



W.A. Nos.1194, 1195 and 1196 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.05.2024

CORAM

**THE HONOURABLE MR.JUSTICE R.MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ**

**W.A. Nos.1194, 1195 and 1196 of 2023
and
C.M.P. Nos.12192, 12193 and 12194 of 2023**

M/s.Satluj Credit & Holdings Private Limited
Represented by its Director
Mr.Prasanna Natarajan
having registered office at Flat No.J-62,
T-1 (3rd Floor), Swapnaapt Dilshad Colony,
Shahdara, New Delhi- 110095.
and having administrative office at
New No.17, Old No.9, Crescent Avenue,
Kesavaperumalpuram, Chennai 600 028.

... Appellant in W.A.No.1194 of 2023

M/s.Sheetala Credit & Holdings Private Limited
Represented by its Director
Mr.Prasanna Natarajan
having registered office at Flat No.J-62,
T-1 (3rd Floor), Swapnaapt Dilshad Colony,
Shahdara, New Delhi- 110095.
and having administrative office at
New No.17, Old No.9, Crescent Avenue,
Kesavaperumalpuram, Chennai 600 028.

... Appellant in W.A.No.1195 of 2023



W.A. Nos.1194, 1195 and 1196 of 2023

M/s.Twentieth Century-Apco Leasing Private Limited

Represented by its Director

Mr.Prasanna Natarajan

having registered office at CK 5, Sector 11,

5th Floor, Salt Lake City, Kolkata – 700091.

and having administrative office at

New No.17, Old No.9, Crescent Avenue,

Kesavaperumalpuram, Chennai 600 028.

... Appellant in W.A.No.1196 of 2023

v.

1. Income Tax Officer

Corporate Ward 6(1),

Wanaparthi Block,

No.121, Mahatma Gandhi Road,

Nungambakkam, Chennai 600 034.

2. The Principal Commissioner of Income Tax -3,

Wanaparthi Block,

No.121, Mahatma Gandhi Road,

Nungambakkam, Chennai 600 034.

... Respondents in W.A.No.1194 of

2023

1. Income Tax Officer

Corporate Ward 6(2),

Wanaparthi Block,

No.121, Mahatma Gandhi Road,

Nungambakkam, Chennai 600 034.

2. The Principal Commissioner of Income Tax -3,

Wanaparthi Block,

No.121, Mahatma Gandhi Road,

Nungambakkam, Chennai 600 034.

... Respondents in W.A.No.1195 of

2023



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1. Income Tax Officer
Corporate Ward 3(1),
Wanaparthi Block,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.
2. The Principal Commissioner of Income Tax -3,
Wanaparthi Block,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.
... Respondents in W.A.No.1196 of 2023

Prayer in W.A.No.1194 of 2023: Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the impugned order passed in W.P.No.12918 of 2023 dated 26.04.2023.

Prayer in W.A.No.1195 of 2023: Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the impugned order passed in W.P.No.13090 of 2023 dated 27.04.2023.

Prayer in W.A.No.1196 of 2023: Writ Appeal filed under Clause 15 of the Letters Patent, praying to set aside the order of the learned Single Judge order in W.P.No.13431 of 2023 dated 27.04.2023.

For Appellant : Mr.R.Sivaraman
in all appeals

For Respondents : Mr.V.Mahalingam
in all appeals Senior Standing Counsel



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COMMON JUDGMENT
MOHAMMED SHAFFIQ, J.

The present writ appeals are filed challenging the orders of the learned Judge in the writ proceedings, wherein notice(s) under Section 148A(b) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) and the order(s) made pursuant thereto under Section 148A(d) of the Act dated 06.04.2023 and the consequential notice(s) under Section 148 of the Act dated 06.04.2023 were put to challenge. The challenge to the above proceedings was on the premise that the Writ Petitions challenging the order(s) under Section 148A(d) of the Act are premature and that the legal issues arising for consideration in the assessment shall be decided by the assessing authority after detailed consideration of the appellants' argument while rejecting the contention of the appellants that the reasons contained in the order(s) issued under Section 148 A(d) of the Act are different from the reasons which were stated in the notice(s) issued under Section 148 A(b) of the Act.

