IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 17.08.2021

CORAM:

THE HON'BLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.26313 of 2017

M/s Delphi-TVS Diesel Systems Limited,
Represented by its Authorized Signatory,
Mr.Sriram Seshadri,
Mannur, Thodukadu Post,
Sriperambadur Taluk, Kanchipuram,
Tamil Nadu - 602 105. ... Petitioner

Vs.

1.ITO (OSD) / Secretary
Dispute Resolution Panel - 2,
7th Floor, Income Tax Office,
BMTC Building, 80 feet Road,
Koramangala, Bangalore - 560 095.

2.Assistant Commissioner of Income-tax (OSD),
Corporate Range - 1, No.121,
M.G. Road, Nungambakkam,
Chennai - 600 034.

3.Deputy Commissioner of Income-tax - 1(2),
5th Floor, Tower I - BSNL Building,
16, Greams Road, Chennai - 600 006. ... Respondents

Prayer : Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorari to call for the records comprised in the impugned order bearing File No.346/DRP-2/BANG/2016-17 dated September 20, 2017 made under Section 144C(5) of the Act on the file of the first respondent and quash the same.

For Petitioner : Mr.N.V.Balaji

For Respondents : Mrs.Hema Muralikrishnan
Senior Standing Counsel

ORDER

The lis on hand is instituted questioning the legal validity of the order passed by the Dispute Resolution Panel in proceeding F.No.346/DRP-2/BANG/2016-17 dated 20th September, 2017.

2. The petitioner was incorporated as a joint venture between M/s.Delphi Singapore and TVS Group India. It is engaged in the business of manufacturing of diesel fuel injection equipment for cars, sports utility and multi utility vehicles, light commercial vehicles, tractors, single and two cylinder engines for original engine manufacturers. During Assessment Year 2013-14, the petitioner was engaged in various international and specified domestic transactions. The petitioner filed its return of income on 28th November, 2011 declaring a total income of 'Nil'. Along with the return of income, the international and specified domestic transactions of the petitioner were duly reported in the Accountant's Report in Form No.3CEB filed in accordance with the provisions of Indian Transfer Pricing Regulations.

3. The second respondent passed a Draft Assessment Order on the petitioner under Section 143(3) read with Section 144C(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for the Assessment Year 2013-14. In the said Draft Assessment Order, there was no proposal for variation in income return by the petitioner by disallowing of any expenditure under Section 40(a)(i) of the Act, the second respondent however had proposed variations in respect of other issues.

4. The petitioner filed its objections before the first respondent in respect of the proposal for variation of income made in the Draft Assessment Order. The first respondent, during the course of proceedings before it, issued a notice for enhancing the income of the petitioner. Hence, the enhancement notice was issued in respect of Employee Secondment Charges and Reimbursement of Expenses on the ground that the same is to be disallowed under Section 40(a)(i) of the Act.

5. The petitioner filed its objections to the proposal for enhancement. The first respondent however rejected the objections and directed the second respondent under Section 144C (5) of the Act to make disallowance under Section 40(a)(i) in respect of Employees Secondment Charges and Reimbursement of Expenses and passed the Assessment Order. The directions of the first respondent enhancing the income, in respect of variations, which are not proposed by the second respondent is beyond the powers conferred under the Income Tax Act and hence, the

petitioner has filed this writ petition seeking to quash the directions of the first respondent.

6. Mr.N.V.Balaji, learned counsel for the petitioner vehemently contended that the respondents have no jurisdiction or powers under Section 144C(8) of the Act to issue such a notice seeking enhancement and therefore, the writ petition is to be considered. The learned counsel for the petitioner contended that sub-section (8) to Section 144C of the Act is in pari materia with Section 251 of the Act. The explanations provided under these two Sections are similar in nature and in respect of Section 251 explanation clause, the Courts have held that whatever not available in the original Assessment Order cannot be taken as an issue for the purpose of enhancement under Section 251. Applying the said principle in the present case, the Assessing Officer has not adjudicated the issue taken out for the purpose of enhancement by the Dispute Resolution Panel and therefore, the Dispute Resolution Panel has no powers to issue notice for enhancement as the said issue raised was not considered by the Assessing Officer in the Draft Assessment Order.

