IN THE HIGH COURT FOR THE STATE OF TELANGANA
:: AT HYDERABAD ::
*** * ***

Writ Petition No.23255 of 2011; Writ Petition No.17518 of 2011; Writ Petition No.17526 of 2011; Writ Petition No.19622 of 2011; Writ Petition No.3906 of 2012; and Writ Petition No.9667 of 2013

Between:

M/s.Satyam Computer Services Limited,
(Now Known as Tech Mahindra Limited,
with its Registered Office at Gateway Building,
Apollo Bunder, Mumbai – 400 001,
and also having its office at Mahindra Satyam Infocity,
Unit 12, Plot No.35/36, Hi-Tech City Layout,
Survey No.64, Madhapur, Hyderabad – 500 081,
Rep. by its Vice-President, Mr. Santosh Kumar Nair

Petitioner

Versus

Central Board of Direct Taxes,
Department of Revenue,
Ministry of Finance,
Government of India, and others

Respondents

JUDGMENT PRONOUNCED ON: 31.01.2025

THE HONOURABLE SRI JUSTICE P.SAM KOSHY
AND
THE HONOURABLE SRI JUSTICE N.TUKARAMJI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : Yes

2. Whether the copies of judgment may be Marked to Law Reporters/Journals? : Yes

3. Whether His Lordship wishes to see the fair copy of the Judgment? : **Yes**

P.SAM KOSHY, J

*** THE HONOURABLE SRI JUSTICE P.SAM KOSHY**
AND
THE HONOURABLE SRI JUSTICE N.TUKARAMJI

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Respondents

! Counsel for Petitioner(s) : Mr.Arvind Datar, Mr. Jehangir Mistri & Mr. Vivek Reddy, learned Senior Counsel appearing on behalf of Mr. K. Pratik Reddy and Cuddapah Nanda Gopal.

^Counsel for the respondent(s) : Mr.B.Narasimha Sharma, learned Additional Solicitor General of India, assisted by Ms. Bokaro Sapna Reddy Mr. A.Rama Krishna Reddy, and Mr. Ajay Kumar Kulkarni.

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> HEAD NOTE:

? Cases referred ::

1. (2011) 15 Supreme Court Cases 522
2. (2008) Supreme Court Cases 582
3. (2009) 1 Supreme Court Cases 540
4. Air 2004 Supreme Court 1107
5. [1988] 170 ITR 37 (KER)
6. 2010 SCC OnLine Bom 1387
7. (2003) 2 Supreme Court Cases 45
8. [2017] 87 taxmann.com 228 Karnataka
9. (2018) 6 Supreme Court Cases 189
10. (1997) 4 Supreme Court Cases 530
11. (1974) 3 Supreme Court Cases 196
12. (1962) 46 ITR 144 (SC)
13. (2007) 160 Taxman 101 (Delhi)
14. 1998 SCC OnLine Mad 951
15. (2008) 10 Supreme Court Cases 617
16. Writ Petition No.1749 of 2009 of the Bombay High Court
17. 2008 (1) KLJ 561
18. C.W.P.No.19040 of 2008 decided on 01.11.2004
19. (2007) 4 Supreme Court Cases 221
20. (2000) 3 Supreme Court Cases 581
21. (2000) 3 Supreme Court Cases 581
22. MANU/AP/0459/2003
23. Writ Petition (L) NO.8766 of 2024
24. (2024) 158 taxman.com 658 (Bombay)

THE HONOURABLE SRI JUSTICE P.SAM KOSHY

AND

THE HONOURABLE SRI JUSTICE N.TUKARAMJI

Writ Petition No.23255 of 2011; Writ Petition No.17518 of 2011; Writ Petition No.17526 of 2011; Writ Petition No.19622 of 2011; Writ Petition No.3906 of 2012 & Writ Petition No.9667 of 2013

COMMON ORDER : *(Per the Hon'ble Sri Justice P. Sam Koshy)*

Since the issue in the present writ petitions is one and the same, they are being disposed of by this Common Order.

2. Heard Mr. Arvind Datar, Mr. Jehangir Mistri and Mr. Vivek Reddy, learned Senior Counsels appearing on behalf of Mr. K.Pratik Reddy and Cuddapah Nanda Gopal, learned counsel for the petitioners; Mr. B.Narasimha Sharma, learned Additional Solicitor General of India, assisted by Ms. Bokaro Sapna Reddy, Mr. A.Rama Krishna Reddy, and Mr. Ajay Kumar Kulkarni, learned counsel for the respondents.

3. These are six Writ Petitions filed by the same assessee, the lead case being Writ Petition No.23255 of 2011 whereby the primary challenge is to the order dated 11.07.2011 passed by respondent No.1 rejecting the application seeking permission for assessment of real and actual income after condoning the delay under Section 119 of the

Income Tax Act, 1961 and the relief sought for was consequential direction to the Income Tax Department.

4. Writ Petition No.17518 of 2011, Writ Petition No.17526 of 2011 and Writ Petition No.9667 of 2013 are Writ Petitions challenging the appointment of special auditor on terms which specifically included the verification of fictitious sales and income from the terms of reference for three assessment years i.e. Assessment Year 2002-03, Assessment Year 2007-08 and Assessment Year 2009-10. Writ Petition No.16722 of 2011 is a Writ Petition challenging the proceedings under Section 147 seeking to reopen the assessment of the petitioner for the Assessment Year 2002-03 and adopting the stand of reassessment proceedings were only to reexamine the claims of deduction under Section 10A while ignoring existence of fictitious sales included in the petitioner's assessed income for the Assessment Year 2002-03.

5. Lastly, Writ Petition No.3906 of 2012 is a Writ Petition challenging the provisional attachment order dated 30.01.2012 under Section 281B of the Income Tax Act. By efflux of time, the rigor of the order of provisional attachment does not survive any further. As such, the order of provisional attachment does not survive any longer and hence the said Writ Petition i.e. Writ Petition No.3906 of 2012 has literally become infructuous.

6. So far as the other four Writ Petitions are concerned, i.e. Writ Petition No.17518 of 2011, Writ Petition No.17526 of 2011, Writ Petition No.9667 of 2013 and Writ Petition No.19622 of 2011 are concerned, if the main Writ Petition i.e. Writ Petition No.23255 of 2011 which in this batch has been taken up as the lead case stands decided in favour of the petitioner, there would not be a necessity for deciding the aforesaid four Writ Petitions and as a consequence those Writ Petitions also would stand disposed of.

7. For convenience, the facts in Writ Petition No.23255 of 2011 are discussed hereunder.

8. Writ Petition No.23255 of 2011 is filed by the petitioner under Article 226 of the Constitution of India praying the Court for the following reliefs, viz.,

(i) to quash the order dated 11.07.2022 bearing No.295/1/2009-IT(INV.I)(Part), passed by the respondent No.1 as arbitrary, illegal, violative of Section 119 of the Income Tax Act, 1961 and Articles 14, 19(1)(g), 265 and 300-A of the Constitution of India;

(ii) to declare the Assessment Orders for the Assessment Year 2003-04 to Assessment Year 2006-07 as illegal, void, *ab*

initio, and violative of Article 265 of the Constitution of India;

(iii) to direct the respondent No.1 / respondent No.3 to re-quantify / re-compute the income by conducting a fresh and proper assessment for the Assessment Year 2003-04 to Assessment Year 2008-09 read together based on the revised financial statements of petitioner for the year ending 31st March, 2009 wherein the irregularities in the financial statements pertaining to Assessment Year 2003-04 to Assessment Year 2008-09 have been duly adjusted as prior period adjustments;

(iv) to permit the petitioner to file revised returns for the Assessment Year 2007-08 and Assessment Year 2008-09 based on the audited financial statements for the said years read together with the audited financial statements for the year ending 31st March, 2009 prepared pursuant to the orders of the Company Law Board and thereafter conduct a proper assessment excluding the fictitious sales and fictitious interest income;

(v) to declare the revised audited financial statements of the petitioner which have been approved by the shareholders for the year ended March, 31, 2009, wherein the irregularities in the past financial statements have been rectified as prior period adjustments, be the basis of conducting assessment proceedings and any other proceeding under the Income Tax Act, 1961 for the Assessment Year 2003-04 to Assessment Year 2008-09;

(vi) to direct the respondents not to proceed with recovery of tax till the income is computed / recomputed pursuant to the reliefs sought in (ii), (iii) and (iv) above;

(vii) to declare the Assessment Orders for the Assessment Year 2002-03 to Assessment Year 2006-07 as illegal, void, *ab initio*, and violative of Article 265 of the Constitution of India;

(viii) to declare the Draft Assessment Order passed by the respondent No.3 for the Assessment Year 2002-03 dated 18.08.2011 as illegal, void, *ab initio*, and violative of Article 265 of the Constitution of India;

(ix) to declare the returns filed by the petitioner for the Assessment Years 2002-03 as illegal, vitiated by fraud and *void ab initio* and no reliance can be placed on the said assessment proceedings; and

(x) to direct the respondent No.1 / respondent No.3 to re-quantify / re-compute the income by conducting a fresh and proper assessment for the Assessment Year 2002-03 based on the report of the Forensic Accountant dated 25.11.2016.

9. It has been pleaded that the petitioner Satyam Computer Services Limited, was an Indian Information Technology (IT) services Company headquartered in Hyderabad. Initially incorporated in the year 1987 and converted from Private Ltd. to public Ltd. On 16.06.2011 with its main objective of business in software consultancy, design and programming of electronic information systems etc., it came out with IPO in 1992. The petitioner Company has brought an IT revolution in India and grew to earn revenues of over $2 Billion by 2008, employing 52,000 IT professionals worldwide. Unfortunately, it became embroiled in India's biggest corporate scandal in January, 2009 when its founder, Mr. Byrraju Ramalinga Raju, admitted to falsifying corporate accounts and confessed to

forging sales and interest income reports amount to Rs.5,040 crores, leading to collapse in stock prices. The said confession was made by the petitioner Company on 07.01.2009 and on the same day the Government of India (for short, 'the GOI') intervened by filing a petition before the Company Law Board (for short, 'the CLB') to suspend the existing Board and take over the company's affairs. The intervention by the Government was aimed to protect the interests of over 53,000 employees and nearly 3 lakh shareholders, and also to protect the reputation of India's I.T. and corporate sector which had been severely tarnished by the scandal.