2. Brief Facts:

a) The appellant(s) herein are private limited companies. Litigation



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involving the appellants and other entities in the company viz., M/s.S.V. Global Mills Limited (hereinafter referred to as “SVGML”), reached the Apex Court consequent upon disputes *inter se* the six shareholders before the Company Law Board.

b) By order dated 17.05.2018, the Hon'ble Supreme Court permitted a buyout of the shares *inter se* the parties. The Apex Court also directed that a sum of Rs.100 crores be paid to the appellants for the buyout of their shares. The appellants have admittedly received a sum of Rs.18,62,03,348/-.

c) The impugned proceedings revolve around the liability of monies/ consideration paid to the appellants pursuant to the buyout of shares of the appellants in SVGML by SVGML under the Act.

d) Before proceeding further, it may be relevant to refer to the order of the Apex Court dated 17.05.2018, the relevant portion of which is extracted below:

"By our order dated 10.05.2018, having heard. the learned Senior Counsel on either side, this Court directed that a sum of Rs. 100 Crores be paid to the Respondents for the purchase of all the respondent's shares in the Company.

Mr. Kapil Sibal, learned Senior wished to examine on that date in how much time this payment can be made.



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Today, we are told that Mr.P. Chidambaram's client's own offer in this Court was for land and not for money. We reiterate that we were told this on the last occasion, after which we 10.05.2018. passed the order dated

As a result, the shares, which we are informed is no longer the subject matter of any attachment, and are free to be sold, should be purchased by Respondent No.7 at the price of Rs.100 Crores, to paid by Mr. Kapil Sibal's client within a period of 9 months from today.

As a result of this share purchase of Rs. 100 Crores being ordered by this Court, we make it clear that there will be no triggering of the SEBI Takeover Regulations.

We also make it clear that this order does not amount to shares being transferred inter vivos, nor can the payment for the shares be treated as deemed dividend. On payment, the share capital of the Company shall stand reduced by virtue of our order.

The observations of the High Court will not bind in any other proceedings between the parties.

Mrs. Vibha Datta Makhija, learned Senior Counsel, who appears on behalf of the Intervener, states that large sums have been defalcated by the Natarajan Group, which belong to depositors. She may urge this grievance before the appropriate forum in accordance with law.

With these observations, the Special Leave Petitions stand disposed of.

All the pending applications filed in the matters also stand disposed of."

(emphasis supplied)

3. Notice(s) were issued by the 1st Respondent(s) to the appellants regarding shortfall in payment / collection of TDS for the assessment year 2019-20 followed by summonses under Section 131(1A) of the Act dated 07.04.2022 and 13.04.2022.



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4. The impugned notice(s) under Section 148A(b) of the Act were issued by the respondent(s) stating that the respondent(s) had information which suggests that income chargeable to tax for the assessment year 2019-20 has escaped assessment within the meaning of Section 147 of the Act. The Annexure to the above notice(s) stated the following:

"Following information has been disseminated as High Risk CRIU/VRU case pertaining to AY 2019- 20 on Insight Portal selected under Risk Management Strategy (RMS) cycle 2 formulated by the CBDT: The Hon'ble Supreme Court of India vide order dated 17.05.2018 had approved a buy-out of shares held by following entities in M/s.SV Global Mills Limited:

- 1.M/s.Satluj Credit (840000 shares). and Holdings Pvt Ltd*
- 2.M/s. Calcom Credit and Holdings (840000 shares) Pvt Ltd*
- 3.M/s.Rajat Chakra Credit and Holdings Pvt Ltd (840000 shares)*
- 4.M/s.Sheetala Credit and Holdings Pvt Ltd (850000 shares)*
- 5.M/s.Twentieth Century Apco Leasing Pvt Ltd (288440 shares)*
- 6.Smt. Rajalakshmi (578000 shares) The Hon'ble Supreme Court directed that a sum of Rs.100 crores es to be paid to the above entities for the buy-out of all their shares in the company. Further, the Hon'ble Supreme Court vide order, dated 25.02.2019 directed M/s.SV Global Mills Ltd to deposit Rs.100 cores in the registry of Hon'ble Supreme Court within a period of two weeks and registry to invest the said amount in an interest bearing short term fixed deposit.*

It is observed that shares had been transferred from assessee company to M/s SV Global Mills Ltd through the order of Hon'ble Supreme Court. Hence, capital gain arising out of transfer of shares requires to be taxed in the hands of the assessee company. However, it is observed from the Income Tax return filed by the assessee company



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for AY 2019-20 that an amount of Rs. 18,62,03,348/- has been claimed as exempt income citing the order of the Hon'ble Supreme Court ie., Direction under Art.142 of the Constitution by SC, whereas the order of the Hon'ble Supreme Court do not appear to suggest/direct to treat the receipt as exempt income under the Income Tax Act, 1961.

