

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.02.2017

DELIVERED ON : 02.06.2017

Coram

The Honourable Mr.Justice RAJIV SHAKDHER

Writ Petition No.12801 of 2016
and WMP Nos.11196 and 27344 of 2016

S.M.Kutubuddin

... Petitioner

Vs

The Assistant Commissioner of Income Tax,
Non Corporate Circle 1,
Office of the Assistant Commissioner of
Income Tax, Room No.309,
3rd Floor, Wanaparthi Block,
121, Mahatma Gandhi Road,
Chennai-600 034.

... Respondent

* * *

Prayer : Writ Petition filed under Article 226 of the
Constitution of India praying for the issuance of Writ of
Certiorari, or any other appropriate writ, or order or direction
in the nature of writ, calling for the records of the respondent
dated 02.03.2016 relating to the Assessment Year 2008-09 in
PAN : AAPPK2572G/2008-09, and quash the same and pass such
further or other order or orders as this Court may deem fit and
necessary in the circumstances of the case.

* * *

For Petitioner : Mr.N.Murali Kumaran
for M/s.Mcgan Law Firm

For Respondent : Ms.Hema Muralikrishnan,
Standing Counsel

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Prefatory facts :

1. This is a writ petition directed against the order dated
02.03.2016, passed by the respondent, in respect of Assessment
Year (AY) 2008-2009.

1.1. The petitioner makes a prayer for quashing the impugned order, on two broad grounds : First, that no reasons were furnished, even though sought for by the petitioner, for reopening the assessment completed under Section 143(3) of the Income Tax Act, 1961 (in short "the Act"); Second, that the reopening of assessment has brought about on a mere change of opinion, which is not permissible in law, as the notice for reopening the assessment had been issued after the expiry of four years from the end of the relevant AY, i.e, AY 2008-2009.

2. In so far as the first aspect of the matter is concerned, the petitioner seek to rely upon the judgment of the Supreme Court in the matter of : GKN Driveshafts (India) Limited Vs. Income Tax Officer, (2003) 1 SCC 72.

2.1. It is pertinent to note, at this stage, that it is the petitioner's case that change in opinion has occurred with respect to an immovable property located at Kovalam village, Thiruporur Taluk, Chengalpet District (for the sake of convenience hereafter referred to as "Kovalam Property"). This property, evidently, at the relevant point in time, was held jointly by the petitioner, along with his sons; each having 1/3rd share in it. The said property was sold and, since, according to the petitioner, it was an agricultural land, it was not a capital asset, to which the provisions of the Act would apply, and hence, income derived upon its sale, was not included by him in his taxable income.

2.2. The record shows that a notice under Section 148 of the Act was issued to the petitioner on 30.03.2015, on the ground that income derived from the sale of the Kovalam property had escaped assessment, by reason of the failure on the part of the petitioner to disclose fully and truly of all material facts.

2.3. It is, this aspect, which on merits, is at the heart of the dispute obtaining between the parties, before me.

3. Notice, in this writ petition, was issued on 05.04.2016, since then, counter affidavit has been filed on behalf of the respondent.

4. In the interregnum, an interim order dated 06.10.2016, was passed, whereby, the respondent was directed not to initiate any coercive action against the petitioner for recovery of penalty.

5. The matter came up for hearing, before me, on 22.12.2016, when, accommodation was sought on behalf of the Revenue. The matter was renotified for hearing on 13.02.2017, when, upon hearing the arguments, judgment was reserved in the matter.

6. In order to adjudicate upon the instant writ petition, the following broad facts need to be noticed :

6.1. The petitioner, as it appears from the record, filed his return for AY 2008-2009, which was taken up for scrutiny and processed thereafter; resulting in an order under Section 143(3) of the Act being passed on 30.11.2010. Via the said order, the petitioner's taxable income was assessed and thus, pegged at Rs.6,14,730/-.

