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W.P.No.34668 of 2018 etc. batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	01.12.2022
Pronounced On	17.06.2022

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.Nos.34668, 34671, 34649, 34654, 34657 & 34664 of 2018

and

**W.M.P.Nos.40210, 40216, 40178, 40195, 40185, 40221, 40176,
40184, 40207, 40204, 40192, 40209 of 2018**

W.P.No.34668 of 2018

M/s.Dishnet Wireless Limited,
Spencer Plaza, 5th Floor,
769, Anna Salai,
Chennai 600 002
Represented by its Authorized Signatory
Mr.K.P.Varadharajan

... Petitioner

Vs.

Assistant Commissioner of Income Tax (OSD),
Company Range – 1 , 6th Floor,
Aayakar Bhavan – Wanaparthi Block,
121, Mahatma Gandhi Salai,
Nungambakkam, Chennai 600 034.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India,
for issuance of a Writ of Certiorarified Mandamus, to call for the records



W.P.No.34668 of 2018 etc. batch

comprised in the impugned Notice dated 28.03.2018 bearing PAN:AAACD5767E, as also letter dated 07.12.2018 bearing PAN:AAACD5767E, the notice dated 28.09.2018 bearing PAN:AAACD5767E and the order dated 24.12.2018 bearing PAN:AAACD5767E/ACIT (OSD) / 2018-19 issued in furtherance thereof by the respondent and all proceedings pursuant thereto, and quash the same as illegal, arbitrary and unconstitutional and consequently forbear the respondent from proceeding with re-assessment under Section 147 & 148 of the Income Tax Act, 1961 in respect of the Assessment Year 2012-13.

For Petitioner : Mr.A.R.L.Sundaresan,
Senior Counsel
for Mr.Allwin Godwin

For Respondent : Mr.Prabhu Mukunth Arunkumar
Junior Standing Counsel

COMMON ORDER

By this common order, all the six (6) Writ Petitions are being disposed. These Writ Petitions have been filed for the following reliefs:-

<i>Sl. No.</i>	<i>W.P.No.</i>	<i>Prayer</i>
1	34668/2018	For issuance of a Writ of Certiorarified Mandamus, to call for the records comprised in the impugned Notice dated 28.03.2018



WEB COPY

Sl. No.	W.P.No.	Prayer
		bearing PAN:AAACD5767E, as also letter dated 07.12.2018 bearing PAN: AAACD5767E, the notice dated 28.09.2018 bearing PAN: AAACD5767E and the order dated 24.12.2018 bearing PAN: AAACD5767E/ACIT (OSD) / 2018-19 issued in furtherance thereof by the respondent and all proceedings pursuant thereto, and quash the same as illegal, arbitrary and unconstitutional and consequently forbear the respondent from proceeding with re-assessment under Section 147 & 148 of the Income Tax Act, 1961 in respect of the Assessment Year 2012-13.
2	34654/2018	For issuance of a Writ of Certiorarified Mandamus, to call for the records comprised in the impugned Notice dated 27.03.2018 bearing PAN:AAACR5136R, as also letter dated 15.11.2018 bearing PAN:AAACR5136R / Company / CC I(1)/2018-19, the notice dated 27.09.2018 bearing PAN: AAACR5136R and the order dated 17.12.2018 bearing PAN:AAACR5136R/AY 2011-12 issued in furtherance thereof by the respondent and all proceedings pursuant thereto, and quash the same as illegal, arbitrary and unconstitutional and consequently forbear the respondent from proceeding with re-assessment under Section 147 & 148 of the Income Tax Act, 1961 in respect of the Assessment Year 2011-12.
3	34664/2018	For issuance of a Writ of Certiorarified Mandamus, to call for the records comprised in the impugned Notice dated 26.03.2018



