

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 24TH DAY OF APRIL, 2018

BEFORE:

THE HON'BLE MRS. JUSTICE S.SUJATHA

W.P.No.3801/2018 c/w

W.P.Nos.5073/2018, 8027/2018,

8028/2018, 12266/2018,

12268/2018, 12270/2018.

12271/2018, 12273/2018,

12275/2018 AND 13174/2018 (T - IT)

IN W.P.NO.3801/2018:

BETWEEN:

Mr. VISHAL AGARWAL
S/O Mr. SAWARMAL AGARWAL
AGED ABOUT 40 YEARS
R/AT No.28, 4TH CROSS
LALBAGH ROAD, K.S. GARDEN
BANGALORE-560027.

... PETITIONER

[BY SRI HARISH.V.S., ADV.]

AND:

THE DEPUTY COMMISSIONER OF INCOME TAX
CIRCLE - 7 (2) (1), ROOM No.318,
3RD FLOOR, BMTC BUILDING,
30 FEET ROAD, 6TH BLOCK,
KORAMANGALA, BANGALORE-560095.

...RESPONDENT

[BY SRI E.I. SANMATHI, ADV. FOR
SRI K.V.ARAVIND, ADV.)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE IMPUGNED ORDER PASSED BY THE RESPONDENT U/S 143 (3) OF THE INCOME TAX ACT, 1961, DATED 29.12.2017 FOR THE ASSESSMENT YEAR 2015-16 I.E., ANNEX-C AND CONSEQUENTIAL NOTICE OF DEMAND ISSUED BY RESPONDENT DATED 29.12.2017 FOR THE ASSESSMENT YEAR 2015-16 I.E., ANNEX-C1 AND ETC.

IN W.P.NO.5073/2018:

BETWEEN:

SMT HOGETHOPPALU
BASAVARAJA SETTY RADHA
W/O Mr. G.SOMNATH
AGED ABOUT 37 YEARS
R/AT VARSH, NEAR HORTICULTURE OFFICE
V.P. EXTENTION, CHITRADURGA-577501. ... PETITIONER

[BY SRI HARISH.V.S., ADV.]

AND:

THE INCOME TAX OFFICER
WARD-2, TAMATKAL ROAD
MEDEHALLI, CHITRADURGA-577502. ...RESPONDENT

[BY SRI E.I. SANMATHI, ADV. FOR
SRI K.V.ARAVIND, ADV.)

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IN W.P.NO.8027/2018:

BETWEEN:

Mr. PARAS TARACHAND CHOWATIA

S/O TARACHAND M CHOWATIA
AGED ABOUT 46 YEARS
R/AT No.33, SUHANI VILLA
MIDDLE SCHOOL ROAD, V.V. PURAM
BANGALORE-560004.

... PETITIONER

[BY SRI HARISH.V.S., ADV.]

AND:

THE INCOME TAX OFFICER
CIRCLE – 5 (2) (1)
ROOM No.316, 3RD FLOOR
BMTC BUILDING, 80 FEET ROAD
6TH BLOCK, KORAMANGALA
BANGALORE-560095.

...RESPONDENT

[BY SRI E.I. SANMATHI, ADV. FOR
SRI K.V.ARAVIND, ADV.)

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IN W.P.NO.8028/2018:

BETWEEN:

Mrs. SONA PARAS CHOWATIA
W/O PARAS TARACHAND CHOWATIA
AGED ABOUT 44 YEARS
R/AT No.33, "SUHANI VILLA"
MIDDLE SCHOOL ROAD, V.V. PURAM
BANGALORE-560004.

... PETITIONER

[BY SRI HARISH.V.S., ADV.]

AND:

THE INCOME TAX OFFICER

CIRCLE – 5 (2) (4)
ROOM No.308, 3RD FLOOR
BMTc BUILDING, 80 FEET ROAD
6TH BLOCK, KORAMANGALA
BANGALORE-560095.

...RESPONDENT

[BY SRI E.I. SANMATHI, ADV. FOR
SRI K.V.ARAVIND, ADV.]

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IN W.P.NO.12266/2018:

BETWEEN:

SMT MALASANI LALITHAMMA
W/O Mr. M.R.SATHYANARAYANA SHETTY
AGED ABOUT 57 YEARS
R/AT 1ST CROSS, VIDYA NAGAR
CHITRADURGA-577501.

... PETITIONER

[BY SRI HARISH.V.S., ADV.]

AND:

THE INCOME TAX OFFICER
WARD – 1, TAMATKAL ROAD
MEDEHALLI
CHITRADURGA-577502.

...RESPONDENT

[BY SRI E.I. SANMATHI, ADV. FOR
SRI K.V.ARAVIND, ADV.]

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ASSESSMENT YEAR 2015-16 I.E., ANNEX-B AND
CONSEQUENTIAL NOTICE OF DEMAND ISSUED BY
RESPONDENT DATED 28.12.2017 FOR THE ASSESSMENT YEAR
2015-16 I.E., ANNEX-C AND ETC.

IN W.P.NO.12268/2018:

BETWEEN:

SMT SWATHI JAGADISH
W/O H.K.JARADISH
AGED ABOUT 31 YEARS
R/AT SRI BASAVESHWARA NILAYA
NEW SANTHE MAIDANA
CHITRADURGA-577501.

... PETITIONER

[BY SRI HARISH.V.S., ADV.]

AND:

THE INCOME TAX OFFICER
WARD - 1, TAMATKAL ROAD
MEDEHALI
CHITRADURGA-577502.

