

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.04.2018

CORAM:

**THE HONOURABLE DR. JUSTICE S.VIMALA
AND
THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM**

W.A. NOS. 1327 To 1329 OF 2014

1. The Asst. Commissioner of Income Tax
Media Circle II, Room No.312, New Block
No.121, Mahatma Gandhi Road
Nungambakkam, Chennai 600 034.
2. The Commissioner of Income Tax-IV
No.121, Mahatma Gandhi Road
Nungambakkam, Chennai 600 034. ... Appellants in all the appeals

- Vs -

1. Vijay Television Private Ltd.
No.15, Jaganathan Road
Nungambakkam, Chennai 600 034
rep. By its Chief Financial Officer
Shri S.Rajaraman.
2. The Dispute Resolution Panel, Chennai
Room No.711, Annexe Building,
7th Floor, Aayakar Bhawan
No.121, Mahatma Gandhi Road
Nungambakkam, Chennai 600 034. .. Respondents in all the appeals

Writ Appeals filed under Clause 15 of the Letters Patent against the order dated 29.04.2014, passed by the learned single Judge made in W.P. Nos. 1526 to 1528 of 2014.

For Appellants : Mr. J.Narayanaswamy
Standing Counsel

For Respondents : Mr. Porus Kaka, SC, for
M/s. M.V.Swaroop

<i>Reserved on</i>	<i>Pronounced on</i>
10.04.2018	23.04.2018

COMMON JUDGMENT

DR. S.VIMALA, J.

The present appeals have been directed against the order of the learned single Judge, whereunder, learned single Judge, had allowed the writ petitions filed by the petitioner/assessee by quashing the assessment order as well as the corrigendum issued by the 2nd respondent in the writ petition.

2. The assessee filed its return of income for the Assessment Year 2009-2010 on 30.09.2009. The case was selected for scrutiny and the Assessing Officer (for short 'AO'), Media Circle II issued notice dated 13.08.2010, calling for details u/s 143 (2) of the Income Tax Act. The assessee filed revised return on 31.3.2011 declaring loss.

3. The records further reveal that the total income being below Rs.25 Lakhs, there was a change of officer and the case was transferred to Media Ward III vide Notification and letter dated 20.7.2011. Opportunity was once again given

to the assessee by issuance of notice dated 7.10.2011 u/s 143 (2) of the Act. It

further transpires from the records that once again due to administrative change, the case was transferred to Media Circle II and again notice u/s 142 (1) dated 16.10.2012 was issued to the assessee fixing the date of hearing on 30.10.2012.

4. As the case involved international transactions, the matter was referred to the Transfer Pricing Officer (for short 'TPO') u/s 92 CA (1) for determination of Arms Length Price (for short 'ALP') and the order of the TPO was received on 30.01.2013. The AO again gave opportunity to the assessee vide letter dated 22.2.2013 and called for, objection to the order passed by the TPO by the assessee.

5. At all stages, the assessee participated in the proceedings and while a draft assessment order (for short 'DAO') was to be passed, the AO found a mistake had crept in while passing the order dated 26.3.2013, more specifically in column 13, where the provisions were omitted to be mentioned. Therefore, a corrigendum was issued on 15.4.2013 rectifying the column 13.

6. The assessment order dated 26.3.2013 and the corrigendum issued on 15.4.2013 were challenged by the assessee in WP Nos.1526 of 2014 and 1527 of 2014 respectively contending that the order dated 26.3.2013 should be treated as a final order without passing the mandated DAO and the corrigendum dated

15.4.2013 cannot rectify the order dated 26.3.2013 as the corrigendum was passed beyond the limitation date (as the last date for passing the order of assessment is 31.3.2013).

7. Learned single Judge, after exhaustive consideration of the matter, accepted the contention of the assessee and allowed the writ petitions holding that the order passed by the AO on 15.4.2013 is beyond the period of limitation, which cannot rectify the error and convert the order dated 26.3.2013 as one of a DAO. Aggrieved by the said order, the present appeals have been preferred by the Revenue.