10. *Vide* order dated 09.01.2009; the CLB approved the Government's application and suspended the existing Board, and appointed six eminent persons as Government of India's nominees on the Board. Since then, the GOI actively managed the company from 09.01.2009 to 16.04.2009.

11. On 17.02.2009, in the light of petitioner Company's severe financial distress, the GOI filed an application seeking induction of a strategic investor into Satyam. In that context, the GOI raised a 600 crore loan to alleviate the company's financial hardship. Thereafter, on 19.02.009, the CLB permitted the GOI to conduct a bidding process

under the supervision of a former retired Chief Justice of India to induct strategic investors to run the company's operations.

12. With the intervention of the GOI, and the subsequent orders passed by the CLB, a retired Chief Justice of India, viz., Justice S.P. Bharucha oversaw the bidding process and M/s. Tech Mahindra was inducted into the petitioner Company as the successful bidder and major shareholder of the petitioner Company. On 16.04.2009, the CLB directed the successful bidder to infuse an amount of Rs.2,908 crores into the petitioner Company through share capital and loans. The CLB also extended the time to file returns / documents with various statutory authorities till 31.12.2009 and directed that no State or Central Government agencies should initiate any Civil, Criminal, Punitive or coercive actions against the petitioner Company.

13. Thereafter, M/s.Tech Mahindra participated in a competitive bidding process and offered to pay a share price of Rs.58/- which was approved by a retired Chief Justice of India and the CLB. The price paid by M/s. Tech Mahindra had no bearing on the subject matter of these petitions. Subsequently, the petitioner Company filed an application before the CLB requesting an additional time for preparation of financial statements and submission before the appropriate authorities. This included requests for compliance under

the Indian Companies Act and all other applicable laws, including taxation laws. The GOI filed its response and stated that it had no objection to these requests.

14. Taking into account the GOI affidavit, the CLB allowed the application by extending the time of filing balance sheet, Profit & Loss Account and any filing required under other applicable laws, including taxation laws, to a date within thirty (30) days from the date of the Annual General Meeting.

15. In the aftermath of the GOI's intervention and the CLB orders, various governmental agencies, including the Central Bureau of Investigation (CBI), Serious Fraud Investigation Office (SFIO), Securities and Exchange Board of India (SEBI), Enforcement Directorate (ED), Income Tax Department and Reserve Bank of India were assembled to investigate into the fraud perpetrated by the former management of the petitioner Company. The findings arrived at by the said agencies corroborated the fraudulent activities of the former Chairman and Managing Director of the petitioner Company, viz., Mr. Byrraju Ramalinga Raju, who was held responsible for causing significant financial loss to the company. The reports also emphasized that the Board of the petitioner Company was not aware of the true financial condition of the company.

16. On 20.09.2009, the CBI has filed a charge-sheet against Mr. Byrraju Ramalinga Raju, the key accused in the Satyam case, framing various charges under various sections of the Indian Penal Code (IPC) including under Section 120-B r/w Section 409, Section 420, Section 467, Section 468, Section 471 and Section 477-A of the IPC.

17. On 26.10.2010, the Hon'ble Supreme Court had reversed the decision of the High Court of Andhra Pradesh to grant bail to the accused and directing the accused to surrender by 10.11.2010. The Hon'ble Supreme Court further directed the Trial Court to conduct trial on a day-to-day basis and conclude it by 31.07.2011; and if the trial is not concluded, the accused were allowed to file an application for bail. It further stated that the Trial Court should remain uninfluenced by any observations made by either the High Court or the Supreme Court.

18. A Special Court was constituted pursuant to a direction issued on administrative side to hear the CBI charge-sheet. The Hon'ble Supreme Court directed that the learned Judge hearing the CBI case in the Satyam scam shall not be transferred till the trial is concluded and trial shall be conducted on day-to-day basis.

19. The CBI filed three reports before the Special Court and the gist of the report as per the CBI was : (i) the promoters dishonestly credited additional tax liabilities and made tax payments on fictitious income and further made the company, i.e., Satyam, suffer a loss to the tune of ₹.126 crores which went detrimental to the interest of the company; and (ii) the CBI also in its report held that the remaining members of the Board were not aware of the true financial condition of the company.

20. Based on the evidence that was brought before the Special Court hearing the CBI case after this six year long trial, the CBI Court found that : (i) the Company become a victim of fraud; (ii) the Board was not aware of the true financial status of the company; (iii) based on inflated and non-existent profits the Board was made to sign fraudulent returns which led to payment of extra / higher tax; (iv) the Court found the former Chairman and Managing Director, Mr. B. Ramalinga Raju, to be the person who has committed criminal breach of trust with the Company; and (v) the former Chairman and Managing Director in fact was responsible for making dishonest tax payment on fictitious income and disabled the company from raising its lawful claim for refunds amounting to ₹.126.57 crores.

21. Meanwhile, the Serious Fraud Investigation Office (for short, 'SFIO') conducted an elaborate investigation into the affairs of M/s. Satyam Computers. In the course of the investigation, the SFIO found that : (i) because of the action of the accused Mr. B. Ramalinga Raju, the company had to pay excess tax and in the process he has caused loss to the company to the tune of ₹.186.91 crores; and (ii) the SFIO reiterated that it was not aware of the true financial status of the company.

22. There was yet another criminal prosecution initiated at the behest of Enforcement Directorate (for short, 'ED'). The ED initially issued provisional attachment order attaching the fixed deposits of the petitioner Company to the tune of ₹.822 crores. The provisional attachment order was challenged before this High Court by way of WPMP.No.47572 of 2012 in Writ Petition No.37487 of 2012 to grant stay of the impugned Provisional Attachment Order, viz., PAO No.4/2012 dated 18.10.2012 in ECIR/01/HZ0/2009 issued by respondent No.1 and all consequential proceedings during the pendency of the said Writ Petition. *Vide* order dated 11.12.2012, the learned Single Judge granted stay of the above impugned Provisional Attachment Order.

23. Thereafter, the ED challenged the order of the learned Single Judge by way of Writ Appeal No.133 of 2013 under Clause 15 of the Letters Patent, aggrieved by the order of the learned Single Judge, dated 11.12.2012, passed in W.P.M.P.No.47572 of 2012 in Writ Petition No.37487 of 2012. However, the Division Bench of this Court, *vide* order dated 31.12.2014, dismissed the said writ appeal. In the course of deciding the same, the Division Bench held as was decided in the earlier set of litigations referred to in the preceding paragraphs, highlights of which are as follows : (i) the petitioner-Company, in spite of the clear evidence of the income being highly inflated and the Company being a victim of fraud, was made to pay dividends when the petitioner Company "Satyam" was in fact incurring substantial loss, and this resulted in an extra tax burden of ₹.39.86 crores for the Financial Year 2007-08 alone; (ii) the petitioner Company was made to pay income tax on inflated and non-existent profit and also on fictitious income to the tune of ₹.126.57 crores; (iii) the benefits of illegal flow of funds went into the coffers of the Income Tax Department as a result of the illegal excess payment of tax based on fictitious and non-existent income; (iv) the Division Bench also went to the extent of holding that these excess payments of receipt of tax by the Income Tax Department should actually be treated as proceeds of

crime as the accused promoters not only got enrolled themselves but also shared the gains with the Income Tax Department; (v) that for the period between 2002-03 to 2008-09, the petitioner Company was made to pay ₹.166.80 crores towards dividends whereas the division of dividends itself for the said period was totally illegal; and (vi) the Division Bench further observed that the payments made to the Income Tax Department indicated that the petitioner Company became the victim of fraud and was actually made to believe.

24. The aforesaid judgment of the Division Bench in Writ Appeal No.133 of 2013, dated 31.12.2014, was subjected to challenge by the ED before the Hon'ble Supreme Court *vide* S.L.P.(Criminal) Diary No.30975 of 2019. After due consideration of the entire factual matrix of the case, the Hon'ble Supreme Court dismissed the said S.L.P. preferred by the ED and affirmed the judgment of the Division Bench, dated 31.12.2014, passed in Writ Appeal No.133 of 2013.

25. Later, the ED again filed a criminal complaint against the petitioner Company before the XXI Additional Chief Metropolitan Magistrate-cum-Special Sessions Judge, Hyderabad under Section 3 of the Prevention of Money Laundering Act, 2002 and the said Court took cognizance of the case *vide* Sessions Case No.1 of 2014, decided on 25.04.2014. Aggrieved, the petitioner Company challenged the

proceedings of the Sessions Court by filing Writ Petition No.17525 of 2014 before this Court. *Vide* order dated 22.12.2014 passed in Writ Petition No.17525 of 2014, a Single Judge of this Court allowed the said writ petition and quashed the criminal complaint lodged before the above Sessions Court. While allowing the said Writ Petition, the learned Single Judge has in very clear terms held that : (i) it was the Government of India which had keenly and actively intervened ensuring revival of the petitioner-company; (ii) the petitioner Company had no knowledge of the alleged money laundering activities nor was the petitioner Company involved in the commission of the offence either directly or indirectly; (iii) the petitioner Company was a successor company, and having succeeded after participating in a transparent tender proceedings and the tender proceedings being supervised by none other than by one of the retired Chief Justice of India, that too much after the commission of the alleged offence; and (iv) since the petitioner was a successor company it could not have been fastened with greater liability or for that matter could not have been prosecuted for any illegalities committed by the persons who were at the helm of affairs of petitioner Company at the time of commission of the offence.

26. The learned Single Judge went on to hold that for the offences committed by the person at the helm of affairs of the petitioner Company at the relevant point of time cannot be saddled upon or attributed upon to the petitioner-company. However, the order of the learned Single Judge in Writ Petition No.17525 of 2014, dated 22.12.2014, was subjected to challenge before the Hon'ble Supreme Court *vide* S.L.P.(Criminal) No.34143 of 2017.

