IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.07.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.28183, 28200, 28204 & 28206 of 2018
and
W.M.P.Nos.32847, 32878, 32885 & 32891 of 2018

M/s.Pentamedia Graphics Limited,
Rep., by its Director (Independent),
Mr.R.Kalyanaraman,
'Taurus', No.25, First Main Road,
United India Colony, Kodambakkam,
Chennai-600 024,
Now at No.30A, Akbarabad,
1st Street, Kodambakkam,
Chennai-600 024. .. Petitioner in all W.Ps.

-vs-

The Assistant Commissioner of Income Tax,
Non Corporate Circle 20(1),
Room No.311, III Floor, Wanaparthy Block,
No.121, Mahatma Gandhi Road,
Chennai-600 034. .. Respondent in all W.Ps.

Prayer in W.P.No.28183 of 2018 :- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records in F.No.AAACP1647B/A.Y.2004-05/ACIT/NCC-20/CHN dated 11.05.2018 on the file of the respondent relating to the assessment year 2004-05 and quash the same and further direct the respondent to allow the claim of investments written off and fixed assets written off in furtherance of the order of this Court in C.A.Nos.330 to 333 of 2009 in C.P.Nos.167 and 171 of 2004 dated 11.01.2010.

Prayer in W.P.No.28200 of 2018 :- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records in F.No.AAACP1647B/A.Y.2003-04/ACIT/NCC-20(1)/CHN dated 24.07.2018 on the file of the respondent relating to the assessment year 2003-04 and quash the same and further direct the respondent to allow the claim of inventory written off in furtherance of the order of this Court in C.A.Nos.330 to 333 of 2009 in C.P.Nos.167 and 171 of 2004 dated 11.01.2010.

Prayer in W.P.No.28204 of 2018 :- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records in F.No.AAACP1647B/A.Y.2001-02/ACIT/NCC-20(1)/CHN dated 31.07.2018 on the file of the respondent relating to the assessment year 2001-02 and quash the same and further direct the respondent to allow the claim of loans and advances written off and sundry debtors written off in furtherance of the order of this Court in C.A.Nos.330 to 333 of 2009 in C.P.Nos.167 and 171 of 2004 dated 11.01.2010.

Prayer in W.P.No.28206 of 2018 :- Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records in F.No.AAACP1647B/A.Y.2002-03/ACIT/NCC-20(1)/CHN dated 31.07.2018 on the file of the respondent relating to the assessment year 2002-03 and quash the same and further direct the respondent to allow the claim of loans and advances written off and sundry debtors written off in furtherance of the order of this Court in C.A.Nos.330 to 333 of 2009 in C.P.Nos.167 and 171 of 2004 dated 11.01.2010.

For Petitioner (In all W.Ps.)	:	Mr.P.H.Aravind Pandian, Senior Counsel assisted by Mr.M.P.Senthil Kumar
For Respondent (In all W.Ps.)	:	Ms.Hema Muralikrishnan, Senior Standing Counsel

COMMON ORDER

All these writ petitions are filed challenging the assessment orders passed with reference to different assessment years.

2.The petitioner is a company registered in terms of the Indian Companies Act, 1956. The petitioner carries on the business of export and development of software and multimedia. The petitioner is a regular assessee in terms of the provisions of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

3.The assessee challenges the assessment orders on the ground that the respondent had erred in rejecting the claim of deductions on inventories return off, sundry debtors return off and loans and advances written off as per the Court orders dated

17.12.2007 for the assessment years 2001-02 to 2003-04 on the basis that the said claims were made for the first time in the revised return dated 31.03.2008. Relying on the directions of the Income Tax Appellate Tribunal, Chennai Bench 'D' (for brevity "the ITAT"), the petitioner has contended that the respondent has committed a mistake in holding that the claims in their revised return could not be entertained. The respondent, being a subordinate authority to the ITAT, is bound by its directions and thus, ought to have followed the same.

4.It is contended that the respondent failed to follow the orders of the Commissioner of Income Tax (Appeals-V), Chennai (for brevity "the CIT(A)") in appellate proceedings for the assessment year 2004-05 and at the out set, it is contended that the orders of the ITAT have not been considered by the respondent and therefore, the assessment orders are in violation of the orders passed by the ITAT as well as the CIT(A).

