



*W.P.Nos.6367 & 6374 of 2021*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 20.12.2021

PRONOUNCED ON : 22.04.2022

CORAM

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.P.Nos.6367 & 6374 of 2021  
and WMP.Nos.18493,18494,  
6979,6980, 6985,& 6987 of 2021

(Through Video Conferencing)

Gopalakrishnan Rajkumar

... Petitioner in  
W.P.No.6367 of

2021

Gopalakrishnan Ravim

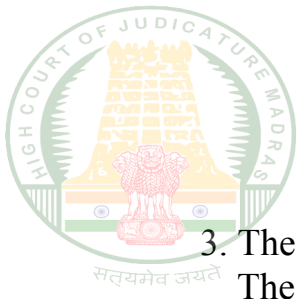
... Petitioner in  
W.P.No.6374 of

2021

vs.

1. The Principal Commissioner of Income-tax,  
Chennai-8,  
Income Tax Office, BSNL Tower,  
16, Greams Road, Chennai 600 006.

2.The Commissioner of Income-tax (Appeals),  
Chennai-5,  
“Aaykar Bhavan”, 121, Uttamar Gandhi Salai,  
Chennai 600 034.



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3. The Designated Authority under VSVS  
The Principal Commissioner of Income-tax,  
Chennai-8,  
Income Tax Office, BSNL Tower,  
16, Greams Road,  
Chennai 600 006.

.. Respondents in  
both W.Ps.

Prayer in W.P.No.6367 of 2021 Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records in DIN & Notice No.ITBA/REV/F/REV1/2020-21/1030851642(1) dated 22.02.2021 on the file of the 1<sup>st</sup> respondent relating to the Assessment Year 2011-2012 and quash the same.

Prayer in W.P.No.6374 of 2021 Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records in DIN & Notice No.ITBA/REV/F/REV1/2020-21/1030852445(1) dated 22.02.2021 on the file of the 1<sup>st</sup> respondent relating to the Assessment Year 2011-2012 and quash the same.

*Both the cases:*

For Petitioners : Mr.G.Baskar

For Respondents : Mrs.Prabhu Mukunth Arunkumar  
Junior Standing Counsel.



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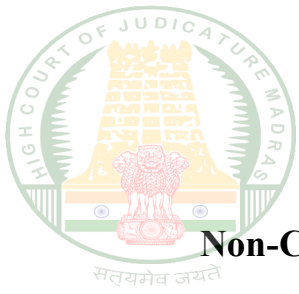
## **COMMON ORDER**

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The respective petitioners have challenged the respective impugned notices dated 22.02.2021 issued by the first respondent under Section 263 of the Income Tax Act, 1961.

2. The facts on record indicate that the petitioners, children of late K.S.Gopalakrishnan along with two other brothers/siblings namely G.Vijayakumar and G.Chinnadurai sold a property during the Financial Year 2010-2011 (Assessment Year 2011-2012) vide Sale Deed dated 29.10.2010. The sale was for a total consideration for approximately 30 Crores out of which the petitioners received a sum of Rs.3,12,50,000/- each. All the four brothers filed their returns under Section 139 of the Income Tax Act, and thereafter the assessment were sought to be reopened for each of the four brothers.

3. As far as one of the brothers namely G.Chinnadurai, a notice issued under Section 148 of the Income Tax Act, was quashed by this Court in W.P.No.28409 of 2015 vide order dated 29.08.2016 in the case of **G.Chinnadurai Vs. Income Tax Officer, Income-Tax Department**



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**Non-Corporate Ward 13(2), Chennai** reported in [2016] 74

taxmann.com 227.

4. Further the appeal before the Division Bench by the Income Tax Department was also dismissed vide order dated 04.04.2017 in W.A.No.1570 of 2016. As far as the other three brothers which include, the two petitioners herein, notice under Section 148 was issued to them which culminated in separate Assessment Orders dated 27.12.2018. Aggrieved by the Assessment Order, each of the three brothers (other than G.Chinnadurai), preferred Appeal before the CIT Appeals under Section 246A of the Income Tax Act, 1961.

5. During the pendency of the appeal one of the petitioners' brother G.Vijaykumar, received a similar notice under Section 263 of the Income Tax Act, 1961. An order was passed by the jurisdictional Commissioner of Income Tax. By the aforesaid order dated 05.07.2021, the proceeding initiated against the said brother came to be dropped by the jurisdictional Commissioner of Income Tax.