8. W.A. No.1329 of 2014 has been filed against the permission granted to the petitioner to withdraw the writ petition, which was filed to quash the assessment order for the assessment year 2009-2010.

9. Mr.Narayanaswamy, learned counsel appearing for the Revenue submitted that the order dated 15.4.2013 can legally validate the earlier order dated 26.3.2013 as a DAO, inasmuch as the proceedings dated 26.3.2013 is in substance and conformity with the intent and purpose of the Act. It is further submitted that the error committed in the order dated 26.3.2013 stood rectified through the corrigendum issued on 15.4.2013 and, therefore, it is evident that

the intent and purpose of the AO was only to pass a DAO, which was even known to the assessee, who participated in the proceedings. Since there is no provision to pass a final assessment order, it should be deemed that the order passed on 26.3.2013 is in effect a DAO. Mere technicality is mentioning a wrong section and a proposal to initiate a penalty proceedings, which was raised in the initial order, would not make it a final assessment order. Therefore, the proceedings dated 15.4.2013 to rectify the mistake that had crept in the order dated 26.3.2013 is only a procedural formality and does not in any way affect the limitation.

10. Per contra, Mr.Porus Kaka, learned senior counsel appearing for the assessee submitted that the order dated 26.3.13, passed by the 2nd respondent is not a draft assessment order, but a final order. It is further submitted that prior to the order dated 26.3.13, a notice of demand u/s 156 of the IT Act was issued and the notice of demand has been served along with the order dated 26.3.13. The assessee was also called upon to pay penalty. Thereafter, the assessee was given an opportunity of hearing on 12.4.13. The Assistant Commissioner of Income Tax, Media Circle II realised the mistake thereafter in passing a final order instead of a draft assessment order, which resulted in issuance of a corrigendum on 15.4.13.

11. It is the submission of the learned senior counsel for the assessee that in the corrigendum it was only stated that the order passed on 26.3.13 has to be

read and treated as a draft assessment order as per Section 143 (C) r/w Section 93 (CA) (4) r/w Section 143 (3) of the Act and by the order dated 15.4.13, the assessee was granted 30 days time to file their objections.

12. It is further submitted by the learned senior counsel for the assessee that on receipt of the corrigendum the assessee approached the Dispute Resolution Panel (for short 'DRP'), but the DRP declined to issue any direction to the AO on the ground that the DRP has got jurisdiction only to entertain an appeal in respect of a pre-assessment order (draft assessment order). Therefore, it is submitted that the order dated 26.3.13 is not only a final order in terms of its content but also by the way in which it was treated so by the DRP as well, as the DRP refused to entertain the appeal filed by the assessee.

13. The main contention raised by the learned senior counsel for the assessee is that as per Section 144 (C) (1) of the Act, the AO has no right to pass any final order pursuant to the recommendations made by the Transfer Pricing Officer (TPO), but the order dated 26.3.13 is a final order though it was directed to be treated as a draft assessment order, by the issuance of a corrigendum.

14. It is the contention of the learned senior counsel for the assessee that the violation committed by the AO in not adhering to the procedure

contemplated under Section 144 (C) (2), has resulted in substantial injustice. Though the Revenue simply terms it as procedural violation, it had the impact of violating the substantive right of parties and as the issue goes to the root of the matter, a corrigendum cannot cure the defect, as termed by the Revenue.

15. It is further submitted by the learned senior counsel for the assessee that on receipt of the DAO, the eligible assessee is entitled to certain rights as envisaged under Section 144-C. It is further contended by the learned senior counsel that Section 144-C highlights not only the rights available to the assessee but also mandates the procedure to be followed while making the DAO.

16. It is the specific contention of the assessee that the procedure for making assessment contemplates the authority by whom the DAO has to be passed and also the appeal procedure, which are totally different and therefore, procedural violation of any of the provision contemplated under Section 144-C is so serious that it would affect the substantive right of the assessee and, hence, it cannot be lightly taken as a mere procedural violation not affecting the rights of the assessee.