27. The Hon'ble Supreme Court *vide* order dated 08.12.2017 dismissed the said S.L.P. validating the order passed by the learned Single Judge in Writ Petition No.17525 of 2014, dated 22.12.2014, insofar as quashing of the complaint lodged under Prevention of Money Laundering Act, 2002 is concerned. Meanwhile, the SFIO filed a criminal complaint before the Special Economic Offences, viz., C.C.Nos.394 and 400 of 2009 on the file of the learned Special Judge for Economic Offences, Hyderabad : C.C.No.394 of 2009 was registered for violation of provisions of Section 309 of the Companies Act, 1956 (for short 'the Act') i.e., failure of respondent No.1 Company to obtain the opinion of the Central Government before payment of remuneration to one of its Directors. C.C.No.400 of 2009 was registered for violation of provisions of Section 220(1) read with Section 162 of the Act, alleging violation of Section 309 of the

Companies Act, 2013. In due course of time, the matter travelled to the High Court which in turn remitted the matter to the Company Law Board (for short, 'the CLB') for fresh reconsideration highlighting the fact that the company has already been found to be a victim of fraud and that too it was played by the previous management, and not by the petitioner. After remand, the Company Law Board, Chennai, *vide* order dated 16.10.2012, in Company Application Nos.233 and 234/621A/CB/2010, allowed the application filed by the petitioner Company for compounding of the offence. Thereafter, aggrieved by the said order, the SFIO subjected the above order to challenge before the High Court by way of filing Company Appeal Nos.4 and 5 of 2014. *Vide* order dated 23.06.2014 in Company Appeal Nos.4 and 5 of 2014, a learned Single Judge of this Court dismissed the said appeals holding that : *"It would therefore be wholly inequitable to subject the revamped company to needless criminal prosecutions when it has gracefully decided to put a quietus to the vexing problem of prosecution. It would be a travesty of justice, if the Company, after its revamp is subjected to persecution."*

28. From the aforesaid given factual matrix of the case, it stands settled by a series of decisions by the High Court under various provisions of law all of which have also been affirmed by the Hon'ble

Supreme Court confirming certain facts like financial embezzlement or fraud by the petitioner Company, which was primarily run by its then Chairman-cum-Managing Director, Mr. B. Ramalinga Raju, who was the key accused. It is also by now well accepted by all the Courts that Board of the petitioner Company was, in fact, not made known of the actual financial status of the company. It also stood established and confirmed by a series of judgments by the High Court that excess tax has been paid by M/s. Satyam Computer Services Limited based on non-existent profits shown in the returns filed by the said company. It was also held in a series of litigation that it was the former Chairman and Managing Director, viz., Mr. B. Ramalinga Raju, who had made dishonest tax payments based on fictitious income and disabled the company from raising its lawful claim of refunds.

29. Based on the said finding fact in a series of litigation by the Court with its approval by the Hon'ble Supreme Court, learned counsel for the petitioners contended that the stand of the Income Tax Department amounts to frustrating the concerted and extra-ordinary efforts made by the Government of India in the revival of the petitioner-company. It was also the contention of the learned counsel for the petitioners that there is a series of finding of fact of there being fictitious income reflected in the return submitted by M/s. Satyam

Computers. Yet, the Income Tax Department inexplicably seeks to deny the stand taken by the learned counsel for the petitioners insofar that excess tax has been paid. The Income Tax Department also, in spite of all these admitted factual matrix of the case, was denying deduction that M/s. Satyam Computers was entitled to under Section 10(a) on its actual / real income. At the same time, the Income Tax Department also seeks to levy income tax on non-existent and fictitious income.

30. The Government of India (GOI) appointed Board of Satyam Computer Services Limited (the Company or SCSL), therefore sought the permission from the Company Law Board (CLB):

i. An extension of the timeline from the CLB to prepare the financial statements for the Financial Year 2008-09, which will provide a true and fair view of the affairs of the company as on 31st March, 2009;

ii. The impact of errors, omissions, irregularities and misstatements which are brought out by the Government appointed investigating agencies - CBI, SFIO and the forensic accountants (KPMG) appointed by the Government appointed Board to be reflected as “Prior Period Item” as per applicable

accounting standards in the accounts for the Financial Year 2008-08; and

iii. The accounts would be audited by Deloitte Haskin & Sales (Deloitte), the statutory auditors, and be presented to the Annual General Meeting for approval within an extended time.

31. The CLB approved the Company's prayer (Order in C.A.No.527 of 2009 and C.A.No.330 of 2009) and the Company prepared the accounts for the Financial Year 2008-09 reflecting the impact of fraud as a Prior Period Item. The accounts were audited by Deloitte (the audit report was dated 29th September, 2010). The shareholders adopted the audited accounts in the AGM held on 21st December, 2010.

32. As the Income Tax Act provides a year wise assessment of income, it was considered prudent to compute the profit & loss accounts and balance sheet for the Financial Year 2001-02 to 2007-08 year wise by splitting "prior period item" and "Opening Balance Difference" as reported in the audited accounts for the Financial Year 2008-09 based on the report of the forensic accountant.

33. The Company engaged B K Khare & Co., Chartered Accountants who are Tax Auditors of Tech Mahindra Ltd. (which acquired SCSL) to

perform "Agreed Procedures" (AUP) in accordance with the Stands on Related Services (SRS 4400) "Engagements to Perform Agreed Upon Procedures regarding financial information" issued by the Institute of the Chartered Accountants of India. The AUP was carried out to provide corrected profit / loss and balance sheet for the Financial Year 2001-02 to 2007-08 as the audited accounts would have presented if the re-audit were to be allowed under the Companies Act (As stated earlier, the Companies Act 1956 did not contain a provision for re-audit. The provision was introduced in the Companies Act, 2013 w.e.f. 1st April, 2016).

34. The procedure agreed to be followed, which is fully described in the AUP Reports, is briefly mentioned below:

a) The Company started with the published financial statements audited by Price Waterhouse (PwC). PwC had issued a letter stating that these accounts should not be relied upon after the discovery of accounts fraud.

   i. The company adjusted each item of the profit & loss account and the balance sheet based on the report of the forensic accountants for each of the above financial years.

ii. B K Khare & Co. checked the above procedure and issued reports for each of the years i.e. Financial Years 2001-02 to 2007-08.

iii. By following the procedures described above, SCSL computed revised Profit & Loss and Balance Sheet for the Financial Year 2001-02 to 2007-08, mirroring the audited accounts if re-audit were possible.

35. The company has also obtained revised Form 56F certificates giving the correct quantification of deduction to be claimed under Section 10A/10AA of the Act. The certificates have been issued by BSR and Associates and BSR & Co., a reputed firm of Chartered Accountants.

36. All this would enable Income Tax Authorities to assess the correct income of SCSL - post adjustment of fictitious income, considering the revised deduction under Section 10A / Section 10AA basis certificate evidencing genuine exports and granting credit for genuine FTC.

37. The petitioner Company approached the CBDT to take into account the actual income. The petitioner Company submitted all the returns filed by the former management and the consequent

assessment orders were based on the inflated income and therefore were *inter alia* vitiated by fraud.

38. On 10.03.2011, the CBDT refused to grant relief on the ground that:

a) The CBDT did not have jurisdiction to intervene once after an assessment attained finality since there was no provision in the law to reopen such assessments;

b) Reconstruction of financials suffer from severe infirmities and the same cannot be relied upon to reach any conclusion as to its real incomes for the relevant years; and

c) The fate of criminal cases against the accused is yet to attain finality so as to hold them actually or vicariously liable for the affairs of the company.

39. When the CBDT refused to grant the said relief, the petitioner approached the High Court of Andhra Pradesh by filing Writ Petition No.7718 of 2011 and subsequently the Hon'ble Supreme Court. After taking into account the SFIO findings on the existence of fictitious income and in view of the peculiar facts and circumstances of the case, the Hon'ble Supreme Court directed the CBDT to consider the petitioner's case for re-quantification / re-assessment (**Satyam**

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40. Pursuant to the aforesaid direction given by the Hon'ble Supreme Court, the petitioner Company approached the CBDT with yet another comprehensive petition seeking for invocation of the powers under Section 119(1) of the Income Tax Act. Through the said petition, the petitioner Company had sought for re-scrutiny of the accounts or in other words, the re-quantification / re-computation of the incomes for the assessment years 2003-04 to 2008-09 which also included the reopened assessment years. Such a request was made with an intention of correcting the fraudulent and fictitious income assessment made during all these periods and which stands established from the orders passed by various judicial and quasi-judicial authorities.

41. It is these petitions which have been rejected *vide* the impugned order dated 11.07.2011 by the CBDT which has led to filing of the main case i.e. Writ Petition No.23255 of 2011. The CBDT held that:

a) For each assessment year, assessment / reassessment proceedings are pending before the AO. Therefore, the petitioner Company can agitate the issues before the AO;

[1] (2011) 15 Supreme Court Cases 522

b) The power under Section 119 is not available to the petitioner;

c) The relief under Section 119(2)(b) is also not available to the petitioner Company since it has not been proved by the Department or the CBI and ED that the petitioner Company has suffered genuine hardship;

d) SFIO report cannot be relied upon;

e) There is no conclusive evidence that can be drawn from the forensic investigation report; and

f) The criminal prosecution is pending. Therefore, the CBI reports cannot be relied upon.

42. After rejection of the aforesaid petition under Section 119(1) of the Income Tax Act, the respondent authorities issued assessment orders for the year 2002-03 and assessment year 2007-08. It is these orders which were challenged in Writ Petitions *vide* Writ Petition No.1726 of 2011 for the assessment year 2002-03, Writ Petition No.17568 of 2011 for the assessment year 2007-08, Writ Petition No.19622 of 2011 against the order of reopening of assessment for the assessment year 2002-03 and Writ Petition No.3906 of 2011 against the order of attachment of assets for the assessment year 2002-03 to 2008-09.

43. According to the petitioner Company, it had approached the CBDT to take a holistic view of the matter and ensure that the Income Tax department acted in concert with the other authorities of the Government of India and in accordance with law. The reason why the petitioner Company had approached the CBDT was for appropriate instructions, directions as it may deem fir for the proper administration of the Act and thereby direct the assessments (fraudulently obtained / made by virtue of assessing non-existent income) be corrected so as to ensure that only actual / real income of the petitioner Company be charged to tax in accordance with the law and the mandate of Article 265 of the Constitution of India.

44. The contention of the petitioner Company also was that the requirement for re-scrutiny or re-quantification was enabling the Tax Department to actually determine and fresh assessment be made considering the re-stated accounts prepared by B K Khare & Co. Chartered Accountants pursuant to the CLB order dated 16.10.2019 following "Agreed Upon Procedures (AUP)" in accordance with the "Standards of Related Services (SRS 4400)". The concerned Chartered Accountants firm carried out the audit by providing corrected Profit & Loss and Balance Sheet for the assessment year 2001-02 to 2007-08.