6.2. The record shows that prior to the passing of the assessment order dated 30.11.2010, the petitioner was called upon to furnish information by the Assessing Officer. The petitioner, through his Chartered Accountants, addressed two letters to the Assessing Officer with regard to information sought for from him. These letters are dated : 30.10.2010 and 09.11.2010.

6.3. A perusal of the said letters would show that the Assessing Officer had, apparently, raised several issues, which were sought to be addressed by the petitioner, albeit, via his Chartered Accountants, vide the aforementioned two letters. What is relevant, in so far as the instant matter is concerned, is, the response that the petitioner gave vis-a-vis the Kovalam property. Accordingly, the relevant extract from the petitioner's letter dated 09.11.2010, set forth hereafter :

"Note on Kovalam property:

The assessee had purchased agricultural land admeasuring 1.59 acres at Kovalam village, Thiruporur Taluk, Chengalpet District, on 8/4/85 along with his sons Mr.K.Md.Baleegh & K.Md.Anas for a consideration of Rs.15900/-. The land was used for cultivating causina / teak. This land has been sold by a sale agreement and a power of attorney on 3/5/2007 for a consideration of Rs.34,45,000/- (being 1/3rd share). The property/being an agricultural land and not coming under the purview of capital asset. The profit on sale of such land is away from the ambit of taxation."

6.4. As is obvious, the assessment order dated 30.11.2010, followed the letter dated 09.11.2010, whereby, inter alia, the aforementioned information was supplied by the petitioner qua the Kovalam property.

6.5. As indicated above, the respondent issued a notice dated 30.03.2015, under Section 148 of the Act, just before the period of limitation of six years was to expire. By this notice, the petitioner was called upon by the respondent to file a return, within thirty (30) days of its service, in the prescribed form, in respect of income, which, according to him,

was assessable qua the AY.

6.6. The petitioner responded to the aforementioned notice, via a reply, which was received by the Department on 01.05.2015. The petitioner reiterated that to the best of his knowledge, no income had escaped assessment. It was emphasised that no reasons were furnished for issuance of the notice under Section 148 of the Act, and therefore, the return filed by him should be treated as a response to the notice issued under Section 148 of the Act.

6.7. The petitioner, it appears, followed the aforementioned response with a communication dated 16.11.2015, wherein, in respect of the Kovalam property, he, inter alia, indicated that the said property ad-measured 1.59 acres and, was jointly held by him, along with his two sons, namely, Mr.K.Mohammed Baleegh and Mr.K.Mohammed Anas. The petitioner, further indicated by the very same letter that the Kovalam property was sold for a total consideration of Rs.1,03,35,000/-, and that, he had received, out of the total sum, an amount equivalent to Rs.34,45,000/-. The petitioner reiterated that, since, the land was "agricultural in nature", it could not be construed as a capital asset under the provisions of the Act, and hence, income derived upon its sale could not be included in his total income.

6.8. The petitioner, interestingly, also adverted to the fact that the income tax return of one of his sons, i.e., Mr.Mohammed Anas, for the same AY, was also processed under Section 143(3) of the Act. The copy of the IT computation filed along with the return and the order passed under Section 143(3) of the Act, qua Mr.K.Mohammed Anas, was also furnished to the Department. The emphasis was, on the fact, that in so far as the other joint owner was concerned, no such steps, for reopening the assessment, were taken, though, the sale transaction qua Kovalam property, included the share of all joint owners. The petitioner also furnished the name of the purchaser, i.e., an entity by the name of Olive Beach, which was represented by Mr.A.R.Shamshudeen.

6.9. In his reply to the notice, dated 22.01.2016, issued by the respondent under Section 142(1) of the Act, the petitioner emphasised the point that the assessment carried out under Section 143(3) of the Act, qua him, could not be opened on a mere change of opinion. Furthermore, the petitioner also stressed on the fact that in order to come to the conclusion whether a particular parcel of land is an agricultural land, what would have to be seen is that, whether or not it was capable of cultivation. According to the petitioner, the actual or ordinary use of the land, at the time of sale and in the period prior to the same is relevant, and not how it would be used after it was sold. It was submitted that while, the

Revenue records may be form a good piece of evidence, such record could not help to determine the true character of the land, as it was not the conclusive evidence. Therefore, what was attempted to be emphasised was that, the parcel of land would still be agricultural land, if valuable plants, or crops, or trees planted on it are found, or, if, it was used for the purposes of husbandry.