17. It is contended that the non-adherence to Section 144-C would result in quashing of the proceedings and this is the view taken across the country by

the various High Courts, i.e., Gujarat, Delhi, Bombay and Andhra Pradesh.

Reliance was placed on the following decisions :-

- 1) *Zuari Cement Ltd. - VS. Asst. Commr. Of IT (AP High Court) – W.P. No.5557 of 2012*
- 2) *Asst. Commr. Of IT – Vs – Zuari Cement Ltd. (SC) – CC 16694/2013*
- 3) *IATA – Vs – Dy. Commr. Of IT & Ors. (Bombay High Court) – 68 Taxmann.Com 246*
- 4) *JCB India Ltd. - Vs – Dy. Commr. Of IT (Delhi High Court – 398 ITR 189*
- 5) *Turner International India Pvt. Ltd. - Dy. Commr. Of IT (Delhi High Court) – 398 ITR 177*
- 6) *Commissioner of IT – Vs – C-Sam (India) Pvt. Ltd. (Gujarat High Court) – 398 ITR 182*
- 7) *Control Risk India Pvt. Ltd. - Vs – Dy. Commr. Of IT (Delhi High Court) – WP 5722/2017*
- 8) *Dy. Commr. Of IT – Vs – Control Risk India Pvt. Ltd. - SLP No.7090/2018*
- 9) *Honda Cars India Ltd. - Vs – Dy. Commr. Of IT (Delhi High Court) – 382 ITR 88*
- 10) *ESPN Star Sports Mauritius S.N.C. ET Compagnie – Vs – UOI (Delhi High Court) – 388 ITR 383*
- 11) *ESS Distribution (Mauritius) S.N.C.E.T. Compagnie – Vs – Asst. Commr. Of IT (Delhi High Court – 399 ITR 362*
- 12) *Pankaj Extrusion Ltd. - Vs – Asst. Commr. Of IT (Gujarat High Court) – 10 Taxmann.com 17*

18. Out of the above decisions, the decision of the Andhra Pradesh High

Court has been taken up to Supreme Court by way of Special Leave Petition and

the Hon'ble Supreme Court has dismissed the SLP (Civil) CC No.16694/2013 dated

27.09.2013.

19. However, the above submissions of the assessee is countered by the learned counsel for the Revenue placing reliance upon the provisions of Section 292B to suggest that the procedure contemplated under Section 292B would cure the irregularities committed by the authorities concerned and therefore, the order passed by the AO cannot be quashed.

20. This Court bestowed its anxious considerations to the submissions advanced by the learned counsel appearing for the parties and also to the various Sections of the Income Tax Act, to which attention was drawn as also the various decisions relied on by either side.

21. In a nutshell, while it is the contention of the learned counsel for the appellants that Section 292B of the Income Tax Act takes care of anomalous situation that would arise in case where mistake creeps in due to defect or omission either in the return of income, assessment, notice, summons or other proceedings, it is countered by the learned senior counsel for the assessee contending that the procedural lapse committed by the AO in the present case is not a mere procedural irregularity, but a procedural illegality, which is incurable, as the mistake in not following the mandate contemplated u/s 144-C hits at the

substratum of the assessee's rights.

22. For better appreciation of the matter, it is but necessary for this Court to have a bird's eye view of the various provisions of the Income Tax Act to which this Court's attention was drawn.

23. Learned counsel relied upon Section 292B to drive home his case that the mistake could be corrected and it will not affect the rights of the assessee. For better appreciation, Section 292B is extracted hereunder :-

“Return of income, etc., not to be invalid on certain grounds.

292B. *No return of income, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.]”*

24. Learned counsel for the assessee placed reliance upon Section 144-C of the Income Tax Act to stress before this Court the need for the AO to follow the procedure contemplated therein, which is for safeguarding the rights of both the

parties. For better appreciation, Section 144-C is extracted hereunder :-

“Reference to dispute resolution panel.