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ASSESSMENT YEAR 2015-16 I.E., ANNEX-B AND
CONSEQUENTIAL NOTICE OF DEMAND ISSUED BY
RESPONDENT DATED 28.12.2017 FOR THE ASSESSMENT YEAR
2015-16 I.E., ANNEX-C AND ETC.

IN W.P.NO.12270/2018:

BETWEEN:

Mrs. SANJEEVA SHETTY MALASANI LAKSHMI
W/O Mr. V.RAGHAVENDRA
AGED ABOUT 43 YEARS

R/AT C/O M/S. SHASHI HARDWARE
M.H.ROAD, CHITRADURGA-577501.

... PETITIONER

[BY SRI HARISH.V.S., ADV.]

AND:

THE INCOME TAX OFFICER
WARD – 1, TAMATKAL ROAD
MEDEHALLI
CHITRADURGA-577502.

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IN W.P.NO.12271/2018:

BETWEEN:

SMT MALASANI ANAND KUMAR ANUPAMA
W/O Mr. ANAND KUMAR
AGED ABOUT 39 YEARS
R/AT C/O M/s. SRI BASAVESHWARA RICE MILL
5TH K.M., NH-13, G.R. HALLY
CHITRADURGA-577501.

... PETITIONER

[BY SRI HARISH.V.S., ADV.]

AND:

THE INCOME TAX OFFICER
WARD – 1, TAMATKAL ROAD
MEDEHALLI, CHITRADURGA-577502.

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IN W.P.NO.12273/2018:

BETWEEN:

SMT MALASANI RAMANANDA AMRUTHALAKSHMI
W/O LATE Mr. M.S.RAMANANDA
AGED ABOUT 49 YEARS
R/AT C/O m/s. SRI GURUDEVA INDUSTRIES
NH-13, 5TH KM, G.R. HALLY
CHITRADURGA-577501.

... PETITIONER

[BY SRI HARISH.V.S., ADV.]

AND:

THE INCOME TAX OFFICER
WARD - 1, TAMATKAL ROAD
MEDEHALLI, CHITRADURGA-577502.

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IN W.P.NO.12275/2018:

BETWEEN:

SMT MALASANI LINGA SETTY JYOTHI

W/O Mr. M.S. LINGA SETTY
AGED ABOUT 53 YEARS
R/AT C/O M/s. SRI BASAVESHWARA RICE MILL
5TH K.M., NH-13, G.R. HALLY
CHITRADURGA-577501.

... PETITIONER

[BY SRI HARISH.V.S., ADV.]

AND:

THE INCOME TAX OFFICER
WARD – 1, TAMATKAL ROAD
MEDEHALLI
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IN W.P.NO.13174/2018:

BETWEEN:

Mr. JIGNESH TARACHAND CHOWATIA
S/O TARACHAND M CHOWATIA
AGED ABOUT 40 YEARS
R/AT No.33, "SUHANI VILLA"
MIDDLE SCHOOL ROAD, V.V. PURAM
BANGALORE-560004.

... PETITIONER

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AND:

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CIRCLE – 5 (2) (1)
ROOM No.316, 3RD FLOOR

BMTC BUILDING, 80 FEET ROAD
6TH BLOCK, KORAMANGALA
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SRI K.V.ARAVIND, ADV.)

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THESE PETITIONS COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Since common issue is involved in these matters, they are clubbed, heard together and disposed of by this common order.

2. Petitioners have challenged the assessment order/s passed by the respondent under Section 143(3) of the Income-tax Act, 1961 ['Act' for short] relating to the assessment year 2015-16 and consequential notice/s of demand issued by the respondent.

3. Challenge is made to the assessment order on the ground of non-compliance with the principles of natural justice, inasmuch as the statement of a third party Mr.Mukhesh Choksi relied on by the respondent-Appellate Authority, not being made available to the petitioner and not providing an opportunity to cross-examine the said witness by the petitioners.

4. Learned counsel appearing for the petitioners placed reliance on the Division Bench judgment of this court in W.A.No.218/015 in the case of **M/s Kothari Metals -vs- Income Tax Officer** (DD 14.8.2015) as well as W.A. No.219/2015 in the case of **M/s Vardhman Metals -v- Income Tax Officer** [DD 26.10.2016]. However, learned counsel appearing for the respondent distinguishing the Division Bench Judgments referred to by the learned counsel for petitioners, placed reliance on the Co-ordinate Bench decision of this Court in W.P.No.30690/2016 [DD 28.8.2017] and submitted that

the department-revenue has no objections to dispose of these matters in terms of the order of this Court passed in W.P. No. 30960/2016.

5. In view of the aforesaid submission, this court finds it appropriate to dispose of these matters in terms of order in W.P.No.30960/2016.

Accordingly, these matters stand disposed of in terms of the order passed in W.P.NO.30960/2016 without expressing any opinion on the merits or demerits of the cases. Appellate Authority is at liberty to re-frame assessment in accordance with law, after complying with the principles of natural justice, by supplying a copy of the statement of Mr.Mukhesh Choksi and other brokers as well as the investigation report, to the petitioners forthwith, further provide with an opportunity of cross-examining the said witnesses by the petitioner or his authorized representatives.

Accordingly, the impugned assessment orders and the demand notices are quashed. Petitioners-assesseees or their authorized legal representative shall appear before the Appellate Authority on 31.5.2018 and the Appellate Authority shall complete the fresh assessment relating to the assessment year/s in question in accordance with law in an expedite manner, in any event not later than six months from the date of appearance of the assesseees or the legal representative before the Appellate Authority.

**Sd/-
JUDGE**

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