7. The respondent, however, was not impressed with the submissions made by the petitioner, and thus, vide communication dated 04.02.2016, rejected the objections/ contentions raised by the petitioner. Pertinently, in the very same communication dated 04.02.2016, in so far as the objections raised by the petitioner with regard to the fact that no reasons were furnished, while issuing notice under Section 148 of the Act, the respondent had the following to state :

".... The reasons for reopening were communicated to the AR of the assessee and subsequently, a notice u/s 143(2) was issued dated 30.10.2015 to continue with the scrutiny proceedings."

8. On receipt of the communication dated 04.02.2016, the petitioner once again wrote to the respondent, albeit, via his Chartered Accountants, vide letter dated 17.02.2016. Via this communication, the petitioner refuted the fact that reasons were furnished to the Authorised Representative (AR) and in particular, that, nothing was furnished in writing; a fact that was adverted to at the time of appearance of the AR. In so far as the merits of the case were concerned, once again, emphasis was laid on the fact that the land sold was agricultural land.

8.1. The respondent, thereafter, proceeded to pass the impugned order. By virtue of the impugned order, a sum of Rs.34,23,043/-, was added as long term capital gains to the total income of the petitioner. Accordingly, a demand, in the sum of Rs.17,35,800/-, was raised on the petitioner.

8.2. The petitioner, being aggrieved by the said order, has preferred the present writ petition.

Submissions of Counsels :

9. Mr.N.Murali Kumaran, who appears for the petitioner, assailed the order, as indicated above, on two grounds : First, that no reasons were supplied for issuance of notice under Section 148 of the Act. It is contended that the petitioner, during the course of the hearing, was only told that the sale of Kovalam property was being treated as sale of non-agricultural land, and therefore, income received thereof, was proposed to be treated as long term capital gain. The reason as to why the Kovalam property was treated as non-agricultural land, according to the learned counsel, was not furnished, as would be evident

from the record. Therefore, according to the learned counsel, the direction issued to the Revenue, by the Supreme Court in the decision rendered in : GKN Driveshafts (India) Limited Vs. Income Tax Officer, (2003) 1 SCC 72, was not adhered to and thus, reopening of the assessment proceedings, which culminated in the impugned order must fail.

9.1. The second ground raised by the learned counsel was that the entire information with regard to Kovalam property was furnished to the respondent, and thereupon, an order under Section 143(3) of the Act was passed by the respondent on 30.11.2010. Thus, according to the learned counsel, reopening of the assessment, after the lapse of four years from the end of the relevant AY, was not mandated in law, as it constituted a mere change of opinion. The petitioner, according to the learned counsel, had supplied all particulars pertaining to the Kovalam property. Furthermore, learned counsel emphasised the fact that the petitioner was only a 1/3rd owner of the Kovalam property, the other two being his sons. It was further averred that the Kovalam property, was also subject matter of an assessment order, passed under Section 143(3) of the Act vis-a-vis one of his sons, i.e. Mr.Mohammed Anas, despite which, no proceedings were initiated against him under Sections 147 and 148 of the Act, which was in stark contrast to the steps taken by the Revenue in the petitioner's case. The argument, being that the Revenue was not acting evenhandedly in so far as the petitioner was concerned.

9.2. It was further submitted by the learned counsel for the petitioner that there was no definition of "agricultural land" given in the Act, and that, only the definition of "agricultural income" under Section 2(1A) of the Act, indicated, as to what was meant by agricultural land. It was stated that the Act, specifically, excluded from the definition of "capital asset" (as contained in Section 2(14) of the Act), agricultural land, save and except land, which, fulfilled the conditional set out in sub-clauses (a) and (b) of Clause (iii) of Section 2(14) of the Act. Since, the Kovalam property did not come within the exception carved out in Section 2(14) of the Act, it could not be treated as land, which was not agricultural in nature, based only on Revenue records without having regard to its location, and other circumstances, such as presence of standing trees on the subject land, to which, no credence was given by the respondent.

