**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**Reserved on 22.04.2025**

**Pronounced on : 30.04.2025**

**CORAM**

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**
**and**
**THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

**WA(MD)Nos.119 to 123 of 2022**
**and**
**C.M.P.(MD)Nos.1186, 1187, 1188, 1190, 1192, of 2022**

**In WA(MD)No.119 of 2022 : -**

1.The Assistant Commissioner of
Income Tax,
Central Circle – 2,
Income Tax Staff Quarters Complex,
Kulamangalam Road,
Meenambalpuram,
Madurai – 626 002. ... Appellant

Vs.

1.M/s.Vetrivel Minerals (VV Minerals),
Rep.by its Managing Partner,
Mr.S.Vaikundarajan ... Respondent

**Prayer :** Writ Appeal filed under Clause XV of Letters Patent, to allow this writ appeal and set aside the order passed by the learned Single Judge in WP(MD)No.11261 of 2021 dated 03.08.2021 and dismiss the writ petition.

**In WA(MD)No.120 of 2022 : -**

1.The Assistant Commissioner of
Income Tax,
Central Circle – 2,
Income Tax Staff Quarters Complex,
Kulamangalam Road,
Meenambalpuram,
Madurai – 626 002. ... Appellant

Vs.

1.M/s.Vijay Cements,
Rep.by its Partner,
Mr.V.Velmurugan ... Respondent

**Prayer :** Writ Appeal filed under Clause XV of Letters Patent, to allow this writ appeal and set aside the order passed by the learned Single Judge in WP(MD)No.11271 of 2021 dated 03.08.2021 and dismiss the writ petition.

**In WA(MD)No.121 of 2022 : -**

1.The Assistant Commissioner of
Income Tax,
Central Circle – 2,
Income Tax Staff Quarters Complex,
Kulamangalam Road,
Meenambalpuram,
Madurai – 626 002. ... Appellant

Vs.

1.M/s.Vijay Cements,
Rep.by its Partner,
Mr.V.Velmurugan ... Respondent

**Prayer :** Writ Appeal filed under Clause XV of Letters Patent, to allow this writ appeal and set aside the order passed by the learned Single Judge in WP(MD)No.11272 of 2021 dated 03.08.2021 and dismiss the writ petition.

**In WA(MD)No.122 of 2022 : -**

1.The Assistant Commissioner of
Income Tax,
Central Circle – 2,
Income Tax Staff Quarters Complex,
Kulamangalam Road,
Meenambalpuram,
Madurai – 626 002. ... Appellant

Vs.

1.M/s.Vijay Cements,
Rep.by its Partner,
Mr.V.Velmurugan ... Respondent

**Prayer :** Writ Appeal filed under Clause XV of Letters Patent, to allow this writ appeal and set aside the order passed by the learned Single Judge in WP(MD)No.11273 of 2021 dated 03.08.2021 and dismiss the writ petition.

**In WA(MD)No.123 of 2022 : -**

1.The Assistant Commissioner of
Income Tax,
Central Circle – 2,
Income Tax Staff Quarters Complex,
Kulamangalam Road,
Meenambalpuram,
Madurai – 626 002. ... Appellant

Vs.

1. M/s.Vetrivel Minerals (VV Minerals),
Rep.by its Managing Partner,
Mr.S.Vaikundarajan ... Respondent

**Prayer :** Writ Appeal filed under Clause XV of Letters Patent, to allow this writ appeal and set aside the order passed by the learned Single Judge in WP(MD)No.11765 of 2021 dated 03.08.2021 and dismiss the writ petition.

