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W.P.Nos.3525, 3527 and 3528 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	30.08.2024
Pronounced On	19.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE C.SARAVANANW.P.Nos.3525, 3527 and 3528 of 2022andW.M.P.Nos.3662, 3663, 3664, 3665, 3666 and 3659 of 2022

M/s.Sanmina-SCI Systems Singapore Pte. Limited,

Represented by its Authorized Signatory

Mr.Jagannathan SV

... Petitioner in all W.Ps

Vs.

1.The Assistant Commissioner of Income Tax,
International Taxation 2(2),
Room No.410, 4th Floor, BSNL Building,
No.16, Greams Road,
Chennai, Tamil Nadu – 600 006.

2.The Additional Commissioner of Income Tax,
(International Taxation), Range-2,
Chennai, Tamil Nadu – 600 006.

... Respondents in all W.Ps

Prayer in W.P.No.3525 of 2022: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the case leading to the issue of Impugned Notice under Section 148 of the Act dated 31.03.2021 on the file of the 1st respondent in DIN & Notice No.ITBA/AST/S/148/2020-21/1032069660(1) and the consequential order rejecting the objections dated 30.12.2021 in DIN & Letter No:



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ITBA/AST/F/17/2021-22/1038260207(1) for the Assessment Year 2016-17 and quash the same.

Prayer in W.P.No.3527 of 2022: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the case leading to the issue of Impugned Show Cause Notice by the 1st respondent under Section 142(1) in DIN & Notice No:ITBA/AST/F/142(1)/2021-22/1038592601(1) dated 10.01.2022 for the Assessment Year 2016-17 and quash the same.

Prayer in W.P.No.3528 of 2022: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records of the case leading to the issue of reasons alongwith a Impugned Scrutiny Notice u/s.143(2) of the Act by the 1st respondent bearing DIN: ITBA/AST/F/143(2)-4/2021-22/1036928652(1) dated 15.11.2021 for the Assessment Year 2016-17 and quash the same.

In all W.Ps.

For Petitioner : Mr.Nishant Thakkar,
Ms.Jasmin Amalsadvala
and Mr.R.Venkatanarayanan
for M/s.Subbaraya Aiyar Padmanabhan Ramamani

For Respondents : Mr.B.Ramanakumar
Senior Standing Counsel
and Mr.Prabhu Mukund Arunkumar
Junior Standing Counsel



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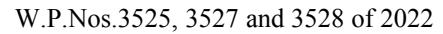
COMMON ORDER

By this Common Order, all the Writ Petitions are being disposed of.

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2. In these Writ Petitions, the petitioner, a Singapore Company, has challenged the Impugned Notice issued under Section 148 of the Income Tax Act, 1961 on **31.03.2021** seeking to re-open the assessment, the Impugned Order dated **30.12.2021** disposing of the objections raised by the petitioner to re-open the assessment, Impugned Show Cause Notice issued under Section 142(1) of the Income Tax Act, 1961 and the Impugned Scrutiny Notice issued under Section 143(2) of the Income Tax Act, 1961 respectively as detailed below:-

W.P.No.	Impugned Notice/Show Cause Notice/Communication No.	Date	Assessment Year
3525 of 2022	DIN & Notice No.ITBA/AST/S/148/2020-21/1032069660(1) and DIN & Letter No.ITBA/AST/F/17/2021-22/1038260207(1)	31.03.2021	2016-2017
3527 of 2022	DIN & Notice No.ITBA/AST/F/142(1)/2021-22/103859260(1)	10.01.2022	2016-17
3528 of 2022	DIN No.ITBA/AST/F/143(2)-4/2021-22/1036928652(1)	15.11.2021	2016-17



4. A Return of Income was filed by the petitioner on **14.10.2016** under Section 139(1) of the Income Tax Act, 1961 declaring a gross receipt of Rs.131,16,58,351/- during the Assessment Year 2016-2017. This was based on the valuation by Ernst & Young Merchant Banking Services Private Limited determining the Fair Market Value of equity shares of M/s.Sanmina-SCI Technology India Private Limited (STIPL).

5. The petitioner had claimed that the capital gains arising from the sale of the shares in M/s.Sanmina-SCI Technology India Private Limited (STIPL) to M/s.Sanmina-SCI India Private Limited (SIPL) was exempt from tax in terms of the India-Singapore Double Taxation Avoidance Agreement (ISDTAA), as



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such income was taxable only in Singapore.