45. It was contended by the petitioner that there is no evidence of fictitious income even though there was a finding of the SFIO to that effect at that time. It was further contended that until the criminal Court comes to a finding it could not accept the plea of fraud. It was further contended that CBDT has in exercise of its jurisdiction rejected the report of SFIO as being "far-fetched" and apart from this serious impropriety it is also impermissible for one Department of Government of India not to follow the report of another Department.

46. It was also the contention of the petitioner that CBDT has erroneously stated that there was no evidence of fictitious income and this statement alone is sufficient to quash the order. When the Union of India took emergency steps to superside the Board the later appointed a retired Chief Justice to conduct the bid process and prayed for forensic and fresh audit, the CBDT was in serious error in giving a finding that there was no bogus income.

47. It was the contention of the learned Senior Counsel for the petitioner that from the decisions that have been taken by the High Court referred to in the earlier paragraphs, it stands undisputed so far as the existence of fraud which came to light on the letter issued by the former Chairman, Mr. Ramalinga Raju. It was also an undisputed fact that, on account of the inflated income the petitioner has suffered

genuine hardship for the subsequent assessment years. The hardship grew because of denial of deductions on : (a) genuine export income; (b) foreign tax credit; and (c) genuine expenditure which the company had made and incurred during regular course of business during the said period of time when inflated incomes were shown in the books of account.

48. It was also the contention of the learned Senior Counsel for the petitioner that once when the aforesaid facts stood undisputed or goes un-denied, the petitioner Company becomes a victim of fraud. The entire assessment made during the said period stands vitiated by fraud, and deductions on fictitious income and deductions on genuine income and genuine expenditure stood disallowed.

49. Another contention which the learned Senior Counsel for the petitioner harped upon was that on the very same set of facts for the Assessment Year 2009-10 and 2010-11, the Income Tax Department, taking into consideration the observations of the Company Law Board for the said assessment year permitted the petitioner to file revised returns with delay, and therefore, there was no reason whatsoever why the Income Tax Department should reject the permission sought by the petitioner for revision of the assessment made for the previous period so as to present the actual returns. In fact, the Income Tax

Department had acknowledged the genuine hardship suffered by the petitioner for the Assessment period 2009-10 and 2010-11 and invoked the provisions of Section 119(2) of the Income Tax Act.

50. Learned Senior Counsel appearing on behalf of the petitioner strongly contended that the fact that the Income Tax Department accepts the hardship suffered by the petitioner for the Assessment Years 2009-10 and 2010-11 and at the same time refused to accept the same contention for the earlier period is nothing but an arbitrary act on the part of the Income Tax Department and also reflects that the Income Tax Department has taken a selective cognizance of the fraud. According to the learned counsel for the petitioner, the issue of existence of fictitious income has by now been accepted in a series of litigation under the various statutes both under Civil law jurisdiction as also under the Criminal law jurisdiction; and even then the Income Tax Department refuses to accept the application filed by the petitioner under Section 119(2) of the Income Tax Act. It was the further contention of the learned Senior Counsel for the petitioner that the grounds which have been relied upon by the Income Tax Department do not have force to sustain, as all the cases which were initiated against the petitioner subsequent to the letter dated 07.01.2009 addressed by the Ex-Chairman, Mr. Ramalinga Raju, were

all decided in favour of the petitioner Company holding them to be not responsible for any of the allegations, charges and contentions leveled against them. Hence, in the light of the cases getting dropped, it stands proved and admitted so far as the fictitious income and the statement of account all at the hands of the erstwhile Chairman of the petitioner-Company, who himself was to be blamed for all the illegalities and which simultaneously proves that the petitioner Company was paying income tax for a considerable period till now on fictitious and non-existing income. According to the learned Senior Counsel appearing for the petitioner, it was on these set of facts that they have moved a petition before the respondent-Authorities for re-assessment of their income based upon the actual business transactions that have transpired during the relevant point of time.

51. According to the learned Senior Counsel appearing for the petitioner, it was only with an intention of putting the records straight in respect of the actual income tax expenditure of the company during the relevant assessment years rather than fictitious income, expenditure and the tax paid on the said fictitious income and expenditure. According to him, they are more concerned about the actual returns being rectified based on the actual business transactions and that they are not very particular about refund of any

excess income tax that they have paid on the fictitious income and expenditure that stood reflected in the statement of accounts and on which the income tax was paid.

52. *Per contra,* the learned Additional Solicitor-General, appearing for the Income Tax Department, contended that when petitioner has filed the application under Section 119 of the Income Tax Act before the Central Board of Direct Tax (C.B.D.T.) there were lot of proceedings pending consideration before different Forums including cases initiated by the Central Bureau of Investigation (C.B.I.), Enforcement Directorate (E.D.), etc. Therefore, in the teeth of pending proceedings, it was not possible for the Income Tax Department to have accepted the application of petitioner. He further contended that allowing the prayer made by the petitioner under Section 119 would amount to digging up old graves and in the process unsettle all that is settled. It was also his contention that even otherwise, the relief sought for by the petitioner was not firstly permissible nor does Section 119 of the Income Tax Act provide for such a power upon the Income Tax authorities or the C.B.D.T., in particular. It was also the contention of the learned Additional Solicitor General, appearing for the respondents, that the application of the petitioner for reassessment of the Income Tax returns of the company could not be

permitted at that point of time for the reason that a petition filed under Section 264(3) to the Commissioner for the Assessment Years 2003-04 to 2006-07 stood rejected on 22.07.2010 against which the petitioner Company has rightly preferred an appeal and pending the appeal, the prayer sought for by the petitioner for revising of the returns was not permissible.

53. The learned Additional Solicitor General further referred to the earlier stand of the petitioner Company while re-opening the Assessment for the year 2002-03 onwards where the petitioner Company has taken a stand requesting the Income Tax Department to treat the return earlier filed for the respective years as valid returns for re-assessment, and after taking such a stand the petitioner Company could not have repeated the prayer for a further re-assessment.

54. The learned Additional Solicitor-General referred to proviso to Clause (1) of Section 119 of the Income Tax Act contending that the proviso itself does not permit the C.B.D.T. to issue instructions requiring the Income Tax authority to act in a particular manner so far as assessment is concerned. In the teeth of the said proviso, according to the learned Additional Solicitor-General, the Income Tax Department was justified in rejecting the prayer of the petitioner-Company, more particularly, when the applications and requests are

made at an inordinately belated stage by which time the accounts submitted by the petitioner Company have attained finality by efflux of time. He, however, submitted that realizing the genuine hardship that the petitioner Company was put to; their claims for the Assessment Years 2009-10 and 2010-11 have been accepted. However, for the period for which there was no strong, cogent reasons available with them, the Income Tax Department could not have permitted the request so made.

55. The learned Additional Solicitor General contended that the claims raised by the petitioner of the assessment orders being vitiated by fraud is factually and illegally incorrect and is also in contravention to the material on record. According to the learned Additional Solicitor General, the term "fraud" has been distinctly defined under the provisions of the Indian Penal Code, 1860, and the ingredients required to make out a case of fraud is missing from the pleadings. According to the learned Additional Solicitor General, the case of the petitioner is only in respect of inflated figures of fictitious income as is reflected from the letter dated 07.01.2009 issued by the then Chairman, Mr. Ramalinga Raju.

56. It was contended by the learned Additional Solicitor General that the petitioner Company had taken over the Company by participating

in the bid knowing fully well all the contents of the letter of the then Chairman of M/s. Satyam Computer Services Limited and when they had participated in the bid were declared successful they were conscious of the consequences that they were likely to face, and therefore, the contention of the petitioner of they being sufferer of unprecedented fraud in the course of taking over the petitioner Company is totally incorrect.

57. The learned Additional Solicitor General reiterated the contention of the claim of the petitioner to declare the assessment orders which has by efflux of time attained finality as null and void to be impermissible under the Income Tax Act and further submitted that such a relief as sought for could not had been granted by the CBDT as it is beyond its scope and powers. The learned Additional Solicitor General also submitted the prayer of the petitioner to recall the assessment orders and to condone the delay in the course of passing of the recalling order and further prayer of the petitioner to permit them to file revised return are all beyond the scope of the statute i.e. the Income Tax Act, particularly when each of these reliefs sought for are specifically governed by specified provisions under the Income Tax law and it does not permit for granting such a relief at this

belated stage. Moreover, there is no provision for recalling of the assessment orders under the Income Tax Act.

58. According to the learned Additional Solicitor General, the provisions for submission of revised return is one which is envisaged under Section 139(5) of the Income Tax Act and it provides for the specific provisions in respect of the same and no such case has been made out by the petitioner.

59. It was also the contention of the learned Additional Solicitor General that for certain assessment years the Assessing Officer has already initiated proceedings under Section 154 and orders have also been passed which are subject matter of appeal filed on behalf of the petitioner and therefore no such direction can be sought by the petitioner, nor can such a relief be granted by the CBDT. According the learned Additional Solicitor General, the revision of the assessment order by a Commissioner is permissible strictly in accordance with the provisions of Section 264 which is itself a self-contained provision and the CBDT as such does not have the power to issue any such direction for the Commissioner either of facts or on law.

60. Relying upon the entire submissions made, it was summed-up by the learned Additional Solicitor General that the entire claim of the petitioner under no stretch of imagination can be brought within the purview of a direction which could be issued for proper administration of the statute. Further, it was also contended that the prayers raised by the petitioner also is specifically barred or is prohibited to be issued considering the twin conditions as is reflected in the proviso to Section 119(1) of the Income Tax Act.

61. Thus, for all the aforesaid submissions, the learned Additional Solicitor General prayed for dismissal of these writ petitions.

62. Upon hearing the Counsel representing the petitioner Company in all these bunch of writ petitions and also considering the contentions put forth by the learned Additional Solicitor General on behalf of the respondents, the entire factual matrix as has been narrated by the petitioner is 1) in respect of the financial position of M/s. Satyam Computer Services Limited is not in dispute so far as the entire controversy starting from the open letter that was issued by the then Chairman Mr. Ramalinga Raju 2) in respect of inflated and fictitious figures reflected in the books of accounts showing fictitious sales and income and interest income 3) in respect of the Company having paid income tax on this inflated figures based upon the

fictitious sales and interest income 4) in respect of the prosecution initiated against the petitioner Company having been quashed by the High Court under more than a couple of jurisdictions, all of which have already been reflected in the preceding paragraphs 5) in respect of the Income Tax Department permitting the submission of the revised return for the assessment year 2009-10 and 2010-11.

