IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:11.08.2022

Pronounced on: 01.09.2022

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

**W.P.Nos.12692, 14810, 14829, 14833, 15384, 19632, 19634, 19637, 14515, 14592, 14897, 14979, 14993, 15082, 15084, 15268, 15276, 15281, 15289, 15304, 15317, 15365, 15386, 15388, 15448, 15452, 15455, 15458, 15721 & 15079, 15995 of 2022 and**
**WMP.Nos.14469, 14470, 14472, 14545, 14596, 14597, 14598, 18952, 18955, 18957, 14035, 14036, 14038, 14040, 14042, 14104, 14106, 14108, 14200, 14203, 14205, 14215, 14216, 14217, 14295, 14296, 14298, 14299, 14300, 14301, 14433, 14436, 14437, 14450, 14451, 14452, 14455, 14456, 14457, 14462, 14465, 14466, 14482, 14483, 14484, 14516, 14517, 14518, 14536, 14537, 14538, 14539, 14540, 14541, 14543, 14544, 14601, 14602, 14603, 14606, 14608, 14609, 14612, 14613, 14614, 12143, 14978, 14980, 15315, 15318, 15320, 18956, 18942, 18944, 18946, 18948, 18949, 19568, 14007, 14008, 14033, 12146, 12147, 13716, 13717, 13718, 13788, 13789, 13790, 14289, 14290, 14006 & 14976 of 2022**

**WP.No.12692 of 2022:**

Dr.Mathew Cherian,
C-5, Parsn's Royal Bungalow, Sesh Nestle,
Nanjundapuram,
Coimbatore – 641 036. ... Petitioner

Vs

The Assistant Commissioner of Income Tax,
Non Corporate Circle-4,
Main Building,
63, Race Course Road,
Coimbatore – 641 018. ... Respondent

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the Respondent in PAN: AAMPC8266C and quash the impugned Order under section 148A(d) of the Income Tax Act, 1961, dated 12.04.2022 in DIN & Notice No:ITBA/AST/F/148A/2022-23/1042709932(1), and the consequential notice u/s.148 of the Act dated 12.04.2022 in DIN & Notice No:ITBA/AST/S/148_1/2022-23/1-1042714624(1) for the Assessment year 2018-19.

(In all WPs)
For Petitioners : Mr.AL.Somayaji, Senior Counsel
for Mr.R.Vijayaraghavan
for M/s.Subbaraya Aiyar Padmanabhan

(In all WPs except WP.No.15995 of 2022)
For Respondents : Mr.A.P.Srinivas, Senior Standing Counsel
and
Mr.ANR.Jayaprathap, Junior Standing Counsel

(In WP.No.15995 of 2022)
For Respondent : Mrs.HemaMuralikrishnan, Senior Standing Counsel

## COMMON ORDER

This batch of Writ Petitions has been filed at the instance of several doctors specializing in different areas of medicine, who challenge proceedings for re-assessment in terms of Section 147 and 148 of the Income Tax Act, 1961 (in short 'Act').

2. There was a survey in Kovai Medical Centre and Hospital (in short KMCH or hospital) by the officials of the Income Tax Department, on 22.11.2021. In the course of the survey, various documents were found and seized that, according to the respondents, are incriminating as they point to the existence of an employer –employee relationship inter se the parties.

3. The documents include 'employee confidentiality agreement', 'revised guidelines for practice of medicine at KMCH' and joining reports, all of which lead the officers to suspect that the doctors were employed with the hospital and were not visiting consultants.

4. On the basis of the above documents and consequent inferences, the authorities have come to a conclusion that (i) employer-employee relationship is established (ii) petitioners are to be construed as employees and not full time/visiting consultants and (iii) the income returned by them has to be assessed under the head 'salary' and not 'professional income'.

5. The impugned orders relate to assessment year (in short 'AY') 2018-19. A show cause notice was issued on various dates under clause (b) of Section 148A of the Income Tax Act, 1961. The notice was accompanied by an annexure setting out the reasons on the basis of which the Department was proposing to initiate the proceedings.

6. For purposes of this batch, the facts and averments in W.P.No.14515 of 2022 are taken to be representative of all matters in the batch. The reasons set out in the annexure to notice dated 23.03.2022 read as follows:

> *'A survey u/s 133A (2A) of the Income-Tax Act, 1961 was conducted in the case of M/s. Kovai Medical Centre & Hospital on 22.11.2021. During the course of survey conducted in the premises of M/s.KMCH, incriminating documents indicating employer-employee relationship between you and M/s.KMCH found were analysed. Since the employer-employee relationship between you and M/s. KMCH was established, the income received ought to have been treated as "salary income instead of "Professional income".*
>
> *However, it was ascertained from your ITR filed for the AY 2018-19 that the amount received from M/s. KMCH was treated as "professional income" and reduced various expenditures therefrom. Your Form No. 26AS relevant to the AY 2018-19 indicated that the tax was deducted at source on the income received from M/s. KMCH u/s 194J of the Act, treating the income as "fees for professional or technical services".*
>
> *In view of the above facts, the income received from M/s. KMCH admitted as "professional income is not acceptable. You are therefore requested to state as to why the income received from M/s. KMCH should not be treated as "salary income".'*

7. The noticee was called upon to file a reply on or before 08.04.2022. A corrigendum was issued on the heels of the aforesaid notice, intimating the assessee that reply was to be received on or before 29.03.2022 and not 08.04.2022. A reply came to be filed by the petitioners within the time

stipulated, objecting to the proposal to treat the income returned under the head 'salary' and not 'professional income'.

8. The objections are two-fold, on the ground of technical reasons as well as on the merits of the proposal. In respect of the former, the petitioners questioned the time granted for reply, as also the basis for the issuance of notice. Section 148 requires, as a pre-condition to its issuance, that the Assessing Officer possesses 'information', that would justify the initiation of proceedings for re-assessment. An objection was taken on the ground that the ingredients of 'information' as set out in Explanation (1) to Section 148 that defines the term, have not been satisfied in the instant cases.

9. On merits, the petitioners submitted that none of the documents found are incriminating or support the issuance of the impugned notices. The thrust of their argument is that, as medical professionals, the petitioners are independent consultants only and not salaried employees. Reference is made to the contract/agreement entered into, vis-à-vis the petitioners and the hospital pointing to the distinction between a contract for services and contract of services, that, according to them has been lost sight of by the authorities.

