the proceeding for sanction of a Scheme under Sections 391 to 394 of the Act is a code by itself, the proceedings, as well as the order sanctioning the Scheme, is a judgment in rem.

7. To such a submission, Mrs.Hema Muralikrishnan, learned Standing Counsel appearing for the respondent submitted that there was no explicit pronouncement in the sanction ordered by the Company Court to the effect that the transaction is not a demerger and that the "income tax implications" referred to in the statement under Section 393 of the Companies Act will not form a part of the "Scheme of Arrangement" and therefore, the Scheme itself is to be treated as one of 'demerger' under Section 2(19AA) of the Income Tax Act.

8. Before addressing the core issue involved in these writ petitions, it would be appropriate to touch upon the preliminary issue raised by the learned Standing Counsel for the respondent on the maintainability of the writ petitions, on the ground of non-availment of the alternate statutory appeal remedy.

9. The issue with regard to non-availment of alternate remedy as a bar to file a writ petition, has been dealt in various decisions of the Hon'ble Supreme Court, by holding that the presence of an alternate remedy is not an absolute bar in entertaining a writ petition and that the exceptions with regard to violation of the principles of natural justice, lack of jurisdiction, manner of exercise of power by the statutory

authorities, correctness and propriety of the decision making process, etc., have been spelt out as grounds for entertaining a writ petition under Article 226 of the Constitution of India.

10. The Madras High Court in the case of Nokia India Private Ltd. Vs Deputy Commissioner (CT)-IV reported in (2015) 79 VST 137 (Mad), has made a consolidated reference to some of the decisions of the Hon'ble Supreme Court and held that the non-availment of the statutory appeal remedy will not be a bar for filing a writ petition. The relevant portion of the order reads as follows:-

26. In the light of the above facts and the contentions raised by both sides, this Court is of the view that the petitioner need not be relegated to avail the alternate remedy as it has been held in all cases that necessity to avail the alternative remedy may not arise and it is not a bar to exercise the jurisdiction under Article 226 of the Constitution of India. As regards the objection of the Revenue that alternative remedy is available to the petitioner, it is no doubt true that the Act provides for an alternative remedy of filing an appeal. In a recent decision reported in [2011] 5 SCC 697 (Union of India (UOI) vs. Tania Construction Private Limited), on the issue of maintainability of a writ petition in the face of an alternative remedy provided under the Act, the apex court held that the presence of an alternative remedy is not an absolute bar in entertaining a writ petition. The apex court considered the decisions reported in [2003] 2 SCC 107 Harbanslal Sahnia v. Indian Oil Corporation Ltd.), [2001] 10 SCC 491 (Modern Steel Industries v. State of U.P.), [2010] 3 SCC 321 (Hindustan Petroleum Corporation Limited v. Super Highway Services), [2009] 14 SCC 451 (National Sample Survey Organization v. Champa Properties Limited) as well as [1998] 8 SCC 1 (Whirlpool Corporation v. Registrar of Trade Marks) and held that the rule of exclusion of writ jurisdiction by availability of an alternative remedy, is a rule of discretion and not one of compulsion and there could be contingencies in which the jurisdiction under article 226 of the Constitution of India could be exercised in spite of availability

of an alternative remedy. The question to be decided is relating to the jurisdiction, manner of exercise of power by the Assessing Officer and the correctness and propriety of the decision making process and whether principles of natural justice was adhered. Therefore, it is held that the Writ Petitions are maintainable and cannot be rejected solely on the ground that as against the impugned assessment orders, the statute provides for alternate remedy. Accordingly, issue No.1 is decided in favour of the petitioner.

11. The grounds raised in the present writ petitions are some of the exceptions cited in the aforesaid decision for maintaining a writ petition without availing the alternate remedy and hence, I am of the view that the petitioner can maintain the writ petitions without availing the statutory appeal remedy.

12. The core issue involved in the present writ petitions is as to whether the statement under Section 393 of the Companies Act, 1956 would form a part of the Scheme of Arrangement and if so, whether the proceedings for sanctioning of the Scheme under Sections 391 to 394 would be a proceeding in rem?

13. The proposition that the sanction of a Scheme will have a binding effect on the statutory authorities, is not seriously disputed. Nevertheless, for the sake of clarity, I deem it appropriate to explicate the legal position with regard to the binding effect of sanction of a Scheme of Arrangement on the statutory authorities and such a sanction is judgment in rem.

