

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री इंटूरी रामा राव, लेखा सदस्य के समक्ष

[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. Nos.397/CHNY/2016, 2544, 2545 & 3148/2018
निर्धारण वर्ष /Assessment years :2011-12, 2011-12, 2012-13 & 2012-13

The Assistant Commissioner
of Income Tax,
Non Corporate Circle 4,
Coimbatore.

Vs. M/s. Sri Balaji Real Estates,
7, Kuppusamy Street,
Pollachi 642 001.

[PAN ABVFS 1678J]

आयकर अपील सं./I.T.A. Nos.1237 & 1238/CHNY/2017.
निर्धारण वर्ष /Assessment years : 2012-13 & 2011-2012.

M/s. Sri Balaji Real Estates,
7, Kuppusamy Street,
Pollachi 642 001.

Vs. The Assistant Commissioner
of Income Tax,
Non Corporate Ward –I,
Coimbatore.

[PAN ABVFS 1678J]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

Assessee by
Department by

: Shri. D. Anand, Advocate
: Shir. S. Bharath, IRS, CIT.

सुनवाई की तारीख/Date of Hearing

: 31-07-2019

घोषणा की तारीख /Date of Pronouncement

: 24-10-2019

आदेश / ORDER**PER INTURI RAMA RAO, ACCOUNTANT MEMBER**

These are appeals and cross appeals filed by the Revenue as well as assessee directed against different orders of the learned Commissioner of Income Tax (Appeals)-3, Coimbatore (hereinafter called as 'CIT(A)') dated 17.11.2015 & 12.06.2018 and Id. Principal Commissioner of Income Tax -2, (hereinafter called as 'PCIT) dated 24.03.2017 for assessment years 2011-12 and 2012-2013.

2. Since, the identical facts and issues are involved in these appeals, we proceed to dispose the same vide this common order.

3. For the sake of convenience and clarity the facts relevant to the appeal in ITA No.397/Chny/2016 for assessment year 2011-12 are stated herein.

4. The Department raised the following grounds of appeal:

'1. The order of the learned CIT(A) is not acceptable on the facts and circumstances of the case.

2. The Learned CIT(A) has erred in law, in deleting the disallowance on cessation of Liability.

3. The Learned CIT(A) has erred in not considering the fact the major portion of payments for purchasing a property cannot be made in two years after the registration when there was another party who had

made major payment as advance towards the purchase of the property.

4. The [earned CIT(A) has erred in stating that he AO is contradicting the payment of extra consideration over and above that in the registered document for which evidence was found during survey wherein the AO has only held that the entire payments were made on or before the date of registration and not in deferred in manner.

5. The Learned CIT(A) has erred in stating that the assessment order does not mention anything about reliability of payment of Rs.6,50,00,000/- Later as AO has clearly brought in the order that above payment has not been made in deferred manner as claimed by the assessee.

5. For these and other grounds that may be adduced at the time of hearing, the order of the CIT(A) may be cancelled and that of the Assessing Officer restored”.

5. The brief facts of the case are as under:

The Respondent -assessee namely "Sri Balaji Real Estates" is a partnership firm engaged in the business of real estates. The return of income for the AY 2011-12 was not filed under the provisions of Section 139 of the Income Tax Act, 1961 (in short "the Act"). Subsequently, the Assessing Officer had come to know that assessee firm had purchased land for consideration of ₹7,98,70,000/-. Based on this information, he formed an opinion that income escaped assessment and accordingly issued notice u/s.148 of the Ac on 12.11.2013. In response to the said notice, assessee filed return of income for the Asst. Year 2011-12 on 16.11.2013 electronically disclosing Nil income. Against the said return of income, the assessment was completed by the Assessing Officer at total income of

₹6,50,00,00/- vide order dated 29.03.2015 passed u/s.147 r.w.s. 144 of the Act. While doing so, the Assessing Officer made addition of ₹6,50,00,000/- being amount payable to Mr. Kanakaraj and Mr. Senthil Vadival on purchase of the property disbelieving existence of the liability.