7. The matter of variation is not proposed in the Draft Assessment Order, therefore, the explanation clause provided under Section 144C(8) cannot be expanded so as to exceed the scope of the original provision i.e., Section 144C of the Act. In other words, it is contended that the explanation contemplated must be within the main provision and exercise of powers under the explanation clause is impermissible under law. In the present case, when the variation is not adjudicated in the Draft Assessment Order, the said variation cannot be taken out for the purpose of enhancement and thus, the Dispute Resolution Panel has no powers to issue notice and reject the objections filed by the petitioner.

8. In support of the said contention, the learned counsel for the writ petitioner relied on the judgment of the Hon'ble Supreme Court of India in the case of Commissioner of Income-tax V. Shapoorji Pallonji Mistry reported in [1962] 44 ITR 891 (SC) wherein the Hon'ble Apex Court held as follows:

> "In Gajalakshmi Ginning Factory v. CIT [1952] 22 ITR 502, it has been held by the Madras High Court that it would not be open to the AAC to introduce into the assessment new sources, as his power of enhancement is restricted only to income which was the subject-matter of consideration for purposes of assessment by the ITO.
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> In view of the provisions of sections 34 of the 1922 Act and 33B of the 1922 Act by which escaped income can be brought to tax, there is reason to think that

the view expressed uniformly about the limits of the powers of the Appellate Assistant Commissioner to enhance the assessment has been accepted by the legislature as the true exposition of the words of the section. If it were not, one would expect that the legislature would have amended section 31of the 1922 Act and specified the other intention in express words. The Income- tax Act was amended several times in the last 37 years, but no amendment of section 31 (3) of the 1922 Act was undertaken to nullify the rulings, to which we have referred. In view of this, we do not think that we should interpret, section 31 of the 1922 Act differently from what has been accepted in India as its true import, particularly as that view is also reasonably possible.

9. In the case of The Trustees, Nagore Durgah Vs. Commissioner of Income-tax reported in [1954] 26 ITR 805 (Madras), this Court has held as follows:

"8. Under Section 66 the Tribunal could refer only questions of law arising out of the order of the Appellate Tribunal and not other questions in view of the expression "arising out of such order". It has been held that a question of law can be said to arise out of an order of the Appellate Tribunal only it such an order discloses that the question was raised before the Tribunal. In other words, a question would arise out of an order, only if it had been raised and dealt with before the Appellate Tribunal. The scope of the jurisdiction was considered recently by the Calcutta High Court in Allahabad Bank Ltd. v. Commissioner of Income-tax [1952] 21 ITR 169 and by this Court in an earlier case, A.Abboy Chetty and Co. v. Commissioner of Income-tax Madras [1947] 15 ITR 442. It was pointed out by the Supreme Court in a recent case Commissioner of Income-tax, West Bengal v. Calcutta Agency Ltd. [1951] 19 ITR 191, that as the statement of the case prepared by the Appellate Tribunal -under the rules framed under the Income-tax Act is prepared with the knowledge of the parties concerned and they have a full opportunity to apply for any addition or deletion from that statement, the High Court in dealing with the question should confine and restrict if self to the facts contained in the statement of the case. The High Court must start by looking at the facts found by the Tribunal and answer the question of law on that footing. It should not depart from that rule and convert itself into a fact finding authority, which is not part of its advisory jurisdiction."

10. In the case of Commissioner of Income-tax V. Rai Bahadur Hardutroy Motilal Chamaria reported in [1967] 66 ITR 443 (SC), the Hon'ble Supreme Court considered the pleas which read as under:

> "The principle that emerges as a result of the authorities of this Court is that the Appellate Assistant Commissioner has no jurisdiction, under section 31(3) of the Act, to assess a source of income which has not been processed by the Income- tax Officer and which is not disclosed either in the returns filed by the assessee or in the assessment order, and therefore. the Appellate Assistant Commissioner cannot travel beyond the subject- matter of the assessment.
>
> ....
>
> There must be something in the assessment order to show that the Income-tax Officer applied Ms mind to the particular subject-matter or the particular source of income with a view to its taxability or to its non-taxability and not to any incidental connection. In the present case it is manifest that the Income-tax Officer has not considered the entry of Rs. 5,85,000 from the point of view of its taxability and therefore the Appellate Assistant Commissioner had no jurisdiction, in an appeal unders. 31 of the Act, to enhance the assessment."