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6. The said M/s.Sanmina-SCI India Private Limited (SIPL) which purchased the shares from the petitioner did not deduct tax at source and therefore, the parallel proceedings were initiated against M/s.Sanmina-SCI India Private Limited (SIPL) under Section 201 of the Income Tax Act, 1961.

7. It is the case of the petitioner that the aforesaid proceedings initiated against M/s.Sanmina-SCI India Private Limited (SIPL) were eventually dropped for the alleged failure to deduct tax while paying such consideration to the petitioner.

8. Counter-affidavit has been filed by the Department, it has been confirmed that the proceedings that were initiated against the purchasing company has been dropped. Para 4 of the counter-affidavit has been stated as follows:-

“4. Without prejudice to the above contentions and before adverting to the averments of the petitioner, the petitioner herein, namely M/s.Sanmina-SCI Systems Singapore Pte Limited is a company incorporated in Singapore and a tax resident of singapore. Its Permanent Account No.AAQCS55868C and assessed to income tax within the jurisdiction of the Assistant/Deputy Commissioner of Income



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Tax (International Taxation) Circle 2(2), Chennai. During the Financial Year 2015-16 relevant to the Assessment Year 2016-2017, the petitioner had sold 8,57,29,304 shares in Sanmina-SCI Technology India Private Limited to Sanmina-SCI India Private Limited at the rate of Rs.25.30 per share. On the Capital Gains arising thereon as per Income Tax Act, 1961, the petitioner was under the assumption that the Singapore resident-Petitioner was eligible to avail the benefit of Double Taxation Avoidance Agreement entered into between India and Singapore, as the DTAA provides that the income would be taxable only in Singapore. The petitioner filed its return of income on 14.10.2016 for the said AY admitting NIL income and disclosing an income of Rs.131,16,58,351 as exempt from taxation. The Assessing Officer issued a Notice under Section 201 of the Act to Sanmina-SCI India Private Limited the company which purchased the share as there was failure on its part to deduct tax at source for the consideration paid by it to the petitioner for acquisition of shares of Sanmina-SCI Technology India Private Limited and after analyzing prima facie the chargeability to tax of such Capital Gains and the submissions of M/s.Sanmina-SCI India Private Limited, the AO had closed the proceedings.”

9. It is further submitted that during the course of assessment proceedings of M/s.Sanmina-SCI India Private Limited (SIPL), the transaction was also scrutinized by the Transfer Pricing Study (TPS), who submitted the same to the Office of the Assistant/Deputy Commissioner of Income Tax, Transfer Pricing Officer Circle-3(1), as a part of its submission dated **07.01.2019**. No adjustment with receipt to the same was proposed in this regard by the Transfer Pricing Officer (TPO).



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10. The return that was filed on **14.10.2016** was sought to be re-looked by the respondents Department vide a Impugned Notice dated **31.03.2021** issued under Section 148 of the Income Tax Act, 1961, which is now subject matter of W.P.No.3525 of 2022.

11. The reasons for reopening the assessment communicated by the respondents Department on **15.11.2021** under Section 143(2) of the Income Tax Act, 1961 which is impugned in W.P.No.3528 of 2022.

12. The reasons for reopening the assessment stated in Impugned Communication/Impugned Scrutiny Notice dated **15.11.2021**, are captured below:-

“Sub: Intimation on change of incumbent-under Section 129 of the IT Act, 1961-Notice u/s.148 dated 31.03.2021 – Communication of Reasons for re-opening of Assessment for A.Y. 2016-17 – reg.

Sir/Madam,

It is informed that I am the present DCIT (International Taxation)-2(2), Chennai and as required u/s 129 of the Income Tax Act, a fresh opportunity of hearing is accorded to you subsequent to the above notice. Consequent to the return filed for the above AY, the reasons for re-opening of assessment are communicated to you as under:

“the remitter claims to have not deducted TDS, relying on th



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only criteria that since the Assessee is a tax resident of Singapore and as per India Singapore DTAA, capital gains arising is only taxable in Singapore.”

Firstly the same is true only if the conditions as set forth in the limitations of benefit clause are satisfied. However, the remitter has failed to furnish any evidence in support of the same.

Secondly in the valuation relied on by the remitter for fair market valuation of the shares from EY.

It is seen as under

“... EY has been engaged to perform fair market valuation of equity shares of STIPL (Sanmina Technology India Private Limited) has been engaged to perform fair valuation of equity shares of STIPL for internal management analysis and also for filing the valuation report with RBI/Authorized Dealers.”