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**WEB COPY** 6. As far as the petitioners are concerned, though the petitioners have challenged the impugned notices issued to the petitioners on 22.02.2021, the petitioners were directed to approach the jurisdictional Principal Commissioner of Income Tax/1<sup>st</sup> respondent vide order dated 09.09.2021 of this High Court in these writ petitions. Pursuant to which, now the impugned orders have been passed by the 1<sup>st</sup> respondent in respective writ petitions where by a different views has taken by the Principal Commissioner in the case of the petitioners other brother namely G.Vijaykumar vide order dated 05.07.2021.

7. The challenge to the impugned notices issued under Section 263 of the Income Tax Act, 1961 by the petitioner is primarily on the ground that these notices are without jurisdiction in the light of the fact that the petitioners opted to settle their cases under the direct tax/Vivad Se Vishwas Scheme under the Direct Tax Vivad Se Vishwas Act, 2020 read with Vivad Se Vishwas Rule 2020.

8. It is submitted that during the pendency of the appeals before the Commissioner (Appeals) against the orders passed on 27.12.2018. The



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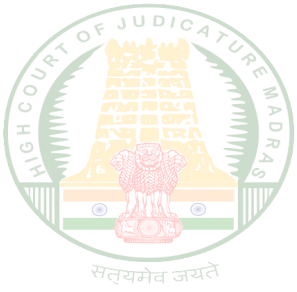
petitioners filed Form 1 and Form 2 as per the aforesaid scheme pursuant

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to which the 3<sup>rd</sup> respondent who is also the 1<sup>st</sup> respondent, but acting in the capacity of the Designated Authority also issued Form 3 to the respective petitioners on 10.12.2020 whereby it was quantified that the petitioners are entitled for a refund of the amount after adjusting the amount already paid by the petitioner during the course of the Assessment proceedings.

9. As far as the petitioner in W.P.No.6367 of 2021 is concerned, Form 3 was issued by the 1<sup>st</sup> respondent in the capacity as the Designated Authority under the Vivad Se Vishwas Scheme wherein it has been stated that the petitioner is entitled for a refund of sum of Rs.2,04,761/- whereas in the case of writ petitioner in W.P.No.6374 of 2021, petitioner is entitled for refund of Rs.2,04,768/-.

10. The learned counsel for the petitioners submits that in the light of the subsequent developments the petitioners rights under the appeal as also the case for being settled under the Vivad Se Vishwas Scheme under the Vivad Se Vishwas Act, 2020 cannot be compromised.



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11. The learned counsel for the petitioners has relied on few decisions of the Hon'ble Supreme Court and that of the Hon'ble Gujarat

High Court in the following cases:-

*“1.Radha Krishnan Industries Vs. State of Himachal Pradesh and Others [2021] SCC Online SC 334;  
2.Pannalal Binjraj Vs. Union of India [1957] 31 ITR 565 (SC) and  
3.Taiyabji Lukmanji Vs. Commissioner of Income Tax [1981] 131 ITR 643 (Guj).”*

12. It is submitted that the Hon'ble Supreme Court in the case of **Radhakrishnan Industries Vs. State of Himachal Pradesh and others** has observed that the rule of law in a constitutional frame work is fulfilled when law is substantively fair, procedurally fair and applied in a fair manner. Each of these three components will need to be addressed in the course of interpreting the tax statute in the aforesaid case.

13. The learned counsel for the petitioners has drawn attention in another passage from the decision of the Hon'ble Supreme Court in **Pannalal Binjraj Vs. Union of India** referred to supra wherein the Hon'ble Supreme Court has observed as follows: -



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*"In spite of the denials of the assesseees in the affidavits which they filed in rejoinder, we presume that such facilities will continue to be afforded to them in the future and the inconvenience and harrassment which would otherwise be cause to them will be avoided. A humane and considerate administration of the relevant provisions of the Income-tax Act would go a long way in allaying the apprehensions of the assesseees and if that is done in the true spirit, no assessee will be in a position to charge the Revenue with administering the provisions of the Act with "an evil eye and unequal hand".*

14. Finally, the learned counsel for the petitioners referred to a passage from the decision of the Hon'ble Gujarat High Court and sought to persuade this court that principles of promissory estoppel also will apply. Relevant passage of the Hon'ble Division Bench of the Gujarat High Court is reproduced below:-