11. In the case of Commissioner of Income-tax V. Scindia Steam Navigation Co. Ltd. reported in [(1961) 42 ITR 589 (SC)], the Constitution Bench of the Hon'ble Supreme Court of India summed up the principles as under:

> "39. The result of the above discussion may thus be summed up :
>
> (1) When a question is raised before the Tribunal and is dealt with by it, it is clearly one arising out of its order.
>
> (2) When a question of law is raised before the Tribunal but the Tribunal fails to deal with it, it must be deemed to have been dealt with by it, and is, therefore, one arising out of its order.
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> (3) When a question is not raised before the Tribunal but the Tribunal deals with it, that will also be a question arising out of its order.
>
> (4) When a question of law is neither raised before the Tribunal nor considered by it, it will not be a question arising out of its order notwithstanding that it may arise on the findings given by it."

12. Relying on the Principle No.4, the learned counsel for the petitioner reiterated that when a question of law is neither before the Tribunal nor considered by it, it will not be a question arising out of its order notwithstanding that it may arise on the findings given by it. In the present case also, the issue regarding variations were not considered in the Draft Assessment Order and therefore, the Dispute Resolution Panel cannot pick up such an issue and send a notice for enhancement. Thus, the impugned orders are issued without jurisdiction and therefore, the subsequent order of final assessment passed also lost its legal validity and thus, the writ petition is to be allowed.

13.Mrs.Hema Muralikrishnan, learned Senior Standing Counsel appearing on behalf of the respondents objected the contentions raised on behalf of the petitioner by stating that the provisions of the Income Tax Act, more specifically, Section 144C(8) is an unambiguous and the Dispute Resolution Panel has the power to consider any matter arising out of the assessment proceedings relating to the Draft Assessment Order. Thus, the only question is that, whether the issue considered is arising out of the assessment proceedings or not? In the present case, the objections filed by the petitioner itself would show that the issues raised for enhancement in the notice dated 12.09.2017 is relating to the financial year 2012-13 and furthermore, the Employees Secondment Charges are also included in the proceedings. When the subject matter was discussed and certain issues were not discussed, such issues can be taken up by the Dispute Resolution Panel either to confirm or to reduce or to enhance the variations. When sub-section (8) provides power to the Dispute Resolution Panel to enhance the variations proposed in the Draft Order and explanation also is provided, the Dispute Resolution Panel has the power to consider any matter arising out of the assessment proceedings, then, there is no reason to interfere with the order passed by the Dispute Resolution Panel and inference offered by the petitioner is not in consonance with the spirit of the provisions of the Income Tax Act.

14. The learned Senior Standing Counsel further contended that the writ petition itself became infructuous, in view of the fact that the final Assessment Order has been passed pursuant to the Draft Assessment Order and the order passed by the Dispute Resolution Panel. When a final Assessment Order is passed, then, the petitioner has to approach the Appellate Authority if at all any grievance exists and thus the writ petition is to be rejected on that ground also.

15. The learned Senior Standing Counsel relied on the Judgment of this Court in the case of Hyundai Motor India Limited V. Secretary, Income-tax Department reported in [2017] 86 taxmann.com 284 (Madras) and said that the appellate remedy once available is to be exhausted by the aggrieved person and in the present case, the final Assessment Order is passed and therefore, the petitioner has to approach the Appellate Authority. In respect of the other ground raised regarding the jurisdiction of the Dispute Resolution Panel, the judgment of the Lahmeyer Holding GMBH V. Deputy Director of Income-tax reported in [2015] 59 taxmann.com 336 (Delhi) is relied upon and the relevant paragraphs are extracted hereunder:

"Section 144C(8)