And the scope of work is mentioned as under:

“The scope of our services is to perform the valuation of equity shares of STIPL as at 31 March 2015 as per internationally accepted methodology based on its Balance Sheet as at 31 March 2015 for the purpose of Internal Management Analysis of STIPL and for filing the Valuation Report with Reserve Bank of India.”

In the beginning also, the report mentions reliance restricted

Therefore, it is clear that the above valuation is only for the purpose of the RBI and not for the Income Tax or its suitability and applicability for any other purpose such as for working out the capital gains liability of the remitte (recipient).

The valuer has also not independently verified the valuation and relied solely on the documentation provided by the remitter.

Therefore when the valuation is carried by the undersigned the same is worked out as per Rule 11UA NAV method as under

[100100] Balance Sheet

Unless otherwise specified, all monetary values are in INR

	31/03/2015	31/03/2014	31/03/2013
Balance Sheet (Abstract)			
Equity and Liabilities (Abstract)			
Shareholders' funds			



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	31/03/2015	31/03/2014	31/03/2013
(Abstract)			
Share Capital	127,65,72,300	127,65,72,300	153,25,22,070
Reserves and surplus	258,10,42,300	256,93,00,903	
Total shareholders' funds	385,76,14,600	384,58,73,203	

Total number of shares is as under:-

Disclosure of shareholding more than five percent in Company [Table]

Unless otherwise specified, all monetary values are in INR

Classes of share capital (Axis)	Equity shares 1 (Member)	
Name of shareholder (Axis)	Shareholder 1 (Member)	
	01/04/2014 to 31/03/2015	01/04/2013 to 31/03/2014
Disclosure of shareholding more than five per cent in company (Abstract)		
Disclosure of shareholding more than five per cent in company (Line Items)		
Type of share	Equity Shares	Equity Shares
Name of shareholder	Sanmina-SCI Systems Singapore Pvt. Ltd.	Sanmina-SCI Systems Singapore Pvt. Ltd.
PAN of shareholder	AAQCS5586C	AAQCS5586C
Country of incorporation of residence of shareholder	SINGAPORE	SINGAPORE
Number of shares held in company	(shares) 12,72,49,024	(shares) 12,72,49,024
Percentage of shareholding in company	1.00	1.00

The value of each share is calculated as under:

Fair value of each share = Rs.258,10,42,300 / 1276,57,230 shares



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= Rs.20.21 Per Share

Rate at which each share was purchased as part of buyback

= Rs.25.30 Per share

Therefore, the difference at which the shares were bought over and above the fair market value is Rs.64,97,75,300/-.

Hence, there is reason to believe that the above consideration received by the assessee towards buyback of the shares also comprises of Long Term Capital Gain. The surplus portion which is consideration over and above the fair market valuation of the shares is to be taxed in the hands of the assessee. Therefore, on account of the above, I have reason to believe that income of Rs.64,97,75,300/- has escaped assessment within the meaning of Section 147 and the assessee has failed to fully and truly disclose all material facts for the correct assessment of income for AY 2016-17.

“The assessee has filed the return of income for AY 2016-17 on 14.10.2016 but has shown the amount of Rs.131,16,58,351/- as long term capital gains and claimed exemption from tax as per India Singapore DTAA. However, as detailed above there is sufficient reason to believe that the remittance also contains excess amount paid over and above the fair market value of shares.”

In this regard an opportunity of being heard is accorded to furnish your objections, if any, as laid down in the case of GKN Driveshafts (India) Ltd. Vs. ITO, (2003) 259 ITR 19 (SC), latest by 22.11.2021. Your objections may please be forwarded to the email id: chennai.dcit.it2.2@incometax.gov.in (word format). Please note that if the objections are not received on or before the said date, it will be construed that you have no objections to offer and necessary action will be taken accordingly.”

13. The petitioner has replied and pursuant to which, the Impugned Show

Cause Notice dated **10.01.2022** under Section 142(1) of the Income Tax Act,

1961 has been issued which is impugned in W.P.No.3527 of 2022.



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14. A Speaking Order dated **30.12.2021** was also passed in line with the decision of the Hon'ble Supreme Court in **G.K.N.Driveshafts (India) Ltd. Vs. Income Tax Officer and Others**, (2003) 259 ITR 19 (SC) (2003) 1 SCC 72, disposing of the objection of the petitioner. Pursuant to the Speaking Order dated **30.12.2021**, the Impugned Show Cause Notice dated **10.01.2022** has been issued to the petitioner which has been impugned in W.P.No.3527 of 2022 as mentioned above.