144C. (1) *The Assessing Officer shall, notwithstanding anything to the contrary contained in this Act, in the first instance, forward a draft of the proposed order of assessment (hereafter in this section referred to as the draft order) to the eligible assessee if he proposes to make, on or after the 1st day of October, 2009, any variation in the income or loss returned which is prejudicial to the interest of such assessee.*

(2) *On receipt of the draft order, the eligible assessee shall, within thirty days of the receipt by him of the draft order,—*

(a) *file his acceptance of the variations to the Assessing Officer; or*

(b) *file his objections, if any, to such variation with,—*

(i) *the Dispute Resolution Panel; and*

(ii) *the Assessing Officer.*

(3) *The Assessing Officer shall complete the assessment on the basis of the draft order, if—*

(a) *the assessee intimates to the Assessing Officer the acceptance of the variation; or*

(b) *no objections are received within the period specified in sub-section (2).*

(4) *The Assessing Officer shall, notwithstanding anything contained in section 153, pass the assessment order under sub-section (3) within one month from the end of the month in which,—*

(a) *the acceptance is received; or*

(b) *the period of filing of objections under sub-section (2) expires.*

(5) *The Dispute Resolution Panel shall, in a case where any*

objection is received under sub-section (2), issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.

(6) The Dispute Resolution Panel shall issue the directions referred to in subsection (5), after considering the following, namely:—

(a) draft order;

(b) objections filed by the assessee;

(c) evidence furnished by the assessee;

(d) report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority;

(e) records relating to the draft order;

(f) evidence collected by, or caused to be collected by, it; and

(g) result of any enquiry made by, or caused to be made by, it.

** * * * **

25. While Section 292B of the Act makes it clear that no return of income,

assessment, notice, summons or other proceeding furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceedings if such return of income, assessment, notice summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act,

Section 144-C mandates the AO, in the first instance, to forward a draft of the proposed order of assessment to the eligible assessee in relation to any variation in the income or loss returned, which is prejudicial to the interest of such assessee, who on receipt of the said draft order, within the time prescribed, shall either file his acceptance of the variations to the AO or file his objections to the variation with the DRP and the AO. It is further mandated that on the objections being received by the DRP under sub-section (2), the DRP shall issue such directions to the AO for the purpose of enabling him to complete the assessment. While issuing directions, the DRP shall consider the documents as mandated under sub-section (6).

26. From the above, it is clear that a right is vested with the assessee to challenge the draft of the proposed order of assessment, issued by the AO with the DRP and the DRP is supposed to guide the AO in completing the assessment.

27. It is the submission of the assessee that no draft assessment order was issued to the assessee by the AO, but the assessment order issued is a final one, which is evident from the corrigendum itself. Further, it is the submission of the assessee that the corrigendum has been issued beyond the limitation period and that the corrigendum cannot rectify the order dated 26.3.2013.

28. A perusal of the records reveal that the original order has been passed on 26.3.2013 and under Column No.13, the Section under which the assessment was passed has been noted as Section 143 (3). It is not in dispute that assessment passed under Section 143 (3) is a final assessment, after duly hearing the assessee and perusing the records.

29. However, curiously, the error that had crept in by mentioning of the incorrect Section in the proceeding was found out by the Revenue and, therefore, a corrigendum dated 15.4.2013 has been issued in and by which Column No.13 was to read as "144-C rws 92CA (4) rws 143 (3)".

30. It is the contention of the learned senior counsel for the respondent/assessee that the issue as to whether the corrigendum issued by the Asst. Comm of Income Tax is really sustainable and whether it would have the effect of curing the deficiencies crept in the order dated 26.3.13 has been extensively dealt with by the learned single Judge and finally after elaborating the reasons it has been held that the corrigendum would not have the effect of curing the original order and the reasons stated are as under :-

"Under Section 144 (C) of the Act, the AO is required pass only a draft assessment order. DAO on the basis of the recommendations made by the TPO after giving an opportunity to the assessee to file their objections and only

thereafter he could pass a final order. In other words, instead of passing a preliminary order, passing a final order straight away would deprive the assessee to file their objections.

