

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Order	Date of Pronouncing the Order
25.01.2018	07/02/18

Coram

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.1533, 1534, 1537, 1538,
1557, 1558, 1562 to 1565 of 2018

and
W.M.P.Nos.1944, 1945, 1961,
1966 & 1967 of 2018

Shri.T.T.Jagannathan ... in Wps.1533/18,1534/18,1562,1563/18

Shri.T.T.Raghunathan ... in Wps.1537,1538,1557,1558/18

M/s.T.T.Krishnamachari & co.,
Rep., by its Partner,
Mr.T.T.Raghunathan ... in Wps.1567 & 1565/18

Vs.

The Assistant Commissioner of Income tax,
Corporate Circle-3(1)
Chennai - 600 034. .. R1 in Wps.1533,1534,1562,1563/18

The Assistant Commissioner of Income tax(OSD)
Corporate Range-3
Chennai - 600 034. .. R1 in Wps.1537,1537,1557,1558/18

The Assistant Commissioner of Income tax,
Non-Corporate Circle-3
Chennai - 600 034. .. R1 in Wps.1564/18 & 1565/18

Prayer:

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, to call for the records of the Petitioner on the file of the Respondent in PAN: AAEPJ4154C/ 2016-17/ A.Y.2011-12 and quash the notice u/s.148 of the Income Tax Act dt.30.03.2017 and the consequential order rejecting the objections dt.07.11.2017 for the assessment year 2011-12(in WP.NO.1533/18)

To call for the records of the Petitioner on the file of the Respondent in PAN: AAEPJ4154C and quash the reassessment Order u/s. 143(3) r.w.s 147 dated 12.12.2017 for the assessment year 2011-12 (WP.NO.1534/18)

To call for the records of the petitioner on the file of the Respondent in PAN: AADPR5270J and quash the impugned reassessment order u/s 143(3) r.w.s. 147 dated 12.12.2017 for the Assessment year 2011-12 (WP.1537/18)

To call for the records of the petitioner on the file of the Respondent in PAN: AADPR5270J 2016-17/ AY 2011-12 and quash the notice u/s 148 of the Act dated 30.03.2017 and the consequential order rejecting the objections dated 07.11.2017 for the asst year 2011-12 (WP.NO.1538/18)

To call for the records of the petitioner on the file of the respondent in PAN: AADPR5270J and quash the notice u/s.148 of the Act dated 30.3.2017 and the consequential order rejecting the objections dated 6.12.2017 for the assessment year 2010-11 (IN WP.NO.1557/18)

To call for the records of the petitioner on the file of the respondent in PAN: AADPR5270J and quash the impugned reassessment order U/s. 143(3) r.w.s. 147 dated 8.12.2017 for the Assessment Year 2010-11 (IN WP.NO.1558/2018)

To call for the records of the Petitioner on the file of the Respondent in PAN: AAEPJ4154C/ 16-17/ AY 2010-11 and quash the notice u/s.148 of the Income Tax Act 1961 dt.30.03.2017 and the consequential order rejecting the objections dt.07.11.2017 for the Assessment year 2010-11 (IN WP.NO.1562/2018)

To call for the records of the Petitioner on the file of the Respondent in PAN: AAEPJ4154C and quash the reassessment Order u/s.143 (3) r.w.s. 147 dated 12.12.2017 for the Assessment Year 2010-11 (IN WP.NO.1563/2018)

To call for the records of the petitioner on the file of the respondent in PAN: AAAFT0395D and quash the impugned order the Assessment year 2010-11 dated 31.12.2017 passed u/s.143(3) r.w.s 147 Income Tax Act (IN WP.NO.1564/18)

To call for the records of the petitioner on the file of the respondent in PAN: AAAFT0395D / 2016-17 and quash the notice u/s.148 of the Income Tax Act dt.31.03.2017 for the Assessment year 2010-11 and the consequential order rejecting the objections dt.20.12.2017 (IN WP.NO.1565/18)

For Petitioner : Mr. Vijaya Raghavan for
M/s. Subbaraya Aiyar & Padmanabhan
For Respondents : Mr. J. Narayanaswamy

COMMON ORDER

In all these Writ Petitions, the petitioners have challenged the assessment orders passed by the respondent under Section 143(3) read with Section 147 of the Income Tax Act, 1961, (Act) for the assessment year 2009-10 and the notices issued under Section 148 of the Act.

2. W.P.No.1565 of 2018, is taken as the lead case, since the assessee therein is the firm and the other Writ Petitioner assesseees are its partners.

3. The learned Senior Standing counsel for the Revenue raised a preliminary objection contending that the Writ Petitions are not maintainable, as the petitioner has an effective alternative remedy of appeal as against the impugned order. In the light of the preliminary objection raised, the learned counsel for the petitioner was directed to advance the arguments on the maintainability of the Writ Petitions and referring to those facts and legal issues, which would be of relevance to support their contention that the Writ Petition is maintainable against the impugned proceedings.