14. In Marshall Sons & Co. (India) Ltd. Vs Income Tax Officer reported in (1997) 223 ITR 809 (SC), it was held that the sanction of a Scheme under the provisions of the Companies Act is binding on all concerned. This ratio decidendi came to be followed by this Court in Pentamedia Graphics Ltd. Vs Income Tax Officer reported in (2011) 236 CTR 204 (Mad) in the following manner:-

"In this connection, the principle laid down by the Supreme Court in the decision reported in Marshall Sons & Co. (India) Ltd. v. ITO (supra) needs reference. Dealing with the question of relevancy of effective date in a scheme sanctioned by the Court, the apex Court held that once the scheme had been sanctioned with effect from a particular date, it is binding on everyone including the

statutory authorities. Having regard to the law declared by the apex Court as to the effect of the scheme sanctioned by the Court, the only course open to the Revenue would be to act as per the scheme sanctioned effective from 1st Jan., 2004, which means that the tax authorities are bound to take note of the state of affairs of the applicant as on 1st Jan., 2004 and a return filed reflecting the same cannot be ignored on the strength of s. 139(5) of the IT Act. 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."

15. The Calcutta High Court in Maan concast Pvt. Ltd. & anr. Vs West Bengal Industrial Development Corporation Ltd. & Ors. Reported in (2017) SCC Online Cal 19426 also took a similar view in the following manner:-

"A transfer which takes place by operation of law, therefore, need not meet the requirement of the provisions of the Transfer of Property Act, 1882 or the Indian Registration Act, 1908. J.K. (Bombay) Private Ltd. (supra) has held that, a scheme under Sections 391 and 392 of the Companies Act, 1956 framed by the Court in respect of a company, to pay of its creditors, would be binding upon the creditors and the shareholders of such company. It has held that, a scheme sanctioned by the Court does not operate as a mere agreement between the parties. It becomes binding on the company, creditors and the shareholders and has statutory force."

.....
"A scheme of amalgamation or arrangement documents the compromise arrived at between the parties to the scheme inter vivos. A scheme may be between two or more companies. It may also be between a company and its shareholders or creditors. A proceeding for sanction of a scheme relating to a company under the Companies Act, 1956 is a proceeding in rem."

16. Similarly, in Bhavita Jitendra Mehta Vs Sudera Enterprises Private reported in (2004) 51 SCL 290 Cal, it was held that the order of amalgamation passed by the Company Court is a judgment in rem.

17. In Dalmia Power Ltd. Vs Assistant Commissioner of Income Tax, Circle-1, Trichy reported in (2019) 418 ITR 221 (Mad), the Hon'ble Supreme Court had referred to one of its own decisions and held that such Schemes sanctioned under the Companies Act has a statutory force and the order is a judgment in rem. The relevant portion of the observation reads as hereunder:-

4.6 Pursuant thereto, the Schemes were sanctioned by the NCLT, Chennai vide Orders 16.10.2017, 20.10.2017, 26.10.2017, 28.12.2017, 10.01.2018, 20.04.2018 and 01.05.2018; and, vide Orders dated 18.05.2017 and 30.08.2017 by the NCLT, Guwahati. Accordingly, the Schemes attains statutory force J.K. (Bom.) (P.) Ltd. v. New Kaiser-I-Hind Spg. & Wvg. Co. Ltd. [1970] 40 Comp. Cas. 689 not only inter se the Transferor and Transferee Companies, but also in rem, since there was no objection raised either by the statutory authorities, the Department, or other regulators or authorities, likely to be affected by the Schemes.

18. On a comprehensive enumeration of the aforesaid judicial precedents, it can be summarised and held that the order sanctioning a Scheme of Arrangement pursuant to Sections 391 to 394 of the Companies Act will have a statutory force, binding on all concerned and the sanction of the Court would operate as a judgment in rem.

19. Above all, the Company Court, while sanctioning the Scheme of arrangement through its order dated 10.09.2001 in C.P.Nos.118 & 119 of 2000, had held in paragraph 5 that the Scheme of Arrangement between the transferor and transferee companies, shall form part of the order.

20. The core objection of the respondent is to the effect that the statement under Section 393 of the Companies Act, 1956 will not form a part of the Scheme of Arrangement sanctioned by the Court and the Scheme would be one of 'demerger', as defined under Section 2(19AA) of the Income Tax Act.

21. The Assessing Officer had disallowed the depreciation claim made by the petitioner and treated the Scheme as one of 'demerger' under Section 2(19AA), thereby restricting the claim for depreciation, only on the Written Down Value (WDV) of the assets being transferred from PSCL to PEL, for the assessment year 2000-01. This stand was maintained by the Assessing Officer in respect of the subsequent assessment years, namely 2001-02, 2002-03, 2004-05, 2005-06 and 2006-07 also.