W.P.No.34668 of 2018 etc. batch

WEB COPY

Sl. No.	W.P.No.	Prayer
		bearing PAN:AAACR5136R, as also letter dated 15.11.2018 bearing PAN:AAACR5136R / Company / CC I(1)/2018-19, the notice dated 27.09.2018 bearing PAN: AAACR5136R and the order dated 17.12.2018 bearing PAN:AAACR5136R/AY 2013-14 issued in furtherance thereof by the respondent and all proceedings pursuant thereto, and quash the same as illegal, arbitrary and unconstitutional and consequently forbear the respondent from proceeding with re-assessment under Section 147 & 148 of the Income Tax Act, 1961 in respect of the Assessment Year 2013-14.
4	34649/2018	For issuance of a Writ of Certiorarified Mandamus, to call for the records comprised in the impugned Notice dated 26.03.2018 bearing PAN:AAACS4449J, as also letter dated 15.11.2018 bearing PAN: AAACS4449J / Company / CC I(1)/2018-19, the notice dated 27.09.2018 bearing PAN: AAACS4449J and the order dated 17.12.2018 bearing PAN: AAACS4449J/AY 2013-14 issued in furtherance thereof by the respondent and all proceedings pursuant thereto, and quash the same as illegal, arbitrary and unconstitutional and consequently forbear the respondent from proceeding with re-assessment under Section 147 & 148 of the Income Tax Act, 1961 in respect of the Assessment Year 2013-14.
5	34671/2018	For issuance of a Writ of Certiorarified Mandamus, to call for the records comprised in the impugned Notice dated 28.03.2018



WEB COPY



W.P.No.34668 of 2018 etc. batch

Sl. No.	W.P.No.	Prayer
		bearing PAN:AAACD5767E, as also letter dated 07.12.2018 bearing PAN:AAACD5767E, the notice dated 28.09.2018 bearing PAN:AAACD5767E and the order dated 24.12.2018 bearing PAN: AAACD5767E / ACIT (OSD) / 2018-19 issued in furtherance thereof by the respondent and all proceedings pursuant thereto, and quash the same as illegal, arbitrary and unconstitutional and consequently forbear the respondent from proceeding with re-assessment under Section 147 & 148 of the Income Tax Act, 1961 in respect of the Assessment Year 2011-12.
6	34657/2018	For issuance of a Writ of Certiorarified Mandamus, to call for the records comprised in the impugned Notice dated 27.03.2018 bearing PAN: AAACS4449J, as also letter dated 15.11.2018 bearing PAN: AAACS4449J / Company / CC I(1)/2018-19, the notice dated 27.09.2018 bearing PAN: AAACS4449J/2011-12 and the order dated 17.12.2018 bearing PAN: AAACS4449J / SY 2011-12 issued in furtherance thereof by the respondent and all proceedings pursuant thereto, and quash the same as illegal, arbitrary and unconstitutional and consequently forbear the respondent from proceeding with re-assessment under Section 147 & 148 of the Income Tax Act, 1961 in respect of the Assessment Year 2011-12.



W.P.No.34668 of 2018 etc. batch

2. For easy reference, the details of the name of the petitioner company and the Assessment Years and impugned notices / orders are tabled as follows:-

Sl. No.	W.P.No.	Name of the Petitioner / Company	A.Y.	Date of first impugned Notice	Date of impugned Letter	Date of second impugned Notice	Date of impugned Order
1	34668/18	M/s.Dishnet Wireless Ltd.	12-13	28.03.18	07.12.18	28.09.18	24.12.18
2	34671/18	M/s.Dishnet Wireless Ltd.	11-12	28.03.18	07.12.18	28.09.18	24.12.18
3	34649/18	M/s.Aircel Limited	13-14	26.03.18	15.11.18	27.09.18	17.12.18
4	34657/18	M/s.Aircel Limited	11-12	27.03.18	15.11.18	27.09.18	17.12.18
5	34664/18	M/s.Aricel Cellular Ltd.	13-14	26.03.18	15.11.18	27.09.18	17.12.18
6	34654/18	M/s.Aricel Cellular Ltd.	11-12	27.03.18	15.11.18	27.09.18	17.12.18

3. By the impugned Notices, the respondent Income Tax Department has sought to re-open the completed assessment. By the impugned orders, the objections of the petitioners against the re-opening of the assessment vide impugned Notices issued under Section 148 of the Income Tax Act, 1961 are sought to be assailed.