10. In the objections filed, the petitioners draw attention to the terms of contract pointing out that there are regulations and guidelines in any workplace. It would be impossible that any workplace could function without guidance or

some semblance of rules and regulations. Thus, the terms and conditions as well as the regulations and guidelines that have been imposed on the doctors must not be viewed as exercise of control by an employer upon an employee but as good practices followed in any place of work, including a hospital.

11.Despite the submissions made an order has come to be passed under Section 148(d) of the Act rejecting the arguments, based on the documents found as well the reasoning that the hospital had itself classified the remuneration paid to the petitioners as salary. Thus, the Assessing Authority reiterated his initial opinion that the revised guidelines for practice of medical personnel indicated the existence of employer-employee relationship, and as a consequence, the income returned must be taxed as salary income.

12. He refers to the timings of work, provision for leave and vacation, the fact that a doctor could avail leave only with sanction of managing director and the stringent regulations that have been placed on private practice or consultancy in other hospitals to support his conclusion. The operative portion of the impugned order in W.P.No.14515 of 2022 reads as follows:

> .....
>
> *13. The fundamental aspects for deciding between employer-employee relationships were between 'contracts of service over contract for service'. In a contract for services' a Master can order only what was to be done whereas is 'contract of service' the master decides not only that has to be done but also how it has to be done. The following variables*

*not only decide employer-employees relationship but also were the main ingredients for Contract of Service and master servant relationship. These are as under:*

*a) Master's right of selection*

*b) Payment of remuneration*

*c) Right to suspend or dismiss*

*d) Vicarious liability of the master on behalf of servant.*

*14. The close scrutiny of the rules and regulations as per the revised guidelines for practice of medicine at KMCH will reveal that the above ingredients were neatly embedded in the service rules of M/s. KMCH with their Employees-doctors.*

*15. An independent Test is one of the criteria to ascertain the relationship is Contract of Services or Contract for Services.*

*I. During the course of post survey proceedings, statements were recorded from the consultant doctors. The consultant doctors stated that only genetic names of medicines were prescribed whereas the brands from which the procurement to be made was decided by the management of KMCH.*

*II. The consultant doctors were not allowed to do any Visiting Consultations procedures or surgeries in other hospitals and thus maintaining the exclusivity of the consultant working with KMCH alone.*

*III. The consultant doctors cannot advice the patients to have investigation outside KMCH. If any test is not available at KMCH, clinical lab of KMCH will handle those tests by alternate methods.*

*IV. Even in the case of private practice, the consultant doctors were not allowed to refer the patients to any other hospital other than KMCH from the above, it is evident that management of KMCH had control over the independency of consultant doctors.*

*16. The Managing Director of the assessee company has categorically written by his own handwriting as "Salary and countersigned in the joint report. The management initially recruited the doctors with fixed salary and subsequently converted as fixed + variable. The percentage of sharing is*

> *decided by the management. It is clear that if under the terms of contract of employment remuneration or recompense for the services rendered by the employer is determined at a fixed percentage of turnover achieved by him then such remuneration or recompense will partake the character of salary, the percentage basis being the measure of salary and therefore such remuneration or recompense falls under the explanation of salary. Further, the non-payment of variable component such as PF, gratuity, leave encashment etc. doesn't change the character of salary as claimed by the assessee.*
>
> *17. It is clearly evident from the foregoing discussions that there exists an employer-employee relationship between KMCH and Full time & Visiting Consultants. The assessee being one of the full time consultants/visiting consultants is therefore held to be employee of M/s. KMCH. Thus, I am of the view that the remuneration paid to the full time consultant and visiting consultant is to be treated as salary only, consequent to which the expenditures claimed under various heads are required to be disallowed. Hence, it is a fit case to issue notice u/s 148 of the Income Tax Act.*

13. It is as against the aforesaid orders that these Writ Petitions have been filed. The submissions of Mr.A.L.Somayaji, learned Senior Counsel who appears on behalf of Mr.R.Vijayaraghavan, learned counsel are that:

(i) Doctors, as a genre, are professionals and cannot be taxed as salaried employees, unless the terms and conditions of service warrant so. In the present case there is no justification for the authorities to have arrived at such conclusion.

(ii) The Assessing Authority has erred in his understanding and appreciation of the terms and conditions and other regulations governing the service of the petitioners as medical professionals.

(iii) The terms only impose overall discipline and regulation in the hospital as no workplace could function in an appropriate fashion, more particularly, a hospital, without the imposition of some measure of regulation among the workforce. The rules, as appropriate, apply to all levels of the workforce, from the managing director and the senior most medical professional in the hospital, encompassing all cadres of staff.

(iv) Though a non-compete clause or exclusivity may be a restriction on the exercise of the profession, such restriction does not, by itself create a master-servant relationship.

(v) Most importantly, the restriction or regulation imposed only concerns administrative requirements and no control is exercised qua the exercise of profession, per se. It is nobody's case that there is regulation of any sort when it comes to the discharge of medical functions by the petitioners.

(vi) The doctors are at liberty, and free to discharge their duties to the best of their ability and skill and there is no interference by the management on this score. Regulation would only extend to administrative and logistical areas

of their practice and there are no controls imposed or restrictions placed impinging upon their skill or expertise as medical professionals.

(vii) The above parameter is key to the determination of the nature of the relationship between the employer and employee. In conclusion, he would state that there is no straight-jacket formula to determine what constitutes a master-servant or employer-employee relationship and the parameters as set out and noticed above would commend the cases of the petitioners for a conclusion in their favour.

14. He relies upon the judgment in the case of *Sushilaben Indravadan Gandhi & another Vs New India Assurance Company Limited* [2021 7 SCC 151], that, though rendered in the context of an Insurance claim, had also dealt with the vexed question as to whether the doctor therein was an employee of the hospital or a consultant, holding in favour of the doctor.

15.The Hon'ble Supreme Court, in the case of *Employees' State Insurance Corporation's Medical Officer's Association Vs. Employees' State Insurance Corporation and Another* [(2014) 16 SCC 182], examined the distinction between an occupation and a profession, in the context of the Industrial Disputes Act, 1947. While an 'occupation' related primarily to the exercise of a job, work or a calling that results in regular wages, a profession

involves extensive training, study and mastery of the subject, be it teaching, law, medicine or others.

16. The latter category of persons who were engaged in the exercise of profession cannot be seen or treated on par with 'workmen' within the meaning of the Industrial Disputes Act. In this case too, the petitioners argue that there is no justification for treating doctors as salaried employees as this would reduce and dilute their professional status.

17. Several other judgments are called to aid. The High Court of Rajasthan in the case of *Escorts Heart Institute & Research Centre Ltd. Vs Deputy Commissioner of Income Tax* [87 taxmann.com 184 (Rajasthan)] considered the question as to whether fees received by doctors would be subject to deduction of tax under Section 194J of the Act dealing with 'professional or technical services' or Section 192 of the Act dealing with 'salary'.