63. Based upon these admitted factual matrix, the points for consideration in these bunch of writ petitions would be:-

1) Whether the respondents were justified in rejecting the application put forth by the petitioner before the CBDT under Section 119(1) of the Income Tax Act?

2) Whether such relief as has been sought by the petitioner can be granted invoking the extraordinary writ jurisdiction conferred upon the High Court under Article 226 of the Constitution of India?

64. Before referring to the various judicial precedents in the course of testing the veracity of the order passed by CBDT dated 11.07.2011, it would be relevant to refer to the provision of Section 119(2)(b) of the

Income Tax Act, 1961. For ready reference, the same is reproduced herein under, viz.,

> *"(2) Without prejudice to the generality of the foregoing power,-*
>
> *(a) …… ….. …*
>
> *(b) the Board may, if it considers it necessary or expedient so to do, for the purpose of proper and efficient management of the work of assessment and collection of revenue, issue, from time to time (whether by way of relaxation of any of the provisions of sections 115P, 115S, 115WD, 115WE, 115WF, 115WG, 115WH, 115WJ, 115WK, 139, 143, 144, 147, 148, 154, 155, 158BFA, sub-section (1A) of section 201, sections 210, 211, 234A, 234B, 234C, 234E, 95[234F,] 270A, 271, 271C, 271CA (and 273 or otherwise), general or special orders in respect of any class of incomes or fringe benefits or class of cases, setting forth directions or instructions (not being prejudicial to assessees) as to the guidelines, principles or procedures to be followed by other income-tax authorities in the work relating to assessment or collection of revenue or the initiation of proceedings for the imposition of penalties and any such order may, if the Board is of opinion that it is necessary in the public interest so to do, be published and circulated in the prescribed manner for general information;"*

65. The Hon'ble Supreme Court in the recent past dealing with the powers vested upon the CBDT has laid down certain judicial precedents, which are as under, viz.,

65.1 In the case of **State of Kerala and Others vs. kurian Abraham (P) Ltd. and another**[2], the Hon'ble Supreme Court held in paragraph Nos.23 and 25 as under, viz.,

[2] (2008) Supreme Court Cases 582

"23. Policy decisions have to be taken by the Government. However, the Government has to work through its senior officers in the matter of difficulties which the business may face, particularly in matters of tax administration. That is where the role of the Board of Revenue comes into play. The said Board takes administrative decisions, which includes the authority to grant administrative reliefs. This is the underlying reason for empowering the Board to issue orders, instructions and directions to the officers under it.

25. One more aspect needs to be mentioned. Provisions of Section 3(1-A) are similar to the provisions of Section 119(1) of the Income Tax Act, 1961 (the 1961 Act) inasmuch as both the sections have used the expression "for the proper administration of this Act". According to Law of Income Tax by Kanga and Palkhivala, the Board is entrusted with the power to give effect to the provisions of the Act and to provide "fair and just administration" in the matter of imposition and collection of tax. This is where it becomes the incumbent duty of the Board to grant administrative relief in appropriate cases. In such exercise, incidentally the Board has to consider the effect of the items enumerated in the entry. Therefore, it is not open to the State Government to contend that the Board in this case had entered into an area which is earmarked for the legislature/executive. In our view, the said circular grants administrative relief to the business. It was entitled to do so. Therefore, it cannot be said that the Board had acted beyond its authority in issuing the said circular. One more reason needs to be stated. Whenever such binding circulars are issued by the Board granting administrative relief(s) business arranges its affairs relying on such circulars. Therefore, as long as the circular remains in force, it is not open to the subordinate officers to contend that the circular is erroneous and not binding on them."

65.2 The Hon'ble Supreme Court in the case of **Corporation Bank vs. Saraswati Abharansala and Another**[3] held at paragraph Nos.19 and 20 as under, viz.,

[3] (2009) 1 Supreme Court Cases 540

> *"**19.** Article 265 of the Constitution of India mandates that no tax shall be levied or collected except by authority of law. In terms of the said provision, therefore, all acts relating to the imposition of tax providing, inter alia, for the point at which the tax is to be collected, the rate of tax as also its recovery must be carried out strictly in accordance with law.*
>
> ***20.** If the substantive provision of a statute provides for refund, the State ordinarily by a subordinate legislation could not have laid down that the tax paid even by mistake would not be refunded. If a tax has been paid in excess of the tax specified, save and except the cases involving the principle of "unjust enrichment", excess tax realised must be refunded. The State, furthermore is bound to act reasonably having regard to the equality clause contained in Article 14 of the Constitution of India."*

65.3 A similar view was also taken earlier in the case of **Union of India and Another vs. Azadi Bachao Andolan and Another**[4] where a circular was issued by CBDT under Section 119 of the Income Tax Act, 1961. It was challenged *inter alia* on the ground that it was *ultra vires* the provisions of Section 19(1). The argument was rejected by the Supreme Court holding that:

> *"47. It was contended successfully before the High Court that the circular is ultra vires the provisions of Section 119. Sub-section (1) of Section 119 is deliberately worded in a general manner so that CBDT is enabled to issue appropriate orders, instructions or directions to the subordinate authorities 'as it may deem fit for the proper administration of this Act'. As long as the circular emanates from CBDT and contains orders, instructions or directions pertaining to proper administration of the Act, it is relatable to the source of power under Section 119*

[4] AIR 2004 SUPREME COURT 1107

irrespective of its nomenclature. Apart from sub-section (1), sub-section (2) of Section 119 also enables CBDT

> *'for the purpose of proper and efficient management of the work of assessment and collection of revenue, to issue appropriate orders, general or special, in respect of any class of income or class of cases, setting forth directions or instructions (not being prejudicial to the assessees) as to the guidelines, principles or procedures to be followed by other Income Tax Authorities in the work relating to assessment or collection of revenue or the initiation of proceedings for the imposition of penalties'.*

In our view, the High Court was not justified in reading the circular as not complying with the provisions of Section 119. The circular falls well within the parameters of the powers exercisable by CBDT under Section 119 of the Act."

65.4 Again in the case of **Commissioner of Income Tax vs. Punalur Paper Mills Ltd.,**[5] in paragraph No.3 it was held as under, viz.,

> *"The Board of Revenue is competent to issue circulars under Section 119 of the Income Tax Act. The circulars so issued have got the force of law. All officers of the Department are bound by the said circulars. The benevolent circulars issued by the Board are in the nature of administrative relief. They really "supplant" the law. The circular can afford administrative relief even beyond the relevant terms of the statute. It can deviate from the provisions of the Act."*

65.5 In the case of **Bombay Mercantile Co-op Bank Ltd. vs. Central Board of Direct Taxes, Ministry of Finance and Others**[6], the High Court of Bombay held at paragraph Nos.7 and 8 as under, viz.,

[5] [1988] 170 ITR 37 (KER)
[6] 2010 SCC OnLine Bom 1387

> *"**7.** As can be seen from the reading of the said provision the Board is vested with the power to admit any application after the expiry of the period specified by or under this Act if sufficient grounds are made out. In our view, therefore, the said reason mentioned by the petitioner in its application, deserves to be accepted. The other reasons cited for condonation of delay, therefore, need not be gone into as the petitioner in our view, would be entitled to condonation of delay on the said ground alone.*
>
> ***8.** It is well settled that in matters of condonation of delay a highly pedantic approach should be eschewed and a justice-oriented approach should be adopted and a party should not be made to suffer on account of technicalities."*

65.6 In the case of **Ex-Capt. Harish Uppal vs. Union of India and Another**[7], the Hon'ble Supreme Court held in paragraph No.30 as under, viz.,

> *"30. No body or authority, statutory or not, vested with powers can abstain from exercising the powers when an occasion warranting such exercise arises. Every power vested in a public authority is coupled with a duty to exercise it, when a situation calls for such exercise. The authority cannot refuse to act at its will or pleasure. It must be remembered that if such omission continues, particularly when there is an apparent threat to the administration of justice and fundamental rights of citizens i.e. the litigating public, courts will always have authority to compel or enforce the exercise of the power by the statutory authority. The courts would then be compelled to issue directions as are necessary to compel the authority to do what it should have done on its own."*

65.7 The High Court of Karnataka in the case of **Dr. (Smt.) Sujatha Ramesh vs. Central Board of Direct Taxes, New Delhi**[8] held at paragraph Nos.12 and 13 as under, viz.,

[7] (2003) 2 Supreme Court Cases 45

"12. The wide powers of the Central Board of Direct Taxes or other higher authorities of the Department to whom such powers can be delegated under Section 119 of the Act, Date of Order 24-10-2017 W.P.No.54672/2015 Dr.(Smt.)Sujatha Ramesh Vs. Central Board of Direct Taxes and another. need not always take only a pro revenue approach in such matters. Their approach in such cases should be equitious, balancing and judicious which should reflect the application of mind to the facts of the case and before denying the genuine claim of the assessee on the grounds of mere delay in making such claim, something more than the user of innocuous terms as employed in the present case, should be forthcoming. Technically, strictly and literally speaking, the Board might be justified in denying the exemption from capital gains tax by rejecting such condonation application, but an assessee, who substantially satisfies the condition for availing such exemption should not be denied the same, merely on the bar of limitation, especially, when the legislature has conferred wide discretionary powers to condone such delay on the highest executive authority of the Central Board of Direct Taxes under the Act.