9.3. The emphasis was that the respondent could not have a second shot at determining whether or not the subject land was agricultural land, when, all material particulars were supplied during the assessment proceedings by the petitioner.

9.4. In support of his submissions, the learned counsel relied upon the following judgments :

- (i).Jindal Photo Films Ltd. V. DCIT and another, (1998) 234 ITR 170 (Del);
- (ii).Transworld International Inc. V. JCIT, (2005) 273 ITR 242 (Del);
- (iii).Techspan India P. Ltd. and another V. ITO, (2006) 283 ITR 212 (Del);
- (iv).CIT V. Kelvinator of India Ltd., (2010) 320 ITR 561 (SC);
- (v).Signature Hotels (P) Ltd. V. ITO, (2011) 338 ITR 51;
- (vi).CIT V. Usha International Ltd., (2012) 348 ITR 485 (Del);
- (vii).Asiatic Oxygen Ltd. V. DCIT and another, (2015) 372 ITR 421 (Cal.);
- (viii).Coperion Ideal Private Limited V. CIT, 2015 SCC Online Del 12737;
- (ix).Commissioner of Wealth Tax V. H.V.Mungale, (1984) 145 ITR 208 ;
- (x).The judgement of the Gujarat High Court dated 29.04.2014, made in Special Civil Application No.2890 of 2014, titled : Deepakbhai Ramjibhai Patel V. ITO ;
- (xi).Order of the ITAT, Jodhpur Bench, dated 18.09.2014, passed in ITA No.471/Jodh/2014, titled : Smt.Shalu Sachdeva V. ACIT.
- (xii).CIT V. Kelvinator of India Ltd. (2002) 256 ITR 1 (Del - FB) ;
- (xiii).UOI V. S.Muthyam Reddy, (1999) 7 SCC 545; and
- (xiv).Singhai Rakesh Kumar V. UOI, (2001) 1 SCC 364.

10. Ms.Hema Muralikrishnan, who appeared on behalf of Revenue, refuted the aforesaid submissions and relied, largely, upon the impugned order passed by the respondent. Furthermore, Ms.Muralikrishnan, submitted that the writ petition would not lie, in view of the fact that the petitioner had available to him, an alternative remedy by way of an appeal.

10.1. It was further contended by the learned counsel that the proceedings under Section 147 and 148 of the Act had been rightly initiated and concluded via the impugned order. The emphasis laid by the learned counsel, was, on the fact that when assessment was carried out, the aspect pertaining to whether or not the subject land was an agricultural land was not considered. Attention, in this behalf, was drawn by Ms.Muralikrishnan to the response received by the respondent qua, the enquiries made from the Tahsildar, Thiruporur. Based on the communication dated 06.01.2016, addressed by the Tahsildar to the respondent, it was submitted that no agricultural activities had been carried out by the petitioner between 2003 and 2007, and therefore, the respondent had rightly concluded that the subject land was not an agricultural land.

10.2. In sum, it was the learned counsel's submission that this was not a case of change of opinion, since, no enquiry had been carried out, at a point in time, when, the original assessment order was passed and, therefore, the respondent was well within his power to pass a re-assessment order under Section 147 of the Act.

10.3. I must note herein that in the counter affidavit, the respondent relied upon the following judgments :

- (i).A.L.A. Firm V. CIT ; (1976) 112 ITR 622 ;
- (ii).Revathy C.P. Equipments Ltd. V. DCIT, 241 ITR 856 (Mad);
- (iii).Kalyanji Mavji and Co. V. CIT, (1976) 102 ITR 287 (SC);
- and
- (iv).Smt.Sarifabibi Mohmed Ibrahim and Others V. CIT, (1993) 114 CTR 0467;

Reasons :

11. I have heard the learned counsel for the parties and perused the record.

12. According to me, as indicated right at the outset, from the two issues are required to be dealt with : First, whether the reasons had been supplied by the respondent for reopening the assessment ?. Second, whether the reopening of assessment was based on a mere change of opinion ?