22. The learned Senior Counsel appearing for the petitioner would submit that the provisions of Sections 391 to 394 of the Companies Act is a code by itself and that the statement under Section 393 of the Act would be a part of the order sanctioning the Scheme. For such a proposition, the only reliance placed was on the decision of a learned Single Judge of the Karnataka High Court in the case of Reserve Bank of India Vs Tulunadu Finance and Developments Ltd., reported in ILR 2010 Kar 4328. On this proposition, the learned Senior counsel fairly stated that, the finding by the learned Single Judge therein that the statement under Section 393 of the Companies Act would form a part of the Scheme, is not supported by reasons. The Karnataka High Court had made such an observation, in the following manner:-

19.

In Clause-22 of the Explanatory Statement under Section 393 of the Companies Act, which forms part of the scheme clearly reveals that since the company could not fulfill all the norms set by the RBI, the RBI vide its letter dated 11.5.2000 has prohibited the company from accepting of fresh public deposits, renewing existing deposits on maturity or alienating any assets of the company without the permission of RBI.

(emphasis supplied)

23. Apart from the above observation, no ratio has been formulated in the entire decision to render the proposition that the statement under Section 393 of the Act will have a statutory force, as a ratio decidendi. At the most, the observation of the Karnataka High Court could be termed as obiter dictum.

24. In Sanjay Singh & Anr. Vs U.P. Public Service Commission reported in (2007) 3 SCC 720, the Hon'ble Supreme Court had held that it is the ratio decidendi of the judgment and not the final order of the judgment, which forms a precedent. Likewise, in Rajbir Singh Dalal Vs Chaudhari Devlal University reported in (2008) 9 SCC 284, it was observed that mere casual observations or directions, without laying down any principles of law and without giving reasons would not amount to a precedent. Thus, the decision of the Karnataka High Court may not have a persuasive effect, for the purpose of this proposition and hence its imperative to analyse the scope and object of the proposition. Barring the reliance placed on the Karnataka High Court's decision in Tulunadu F & D Ltd., (supra), no other decisions were relied upon by either side on this proposition.

25. In the Scheme of Arrangement between PSCL and PEL, the

transfer and vesting of Erode Undertaking (EU) in PEL, was for the aggregated value of Rs.7,500 lakhs. In the statement under Section 393 of the Companies Act, 1956, the Income Tax implications were explained, whereby, the scheme involving transfer of EU was construed to be not one of "Demerger", within the meaning of Section 2(19AA). The statement also explained that the PEL, upon transfer of EU to it at fair value, will be entitled to claim depreciation in its tax returns on the basis of fair market value or fixed assets as of effective dates arrived at on the basis of independent valuation undertaken by the PEL, at the appropriate time for this purpose. The Company Court, had taken note of this aspect in paragraph 4 of its order dated 10.09.2001 in C.P.Nos.118 & 119 of 2000 while sanctioning the arrangement, by observing that the transfer of EU is contemplated at a fair value reckoned at Rs.7,500 lakhs, based on the valuation report of the Chartered Accountants and the surplus arising to the transferor companies on EU being transferred to PEL, shall be used to write-off the deferred revenue expenditure and to improve its financial position.

26. Though the income tax implications has been explained to the creditors or members in the statement under Section 393 of the Act, the objections of the respondent is that the Company Court has not explicitly pronounced that the transaction is not a Demerger. It is the argument of the respondent that the sanction of the Scheme of Arrangement will not include the statement under Section 393 of the Act.

27. Section 393 of the Companies Act, 1956 reads as follows:-

"393. Information as to compromises or arrangements with creditors and members.--

1) Where a meeting of creditors or any class of creditors, or of members or any class of members, is called under section 391,-

a) with every notice calling the meeting which is sent to a creditor or member, there shall be sent also a statement setting forth the terms of the compromise or arrangement and explaining its effect; and in particular, stating any material interests of the directors, managing director, managing agent, secretaries and treasurers or manager of the company, whether in their capacity as such or as members or creditors of the company or otherwise, and the effect on those interests, of the compromise or arrangement, if, and in so far as, it is different from the effect on the like interests of other persons; and

b) in every notice calling the meeting

which is given by advertisement, there shall be included either such a statement as aforesaid or a notification of the place at which and the manner in which creditors or members entitled to attend the meeting may obtain copies of such a statement as aforesaid.

2) Where the compromise or arrangement affects the rights of debenture holders of the company, the said statement shall give the like information and explanation as respects the trustees of any deed for securing the issue of the debentures as it is required to give as respects the company's directors.

3) Where a notice given by advertisement includes a notification that copies of a statement setting forth the terms of the compromise or arrangement proposed and explaining its effect can be obtained by creditors or members entitled to attend the meeting, every creditor or member so entitled shall, on making an application in the manner indicated by the notice, be furnished by the company, free of charge, with a copy of the statement.