5.The petitioner-company has raised other grounds with reference to the facts and circumstances. However, perusal of the impugned order would reveal that it is an assessment order, which is appealable under the provisions of the Act. Adjudication of merits, at this juncture, by the High Court cannot be done in view of the fact that disputed facts are to be adjudicated by the final fact finding authority, viz., the appellate authority. The finding of fact by the original authority/Assessing Officer in the present case cannot be considered as final finding, as the errors, omissions or commissions may be rectified by the Appellate Authority and thus, the aggrieved persons are bound to approach the appellate authority.

6.The learned Senior Counsel appearing on behalf of the petitioner referred to the judgment of this Court dated 29.11.2007 passed in C.A.Nos.2975 to 2977 of 2007 in C.P.Nos.167 to 171 of 2004.

7.It is contended that this Court has passed an order that the Composite Scheme of Amalgamation, Arrangement and Compromise between Pentamedia Graphics Limited, Media Dreams Limited, Kris Srikkanth Sports Entertainment Limited, Intelivision Limited and Mayajaal Entertainment Limited, sanctioned by this Court on 12.10.2004 and 08.11.2004 in C.P.Nos.167 to 171 of 2004, now modified and morefully set out the Annexure herewith in compliance with the No Objection letter dated 31.10.2007 of the Bombay Stock Exchange Limited be and is hereby sanctioned with effect from 1st January, 2004 as to be binding on all the shareholders and creditors of the Applicant Companies therein namely, Pentamedia Graphics Limited, Media Dreams Limited, Kris Srikkanth Sports Entertainment Limited, Intelivision Limited and Mayajaal Entertainment Limited.

8.Relying on the said order passed by this Court, the learned Senior Counsel relied on the modified Scheme of Amalgamation, Arrangement and Compromise between the companies. It is referred that the appointment date means 1st January, 2004 that was approved by this Court in the Company Applications. The learned Senior Counsel referred to paragraph 4.8 of the Composite Scheme of Amalgamation wherein, it is contended that notwithstanding anything contained in the Act, an amount not exceeding Rs.690.07 crores out of the balance standing in the Securities Premium Account of PMGL as on 31st March 2003 shall be utilized for adjustment of the estimated future diminution other than temporary in value of certain fixed assets, capital work-in-progress and inventories and investments from the balance as at 31st March, 2003 and variations thereon, if any, during the period 1st April 2003 to 31st December, 2003 not exceeding Rs.690.07 Crore.

9.Relying on the above clause, clause 7.2 is also referred to, which reads as follows:-

> "7.2. MAYAJAAL and PMGL are expressly permitted to revise their Income Tax returns and related TDS certificates and the right to claim refund, advance tax credits etc., upon this Scheme becoming effective and have expressly reserved the right to make such revisions in the Income Tax returns and related TDS certificates and the right to claim refund, advance tax credits etc., pursuant to the sanction of this Scheme."

10.Referring these two clauses, the learned Senior Counsel made a submission that this Court elaborately considered the Scheme of Amalgamation as approved in C.A.Nos.330 to 333 of 2009 in C.P.Nos.167 to 171 of 2004 dated 11.01.2010. The petitioner, Pentamedia Graphics Limited filed C.A.Nos.330 & 331 of 2009.

11.Relying on the said judgment of this Court, the learned Senior Counsel for the petitioner made a submission that the petitioner filed revised returns on 12.01.2007 and 27.12.2007 after completion of the assessment. The return filed pursuant to the notice under Section 148 of the Act cannot be treated as a revised return is the stand taken by the Department and further, it is contended that the revised return was filed beyond the period of limitation.