13. In so far as first aspect is concerned, it is quite clear upon perusal of the very first response issued by the petitioner to the 148 notice served upon him, which was received by the Department on 01.05.2015, that he had indicated in no uncertain terms that "no specific reasons" had been furnished for issuing the said notice. This was reiterated by the petitioner in his communication dated 02.02.2016. The respondent, instead of placing on record, the communication, whereby, reasons were furnished, in his communication dated 04.02.2016, simply states that reasons for reopening the communication were furnished to the AR of the petitioner. The petitioner, by a return communication dated 17.02.2016, which was issued via his Chartered Accountants, refuted this fact. It was stated that nothing was furnished by the respondent by way of reasons in writing and that, this fact was brought about to the notice of the respondent orally by the AR at the time of his appearance before the respondent. The counter affidavit filed in this Court, as well, does not shed any light on this aspect of the matter. Specific ground, i.e., ground No.VII, has been raised in that behalf by the petitioner. The respondent, in its counter affidavit, has not been able to refute this assertion of the petitioner.

13.1. Therefore, quite clearly, the respondent has violated the mandate of law, as enunciated by the Supreme Court in the matter of : GKN Driveshafts. The said judgment, clearly, expounds that once, notice under Section 148 of the Act is received by an Assessee, he is entitled to seek reasons for issuance of such notice, and that, the Assessing Officer is bound to furnish reasons within a reasonable time. The respondent's stand that reasons were communicated to the AR is, really, sidestepping the issue.

13.2. For a moment even one were to accept the stand taken by the respondent that the petitioner was told that income received by him, upon the sale of Kovalam property would be treated as capital gains, because, the nature of the said land was not agricultural, in my view, would not suffice, as the reasons, which, the respondent was obliged to furnish, due to the mandate of law, would, ordinarily, have to state as to why he had proposed to treat the Kovalam property as non-agricultural land.

13.3. The purpose of furnishing reasons is to enable the Assessee to effectively meet the charge levelled against him. Therefore, in so far as this aspect is concerned, the submission advanced on behalf of the Revenue cannot be accepted.

14. In so far as the second aspect is concerned, the stand taken on behalf of the respondent is that no enquiry was caused, as regards the nature of the subject land, i.e., Kovalam property, when, the original assessment order was passed. As indicated in my narration above, while, concluding the assessment proceedings qua the petitioner under Section 143(3) of the Act, the queries were raised by the respondent, as regards various issues, including those which pertained to the Kovalam property. The fact that queries were raised is reflected in the letter dated 30.10.2010 and 09.11.2010, sent on behalf of the petitioner, by his Chartered Accountants.

14.1. A perusal of the communication dated 09.11.2010, would show that the petitioner had in no uncertain terms given the entire details, which included the following : (i) The area of the land, which was stated as 1.59 Acres. (ii) The location. (iii) The date of its purchase and the fact that it was purchased along with his sons, Mr.K.Mohammed Baleegh and Mr.K.Mohammed Anas, for a sum of Rs.15,900/- on 08.04.1985. (iv) The fact that the land was used for cultivating causina/teak. (v) The date of sale, which was indicated as : 03.05.2007. (vi) And finally, the consideration received by the petitioner was disclosed, as well.

14.2. Furthermore, the petitioner also, specifically, stated that since, the Kovalam property was agricultural land, it was not a capital asset within the meaning of the Act, and hence, the profit made upon its sale was not taxable.