6. The facts as set out by the Assessing Officer is extracted below:-

'A survey action 133A was conducted in the premises of M/s Kwaliti Spinning Mills Pvt Ltd, Pollachi on 04-09-2013. During the course of survey action it came to light that M/s. Kwaliti Spinning Mills Private Ltd had sold 16.39 acres of land (Old chitta no -53; New Chitta no-169; S.F No 23/B and 40/1) to Sh. Kanakaraj and Sh. R.M.Senthil Vadivel of M/s Vanjiamman Finance & Real Estates, Pollachi. This property in turn was sold to assessee, M/s Balaji Real Estate on 27-12-2010 for value of Rs.61,62,502/- vide registered sale deed dated: 27-12-2010, document no 10563/2010 and Rs.19,57,498/- vide registered sale deed dated : 27-12-2010 , document no 10564/2010. However some unregistered documents were recovered during the survey proceedings. As per one of the document the property had been sold to assessee firm for Rs.7,98,70,000/- vide unregistered document dated: 25-11-2010. In order to verify the true nature of the transactions, statement u/s 131 of the IT Act were recorded under oath from Sh. Kanakaraj and Sb. R.M.Senthil Vadivel on 05-09-2013. In the statement Sh. Kanakaraj and Sb. R.M.Senthil

Vadivel, both admitted on oath that the property was registered at a lower value , but the actual sale consideration received was Rs.7,98,70,000/- from M/s Balaji Real Estates”.

Based on the above information, the Assessing Officer formed an opinion that income had escaped assessment and accordingly issued notice u/s.148 of the Act dated 12.11.2013 and during the course of assessment proceedings, the Assessing Officer found that out of total consideration of ₹7,98,70,000/- paid to sellers namely Mr. Kanakaraj and Mr. Senthil Vadival, found that source of investment for purchase of property for ₹1,48,70,000/- was explained. However, for the balance amount of ₹6,50,00,000/- when required by the Assessing Officer to explain the source of investment, it was explained that balance amount was paid in subsequent two years in cash. The Assessing Officer disbelieved the explanation of the assessee and held that balance consideration of ₹6,50,00,000/- was paid at the time of registration of the sale deed by placing reliance on the decision of Hon'ble Supreme Court in the case of *Sumati Dayal vs. CIT, 214 ITR 801* by holding that the liability is not existing and brought to tax a sum of ₹6,50,00,000/-.

7. Being aggrieved by the above addition, an appeal was preferred before Id. CIT(A), who vide impugned order deleted the addition taking into consideration the following set of facts.

'(a) It has not been established that the payment is not made in Financial Years 2011-12 and 2012-13.

(b) The parties in their statements have not given any proof for the receipt of payment before registration.

(c) The assessment order does not mention anything about the reliability of payment of Rs. 6,50,00,000/- later.

(d) The Assessing Officer by stating cessation of liability is contradicting the payment of extra consideration over and above that in the registered document for which evidence was found during the course of survey u/s 133A.

(e) There is no cogent rebuttal of the appellant's argument that the payment was deferred as there was legal dispute over the property".

8. Being aggrieved by the order of the Id. CIT(A), the Revenue is in appeal before us in ITA No.397/CHNY/2016 for assessment year 2011-12. It is contended before us that the Id. CIT(A) ought not have deleted the addition considering the circumstantial evidence, such as statement of the partners and having regard to the prevailing practice in the real estate business ought to have held that on money was paid at the time of purchase of land for which the source remained unexplained.

9. On the other hand, Id. Authorised Representative submitted that balance of consideration of ₹6,50,00,000/- was paid during the previous year relevant to assessment years 2012-2013 and 2013-14 and having regard to the observation made by the Assessing Officer during the course of assessment proceedings in the year 2012-2013, and Assessing Officer having had recorded a finding that the vendors of the property i.e. Mr. Kanakaraj and Mr. Senthil Vadival, had admitted on oath on 05.09.2013 that the entire sale consideration was received, he cannot resort to making addition on account of cessation of liability.