The following circumstances are pointed out to show that the order dated 26.3.13 is a final order and not a pre-assessment order:-

a) The order dated 26.3.13 has raised a demand as well as has imposed penalty; Needless to point out that demand would be made after assessment and not prior to the assessment. When it is clear that taxable amount has been determined it would amount to a final order.

b) Following the order dated 26.3.13 a notice of demand u/s 156 of the Act has been issued pursuant to the order dated 26.3.13.

c) In the corrigendum issued, it is only stated that the order u/s 143 (3) has to be read and treated as DAO in terms of Section 143A(C) r/w Section 92 (CA) (4) r/w Section 143 (3) of the Act.

d) Even though 30 days time was granted to file objections when the assessee approached the DRP, DRP itself declared that it is a final order.”

(Emphasis supplied)

31. A perusal of the materials available in the typed set of documents reveal that the order dated 26.3.13 not only has finalised the assessment, but goes one step ahead by making a demand for tax, thereby implying that the

assessment is final and not provisions. Adding insult to injury, penalty has also been imposed in the very same order. A notice of demand has also been made under Section 156 of the Act. Therefore, it is a conclusive order completing the assessment and making a consequential demand and by no stretch of imagination it can be construed as pre-assessment order.

32. It is further evident from the materials available on record that when the assessee approached the DRP against the above assessment order u/s 144-C (2), the DRP has categorically refused to entertain the appeal pointing out that no draft assessment order has been placed before it for taking up the matter. In essence, the DRP itself has confirmed that the order passed by the AO is a final order and not a draft assessment order.

33. Therefore, it is very clear that what has been issued is not a Draft Assessment Order, as contemplated u/s 144-C of the Income Tax Act, but a final order, as mandated u/s 143 (3) of the Act. However, the contention now raised is that the mistake stood corrected by issuance of the corrigendum dated 15.4.2013 and, therefore, for all purposes the assessment order should be treated as draft assessment order.

34. Will the corrigendum, which has been issued on 15.4.2013 cure the

defect that has crept into the order and, thereby, rectify the mistake committed by the Revenue and enable treatment of the assessment order as a draft assessment order is the point, which requires the determination of this Court.

35. Reliance has been placed by the Revenue on the decision of the Allahabad High Court in **Commissioner of Income Tax, Aligarh – Vs – Shyam Cold Storage (31 TAXMANN 358 (ALL))** and the decision of the Karnataka High Court in **Commissioner of Income Tax, Central Circle – Vs – Sri Durga Enterprises (44 TAXMANN 442 (KAR))**, wherein, it has been held that Section 292B has been enacted to cure certain defects that have crept in, which, if not allowed, would defeat the very purpose of the Act. It has been further held therein that the assessee having participated in the proceedings cannot be allowed to turn around and raise objection for the first time before the Tribunal seeking invalidation of the proceedings due to any of the curable defects that has crept in the order of assessment.

36. Considering the question as to whether Section 292B of the Income Tax Act would protect the order passed by the AO vis-a-vis Section 144-C of the Act, the Delhi High Court in **JCB India Ltd. - Vs – Dy. Commr. of Income Tax & Anr. (2017 (398) ITR 189 (Del.))** has held that Section 292B of the Act cannot be read to confer jurisdiction on the AO where none exists and the relevant observation

reads as under :-

*“19. As already noted, the final assessment order of the Assessing Officer stood vitiated not on account of mere irregularity, but since it was an incurable illegality. **Section 292B of the Act would not protect such an order.** This has been explained by this Court in its decision dated July 17, 2015 passed in ITA No.275 of 2015 (Principal CIT v. Citi Financial Consumer Finance India Pvt. Ltd.), where it was held :-*

“Section 292B of the Act cannot be read to confer jurisdiction on the Assessing Officer where none exists. The said section only protects return of income, assessment, notice, summons or other proceedings from any mistake in such return of income, assessment, notices, summons or other proceedings, provided the same are in substance and in effect in conformity with the intent of purposes of the Act.”