**In all cases : -**

For Appellant : Mr.N.Dilip Kumar

For Respondents : Mr.Sricharan Rangarajan, Senior Counsel,
for Mr.K.Ravi

## COMMON JUDGMENT

These writ appeals have been filed by the revenue challenging the common order dated 03.08.2021 allowing WP(MD)Nos.11261, 11271, 11272, 11273 and 11765 of 2021 filed by the assessees. There are two writ petitioners, namely, M/s.Vetrivel Minerals (V.V.Minerals) rep.by its Managing Partner S.Vaikundarajan and M/s.Vijay Cements rep.by its Partner V.Velmurugan. The broad case details stand captured in the following table :

**TABULATION OF CASES**

| SL. NO | WA Nos. | WP Nos. | PARTY WITH PAN | IMPUGNED ORDER | ASSMT. YEAR | SEC. |
|---|---|---|---|---|---|---|
| 1. | 119 /2022 | 11261 /2021 | Vetrivel minerals AAHFV-2400N | Assessment order dated 24.06.2021 and consequential rectification order dated 01.07.2021 | 2013-14 to 2019-20 | 154 1 |
| 2. | 120 /2022 | 11271 /2021 | Vijay AAAFV-1631J | Assessment order dated 16.06.2021 | 2017-18 | 153A |
| 3. | 121 /2022 | 11272 /2021 | Vijay AAAFV-1631J | Assessment order dated 16.06.2021 | 2018-19 | 153A |
| 4. | 122 /2022 | 11273 /2021 | Vijay AAAFV-1631J | Assessment order dated 16.06.2021 | 2019-20 | 143(3) |
| 5. | 123 /2022 | 11765 /2021 | Vetrivel minerals AAHFV-2400N | Assessment order dated 24.06.2021.<br><br>Assessment order dated 24.06.2021 and consequential rectification order dated 01.07.2021 | 2013-14 to 2017 - 18<br><br>&<br><br>2019-20 | |

2.Following the search conducted on the writ petitioners' premises and that of others on 25.10.2018 and other days, order under Section 127 of the Income Tax Act, 1961 was passed directing transfer of the cases set out in the schedule annexed to the order to DCIT, Central Circle-2, Madurai. Questioning the said move, WP(MD)No.16869 of 2019 was filed by M/s.V.V.Minerals. It was dismissed on 28.02.2020. WA(MD)No.417 of 2020 questioning the dismissal order dated 28.02.2020 was also dismissed. SLP filed against the order in WA(MD)No.417 of 2020 was dismissed on 14.10.2020.

3.In the meanwhile, notice dated 16.07.2019 was issued under Section 153A of the Act to M/s.V.V.Minerals for the assessment years 2013-14 to 2018-19. Notices under Section 153A of the Act were issued to Vijay Cements on 26.02.2020 for the assessment years 2017-18 and 2018-19. Another notice under Section 143(2) of the Act was issued to Vijay Cements on 11.03.2020 for the assessment year 2019-20. In response to the notices, the writ petitioners submitted their replies. They also wrote to the assessing officer requesting certain documents. The stand of the department is that permission was given to the assessee to take the copies. Finally, on 24.06.2021, assessment orders were passed under Section 143(3)/144 r/w.153A of the Act.

Subsequently, rectification order was passed under Section 154 on 01.07.2021. Challenging the same, writ petitions were filed.

4.The learned Single Judge allowed the writ petitions and set aside the assessment orders primarily on the ground that the principles of natural justice were seriously breached. The learned Single Judge noted the following :

> i) Even though as many as 101 panchnamas were prepared after the searches were concluded, they were not furnished to the assessees.
>
> (ii) Statements of certain persons including the employees of the assessees' firms which were recorded behind the back of the writ petitioners were relied upon without affording opportunity of cross-examination of such witnesses.
>
> iii) Electronic records were received in evidence in violation of the statutory mandate set out in Section 65B of the Indian Evidence Act, 1872.

The learned Judge concluded that the violation of the principles of natural justice had caused serious prejudice to the assessees. According to the learned Judge, only if the materials sought for by the assessees had been furnished, they could have established their contention as regards the non-existence of certain jurisdictional facts.