Further, the assessee company's share of interest amount on short term fixed deposit of Rs.100 crores is also requires to be taxed in the hands of the assessee company. Furthermore, against the deposit of Rs.100 crores, assessee company and others have got the benefit of acquiring the title of the land worth Rs.36 crores (Book value) from the Government of Puducherry as per the order of Hon'ble High Court of Madras, vide order dated 18.03.2021."

5. The above notice(s) were duly responded to by the appellants by placing reliance on the order of the Supreme Court dated 10.05.2018 wherein it was directed that a sum of Rs.100 crores be paid to the appellants herein for buying out the shares of the appellants in SVGML. It was further set out in the order of the Supreme Court that the buyout would not amount to shares being transferred inter-vivos, nor can the payment for the shares made to the appellants be treated as deemed dividend. It was further submitted that assessments made on other entities who were also shareholders of SVGML and whose shares were bought out pursuant to the directions of the Apex Court have either not received any notices or if proceedings were initiated, the same was dropped. With regard to the interest on short term fixed deposit, it was submitted that the



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same would be offered to tax in the Financial Year 2022-23 i.e., the year in which the issue is finally settled by the Supreme Court. It was also submitted that as a matter of fact, advanced tax for the Financial Year 2022-23 has also been paid.

6. On consideration of the above, the impugned order(s) under Section 148A(d) of the Act, were passed wherein it was stated that the Supreme Court has nowhere held in its order that the receipt of money toward the buyout of shares from the appellants is exempt. It was further observed that in respect of the impugned transaction, Section 56(2)(x)(a) of the Act, would get attracted. Importantly, it was stated that reopening of assessment is on a *prima facie* view that income chargeable to tax has escaped assessment and that further opportunity would be available to the assesseees to present their case both on facts and under law which the Assessing Officer would consider before passing any order in the matter. The relevant portion of the said order is extracted hereunder:

“13. that income chargeable to tax has escaped assessment and during the course of assessment proceedings, further opportunity would be available to the assessee to present its case both facts and under law and the Assessing Officer would consider the same before



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passing any order in the matter.”

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7. The appellants submitted that the reasons set out in the notice(s) under Section 148(b) and the reasons contained in the order(s) under Section 148(d) are different thereby denying the appellants an opportunity to respond to the reasons contained in the order(s) under Section 148(d).

8. The learned Judge had rejected the writ petitions in WP.No.12918 of 2023 dated 26.04.2023 and W.P.Nos.13090 and 13431 of 2023 dated 27.04.2023 *inter alia* for the following reasons:

a) That the assessing officer's line of thinking is thus clear, to the effect that while the assessee has sought exemption in respect of the amount of Rs.18.62 crores (approx), the assessing authority was of the view that the Apex Court had nowhere indicated that the receipt should be treated as exempt under the Income Tax Act. Furthermore, he has also expressed the view that the interest thereupon is liable to tax in Assessment Year 2019-20.



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b) That there is nothing untoward in the assessing authority having come to the *prima facie* conclusion in the impugned order that there is escapement of income. The legal issues are to be decided by the assessing authority after detailed consideration of the appellants' arguments in assessment and the matter is premature at this juncture.

c) With regard to the interest liability on the sum of Rs.18.62 crores, it is a timing difference, and the officer *prima facie* believes that the interest must be taxed in Assessment Year 2019-20 i.e., the year when the order was passed by the Apex Court on the ground of accrual. Though the appellants would suggest that the receipt had been delayed and it is only after a few years that the amounts had been received, such submission involves appreciation of facts and are best considered by the authorities.

d) That the argument of appellants to the effect that the taxability of the receipt has not been put to it in the show cause notice is also devoid of merit, since the assessing authority has raised these issues specifically in the penultimate paragraph of the Annexure to notice under Section



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148A(b). A notice under Section 148A(b) is not expected to be as detailed as order of assessment and it would suffice that the issue on the basis of which the re-assessment is proposed is outlined broadly therein. It is for the assesseees / appellants to respond on all aspects of the matter and seek clarifications, where it so requires.

9. Heard both sides and perused the material on record.

10. The primary contention of the appellants was that the reasons set out in the order(s) under Section 148 A(d) of the Act that the impugned transactions would attract Section 56 (2)(x)(a) of the Act, were raised for the first time. The notice(s) issued under Section 148 A(b) of the Act proposed to tax the above receipts on the premise that it would attract capital gains. The appellants would submit that the departure from the notice(s) issued under Section 148 A(b) of the Act vitiates the order(s) under 148A(d) issued under Section 148.