10. We heard the rival submissions and perused the material on record. During the previous year relevant to assessment year under consideration, respondent – assessee brought 16.39 acres of land at Pollachi from Mr. Kanakaraj and Mr. Senthil Vadival. This property was purchased by the sale deed dated 27.12.2010 vide document No.10563/2010 for ₹61,62,502/- and document No.10564/2010, dated 27.12.2010 for ₹19,57,498/-. However, it was an admitted fact that total consideration paid on purchase of said land was ₹7,98,70,000/-, out of which a sum of ₹6,50,00,000/- was shown payable to the seller of the property as on 31.03.2011 was disbelieved by the Assessing Officer and brought to tax as non existing liability. On appeal before the Id. CIT(A), the Id. CIT(A) deleted the addition made by the

Assessing Officer. From the perusal of para 1.5 of the assessment order, it is clear that the Assessing Officer had recorded statement from Mr. Senthil Vadival, who is the seller of the property, confirmed the factum of receipt of balance consideration of ₹6,50,00,000/- in cash during the previous year relevant to assessment years 2012-13 and 2013-14 and he also explained before the Assessing Officer, the circumstances under which the balance consideration was accepted in cash. However based on the plaintiff filed by one Shri. Varadharaj in the Civil Suit, who is the partner of M/s. Vanjiamman Finance and Real Estates that a sum of ₹4,00,00,000/- was received in cash had concluded that there was no money payable on account of purchase of property. The allegation of Shri. Varadharaj required to be proven, in a Court of law. The outcome of Civil Suit was not brought on record by the Assessing Officer. In the circumstances, it cannot be said that it is a conclusive proof of payment of ₹4,00,00,000/- by the Respondent – assessee firm to the vendors. In any event there is no material on record suggesting payment of ₹6,50,00,000/- on the date of purchase of property. Further, the Assessing Officer had not brought evidence in rebuttal of the explanation of the assessee that the balance consideration of ₹6,50,00,000/- was paid during the previous years relevant to assessment years 2012-13 and 2013-14. In the circumstances, it cannot be said that there is a cessation of

liability of ₹6,50,00,000/- as on 31.03.2008, therefore no addition on account of cessation of liability is warranted in the hands of the respondent assessee firm. Therefore, we do not find any reason to interfere with the order of the Id. CIT(A). The appeal filed by the Revenue stands dismissed.

11. In the result, the appeal of the Revenue in ITA No.397/CHNY/2016 for assessment year 2011-12 stands dismissed.

12. Now, we take up appeal of the assessee in ITA NO.1238/CHNY/2017 for assessment year 2011-2012 for adjudication.

13. This is an appeal filed by the assessee directed against the order of Id. Principal Commissioner of Income Tax-2, Coimbatore (in short 'Id. PCIT) passed u/s.263 of the Act dated 24.03.2017 for assessment year 2011-2012.

14. The assessee raised the following grounds of appeal.

'1. The orders of PrCIT are opposed to on law and facts of the case.

2. The PrCIT ought to have appreciated that he erred in passing orders u/s 263 in this case

3. The PrCIT ought to have held that the section 263 does not confer powers of revision in this case

4. The PrCIT ought to have found that the Assessing Officer in his order dated (now set aside) has declared that the liability has ceased to exists. Now the order u/s 263 is on the mode of repayment of the very same liability which the Assessing Officer declares does not exists

5. The PrCIT ought to have dropped proceedings u/s 263 when the department has filed an appeal questioning the orders of CIT (A) on the cessation of the liability (ITA 397/2016 with ITAT Chennai A Bench)

6. The PrCIT ought to have held that with the appeal filed by department on the issue, the stand taken in revision u/s 263 amounts to change of opinion and contrary to the stand of the department taken before ITAT

7. The PrCIT ought to have found that the proposal u/s 263 to question the mode of discharge of liability (violations of 40A(3)) becomes relevant only when the department accept the order of CIT(A) holding no cessation has taken place and withdraws appeal before ITAT (ITAT 397 /20 16 with ITAT Chennai 'A' Bench).

8. The PrCIT ought to have found that the appellant had reasonable cause for making payment by cash and this has been examined in details by the Assessing Officer and accepted by him

9. The PrCIT has failed to appreciate that there existed peculiar conditions in the transaction like court case problems in partnership etc warranting some special arrangements in this case.