18. So too did the Gujarat High Court in the case of *Commissioner of Income Tax (TDS) Vs. Apollo Hospitals International Ltd.* [44 Taxmann.com 368 (Guj)], the Bombay High Court in the case of *Commissioner of Income Tax (TDS) Vs.Grant Medical Foundation* [55 Taxmann.com 75 (Bom)], the Karnataka High Court in the case of *Commissioner of Income Tax, Bangalore Vs Manipal Health Systems (P) Ltd.* [2015 (57) Taxmann.com 255 (Karnataka)], the Andhra Pradesh High Court in the case of *Commissioner of*

*Income Tax (TDS) Vs Yashoda Super Speciality Hospital* [2014 (49) taxmann.com (570) Andhra Pradesh] and *HOSMAT Hospital Private Ltd. Vs. Assistant Commissioner of Income Tax (TDS)* [(2022) 440 ITR 149].

19. In the above cases the question that had come up for decision touched upon a question very similar to that before me, as to whether services rendered by medical professionals are to be taxed as salary or professional income. As a corollary to the aforesaid decisions, petitioners also rely upon a line of judgments for the proposition that where an issue has been raised before, and decided categorically by the Courts, it must be laid to rest at some point of time and must not be flogged time and again at the mere whims and pleasure of the department.

20.The judgements are *Birla Corporation Ltd. Vs Commissioner of Central Excise* [(2005) 6 SCC 95], *Commissioner of Central Excise, Navi Mumbai Vs Amar Bitumen and Allied Products Private Limited and others* [2010 (13) SCC 76], *Union of India Vs Kaumudini Narayan Dalal and Another* [2001 (10) SCC 231].

21. Mr.A.P.Srinivas, learned Senior Standing Counsel who appears for the Income Tax Department would vehemently contest the maintainability of the writ petitions on the ground that the challenge is premature. All writ petitions

are poised at the threshold of proceedings for re-assessment and the determination and crystallization of facts is yet to be completed.

22. He would point out that almost all the judgments relied upon by the petitioners have been rendered in statutory appeals under Section 260A of the Act and not writ petitions, particularly, those involving analysis and interpretation of agreements between the parties.

23. The impugned orders in many cases do not refer to the clauses of the contract and hence it would be premature for this Court to intervene at this stage. After all, the impugned orders have only the consequence of a notice under Section 148 being issued and all the submissions made before this Court may well be made before the authority who will be better positioned to appreciate the same.

24. Heard learned senior counsel as well as standing counsel and studied the files and case-law cited, in detail. It is true that the proceedings for re-assessment are only at the threshold. However, what is impugned before me is the assumption of jurisdiction for re-assessment under Section 148A. The provision stands triggered only if the Income Tax Department is in possession of 'information', which suggests that income chargeable to tax has escaped assessment.

25. As on 01.04.2021, the scheme of re-assessment under the Income tax Act law has undergone a sea change. While the provisions earlier required the officer to have 'reason to believe' that there had been escapement of income from tax, what is now required is 'information' that suggests escapement of income from tax.

26. The provisions of Section 148A read as follows:

> ***Conducting inquiry, providing opportunity before issue of notice under section 148.***
>
> ***148A.*** *The Assessing Officer shall, before issuing any notice under section 148,—*
>
> *(a) conduct any enquiry, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;*
>
> *(b) provide an opportunity of being heard to the assessee, by serving upon him a notice to show cause within such time, as may be specified in the notice, being not less than seven days and but not exceeding thirty days from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);*
>
> *(c) consider the reply of assessee furnished, if any, in response to the show-cause notice referred to in clause (b);*
>
> *(d) decide, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, by passing an*

*order, with the prior approval of specified authority, within one month from the end of the month in which the reply referred to in clause (c) is received by him, or where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires:*

27. The term 'information' is defined under Explanation 1 to Section 148 that reads as follows:

> ***148. Issue of notice where income has escaped assessment.***
>
> .....
>
> *Explanation 1 - For the purposes of this section and section 148A, the Information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means-*
>
> *(i) any information flagged in the case of the assessee for the relevant assessment year in accordance with the risk management strategy formulated by the Board from time to time;*
>
> *(ii) any final objection raised by the Comptroller and Auditor General of India to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act.'*

28. No doubt, the definition of 'information' is wide and could include just about any material in the possession of the officer. However, the caveat/pre-condition is that such information must enable the suggestion of escapement of tax. Then again, the mandate cast upon the officer under Section 149A(d) is

that he is to decide whether it is a 'fit case' for issue of a notice for re-assessment, upon a study of the material in his possession, including the response of the assessee.

29. Thus, not all information in possession of the officer can be construed as 'information' that qualifies for initiation of proceedings for re-assessment, and it is only such 'information' that suggests escapement and which, based upon the material in his possession, that the officer decides as 'fit' to trigger reassessment, that would qualify.

30. The 'information' in possession of the Department must prima facie, satisfy the requirement of enabling a suggestion of escapement from tax. This is not to say that the sufficiency or adequacy of the 'information' must be tested, as such an analysis would be beyond the scope of jurisdiction of this Court in writ jurisdiction. However whether at all the 'information' gathered could lead to a suggestion of escapement from tax can certainly be ascertained.

31. For the purposes of such ascertainment and to determine 'fitness' to re-assess, the materials gathered must be seen in the context of the allegation of tax evasion, taking assistance of decided cases to ascertain whether the allegation is sustainable or not.With the necessity for 'belief' effaced from the statutory provision, the dimension of subjectivity that existed pre 01.04.2021 stands substantially whittled.

32. In the present regime of reassessments, an assessing officer must be able to establish proper nexus of information in his possession, with probable escapement from tax. No doubt the term used is 'suggests'. That is not to say that any information, however tenuous, would suffice in this regard and it is necessary that the information has a live and robust link with the alleged escapement. This is where settled propositions assume relevance and importance.

33. Whether under the old or new regimes of re-assessment, it is a settled position that issues decided categorically by judicial precedent should not be revisited in the guise of re-assessment. In all cases the entity searched was Kovai Medical Centre and Hospital (KMCH) and though Mr.Srinivas points out that the terms of the agreement in all cases have not been extracted in the impugned orders, he agrees that the terms would be more or less similar in the cases of all petitioners.