*"Whether or not it amounted to promissory estoppel and created a legal right apart, the question was required to be examined from the standpoint of the credibility of the department. Would it not cause greated harm to the department itself if assesseees who respond to its appeal and desire to cleanse themselves of the past sins are deterred from doing so? In a way, in the long run, it might be counter productive to do so. All three questions cannot be elbowed aside. They have to be met squarely in the face by the revenue authorities and the Tribunal by*





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*addressing themselves to it and answering the same in the manner considered right by them on policy and principle. We are, therefore, not inclined to answer the question referred to us. In our opinion, the proper course to adopt is to remit the matter to the Tribunal for deciding the question of levying penalty afresh in the light of the dimension regarding the instructions contained in the advertisement issued by the Board referred to above".*

15. Opposing the prayer in these writ petitions, the learned Junior Standing Counsel for the respondents submits that the petitioners have filed the writ petitions against the notices issued under Section 263 of the Income Tax Act, 1961 and therefore these writ petitions are devoid of merits and are liable to be dismissed.

16. The learned Junior Standing Counsel for the respondents further submits that the petitioners were not the partners in the firm named M/s.Karpagam Studios. The petitioners father and few others were the partners. It is therefore submitted that the proceeds from the sale were distributed among the 4 brothers. It is submitted that income from the sale cannot be treated as a long term capital gain and ought to have been assessed as income from other sources. It is therefore submitted that the



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returns filed by the petitioner under Section 139 of the Income Tax, Act,

1961 was incorrect there is no question of the petitioners or their brothers claiming legitimately the benefit of Section 54F of the Income Tax Act, 1961 and therefore the respondents were well within their rights to invoke the jurisdiction under Section 263 of the Income Tax Act as the Assessment orders passed. As far as the petitioners and also their brothers on 27.02.2018 were erroneous and prejudicial to the interest of the Revenue.

17. It is submitted that the petitioners cannot have the case either settled under the Vivad Se Vishwas Scheme or can scuttle the proceedings initiated under impugned notices under Section 263 of the Income Tax Act.

18. On behalf of the respondents, the learned Junior Standing Counsel for the respondents submits that though the petitioners had attempted to settle the case under Vivad Se Viswas Act, 2020, notice was issued under Section 263 of the Income Tax Act, 1961 cannot be said to be without jurisdiction inasmuch as the scope of appeal that was pending before the Appellate Commissioner was limited. Thereafter, the



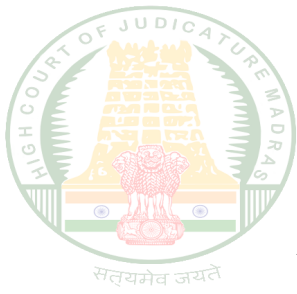
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petitioner had filed objections dated 26.02.2021 and also sought time for

10 days to submit and substantiate his claims.

19. It is the specific case of the respondents that the petitioners were not the owners of the land which was sold by their father. It is further submitted that the said Karpagam Studio was a partnership firm where the petitioners' father was a partner along with other. Partners which did not include the petitioners. The profits from the sale was distributed among the four siblings for a sum of Rs.12,50,00,000/- ( Rs.3,12,50,000/- each) among the four siblings.

20. It is submitted that if the petitioners had offered this amount correctly as income from other sources while filing returns under Section 134 of the Income Tax Act, 1961 instead of treating it as a capital gain under Section 53(c) of the IT Act and for claiming exemption under Section 54 F of the IT Act , 1961 issued to the petitioners, there would have been no necessity for initiating proceedings under Section 263 of the Act.



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21. The learned Junior Standing Counsel for the respondents

submits that though Section 3 of the Income Tax Act under the Direct tax

Vivad Se Viswas Act, 2020 starts with a non obstante clause, it is confined

to tax arrears as defined in section 2(o) of the aforesaid Act which read as

under:-

“(o) tax arrear” means -

- (i) the aggregate amount of disputed tax, interest chargeable or charged on such disputed tax and penalty leviable or levied on such disputed tax; or
- ii) disputed interest; or
- iii) disputed penalty; or
- iv) disputed fee as determined under the provisions of the Income Tax Act.”