12.The learned Senior Counsel solicited the attention of this Court to the stand taken by the Department, which was considered by the High Court regarding the maintainability of the revised return beyond the period of limitation as well as the pendency of reopening of the proceedings under Section 148 of the Act. Considering all these factors and taking note of the appointment date as 01.01.2004, the Court passed an order on 11.01.2010. Paragraphs 21 to 23 of the order dated 11.01.2010 read as follows:-

> "21.Learned Standing Counsel appearing for the Revenue, however, submitted that the original assessment order was passed even much before this date and the revised returns filed must satisfy the provisions of Section 139(5) of the Income Tax Act. As regard the orders granting sanction of the scheme is concerned, there is no dispute that the scheme is effective from 1.1.2004. That being so, the contention of the respondent based on Section 139(5) of the Income Tax Act as regards the non-filing of revised return before the expiry of one year from the end of the relevant period on or before the expiry of the year, whichever is earlier, needs to be considered. In this connection, the principle laid down by the Supreme Court in the decision reported in 88 CC 528 - Marshall Sons and Co. (India) Ltd., vs. Income Tax Officer 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 every one 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 1.1.2004, which means that the Ta Authorities are bound to take note of the sate of affairs of the applicant as on 1.1.2004 and a return filed reflecting the same cannot be ignored on the strength of Section 139(5) of the Income Tax 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.
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> 22.As rightly pointed out by the learned counsel for the petitioner, when the claim of the assessee in the appeal had already been granted on a mere circumstance that the Department had

not accepted the same and gone before the Appellate forum does not mean that the scheme sanctioned would be of no consequence to the respondent. The respondent cannot ignore the order of this Court approving the scheme giving the effective date as 1.1.2004.

23.In the circumstances, the accepting the case of the applicant, this Court directs the Revenue to consider the returns filed in terms of the scheme sanctioned by this Court effective from 1.1.2004. The applications are ordered."

13.The learned Senior Counsel relied on the observations made by this Court in various paragraphs in order to show that all the grounds raised by the petitioner were considered by this Court and the applications were ordered. Therefore, the respondent has no option but to accept the revised return filed by the petitioner. The relief sought for in C.A.No.330 of 2009 is to accept the revised return for the assessment years 2001-02 to 2004-05. Thus, the prayer must be read cogently along with the relief granted by this Court. The applications filed by the petitioner were ordered. Thus, the respondent ought to have accepted the revised return as submitted by the petitioner. Contrary to the orders passed by this Court, the impugned orders are passed. Thus, the petitioner is constrained to move the present writ petitions.

14.The learned Senior Counsel referred to the subsequent orders passed in W.P.No.2357 of 2010 dated 15.07.2010 wherein also, the petitioner sought for a direction to the respondent to determine the refund due to the petitioner in respect of the assessment years 1998-99 to 2006-07 and grant the petitioner the said refund forthwith. In the said case, this Court passed an order directing the first respondent/Assessing Officer therein to dispose of the petitioners representation for refund within a period of eight weeks from the date of receipt of a representation from the petitioner.

15.The learned Senior Counsel solicited the attention of this Court with reference to the order passed by the ITAT wherein, the ITAT also made an observation that the directions issued by this Court are to be followed. Accordingly, the appeal filed by the Revenue was dismissed. In spite of the orders passed by this Court as well as by the ITAT, and subsequent objections submitted by the petitioner on 25.06.2012 with reference to the assessment year 2004-05, the respondent has passed the impugned orders and therefore, the very assessment orders are in violation of the directions issued by this Court and thus, the orders are liable to be set aside.

16.It is contended that the respondent cannot sit over the findings of this Court as well as the ITAT and in the present case, the respondent has exceeded their jurisdiction and made a finding, which is directly in violation of the observations made and the relief granted by this Court, as far as the petitioner herein is concerned.

17.The learned Senior Standing Counsel appearing on behalf of the respondent disputed the contentions raised on behalf of the petitioner by stating that the revised return was permitted only for the assessment year 2004-05. However, the petitioner-company have filed revised returns beyond the scope of the company applications for various assessment years right from 2001-02 to 2004-05. The petitioner-company themselves cannot go beyond the scope of this Court's order by submitting revised returns for various assessment years, which all are not permitted by this Court in its order. This order of this Court was well considered by the respondent while passing the impugned assessment orders. The revised returns admittedly were filed beyond the period of limitation. However, it was considered pursuant to the directions issued by this Court. The various observations made by this Court were also complied with, with reference to the facts established based on the files and documents. Thus, the respondent has not violated the orders of this Court.