20. The Court further observed that Section 292B of the Act cannot save an order not passed in accordance with the provisions of the Act. As the court explained, “the issue involved is not about a mistake in the said order, but the power of the Assessing Officer to pass the order.”

(Emphasis supplied)

37. In **Turner International India Pvt. Ltd. - Vs – Dy. Commissioner of Income Tax (398 ITR 177)**, the Delhi High Court had an occasion to consider a similar issue, as raised in this writ petition and it was held as under :-

“10. The short ground on which the aforementioned final assessment orders and the consequent demand notices have

been challenged is that there was non-compliance with the mandatory provision contained in Section 144C(1) of the Act requiring the AO to first frame draft assessment orders.

11. The question whether the final assessment order stands vitiated for failure to adhere to the mandatory requirements of first passing draft assessment order in terms of Section 144C(1) of the Act is no longer res integra. There is a long series of decisions to which reference would be made presently.

12. In Zuari Cement Ltd. v. ACIT (decision dated 21st February, 2013 in WP(C) No. 5557/2012), the Division Bench (DB) of the Andhra Pradesh High Court categorically held that the failure to pass a draft assessment order under Section 144C (1) of the Act would result in rendering the final assessment order “without jurisdiction, null and void and unenforceable.” In that case, the consequent demand notice was also set aside. The decision of the Andhra Pradesh High Court was affirmed by the Supreme Court by the dismissal of the Revenue's SLP (C) [CC No. 16694/2013] on 27th September, 2013.”

38. Similar orders passed by the Andhra Pradesh High Court, Bombay High Court, Gujarat High Court and in many cases by the Delhi High Court have been placed before this Court by the learned senior counsel for the assessee. It is further submitted before this Court that the Supreme Court has also confirmed the view taken by the various High Courts on this issue.

39. From the above it is unambiguously clear that the Assessing Officer is duty bound to adhere to the mandatory requirement mandated under Section

144-C (1) of the Act by first passing a draft assessment order, the failure of which would invalidate the final assessment order and the consequent demand notices and penalty proceedings.

40. Is the procedure followed by the Revenue an irregular procedure, that could be cured or an illegal procedure, which strikes at the substratum of the case and render the assessment order null and void needs to be looked into.

41. The word *“irregularity”* as found in Websters Dictionary means --

“not conforming to established rule, method, usage, standard, etc.; out of the ordinary”

42. The word *“illegality”* as found in Websters Dictionary means --

“prohibited by law; against the law; unlawful; illicit; also, not authorized or sanctioned, as by rules”

43. From the above, it is clear that while something not conforming to the established rule, method or usage and which is out of the ordinary is termed *“irregular”*, anything which is prohibited by law, against the law, unlawful, illicit and not authorised or sanctioned as by rules is termed *“illegal”*.

44. The materials available on record reveal that initially, vide proceedings

dated 26.3.13, order of assessment u/s 143 (3) was passed by the Assessing Officer. The last date for the four year block period ended on 31.3.2013. Therefore, the initial order of assessment was passed u/s 143 (3) within the said block period. However, the order passed u/s 143 (3) of the Act is a final assessment order and the Revenue, realising the mistake committed by it, had, thereafter, issued the corrigendum, amending the Section to read as Section 144-C r/w 92 CA r/w 143 (3). Curiously, demand u/s 156 of the Act has been issued and penalty has also been imposed. For all practical purposes, the order of assessment should be deemed to be one under Section 143 (3) of the Act, though the draft assessment order ought to have been passed u/s 144-C. On objections being raised before the DRP, the DRP has also opined that the order passed is a final order and, therefore, it has no jurisdiction to entertain the objections.