22. It is submitted that a reading of the above definition only the aggregate of the amount of the disputed tax in respect of the disputed income or disputed interest and disputed penalty can be settled. In this connection, a reference was made to Section 2(J)(B) of the Direct tax Vivad Se Viswas Act, 2020 which defines the expression disputed tax as in section 2(j) which reads as under :-

“(B) in a case where an order in an appeal or in writ petition has been passed by the Appellate Forum on or before the specified date, and the time for filing appeal



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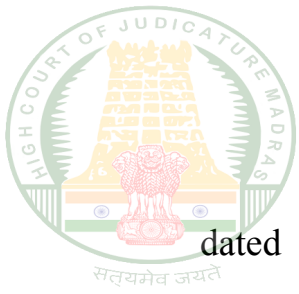
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or special leave petition against such order has not expired as on that date, the amount of tax payable by the appellant after giving effect to the order so passed”.

23. It is submitted that the assessment which is sought to be revised under Section 263 of the Income Tax Act, 1961 was made by the Assessing Officer without making proper enquiries or verifications. It is submitted that it should have been treated under the head “income from other sources”. The respondents have considered the Assessment Order dated 27.12.2018 to be prejudicial to the interest of the revenue and therefore notice issued under Section 263 was within the jurisdiction under the Income Tax Act, 1961.

24. The learned Junior Standing Counsel for the respondents has further submitted that both under Sections 148 and 263 of the Income Tax Act, 1961 an issue which is not the subject matter of such proceeding cannot be settled under the Direct Tax Vivad Se Vishwas Act, 2020.

25. By way of rejoinder, the learned counsel for the petitioners submits that the exercise undertaken by the first respondent vide order



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dated 25.09.2011, in the case of the respective petitioners was at the

instance of this Court and not a voluntary act of the respondents.

26. The learned counsel for the petitioners further submits that once Form-3 was issued by the Designating Authority, the third respondent had no role as the Principal Commissioner to issue notice under Section 263 of the Income Tax Act, 1961 to the petitioners. It was without jurisdiction. It is further submitted that the intention of the Act, is evident from the Finance Minister speech of First February, 2020 wherein in para 126 it has been stated as follows:-

“126. No Dispute but Trust Scheme – Vivad Se Vishwas Scheme

Sir, in the past our Government has taken several measures to reduce tax litigations. In the last budget, Sabka Vishwas Scheme was brought into reduce litigation in indirect taxes. It resulted in settling over 1,89,000 cases. Currently, there are 4,83,000 direct tax cases (Appeals), ITAT, High Court and Supreme Court. This year, I propose to bring a scheme similar to the indirect tax Sabka Vishwas for reducing litigations even in the direct taxes.

Under the proposed Vivad Se Vishwas' Scheme, a taxpayer would be required to pay only the amount of the disputed taxes and will get complete waiver of interest and penalty provided he pays by 31<sup>st</sup> March,



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2020. Those who avail this scheme after 31<sup>st</sup> March, 2020 will have to pay some additional amount. The scheme will remain open till 30<sup>th</sup> June, 2020.

\* Taxpayers in whose cases appeals are pending at any level can benefit from this scheme.

\* I hope that taxpayers will make use of this opportunity to get relief from vexatious litigation process.”

27. I have considered the arguments advanced by the learned counsel for the petitioners and the learned Junior Standing Counsel for the respondents.

28. The petitioners herein have challenged the Impugned Order dated 22.02.2021 passed by the first respondent under Section 263 of the Income Tax Act, 1961. The petitioners have received proceeds of sale of land of a partnership firm of which the petitioners' father one late K.S.Gopalakrishnan was a partner.

29. The petitioners have each received approximately a sum of Rs.3.12 crores as their share. Under these circumstances, the petitioners have filed returns under Section 139 of the Income Tax Act, 1961 and



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have claimed 54(F) exemption and have invested the amount received by them in the purchase of residential houses.

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30. After the returns were filed, an intimation under Section 143(1) of the Income Tax Act, 1961 was also issued to them. Thereafter, the assessment was sought to be reopened under Section 147 by issuing a notice dated 05.09.2017 in respect of the petitioners under Section 148 of the Income Tax Act, 1961.