10. For these and other grounds to be submitted at the time of hearing the appellant prays for cancelling the orders of PrCIT made u/s 263

11. The appellant reserves the right of adding to or otherwise modifying the grounds as may be advised."

15. On the verification of the assessment record of M/s. Sri Balaji Real Estates, the Id. Principal Commissioner of Income Tax (in short the Id. PCIT)-2, Coimbatore noticed that assessee made cash payments of ₹2,20,000/- on 14.11.2010 and ₹67,50,000/- on

21.11.2010 towards purchase of land which was shown as stock in trade in the books of accounts. Therefore, the Id. PCIT had opined that such cash payments attracted disallowance u/s.40A(3) of the Act for failure of the Assessing Officer to make disallowance u/s.40A(3) of the Act, the assessment order passed by the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. Accordingly, he issued show cause notice u/s.263 of the Act on 29.06.2016. In response to which, it was submitted that the order of the Assessing Officer is subject matter of appeal before the Id. CIT(A) and the Id. PCIT cannot exercise the power of revision. It was further contended that cash payments are covered by one of the exceptions carved out under the provisions of Rule 6DD and the question of disallowance does not arise. However, the Id. PCIT had observed that Assessing Officer had not applied his mind on the issue and accordingly passed order of revision u/s.263 of the Act setting aside the assessment order to the Assessing Officer for denovo assessment in accordance with law.

16. Being aggrieved by the order of the Id. PCIT u/s.263 of the Act, the assessee is in appeal before us. The Id. Authorised Representative contended that the issue which is sought to be revised by the Id. PICIT, is examined by the Assessing Officer and took one of the possible view and therefore the assessment order cannot be termed as erroneous and prejudicial to the interest of the

Revenue. Ld. Authorised Representative Shri. D. Anand placed reliance on the judgment of Hon'ble Supreme Court in the cases of *Malabar Industrial Co. Ltd. v. CIT [2000] 243 ITR 83 (SC) and CIT vs. Max India Ltd, (2007) 295 ITR 282.*

17. On the other hand, Id. Departmental Representative opposed the submissions made on behalf of the assessee.

18. We heard the rival submissions and perused the material on record. The only issue involved in the present appeal is whether or not the order of revision passed u/s.263 of the Act by the Id. PCIT is valid under law. Admittedly, the factum of payment of consideration in cash for purchase of property was on record. But there is nothing on record to show that the Assessing Officer had applied his mind as to applicability of provisions of Section 40A(3) of the Act. Therefore, it cannot be said that the Assessing Officer took one of the possible views. Therefore, the proposition of law laid down by Hon'ble Supreme Court in the cases of *Malabar Industrial Co. Ltd (supra) and Max India Ltd (supra)* had no application to the facts of the present case. The argument of the Id. Authorised Representative that the order of the Assessing Officer is subject matter of appeal before the Id. CIT(A) cannot be accepted, in as much as, the issue of disallowance u/s.40A(3) of the Act is not subject of matter of appeal

before the Id. CIT(A). It is equally settled position of law that non application of mind on the issues which are sought to be revised by the Assessing Officer renders the assessment order erroneous and prejudicial to the interest of the revenue. Therefore, we uphold the order of revision u/s.263 of the Act. Thus, the appeal filed by the assessee stands dismissed.

19. In the result, the appeal filed by the assessee in ITA No.1238/CHNY/2017 for assessment year 2011-12 stands dismissed.

20. Now, we take up appeal of the Revenue in ITA No.2544/CHNY/2018 for assessment year 2011-2012 for adjudication.

21. The Assessing Officer passed order consequent to the order passed by the Id. PCIT-2, Coimbatore u/s.263 of the Act dated 24.03.2017 after making disallowance of ₹69,70,000/- u/s.40A(3) of the Act rejecting the contention of the assessee that cash payments were made on Sundays and Bank holiday and therefore no disallowance can be made.

22. Being aggrieved, assessee preferred an appeal before the Id. CIT(A), who vide impugned order had deleted the addition placing reliance on the decisions of Hon'ble Supreme Court in the case of Attar Singh Gurumukh Singh vs. ITO, 191 ITR 667 and Jurisdictional High Court in the case of CIT vs. Chrome Leather Company Private

Ltd, 235 ITR 708, wherein it was held that no disallowance can be made u/s.40A(3) of the Act in case if the genuineness of the payment is established.

23. Being aggrieved by the order of the Id. CIT(A), the Revenue is in appeal before us. The Id. Departmental Representative argued that the Id. CIT(A) ought not have held the payment are genuine, in as much as, the payments have been made intentionally on holidays just to avoid the consequence of disallowance.

