IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.Nos.3644, 3647, 3651, 3652 & 3656 of 2023 &
W.M.P.Nos.3732, 3734, 3737, 3741 & 3744 of 2023

Mac Quality Builders Private Limited,
Having registered office at Plot No.198, 13th Cross Street,
Sri Sai Nagar, Okkiam Thoraipakkam,
Chennai - 600 097. ... Petitioner in W.P.No.3644 of 2023

Meadow Infrastructure Private Limited,
Having registered office at Plot No.198, 13th Cross Street,
Sri Sai Nagar, Okkiam Thoraipakkam,
Chennai - 600 097. ... Petitioner in W.P.No.3647 of 2023

Mukunda Land Developers Private Limited,
Having registered office at Plot No.14,
Sri Karpaga Vinayagar Nagar,
Thoraipakkam,
Chennai - 600 097. ... Petitioner in W.P.No.3651 of 2023

Mugilan Structurals Private Limited,
Having registered office at Plot No.198, 13th Cross Street,
Sri Sai Nagar, Okkiam Thoraipakkam,
Chennai - 600 097. ... Petitioner in W.P.No.3652 of 2023

Minal Contractors and Builders Private Limited,
Having registered office at Plot No.198, 13th Cross Street,
Sri Sai Nagar, Okkiam Thoraipakkam,
Chennai - 600 097. ... Petitioner in W.P.No.3656 of 2023

vs.

The Deputy Commissioner of Income Tax,
Central Circle 2(2), Chennai,
Investigation Building,
No.46 (Old No.108), Mahatma Gandhi Road,
Chennai - 600 034.
...Respondent in all W.Ps.

Common Prayer: Writ petition filed under Article 226 of the Constitution of India for writ of Certiorari calling for the records of the respondent contained in the impugned assessment Order under section 143(3) of the Income Tax Act, 1961 bearing DIN & Notice No.ITBA/AST/S/143(3)/2022-23/1048312919(1) dated 28.12.2022, DIN & Notice No.ITBA/AST/S/143(3)/2022-23/1048312922(1) dated 28.12.2022, DIN & Notice No.ITBA/AST/S/143(3)/2022-23/1048312943(1) dated 28.12.2022, DIN & Notice No.ITBA/AST/S/143(3)/2022-23/1048305967(1) dated 28.12.2022 and DIN & Notice No.ITBA/AST/S/143(3)/2022-23/1048312944(1) dated 28.12.2022, for the assessment year 2021-2022, quash the same as arbitrarily, illegal and in violation of principles of natural justice.

For Petitioners in all W.P.s. : Mr.Aravind Pandian, Senior Counsel for Mr.Salai Varun

For Respondent in all W.P.s. : Mr.A.P.Srinivas, Standing Counsel

COMMON ORDER

The petitioners have challenged the respective assessment orders passed under section 143(3) of the Income Tax Act, 1961 on the ground of violation of principles of natural justice.

2. Mr.A.P.Srinivas, learned Standing Counsel accepts notice on behalf of the respondent. By consent of both the parties, these writ petitions are taken up for final disposal in the admission stage itself.

3. Heard Mr.Aravind Pandian, learned Senior Counsel representing Mr.Salai Varun, learned counsel for the petitioners and Mr.A.P.Srinivas, learned Standing Counsel appearing for the respondent.

4. The contention of the respective petitioners is that the Assessing Officer has treated the subject amount as deemed dividend, instead of

treating the same as loan amount. The respective petitioners have submitted their reply to the notice issued under section 142(1) of the Income Tax Act on various dates and in the said replies, they had sought time to send their detailed reply. They had also referred to certain decisions rendered by the Constitutional Courts in respect of their contention that the subject amount ought not to have been treated as deemed dividend. According to the petitioners, without granting sufficient time to file a detailed reply, the impugned assessment orders have been passed within two days from the date of their reply, wherein the petitioners had sought for extension of time to file a detailed reply.

5. The petitioners have also preferred the statutory appeals as against the impugned assessment orders raising the very same grounds that have been raised in these writ petitions. Since the petitioners have already filed the statutory appeals, this Court is not inclined to pass orders on merits in these writ petitions. However, considering the fact that the valuable right of the petitioners with regard to their contention that the subject amount received by the respective petitioners, has been erroneously declared to be deemed dividend under the impugned assessment orders, the petitioners

must be protected for a period of four weeks to enable them to approach the statutory appellate authority and seek stay of the impugned assessment orders. This Court is of the considered view that a direction can be issued to the statutory appellate authority to dispose of the statutory appeals within a period of three months from the date of receipt of a copy of this Order.

6. For the foregoing reasons, these writ petitions are disposed of with the following directions:

(a)There shall be an order of interim stay of the impugned assessment orders dated 28.12.2022 for a limited period of four weeks from the date of receipt of a copy of this Order to enable the respective petitioners to approach the appellate authority viz., Commissioner of Income Tax Appeals, and seek stay of the impugned assessment orders.

(b) The appellate authority viz., Commissioner of Income Tax Appeals shall consider the petitioner's application seeking for stay of the impugned assessment orders as expeditiously as possible and dispose of the statutory appeals filed by the respective petitioners, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this Order.

No costs. Consequently, connected miscellaneous petitions are closed.

08.02.2023

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Note: Issue order copy **on 09.02.2023**

Index: Yes/No
Speaking order/Non-Speaking Order
Neutral Citation : Yes/No

To

The Deputy Commissioner of Income Tax,
Central Circle 2(2), Chennai,
Investigation Building,
No.46 (Old No.108), Mahatma Gandhi Road,
Chennai - 600 034.

ABDUL QUDDHOSE, J.
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W.P.Nos.3644, 3647, 3651, 3652 & 3656 of 2023

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