15. The Impugned Show Cause Notice dated **10.01.2022** merely calls upon the petitioner to furnish the following documents:-

- i. Unique Tax Identification Number allotted by the Tax Authority issuing Tax Residency Certificate.
- ii. The details of the Chairperson along with his/her Name, Designation, Address, Contact Number and Email ID.
- iii. Power of Authorisation for filing the replies on behalf of the assessee-company.
- iv. A brief note about the nature of business activity carried out by the petitioner during the year under consideration.
- v. Statement of computation of income for the relevant Assessment Year.
- vi. Details of remittances received on share transactions (buy back) during the relevant Assessment Year along with all supporting documents, copy of agreements, Ledger copies, and also explain the specific nature of supply or services rendered, etc.
- vii. Copies of Profit & Loss Account and Balance Sheet for the years FY 2012-13, 2013-14, 2014-15 and 2015-16.
- viii. Copy of the Bank Account evidencing the receipt of the remittances received during the year.



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- ix. Clarification/explanation for claiming such income received from Indian entities as not taxable.
- x. Other evidences/explanations in support of the petitioner's return of income.

16. The petitioner has also replied to the same vide reply dated **25.01.2022** seeking for further time. The respondents Department has informed the petitioner by its Communication dated **27.01.2022** that additional time was granted till 3.00 p.m on **04.02.2022** as the time for completing the assessment would be getting barred by limitation on **31.03.2022**.

17. The petitioner has also replied on **04.02.2022** stating that the petitioner Company was still in the process of deliberating on the way forward and prays for additional time of one week. Thereafter, a Show Cause Notice was also been issued on **04.02.2022** to the petitioner to show cause as to why the assessment should not be completed for the material period based on the available record if the petitioner fails to submit the required information by **08.02.2022**.

18. The petitioner further sought for additional time by its Representation dated **08.02.2022** and has thereafter proceeded to file the present writ petitions on **10.02.2022** raising grounds.



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19. The case of the petitioner is that there were no jurisdictional fact that are available for reopening the assessment, as is evident from the reasons furnished by the respondents for re-opening the assessment in the annexure attached to their response dated **15.11.2021**. It is submitted that the shares of the purchasing company namely Sanmina-SCI India Private Limited has been valued to arrive at a incorrect conclusion for income assessment by invoking Rule 11UA of the Income Tax Rules, 1962 under the Net Assessment Valuation (NAV) method. It is submitted that if at all such an exercise is to be carried out, at best the shares of the company, two shares were sold by the petitioner namely Sanmina-SCI Technology India Private Limited (STIPL) ought to have been valued and therefore in absence of the jurisdictional fact that are available, the proceedings initiated vide Impugned Notice dated **31.03.2021** and the consequential order passed on **30.12.2021** overruling the objections of the petitioner is liable to be quashed.

20. The reasons that forthcoming in the affidavit filed in support of the present writ petitions are that there are no fresh and tangible materials that have come in possession of the respondents Department for issuance of the Impugned Notice dated **31.03.2021** under Section 148 of the Income Tax Act,



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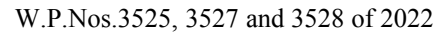
1961 impugned in W.P.No.3525 of 2022.

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21. In this connection, a reference is made to the decision of this Court in **Asianet Stat Communications Private Limited Vs. ACIT** in W.P.No.24842 of 2019 and in **Mobis India Limited Vs. DCIT**, 421 ITR 463. It is further submitted that reopening of the assessment is on the basis of a change of opinion since there were no adverse inference in TDS/Sec.201 proceedings initiated against the petitioner.

22. The learned counsel for the petitioner has also stated that there are no other materials that are available to conclude there was any inaducive part of the petitioner to provide information for completing the assessment. It is further submitted that a conclusion for buy back of shares cannot be countenanced. In any event, it would be exempt from tax in terms of Section 10(34A) of the Income Tax Act, 1961.

23. The learned counsel for the petitioner would contend that infact there was no material or information which prompted the respondents Department to take the case of the petitioner for reassessment and such reassessment cannot be initiated based on mere change of opinion. He would also contend that if at all



24. It is submitted that the obligation if any was only on M/s.Sanmina-SCI India Private Limited (SIPL) and not the petitioner as it would be exempted under Section 10(34A) of the Income Tax Act, 1961. He would also contend that the Impugned Scrutiny Notice dated **15.11.2021** issued under Section 143(2) of the Income Tax Act, 1961, cannot be sustained since it has been issued without consideration of the objections raised by the petitioner.

