

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2019

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.12603, 12604 & 33239 of 2002

Seshasayee Paper and Boards Limited

Pallipalayam

Cauvery R S P O

Erode-638007

Represented by its Vice President (Finance) &
Secretary Sri V Pichai

...Petitioner
(in all Wps)

Vs

1. Union of India

Represented by

The Commissioner of Income Tax, (Central II)

108, Uttamar Gandhi Road

Chennai-600034.

2. The Assistant Commissioner of Income Tax

Central Circle II (1)

108, Uttamar Gandhi Road

Chennai-600034.

...Respondents
(in all W.Ps)

WP No.12603 of 2002 is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records from the respondents in respect of the notice, bearing PA No.4-S/AAC CS 1192 G, dated 13.03.2002, for the assessment year 1995-1996, issued by the second respondent, under Section 148 of the Income Tax Act, 1961 and quash the same.

WP No.12604 of 2002 is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records from the respondents in respect of the notice, bearing PA No.4-S/AAC CS 1192 G, dated 13.03.2002, for the assessment year 1996-1997, issued by the second respondent, under Section 148 of the Income Tax Act, 1961 and quash the same.

WP No.33239 of 2002 is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to

call for the records from the second respondent in respect of the notice, bearing PA No.4-S/97-98, dated 04.07.2002, for the assessment year 1997-1998, issued by the second respondent, under Section 148 of the Income Tax Act, 1961 and quash the same.

For Petitioner in all WPs :Mr.A.L. Somayaji
Senior Counsel
for Mr.M.P.Senthil Kumar

For Respondents in all WPs :M/s.A.P.Srinivas and
A.N.R.Jayaprathap,
Senior Standing Counsel
for Income Tax.

C O M M O N O R D E R

The notice issued under Section 148 of the Income Tax Act, 1961 is sought to be quashed in all these present writ petitions.

2. The learned Senior Counsel Sri.A.L Somayaji appearing on behalf of the writ petitioners, mainly relied on the grounds that the very issuance of notice by the respondents are without jurisdiction and they have no authority to issue the notice. This apart, the notice was issued after the expiry of the time limit prescribed under the statute and therefore, the notice impugned is liable to be scrapped on these grounds:

To substantiate the above legal grounds, the learned Senior Counsel made a submission that the assessment orders relevant for the purpose of considering the present writ petitions for 1995-1996, 1996-1997 and 1997-1998. The writ petitioners had submitted their returns in time, which were properly assessed by the Assessing Officer under Section 143(3) of the Income Tax Act, 1961 and therefore, the same were scrutinized and finalized by the Income Tax Department. The block assessment made in this regard were also quashed by the ITAT and therefore there is no "reason to believe", which is contemplated under the Act for initiation of proceedings for reassessment by invoking the powers conferred under Sections 147 to 153 of the Income Tax Act. The learned Senior Counsel is of the strong opinion that the authorities competent have issued the notice only on the premise that the block assessment made by the authorities were quashed by the ITAT and out of frustration they have initiated the proceedings for reassessment under Sections 147 and 148. The said contentions are well narrated in the affidavit filed by the writ petitioners in support of the writ petition and by citing the allegations set out against the officials, the learned Senior Counsel is of an opinion that all the materials, information and documents were furnished by the writ petitioners at the time of filing of returns and at the time of block

assessment, the documents and information provided by the writ petitioners were well accepted by the ITAT and specific evidences were given before the ITAT stating that there is no undisclosed income and therefore, the block assessment deserves to be quashed. When the Tribunal came to the conclusion that there is no suppression or hiding of information, there is no reason to believe to reopen the assessment already concluded.

3. The learned Senior Counsel contends that the other cases decided in this regard may not have any direct application in view of the fact that the factual circumstances in the present cases are distinct and would show that the writ petitioners had already filed the returns in full format by providing all informations and by filing the relevant documents. This being the factum established by the writ petitioners, the writ petition cannot be rejected merely on the ground that the notice issued under Section 148 is under challenge. Undoubtedly, notice cannot be challenged in a routine manner by way of writ proceedings, however, when the factual details furnished by the writ petitioners reveal that the block assessment proceedings were also quashed and the returns filed by the assessee were also approved under Section 143(3) of the Income Tax Act. The very requirement contemplated under Section 147 is not satisfied and absolutely there is no reason to believe for the authorities to initiate reassessment proceedings under Sections 147 to 153.