31. The reasons for reopening of the assessments of the respective petitioners reads as under:

**Circular in W.P.No.6374 of 2021**

**GOVERNMENT OF INDIA  
INCOME TAX DEPARTMENT  
OFFICE OF THE INCOME TAX OFFICER, NON-  
CORPORATE WARD 17(4)**

**Room No.518, 5<sup>th</sup> Floor, BSNL Tower-I Building,  
No.16, Greams Road, Chennai – 600 006.  
004-28295279, Email:**

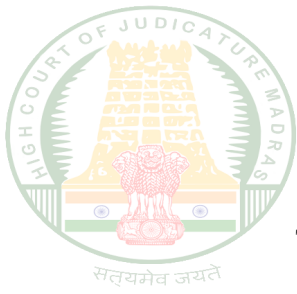
**[Chennai.ito.nc17.4@incometax.gov.in](mailto:Chennai.ito.nc17.4@incometax.gov.in)**

NCW. 17(4) /AGJPR9078A/2018-19  
11.07.2019

Date :

RECD. ON.11.07.2018  
TIME: 16.00





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To  
Shri G.Ravi,  
No.11/477 4<sup>th</sup> Sector 19<sup>th</sup> Street,  
K.K.Nagar,  
Chennai – 600 078.

Sir,

Sub: Reopening of assessment in your own  
case- Asst.year 2011-12-reg.

Ref: Your letter dated 06.10.2017.

\*\*\*

Vide letter cited you have requested for Reasons recorded for reopening the assessment u/S.148 of the I.T.Act.

During the assessment year 2011-12 relating to previous year 2010-11, you and nine others had sold immovable property for consideration of Rs.3 Crores. In your return of income you have claimed deduction u/S.54 and have not admitted income from capital gains. Hence, the assessment u/s. 143(3) has been reopened to assess the same.

For the reasons cited above, the reopening u/s. 147 of Income Tax Act.

Sd/xxxxx  
(S.Samuthiram)  
Income-tax Officer  
Non Corporate Ward 17(4)  
Chennai – 34.

**Circular in W.P.No.6367 of 2021**

**GOVERNMENT OF INDIA  
INCOME TAX DEPARTMENT  
OFFICE OF THE INCOME TAX OFFICER, NON-  
CORPORATE WARD 17(4)  
Room No.518, 5<sup>th</sup> Floor, BSNL Tower-I Building,  
No.16, Greams Road, Chennai – 600 006.**



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**004-28295279, Email:  
[Chennai.ito.nc17.4@incometax.gov.in](mailto:Chennai.ito.nc17.4@incometax.gov.in)**

NCW. 17(4) /AGKPR6315B/2018-19 Date:11.07.2018  
RECD. ON.11.07.2018  
TIME: 16.00

To  
Shri G.Rajkumar,  
No.11/477 4<sup>th</sup> Sector 19<sup>th</sup> Street,  
K.K.Nagar,  
Chennai – 600 078.

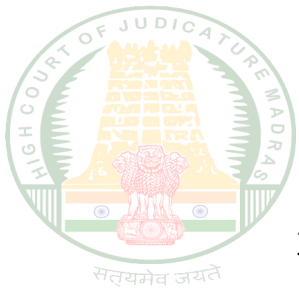
Sir,  
Sub : Reopening of assessment in your own case-  
Asst.year 2011-12-reg.  
Ref : Your letter dated 06.10.2017.

Vide letter cited you have requested for Reasons recorded for reopening the assessment u/S.148 of the I.T.Act.

During the assessment year 2011-12 relating to previous year 2010-11, you and nine others had sold immovable property for consideration of Rs.3 Crores. In your return of income you have claimed deduction u/s.54 and have not admitted income from capital gains. Hence, the assessment u/s. 143(3) has been reopened to assess the same.

For the reasons cited above, the reopening u/s. 147 of Income Tax Act.

Sd/xxxx  
(S.Samuthiram)  
Income-tax Officer  
Non Corporate Ward  
17(4)  
Chennai – 34.



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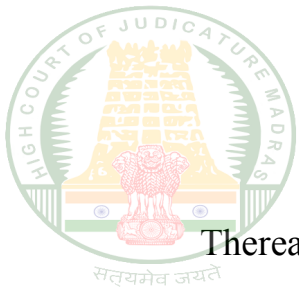
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32. The reason for reopening of the assessment was that the petitioners did not admit the capital gains in their returns filed by them. Eventually, the aforesaid proceedings culminated in an order dated 27.12.2018 under Section 143(3) read with 147 of the Income Tax Act, 1961.

33. Aggrieved by the same, the petitioners have also filed appeal before the CIT Appeals. It is during the pendency of the aforesaid proceedings before the CIT Appeals under Section 246A of the Income Tax Act, 1961.