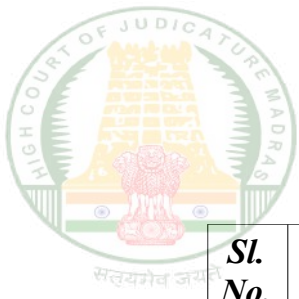
W.P.No.34668 of 2018 etc. batch

4. The short point that arises for consideration in these Writ Petition is whether the proceeding under Section 148 of the Income Tax Act, 1961 were without jurisdiction since the respective petitioners had voluntarily filed Corporate Insolvency Resolution Process (CIRP) under the provisions of the Insolvency and Bankruptcy Code, 2018 on 28.02.2018 before the "National Company Law Tribunal, Mumbai ("NCLT") and were admitted on 12.03.2018/19.3.2018 and later ordered?

5. The proceedings for reopening of the Assessment were initiated under Section 148 of the Income Tax Act, 1961 during March 2018 after the respective petitioners had approached the NCLT, Mumbai for Corporate Insolvency Resolution Process (CIRP) voluntarily under Section 10 of the Insolvency and Bankruptcy Code, 2016.

6. These Applications filed by the petitioners were admitted by the NCLT, Mumbai on the following dates:-

Sl. No.	W.P.No.	Name of the petitioner / company	Application Reference No.	Date of Admission
1	34668/18	M/s.Dishnet	C.P.(IB)-	19.03.18
2	34671/18	Wireless Ltd.	302/NCLT/MB/MAH/2018	



WEB COPY



W.P.No.34668 of 2018 etc. batch

Sl. No.	W.P.No.	Name of the petitioner / company	Application Reference No.	Date of Admission
3	34649/18	M/s.Aircel Limited	C.P.(IB)-298/NCLT/MB/MAH/2018	12.03.18
4	34657/18			
5	34664/18	M/s.Aricel Cellular Ltd.	C.P.(IB)-300/NCLT/MB/MAH/2018	19.03.18
6	34654/18			

7. In the above background, these Writ Petitions were filed on 26.12.2018. Interim orders came to be passed by this Court on 27.12.2018 in these Writ Petitions. In term of the aforesaid interim orders, the respondent, Income Tax Department was allowed to proceed with the assessment but was directed to keep the assessment in a sealed cover.

8. After the aforesaid interim order was passed, the NCLT, Mumbai approved a resolution plan on 09.06.2020. Clause 9.1.16 of the approved resolution plan reads as under:-

Clause	Dispensation	Orders Thereon
9.1.16	From the Approval Date, all inquiries, investigations and proceedings, suits, claims, disputes, proceedings in connection with the corporate debtor, pending or threatened, present or future	Granted, subject to the condition that these shall pertain to any inquiries, investigations, proceedings, suits,



W.P.No.34668 of 2018 etc. batch

Clause	Dispensation	Orders Thereon
	in relation to any period prior to the Approval Date, or arising on account of implementation of this Resolution Plan shall stand withdrawn and dismissed and all liabilities and obligations therefore, Whether or not set out in the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor will be deemed to have been written off fully, and permanently extinguished and no adverse orders passed in the said matters should apply to the Corporate Debtor or the Resolution Applicant. Upon approval of this Resolution Plan, all new inquiries, investigations, notices, suits, claims, disputes, litigations, arbitrations or other judicial, regulatory or administrative proceeding will be deemed to be barred and will not be initiated or admitted against the Corporate Debtor in relation to any period prior to the Effective Date.	claims, disputes, etc. only in relation to the period prior to the Approval Date, and not thereafter. From the Approval Date, the corporate applicants now controlled applicants now controlled by the RA shall be responsible for their own destinies arising out of non-compliance for the period after such approval.

9. The learned Senior Counsel for the petitioners submits that the issue is to be decided in the light of the decision of the Hon'ble Supreme Court in **Ghanashyam Mishra & Sons (P) Ltd. Vs. Edelweiss Asset Reconstruction Co. Ltd.**, (2021) 9 SCC 657 which was followed by the Hon'ble Supreme Court in **Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta and Others**, (2020) 8 SCC 531.



W.P.No.34668 of 2018 etc. batch

WEB COPY

10. In support of these Writ Petitions, the learned Senior Counsel also drew attention to the other Sections in Paragraph Nos.132, 144 & 146 in **Ghanashyam Mishra & Sons (P) Ltd.** case referred to *supra* which reads as under:-

"132. The appeal therefore is allowed. The impugned judgment and order dated 6.7.2020 passed by the Allahabad High Court is quashed and set aside. We hold and declare, that the respondents are not entitled to recover any claims or claim any debts owed to them from the Corporate Debtor accruing prior to the transfer date. Needless to state, that the consequences thereof shall follow."