4. In support of the said contentions, the learned Senior Counsel cited the judgments. The first case is Commissioner of Income Tax Versus ELGI Finance Limited (2006) 286 ITR 674. The substantial question of law raised in that case is "Whether, on the facts and circumstances of the case, the Tribunal was right in treating the reassessment under Section 147, as time barred?" The question of law has been answered by his lordship Justice P.P.S. Janarthana Raja, while speaking for the change as follows in paragraphs 9 and 10 of the judgment:

"9. In the present case, the question is whether the assessee-company had disclosed fully and truly all the material facts necessary for the assessments and with particular reference to computation of depreciation allowance. The assessee company had filed full set of accounts before the Assessing Officer comprising of profit & loss account, balance sheet and schedules thereto. The assessee-company had furnished the details regarding the acquisition of various machineries and assets and the details regarding the leasing out of those machineries and items to other parties. The assessee had also furnished the details of

lease rent received out of those lease agreements. The assessee had also furnished the detailed computation of depreciation mentioning therein the written down value of machineries and assets before and after claiming the depreciation allowance for the impugned assessment years. It is a factual finding by the Tribunal that the assessee-company had fully and truly disclosed all material facts necessary for working out the quantum of depreciation allowance and completed the assessment accordingly. The Tribunal is right in following the judgment of the learned Single Judge of this Court reported in Fenner (India) Limited Vs. Deputy CIT, [2000] 241 ITR 672. In the said judgment, the learned Single Judge considered the scope of the proviso to Section 147 of the Income Tax Act in detail and held as follows:

"The pre-condition for the exercise of the power under section 147 in cases where power is exercised within a period of four years from the end of the relevant assessment year is the belief reasonably entertained by the Assessing Officer that any income chargeable to tax has escaped assessment for that assessment year. However, when the power is invoked after the expiry of the period of four years from the end of the assessment year, a further pre-condition for such exercise is imposed by the proviso namely, that there has been a failure on the part of the assessee to make a return under Section 139 or in response to a notice issued under Section 142 or Section 148 or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for that assessment year. Unless, the condition in the proviso is satisfied, the Assessing Officer does not acquire jurisdiction to initiate any proceeding under section 147 of the Act after the expiry of four years from the end of the assessment year.

10. Thus, in cases where the initiation of the proceedings is beyond the period of four

years from the end of the assessment year, the Assessing Officer must necessarily record not only his reasonable belief that income has escaped assessment but also the default or failure committed by the assessee. Failure to do so would vitiate the notice and the entire proceedings. The relevant words in the proviso are,

".... unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee....."

Mere escape of income is insufficient to justify the initiation of action after the expiry of four years from the end of the assessment year. Such escapement must be by reason of the failure on the part of the assessee either to file a return referred to in the proviso or to truly and fully disclose the material facts necessary for the assessment.

Whenever a notice is issued by the Assessing Officer beyond a period of four years from the end of the relevant assessment year, such notice being issued without recording the reasons for his belief that income escaped assessment, it cannot be presumed in law that there is also a failure on the part of the assessee to file the returns referred to in the proviso or a failure to fully and truly disclose the material facts. The reasons referred to in the main paragraph of section 147 would, in cases where the proviso is attracted, include reasons referred to in the proviso and it is necessary for the Assessing Officer to record that any one or all the circumstances referred to in the proviso existed before the issue of notice under section 147.

After an assessment has been made, in the normal circumstances, there would be no reason for anyone to doubt that the assessment has been made on the basis of all relevant facts. If the Assessing Officer chooses to entertain the belief that the assessment has been made in the background of the assessee's failure to disclose truly and fully all material facts, it is necessary for him to record that fact, and in the absence of a record to that effect, it cannot be held

that a notice issued without recording such a fact is capable of being regarded as a valid notice. As to whether the material facts disclosed by the assessee are full and true is always a question of fact and unless the facts disclosed had been examined in relation to the extent of failure if any on the part of the assessee, it is not possible to form the opinion that there had been a failure on the assessee's part to truly and fully disclose the material facts. A notice issued without a record of the Assessing Officer's reasonable belief that there was such failure on the part of the assessee would be indicative of a failure on the part of the Assessing Officer to apply his mind to material facts, and on that ground also the notice issued would be vitiated."

5. In the case of Assistant Commissioner of Income Tax Mumbai and others Versus ICICI Securities Primary Dealership Limited Reported in (2012) 13 SCC 514, the honorable Supreme Court of India held that:

"2. the assessee had disclosed full details in the return of income in the matter of its dealing in stocks and shares. According to the assessee, the loss incurred was a business loss, whereas, according to the Revenue, the loss incurred was a speculative loss. Rejection of the objections of the assessee to the re-opening of the assessment by the Assessing Officer vide his order dated 23.06.2006, is clearly a change of opinion. In the circumstances, we are of the view that the order re-opening the assessment was not maintainable.