34. There are no differences that emanate from a perusal of the impugned orders and the references to the agreements and contracts are in standardized terms. The clauses extracted in WP.No.14515 of 2022 are thus taken to be representative of the agreement entered into by KMCH in the cases of all the petitioners. The clauses, as extracted in impugned order dated 12.04.2022 in W.P.No.14515 of 2022 read as follows:

. . . .

*10. Also on perusal of the Revised Guidelines for practice of Medicines at M/s.KMCH, the following points reveal the existence of employer-employee relationship:*

*a. Hospital working time will be normally from 8 AM to 5 PM. Doctors will be on call in the nights, holidays and Sundays according to the number of consultants available in the concerned department. During night calls, only lady doctor will be provided with transport with available vehicle. It is necessary that the doctor should come to the hospital before 8 AM and leave only after 5 PM.*

*b. Consultants can take one-month vacation. It can be used for personal vacation and for conferences. Other leave option will be based on case by case basis. Frequent leaves will affect the hospital function.*

*c. All/leave applications should be directed to MD at least 7 days before. ONLY AFTER APPROVAL, the leave will be sanctioned. If the leave is not sanctioned and the doctor avails leave it will be considered as absent.*

*d. Full time consultants who request to have a clinic outside, the hospital will give with following conditions. It should be in the city only where KMCH is located. Permissions will be as under:*

*i) They should have completed 2 years of service at KMCH*

*ii) it will be negotiated arrangement for each individual consultant.*

*iii) It should be only after 6 PM*

*iv) All their admissions should be only at KMCH*

*v) No KMCH patients should be referred to their clinic.*

*vi) No KMCH function should be affected.*

*vii) They will not be allowed to do any visiting consultants, procedure or surgeries in the other hospitals.*

*viii) KMCH prefers that the consultant who has clinic outside, his or her investigations shall be carried out at KMCH main or at peripheral centers only*

*ix) Generally KMCH prefers no outside practice.*

*e. Hospital will have guideline fees for all consultants, visitations, procedures and surgeries. All patient charges shall be collected only by the hospital and no money should be collected by the consultant on any account, inside or outside the hospital.*

*f. The doctors cannot advice the patient have investigations outside KMCH. If any test is not available at KMCH, clinical lab will handle those tests by alternate methods. If there is any need to refer to consult outside, it should be only through permission from Medical Director or from the Chairman's Office.*

*g. If any consultant likes to discontinue his services, at least 3 month'snotice should be given. If he/she gives short notice, consultant has to pay three months' remuneration.*

*h. CHAIRMAN is responsible for all consultants directly. Any other matter concerning the hospital administration will be dealt by the Chairman only. Rules and regulations will be modified and changed by the management if deemed necessary.'*

35. On the basis of the above clauses, the officer has come to the conclusion that KMCH exercises total control over the doctors in regard to their

timings of work, holidays, call duties based on the exigencies of work, termination, entitlement to private practice, increments and other service rules.

36. The key distinction in this regard is between a contract for service and one of service, and depends on several factors. The regulations, restrictions, guidelines and control exercised in regard to logistical and administrative functions of the work force are not unique to a hospital and I am hard pressed to identify any establishment that does not exercise some degree of control over the administrative and logistical functioning of the workforce, be they salaried or otherwise.

37. Such a situation would, in fact, be extremely undesirable, if not leading to a situation of anarchy. No management would risk running an organization where the work force comes and goes when they chose without any control exercised in areas of their functionality. Then again, the policy to permit private practice, does not, by itself, determine the existence or otherwise of a master-servant relationship. In facts, the terms as extracted as part of the impugned order reveal that the consultants are entitled to practice privately subject to certain regulatory conditions by the hospital.

38. To my mind, what is vital is that the professionals discharge their professional duties and functions in a free and fully independent fashion without any interference from the hospital management. Though it is expected

that there would be regular quality control measures, this would not lead to the inference that there is control exercised over the discharge of professional functions.

39. That apart, some of the petitioners have also submitted that they have availed medical insurance to insulate them from patient/patient family claims, and this is a responsibility they carry solo.

40. In the case of *Sushilaben* (supra), the Apex Court dealt with the claim of insurance by the wife of a deceased doctor who had been attached to the Rotary Eye Institute/R3 in that case. The deceased had been travelling in a mini bus owned by R3 which had turned turtle leading to his injury and subsequent demise. The claim for insurance by his wife had initially been rejected on the ground that he was in the employ of R3 as on the date of the accident, as a result of which the limitation of liability provision in favour of the New India Assurance Company Limited would kick in.

41. The question that arose for consideration was as to whether the contract entered into by the deceased with R3 was a contract *of* service in which case a liability would be capped to an extent of Rs.50,000/- or whether it was a contract *for* service in which case, the liability would be unlimited.

42. The Apex Court discusses several judgments rendered in the context of the Industrial Disputes Act as to whether persons who supplied goods or services in several capacities could be said to '*in the employ'* of the employer.

43. In *Dharangadhara Chemical Works Ltd. v. State of Saurashtra* (AIR 1957 SC 264), the Court held that the prima facie test for determination of a master-servant relationship is the right of the master to supervise and control the work done by the servant in the matter of not just in directing what work is to be done but also the manner in which he shall execute the work.

44. So too in the case of *Mersey Docks and Harbour Board v. Coggins & Griffith (Liverpool) Ltd.* (1947 AC 1 (HL)). To quote Lord Uthwatt, *'The proper test is whether or not the hirer had authority to control the manner of execution of the act in question'*.

45. In *Chintaman Rao V. State of M.P.* (AIR 1958 SC 388), the Hon'ble Supreme Court held that Sattedars and their coolies were not workers within the meaning of Section 2(1) of the Factories Act and in *Birdhichand Sharma V. First Civil Judge* (AIR 1961 SC 644), the Court found that persons working in a beedi factory were workers under the Factories Act.

46. In *Shankar Balaji Waje V. State of Maharashtra* (AIR 1962 SC 517), upon a consideration of the facts involved, the Supreme Court preferred to apply

the judgment in the case of *Chintaman Rao* (supra) holding in favour of the worker.

47. In *D.C. Dewan Mohideen Sahib and Sons v. Secretary, United Beedi Workers' Union* (AIR 1964 SC 370), the Court examined the sample agreement that was produced before the Court in coming to the conclusion that the workers were employees of the contractors.

48. In *Silver Jubilee Tailoring House v. Chief Inspector of Shops & Establishments*((1974) 3 SCC 498), the question that arose was as to whether there was a relationship of employer and employee, between a tailoring shop and those employed by the owner of the shop for stitching. The provisions of Section 2(14) of the Andhra Pradesh (Telengana Area) Shops and Establishments Act, 1951 defined a person 'employed' as in the case of a shop, a person wholly or principally employed therein in connection with the business of the shop.