24. On the other hand, the Id. Authorised Representative placed reliance on the order of the Id. CIT(A).

25. We heard the rival submissions and perused the material on record. Admittedly, the cash payments are made towards purchase of property, which is stock in trade in the hands of the assessee firm. The provisions of Section 40A(3) of the Act states that any expenditure incurred in cash aggregating to the sum of ₹20,000/- on a single day shall be disallowed except under the circumstances mentioned under Rule 6DD. It is a matter of record that both the assessee, as well as the payees admitted cash payments and the same was duly reflected in the respective books. Thus, the genuineness of the expenditure is established beyond doubt, no disallowance can be made u/s.40A(3) of the Act in the light of the of the judgment of Hon'ble Supreme Court in

the case Attar Singh Gurumukh Singh (supra) wherein it was held as follows:-

‘Section 40A(3) only empowers the Assessing Officer to disallow the deduction claimed as expenditure in respect of which payment is not made by crossed cheque or crossed bank draft. The payment by crossed cheque or crossed bank draft is insisted on to enable the assessing authority to ascertain whether the payment was genuine or whether it was out of the income from undisclosed sources. The terms of section 40A(3) are not absolute. Considerations of business expediency and other relevant factors are not excluded. Genuine and bona fide transactions are not taken out of the sweep of the section’.

Thus, the deletion made by the Id. CIT(A) is based on law laid by Hon'ble Supreme Court in the case of Attar Singh Gurumukh Singh (supra). We do not find any reason to interfere with the order of the Id. CIT(A). The appeal filed by the Revenue stands dismissed.

26. In the result, the appeal filed by the Revenue in ITA No.2544/CHNY/2018 for assessment year 2011-2012 stands dismissed.

27. Now, we take up assessee's appeal in ITA No.1237/CHNY/2017 for assessment year 2012-2013 for adjudication.

28. The return of income for the assessment year 2012-2013 was filed electronically on 28.09.2013 disclosing at total income of ₹2,52,32,670/-. Against the said return of income, the assessment

was completed by the Assistant Commissioner of Income Tax, Non Corporate Circle-4, Coimbatore vide order dated 27.03.2015 passed u/s. 143(3) of the Income Tax Act, 1961 (for short 'the Act') at total income of ₹2,72,95,903/- after making addition of ₹20,63,233/- on account of disallowing improvement expenditure for want of evidence. While the matter stood thus, the Id. PCIT-2, Coimbatore on suo-motu examination of assessment records had come to conclusion that the Assessing Officer had failed to consider the applicability of provisions of Section 40A(3) of the Act to the cash payments of ₹3,50,00,000/- made during the financial year relevant to assessment year 2012-2013 towards purchase of land, which is stock in trade. Accordingly, the Id. PCIT issued show cause notice under the provisions of Section 263 of the Act on 29.06.2016 calling upon the assessee to show cause why the assessment order should not be revised for the above reasons. In response to the show cause notice, assessee filed detailed submissions contending that the issue which is sought to be revised is subject matter of appeal by the assessee for the assessment year 2011-2012 and therefore it is contended that jurisdiction u/s.263 of the Act cannot be invoked. Even on merits, it was contended that the provisions of Section 40A(3) of the Act have no application to the impugned payments as the cash payments were made on bank holidays and the payments were genuine. Id. PCIT

after duly considering the submissions held that the assessment order is erroneous and prejudicial to the interest of the Revenue, accordingly set aside the assessment order to the Assessing Officer for denovo assessment after giving an opportunity of hearing to the assessee firm.

29. Being aggrieved by the order of the Id. PCIT, assessee is in appeal before us in the present appeal. It is contended that the very same issue which is sought to be revised under the provisions of Section 263 of the Act is a subject matter of appeal before the Id. CIT(A) in the preceding assessment year 2011-2012. It is further contended that Id. PCIT cannot exercise the powers of revision u/s.263 of the Act on debatable issues. It is further contended that in any case, where the Assessing Officer adopted one of the possible views, the power of revision cannot be exercised u/s.263. Placed reliance on the decisions of Hon'ble Supreme Court in the cases *Malabar Industrial Co. Ltd. (supra)* and *Max India Ltd, (supra)*.

30. Even on merits, it is submitted that once genuineness of the cash payments is established, the disallowance u/s.40A(3) of the Act does not arise. In support of this, Id. Authorised Representative placed reliance on the decision of Co-ordinate Bench of the Tribunal in the case of *M.R. Chendilnathan vs. ACIT* in ITA No.2010/CHNY/2017

and 1893/CHNY/2017, dated 23.05.2019 for assessment year 2011-2012.