6. Mr. Mistry, learned counsel for the petitioner, points out that the reasons given by the first respondent in his order dated 27.03.2006 are clearly based on the documents which the petitioner had already furnished, containing the accounts tendered by the petitioner. There is nothing new that has come to the notice of the Revenue at this point of time. It is only a different analysis which is now being done and the conclusion is being drawn that its income to the extent of Rs.19.86 crores has escaped the assessment. In his submission, this is impermissible under the powers that are

available to the Revenue under Section 147 of the Income Tax Act. It can only be where there is a failure on the part of the assessee to make a true return which is would be permissible after the expiry of four years. In the instant case, nothing of the kind has happened.

7. Mr.Kotangale, learned counsel for the respondents, has drawn our attention to a judgment of the Apex Court in Srikrishna (P) Ltd. v. ITO². In this case, what is held by the Apex Court is that where certain loan transactions were relied upon and which were subsequently discovered to be false, reassessment proceedings were validly initiated. What is however material to note is that in that particular case the Court has given a clear finding that the assessee had created and recorded bogus entries of loan and, therefore, the Court held that the assessee could not say that it had truly and fully disclosed all material facts necessary for the assessment for the year concerned."

6. Relying on the above findings of the Apex Court, the learned Senior Counsel states that the present case on hand, is also akin to that of the case decided by this Court. In the present writ petitions, the returns submitted by the assessee were approved and concluded. Thus, the block assessment made by the authorities were quashed. Thus, the notice under Section 148 is issued only on the basis of change of opinion and there is no reason to believe for initiation of reassessment proceedings. In view of the fact that it is a change of opinion, the present writ petitions are to be allowed by following the principles settled by the Apex Court in the case cited supra.

7. In the case of Foramer Versus Commissioner of Income Tax and others reported in [2001] 247 ITR 436 (All), the High Court of Allahabad dealt with the point of limitation stipulated under the Income Tax Act, while dealing with the case, his lordship Markandey Katju and Onkareshwar Bhatt, JJ., elaborated that the re-opening of assessment is made beyond the period of limitation and therefore, the very notice itself is liable to be quashed. The facts in that case reveals that the very initiation is beyond the period of limitation. It is solicited before this Court is that the said judgment was upheld by the Supreme Court of India in Civil Appeal Nos.5269 to 5271 of 2001 dated 16.01.2003.

8. In the case of Fenner (India) Limited Versus Deputy Commissioner of Income Tax reported in (1999) 155 CTR 0165 in W.P.No.18664 of 1997 dated 27.11.1998, the honorable Single Judge of High Court of Madras held that "the notice was issued more than six years after the end of the relevant assessment years, therefore, the notice is liable to be quashed and writ petitions are maintainable." In the case cited above, the very issuance of notice by the Income Tax Authority were beyond the period of six years and therefore it is directly hit by the limitation clause prescribed in the statute.

9. In the case of Commissioner of Income Tax Versus Arvind Remedies Limited reported in (2015) 378 ITR 547, the Division Bench of this Court held as follows referring to the judgment rendered in the case of Fenner (India) Limited and the relevant paragraph is prescribed here:

"Whenever a notice is issued by the Assessing Officer beyond a period of four years from the end of the relevant assessment year, such notice being issued without recording the reasons for his belief that income escaped assessment, it cannot be presumed in law that there is also a failure on the part of the assessee to file the returns referred to in the proviso or a failure to fully and truly disclose the material facts. The reasons referred to in the main paragraph of section 147 would, in cases where the proviso is attracted, include reasons referred to in the proviso and it is necessary for the Assessing Officer to record that any one or all the circumstances referred to in the proviso existed before the issue of notice under section 147...

The duty of an assessee is limited to fully and truly disclosing 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 Assessing Officer were in conformity with the requirements of all applicable laws and known accounting principles, and material details had been exhibited before the Assessing Officer, it is for the Assessing Officer 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 the assessee's failure to furnish the material facts truly and fully. Any lack of comprehension on the part of the Assessing Officer in understanding the details placed before him cannot 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 Assessing Officer in exercise of his power under section 147, therefore, cannot be sustained.