49. The judgments of English and American Courts in *Cassidy v. Ministry of Health* ((1951) 1 All ER 574 (CA)), *Montreal v. Montreal Locomotive Works Ltd. etc.* ((1947) 1 DLR 161), *Bank Voor Handel en Scheepvaart N.V. v. Slatford* ((1952) 2 All ER 956) , *U.S. v. Silk* (1947 SCC Online US SC 97), *Market Investigations Ltd. v. Minister of Social Security* ((1969) 2 QB 173) were discussed.

50. In the aforesaid judgments, the Courts had looked into the test of control of the manner of work and in *Cassidy's* case (supra), the Court pointed out that the test of control was not universal, pointing out there were many instances in contracts of services where the master cannot control the manner in which the work is to be done, such as in the case of a captain of a ship. Thus, to apply the test of control in the case of skilled employments to decide whether there is relationship of master-servant, would be unreal and would not result in a proper conclusion.

51. In the case of *Montreal Locomotive Works Ltd* (supra) the Court felt that in complex business and industrial conditions one would have to apply a test involving control, ownership of the tools, risk of loss and other relevant tests.

52. In *Slatford* (supra) the Court looked into whether the person concerned was *'part and parcel of the organization'* and in the case of *Silk* (supra), the Court opined that the test was not merely the common law test of *'power of control'* where the persons concerned could be said to be employees *'as a matter of economic reality'*.

53.The important considerations were degree of control, opportunities of profit or loss, investment in facilities, permanency of relations and the skill required to carry out the operations.

54. The question in *Silver Jubilee Tailoring House* (supra) was ultimately decided holding that the individuals were employees, since the equipment upon which they sewed were supplied by the shop and supervision was exercised by the employer, who had the right to reject sub-standard work.

55. In *Hussainbhai v. Alath Factory Thozhilali Union* ((1978) 4 SCC 257), applying the test of economic reality of control of the employer over the workers' subsistence, skill and continued employment, the question was answered holding that the persons were direct employees of the owner. The argument that they were only employed with the contractor and not the employer, was rejected.

56. Thus the question of whether there was *'right of control'* by the employer would depend on the facts in each case and on the terms of the contracts between the parties.

57. In *Indian Banks Assn. V. Workmen of Syndicate Bank* ((2001) 3 SCC 36) the deposit collectors employed by specific banks were held entitled to be treated as workmen. In *Indian Overseas Bank V. Workmen* ((2006) 3 SCC 729), the question that arose was whether the Bank who employed jewel appraisers were workmen for the purpose of Industrial Disputes Act. The terms of employment of regular employees and jewel appraisers were compared and the comparison is extracted below:

| | *Regular employees* | | *Jewel appraisers* |
|---|---|---|---|
| 1 | *Subject to qualification and age prescribed* | 1 | *No qualification/age* |
| 2 | *Recruitment through employment exchange/Banking Service Recruitment Board* | 2 | *Direct engagement by the local Manager* |
| 3 | *Fixed working hours* | 3 | *No fixed working hours* |
| 4 | *Monthly wages.* | 4 | *No guaranteed payment, only commission paid* |
| 5 | *Subject to disciplinary control* | 5 | *No disciplinary control* |
| 6 | *Control/supervision is exercised not only with regard to the allocation of work, but also the way in which the work is to be carried out* | 6 | *No control/supervision over nature of work to be performed.* |
| 7 | *Wages are paid by the Bank* | 7 | *Charges are paid by the borrower* |
| 8 | *Retirement age* | 8 | *No retirement age* |
| 9 | *Subject to transfer* | 9 | *No transfer* |
| 10 | *While in employment cannot carry on any other occupation* | 10 | *No bar to carry on any avocation or occupation.* |

58. Based upon the comparison as above, the Court held that the jewel appraisers are not employees of the Bank. The English Court of Appeal in *Ev. English Province of Our Lady of Charity and Anr.* (2013 QB 732), was

concerned with the question as to whether the Roman Catholic Church would be vicariously liable in a claim brought for damages alleging that a lady, when resident in a children's home operated by a Roman Catholic order of nuns, had been sexually abused by a priest.

59. The judgment made reference to several English judgments and the tests laid out therein to decide the question of *'Hallmarks of the relationship of employer and employee'*, referring inter alia to the four indicia of a contract of service being (a) The master's power of selection of his servant; (b) the payment of wages or other remuneration; (c) the master's right to control the method of doing the work; and (d) the master's right of suspension or dismissal.

60. In *Lee Ting Sang V. Chung Chi-Keung* ((1990 2 AC 374 (PC), the Court referred to the 'fundamental' test determined by Cooke, J in *Market Investigations Ltd v Minister of Social Security* ((1969) 2 QB 173), being'*..is the person who has engaged himself to perform these services performing them as a person in business on his own account?'* If the answer was 'yes', then the contract is a contract for services. If the answer is 'no', then the contract is a contract of service.

61. After a detailed discussion of the above cases, the Apex Court, in the case of *Sushilaben* (supra) examined the contract between the deceased and R3 as follows:

*34. Looked at in this light, let us now examine the agreement between Dr. Alpesh Gandhi and the Respondent No. 3. The factors which would lead to the contract being one for service may be enumerated as follows:*

*34.1 The heading of the contract itself states that it is a contract for service.*

*34.2 The designation of Dr. Gandhi is an Honorary Ophthalmic Surgeon.*

*34.3 INR 4000 per month is declared to be honorarium as opposed to salary.*

*34.4 In addition to INR 4000 per month, Dr. Gandhi is paid a percentage of the earnings of the Respondent No. 3 from out of the OPD, Operation Fee component of Hospitalization Bills, and Room Visiting Fees.*

*34.5 The arbitration clause which speaks of disputes arising in the course of the tenure of this contract will be referred to the Managing Committee of the Institute, the decision of the Managing Committee being final, is also a clause which is unusual in a pure master-servant relationship.*

*34.6 The fact that the appointment is contractual – for 3 years – and extendable only by mutual consent, is another pointer to the fact that the contract is for service, which is tenure based.*

62.As against the above factors, the distinguishing factors noted were as follows:

*34.7 The fact that termination of the contract can be by notice on either side would again show that the parties are dealing with each other more as equals than as master-servant.*

*34.8 Clause XI of the agreement also makes it clear that the earlier appointment that was made of Dr. Gandhi would cease the moment*

*this contract comes into existence, Dr. Gandhi no longer remaining as a regular employee of the Institute.*