4. Mr. Vijaya Raghavan, learned Senior counsel appearing for M/s. Subbaraya Aiyar Padmanabhan Ramamani, counsels for the petitioner submitted that the petitioners in these Writ Petitions, have challenged the impugned assessment orders as well as the notice issued under Section 148 of the Act and therefore, the petitioners are entitled to maintain the Writ Petitions. It is submitted that there is no failure on the part of the assessee to disclose fully and truly all materials facts and hence, reassessment beyond four years from the end of the relevant assessment year is not permissible under law. To support such contention, reliance was placed on the decision in the case of CIT Vs. M/s. Cholomandalam Investment and Finance Co., Ltd., [309-ITR 110 (Mad)]. It is further submitted that the Assessing Officer before completing the original assessment has considered all the facts on record and passed the order and in the absence of any new tangible material available with the Assessing Officer for reopening of assessment, it is merely a change of opinion and impermissible under law. In this regard,

reliance was placed on the decision of the Hon'ble Supreme Court in the case of CIT vs. Kelvinator India Ltd., [320 ITR 561 (SC)]. Further, it is submitted that reopening of the assessment on the same material, which was considered in the original assessment under Section 143(3) is not sustainable. In support of such contention, reliance was placed on the decision in the case of CIT vs. Ashley Services Limited [369 ITR 309]. On facts, the learned counsel would submit that the reasons for reopening the assessment on the ground that the information regarding investment was provided by DCIT (International Taxation) is untenable, since the information regarding investment in M/s. TTK Heath Care, TTK Services Private Limited at Rs.10/- per share was available at the time when the scrutiny assessment was made, mentioned in the form of financial statement and more specifically in the schedule of details of investment. The impugned reopening proceedings having been initiated based on the details already available and considered at the time of scrutiny assessment, shows that there is no failure on the part of the assessee to fully and truly disclose all material facts at the time of scrutiny assessment. Further, it is submitted that reassessment proceedings cannot be initiated on the basis of borrowed satisfaction, as the Assessing Officer has merely relied on the letter of DCIT (International Taxation) and no independent conclusion or reason to believe that income has escaped assessment is being arrived at by the Assessing Officer. Further, it is submitted that no opportunity was given to the petitioner to substantiate non-applicability of Section 56(1) of the Act. In this regard, it is submitted that the provisions of the tax receipt of shares by a firm for a consideration less than fair market value were introduced only post-assessment year 2010-11, i.e., w.e.f., 01.06.2010, by inserting Section 56(2) (VIIA) and hence, the said provision is no way applicable to the assessee's case and this fact was noted and rectified by the Assessing Officer in his letter dated 20.12.2017. Further, without prejudice to the said contention, it is submitted that the instant amount is money brought in for allocation of shares, which is squarely in a capital fee and hence, judging it as 'income from other sources' under Section 56(1) is grossly erroneous. It is further submitted that without resorting to the procedure prescribed under Rule 11UA for valuation, the Assessing Officer wrongly determined the fair market value. With the above submissions, it is stated that the Writ Petitions may be entertained and the challenge to the impugned proceedings be maintained.

5. The learned Senior Standing counsel appearing for the Revenue reiterated his preliminary objection and submitted that while disposing of the objections filed by the petitioner, the Assessing Officer has considered all issues and passed speaking orders after which, the assessment orders have been passed in

which further reasons have been assigned by the Assessing Officer and therefore, the petitioners should be relegated to the appellate remedy available under the Act.

6. After elaborately hearing the learned counsels for the petitioner on the above aspects, this Court, at the first instance would consider the preliminary issue as to whether the Writ Petitions should be entertained. Admittedly, the petitioner has not approached this Court soon after the petitioner's objections to the reopening proceedings were rejected by a speaking order. The petitioner is before this Court after the assessment orders were passed on 31.12.2017, after actively participating in the assessment proceedings in which the authorised representative was heard by the Assessing Officer.

7. Before the Assessing Officer in the course of the assessment proceedings, it was contended that the assessee had been allotted shares at face value of Rs.10/- per share for and on behalf of the firm, shares were allotted in the names of its partners (other Writ Petitioners) and that during the same period, these shares were allotted to M/s.Swiss Reinsurance Company Zurich at an aggregate fair market value of Rs.901.78 and Rs.4713.71 per share on two different occasions. This according to the Assessing Officer makes it clear that the assessee was allotted shares at less than fair market value. Thus, he concluded that the aggregate fair market value of the said shares to the extent it exceeds the consideration requires to be taxed as deemed income of the assessee under the head "income from other sources" under Section 56(1). Further, the Assessing Officer has observed that his office received a communication from ACIT, Corporate Circle-3(1), Chennai stating that the taxation on the same issue for the assessment year 2010-11 was being done in the hands of the assessee's partners protectively as the partners held the shares in their names on behalf of the firm. Further, the Assessing Officer noted that the partners, who are the other writ petitioners, participated in the assessment proceedings before the ACIT, Corporate Circle-3(1) and contended that the taxation on allocation of these shares can be done only in the hands of the firm (petitioner in W.P.No.1564/18) and they were holding it on behalf of the firm. To prove the same, the partners produced evidence to show that the amounts for purchase of shares were routed through the bank account and that the investment in shares has been duly reflected in the balance sheet relating to the firm. Therefore, the partners, namely, other Writ Petitioners contested that the deemed income cannot be assessed in their hands and this would mean that according to the partners, assessment in the name of the petitioner firm is correct. The Assessing Officer has taken note of the dates of allocation of shares, the value and then computed the aggregate difference. Thus, it appears that the