As the error here is one of jurisdiction it is not necessary for the assessee to have recourse to the remedies by way of appeal, revision, etc. It is well settled that when a jurisdictional error is brought to the notice of this court such errors are capable of being corrected by this court in exercise of the court's powers under article 226 of the Constitution of India. The Supreme Court in the case of CIT v. Progressive Engineering [1993] 200 ITR 231 (SC) (sic), held that when all the relevant facts were before the court and the law is clear on the subject, it is the duty of the High Court to interfere. That was also a case where the proceedings were sought to be initiated against the assessee under section 147 of the Act."

10. In the case of Madras Suspensions Limited Versus Deputy Commissioner of Income Tax, the honorable Single Judge of this Court passed an order on 11.10.2017, relying on the judgment rendered in the case of Fenner (India) Limited and allowed the writ petition on the ground that the facts reveals that it was the change of opinion on the part of the authorities and therefore, the issuance of notice was without jurisdiction.

11. The learned Senior Counsel referred to in GKN Driveshafts (India) Ltd. Versus Income Tax Officer and others reported in (2003) 179 CTR 0011 case wherein, the Supreme Court of India held that as the reasons have been disclosed in these proceedings, the AO has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the above said five assessment years.

12. Relying on the judgments cited supra, the learned Senior Counsel argued that the present case and its facts are squarely falling under the legal principles settled by the High Court of Madras as well as the Supreme Court of India so also the High Court of Allahabad. In the present case, the notice was issued beyond the period of limitation of 4 years, even there is no reason to believe, which is a precondition for invoking Section 147. In case, the A.O proposes to reopen the assessment beyond

the period of 4 years then he must possess any additional material to establish that the assessee had not furnished any information which all are required to be furnished or suppressed any material facts at the time of filing original assessment. Both the conditions are not satisfied in respect of the facts and circumstances of the present writ petitions. Thus, the impugned notices are liable to be scrapped as not maintainable.

13. The learned Senior Central Government Standing Counsel appearing on behalf of the Income Tax Department disputed the entire contentions raised on behalf of the writ petitioners by stating that, the writ petitions are not maintainable and liable to be dismissed in limine. What is under challenge in these writ petitions are notices issued under Section 148 of the Income Tax Act. The contentions of the notice impugned, reveals that the returns filed for the assessment years had escaped assessment within the meaning of Section 147 of the Income Tax Act, 1961. In view of the fact that the escaped assessment is noticed by the authorities or any information received in this regard then the competent authorities are empowered to invoke the powers conferred under Sections 147 to 153 of the Act and initiate proceedings for reopening of the assessments which were completed. Thus, there is no irregularity or illegality in respect of initiation of reopening proceedings under the relevant provision of the Income Tax Act. The very purpose and object of the Act is to ensure that the assessments are properly made with reference to the actual income of the assessee and to impose tax if there is any escapement in respect of the information or the returns filed. The very purpose and object of the Act cannot be defeated, as in the present writ petitions, the very notice itself are under challenge. The writ petitioners are entitled for further opportunities to file returns, seek reasons for reopening of the assessment, submit their objections and only after passing the final assessment order, they are at liberty to prefer further appeal contemplated under the Income Tax Act. When opportunities are available to redress the grievances under the provisions of the Act itself, the very initiation cannot be challenged by the writ petitioners by way of writ proceedings and this Court cannot encourage such writ petitions in view of the facts that certain material fact forms basis for the initiation of such proceedings.

14. It is brought to the notice of this Court that pursuant to the impugned notices issued under Section 148 of the Act, the writ petitioners had filed returns and further submitted applications seeking the reasons for re-opening of the assessment. However, during the relevant point of time based on the earlier judgments of the Apex Court, the department passed an order on 13.08.2002 rejecting the request of the writ petitioners for furnishing reasons. The learned Senior Standing

Counsel, now concedes that the legal position has been changed and now the assessee is entitled for reasons and the department is ready and willing to provide the reasons. Therefore, the reply given in proceedings dated 13.08.2002 need not to be relied upon on account of efflux of time and now after a lapse of 15 years, the law in this subject has been changed and the writ petitioners are entitled for the reasons and the competent authorities/Assessing Officer is bound to furnish the reasons for reopening of the assessment with reference to Sections 147 to 153 of the Income Tax Act. Therefore, the respondents are ready to furnish the reasons. On receipt of such reasons, the writ petitioners are entitled to submit their objections/explanation and file documents and that the adjudication process is to be undertaken by the Assessing Officer and thereafter, a decision would be taken by the authorities competent by passing the final assessment order. This being the procedure contemplated and now being followed by the Income Tax Department, the present writ petitions deserve no merit consideration and accordingly liable to be rejected.