The question as to whether proceedings could have been taken under Section 153A or 153C of the Act cannot be answered in the absence of the material sought for by the assessees. The writ petitions were held to be maintainable notwithstanding the availability of alternative remedy. The assessment orders impugned in the writ petitions were quashed and de-novo assessments were ordered. Further, certain directions were also issued to guide the assessing officer as to how he should conduct the post-remand assessment proceedings. Para 26 of the order of the learned Single Judge reads as follows :

> "26.As far as WP(MD)No.11765 of 2021, is concerned, it is said to be filed only to overcome the technical objection raised by the respondent and not challenging the assessment orders separately. Therefore, the assessment orders impugned in the present writ petitions are set aside and the matter is remanded back to the respondent assessing officer for denova assessment and while doing so, the respondent officer shall,
>
> a)afford an opportunity of cross examination of the persons whose statements are relied upon by the respondent for making additions or disallowance;
>
> b)give the details of all the seized materials including the place of seizure and give copies of seized material demanded by the petitioners. In case, the department thinks that the seized materials

sought for by the petitioners does not belong to the petitioners or the petitioners' group, communicate the same to the petitioners and in such event, in the assessment orders that framed either on the concerns that do not belong to the petitioners/petitioners' group or the assessment orders that are framed on the basis of the seized materials refused to be given to the petitioners/members of the petitioners' group, there would be no tax liability on the petitioners or members of the petitioners' group;

c)the respondent should strictly comply with Section 65-B of the Indian Evidence Act if the respondent wants to use the electronic document by way of secondary evidence;

d)none of the statements of the other group should be taken into consideration while framing the assessment on the petitioners or members of the petitioners' group and if the department thinks it is necessary to use the statement of the other group members, the petitioners/members of the petitioners' group should be given opportunity for cross examination, if demanded of the persons whose statements are relied on, by the petitioners or members of the petitioners' group.

e)In case, if the department wants to fix the tax liability on the petitioners or on the members of the petitioners group, based on the search conducted and materials seized during the search conducted in the premises of the other group or in case, if the department wants to rely on the statement recorded under Section 132(4) during search conducted in the premises of the members of the other

group, the said assessment proceedings can only be under Section 153-C of the Act. The limitation if any would stand extended and would start afresh for completion of the fresh assessment proceedings."

5.The learned standing counsel appearing for the revenue contended that the writ petitions ought to have been dismissed at the threshold for non-exhaustion of the appeal remedy. He also sought to meet every other contention advanced on behalf of the assessees. The learned Senior Counsel appearing for the assessees on the other hand submitted that the impugned order does not call for interference.

6.To be fair to the learned counsel on either side, we must record that elaborate arguments were advanced by them. A number of case-laws were cited. Written submissions were filed. But we consciously refrain from going deep into the matter because, according to us, the assessees ought to avail the alternative remedy of appeal.

7.Section 246A of the Income Tax Act provides for remedy of appeal before the Commissioner (Appeals). The Hon'ble Supreme Court of India in the decision reported in ***(2014) 1 SCC 603 (Commissioner of Income Tax v. Chhabil Dass Agarwal***) held that when the Income

Tax Act provides complete machinery for the assessment/re-assessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the revenue authorities, the assessee could not be permitted to abandon the machinery and invoke the writ jurisdiction when he had adequate remedy open to him by way of an appeal to the Commissioner of Income Tax (Appeals).

8.We propose to non-suit the writ petitioners by upholding the objection of the standing counsel on the anvil of ***Chhabil Dass Agarwal***. We are conscious of the withering criticism made in ***Kanga & Palkhivala's The Law and Practice of Income Tax (11th Edition)*** by the eminent lawyer Shri Arvind P Datar. The learned author at Page 16 has remarked thus :