45. Further, it is to be pointed out that even though the corrigendum has been issued indicating to read the Section 143(3) as Section 144-C r/w 92 (CA) r/w 143 (3) it does not indicate that the demand and penalty made in the Assessment Order has been withdrawn. Hence, the submission of the Revenue that the Assessment Order passed under section 143(3) read with the corrigendum issued shall be treated as Draft Assessment Order cannot be countenanced. It is not the case of the Revenue that the Assessing Officer has consciously passed the Draft Assessment Order under Section 144-C, however, indicated the Section wrongly.

46. The Revenue, with a view to squirm around from under wrongful act of passing the assessment order, which is prohibited by law and an unlawful one, had issued a corrigendum, amending the Section under which the order has been passed, forgetting that the content of the order that matters and not the mere quoting of the Section alone. In other words, the window dressing which has been attempted by the Revenue would not give life to an order passed without jurisdiction. It is to be pointed out that the order of assessment, once issued under Section 143 (3), becomes final and reopening the same is impermissible. The mistake committed by the Revenue in not following the mandatory requirement of Section 144-C by passing an order under Section 143 (3) cannot be cured by the issuance of a corrigendum. In other words, the proceedings issued in the name of corrigendum trying to correct its mistakes only by introducing a Section without realising the consequences of not following the mandatory requirement u/s 144-C will not do justice to either of the parties.

47. The necessity for the Parliament to incorporate Section 144-C is not only to safeguard the Revenue, but also the assessee and any mistake committed by any one of them, the said party is supposed to face the consequences and cannot put the hands of the clock back and start afresh.

48. Though it is the submission of the Revenue that it is a procedural irregularity, which can be corrected through issuance of a corrigendum and no prejudice would be caused to the assessee, however, it is to be pointed out that the act committed by the Revenue is an incurable illegality, which cannot stand protected by Section 292B of the Act. If the contention of the Revenue is accepted, then it would literally render all the provisions of the Income Tax Act subservient to Section 292B. In effect, any error or omission or mistake committed by the Revenue at any stage of a proceeding cannot be sought to be cured by taking umbrage under Section 292B. Allowing such a contention would be misreading the intention of the Parliament in enacting Section 292B and Section 144-C.

49. The question of limitation raised by the Revenue would in no way save the Revenue from the non-compliance of Section 144-C of the Act. The non-compliance of the mandatory provisions of Section 144-C of the Act, being an incurable illegality, renders the assessment order null and void. Learned single Judge has taken into account all the relevant facts and laws and has given a well considered finding and we are of the considered opinion that no interference is called for with the order passed by the learned single Judge.

50. In fine, all the writ appeals, being devoid of merits, are liable to be

dismissed and, accordingly, the appeals are dismissed. However, in the circumstances of the case, there shall be no order as to costs.

(S.V.J.) (S.R.T.J.)