"144. Insofar as, the judgment authored by Deepak Roshan, J. is concerned, the learned Judge has observed, that since the resolution plan was approved by NCLT on 17.4.2018, 2019 amendment to Section 31(1) of I&B Code would not apply to the said plan. We find, that the finding of the High Court, that the dues owed to the State Government and Central Government would not come within the definition of 'operational debt', is incorrect in law in the light of the view that is taken by us. So also the finding, that since the order of NCLT is prior to the date on which Section 31(1) of I&B Code was amended, the provisions of Section 31 would not be applicable, also cannot stand in view of the foregoing observations made by us hereinabove."



WEB COPY



W.P.No.34668 of 2018 etc. batch

"146. Shri Gurukrishna Kumar, learned Senior Counsel, strenuously argued, that RP/CoC had acted in a fraudulent manner. It is submitted, that though a notice inviting claim was required to be published in local newspapers where the registered office of the Corporate Debtor was situated, the notice was published in the newspaper of Kolkata edition. As per Regulation 6(2)(b) of the 2016 Regulations, the said notice is required to be published in one English and one regional language newspaper with wide circulation at the location of the registered office and corporate office of the Corporate Debtor. Perusal of the record would reveal, that the notice was published in Business Standard and Ananda Bazar Patrika newspapers of the Kolkata edition, which have wide circulation in Ranchi. The corporate office of the Corporate Debtor is at Kolkata whereas its registered office is at Ranchi. In any case, it is to be noticed, that the Forest Department of the State Government had filed intervention application before NCLT as well as NCLAT. When one of the wings of the State Government has approached NCLT and NCLAT, it is difficult to believe, that other organ of the State was not aware about the said proceedings."

11. The learned Senior Counsel submits that the decision of this Court in **M/s.Ruchi Soya Industries Ltd Vs. Union Of India and anr.** rendered in W.P.No.31090 of 2015 dated 26.04.2021 is to be distinguished on facts particularly in the light of the decision of the Hon'ble Supreme Court in the above said case.



W.P.No.34668 of 2018 etc. batch

12. The learned Senior Counsel further submits that the respondents are not entitled to proceed further in the light of the definition of claim as in Section 3(6) of the Insolvency and Bankruptcy Code, 2016.

13. It is submitted that the Government is a “corporate debtor” and therefore cannot proceed further as the Corporation Insolvency Resolution Plan (CIRP) has been approved by the NCLT, Mumbai and has extinguished all the claims pre-existing prior to the approval of the aforesaid Corporation Insolvency Resolution Plan (CIRP).

14. It is submitted that all these issues were considered by the NCLT, Mumbai after the Insolvency Resolution Professional was appointed and after Committee of Creditors approved the plan and since the plan has been approved by the NCLT Mumbai, the respondent Income Tax Department is precluded for proceedings against the petitioner in terms of Section 31 of the Insolvency and Bankruptcy Code, 2016.



W.P.No.34668 of 2018 etc. batch

WEB COPY

15. The learned Senior Counsel also submits that the decision of this Court in **M/S.Ruchi Soya Industries Ltd. Vs. Union Of India** **another** in W.P.No.31090 of 2015 dated 26.04.2021 has been distinguished by the Division Bench of the Karnataka High Court in **Union of India Vs. Ruchi Soya Industries Limited** vide order dated 27.05.2021 in W.A.No.2575 of 2018 and therefore submits that there is no necessity to remit the case back to the NCLT, Mumbai for examining whether the claim of the respondent, Income Tax Department was factored before approving the plan.

16. Appearing on behalf of the respondent, the learned Junior Standing Counsel submits that these Writ Petitions were filed after a Moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 (IBC) came into force. It is submitted that the aforesaid Moratorium did not preclude the Income Tax Department either from re-opening of the concluded Assessment in the exercise of power conferred under Section 148 of the Income Tax Act, 1961.



W.P.No.34668 of 2018 etc. batch

WEB COPY

17. The learned Junior Standing Counsel for the respondents further submits that the claim of the Income Tax Department had not crystalized and therefore the question of extinguishment of any claim which was yet to be articulated in an Assessment Order cannot be said to have been extinguished.