13. The general and wide powers given to the Board in this regard, "if it considers it desirable or expedient so Date of Order 24-10-2017 W.P.No.54672/2015 Dr.(Smt.)Sujatha Ramesh Vs. Central Board of Direct Taxes and another. to do for avoiding genuine hardship in any case.....", not only gives wide powers to the Board, but confers upon it a obligation to consider facts relevant for condonation of delay as well as the merit of the claim simultaneously. If the claim of exemption or other claim on merits is eminently a fit case for making such claim, it should not normally be defeated on the bar of limitation, particularly, when the delay or the time period for which condonation is sought is not abnormally large. It will of course depend upon the facts of the each case, where such a time period or the merit of the claim deserves such exercise of discretion in favour of the assessee under Section 119 (2)(b) of the Act or not and therefore, no straight jacket formula or guidelines can be laid down in this regard. However, such orders passed by the Central Board of Direct Taxes being a quasi-judicial order is always open to judicial review by the higher constitutional courts. If the good conscience of the Courts is pricked, even though such orders rejecting the

[8] [2017] 87 taxmann.com 228 Karnataka

> *claims on the bar of limitation may appear to be prima facie tenable, the Courts may exercise Date of Order 24-10-2017 W.P.No.54672/2015 Dr.(Smt.)Sujatha Ramesh Vs. Central Board of Direct Taxes and another. their jurisdiction to set aside such orders and allow the claims on merits, setting aside the bar of limitation."*

66. Dealing with the relevancy of collecting tax on the real income and the actual expenses incurred on the raid not to be collected under any circumstances on inflated or unrealistic entries made in the books of accounts, the Hon'ble Supreme Court laying down certain precedents has held as under.

66.1 In the case of **Deputy Commissioner of Income Tax vs. T. Jayachandran**[9], the Hon'ble Supreme Court in paragraph Nos.16, 18 and 19 held as under, viz.,

> *"16. The conduct of the respondent in the transaction in question cannot be termed to be strictly within the normal course of business and the irregularities can be noticed from the manner in which the whole transactions were conducted. However, the same cannot be the basis for holding the respondent liable for tax with regard to the sum in question and what is required to be seen is whether there accrued any real income to the respondent or not.*
>
> *18. We do not find any force in the contention of the appellant herein as the High Court has not held that the findings of the criminal court are binding on the Revenue Authorities. Rather the High Court was of the view that the findings arrived at by the criminal court can be taken into consideration while deciding the question as to the relationship between the parties to the case. When the findings are arrived at by a criminal court*

[9] (2018) 6 Supreme Court Cases 189

on the evidence and the material placed on record then in the absence of anything shown to the contrary, there seems to be no reason as to why this duly proved evidence should not be relied upon by the Court.

19. The income that has actually accrued to the respondent is taxable. What income has really accrued is to be decided, not by reference to physical receipt of income, but by the receipt of income in reality."

66.2 In the case of **Godhra Electricity Co. Ltd. vs. Commissioner of Income Tax, Gujarat-II, Ahmedabad**[10] the Hon'ble Supreme Court in paragraph Nos.13, 14 and 22 held as under, viz.,

*"**13.** Under the Act income charged to tax is the income that is received or is deemed to be received in India in the previous year relevant to the year for which assessment is made or on the income that accrues or arises or is deemed to accrue or arise in India during such year. The computation of such income is to be made in accordance with the method of accounting regularly employed by the assessee. It may be either the cash system where entries are made on the basis of actual receipts and actual outgoings or disbursements or it may be the mercantile system where entries are made on accrual basis, i.e., accrual of the right to receive payment and the accrual of the liability to disburse or pay. In CIT v. Shoorji Vallabhdas and Co. [(1962) 46 ITR 144 (SC)] it has been laid down: (ITR p. 148)*

> *"… Income tax is a levy on income. No doubt, the Income Tax Act takes into account two points of time at which the liability to tax is attracted, viz., the accrual of the income or its receipt; but the substance of the matter is the income. If income does not result at all, there cannot be a tax, even though in book-keeping, an entry is made about a 'hypothetical income', which does not materialise."*

[10] (1997) 4 Supreme Court Cases 530

14. *This principle is applicable whether the accounts are maintained on cash system or under the mercantile system. If the accounts are maintained under the mercantile system what has to be seen is whether income can be said to have really accrued to the assessee company. In H.M. Kashiparekh & Co. Ltd. v. CIT [(1960) 39 ITR 706 (Bom)] the Bombay High Court had said:*

> *"… Even so, (the failure to produce account losses) we shall proceed on the footing that, the assessee company having followed the mercantile system of account, there must have been entries made in its books in the accounting year in respect of the amount to commission. In our judgment, we would not be justified in attaching any particular importance in this case to the fact that the company followed mercantile system of account. That would not have any particular bearing in applying the principle of real income in the facts of this case."*

22. *The question whether there was real accrual of income to the assessee company in respect of the enhanced charges for supply of electricity has to be considered by taking the probability or improbability of realisation in a realistic manner. If the matter is considered in this light, it is not possible to hold that there was real accrual of income to the assessee company in respect of the enhanced charges for supply of electricity which were added by the Income Tax Officer while passing the assessment orders in respect of the assessment years under consideration. The Appellate Assistant Commissioner was right in deleting the said addition made by the Income Tax Officer and the Tribunal had rightly held that the claim at the increased rates as made by the assessee company on the basis of which necessary entries were made represented only hypothetical income and the impugned amounts as brought to tax by the Income Tax Officer did not represent the income which had really accrued to the assessee company during the relevant previous years. The High Court, in our opinion, was in error in upsetting the said view of the Tribunal."*

66.3 The Hon'ble Supreme Court in the case of **Commissioner of Income Tax, West Bengal II vs. Birla Gwalior (P) Ltd.**[11] held as under, viz.,

> *"8. …Hence, the mere fact that the assessee Company was maintaining its accounts on the basis of the mercantile system cannot lead to the conclusion that the commission had accrued to it by the end of the relevant accounting year…*
>
> *…it was the real income of the assessee Company for the accounting year that was liable to tax and that the real income could not be arrived at without taking into account the amount forgone by the assessee. In ascertaining the real income the fact that the assessee followed the mercantile system of accounting did not have any bearing…"*

66.4 The Hon'ble Supreme Court in the case of **Commissioner of Income-tax vs. Shoorji Vallabhdas & Co.**[12] held as under:

> *"Income-tax is a levy on income. No doubt, the Income-tax Act takes into account two points of time at which the liability to tax is attracted, viz., the accrual of the income or its receipt; but the substance of the matter is the income. If incomes does not result at all, there cannot be a tax, even though in book-keeping, an entry is made about a "hypothetical income", which does not materialize. Where income has, in fact, been received and is subsequently given up in such circumstances that it remains the income of the receipient, even though given up, the tax may be payable. Where, however, the income can be said not to have resulted at all, there is obviously neither accrual nor receipt of income, even though an entry to that effect might, in certain circumstances, have been made in the books of account.*
>
> *A mere book-keeping entry cannot be income, unless income has actually resulted, and in the present case, by the change of the terms the income which accrued was received consisted of the lesser amounts and not the larger."*

[11] (1974) 3 Supreme Court Cases 196
[12] (1962) 46 ITR 144 (SC)

66.5 In the case of **S.D.S. Mongia vs. Central Board of Direct Taxes**[13], the High Court of Delhi held in paragraph No.6 as under, viz.,

> *"6. Since the extraordinary jurisdiction of this Court has been invoked, the constraints that may have been felt by the Commissioner in deciding the assesse's revision application under section 264 would not impinge on the powers of the Court under article 226 of the Constitution to correct an injustice that has occurred albeit because of the petitioners/assessee himself. Article 265 of the Constitution mandates that no person shall be taxed without the authority of law. Since in the present case there is no authority to tax the annuities received by the petitioner, we consider it appropriate to exercise our extraordinary powers to correct the injustice."*

66.6 In the case of **R. Seshammal vs. Income-Tax Officer and Another**[14], the Madras High Court held at paragraph Nos.4 and 8 as under, viz.,

> *"**4.** The fact that the petitioner had paid the monies to the Government under the mistaken notion that the association of persons would be liable for tax even when the assessment was not required to be made as an association of persons; that the amount though paid was not actually required to be paid and that the State has not refunded those amounts by taking advantage of the mistake committed by the payer is not in dispute. The Act is not intended to benefit the State by enabling it to collect or retain monies not payable to it under the Act. What is required to be collected from the assessees under the Act is only the tax and other amounts properly payable under the Act.*
>
> ***8.** The State is not entitled to plead the hypertechnical plea of limitation in such a situation to avoid return of the amounts. Section 119 of the Act vests ample power in the Board to render*

[13] (2007) 160 TAXMAN 101 (DELHI)
[14] 1998 SCC OnLine Mad 951

> *justice in such a situation. The Board has acted arbitrarily in rejecting the petitioner's request for refund."*

67. The Hon'ble Supreme Court further dealing with the term 'genuine hardship' as is referred to in Section 119(2)(b) of the Income Tax Act, has in a couple of decisions laid down certain judicial precedents which are as under:

67.1 In the case of **B.M. Malani vs. Commissioner of Income Tax and Another**[15] the Hon'ble Supreme Court held in paragraph Nos.16, 17 and 18 as under, viz.,

> *"**16.** The term "genuine" as per the New Collins Concise English Dictionary is defined as under:*
>
> > *"'Genuine' means not fake or counterfeit, real, not pretending (not bogus or merely a ruse)".*
>
> ***17.** [**Ed.** : Para 17 corrected vide Official Corrigendum No. F.3/Ed.B.J./5/2009 dated 20-1-2009.] For interpretation of the aforementioned provision, the principle of purposive construction should be resorted to. Levy of interest is statutory in nature, inter alia, for recompensating the Revenue from loss suffered by non-deposit of tax by the assessee within the time specified therefor. The said principle should also be applied for the purpose of determining as to whether any hardship had been caused or not. A genuine hardship would, inter alia, mean a genuine difficulty. That per se would not lead to a conclusion that a person having large assets would never be in difficulty as he can sell those assets and pay the amount of interest levied.*
>
> ***18.** The ingredients of genuine hardship must be determined keeping in view the dictionary meaning thereof and the legal conspectus attending thereto. For the said purpose, another*

[15] (2008) 10 Supreme Court Cases 617

well-known principle, namely, a person cannot take advantage of his own wrong, may also have to be borne in mind. The said principle, it is conceded, has not been applied by the courts below in this case, but we may take note of a few precedents operating in the field to highlight the aforementioned proposition of law. [See Priyanka Overseas (P) Ltd. v. Union of India [1991 Supp (1) SCC 102] (SCC at pp. 122-23, para 39); Union of India v. Major General Madan Lal Yadav (Retd.) [(1996) 4 SCC 127 : 1996 SCC (Cri) 592] (SCC at p. 142, paras 28-29); Ashok Kapil v. Sana Ullah [(1996) 6 SCC 342] (SCC at p. 345, para 7); Sushil Kumar v. Rakesh Kumar [(2003) 8 SCC 673] (SCC at p. 692, para 65, first sentence); Kusheshwar Prasad Singh v. State of Bihar [(2007) 11 SCC 447] (SCC at pp. 451-52, paras 13-14 and 16).]"