> "There is an increasing and regrettable reluctance on the part of the High Courts to interfere under art 226 even where the assessments are sought to be reopened completely without any jurisdiction. The case that is often relied on is *CIT v Chhabil Dass Agarwal*, where the assessee had not filed any return in response to a notice under s 148 and was subject to best judgment assessment under s 144. He then questioned this assessment under art 226 and the Sikkim High Court erroneously allowed the writ petition even though several factual questions were

involved. When this matter was taken to the Supreme Court, it could have simply allowed the Department's appeal, but the court went on to make an elaborate order discussing the law relating to alternate remedy even though this was wholly unnecessary. But the Chhabil Dass decision is repeatedly relied upon by the High Court to reject writ petitions even in the most genuine cases. The Chhabil Dass decision mercifully recognizes some exceptions and these are: (a) where the statutory authority has not acted in accordance with the enactment in question or (b) in defiance of the fundamental principles of judicial procedure, or (c) has sought to invoke provisions which are repealed, or (d) when an order is passed in total violation of the principles of natural justice. It is submitted that another exception to the rule is where the statutory authority seeks to demand tax or duty on the basis of an amendment that has come much later, or, in other words, deliberately ignores the statutory provisions which were applicable at the relevant time."

With utmost respect to the aforesaid remarks, we have to observe that ***Chhabil Dass Agarwal*** does not stand in isolation. It is in good company. As early as in 1961, a three Judges Bench decision in ***C.A. Abraham v. ITO (1960 SCC OnLine SC 128***) authored by J.C.Shah, J. held thus :

> "3. In our view the petition filed by the appellant should not have been entertained. The Income Tax Act provides a complete machinery for assessment of tax and imposition of penalty and for obtaining relief in respect of any improper orders passed by the Income Tax Authorities, and the appellant could not be permitted to abandon resort to that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Tribunal...."

***Chhabil Dass Agarwal*** merely reiterates the position laid down in ***C.A.Abraham***. In fact, even the language has been reproduced. Thus, if at all, the original sin was committed in ***C.A.Abraham***. ***Chhabil Dass Agarwal*** had been approvingly cited in a host of subsequent decisions by the Supreme Court even in matters arising under other statutes.

9.It is true that exceptions have been carved out in ***Chhabil Dass Agarwal*** for by-passing the alternative remedy. When an order has been passed in total violation of the principles of natural justice, the assessee can, no doubt, seek writ remedy. According to the learned Senior Counsel appearing for the assessee, the case on hand would fall under the said exceptional category. We are of the view that even in such cases, it would still be a question of discretion to be exercised by the writ court.

10.In other words, even if the writ petitioner demonstrates that the case on hand falls under the exceptions carved out in ***Chabbil Dass Agarwal***, still the writ court has to apply its mind and judiciously exercise its discretion as to whether the appeal remedy can be by-passed. There cannot be any automatic admission or entertaining of writ petitions even in such cases. It would always be possible to point out some breach of procedure or violation of principles of natural justice by the authority concerned. The writ court should not readily latch on to that argument to facilitate by-passing the statutory remedy. The courts must see if the point projected by the petitioner goes to the root of the matter. That is why, the Division Bench of the Delhi High Court in the decision reported in ***1974 SCC OnLine Del 177 (Gee Vee Enterprises v. CIT***) relying on the decision of the Hon'ble Supreme Court reported in ***(1971) 3 SCC 20 (Champalal Binani v. CIT, West Bengal)*** remarked that while it is most important that the assessee must get the benefit of the rules of natural justice, such a benefit can be given to him by the Income Tax authorities themselves and that it cannot be said that he can be given natural justice only by the writ court.

11.While dealing with such issues, the big picture may have to be taken into account. We had a look, let us clarify just a look, at the

impugned assessment orders. The figures are mind-boggling. Several crores of rupees have not at all been accounted for and additions had to be made on that score. When confronted as regards the manner in which certain expenditures had been shown in the books of account, Thiru.Vaikundarajan is said to have replied that the nature of his business being what it is, the manner of accounting cannot be helped. We could notice that the officials of the Income Tax Department had taken extraordinary pains to gather the incriminating materials and after putting the assessees on notice, the impugned orders came to be passed. The process had taken close to three years. The searches took place in October 2018. The assessment orders came to be passed in June 2021. It would not be appropriate to knock out all these proceedings and order de-novo assessments on a technical ground. In any event, we cannot endorse the directions passed by the learned Single Judge which will have the effect of micromanaging the assessment proceedings and interfering with the discretion of the authority. However, we direct the department to furnish copies of all the panchnamas (101) prepared at the end of the searches made by them forthwith so that the assessees can effectively pursue their appeal remedy.

12.It is true that statements of persons who were not made available for cross-examination were relied upon in the impugned order. To our specific question as to whether Thiru.Vaikundarajan or Velmurugan made any request for cross-examination, the learned Senior Counsel replied that Thiru.Jegadeesan, the estranged brother of Thiru.Vaikundarajan made such a request. Since Thiru.Jegadeesan is also a partner, his request must be taken as request made on behalf of the firm. This contention is no doubt attractive. The fact remains that before us V.V.Minerals and Vijay Cements, the firms in question, are represented by Thiru.Vaikundarajan and his son Velmurugan respectively. When the persons before this Court had not made a request for cross-examination, we are of the view that this could not have been the ground for by-passing the appeal remedy. However, we would permit this point to be urged before the appellate authority.

13.The learned Single Judge had concluded that Section 65B of the Indian Evidence Act, 1872 would strictly apply to the impugned assessment proceedings. Sections 65A and 65B of the Indian Evidence Act (corresponding to Sections 62 and 63 respectively of Bharatiya Sakshya Adhiniyam, 2023) is as follows :

"65A. Special provisions as to evidence relating to electronic record. —The contents of electronic records may be proved in accordance with the provisions of section 65B.

65B. Admissibility of electronic records. — (1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.

.....

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, —

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate,

and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

Section 63 of Bharatiya Sakshya Adhiniyam, 2023 deals with the admissibility of electronic records. Sub-section (4) of the said provision is as follows :

"(4) In any proceeding where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things shall be submitted along with the electronic record at each instance where it is being submitted for admission, namely,

a)...

b)...

c)...

and purporting to be signed by a person in charge of the computer or communication device or the management of the relevant activities (whichever is appropriate) and an expert shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it in the certificate specified in the Schedule.

Thus, under the new law of evidence, expert's certificate is also made mandatory. This is an extra requirement. We may now examine if the statutory requirement set out in the Evidence Act (now BSA) must be fulfilled before the assessing authority would receive the electronic record as evidence in the assessment proceedings. Our answer is in the negative. We hold that Section 65B of the Evidence Act, 1872 as well as Section 63 of Bharatiya Sakshya Adhiniyam, 2023 are inapplicable to the assessment proceedings before the assessing officer/appellate authority/tribunal.

14.In the decision reported in ***AIR 1967 SC 768 (CIT vs. East Coast Commercial Company)***, the Hon'ble Supreme Court was concerned with the admissibility of the report of the Income Tax Investigation Commission since certain provisions of the Taxation of Income (Investigation Commission) Act relating to the inquiries to be held were declared to be ultra vires. While holding that the report of the commission had evidentiary value and could be taken into account, the Hon'ble Supreme Court held that the Income Tax authorities are not strictly bound by the rules of evidence. It was however observed that the report must be brought to the notice of the assessee and the assessee must be given an opportunity to make its representation

against the report and to tender evidence against the truth of the recitals contained therein. In ***Amiya Bala Paul v. CIT (2003) 6 SCC 342***, it was held that the assessing officer who is the fact finding authority is not bound by strict rules of evidence. In ***Commr. of Customs v. South India Television (P) Ltd., (2007) 6 SCC 373***, it was held that strict rules of evidence do not apply to adjudication proceedings and they apply strictly to courts' proceedings. Of course, the assessing officer has to examine the probative value of the documents on which reliance is placed by the department. This decision rendered in the context of customs law has been followed in a catena of subsequent decisions. A Five Judges Bench of the Hon'ble Supreme Court in ***Union of India v. Madras Bar Assn., (2010) 11 SCC 1*** noted the difference between courts and tribunals. While courts are governed by detailed statutory procedural rules, in particular, the code of Civil Procedure and the Evidence Act requiring an elaborate procedure in decision making, tribunals generally regulate their own procedure applying the provisions of CPC only where it is required and without being restricted by the strict rules of the Evidence Act. When tribunals themselves are not bound by the technical provisions of the law of evidence, it is too obvious that quasi judicial authorities cannot also be bound. Section 1 of the Indian Evidence Act, 1872 makes it clear that its provisions apply to all judicial

proceedings in or before any court. Section 1 of BSA is also on the same lines. They do not anywhere say that they would apply to quasi judicial proceedings. When the statutory law does not mandate the applicability of Section 65B (corresponding to Section 63 of BSA) and when the Hon'ble Supreme Court has been repeatedly holding that the income tax authorities are not bound by the rules of evidence, the learned single Judge could not have held that Section 65B of the Evidence Act is applicable. This conclusion is patently erroneous. That is why, when the impugned decision was cited in WP No.11630 of 2023 etc batch, His Lordship Mr.Justice C.Saravanan declined to follow the same (vide order dated 18.01.2024). We endorse and uphold the view taken in WP No.11630 of 2023.

15.We however clarify that it is open to the assessee to challenge the genuineness of the material relied on by the department. But the non-furnishing of the certificate under Section 65B cannot be used as a shield to resist the reception of the electronic record. This is for the simple reason that the assessment proceedings are not judicial proceedings and the technical rules of the Evidence Act are inapplicable to them. There is yet another reason. The adverse materials have been seized from the electronic systems and instruments maintained by the

assessees/their employees. It would be too much to expect them to issue certificates in favour of the department which would use the material against them.

16.We came across the Digital Evidence Investigation Manual 2014 issued by the Central Board of Direct Taxes in which it has been mentioned that since Section 65A and 65B of the Indian Evidence Act govern the integrity of the electronic record, while handling any digital evidence, the procedure has to be in consonance with the said provisions. We are however of the view that the contents of a manual cannot have any statutory value or force and in any event, they cannot alter the legal position laid down by the Hon'ble Supreme Court. When there is no statutory provision which makes the rules of Evidence Act applicable to the assessment proceedings under the Income Tax Act, they cannot become applicable by virtue of the contents found in the manual issued by the department.

17.We do not want to delve further into the matter as we are of the view that it may prejudice the case of the assessees before the appellate forum. When we relegate a litigant to go before the appellate forum, we should not render any finding on facts. That is why, apart

from clarifying on the legal issue of applicability of Section 65B of the Evidence Act, we have not touched on any other aspect.

18.In view of the foregoing reasons, the impugned order of the learned Single Judge allowing the writ petitions is set aside. The appellant is directed to furnish the petition mentioned panchnamas (101) to the writ petitioners within three weeks from the date of receipt of copy of this order. The assessees are given four weeks from the date of receipt of panchnamas to file appeals under Section 246A of the Act. All the contentions of the assessees are left open except on the issue of applicability of Section 65B of the Indian Evidence Act.

19.The writ appeals are allowed. No costs. Connected miscellaneous petitions are closed.

**(G.R.S. J.,) & (M.J.R. J.,)**
**30.04.2025**

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
SKM

To:-

The Assistant Commissioner of Income Tax,
Central Circle – 2, Income Tax Staff Quarters Complex,
Kulamangalam Road, Meenambalpuram, Madurai – 626 002.

**G.R.SWAMINATHAN, J.**
**and**
**M.JOTHIRAMAN, J.**

SKM

**WA(MD)Nos.119 to 123 of 2022**
**and**
**C.M.P.(MD)Nos.1186, 1187, 1188, 1190, 1192, of 2022**

**30.04.2025**