4) Where default is made in complying with any of the requirements of this section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees; and for the purpose of this sub-section any liquidator of the company and any trustee of a deed for securing the issue of debentures of the company shall be deemed to be an officer of the company: Provided that a person shall not be punishable under this sub-section if he shows that the default was due to the refusal of any other person, being a director, managing director, managing agent, secretaries and treasurers, manager or trustee for debenture holders, to supply the necessary particulars as to his material interests.

5) Every director, managing director, managing agent, secretaries and treasurers or manager of the company, and every trustee for debenture holders of the company, shall give notice to the company of such matters relating to himself as may be necessary for the purposes of this section; and if he falls to do so, he shall be punishable with fine which may extend to five hundred rupees."

28. The statement referred to in Section 393 is a mandatory statement to be served on the creditors or members, along with the notice calling the meeting under Section 391. The object of the statement under Section 393 is to explain to all the members of the proposed meeting about the nuances and implications of the terms of the arrangement and its effect. Unless, it is established to the subjective satisfaction of the Court that such a statement under Section 393 has been sent to the creditors and members along with the notice calling the meeting under Section 391, the sanction itself may not be granted.

29. The provision also indicates the limitations on the contents of the statement. It shall contain the terms of the compromise or arrangement and the effects of such terms could be explained. In other words, the contents of the statement should be in conformity with the main Scheme of Arrangement and cannot bring in such terms that are not in conformity with the scheme. Thus, the proceedings sanctioning the Scheme of Arrangement under Sections 391 to 394 of the Companies Act, 1956 is a Code by itself. As such, when it is a settled proposition that the Scheme of Arrangement would also form a part of the order of the Court sanctioning the scheme and such an sanction acts as a "judgment in rem", the statement under Section 393 of the Act would also merge with the Scheme of Arrangement and thus, be a part of the order of the Court sanctioning the scheme. Since the object behind the statement under Section 393 is to explain to the stakeholders on the effect of the proposed terms of settlement, such a explanatory statement cannot be contradictory to the scope of the Scheme of arrangement.

30. As stated earlier, under the Scheme of Arrangement, the value of the EU for transfer, was for aggregate value of Rs.7,500 lakhs and this aspect has also been taken note of by the Company Court, while sanctioning the Scheme. The income tax implications have been explained to the creditors or members in the statement under Section 393, to the effect that the scheme involving the transfer of EU is not one of a Demerger. Upon transfer of EU to PEL at a fair value, PEL will be entitled to claim depreciation on the basis of fair market value of the fixed assets. In view of the legal principles unequivocally settled by the Hon'ble Supreme Court in Dalmia's case (supra), as well as, various other decisions dealt with in the earlier portion of this order, the Scheme of Arrangement between PSCL and PEL, which expressly states that the Scheme is not a Demerger, within the meaning of Income Tax Act, has attained finality and statutory force not only "inter se" PSCL or PEL but also "in rem". Accordingly, the Scheme, that includes the Income Tax implications given in the statement and which explanatory statements are in conformity with the scope of the terms of arrangement, would be binding on the Tax Department.

31. On a conjecture that the Scheme is one of Demerger under Section 2(19AA), the Assessing Officer had disallowed the depreciation claim made by the petitioner and thereby restricted the claim for depreciation only on the WDV of the assets transferred from PSCL to PEL. The Company Court, while considering the petition for sanction under the Companies Act, had approved the Scheme of Demerger and the statement under Section 393 of the Companies Act. As held in the preceding paragraphs, the statements, being in conformity with the scope of the terms of the Scheme of Arrangement, becomes an integral part of the Scheme, which was sanctioned by the Company Court, and thus, the transfer of the undertakings will not be considered to be one of the Demerger within the meaning of Section 2(19AA) of the IT Act. As such, the basis of the impugned proceedings itself is fallacious and the further proceedings thereon, cannot be sustained.

32. Accordingly, the impugned proceedings dated 23.03.2004, 27.03.2006, 28.12.2006, 28.12.2007 & 20.01.2009 respectively are quashed. The concerned Assessing Authority shall taken into consideration of the findings of this Court that the Scheme of Arrangement is not a Demerger, within the meaning of Section 2 (19AA) and take further course of proceedings, in accordance with law.

33. The Writ Petitions stands allowed. Consequently, connected Miscellaneous Petition(s) are closed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

DP/hvk
To

The Assistant Commissioner of Income-Tax,
Company Circle V(2),Chennai-600 034.

+6cc to M/s.Mallika Srinivasan, Advocate,
S.R.Nos.34618, 34620 TO 34624

W.P.Nos.12510 & 12511 of 2004, 12255 of 2006,
3830 of 2007, 1054 of 2008 & 2629 of 2009
and WMP.Nos.132825 of 2006, 14637 & 14636,
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VSNII (CO)
CS/05/01/2021