18. The learned Junior Standing Counsel further submits that the Supreme Court in the case of **Ghanashyam Mishra & Sons (P) Ltd. Vs. Edelweiss Asset Reconstruction Co. Ltd.**, (2021) 9 SCC 657 which was relied by the learned Senior Counsel for the petitioner, has itself answered the issue against the petitioner in as much as the amount which was due had crystalized before the Resolution Plan was approved.

19. It is submitted that in the facts of the present case, only notice under Section 148 of the Income Tax Act, 1961 has been issued and the objections of the petitioner for reopening of the assessment had been overruled by a speaking order. It is also submitted that the petitioners have an alternate remedy against the Assessment Order that has been



W.P.No.34668 of 2018 etc. batch

permitted to be passed and kept in a sealed cover in terms of the interim order dated 27.12.2018.

20. The learned Junior Standing Counsel drew attention to Section 238 of the Insolvency and Bankruptcy Code, 2016 and submits that there is no bar under the law which inhibits or eclipses the power of the Income Tax Department to continue with the proceedings initiated under Section 148 of the Income Tax Act, 1961.

21. I have considered the arguments advanced by the learned Senior Counsel for the petitioners and the learned Junior Standing Counsel for the respondent Income Tax Department. Arguments in these Writ Petitions are inspired from the decision of the Hon'ble Supreme Court in **Ghanashyam Mishra & Sons (P) Ltd. Vs. Edelweiss Asset Reconstruction Co. Ltd.**, (2021) 9 SCC 657.

22. The Hon'ble Supreme Court in Paragraph No.138 in **Ghanashyam Mishra & Sons (P) Ltd. Vs. Edelweiss Asset Reconstruction Co. Ltd.**, (2021) 9 SCC 657, held as under:-



WEB COPY



W.P.No.34668 of 2018 etc. batch

138. In the foregoing paragraphs, we have held that the 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will have a retrospective operation. As such, when the resolution plan is approved by NCLT, the claims, which are not part of the resolution plan, shall stand extinguished and the proceedings related thereto shall stand terminated. Since the subject-matter of the petition are the proceedings, which relate to the claims of the respondents prior to the approval of the plan, in the light of the view taken by us, the same cannot be continued. Equally the claims, which are not part of the resolution plan, shall stand extinguished.

23. The above conclusion was arrived based on the conclusion in Paragraph No.102, wherein the questions framed by the Hon'ble Supreme Court were answered as under:-

Conclusion.

102. In the result, we answer the questions framed by us as under:-

102.1. That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the



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W.P.No.34668 of 2018 etc. batch

adjudicating authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.

102.2. *The 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the I&B Code has come into effect.*

102.3. *Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.*

24. In **Ghanashyam Mishra & Sons (P) Ltd. Vs. Edelweiss Asset Reconstruction Co. Ltd.**, (2021) 9 SCC 657, the Hon'ble Supreme Court also held that *“The legislative intent of making the resolution plan binding on all the stakeholders after it gets the seal of approval from the adjudicating authority upon its satisfaction, that the resolution plan approved by CoC meets the requirement as referred to in sub-section (2) of Section 30 is that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution*



W.P.No.34668 of 2018 etc. batch

applicant. The dominant purpose is that he should start with fresh slate on the basis of the resolution plan approved.”

25. In **M/S.Ruchi Soya Industries Ltd.** referred to *supra*, this had given liberty to the petitioner therein to obtain a clarification from the NCLT as to whether the plan included customs duty paid by the petitioner therein on the import under the subject Bill of Entry therein, whereas, in the present case, the documents reveal that the income tax was not under the contemplation of NCLT.

26. Upon admission of petitions under Section 7, there are various important duties and functions entrusted on the Resolution Professional and the Committee of Creditors (COC). The Resolution Professional is required to issue a publication inviting claims from all the stakeholders. He is required to collate information and submit necessary details in the information memorandum. The resolution applicants are required to submit their plans on the basis of the details provided in the information memorandum. The Resolution Plans undergo deep scrutiny by the Resolution Professional as well as Committee of Creditors (COC).