partners have pitched their case against the petitioner firm. The petitioner firm is now before this Court raising factual and legal issues challenging the proceedings commencing from the initiation of reopening. The partners have taken a stand before their Assessing Officer that the assessment in the names of the company, has been rightly done.

8. Thus, I am of the considered view that the issue to be decided in the instant case are not pure questions of law, but requires in-depth consideration of the factual position and then apply the legal principles. The assessment having been completed in the names of the petitioner firm and protectively against the partners, they have to necessarily avail the appeal remedy available to them under the provisions of the Act. This is more so because the petitioners have not been able to establish that the appellate remedy is not efficacious, nor the petitioners were able to convince the Court that their cases fall within the well-defined exceptions which have been drawn as to when jurisdiction under Article 226 of the Constitution could be exercised.

9. For the above reasons, I sustain the preliminary objections raised by the Revenue and hold that these Writ Petitions are not maintainable.

10. In the result, the Writ Petitions are dismissed as not maintainable, as the petitioners have an effective alternate remedy of appeal before the Appellate Authority, leaving it open to the petitioners to avail the appellate remedy. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CO)

/true copy/

सत्यमेव जयते
Sub Asst. Registrar

pbn

To

1.The Assistant Commissioner of Income tax,
Non-Corporate Circle 3,
Chennai - 600 034.

2.The Assistant Commissioner of Income tax,
Corporate Circle 3(1),
Chennai - 600 034.

3.The Assistant Commissioner of Income tax(OSD)
Corporate Range-3
Chennai - 600 034.

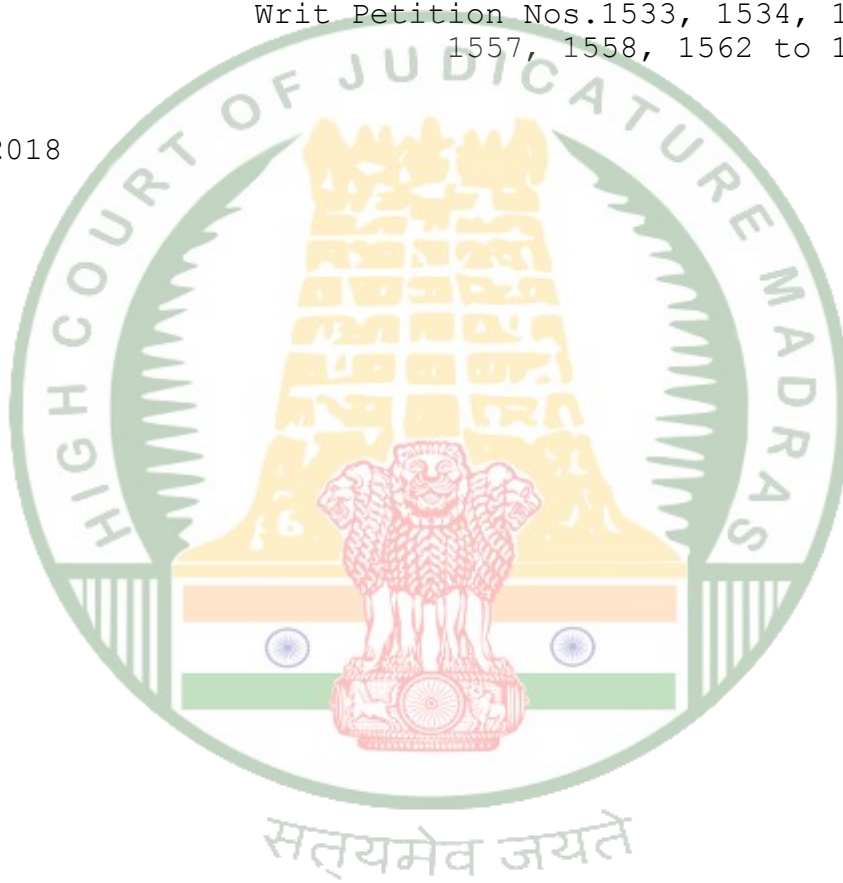
+ 4 cc to Mr.J.Narayanaswamy Advocate,SR.10088 TO 10091

+ 10 cc to M/s.Subbaraya Aiyar &Padmanabhan Advocate,SR.10093 TO
10095,10099, 10100 TO 10105)

+1cc to Mr.J.Narayanaswamy, Advocate sr.no.10087(12/06/2018)

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1557, 1558, 1562 to 1565 of 2018

RV(CO)
NR 26/02/2018



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