> 23. One more aspect which needs some discussion is with regard to the submission that the DRP had no occasion to consider the issue of taxability of the transaction involving the transfer of the expired value of the contract in exchange of shares as no variation had been suggested by the Assessing Officer on this aspect of the matter in his draft assessment order. It was submitted by the learned counsel for the revenue that the jurisdiction of the DRP in terms of Section 144C(8) was that it could confirm, reduce or enhance the variations proposed in the draft order, but it could not introduce a new element of tax or variation. In response to this, the learned counsel for the petitioner drew our attention to the Explanation added after Section 144 C(8). It was submitted by the learned counsel for the petitioner that by virtue of the said Explanation, the DRP always had the power to consider any matter arising out of the assessment proceedings relating to the draft order, notwithstanding that such matter was raised or not by the eligible assessee. Section 144 C(8) and the Explanation appended thereto reads as under:-
>
> "144C (8) The Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order so, however, that it shall not set aside any proposed variation or issue any direction under sub-section (5) for further enquiry and passing of the assessment order.
>
> Explanation. - For the removal of doubts, it is hereby declared that the power of the Dispute Resolution Panel to enhance the variation shall include and shall be deemed always to have included the power to consider any matter arising out of the assessment proceedings

relating to the draft order, notwithstanding that such matter was raised or not by the eligible assessee."

24. The said explanation was introduced through the Finance Act of 2012. But, it was to take effect retrospectively from 01.04.2009. The Dispute Resolution Panel's directions were issued after the Explanation had come into operation. In any event, the Explanation is clarificatiory. Reading the Explanation with sub-section 144C(8), it is evident that the Dispute Resolution Panel could examine the issues arising out of the assessment proceedings even though such issues were not part of the subject matter of the variations suggested by the Assessing Officer. In this light, it is significant that though the draft order had not proposed any addition with regard to the restructuring and the said transaction, yet, the DRP had asked for details of the restructuring and had examined the matter. After such examination, the DRP did not direct any addition to be made in this regard. It is evident that the DRP formed an opinion that the transaction was not exigible to capital gains tax and, to contend otherwise, in the purported reasons for re-opening of the assessment, would be nothing but a 'change of opinion' which is not permissible in law."

16. Relying on the above judgments, the learned Senior Standing Counsel summed up by stating that the Dispute Resolution Panel exercised its power as contemplated under sub-section (8) to Section 144C of the Act and thereafter the order of the Dispute Resolution Panel was taken into consideration and an Assessment Order was passed and therefore, the petitioner has not established any acceptable ground for the purpose of considering the writ petition.

17. Considering the arguments as advanced by the respective learned counsel for the petitioner as well as the learned Senior Standing Counsel for the respondents, it is necessary for this Court to understand the spirit of Section 144C as well the sub-section (8) of the Income Tax Act.

18. Section 144C is 'Reference to dispute resolution panel'. The purpose and object of constituting a Dispute Resolution Panel is to assist the Assessing Officer in respect of certain matters as the Panel consists of three Commissioner of Income Tax and such a Panel is considered as an Expert body for the purpose of adjudicating certain issues and issue appropriate directions to resolve the matter in more appropriate

manner. Thus, the Dispute Resolution Panel is a Statutory body provided enabling the competent authorities to get certain issues clarified and the Panel is empowered to adjudicate the issues by following the procedures as contemplated and issue suitable directions to the competent authority for inclusion.

19. Thus, the Dispute Resolution Panel is an Expert Panel consisting of three Commissioners of Income Tax and in this context, the provision is to be considered. At the first instance, the draft of the proposed order of assessment is to be forwarded to the Dispute Resolution Panel by the Assessing Officer. Thereafter, on receipt of the draft order, the eligible Assessee shall, within thirty days of the receipt by him of the draft order, may accept the variations of the Assessing Officer or file his objections, if any, to such variation with the Dispute Resolution Panel and the Assessing Officer. In the event of acceptance, the Assessing Officer shall complete the assessment on the basis of the Draft Assessment Order, if no objections are received within the period as specified in sub-section (2), then also the Assessing Officer shall pass final orders. However, in the cases where any objections are filed, then, the Dispute Resolution Panel shall issue directions referred to in sub-section (5), after considering the issues as contemplated under sub-section (6) of Section 144C of the Act.

20. Sub-section (7) contemplates that the Dispute Resolution Panel may, before issuing any directions referred to in sub-section (5), make such further enquiry, as it thinks fit, or cause any further enquiry to be made by the Income Tax Authority and report the result of the same to it.