67.2 In the case of **Sitaldas K.Motwani vs. Director General of Income Tax and Others**[16], the Bombay High Court in paragraph No.3 and 15 has held as under, viz.,

"3. The assessee filed his return of income for the first time for A.Y. 2000-01 claiming that the Short Term Capital Gains on sale of shares of Indian Companies qualify to be investment income u/s.115C of the Act, taxable at a flat rate of 20% and claimed a refund of Rs.20,78,871/-. Needless to mention that prior to filing this return on 24th September, 2003, the assessee did not file any return for any assessment year. The return of income for A.Y.2000-01 had become barred by limitation on 31st March, 2002 and therefore, the return was filed on 24th September, 2003 along with an application u/s.119(2)(b) for condonation of delay in filing of return and claiming refund.

15. The phrase "genuine hardship" used in Section 119(2)(b) should have been construed liberally even when the petitioner has complied with all the conditions mentioned in Circular dated 12th October, 1993. The Legislature has conferred the power to condone delay to enable the authorities to do substantive justice to the parties by disposing of the matters on merit. The expression "genuine" has received a

[16] Writ Petition No.1749 of 2009 of the Bombay High Court

liberal meaning in view of the law laid down by the Apex Court referred to hereinabove and while considering this aspect, the authorities are expected to bare in mind that ordinarily the applicant, applying for condonation of delay does not stand to benefit by lodging its claim late. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of malafides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk. The approach of the authorities should be justice oriented so as to advance cause of justice. If refund is legitimately due to the applicant, mere delay should not defeat the claim for refund."

67.3 The High Court of Kerala in the case of **Pala Marketing Co-op. Socy. Ltd. vs. Union of India & Ors**[17] held in paragraph No.3 as under:

"3. What is stated in Section 119(2)(b) is that if the Board considers desirable or expedient for avoiding genuine hardship to the assessee, it should condone the delay. In other words, what the Board should consider is hardship to the party if delay is not condoned. The Board should condone the delay if failure to condone the delay causes genuine hardship to the assessee, no matter whether the delay in filing return is meticulously explained or not. In other words, once the Board allows the application under Section 119(2)(b) of the Act, the matter goes to the Assessing Officer for considering assessee's claim for refund under Section 237. Section 237 makes it clear that the Assessing Officer while considering application for refund should consider the amount of tax chargeable on the

[17] 2008 (1) KLJ 561

claimant under the Act and refund arises only if -payment is in excess of the tax payable under the Act."

67.4 In the case of **Jaswant Singh Bambha vs. Central Board of Direct Taxes and Others**[18] it was held in paragraph Nos.11 and 12 as under:

"11. It is true that the aforementioned observations have been made in the context of clause (a) of Section 119(2) of the Act but we are of the view that the same shall apply in full force even to clause (b) of the said provision. Clause (a) deals with the power to grant relaxation from the provisions of several sections enumerated therein. Clause (b) deals with power to grant relaxation from the period of limitation to avoid genuine hardship in any case or class of cases. In Associated Electro Ceramics [1993] 201 ITR 501 (Karn), it was held that even though no power had been granted to an Income-tax Officer or any other officer to condone the delay in making the claim for refund, such power had specifically been conferred on the Board under Section 119(2)(b) of the Act. The contention of the Revenue that the Board had no such power was rejected by S. Rajendra Babu J. (as his Lordship then was), in the following terms (page 504) :

> *"The contention of learned counsel for the Department that if no power had been granted to an Income-tax Officer or any other officer to condone the delay in making such a claim, the Board also cannot extend time, will not be correct, because this provision expressly provides that, where any time limit has been fixed, such time limit can be extended or delay condoned by the Board."*

12. The power of the Board under Section 119(2)(b) to admit an application or claim or return filed after the period specified for avoiding genuine hard- ship caused in any case or class of cases has also been recognised in John Shalex Paints (P.) Ltd. v. CBDT [1993] 201 ITR 523 (Karn); H. S. Anantharamaiah v. CBDT [1993] 201 ITR 526 (Karn); Pallavan Transport Con-

[18] C.W.P.No.19040 of 2008 decided on 01.11.2004

sultancy Services Ltd. v. Union of India [1998] 233 ITR 745 (Mad); Mysore Sales International Ltd.'s case [1998] 233 ITR 663 (Karn) ; Kusumben M. Parikh's case [2000] 242 ITR 501 (Guj) and Dharampal Singh Pall's case [2001] 250 ITR 629 (MP). By admitting a belated claim for refund, the Board neither interferes with the course of assessment of any particular assessee nor with the discretion of the Commissioner of Income-tax (Appeals) which, according to the Supreme Court in Azadi Bachao Andolan [2003] 263 ITR 706, is the only restriction on the powers of the Board under Section 119 of the Act."

68. Again dealing with the topic of orders passed by fraud losing its judicial sanctity and holding that fraud vitiates everything, the Hon'ble Supreme Court has laid down quite a few judicial precedents, some of which are mentioned herein under:

68.1 The Hon'ble Supreme Court in the case of **A.V. Papayya Sastry and Others vs. Govt. of A.P. and Others**[19], held at paragraph Nos.21, 22, 25, 26, 30 and 33 as under, viz.,

*"**21.** Now, it is well-settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed:*

> *"Fraud avoids all judicial acts, ecclesiastical or temporal."*

***22.** It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order—by the first court or by the final court—has to be treated as nullity by every court, superior or*

[19] (2007) 4 Supreme Court Cases 221

inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.

25. *It has been said : fraud and justice never dwell together (fraus et jus nunquam cohabitant); or fraud and deceit ought to benefit none (fraus et dolus nemini patrocinari debent).*

26. *Fraud may be defined as an act of deliberate deception with the design of securing some unfair or undeserved benefit by taking undue advantage of another. In fraud one gains at the loss of another. Even most solemn proceedings stand vitiated if they are actuated by fraud. Fraud is thus an extrinsic collateral act which vitiates all judicial acts, whether in rem or in personam. The principle of "finality of litigation" cannot be stretched to the extent of an absurdity that it can be utilised as an engine of oppression by dishonest and fraudulent litigants.*

33. *In* ***United India Insurance Co. Ltd. v. Rajendra Singh***[20]*, allowing the appeal, this Court held in paragraph Nos.15 to 17 as under, viz.,*

> *"15. It is unrealistic to expect the appellant Company to resist a claim at the first instance on the basis of the fraud because the appellant Company had at that stage no knowledge about the fraud allegedly played by the claimants. If the Insurance Company comes to know of any dubious concoction having been made with the sinister object of extracting a claim for compensation, and if by that time the award was already passed, it would not be possible for the Company to file a statutory appeal against the award. Not only because of the bar of limitation to file the appeal but the consideration of the appeal even if the delay could be condoned, would be limited to the issues formulated from the pleadings made till then.*
>
> *16. Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly-discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation.*

[20] (2000) 3 Supreme Court Cases 581

> *No court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim.*
>
> *17. The allegation made by the appellant Insurance Company, that the claimants were not involved in the accident which they described in the claim petitions, cannot be brushed aside without further probe into the matter, for the said allegation has not been specifically denied by the claimants when they were called upon to file objections to the applications for recalling of the awards. The claimants then confined their resistance to the plea that the application for recall is not legally maintainable. Therefore, we strongly feel that the claim must be allowed to be resisted, on the ground of fraud now alleged by the Insurance Company. If we fail to afford to the Insurance Company an opportunity to substantiate their contentions it might certainly lead to a serious miscarriage of justice." (emphasis supplied)*

68.2 The Hon'ble Supreme Court in the case of **United India Insurance Col. Ltd. vs. Rajendra Singh and Others**[21], held in paragraph Nos.15 and 17 as under, viz.,

> *"**15.** It is unrealistic to expect the appellant Company to resist a claim at the first instance on the basis of the fraud because the appellant Company had at that stage no knowledge about the fraud allegedly played by the claimants. If the Insurance Company comes to know of any dubious concoction having been made with the sinister object of extracting a claim for compensation, and if by that time the award was already passed, it would not be possible for the Company to file a statutory appeal against the award. Not only because of the*

[21] (2000) 3 Supreme Court Cases 581

bar of limitation to file the appeal but the consideration of the appeal even if the delay could be condoned, would be limited to the issues formulated from the pleadings made till then.

17. *The allegation made by the appellant Insurance Company, that the claimants were not involved in the accident which they described in the claim petitions, cannot be brushed aside without further probe into the matter, for the said allegation has not been specifically denied by the claimants when they were called upon to file objections to the applications for recalling of the awards. The claimants then confined their resistance to the plea that the application for recall is not legally maintainable. Therefore, we strongly feel that the claim must be allowed to be resisted, on the ground of fraud now alleged by the Insurance Company. If we fail to afford to the Insurance Company an opportunity to substantiate their contentions it might certainly lead to a serious miscarriage of justice."*

68.3 The High Court of Andhra Pradesh at Hyderabad in the case of **Lambai Pedda Bhadru and Ors. vs. Mohd. Ali Hussain and Ors.**[22] held at paragraph Nos.64 to 70 as under, viz.,

"Consequences of playing fraud:

64. Whether an order obtained by fraud can be recalled at any time? The next formidable submission made by the learned Advocate-General is that any order obtained by playing fraud on the Court or the Tribunal, as the case may be, is a nullity and non-est in the eve of law.

65. It is submitted that it can be challenged in any Court even in collateral proceedings.

66. "Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. The parties are not left without any legal remedy when a party to a judgment or order later discovers that such judgment or order was obtained by fraud.

[22] MANU/AP/0459/2003

67. Denning LJ has said: "No judgment of a Court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. (See: Lazarus Estates Ltd. v. Beasley, (1956) 1 QB 702).