23.04.2018

Index : Yes / No

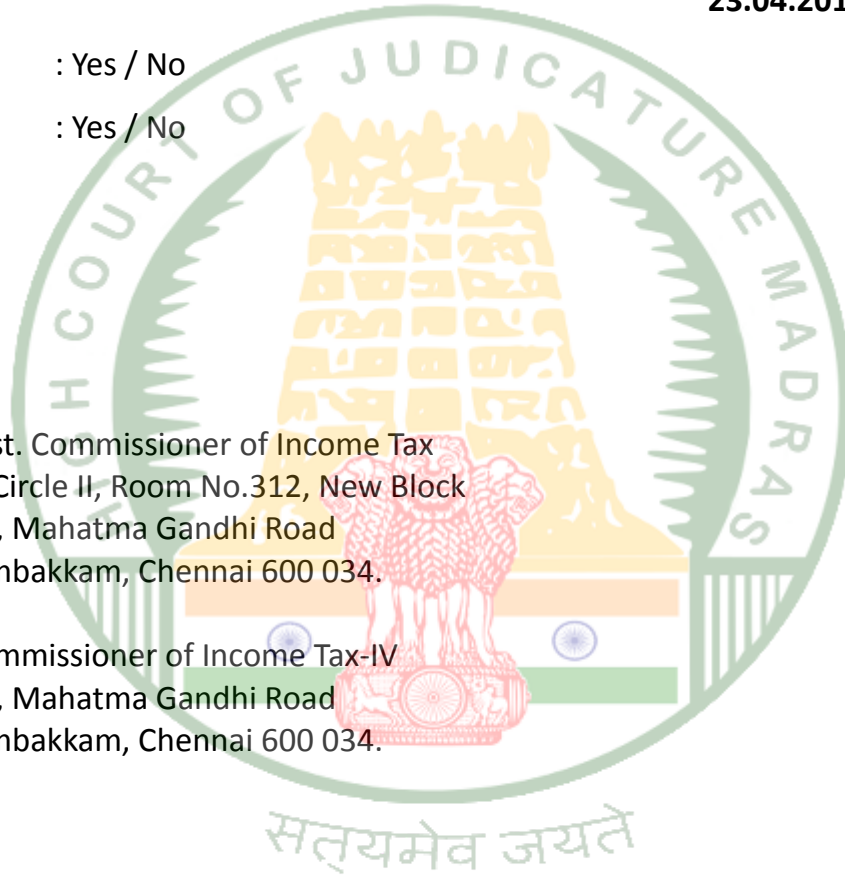
Internet : Yes / No

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To

1. The Asst. Commissioner of Income Tax
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No.121, Mahatma Gandhi Road
Nungambakkam, Chennai 600 034.

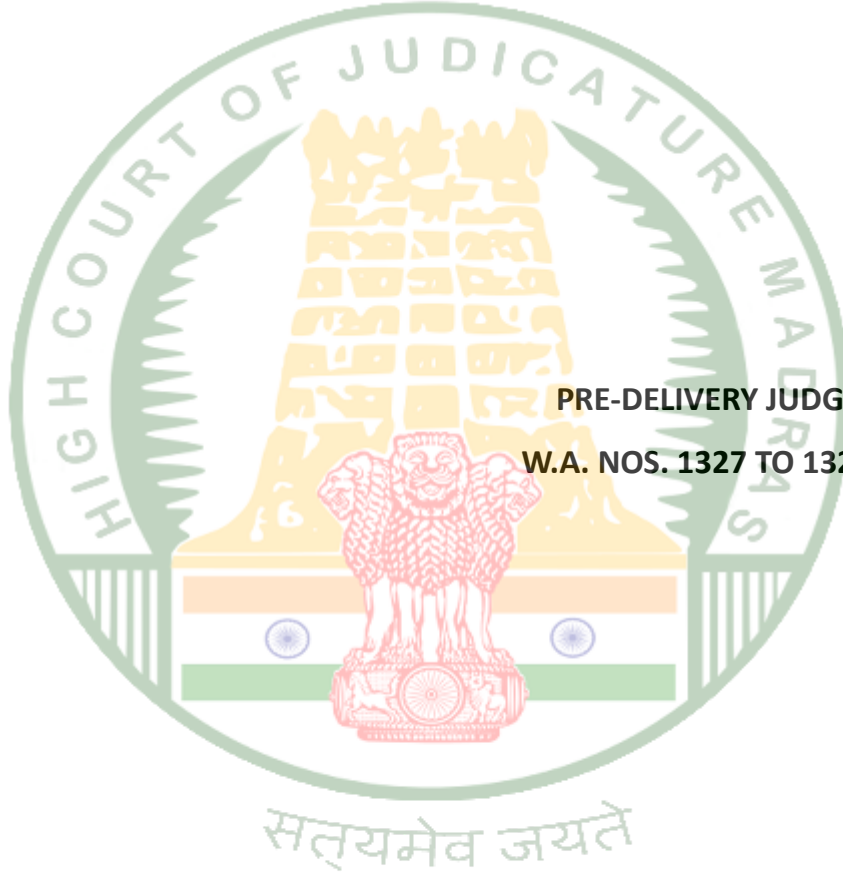
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PRE-DELIVERY JUDGMENT IN
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