25. Finally, the learned counsel for the petitioner has also submitted that no approval, as is contemplated under Section 151 of the Income Tax Act, 1961 has been obtained and therefore on this count also the impugned proceedings are liable to be dropped. In support of the case, the petitioner has placed the following decisions:-

(i) Cognizant Technology Solutions Pvt Ltd Vs. Deputy Commissioner of Income Tax in W.P.No.32752 of 2017;

(ii) *Mohanlal Champalal Jain Vs. Income Tax Officer, Ward 1(2), Thane* reported in 2019 102 taxmann.com 293 (Bombay);



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(iii) Income Tax Officer, Ward 1(2) Vs. Mohanlal

Charmpalal Jain reported in 2019 11 taxmann.com 67 (SC);

(iv) Akshar Builders & Developers Vs. Assistant

Commissioner of Income Tax – 28(1), Mumbai reported in 2019

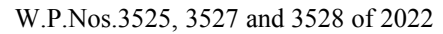
103 taxmann.com 162 (Bombay) and

(v) Ankita A. Choksey Vs. Income Tax Officer – 19 (1) (1)

& Others in W.P.No.3344 of 2018.

26. Arguing the case on behalf of the respondents, the learned Senior Standing Counsel for the respondents would submit that these Writ Petitions are devoid of merits and therefore these Writ Petitions are liable to be dismissed.

27. The learned counsel for the respondent would submit that transactions which are exempted from payment of tax involving cross border transactions have to be examined as there can be a case for income escaping assessment under the provisions of the Income Tax Act, 1961. It is further submitted that only an intimation was made and the assessment was completed only under 143(1) and therefore it cannot be stated that there is no change of opinion.



31. It is further submitted that the petitioner was issued with two notices



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dated **10.01.2022** and **27.01.2022** after the Impugned Order dated **30.12.2021**

was passed. However, the petitioner has not co-operated with the respondents.

32. Finally, the learned counsel for the respondent would submit that in the light of dropping of the proceedings initiated against the company purchasing the shares which is the subsidiary of the petitioner, in all likelihood proceedings will be dropped. It is submitted that the writ petitions are premature and therefore liable to be dismissed.

33. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior Standing Counsel for the respondents.

34. A reading of the reasons communicated vide Communication/Impugned Scrutiny Notice dated **15.11.2021** under Section 143(2) of the Income Tax Act, 1961 is impugned in W.P.No.3528 of 2022 makes it clear that there were sufficient reasons for reopening of the assessment under Section 148 read with Section 147 of the Income Tax Act, 1961 as it stood on **01.04.2021**.

35. That apart, the petitioner has suffered Speaking Order dated



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30.12.2021. Therefore, there is no justification in challenging the Impugned

Notice dated **31.03.2021** issued under Section 148 of the Income Tax Act, 1961

and the Impugned Communication/Impugned Scrutiny Notice dated **15.11.2021**

giving reasons for reopening the assessment and the Impugned Show Cause

Notice dated **10.01.2022**.

36. That apart, the petitioner has not cooperated with the respondents Department by furnishing the required informations. Therefore, on this count also there is no basis on which, the Impugned Notices/Communications can be quashed.

37. In fact, the respondents Department are empowered to pass the Assessment Orders based on best judgment method under Section 144 of the Income Tax Act, 1961 in absence of proper informations by the petitioner to the above communications calling upon the petitioner to furnish the required informations/documents.

38. Under these circumstances, these Writ Petitions are liable to be



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dismissed and are accordingly dismissed.

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39. The respondents are directed to complete the assessment preferably, within a period of 3 months from the date of receipt of a copy of this order or such other extended period that may be required subject to the petitioner filing its reply objections, if any, to the Show Cause Notice dated **04.02.2022**.

40. It is made clear that in case the petitioner fails to cooperate with the respondents Department, the respondents Department are at liberty to finalize the assessment by invoking Section 144 of the Income Tax Act, 1961. No costs. Connected Writ Miscellaneous Petitions are closed.

19.12.2024

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

arb

To:



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1. The Assistant Commissioner of Income Tax,
International Taxation 2(2),
Room No.410, 4th Floor, BSNL Building,
No.16, Greaves Road,
Chennai, Tamil Nadu – 600 006.

2. The Additional Commissioner of Income Tax,
(International Taxation), Range-2,
Chennai, Tamil Nadu – 600 006.



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C.SARAVANAN, J.
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Pre-delivery Common Order in
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