68. In Indian Bank (supra), the Supreme Court had an occasion to consider the question as to the power of the authorities, be they constitutional, statutory or administrative, (and particularly those who have to decide a lis) to recall their judgments or orders if they are obtained by fraud, and observed:

> *"The judiciary in India also possesses inherent power, specially under Section 151 CPC, to recall its judgment or order if it is obtained by fraud on Court. In the case of fraud on a party to the suit or proceedings, the Court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud. Inherent powers are powers which are resident in all Courts, especially of superior jurisdiction. These powers spring not from legislation but from the nature and the constitution of the Tribunals or Courts themselves so as to enable them to maintain their dignity, secure obedience to its process and rules, protect its officers from indignity and wrong and to punish unseemly behaviour. This power is necessary for the orderly administration of the Court's business. Since fraud affects the solemnity, regularity and orderliness of the proceedings of the Court and also amounts to an abuse of the process of Court, the Courts have been held to have inherent power to set aside an order obtained by fraud practised upon that Court. Similarly, where the Court is misled by a party or the Court itself commits a mistake which prejudices a party, the Court has the inherent power to recall its order. (See: Benoy Krishna Mukerjee v. Mohanlal Goenka (AIR 1950 Cal 287); Gajanand Sha v. Dayanand Thaknr (AIR 1943 Pat 127); Krishnakumar v. Jawand Singh (AIR 1947 Nag 236); Devendra Nath Sarkar v. Ram Rachpal Singh (ILR (1926) 1 Luck 341); Saiyed Mohd, Raza v. Ram Saroop (ILR (1929) 4 Luck 562; Bankey Behari Lal v. Abdul Rahman (ILR (1932) 7 Luck 350); Lekshmi Amma Chacki Amma v. Mammen Mammen (1955 Ker LT*

> *459). The Court has also the inherent power to set aside a sale brought about by fraud practised upon the Court (Ishwar Mahton v. Sitaram Kumar (AIR 1954 Pat 450) or to set aside the order recording compromise obtained by fraud. (Bindeshwari Pd. Chaudhary v. Debendra Pd. Singh ; Tara Bai v. V.S. Kriahnaswamy Rao (AIR 1985 Kant 270.)"*
>
> *69. It is further observed by the Supreme Court mat the authorities, be they constitutional, statutory or administrative, (and particularly those who have to decide a lis) possess the power to recall their judgments or orders if they are obtained by fraud as fraud and justice never dwell together (Fraus et jus nunquam cohabitant). It has been repeatedly said that fraud and deceit defend or excuse no man {Fraus et dolus nemini patrocinari debenf).*
>
> *70. In our opinion, public interest demands recalling of orders obtained by parties by playing fraud upon Courts. The Court, Tribunal, quasi-judicial bodies and other authorities have clear and definite power to recall and set aside such orders obtained by playing fraud. Silence and indifference on the part of the Courts and authorities result in perpetuating fraud. Judicial process gets sullied resulting not only in miscarriage of justice but also in erosion of public faith and confidence in the system of administration of justice. It is the duty of all entrusted with judicial power to keep streams of judicial process pure and free from pollution."*

69. Very recently, in almost an similar if not identical set of facts, the Division Bench of the Bombay High Court in the case of **CG Power and Industrial Solutions Ltd. vs. The Assistant Commissioner of Income Tax, Circle - 6(2)(1) and Ors**[23] *vide* its judgment dated 30.04.2024 had allowed the writ petition and had granted the relief similar to the relief sought for in the present batch of writ petitions.

[23] Writ Petition (L) NO.8766 of 2024

70. Reading of the facts in the said judgment passed by the Division Bench of the Bombay High Court, what is clearly reflected is that the officers of the Income Tax Department were in agreement with the petitioners to their request for condoning the delay and also going in for reassessment so as to compute the correct taxable income. However, the view of the Income Tax officials were negated by the CBDT and the CBDT advised the Income Tax Department to reject the condonation of delay application under Section 119 and also to reject the claim for reassessment. It is in this factual context that the Division Bench of the Bombay High Court relying upon a judgment of the Bombay High Court itself in the case of **K.S. Bilawala vs. Principal Commissioner of Income Tax**[24] while allowing the writ petition in the operative part in paragraph Nos.24 to 27 has held as under, viz.,

> *"24. In the circumstances, the Rule is made absolute in terms of prayer clauses – (a), (b) and (c) which read as under :*
>
> > *a. this Hon'ble Court may be pleased to issue a writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ, order or direction under article 226 of the Constitution of India, calling for the records of the present case and after examining the legality and validity thereof quash and set-aside the impugned order dated 29.02.2024 (being Exhibit 'III' hereto);*

[24] (2024) 158 taxman.com 658 (Bombay)

b. this Hon'ble Court may be further pleased to issue a writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction under article 226 of the Constitution of India directing the Respondent Nos. 1 to 5 to allow the Petitioner to file revised returns of income and revised computations of income prepared in accordance with/based on the re-casted/revised books of account and financial statements for assessment years 2015-16 to 2020-21 and to assess the Petitioner's income chargeable to tax based on the same;

c. this Hon'ble Court may be further pleased to issue a writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction under article 226 of Constitution of India directing the Respondents Nos. 1 and 4 to assess the Petitioner's income in the assessment/appellate proceedings based on the re-cased/revised books of account and financial statements;

25. Petitioner shall file physical returns of income based on books of account, revised/recasted under Section 130(2) of the Companies Act, 2013, as taken on record by the NCLT for A.Y. 2015-16 to A.Y. 2020-21 before the JAO within 30 days from the date this order is uploaded.

On or before 28th February 2025 the A.O. shall frame assessments in accordance with law considering the revised returns of income filed based on recasted/revised books of account for A.Y. 2015-16 to A.Y. 2020-21.

26. In view of what is recorded above, any assessment order passed under Section 143(3) or 144(C) of the Act for any of the years for which recasted/revised accounts have been filed will not survive. So also consequential notices, if any, issued or orders, if any, passed.

27. We clarify that accepting returns of income on recasted accounts will not absolve anybody from any action that may be taken on the basis of earlier accounts based on

investigation which are on going. If after investigation, if these recasted accounts are required to be relooked or reworked, the company shall not raise issue of limitation for a period of three years from the date on which the assessment order is passed."

71. Given the fact that the Bombay High Court has in the recent past itself allowed two similar writ petitions and the facts in the instant batch of writ petitions also being almost same, coupled with the series of judicial precedents referred to in the preceding paragraphs dealing with the powers of CBDT and also the judgments of the Hon'ble Supreme Court dealing with the term 'genuine hardship' as is referred to under Section 119 of the Income Tax Act, we see no reason why Writ Petition No.23225 of 2011 be not allowed and it is ordered accordingly.

72. The order dated 11.07.2011 passed by respondent No.1 as a consequence is set aside / quashed being arbitrary, illegal and violative of Section 119 of the Income Tax Act. Further, it is ordered that the assessment orders for the Assessment Year 2003-04 to 2008-09 are illegal and violative of Article 265 of the Constitution of India and also *void ab initio*. The respondent No.1 and respondent No.3 are hereby directed to re-quantify / re-compute the income of the petitioner Company by conducting a fresh and proper assessment for the Assessment Year 2003-04 to 2008-09 based upon the revised

financial statements of the petitioner Company for the year ending 31st March, 2009. The petitioner Company is further directed to file the revised return for the Assessment Year 2003-04 to 2008-09 based on the audited financial statements for the said years read with the audited financial statement for the year ending 31st March, 2009 and thereafter, conduct a proper assessment excluding the fictitious sales and fictitious interest income reflected in the books of accounts. Meanwhile, it is also ordered that till re-quantification and re-computation of the income is done, the respondents shall not proceed with any recovery of income tax against the petitioner for the said relevant period.

73. In view of the fact that this Bench finding the action on the part of CBDT in rejecting the petition under Section 119 of the Income Tax Act, 1961 to be bad in law in the given factual matrix of the case, the two questions of law framed as is enunciated in paragraph No.63 of this judgment, stands answered accordingly:-

a) So far as the question whether the respondents were justified in rejecting the application under Section 119(1) of the Income Tax Act is answered in the negative holding that the rejection of the said application was bad in law and also was not sustainable factually.

b) So far as the relief which has been sought for whether can be granted invoking Article 226 of the Constitution of India, the same is answered in the affirmative in the view of the findings given by this Bench in the preceding paragraphs based on the judicial precedents.

74. This Court is conscious of the fact that post re-assessment; there is a likelihood of inflated values emerging which could possibly show surplus tax having been paid potentially burdening the Revenue. However, the petitioner Company has voluntarily agreed not to make any claim for refund. The petitioner Company has filed a memo in this regard dated 15.02.2024 undertaking to waive any such surplus tax having been paid which may arise after assessment. This proactive step by the petitioner Company provides additional compelling ground for allowing this petition, particularly in light of there being no financial implication falling on the Revenue. This gesture on the part of the petitioner to mitigate potential financial implications also shows their commitment only with an intention of getting a fair and genuine assessment so far as the income and the expenditure of the petitioner Company for the relevant period is redone by way of reassessment.

75. This Court finds that the petitioner-Company through its Assistant Chief Corporate Counsel (Legal) and Authorized Signatory

has unequivocally agreed to waive its rights to claim any refund that may arise after adjusting any tax liability arising from the *de novo* assessments for Assessment Years 2002-03 to 2008-09. This waiver is comprehensive and applies to any residual refunds that may arise after setting off aggregate demands across the relevant Assessment Years under Section 245 of the Income Tax Act, 1961. This Court finds that this decision of the Assistant Chief Corporate Counsel (Legal) has been duly authorized by the Managing Director of the petitioner Company supported by a valid Power of Attorney dated 22.11.2013. This waiver effectively ensures that there will be no additional financial burden on the Revenue following the completion of the reassessment process.

76. As a consequence of the lead case i.e. Writ Petition No.23255 of 2011 being allowed, all the other connected Writ Petitions heard analogously also stands allowed and disposed of leaving open the right of the Revenue to initiate appropriate proceedings if required after the re-assessment is done in terms of the order passed today by this Bench in Writ Petition No.23255 of 2011.

77. No order as to costs.

78. As a sequel, miscellaneous applications pending if any in these writ petitions, shall stand closed.

P.SAM KOSHY, J

N.TUKARAMJI, J

Date: 31.01.2025

Note : LR copy to be marked
B/o.

Ndr / Gsd