14.3. The record shows that, it is only thereafter, the assessment order dated 30.11.2010, was passed under Section 148 of the Act. Therefore, quite clearly, the queries were raised to which, the petitioner had furnished his answers. The respondent, now, oblivious to the queries raised and answers received, chooses to tax the gains made by the petitioner qua his share of the sale consideration on the ground that the Tahsildar, had reported that between 2003 and 2007, that, no agricultural activity was carried out on the Kovalam property.

14.4. According to me, the aforesaid facts, clearly, establish that the respondent is having a second shot at unravelling the tax impact of the subject transaction. Since, the petitioner furnished all the information which was available with him, qua the Kovalam property and the subject transaction, the respondent was, distinctly, acting beyond the ambit of the provisions of Section 147 of the Act, which vested upon him the power to reassess the income and not "review" the subject transaction. (See Commissioner of Income Tax V. Kelvinator of India Limited, (2002) 256 ITR 1 (Delhi FB), and also Commissioner of Income Tax V. Kelvinator of India Ltd., (2010) 320 ITR 561 (SC).

14.5. Ms.Muralikrishnan's submission that, since, there was no discussion qua the sale of the Kovalam property, in the assessment order dated 30.11.2010, the respondent, therefore, was not barred from reexamining the subject transaction, even though, the information with regard to the same, was available to him - in my view, is untenable proposition, in the given facts and circumstances. The record shows that query was raised, pursuant to which, information was supplied by the petitioner; a circumstance, which is, suggestive of the fact that an enquiry was made with regard to the subject transaction.

14.6. These facts would, clearly, bring the case within the four corners of the expression, "change of opinion". In this behalf, I may only quote with profit the following observations made by the Full Bench of the Delhi High Court in CIT V. Usha International Limited, (2012) 348 ITR 485 (Del) :

".... 57. Frankly, I am unable to see any difference between a case where a query is raised by the Assessing Officer which is replied to by the assessee with supporting evidence or material, but the opinion of the Assessing Officer on the assessee's reply is not recorded in the assessment order, and a case where even without a query from the Assessing

Officer, the assessee voluntarily discloses full and true particulars necessary for his assessment, which are not referred to in the assessment order and the opinion of the Assessing Officer has not been expressly recorded therein. The distinction which was sought to be made on behalf of the Revenue between the two types of cases was that in the former the Assessing officer has manifested in his intention to examine the matter by raising a query, whereas in the latter type of cases he has not even done that. The distinction is too simplistic for acceptance. The question is not whether any query was raised or not. The question is whether the assessee fulfilled his duty of disclosing fully and truly, all material particulars and primary facts necessary for the assessment of his income. Even in a case where a query is raised and a reply is furnished with all supporting material, if the assessing officer chooses to keep silent in the assessment order, what difference does it make that he did not even raise a query and also chose to be silent in the assessment order? In both the cases the basic requirement that the assessee should have adduced all material particulars and primary facts fully and truly, stands satisfied. The raising of a query may only indicate that the assessing officer had inquired into the matter; but if nothing is recorded in the assessment order, that would still not show what opinion he took of the matter, and one has to only presume that he did accept the assessee's version, which is what the Full Bench has held. In my opinion, there is thus qualitatively no difference between the two types of cases. The ruling of the Full Bench of this Court would apply with equal force to both types of cases, since the assessee has furnished, fully and truly, all material particulars and primary facts necessary for his assessment. The presumption under section 114(e) is applicable to both types of cases.

58. In my understanding of the judgment of the Full Bench of this court in *Kelvinator* (supra), the ruling is applicable to all cases where the assessment was completed under section 143(3) of the Act, subject only to the condition that the assessee has furnished fully and truly all material particulars and primary facts necessary for the assessment. It is not a question of deemed formation of opinion alone; it goes beyond that, and the substratum of the ruling is that the assessing officer cannot take advantage of the perfunctory manner in which he completed the assessment. This does not necessarily mean that