21.As far as the present case is concerned, sub-section (8) is more relevant as the learned counsel for the petitioner states that the Dispute Resolution Panel has no power to enhance based on the variations which were not identifiable in the Draft Assessment Order.

22.In this context, close reading of sub-section (8) would reveal that "the Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order so, however, that it shall not set aside any proposed variation or issue any direction under sub-section (5) for further enquiry and passing of the assessment order."

23. Explanation to sub-section (8) reads as under:

> "Inserted by the Finance Act, 2012, w.e.f. 1-4-2009 [Explanation.- For the removal of doubts, it is hereby declared that the power of the Dispute Resolution Panel to enhance the variation shall include and shall be deemed always to have included

the power to consider any matter arising out of the assessment proceedings relating to the draft order, notwithstanding that such matter was raised or not by the eligible assessee.]"

24. Drawing inference, the learned counsel for the petitioner reiterated that the explanation cannot supersede the main provision i.e. sub-section (8). In this regard, this Court has to consider the scope of explanation to sub-section (8).

25. Sub-section (8) empowers the Dispute Resolution Panel to confirm, reduce or enhance the variations proposed in the Draft Order. Therefore, the undisputed position is that the Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the Draft Order. The explanation to sub-section (8) says that, for removal of doubts, the power of the Dispute Resolution Panel to enhance the variation shall include and shall be deemed always to have included the power to consider any matter arising out of the assessment proceedings relating to the Draft Order. The nexus between sub-section (8) and the explanation is to be considered for the purpose of forming an opinion regarding the jurisdictional power as raised by the petitioners. Sub-section (8) gives power for enhancement. Explanation is provided to remove the doubts. The explanation clarifies that the Dispute Resolution Panel have the power to consider any matter arising out of the assessment proceedings relating to the Draft Order. Thus, the requirement is that the variations proposed for enhancement must be relatable to the Draft Assessment Order and such issues must be arising out of the assessment proceedings. The very purpose and object of explanation is to ensure that in the event of any non-consideration of a particular point in the Draft Assessment Order by the Assessment Officer, the Dispute Resolution Panel being a Specialised Panel is provided with the power to propose such variations, relating to any matter arising out of the assessment proceedings. Therefore, the power of enhancement contemplated under sub-section (8) is clarified through the explanation. Such a clarification cannot be construed as 'excessive power' as in the absence of such clarification by way of an explanation, the very purpose and object of sub-section (8) to Section 144C would be diluted.

26. Power conferred on the Dispute Resolution Panel to confirm enhance or reduce is certainly guided under the provisions of the Act. Explanation to sub-section (8) of Section 144C of the Act, stipulates that enhancement is to be made with reference to the matter arising out of the assessment proceedings relating to the Draft Assessment Order. Responsibility of the Dispute Resolution Panel, once an objection is raised by the eligible assessee, to scrutinise the

Draft Assessment Order and verify the correctness or otherwise and thereafter, issued suitable directions as it deems thought fit for the purpose of incorporation in the assessment order. Thus, the Explanation contemplates that any variation arising out of the assessment proceedings relating to the Draft Assessment Order shall be proposed and on such proposal, an opportunity is to be provided to the eligible assessee to defend their case. Thus, the requirement as contemplated is that the Dispute Resolution Panel is to provide pre-decisional hearing to the assessee in order to comply with the principles of natural justice. Once a Dispute Resolution Panel identified and picked up such variations arising out of the assessment proceedings relating to the Draft Assessment Order, then such variations are to be communicated to the Assessee, enabling them to file their objections on such variations. On receipt of objections, the same is to be disposed of meaningfully.

27. There is a clear nexus between sub-section (8) and the Explanations provided to the sub-section. Explanation fulfils the purpose and object sought to be achieved under the said provision. In the absence of the explanation, there is a possibility of misinterpretation by either of the parties and therefore, the explanation became necessary as far as the sub-section (8) is concerned and thus, the contention raised by the petitioner that the Explanation exceeds the provision is incorrect and thus, rejected.