*35. As against the aforesaid factors which would point to the contract the contract being a contract for service, the following factors would point in the opposite direction:*

*35.1 The employment is full-time. Dr. Gandhi can do no other work, and apart from the seven types of work that Dr. Gandhi is to perform under Clause IV, any other assignment that may get created in the course of time may also be assigned to him at the employer's discretion.*

*35.2 Dr. Gandhi is to work on all days except weekly offs and holidays that are given to him by the employer. However, what is important is that though governed by the leave rules of the Institute as in vogue from time to time, Dr. Gandhi will not be entitled to any financial benefit of any kind as may be applicable to other regular employees of the Institute under Clause V.*

*35.3 Dr. Gandhi will be governed by the Conduct Rules of the Institute as invoked from time to time and as applicable to regular employees of the Institute.*

63. On balance, the Court held that factors that would render the contract, one for service, outweighed the facts pointing in the opposite direction, and concluded as follows:

*36. If the aforesaid factors are weighed in the scales, it is clear that the factors which make the contract one for service outweigh the factors which would point in the opposite direction. First and foremost, the intention of the parties is to be gathered from the terms of the contract.The terms of the contract make it clear that the contract is one for service, and that with effect from the date on which the contract begins, Dr. Gandhi shall no longer remain as a regular employee of the Institute, making it clear that his services are now no longer as a regular employee but as an*

*independent professional. Secondly, the remuneration is described as honorarium, and consistent with the position that Dr. Gandhi is an independent professional working in the Institute in his own right, he gets a share of the spoils as has been pointed out hereinabove. Thirdly, he enters into the agreement on equal terms as the agreement is for three years, extendable only by mutual consent of both the parties. Fourthly, his services cannot be terminated in the usual manner of the other regular employees of the Institute but are terminable on either side by notice. The fact that Dr. Gandhi will devote full-time attention to the Institute is the obverse side of piece-rated work which, as has been held in some of the judgments hereinabove, can yet amount to contracts of service, being a neutral factor. Likewise, the fact that Dr. Gandhi must devote his entire attention to the Institute would not necessarily lead to the conclusion that de hors all other factors the contract is one of service. Equally important is the fact that it is necessary to state Dr. Gandhi will be governed by the Conduct Rules and by the Leave Rules of the Institute, but by no other Rules. And even though the Leave Rules apply to Dr. Gandhi, since he is not a regular employee, he is not entitled to any financial benefit as might be applicable to other regular employees. Equally, arbitration of disputes between Dr. Gandhi and the Institute being referred to the Managing Committee of the Institute would show that they have entered into the contract not as master and servant but as employer and independent professional. A conspectus of all the above would certainly lead to the conclusion, applying the economic reality test, that the contract entered into between the parties is one between an Institute and an independent professional.*

64. At paragraph 43, the Court summarised its findings as follows:

*The question that arises before us is as to whether the expression "employment" is to be construed widely or narrowly – if widely construed, a person may be said to "employed" by an employer even if he is not a regular employee of the employer. However, the wider meaning that has been canvassed for by the insurance company cannot possibly be given, given the language immediately*

*before, namely, "in the course of", thereby indicating that the "employment" can only be that of a person regularly employed by the employer.*

65. In the case of *Escorts*, the hospital had two categories of Doctors i.e. Employee Doctors and Retainer/Consultant Doctors. The terms were different from one category to another. The differences has been set out by way of a tabulation extracted below:-

| ***Sl.No*** | ***As per Agreement*** | ***Employee Doctors (Agreement @ pg 170)*** | ***Retainer/Consultant Doctors (Agreement @ pg 150)*** |
|---|---|---|---|
| *1* | *Term* | *Whole time employment-not restricted for a fixed term* | *Fixed Term defined in agreement-renewable based on mutual consent* |
| *2* | *Remuneration* | *Salary plus following employment benefits:*<br>*- House Rent Allowance*<br>*- Education Allowance*<br>*- Special Allowance*<br>*- Medical Reimbursement*<br>*- Leave Travel assistance*<br>*- Performance linked bonus* | *Consolidated Retainership Fee* |
| | | *Also entitled to performance linked bonus* | *N.A.* |
| | | *Also entitled to Terminal benefits:*<br>*- Provident Fund*<br>*- Gratuity* | *N.A.* |
| *3* | *Exclusively* | *Doctors employed on whole-time basis with the Hospital-complete restriction on any other work for remuneration (part-time/full time) in any other trade or business* | *Partly restricted-Doctors not to engage in employment with other hospitals; however, no restriction on private practice* |
| *4* | *Transfer/Postin* | *Transfer and posting of* | *N.A.* |

| Sl.No | As per Agreement | Employee Doctors (Agreement @ pg 170) | Retainer/Consultant Doctors (Agreement @ pg 150) |
|---|---|---|---|
| | g | doctors at the sole discretion of the Hospital | |
| 5 | Retirement | Retirement Age prescribed under the agreement @ 58 years | N.A. |
| 6 | Leave | Eligible for privilege, sick and casual leaves as applicable for respective category | N.A. |
| 7 | Intellectual Property rights | Any IPR developed by the doctor to be the sole property of the Hospital | N.A. |
| 8 | Insurance | N.A. | Professional Indemnity Insurance obtained by Doctors on their own account @ pg. 135 |
| 9 | ITR | Remuneration treated as 'Salary' by Doctors | Remuneration treated as 'Professional Fee' by Doctors @ pg.143 & 146 |

66. The question that arose was, as regards the taxability of the remuneration paid to the Retainer Doctors, whether salary or income from profession. Upon going through the differences in the terms governing the two categories of Doctors, the High Court allowed the appeal of the hospital holding the same to be an exercise of profession. What weighed substantially with the Court was the absence of control exercised by the hospital.

67. On the aspect of ‘consultancy’ by the professionals, the Court stated thus:

*'15.'Consultancy charges' in the ordinary sense means providing of expert knowledge to a third party for a fee. It is a*

*service provided by a professional advisor. These consultant Doctors are rendering professional services as and when they are called upon to attend the patients.*

*Profession implies any vocation carried by an individual or a group of individuals requiring predominantly intellectual skill, depending on individual characteristic of person(s) pursuing with the vocation, requiring specialized and advance education or expertise. Consultancy charges are paid to the Doctors towards rendering their professional skill and expertise which are purely in the nature of professional charges. Assessee Company has no control over the Doctors engaged by them with regard to treatment of patients.*

*16.Mere providing of non-competition clause in the agreement shall not invalidate the nature of profession. It is common that the doctors are rendering their professional services as visiting doctors in different hospitals. Imposing a condition of bar to private practice is to make use of the expertise, skill of a doctor exclusively to the assessee-company i.e., to get the attention and focus of the professional skill and expertise only to the patients of the assessee-company and to discourage doctors from transferring patients to their own clinics or any other hospital. This condition imposed by the assessee-company would not alter the nature of professional service rendered by the doctors. Tribunal also held that none of the doctors are entitled to gratuity, PF, LTA and other terminal benefits. Considering all these aspects at length a detailed, well reasoned order is passed by the Tribunal on this issue which we may not find fault with.'*

Several other judgments were also discussed, many that find reference in the judgment of the Supreme Court in *Sushilaben's* case.