wherever the assessing officer has completed the assessment under section 143(3) it must be taken as if he has discharged his duties in a perfunctory manner. The ratio of the judgment is rooted to the salutary principle that the assessee shall not be subjected to harassment if they have furnished full and true particulars at the time of the original assessment, which is what the Supreme Court observed in the judgment in Srikrishna Pvt. Ltd. (supra). It certainly does not imply that every assessment order passed under section 143(3) without an elaborate discussion of various contentions and claims put forth by the assessee is necessarily a wrong order to be corrected later by resorting to section 147. Making an assessment to income tax represents the quantification of the charge to tax; it is a serious task. Legal consequences follow. A return of income is not a mere scrap of paper. It is to be treated with the respect it deserves. I think the real principle laid down by the Full Bench in Kelvinator (supra) is that if the assessee has discharged his duty of furnishing full and true particulars at the time of the assessment, it may be fairly taken that the assessing officer has equally discharged his functions in the manner required of him. If he passes an assessment order under section 143(3) of the Act, it hardly matters that he has not recorded his agreement with the assessee on every issue or point; that could be reasonably inferred."

(emphasis is mine)

14.7. I respectfully agree with the view taken by the Delhi High Court in Usha International Limited case. Thus, even with regard to the second aspect, the stand on behalf of the respondent that this was not a case of change of opinion cannot be accepted.

15. As regards the judgments rendered in the matter of : Kalyanji Mavji and Co. V. CIT, (1976) 102 ITR 287 (SC) and A.L.A Firm V. CIT, (1976) 102 ITR 622, are concerned, in my opinion, the same, on facts, are distinguishable, as in both cases, though, notices for reopening of assessments are issued, based on material already on record, no queries were raised and answered, as is the circumstance obtaining in the instant case.

15.1. Furthermore, it may be noticed in so far as the judgment in A.L.A Firm V. CIT, (1976) 102 ITR 622, is concerned, it was based on interpretation of the provisions of Section 34 (1) (b) of the Income Tax Act, 1922.

15.2. Furthermore, these judgments have also been considered in the judgment of the Full Bench of the Delhi High Court in Usha International case.

15.3. As regards the judgment of the Division Bench of this Court dated 18.01.2010, rendered in W.A.Nos.419 to 423 of 2000, titled : M/s.Revathi C.P. Equipments Limited V. The DCIT, is concerned, the same, to my mind, has no application. The appellant, it appears, filed a writ petition, which was dismissed on the ground that a show cause notice had been issued. The learned Judge, while dismissing the writ petition, had also adverted to the merits of the case. Being aggrieved, the appellant approached the Division Bench. The Division Bench allowed the appeal, to the extent the order of the Single Judge, dwelled on the merits of the case.

15.4. In the instant case, the challenge is to the lack of jurisdiction on the part of the Revenue, to trigger the proceedings for reopening of the assessment, contrary to the mandate of law.

15.5. In so far as the judgment in the case of Sarifabibi Mohmed Ibrahim and Others V. CIT, 1993 Supp. (4) SCC 707, is concerned, it relates to the merit of the matter. The Revenue, in the first instance, would have to cross the threshold, which is, as whether or not it had jurisdiction to reopen the assessment proceedings. Once, that threshold is crossed, only then, can the Revenue embark upon the merits of the matter. Accordingly, this decision is also distinguishable.

16. For the very same reasons, the preliminary objection raised on behalf of the respondent that the writ petition is not maintainable, in view of alternative remedy being available to the petitioner cannot be sustained.

16.1. The respondent, clearly, acted beyond his jurisdiction in, firstly, triggering the proceedings under Section 147 of the Act; and secondly, in failing to act in accordance with the mandate of the law, as enunciated in GKN Driveshafts Limited case, which, willy nilly, required him to furnish reasons, to the petitioner.

17. Thus, for the foregoing reasons, I am inclined to set aside the impugned order. It is ordered accordingly. Resultantly, pending application shall stand closed.

18. Given the facts and circumstances of the case, there shall, however, be no order as to costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner of Income Tax,
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+1 cc to Mr.T.Ravikumar Advocate sr 39461
+1 cc to M/s.Gan Law Firm sr 39712

Writ Petition Nos.12801 of 2016

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