11. It may be relevant to refer to the judgment of the Hon'ble Supreme Court in the case of *Union of India v. Ashish Agarwal*, reported



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in (2023) 1 SCC 617, wherein the object and purpose of inserting Section 148A of the Act was explained after referring to the amendment made to the provisions relating to reassessment under the Act. The relevant portions of the judgment are extracted hereunder:

“10.Parliament introduced reformative changes to Sections 147 to 151 of the Income Tax Act, 1961 governing reassessment proceedings by way of the Finance Act, 2021, which was passed on 28-3-2021

.....

148-A.Conducting inquiry, providing opportunity before issue of notice under Section 148.—*The Assessing Officer shall, before issuing any notice under Section 148—*

(a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;

(b) provide an opportunity of being heard to the assessee, with the prior approval of specified authority, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under Section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);

(c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);

(d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under Section 148, by passing an order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:



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.....

16. Further pre-Finance Act, 2021, the reopening was permissible for a maximum period up to six years and in some cases beyond even six years leading to uncertainty for a considerable time. Therefore, Parliament thought it fit to amend the Income Tax Act to simplify the tax administration, ease compliances and reduce litigation. Therefore, with a view to achieve the said object, by the Finance Act, 2021, Sections 147 to 149 and Section 151 have been substituted.

17. Under the substituted provisions of the IT Act vide the Finance Act, 2021, no notice under Section 148 of the IT Act can be issued without following the procedure prescribed under Section 148-A of the IT Act. Along with the notice under Section 148 of the IT Act, the assessing officer ("AO") is required to serve the order passed under Section 148-A of the IT Act. Section 148-A of the IT Act is a new provision which is in the nature of a condition precedent. Introduction of Section 148-A of the IT Act can thus be said to be a game changer with an aim to achieve the ultimate object of simplifying the tax administration, ease compliance and reduce litigation.

18. But prior to pre-Finance Act, 2021, while reopening an assessment, the procedure of giving the reasons for reopening and an opportunity to the assessee and the decision of the objectives were required to be followed as per the judgment of this Court in GKN Driveshafts (India) [GKN Driveshafts (India) Ltd. v. ITO, (2003) 1 SCC 72].

19. However, by way of Section 148-A, the procedure has now been streamlined and simplified. It provides that before issuing any notice under Section 148, the assessing officer shall:

(i) conduct any enquiry, if required, with the approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;

(ii) provide an opportunity of being heard to the assessee, with the prior approval of specified authority;

(iii) consider the reply of the assessee furnished, if any, in response to the show-cause notice referred to in clause (b); and



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(iv) *decide, on the basis of material available on record including reply of the assessee, as to whether or not it is a fit case to issue a notice under Section 148 of the IT Act; and*

(v) *the AO is required to pass a specific order within the time stipulated.*

20. Therefore, all safeguards are provided before notice under Section 148 of the IT Act is issued. At every stage, the prior approval of the specified authority is required, even for conducting the enquiry as per Section 148-A(a). Only in a case where, the assessing officer is of the opinion that before any notice is issued under Section 148-A(b) and an opportunity is to be given to the assessee, there is a requirement of conducting any enquiry, the assessing officer may do so and conduct any enquiry. Thus if the assessing officer is of the opinion that any enquiry is required, the assessing officer can do so, however, with the prior approval of the specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment.

22. Thus, the new provisions substituted by the Finance Act, 2021 being remedial and benevolent in nature and substituted with a specific aim and object to protect the rights and interest of the assessee as well as and the same being in public interest, the respective High Courts have rightly held that the benefit of new provisions shall be made available even in respect of the proceedings relating to past assessment years, provided Section 148 notice has been issued on or after 1-4-2021. We are in complete agreement with the view taken by the various High Courts in holding so.”

11.1. It is thus clear that the object behind issuance of notice under Section 148 A(b) of the Act is not an empty formality but is a mandatory requirement intended to put the assessee on notice of the reason on the basis of which the revenue intends to issue a notice under Section 148 of the Act. It is trite law that a notice must contain the reasons to which the



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noticee is required to respond. In other words, it is essential to disclose the reasons to enable the noticee to give a reply/ response, for, it is rudimentary that the noticee should be made aware of all that which influence the decision maker and which he has to meet. If the reasons which are set out in the notice to which the noticee is required to respond and the reasons contained in the order are different, the issuance of the notice would fail to serve its purpose and would be reduced to an empty formality. That means, it would neither qualify as a notice nor serve the object of issuance of notice.