68. The Gujarat High Court in *Apollo Hospital* considered the nature of remittances made to full time resident Doctors in Apollo Hospital International

Limited. Professional Tax and Provident Fund were being deducted from the payments, and two types of agreements entered into by that hospital, one in the case of Employee Doctors and the second in the case of Consultant Doctors. The distinctions have been summarised in the following terms:-

> *'(a) In the case of 'employee doctors' there is a list of allowances such as Basic, HRA, Trans. Allw. Edu. Allw. B&P Allw. Tel. Allw. Other Allw. On the other hand, in the case of 'consultant doctors' there is a clause of lump sum monthly payment. The consultant doctors, however, are not paid any such allowance.*
>
> *(b) In the case of 'employee doctors' there is a clause of entitlement of leave prescribed for a specific period, however, there is no such condition mentioned in case of agreement with the 'consultant doctors'.*
>
> *(c) An 'employee doctor' is entitled for medical benefit and personal accident benefit provided by the assessee as per the policy of the hospital. Contrary to this there is no such benefit granted to the 'consultant doctors'.*
>
> *(d) There is a specific mention of general service rules and regulations to govern the service matters, but in the agreement of FGCs they are not governed by such rules and regulations, rather they were confined within the terms of the agreement.*
>
> *(e) For 'employee doctors' the employment is full-time employment and they are not entitled for any other full-time employment or private practice. On the other hand, consultant doctors are free to do any other job.*
>
> *(f) In the case of consultant doctors, there is a clause of fixed 'guarantee money' per month, but along with this amount there is a clause of sharing of receipts with the hospital. This clause of agreement states that the arrangement is 'fee for service' and the hospital is entitled to collect the amount to be*

*shared between the two. However, there is no such clause for regularly employed doctors.*

*(g) The consultant doctors were required to take professional indemnity insurance on their own.*

*(h) The consultant doctors were not employed by the service rules and regulations but they were expected to follow the code of conduct and ethics of doctors.'*

The conclusion of the Tribunal to the effect that the income of the Consultant Doctors should be treated as professional income was confirmed.

69. In the case of *Grant Medical Foundation*, the Bombay High Court also considered a similar case involving two categories of doctors. Neither category was entitled to provident fund or terminal benefits. Both categories were free to carry on private practice, but the private patients were to be treated only from the premises of the assessee hospital. There was a difference in the manner of remuneration as well, fixed in the case of the full time doctors and variable in the case of the consultants.

70. The Bench also noticed the insistence of that hospital management, that facilities provided for investigation, consultation and diagnostics be utilised to the optimum. As regards the incorporation of fixed timings and hours, the Bench opined that such regulations were only a measure of ensuring that the medical practitioner was obliged to devote time and energy wholeheartedly to the hospital.

71. In conclusion, the issue was decided in favour of the hospital, the Court clarifying that their concurrence did not mean that professionals could never be employees or that there could never be a master-servant relationship in the case of a professional. Such a finding would depend upon the attending facts and circumstances, terms and conditions of engagement and on an examinationon a case to case basis.

72. In the case of *IVY Health and Life Sciences (P) Ltd.*, the Punjab and Haryana High Court considered the taxability of payments to doctors falling within a single category, and who worked on fixed timings. The doctors were not entitled to private practice, attended the hospitals on call and received a fixed salary. They are not entitled for Leave Travel concession, concession in medical treatment of relatives, Provident Fund, Leave Encashment, Retirement benefits such as gratuity and are subject to the rules and regulations of the hospitals.

73. The terms read as follows:

> *'16.Additionally, we may notice the terms of the agreement on the basis of which the Assessing Officer had issued show cause notice to the assessee which read thus:-*
>
> *"(i) The second party shall be associated exclusively with M/s.IVY Hospital as full-time consultant and shall not associate himself with any other hospital.*

*(ii) the second party shall be paid professional charges for services rendered by him in IVY Hospital as under with a minimum guarantee of Rs...per month subject to TDS deductions as per Act, the minimum guarantee amount shall be paid to the second party for a period of 12 months from the date of joining. The same shall be revised at the end of 12 months.*

*(a) 70% of the OPD charges*

*(b) Visiting charges in ward/private room as mutually settled between the two parties.*

*(c) 15% of the investigation done of IVY Hospital.*

*(iii) the second party shall not do practice at any other place and would be associated exclusively with IVY hospital. The second party shall not operate or admit patient in any other hospital except at IVY Hospital."*

Considering the above, the stand of the assessee was accepted.

74. In *Manipal Health Systems (P) Ltd.,* the Karnataka High Court considered and applied the *'intention test'* to decide in favour of the assessee, noting that the income of the Doctor was variable and concluding that there was no employee and employer relationship between the parties.

75. The Andhra Pradesh High Court, in *Yashoda Super Speciality Hospital*, by way of a short judgment accepted the case of the Doctors. They also concluded that the embargo placed upon private practice would not change the basic character of the relationship between the doctor and the hospital. An

agreement is expected to contain both prohibitory as well as facilitatory clauses, and must be read as a whole, and in balance.