18.The learned Senior Standing Counsel made a submission that it is an assessment order passed by the original authority and therefore, the petitioner is bound to prefer an appeal under the provisions of the Act for the purpose of redressal of their grievances.

19.This Court is of the considered opinion that perusal of the impugned order would reveal that the order passed by the High Court was considered by the respondent. The respondent formed an opinion in paragraph 9 of the impugned order, which reads as under:-

> "9. Assessee's contention that the claim was made on the basis of order of High Court is legally and factually incorrect as High Court in Comp.Petition Nos.167 to 171/2004 dated 12.10.2004, 08.11.2004 and 29.11.2007 only fixed the appointed date of demerger of assessee company as 01.01.2004 and it nowhere permitted assessee company to make claim for any of the earlier years; in fact there is not even a whisper about such claim being made by company before the High Court so as to adjust its

accounts for the year ending 31.03.2003. Part IV of the High Court order only speaks about Reorganization of capital of assessee company in which assessee company was permitted to adjust amount upto Rs.690.07 Crores out of the Securities Premium a/c against value of certain fixed assets, capital WIP, inventories and investments as on the appointed date ie. 01.01.2004."

20.There is a finding in the impugned order that this Court directed the respondent to take note of the affairs of the assessee-company as on 01.01.2004 consequent to the scheme. Since 01.01.2004 is not falling within the previous year relevant to the assessment year under consideration, such direction does not have any effect in the assessment year 2003-04. Para 72 of the order of the High Court dated 08.11.2004 was also considered by the Assessing Officer and a finding was made that the claim made by the assessee in their revised return does not have sanction of law. Vide letter dated 09.05.2008, the Assessing Officer specifically informed the assessee as under:-

> "3. The Hon'ble Madras High Court vide order dated 11.01.2010 has directed the Revenue to consider the returns filed in terms of the scheme sanctioned by the Hon'ble High Court effective from 01.01.2004. In other words, the High Court's direction is application for the F.Y. 2003-04 relevant to the A.Y. 2004-05 since the appointed date (ie. 01.01.2004) falls in the Previous Year relevant to the A.Y.2004-05.
>
> Such order was accepted by the assessee and did not challenge before any appellate authority. Thus the issue has reached finality."

21.Thus, the Assessing Officer has considered the facts and circumstances as well as the directions issued by this Court in the above orders referred to by the petitioner. After considering all these factors, the total income was computed and the impugned order has been passed.

22.This Court is of the considered opinion that this Court initially approved the Scheme of Amalgamation. Thereafter, this Court passed an order on 11.01.2010 in C.A.Nos.330 to 333 of 2009. Undoubtedly, this Court made observations with reference to the revised returns filed by the petitioner pursuant to the notice issued under Section 148 of the Act. This Court made certain factual findings also with reference to the Scheme of Amalgamation and certain clauses in the scheme more specifically, clauses 4.8 and 7.2. Further, this Court made certain observations on facts also. However, these observations would not preclude the competent authorities to consider the facts and circumstances with reference to the documents and evidences.

23.This Court in paragraph 23 of the judgment in clear terms directed the Revenue to consider the return filed in terms of the scheme sanctioned by this Court effective from 01.01.2004. Thus, one aspect of the matter is that the High Court directed the Revenue to consider the revised return in terms of the scheme with effect from 01.01.2004. In view of the fact that this Court directed the authorities to consider, it is not necessary that the facts culled out or revealed from the original documents as well as the evidences are to be neglected. It is the duty of the competent authorities to ensure that such directions are implemented in its real letter and spirit to ensure that the facts, circumstances as well as the documents and evidences are considered and appreciated in a right perspective. While doing so, if at all some errors, omissions or commissions are made by the original authority, the aggrieved persons are bound to prefer an appeal and certainly not a writ proceedings once again for the purpose of adjudication of the merits of the case. The observations made based on the affidavits filed by the respective parties cannot be construed as conclusive factors, which are to be referred with reference to the original documents and evidences. This Court has not passed an order by conducting an elaborate enquiry with reference to the documents and evidences and such an adjudication must be done by the competent authority. However, this Court considered certain facts which all are placed before it and observations are made but the final directions are granted to consider the claim of the petitioner and take a decision. Under these circumstances, the parties cannot berely on the observations and form an opinion that the revised return in the present case must be accepted by the competent authority/Assessing Officer. In such an event, opportunity of adjudication for either of the parties, viz., the petitioner as well as the Revenue is denied and thus, the spirit of the order of the High Court is to be understood that the observations are the guidelines for the authorities to consider the facts and ultimately, they are bound to consider the entire facts and circumstances with reference to the documents and evidences, which all are on record.