34. The Finance Minister in the parliament had introduced the "Direct Tax Vivad Se Vishwas Act, 2020. The respective petitioners opted to settle the dispute with Income Tax Department by filing declarations in Form 1 and 2 on 31.08.2020.

35. The Designated Authority namely, the third respondent has also issued Form 3 on 10.12.2020 to the respective petitioners. On 09.02.2021, the respective petitioners have also received an intimation regarding the payments made by the petitioners pursuant to Form 3 dated 10.12.2020.



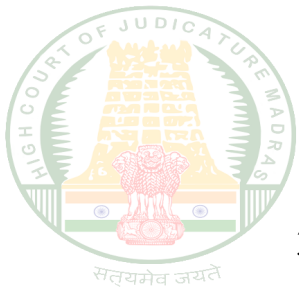
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Thereafter, the Impugned Notice for revising the assessment orders dated 27.12.2018 have been issued to the respective petitioners.

36. In the aforesaid notice, it has been stated that the amounts received cannot be treated as a capital gains, on account of transfer of long term capital asset which was in the name of M/s.Karpagam Studios. The notice indicates that the petitioners could not have claimed deduction under Section 54(F) of the Act. It has also stated that the date of completion as per the completion certificate of CMDA falls after three years specified under Section 54(F) of the Act.

37. Therefore, under Section 54(F) was to be withdrawn and the gross receipt was to be treated as an income from other source.

38. The respective petitioners have also replied to the same to their Chartered Accountant on 26.02.2021 stating that the Impugned Notice under Section 263 of the Income Tax Act, 1961 was without jurisdiction inasmuch as the petitioners have settled the case under the Direct Tax Vivad Se Vishwas Act, 2020.



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39. The question therefore that arises for consideration is whether the impugned proceedings initiated after the petitioners opted to settle the dispute under the Direct Tax Vivad Se Vishwas Act, 2020 are sustainable or not?

40. The expression disputed tax has been defined in Section 27 of the Direct Tax Vivad Se Vishwas Act, 2020 reads as under:

*(j) “disputed tax”, in relation to an assessment year or financial year, as the case may be, means the income-tax, including surcharge and cess (hereafter in this clause referred to as the amount of tax) payable by the appellant under the provisions of the Income-tax Act, 1961, as computed hereunder:—*

*(A) in a case where any appeal, writ petition or special leave petition is pending before the appellate forum as on the specified date, the amount of tax that is payable by the appellant if such appeal or writ petition or special leave petition was to be decided against him;*

*(B) in a case where an order in an appeal or in writ petition has been passed by the appellate forum on or before the specified date, and the time for filing appeal or special leave petition against such order has not expired as on that date, the amount of tax payable by the appellant after giving effect to the order so passed;*



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*(C) in a case where the order has been passed by the Assessing Officer on or before the specified date, and the time for filing appeal against such order has not expired as on that date, the amount of tax payable by the appellant in accordance with such order;*

*(D) in a case where objection filed by the appellant is pending before the Dispute Resolution Panel under section 144C of the Income-tax Act as on the specified date, the amount of tax payable by the appellant if the Dispute Resolution Panel was to confirm the variation proposed in the draft order;*

*(E) in a case where Dispute Resolution Panel has issued any direction under sub-section (5) of section 144C of the Income-tax Act and the Assessing Officer has not passed the order under sub-section (13) of that section on or before the specified date, the amount of tax payable by the appellant as per the assessment order to be passed by the Assessing Officer under sub-section (13) thereof;*

*(F) in a case where an application for revision under section 264 of the Income-tax Act is pending as on the specified date, the amount of tax payable by the appellant if such application for revision was not to be accepted:*

*Provided that in a case where Commissioner (Appeals) has issued notice of enhancement under section 251 of the Income-tax Act on or before the specified date, the disputed tax shall be increased by the amount of tax pertaining to issues for which notice of enhancement has been issued:*

*Provided further that in a case where the dispute in relation to an assessment year relates to reduction of tax credit under section 115JAA or section 115D*



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*of the Income-tax Act or any loss or depreciation computed thereunder, the appellant shall have an option either to include the amount of tax related to such tax credit or loss or depreciation in the amount of disputed tax, or to carry forward the reduced tax credit or loss or depreciation, in such manner as may be prescribed.*

*(k) “Income-tax Act” means the Income-tax Act, 1961;*

*(l) “last date” means such date as may be notified by the Central Government in the Official Gazette;*