31. On the other hand, the Id. CIT- Departmental Representative placed reliance on the order of the Id. PCIT.

32. We heard the rival submissions and perused the material on record. The solitary issue involved in the present appeal relates to the validity of assumption of jurisdiction u/s.263 of the Act. In this case, original assessment order was completed on 27.03.2015. At the time of completion of original assessment, factum of payment of consideration of ₹3,50,00,000/- in cash is within the knowledge of the Assessing Officer. However, the Assessing Officer was of the opinion that the entire consideration was discharged during the previous year relevant to assessment year 2011-2012 and the balance consideration shown as payable, he held it to be fictitious and according chose to make addition on account of cessation of liability. The addition was contested by the assessee in assessment year 2011-2012 and the Id. CIT(A) had deleted the addition. On further appeal before this Tribunal, the deletion of addition was confirmed by the Tribunal vice para 10 above (supra). In the backdrop of these facts, the issue that comes up for consideration is whether the exercising the revisionary powers u/s.263 of the Act holding the assessment order erroneous for

failure of the Assessing Officer to consider the applicability of Section 40A(3) of the Act to the cash payments made is correct or not. From the perusal of the assessment orders for the years 2011-2012 and 2012-2013, it would demonstrate that the Assessing Officer had rejected the contention of the assessee that cash payments were made in the subsequent assessment years i.e. 2012-13 and 2013-2014. Accordingly, the Assessing Officer had not chosen resort to the disallowance u/s.40A(3) of the Act. The course of action adopted by the Assessing Officer is inconsonance with the approach adopted by him in the preceding assessment year which is one of the possible view. The view of the Assessing Officer is being challenged by the assessee, before Id. CIT(A) when relief was granted by the CIT(A), the matter was being challenged in further appeal before the Tribunal. This would go to show that the Assessing Officer is of the opinion that course of action adopted by him is correct and the Id. PCIT cannot revise the assessment order on the ground that Assessing Officer should have adopted different view in respect of very same issue which is not permissible in view of the judgment of Hon'ble Supreme Court in the case of *Malabar Industrial Co. Ltd. (supra)*. *The Relevant para is abstract hereunder:-*

The phrase "prejudicial to the interests of the Revenue" has to be read in conjunction with an erroneous order passed by the Assessing Officer. Every loss of revenue as a consequence of an order of the Assessing Officer cannot be treated as prejudicial to the interests of

the Revenue. For example, when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of Revenue ; or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of the Revenue, unless the view taken by the Income-tax Officer is unsustainable in law. It has been held by this court that where a sum not earned by a person is assessed as income in his hands on his so offering, the order passed by the Assessing Officer accepting the same as such will be erroneous and prejudicial to the interests of the Revenue. Rampyari Devi Saraogi v. CIT [1968] 67 ITR 84 (SC) and in Smt. Tara Devi Aggarwal v. CIT [1973] 88 ITR 323 (SC)".

Applying the principle enunciated above to the facts of the case, we are of the opinion that the order of revision by the Id. PCIT is not valid in law and therefore we quash the revisionary proceedings u/s.263 of the Act.

33. In the result, the appeal filed by the assessee in ITA No.1237/CHNY/2017 for assessment year 2012-2013 is allowed.

34. Now, we take up appeals of the Revenue in ITA Nos.2545 & 3148/CHNY/2018 for assessment year 2012-2013 for adjudication.

35. Since we had already held that the revision assessment u/s.263 of the Act is invalid in law of para 32 above, the consequent assessment order does not survive. Therefore, the appeals filed by the Revenue in ITA Nos.2545 & 3148/CHNY/2018 are dismissed as infructuous.

36. To summarize the results, the appeals filed by the assessee in ITA No.1238/CHNY/2017 for assessment year 2011-2012 stands dismissed whereas ITA No.1237/CHNY/2017 for assessment year 2012-2013 is allowed. Appeals of the Revenue in ITA Nos. 397/CHNY/2016 and 2544/CHNY/2018 for assessment year 2011-2012 and ITA Nos.2545 & 3148/CHNY/2018 for assessment year 2012-2013 stand dismissed.

Order pronounced on 24th day of October, 2019, at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-

(इंटूरी रामा राव)

(INTURI RAMA RAO)

लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated:24th October, 2019.

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |