IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 12.10.2015 & Pronounced on: 27.10.2015

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN
and
THE HON'BLE MR.JUSTICE T.MATHIVANAN

W.A.Nos. 1171 and 1172 of 2015

M/s. PVP Ventures Limited,
rep. by its Head -Finance &
Accounts Mr.S.Kannan,
KRM Centre, 9th Floor,
No.2, Harrington Road,
Chetpet, Chennai - 600 031. ..Appellant/Petitioner in both Appeals

Vs.

1. The Assistant Commissioner of
Income Tax, Corporate Circle 5(2),
121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034. ...1st Respondent in WA.1171/2015

2. The Deputy Commissioner of
Income Tax, Corporate Circle 5(2),
121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034. ..2nd Respondent in WA.1171/2015 & Respondent in WA.1172/2015/Respondents

Writ Appeals under Clause 15 of Letters Patent against the common order dated 11.06.2015 passed by a learned Judge, dismissing the writ petitions filed by the appellant in W.P.Nos.1626 and 2057 of 2015.

WP.No.1626/2015: This Writ petition is filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorari to call for the records on the file of the 2nd respondent and quash the impugned proceedings in PAN No.AAACS310P/Corp.Cir-5(2)/2014-15 dated 12.01.2015 of the Respondent along with notice issued by the 1st Respondent u/s.148 of the Act dated 10.12.2013

WP.NO.2057/2015: This Writ petition is filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorarified mandamus, to call for the records on the file of the respondent and quash the impugned order dt 20.1.2015 and consequently direct the respondent to afford opportunity of being heard.

For Petitioner : Mr. R.Sivaraman
For Respondents : Mr. T.Pramodkumar Chopda

COMMON JUDGMENT

These writ appeals arise out of the dismissal of two writ petitions filed by the appellant, questioning a show cause notice dated 12.1.2015 and an order of assessment dated 20.1.2015 passed after reopening of assessment.

2. We have heard Mr.R.Sivaraman, learned counsel for the appellant and Mr.Pramodkumar Chopda, learned Standing Counsel appearing for the respondent.

3. The appellant/assessee filed a Return of Income on 30.9.2008 declaring a loss of Rs.14,07,72,863/-. Later they filed a Revised Return of Income on 26.3.2009 declaring a loss of Rs.17,47,251/-. The case was selected for scrutiny and a notice under Section 143(2) and 142(1) was issued.

4. Six specific issues were taken up in the course of scrutiny proceedings. One of them related to income from purported sale of land. The assessee had declared an income of Rs.14,31,19,916/- as Short Term Capital Gain on sale of land. Since Fixed Assets Schedule of the company for the relevant previous year did not show any land having been disposed of and since the depreciation statement of the assessee prepared for income tax purposes also showed a particular value at the beginning and at the end of the relevant year, the Assessing Officer concluded in para 5 of the Order of Assessment dated 31.12.2010 that the assessee had income from undisclosed sources assessable under Section 69A. Consequently, the Assessing Officer treated the entire receipt of sale consideration of Rs.31,07,20,000/- derived by the assessee from undisclosed sources assessable under Section 69A.

5. Subsequently, the Assessing Officer passed a rectification order on 6.9.2011 under Section 154 of the Act. This order was for the purpose of adjustment of losses under the

head Unabsorbed Depreciation and Business Loss of Earlier Years.

6. More than two years after the order passed under Section 154 and more then three years after the Original Order of Assessment, the Assessing Officer issued a notice under Section 148, proposing to reassess the income for the Assessment Year 2008-09, on the ground that he had reason to believe that the income chargeable to tax had escaped assessment within the meaning of Section 147.

7. The appellant made a request on 19.12.2013 demanding reasons for the reopening of assessment. The reasons for reopening the assessment were communicated by a letter dated 8.12.2014. The letter reads as follows:

> "The scrutiny assessment was completed u/s 143(3) determining the total income at Rs.415.20 crores after making an addition of Rs.415.37 crores which included Rs.408.78 crores made u/s 68 & 69A. The assessment was revised which interalia included to allow the assessee's claim for set off of unabsorbed depreciation aggregating to Rs.45.18 crores relating to A.Y. 2004-05 and unabsorbed business loss of Rs.4.15 crores relating to A.Y.2005-06. The above addition u/s 68 & 69A is deemed income of the assessee and does not come under any heads of income specified in Chapter IV of the Income-tax Act, 1961 and hence brought forward business loss and depreciation cannot be set off against this as per Section 72."

8. Immediately the appellant submitted their objections on 12.12.2014, followed by another letter dated 15.12.2014. But overruling the objections, an order was passed on 12.1.2015. Simultaneously, a show cause notice was also issued on 12.1.2015, seeking to make additions.

9. The appellant submitted their detailed objections on 19.1.2015. On the very next day namely 20.1.2015, the Assessing Officer passed an order of assessment and directed the issue of demand notice. A demand notice dated 21.1.2015 was accordingly issued.

10. Aggrieved by the show cause notice dated 12.1.2015 as well as the order of assessment dated 20.1.2015, on the ground that the reopening of assessment itself was illegal, the appellant filed two writ petitions in W.P.Nos. 1626 and 2057 of 2015. The writ petitions were dismissed by the learned Judge by

a common order dated 11.06.2015, on the ground that since the original Returns filed by the appellant got merged with the rectification order dated 6.9.2011, the period of 4 years has to be calculated not from the end of the relevant assessment year, but from the date, on which, the rectification application was filed. Therefore, the learned Judge held that the reopening of assessment was within the period of 4 years prescribed under Section 147. In the light of such a conclusion, the learned Judge held that the appellant should canvass the correctness of the order of assessment only before the First Appellate Authority in regular appeal. Aggrieved by the said common order of the learned Judge, the appellant is before us.

11. At the outset, even Mr.T.Promodkumar Chopda, learned Standing Counsel for the department, does not support the conclusion reached by the learned Judge that the reopening of assessment should be taken to be within the period of 4 years, in view of the fact that a petition for rectification under Section 154 was filed on 25.1.2011. This is due to the fact that the Proviso to Section 147 makes it very clear that where an assessment under Section 143(3) has been made for the relevant assessment year, no action shall be taken under this section after the expiry of 4 years from the end of the relevant assessment year. The only exception to this Rule of Limitation is that if any income chargeable to tax has escaped assessment by reason of the failure on the part of the assessee to make a return under Section 139 or in response to a notice issued under Section 142(1) or Section 148 or to disclose fully and truly all material facts necessary for his assessment, the limitation of 4 years may not apply.

12. The Proviso to Section 147 does not use the expression "assessment" or "reassessment". Therefore, the starting point for the period of limitation is not the date of assessment or revised assessment and/or reassessment. The Proviso uses the expression "from the end of the relevant assessment year". Hence, the finding recorded by the learned Judge in para 16 of his common order dated 11.06.2015 is not correct. This is why the learned Standing Counsel for the Department endeavoured to contend before us that this is a case of failure on the part of the assessee to disclose fully and truly all material facts. In other words, the attempt of the learned Standing Counsel for the Department was to convince us that though the reopening of assessment was sought to be made beyond the period of limitation stipulated in the proviso to Section 147, the case is one of failure to disclose and it is a case of escapement of assessment within the purview of Explanation 2 to Section 147.

13. Having cleared the question of limitation as above, let us now move on to the contentions of the appellant.

14. Assailing the order of the learned Judge, it is contended by Mr.R. Sivaraman, learned counsel for the appellant/assessee that the mere reopening of assessment was on a change of opinion on the part of the Assessing Officer and hence, it is bad in law.

15. The next contention of the learned counsel for the appellant is that the reasons for reopening the assessment indicated in the letter dated 8.12.2014 were different from the reasons indicated in the show cause notice dated 12.1.2015 and hence, the order resulting therefrom is illegal.

16. The third contention of the learned counsel for the appellant is that this is not a case, which will fall either under the category of (i) failure to file return or (ii) failure to disclose fully and truly all material facts. Therefore, the period of limitation would operate in respect of the case on hand.

17. The last contention of the learned counsel for the appellant is that the Assessing Officer was in such a great hurry that he neither considered the detailed objections submitted on 19.1.2015 nor considered a letter seeking time to file further objections. Therefore, the learned counsel contends that there was a gross violation of principles natural justice.

18. On the first contention, we do not think that we need to spend more time. The Supreme Court made it clear in Commissioner of Income Tax v. Kelvinator of India Limited [(2010) 320 ITR 561 (SC)], that though the power to reopen assessment, after the Direct Tax Laws (Amendment) Act 1987, is much wider, one needs to give schematic interpretation to the words "reason to believe", failing which, Section 147 would give arbitrary powers to the Assessing Officer to reopen assessments on the basis of "mere change of opinion". The Court emphasised that the Assessing Officer has no power of review and that there is a conceptual difference between the power of review and power to reassess. One must treat, according to the Supreme Court, the concept of "change of opinion" as an inbuilt test to check abuse of power by the Assessing Officer.

19. The reliance placed by Mr.T.Pramodkumar Chopda, learned Standing Counsel for the Department on the decision of the Supreme Court in Reymonds Woollen Mills Limited v. Income Tax Officer [(1999) 236 ITR 34 (SC), cannot be of any assistance to him. The decision in Kelvinator was by a three Member Bench and it was made long after the decision in Reymonds Woollen Mills

Limited.

20. It is contended by Mr.T.Promodkumar Chopda, learned Standing Counsel for the Department that this is not a case of change of opinion. At the time when a scrutiny assessment was made, the Assessing Officer did not even form an opinion about the addition made under Sections 68 and 69A. Therefore, the reopening of assessment, according to the learned Standing Counsel, cannot be said to tantamount to change of opinion.

21. We do not agree. The scrutiny assessment order dated 31.12.2010, as we have pointed out earlier, dealt with six specific issues. One such issue was the income from purported sale of land. In paragraph 5 of the order of scrutiny assessment dated 31.12.2010, the Assessing Officer specifically dealt with income from undisclosed sources assessable under Section 69A. Paragraph 5 of the scrutiny assessment order dated 31.12.2010 reads as follows:-

> "5. Income from purported Sale of land:
> The assessee has declared an income of Rs.14,31,19,916/- as Short Term Capital Gain (STCG) on sale of land. It was seen from the Fixed Schedule of the assessee company for the relevant previous year that no Land has been shown as disposed off (land value at the beginning and at the end of the relevant year quantified at Rs.15,12,91,428/-). The Depreciation Statement of the assessee prepared for I.T. purposes also shows the same value at the beginning and at the end of the relevant year. Hence, it can be conclusively taken that the assessee has income from undisclosed sources (assessable u/s 69A) which it has tried to project as income from STCG, obviously, for the purpose of Set-off of STCG against business loss. Therefore the entire receipt of sale consideration of Rs.31,07,20,000/- derived by the assessee from undisclosed sources is assessed u/s.69A of the I.T. Act."

22. Therefore, it is wholly untenable for the Revenue to contend that the Assessing Officer never formed an opinion at the time of scrutiny assessment and that therefore, the formation of opinion for the first time cannot tantamount to change of opinion.

23. Drawing our attention to the show cause notice dated 12.1.2015, it is next pointed out by the learned Standing Counsel for the Department that there were actually four

different reasons for the reopening of assessment. Hence, it is contended that even if the issue relating to income from undisclosed sources assessable under Section 69A is taken to have been already covered by the scrutiny assessment order, the other issues raised in the show cause notice would still remain.

24. But unfortunately for the Department, we cannot now allow the Department to enlarge the scope of the enquiry under Section 147. As per the communication dated 8.12.2014, which we have extracted in para 7 above, there was only one reason stated for reopening of the assessment. The Department will have to stand or fall only on the reasons stated therein, for justifying the reopening of assessment.

25. However, drawing our attention to Explanation 3 under Section 147, it is contended by Mr.T.Pramodkumar Chopda, learned Standing Counsel for the Department that the reassessment sought to be made under Section 148, need not be confined to the reasons stated in the proceedings under Section 148(2). In support of this contention, the learned Standing Counsel placed reliance upon a decision of the Punjab and Haryana High Court in Majinder Singh Kang v. Commissioner of Income Tax [(2012) 25 Taxmann.com 124].

26. In order to test the above contention, we have to take note of the provisions of Sub-Sections (1) and (2) of Section 148 as well as Explanation-3 under Section 147. Sub-Section (1) of Section 148 obliges the Assessing Officer to serve a notice on the assessee requiring him to furnish a return of his income in respect of which he is assessable. Before issuing any such notice under Section 148(1), the Assessing Officer is made obliged to record his reasons for doing so under Sub-Section (2) of Section 148.

27. Keeping this in mind, let us see what Explanation 3 to Section 147 says, which reads as follows:

> "Explanation 3. - For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148."

28. A careful perusal of the Explanation extracted above would show that the Assessing Officer is given liberty to assess

or reassess the income in respect of any issue that comes to his notice subsequently in the course of the proceedings under Section 147, even if the reasons for such issue have not been included in the proceedings under Section 148(2). Two sets of words found in Explanation 3 are of importance. The word "subsequently" and the words "in the course of proceedings" clearly indicate that an issue other than the one mentioned in the order under Section 148(2) should have come to his notice, after the recording of reasons. It should have come to his notice "in the course of proceedings". The words "in the course of proceedings" are also of significance. As a matter of fact, in the decision of the Punjab and Haryana High Court in Majinder Singh Kang, the assessment was reopened on the ground that the assessee in question, who was the Chairman of a State owned Corporation, was charge sheeted by the Department of Vigilance and Anti-Corruption, after which, he filed a revised Return. Therefore, there was never a question as to the issue whether the reopening of assessment was proper or not. After the threshold entry point was crossed, the Assessing Officer found in the course of the proceedings that some other additions were also liable to be made. Therefore, the said case is of no assistance to the Revenue.

29. Even the decision in Commissioner of Income Tax v. Mehak Finvest (P) Ltd. [(2014) 52 Taxmann.com 51] of the Punjab and Haryana High Court cannot go to the rescue of the Revenue. In that case, the Assessing Officer reopened the assessment, upon receipt of information that various finance companies managed and controlled by Chartered Accountants were involved in providing accommodation entries to the assessee company. Therefore, the validity of the reopening of assessment was not in doubt. After reopening, the Assessing Officer also found that there was an unexplained income in the form of share application money. Therefore, it was added. This was upheld by the Punjab and Haryana High Court. Hence, the said decision is of no avail to the Revenue.

30. As we have indicated earlier, cases where the reopening is found to be within the parameters of the prescription contained in Sections 147 and 148, the additions made subsequently in the course of the proceedings, have always been upheld by Courts. But, where the reopening of assessment cannot stand on the strength of the reasons recorded under Section 148 (2), the Revenue cannot seek to justify the reopening, by finding some point or the other post-facto after the reopening of assessment.

31. Sub-Sections (1) and (2) of Section 148 and Explanation 3 under Section 147 contemplate two entry points or two gate

ways. The first entry point or the outer gate is the formation of an opinion that there was some income, which escaped assessment and which is reflected in the reasons recorded under Section 148(2). The Assessing Officer will be permitted entry through this outer gate only if he satisfies three criteria namely (i) the existence of a reason to believe that an income chargeable to tax has escaped assessment (ii) the recording of reasons under Section 148(2) and (iii) the issuing of notice under Section 148(1). Once the Assessing Officer satisfies these three criteria, he is allowed entry through the outer gate or the first check-post. The moment he has gained entry lawfully through the first check-post, the proceedings for reassessment begin. In the course of those proceedings, if issues other than those, which triggered the formation of his opinion under Section 147, come to his notice, he would be permitted, by virtue of Explanation 3, to gain entry into all other check-posts located within the prohibited area. Therefore, Explanation 3 comes into play only after the Assessing Officer gains entry through the first door. If the Assessing Officer is imagined to be an air passenger, travelling by flight to another destination, his reason to believe, his recording of reasons and the issuance of notice can be compared to a valid ticket that he holds. Only if he holds such a valid ticket, he will be permitted entry into the airport. After gaining entry into the airport, he may also be permitted to visit restaurants, duty-free shops etc., before boarding the flight. His access to the facilities inside the airport is dependent upon his right of entry into the airport. This is how Sub-Sections (1) and (2) of Section 148 and Explanation 3 to Section 147 have to be understood.

32. Therefore, any number of reasons indicated in the show cause notice, cannot justify the reopening of assessment. The justification for reopening of assessment has to be tested only on the strength of the order recording reasons for reopening under Section 148(2). Once the reasons are found to be not within the prohibited degree or found not to be a mere change of opinion, or found not to be amenable to attack on any other ground under Section 147, then, proceedings for reassessment would commence. After commencement, all other issues including those not covered in the original notice will also be amenable to scrutiny by the Assessing Officer. Hence the contention based upon Explanation 3 to 147 is rejected.

33. That takes us to the next question as to whether this case would fall under the category of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment.

34. This question becomes one of importance in view of the admitted position and in view of our finding that the reopening has obviously taken place after the expiry of four years from the end of the relevant assessment year. Under the proviso to Section 147, there must be a failure on the part of the assessee to disclose fully and truly all material facts, to justify reopening of assessment after the expiry of four years.

35. In the case on hand, paragraph 5 of the order of scrutiny assessment dated 31.12.2010 and the order passed under Section 154 on 6.9.2011 show that all material facts on account of which the Assessing Officer sought to reopen the assessment, were not only available on record but they had also been taken into account by the Assessing Officer. There was nothing that the assessee has failed to disclose fully and truly. What was shown by the assessee as income from undisclosed sources assessable under Section 69A was not only available, but was very clearly taken note of by the Assessing Officer both in the order of scrutiny assessment dated 31.12.2010 and the order under Section 154 dated 6.9.2011. The record of reasons under Section 148(2), made on 8.12.2014 does not disclose what are the material facts that the appellant/assessee failed to disclose truly and fully. The reasons for reopening, recorded on 8.12.2014 are already available and taken note of in para 5 of the order of scrutiny assessment. Therefore, this is not a case where the appellant/assessee can be held to have failed to disclose truly and fully all material facts.

36. Mr.T.Promodkumar Chopda, learned Standing Counsel for the department, in a brave attempt to save the reopening of assessment, contended that if an assessee makes a claim in the Form in which he files his return and that claim is found to be legally untenable, the same would tantamount to a failure to disclose truly and fully all material facts. In other words his contention is that if an assessee has claimed an addition or allowance under a particular provision though he is not entitled to the same in law, he would be taken to be guilty of failure to disclose fully and truly according to the learned Standing Counsel, the assessee made a claim under Section 68 and 69A though he was not entitled to the same and that this would amount to a failure to disclose.

37. Except patting the learned Standing Counsel for his bravery, we do not think that we can go with him. True and full disclosure contemplated in the first proviso to Section 147 is that "all material facts" and not of a legal provision. If an assessee has disclosed all material facts truly and fully, but has made a claim which is wrong in law, the same cannot amount

to failure to disclose, in terms of the first proviso to Section 147.

38. In Fenner (India) Limited v. Deputy Commissioner of Income Tax [(2000) 241 ITR 672], R.Jayasimha Babu, J (as he then was) explained this position as follows:-

> "21. The duty of an assessee is limited to fully and truly disclose all the material facts. The assessee is not required thereafter to prepare a draft assessment order. If the details placed by the assessee before the AO was in conformity with the requirements of all applicable laws and known accounting principles, and materials details had been exhibited before the AO, it is for the AO to reach such conclusions as he considered was warranted from such data and any failure on his part to do so cannot be regarded as assessee's failure to furnish the material facts truly and fully. Any lack of comprehension on the part of the AO in understanding the details placed before him cannot be confer a justification for reopening the assessment, long after the period of four years had expired. On the facts of this case, it is clear that the escapement of income if any on this account is not on account of any failure on the assessee's part to disclose the material facts fully and truly. The notice issued by the AO in exercise of his power under s.147, therefore, cannot be sustained."

39. Similarly, in Assistant Commissioner of Income Tax v. ICICI Securities Primary Dealership Limited [(2012) 348 ITR 299], the Supreme Court held that when all details with respect to the stocks and shares and the income derived therefrom are disclosed in the Return, a dispute as to whether the loss incurred was a business loss or speculative loss, cannot come under the category of failure to disclose.

40. In Commissioner of Income Tax v. Elgi Finance Limited [(2006) 286 ITR 674], this Court found that when the assessee had furnished details regarding the acquisition of various machineries and assets and the details regarding leasing out of those machineries together with the lease rent received as well as computation of depreciation, an attempt to reopen the assessment was made on the ground that depreciation was claimed and allowed at an higher rate. This Court held that when all material facts had been disclosed truly and fully, the question as to the correct rate of depreciation to be allowed cannot be a reason for reopening after four years. Incidentally this

decision also arose under identical circumstances where there was a scrutiny assessment followed by an order of rectification under Section 154.

41. The learned Standing Counsel for the department relies upon a decision of the Bombay High Court in Sociedade De Formento Industrial (P) Ltd., v. Assistant Commissioner of Income Tax [(2010) 235 CTR 322 (Bombay)], to drive home the contention as to what would constitute true and full disclosure. But the said decision arose out of a case where the assessee did not disclose the fact that there was a new unit started. The case arose out of a non-disclosure of a fact and not of law.

42. In Indian Hume Pipe Co. Limited v. Assistant Commissioner of Income tax [(2011) 16 taxmann.com 190], the Bombay High Court held that the full and true disclosure contemplated by statute must be judged in the context of Explanation 1 to Section 147. The Court also held that the mere production of account books or other evidence from which material evidence could have been discovered, if the Assessing Officer had exercised due diligence, would not tantamount to a true and full disclosure. The said decision was also followed by the same High Court in Pranawa Leafin (P) Ltd., v. The Deputy Commissioner of Income Tax [(2013) 33 taxmann.com 454].

43. But the above decision would not be of any assistance to the Revenue in this case. It is for the reason that in the case on hand, the Assessing Officer indicated in para 5 of the scrutiny assessment order, not only the disclosure but also his application of mind to the same.

44. The decision of the Delhi High Court in Dalmia (P) Ltd. Vs. C.I.T. [2011 (14) Taxmann.com 106], relied upon by the learned Standing Counsel for the Department, would not also advance the case of the Department. This is for the reason that in that case, the re-assessment proceedings were initiated on the basis of audit note and the Assessing Officer called for complete details and confirmations from sundry creditors. The assessee was able to provide confirmation only for part of the amount. But, the assessee contended that in the original proceedings, the Assessing Officer had taken a conscious and deliberate decision to add one particular portion of the amount, for which, confirmation was called for. Therefore, the assessee relied upon the decision in Kelvinator. But, the Delhi High Court held that in the questionnaire issued by the Assessing Officer at the time of the original assessment proceedings, the assessee was asked to submit a list of sundry creditors with their names and addresses and that the said demand was only partially complied by the assessee. Therefore, the Court held

that there was no formation of opinion in the first instance, so as to enable the assessee to contend that the reopening of assessment was merely a change of opinion. In contrast to the said case before the Delhi High Court, the Assessing Officer, in the case on hand, had all material facts on hand in the course of scrutiny assessment and also applied his mind to the claim, as seen from paragraph 4 of the scrutiny assessment order. Therefore, the decision in Dalmia cannot be pressed into service.

45. The decision of the Gujarat High Court in Fakkir Mohamed Haji Hasan Vs. C.I.T. [2002 (120) Taxmann 11 (Guj.)], relied upon by the learned Standing Counsel for the Department, is not a case that arose out of reopening of assessment. The said decision relates to the applicability of Sections 69, 69A, 69B and 69C.

46. The Standing Counsel relies upon this decision to contend that the Assessing Officer was right on the merits of the case.

47. But, we have not tested the merits of the case. We are on the primary question as to whether the reopening of assessment is in accordance with the provisions of the statute or not.

48. Therefore, in fine, we hold

(i) that there was true and full disclosure by the assessee of all material facts;

(ii) that in the scrutiny assessment order, the Assessing Officer accepted the claim of the assessee under Section 69A;

(iii) that however, after the expiry of four years, the Assessing Officer sought to reopen the proceedings contrary to the proviso to Section 147; and

(iv) that therefore, the reopening of assessment is contrary to law.

49. Once it is found that the reopening of assessment is contrary to law, the question of directing the appellant to the alternative remedy of appeal before the Commissioner of Income Tax does not arise, especially when the case is obviously one of change of opinion.

50. In the result, the writ appeals are allowed, the common order of the learned Judge is set aside and the writ petitions are allowed. No costs.

Sd/
ASSISTANT REGISTRAR(CS-III)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

gr./RS

To

1. The Assistant Commissioner of Income Tax,
Corporate Circle 5(2), 121,
Mahatma Gandhi Road, Nungambakkam,
Chennai - 600 034.

2. The Deputy Commissioner of Income Tax,
Corporate Circle 5(2),
121, Mahatma Gandhi Road,
Nungambakkam, Chennai - 600 034.

+1 CC to MR.R.Sivaraman Advocate. SR.NO. 58964
+1 CC to MR.T.Pramodkumar Chopda Advocate. SR.NO. 58186

W.A.Nos. 1171 and 1172 of 2015

CO-SR
JD 18/12/2015