W.P.No.34668 of 2018 etc. batch

WEB COPY

27. Negotiations may be held between Committee of Creditors (COC) and the Resolution Applicant and various modifications may be made so as to ensure that while paying part of the dues of financial creditors as well as operational creditors and other stakeholders, the corporate debtor is revived and is made an on-going concern. After Committee of Creditor (COC) approves the plan, the adjudicating authority is required to arrive at a subjective satisfaction that the plan conforms to the requirements as are provided in Sub-Section (2) to Section 30 of the Insolvency and Bankruptcy Code, 2016.

28. Only thereafter, the adjudicating authority can grant its approval to the plan. It is at this stage that the plan becomes binding on the corporate debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. The legislative intent behind this is to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims.



W.P.No.34668 of 2018 etc. batch

WEB COPY

29. The Resolution Plan submitted on behalf of the petitioners by the Insolvency Resolution Professional under Section 30(6) of the Insolvency and Bankruptcy Code, 2016 on 21.05.2019 has not contemplated any concession from the Income Tax Department though Notices under Section 148 of the Income Tax Act, 1961 had already been issued during March, 2018.

30. Corporate Insolvency Resolution Plan approved under Section 31 of the Insolvency and Bankruptcy Code, 2016 (IBC) did not contemplate tax dues under the Income Tax Act, 1961. Further, at the stage, the proceedings under 148 of the Act, 1961 had not crystallized.

31. The objections of the respective petitioners were also not in the light of the voluntary Corporate Insolvency Resolution Proceedings initiated by the petitioners.

32. Since the proceedings under the Code were initiated by the petitioners few days prior to the initiation of the proceedings under



W.P.No.34668 of 2018 etc. batch

Section 148 of the Income Tax Act, 1961, it was incumbent for the petitioners to have ensured proper notice to the Income Tax Department and obtained appropriate concession in Corporate Insolvency Resolution Plan.

33. That apart, claims of the Income Tax Department were not considered by the NCLT, Mumbai, while approving the Resolution Plan and therefore the question of abetment of such rights of the Income Tax Department cannot be countenanced.

34. The provisions of Insolvency and Bankruptcy Code, 2016 (IBC) cannot be interpreted in a manner which is inconsistent with any other law in the time being in force.

35. Therefore, Corporate Insolvency Resolution Plan sanctioned and approved cannot impinge on the rights of the Income Tax Department to pass any fresh Assessment Order under Section 148 read with Sections 143(3) and 147 of the Income Tax Act, 1961.



W.P.No.34668 of 2018 etc. batch

36. Therefore, the proceedings under the Insolvency and Bankruptcy Code, 2016 (IBC) cannot be pressed into service to dilute the rights of the Income Tax Department under the Income Tax Act, 1961 to re-open the assessment under Section 148 of the Income Tax Act, 1961.

37. In my view, the Income Tax Department was not precluded from reopening the assessment completed under Section 143(3) of the Income Tax Act, 1961.

38 Therefore, these Writ Petitions filed by these petitioners have to be dismissed. The Assessment Orders which have been passed pursuant to the interim order dated 27.12.2018 are directed to be given to the respective petitioners by the respondent, within a period of thirty days from the date of receipt of a copy of this order.

39. If the petitioners are so aggrieved by such of those Assessment Orders, the petitioners have to work out their Appellate remedy before the Commissioner of Income Tax (Appeals) under Section 246A of the



W.P.No.34668 of 2018 etc. batch

Income Tax Act, 1961. Since the time for filing appeal would have already expired, liberty is given to the petitioners to file such appeal before the Appellate Commissioner, within a period of thirty days from the date of communication of the Assessments Orders.

40. These Writ Petitions are dismissed with the observations. No cost. Consequently, connected Miscellaneous Petitions are closed.

17.06.2022

Internet : Yes/No
Index : Yes / No
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To
Assistant Commissioner of Income Tax (OSD),
Company Range – 1 , 6th Floor,
Aayakar Bhavan – Wanaparthi Block,
121, Mahatma Gandhi Salai,
Nungambakkam, Chennai 600 034.



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W.P.No.34668 of 2018 etc. batch

C.SARAVANAN, J.

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Pre-Delivery Common Order
in
W.P.Nos.34668, 34671, 34649,
34654, 34657 & 34664 of 2018
and W.M.P.Nos.40210, 40216, 40178,
40195, 40185, 40221, 40176, 40184,
40207, 40204, 40192, 40209 of 2018

17.06.2022