28. Regarding the judgment cited by the learned counsel for the petitioner in the case of Commissioner of Income-tax Vs. Scindia Steam Navigation Co. Ltd., the Hon'ble Supreme Court summed up four principles and such four principles are relatable to the question of law, which was neither raised before the Tribunal nor considered by the Tribunal and in such circumstances, the Hon'ble Supreme Court of India held that it will not be a question arising out of its order notwithstanding that it may arise on the findings given by it. Such an issue does not arise at all in the present case. In the case before the Hon'ble Supreme Court and the principles summed up would reveal that the particular question of law was neither raised before the Tribunal concerned nor considered by the Tribunal and therefore, the same will not be a conclusion arising out of its order. However, in the present case, the variations raised by the Dispute Resolution Panel in its notice is relatable to the Draft Assessment Order and more specifically, the objections filed by the petitioner itself reveals that they have dealt with the facts in respect of Employee Secondment Charges and while narrating the background, the details are also furnished. Thus, the Dispute Resolution Panel in exercise of its powers as guided in the Explanation clause, issued notice and received objections and thereafter, proceeded with the matter by following the

procedures as contemplated. The Dispute Resolution Panel being an Expert Panel, is bound to ascertain the correctness or otherwise of the Draft Assessment Order passed by the Assessing Officer. In the event of identifying omission or commission or excessive exercise, the Dispute Resolution Panel is empowered under sub-section (8) to confirm or reduce or enhance the variations. The explanation is provided only to remove the doubts and therefore, the explanation cannot be read in isolation and certainly in consonance with the main provision in the present case. The Explanation undoubtedly fulfils the purpose and object of sub-section (8) to Section 144C of the Income Tax Act. Thus, there is no impediment as such for the Dispute Resolution Panel to consider any matter arising out of the assessment proceedings relating to the Draft Assessment Order and no matter, such an issue was discussed in the Draft Assessment Order or not, but it should not be totally unconnected with the assessment proceedings or the Draft Assessment Order. This being the purposive interpretation to be adopted for the purpose of defining Section 144C and sub-section (8) as well as the Explanation, this Court is of the considered opinion that proposed notice issued to the writ petitioner is relatable to the assessment proceedings and to the Draft Assessment Order. Thus, there is no infirmity in respect of exercise of powers by the Dispute Resolution Panel and the notice issued for enhancement. The petitioner submitted its objections and such objections were also disposed of and finally, the assessment order was admittedly passed by the Assessing Officer on 05.10.2017.

29. The learned counsel for the petitioner though pointed out that the final Assessment Order is anti-dated, this Court is of an opinion that such disputed facts are to be adjudicated before the Appellate authority, if the petitioner has chosen to file an appeal against the final assessment order. However, the said point raised may not be relevant as far as the issues raised in this writ petition is concerned. Thus, the petitioner is at liberty to raise all such grounds before the Appellate authority, if any appeal is filed against the final assessment order.

30. In view of the facts and circumstances, the following orders are passed : -

(i) The relief as sought for by the petitioner in the present writ petition stands rejected;

(ii) The petitioner is at liberty to prefer an appeal against the final Assessment Order passed by the competent authority on 05.10.2017 within a period of four weeks from the date of receipt of a copy of this order in a prescribed manner and by complying with the provisions of the Act and Rules;

(iii) In the event of filing any such appeal, the competent Appellate Authority shall condone the delay, if any taking into consideration the pendency of writ petition before this Court and dispose of the appeal on merits and in accordance with law and by affording an opportunity to the writ petitioner as expeditiously as possible.

31. With these directions, the Writ Petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

Sgl

To

1.ITO (OSD) / Secretary
Dispute Resolution Panel - 2,
7th Floor, Income Tax Office,
BMTC Building, 80 feet Road,
Koramangala, Bangalore - 560 095.

2.Assistant Commissioner of Income-tax (OSD),
Corporate Range - 1, No.121,
M.G. Road, Nungambakkam,
Chennai - 600 034.

3.Deputy Commissioner of Income-tax - 1(2),
5th Floor, Tower I - BSNL Building,
16, Greams Road, Chennai - 600 006.

+1cc to Mr.N.V.Balaji, Advocate SR.No.41150

+1cc to Mrs.Hema Muralikrishnan, Advocate SR.No.41049

W.P.No.26313 of 2017

SSV(CO)
GMY(01/09/2021)