12. We are conscious that the proceedings/ order under Section 148 A(b) of the Act does not conclude the reassessment proceedings and there is still an opportunity for the assessee after issuance of notice under Section 148 to respond. However, we cannot turn a blind eye to the fact that legislature has introduced Section 148A of the Act, which is an enquiry undertaken before issuance of notice under Section 148 of the Act, and one cannot reduce the provisions under Section 148 A of the Act to an empty formality/ dead letter.



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13. In this regard, we may refer to a few decisions of the Hon'ble Supreme Court wherein the relevance of notice has been explained and departure from the notice has been frowned upon inasmuch as it has been consistently held that notice forms the foundation of proceedings:

i) CIT v. ICICI Bank Ltd., reported in 2012 SCC OnLine Bom 917 : (2012) 349 ITR 482:

"16..... Thus, the basis of the order is completely different from the reasons recorded for reopening the assessment. This is clearly not permissible as held by this court in CIT v. Jet Airways (I) Ltd. (2011) 331 ITR 236 (Bom). The Division Bench of this court in Jet Airways held as under (page 247):

"Section 147 has this effect that the Assessing Officer has to assess or reassess the income ('such income') which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which comes to his notice during the course of the proceedings. However, if after issuing a notice under section 148, he accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income. If he intends to do so, a fresh notice under section 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee."

ii) CCE v. Champdany Industries Ltd., reported in (2009) 9 SCC 466 :

"38. Apart from that, the point on Rule 3 which has been argued by the learned counsel for the Revenue was not part of its case in the show-cause notice. It is well settled that unless the foundation of the case is made out in the show-cause notice, the Revenue cannot in Court argue a case not made out in its show-cause notice. (See Commr. of



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Customs v. Toyo Engg. India Ltd. [(2006) 7 SCC 592]) Similar view was expressed by this Court in CCE v. Ballarpur Industries Ltd. [(2007) 8 SCC 89] In para 27 of the said Report, learned Judges made it clear that if there is no invocation of the Rules concerned in the show-cause notice, it would not be open to the Commissioner to invoke the said Rules.”

iii) CCE v. Shital International, reported in (2011) 1 SCC 109 :

“19.As regards the process of electrifying polish, now pressed into service by the Revenue, it is trite law that unless the foundation of the case is laid in the show-cause notice, the Revenue cannot be permitted to build up a new case against the assessee. (See Commr. of Customs v.Toyo Engg. India Ltd. [(2006) 7 SCC 592], CCE v.Ballarpur Industries Ltd. [(2007) 8 SCC 89] and CCE v. Champdany Industries Ltd. [(2009) 9 SCC 466]) Admittedly, in the instant case, no such objection was raised by the adjudicating authority in the show-cause notice dated 22-6-2001 relating to Assessment Years 1988-1989 to 2000-2001. However, in the show-cause notice dated 12-12-2000, the process of electrifying polish finds a brief mention. Therefore, in the light of the settled legal position, the plea of the learned counsel for the Revenue in that behalf cannot be entertained as the Revenue cannot be allowed to raise a fresh plea, which has not been raised in the show-cause notice nor can it be allowed to take contradictory stands in relation to the same assessee.”

(emphasis supplied)

13.1. While we are conscious that the judgments referred to above culminate in an order of assessment whereas an order under Section 148 A(d) of the Act only results in issuance of notice under Section 148 of the Act, nevertheless, we see no reason why the principles laid down by the Supreme Court in the above judgments should not apply to a



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proceeding under Section 148A of the Act.

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14. For all the above reasons, the impugned orders passed under Section 148A(d) of the Act shall be treated as notice(s) under Section 148A(b) and the appellants are directed to put forth their objections within a period of six (6) weeks from the date of receipt of a copy of this judgment. If any such objections are filed, the same shall be considered and orders shall be passed on merits and in accordance with law, within a period of six weeks, after providing an opportunity of hearing to the appellants.

15. Accordingly, all the writ appeals are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D., J.] [M.S.Q., J.]
10.05.2024

Speaking (or) Non Speaking Order
Index : Yes/ No



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Neutral Citation : Yes/ No
spp/ mka

To

1. Income Tax Officer
Corporate Ward 6(1),
Wanaparthi Block,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai 600 034.
2. Income Tax Officer
Corporate Ward 6(2),
Wanaparthi Block,
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3. Income Tax Officer
Corporate Ward 3(1),
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AND
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