76. The overwhelming precedent is thus in favour of the doctor/hospitals, and I note close identity in the agreement before me with those in the aforesaid cases. All petitioners before me hold specialisations in different fields of medicine and a tabulation of their specialisations is set out below:

| S.No. | W.P.No. | CONSULTANT |
|---|---|---|
| 1. | 15268 of 2022 | Anaesthesiologist |
| 2. | 14592 of 2022 | Anaesthetist |
| 3 | 15289 of 2022 | Nephrologist |
| 4. | 15304 of 2022 | Dental Surgeon |
| 5. | 12692 of 2022 | Neuro and Cardiovascular Radiologist |
| 6. | 15079 of 2022 | Dermatologist |
| 7. | 14810 of 2022 | Pulmonologist |
| 8. | 14829 of 2022 | Anaesthetist |
| 9. | 14897 of 2022 | Urologist |
| 10. | 14993 of 2022 | Radiologist |
| 11. | 14979 of 2022 | Radiologist |
| 12. | 15082 of 2022 | Physician |
| 13. | 15084 of 2022 | Transfusion Medicine |
| 14. | 15281 of 2022 | General and Laparoscopic Surgeon |
| 15. | 15276 of 2022 | Paediatrician and Neonatologist |
| 16. | 14515 of 2022 | Oncologist |
| 17. | 15317 of 2022 | General Surgery |
| 18. | 15365 of 2022 | Gastroenterologist |
| 19. | 15386 of 2022 | Cardiac Anaesthesia |
| 20. | 15452 of 2022 | Orthopaedic Surgeon |
| 21. | 15448 of 2022 | Orthopaedic Surgeon |
| 22. | 15458 of 2022 | Plastic Surgeon |

| | | |
|---|---|---|
| 23. | 15721 of 2022 | Internal Medicine |
| 24. | 15995 of 2022 | Intensivist |
| 25. | 19632 of 2022 | Head of Critical Care Department |
| 26. | 19637 of 2022 | Critical Care Medicine |
| 27. | 19634 of 2022 | Intensivist |
| 28. | 15384 of 2022 | Radiologist |
| 29. | 15455 of 2022 | Psychiatrist |
| 30. | 15388 of 2022 | Neurologist |
| 31. | 14833 of 2022 | Neuro Surgeon and Spine |

77. The agreements in the present cases reveal the following terms:

(i) The doctors are referred to as consultants and fall within the category of visiting consultants/full time consultants, as against part-time and special category consultants who also attend the hospital.

(ii) The remuneration paid is of a fixed amount along with a variable component depending on the number of patients treated, and is termed as ‘salary’.

(iii) The consultants are not entitled to any statutory service benefits such as PF, Gratuity, Bonus, medical reimbursement, insurance, leave encashment etc.

(iv) Working hours are stipulated as 8 a m to 5 p m and the consultants are expected to be available on call in the night.

(v) They are permitted a month’s vacation and leave on a case-to-case basis and depending on need.

(vi) Private practice is permitted in the case of both categories, upon the satisfaction of certain conditions, such as service of 2 years in the hospital and other conditions extracted as part of the impugned order at paragraph 12 above.

(vii) The hospital does not exercise any control, intervention or direction over the exercise of professional duties by the petitioners.

(viii) The petitioners are wholly responsible for professional indemnity insurance and the hospital does not indemnify the doctors from any manner of claims.

78. The intention of the parties appears to engage in a relationship of equals. The hospital, on the one hand, and the professional, on the other, engage in a relationship where the former provides the administrative infrastructure and facilities and the latter, the professional skill and expertise to result in a mutual rewarding result.

79. Then again, the fact that the remuneration paid is variable, and the doctors are not entitled for any statutory benefits also points to the absence of an employer-employee relationship. The mere presence of rules and regulations do not, in my considered view, lead to a conclusion of a contract of service. Rules and regulations are necessary to ensure that the workplace functions in a streamlined and disciplined fashion. Thus, mere existence of an agreement that

indicates some measure of regulation of the service of the doctors, cannot lead to a conclusion that they are salaried employees.

80. References in the show cause notices and impugned orders to insistence of the management on selected brand of medication does not advance the stand of the revenue. What is important is that professional decisions as regards the diagnosis, treatment and procedures rests solely and wholly upon the doctors and there is no interference in this regard by the hospital.

81. The fact that the doctors hold full responsibility for their medical decisions and actions and the hospital bears no responsibility in this regard is also of paramount importance, relevant to determine the nature of the relationship as being one of equals, rather than one of master-servant.

82. In this context and at this juncture, it is relevant to note the ratio of the judgments of the Hon'ble Supreme Court in the case of *Birla Corporation Limited, Kaumudini Narayan Dalal and Another, Kusum Ingots and Alloys* that categorically settle the proposition that issues settled in one matter must not be raked up in other matters involving similar facts and there must be finality in regard to the same.

83. The officer has, at paragraph 8 of the impugned order, stated in so many words, that all material in his possession that the intends to rely upon, have been shared with the petitioners. The exercise of fact finding is thus

complete and to this end, it is not correct to state that the proceedings are premature, as the impugned order contains clear, categoric and conclusive findings that are adverse to the petitioners. There are no disputed facts at play and rather, it is only the interpretation of admitted facts and conclusions arrived at by the officer, that are challenged.

84. The terms in the agreements before me compare very closely to those in the cases discussed in the preceding paragraphs and the conclusions of several Courts upon identical issues are equally applicable in these matters. In light of the discussion as above, I have no hesitation in holding that the 'information' in possession of the revenue does not, in light of the settled legal position discussed above, lead to the conclusion that there has been escapement of tax.

85. The impugned orders are set aside and these writ petitions are allowed. No costs. Connected miscellaneous petitions are closed.

Sl/vs/ska **01.09.2022**
Index : Yes / No
Speaking Order / Non Speaking Order

To

The Assistant Commissioner of Income Tax,
Non Corporate Circle-4,
Main Building,

63, Race Course Road,
Coimbatore – 641 018.

**DR.ANITA SUMANTH, J.**

Sl/ska/vs

**W.P.Nos.12692, 14810, 14829, 14833, 15384, 19632, 19634, 19637, 14515, 14592, 14897, 14979, 14993, 15082, 15084, 15268, 15276, 15281, 15289, 15304, 15317, 15365, 15386, 15388, 15448, 15452, 15455, 15458, 15721 & 15079, 15995 of 2022 and**
**WMP.Nos.14469, 14470, 14472, 14545, 14596, 14597, 14598, 18952, 18955, 18957, 14035, 14036, 14038, 14040, 14042, 14104, 14106, 14108, 14200, 14203, 14205, 14215, 14216, 14217, 14295, 14296, 14298, 14299, 14300, 14301, 14433, 14436, 14437, 14450, 14451, 14452, 14455, 14456, 14457, 14462, 14465, 14466, 14482, 14483, 14484, 14516, 14517, 14518, 14536, 14537, 14538, 14539, 14540, 14541, 14543, 14544, 14601, 14602, 14603, 14606, 14608, 14609, 14612, 14613, 14614, 12143, 14978, 14980, 15315, 15318, 15320, 18956, 18942, 18944, 18946, 18948, 18949, 19568, 14007, 14008, 14033, 12146, 12147, 13716, 13717, 13718, 13788, 13789, 13790, 14289, 14290, 14006 & 14976 of 2022**

**01.09.2022**