*(m) “prescribed” means prescribed by rules made under this Act;*

*(n) “specified date” means the 31st day of January, 2020;*

*(o) “tax arrear” means,—*

*(i) the aggregate amount of disputed tax, interest chargeable or charged on such disputed tax, and penalty leviable or levied on such disputed tax; or*

*(ii) disputed interest; or*

*(iii) disputed penalty; or*

*(iv) disputed fee,*

*as determined under the provisions of the Income-tax Act.*

41. As per Section 3 of the the Direct Tax Vivad Se Vishwas Act, 2020, notwithstanding anything contained in the Income Tax Act or any other law for the time inforce the amount payable by a declarant shall be as specified in the table to the said section.



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**WEB COPY** 42. As per Section 4(6) of the Direct Tax Vivad Se Vishwas Act, 2020, the declarations filed under Section(1) shall be presumed to have never been made if : -

- “a) Any material particular furnished in the declaration is found to be false at any stage;
- b) The declarant violates any of the conditions referred to in this Act;
- c) The declarant acts in any manner which is not in accordance with the undertaking given by him under sub-section(5)

And in such cases, all the proceedings and claims which were withdrawn under Section 4 and all the consequences under the Income-Tax Act against the declarant shall be deemed to have been revived.”.

43. Section 6 of the Direct Tax Vivad Se Vishwas Act, 2020, makes it very clear that once there is a compliance with the timeliness specified under Section (5), the designated authority shall not institute any proceedings in respect of an offence or aims or levy any penalty or charge any interest under the Income Tax in respect of the tax arrears.

44. Section 5 of the Direct Tax Vivad Se Vishwas Act, 2020, also makes it clear that save as otherwise expressly provided in sub-section(3)





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of Section 5 or Section 6, noting contained in this Act shall be construed

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as conferring any benefit, concession or immunity on the declarant in any proceedings other than those in relation to which the declaration has been made.

45. The intention of the parliament enacting the of the Direct Tax Vivad Se Vishwas Act, 2020, is to bring a closure of disputes in respect of tax arrears. Whether the petitioner had correctly or wrongly availed the benefit of Section 57(F) of the Income Tax Act or not cannot be re-opened once again under Section 263 of the Income Tax Act, 1961.

46. Once the petitioners had opted to settle the dispute under the Direct Tax Vivad Se Vishwas Act, 2020, the proceedings initiated under Section 263 have to go. If on the other hand the respective petitioners had not filed Form 1 and 2 or not accepted with the issue of Form 3, the Impugned Notice seeking to re-open the assessment under Section 263 of the Income Tax Act, 1961 could be justified.

47. The Finance Minister in her speech on 01.02.2020 announced the the Direct Tax Vivad Se Vishwas Scheme to bring down the litigation.



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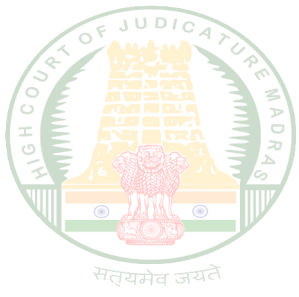
The Government intended to reduce the litigation, so that the taxpayers can buy peace with the department. The aforesaid scheme was to be implemented on 30.06.2020.

48. The taxpayers whose appeals were pending at any level were entitled to avail benefit of the scheme. Therefore, there is no justification in proceeding further with the impugned proceedings initiated by the first respondent under Section 263 of the Income Tax Act, 1961.

49. Therefore, I am inclined to allow these writ petitions. Accordingly these writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

22.04.2022

Index : Yes/No  
Internet : Yes/No  
rgm/kkd



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WEB COPY

To

1. The Principal Commissioner of Income-tax,  
Chennai-8,  
Income Tax Office, BSNL Tower,  
16, Greams Road,  
Chennai 600 006.
2. The Commissioner of Income-tax (Appeals),  
Chennai-5,  
“Aaykar Bhavan”, 121, Uttamar Gandhi Salai,  
Chennai 600 034.
3. The Designated Authority under VSVS  
The Principal Commissioner of Income-tax,  
Chennai-8,  
Income Tax Office, BSNL Tower,  
16, Greams Road,  
Chennai 600 006.



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W.P.Nos.6367 & 6374 of 2021

**C.SARAVANAN,J.**

rgm/kkd

Pre-delivery Common Order in  
W.P.Nos.6367 & 6374 of 2021

22.04.2022