24.High Court cannot adjudicate the facts and circumstances based on the records, which all are to be scrutinized by the appellate authority in the present case. The petitioner-company is at liberty to adjudicate the legal grounds before the appellate authority, which is competent to entertain the same and redress the grievances in the manner known to law. In the event of entertaining a writ petition against the original assessment order, the aggrieved persons are not only deprived of an appellate remedy contemplated under the Act, but there is a possibility of omission and commission in respect of the complete facts and circumstances in a writ proceedings. Merely based on the affidavit filed by the parties, High Court cannot form an opinion with reference to the records, which is to be formed based on the original documents and evidences. Thus, an affidavit in a writ proceedings is insufficient to make a fact finding with reference to the documents and evidences. Therefore, the importance of an appellate remedy to be exhausted, at no circumstances, be undermined.

25.High Court cannot dispense with the appellate remedy in a routine manner. Writ Petitions are filed on various grounds some times with an idea to avoid delay in disposal of appeals. However, the legislative intention to exhaust the appellate remedy is to be considered by the Court. The legislatures thought fit that by providing an appeal, complete adjudication of facts, circumstances, documents and evidences would be completed. Thus, such a valuable remedy provided has to be exhausted in all circumstances.

26.The petitioner has raised certain legal grounds for the purpose of entertaining a writ petition. However, all such legal grounds may be pleaded before the appellate authority for effective adjudication. The final fact finding by the appellate authority would be of greater assistance to the High Court for effective disposal of the writ petition. Thus, the parties aggrieved must, at the first instance, prefer an appeal, exhaust the same and thereafter, they have to approach the appropriate form.

27.The power of review of the High Court under Article 226 of the Constitution of India is to scrutinize the processes through which a decision is taken by the competent authority in consonance with the provisions of a statute and rules, but not the decision itself. Therefore, the power of judicial review under Article 226 of the Constitution of India cannot be extended for the purpose of adjudicating the disputed facts with reference to the documents and evidences, which cannot be done at all. Based on the mere affidavit and some xerox copies of the documents, High Court cannot form an opinion with reference to the complete facts.

28.As far as the Income Tax matters are concerned, it involves certain technicalities and intricacies in accountancy.

Such intricacies and the expertise are to be exercised by the competent appellate authority of the Department of Income Tax, who is having thorough knowledge about the taxation policies. Therefore, the finding of appellate authority in such circumstances are of paramount importance for the High Court to exercise the power of judicial review. This Court is of the considered opinion that in all these cases, the petitioner has challenged the assessment orders passed admittedly and appeal is contemplated under the provisions of the Act. There is no other reason for the purpose of entertaining a writ petition before exhausting the appellate remedy and therefore, the petitioner-company is at liberty to approach the appellate authority by filing an appeal in a prescribed format and in compliance with the provisions of the Act. In the event of filing any such appeal, the appellate authority shall consider the same on merits and in accordance with law and by affording opportunity to the writ petitioner and dispose of the appeal as expeditiously as possible.

With the above observations and directions, all these writ petitions stand disposed of. No costs. Connected MPs are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

abr

To

The Assistant Commissioner of Income Tax,
Non Corporate Circle 20(1),
Room No.311, III Floor, Wanaparthy Block,
No.121, Mahatma Gandhi Road,
Chennai-600 034.

+4CCs to Mr.G.Baskar, Advocate, Sr.Nos.32718, 32719, 32720, 32721
+1CC to M/s.Hema Muralikrishnan, Advocate, Sr.No.32558

W.P.Nos.28183, 28200, 28204 &
28206 of 2018

SKY (CO)
K.RK. (01.11.2021)