15. In support of the said contentions, the learned Senior Standing Counsel for the Income Tax Department cited the judgment of the honorable Single Judge of this Court in W.P.No.27598 of 2008 dated 29.01.2018, the said judgment is submitted to repudiate the judgment submitted by the learned Senior Counsel dated 11.10.2007 in W.P.No.18411 of 2004. The learned Senior Counsel for the petitioner relying on the judgment dated 11.10.2017 said that the notice impugned in the present writ petitions are liable to be scrapped on the ground that it is a change of opinion and not the reason to believe. It is pertinent to note that both the judgments were delivered by the Honorable Mr. Justice T.S. Sivagnanam. The learned judge has taken a view that the petitioner appears to have acquired some knowledge, though not officially, as to what could have been the reasons for reopening, which prompted the petitioner to send the letter dated 06.06.2008 objecting to the reopening proceedings. In response to the said letter, the first respondent sent a reply dated 12.08.2008 calling upon the petitioner to file their return of income. Once again, another letter of the even date was sent by the first respondent to the petitioner calling upon the petitioners for the proposal under Section 144 of the said Act for the assessment year 2002-2003.

16. The learned Judge, further states that in para 7 as follows:

7. The mandate, as laid down by the Hon'ble Supreme Court in the case of GKM Driveshafts (India) Ltd. Vs. ITO [reported in (2003) 259 ITR 19], requires that when an assessee seeks reasons for reopening

the assessment, the Assessing Officer is bound to furnish the same. On receipt of the reasons, the assessee is entitled to submit their objections, which should be considered and a speaking order should be passed. The reasons cannot be inferred from the reply given by the Assessing Officer dated 12.8.2008. The reasons for reopening should find a place in the files of the Assessing Officer for the relevant assessment year and those reasons need to be communicated to the assessee so as to enable them to file their objections to the reopening proceedings. Therefore, this Court is of the considered view that the reply sent by the Assessing Officer on 12.8.2008 is of little avail. Even assuming that the assessee had partial knowledge of the reasons for reopening the assessment, that would not be sufficient compliance of the mandate in the light of the decision in the case of GKN Driveshafts (India) Ltd.

16. The learned Senior Standing counsel referred another judgment of this Court dated 23.11.2018 passed in W.P.Nos.34676 and 34677 of 2003 and the said judgment was delivered by myself (Honorable Mr. Justice S.M. Subramaniam). The relevant paragraphs are extracted here under:

26. The learned counsel for the petitioner has drawn the attention of this Court regarding the judgment of the Hon'ble Supreme Court of India in the case of GKN Driveshafts (India) Ltd. vs. Income Tax Officer And Others [(2003) 1 SCC 72], in paragraph-5, held as follows:-

"5. We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under Section 148 of the Income Tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to

dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the abovesaid five assessment years."

The procedures prescribed by the Supreme Court of India in G.K.N.Driveshafts (India) Limited case, are to be followed by the Competent Authorities scrupulously.

27. The learned counsel for the respondents also has not disputed the proposition and reiterated that the Authorities Competent are following the principles laid down by the Apex Court and with reference to the present writ petition on hand, the same procedure has been followed.

28. This Court has elaborately considered the legal principles in the case of South Asia FM Ltd., reported in [2018] 98 taxmann.com 200 (Madras). The relevant paragraphs are extracted hereunder:

"95. The very concept of income tax assessment is that the Assessee is taxed by the Department based on the returns filed by the Assessee. Section 2 of the Act provides "definitions". Section 2(8) defines "assessment includes reassessment". Thus the very meaning of the assessment provided under the Act includes reassessment also. Thus, the reassessment is not a separate concept and it is included within the meaning of the assessment under Section 2(8) of the Act. Thus, an assessment and reassessment are part and parcel of the procedures and therefore, there cannot be any doubt in respect of the power of reassessment provided under the Act.

96. The Income Tax Department may not be aware of the income of the individual Assessee. They are assessing the tax based on the returns filed by the respective Assessee. Thus, the very concept of assessment is that the Officer who is scrutinising the returns did not aware of the income of an individual. For this reason only Act provides adequate power to deal with the cases, where there is evasion or suppression or otherwise by the Assessee. The very source of assessment is the returns filed by the Assessee concerned. Only after the filing of the returns, the Department of Income Tax came to

understand the income of the person concerned. Thus, the reassessment may arise on several occasions and on several grounds. The Income Tax Department may receive informations from many other sources. The Income Tax Department may get some external materials as well as from various other sources. It is the process of investigation. On receipt of such materials or informations from various other sources, in such circumstances, the authorities must be in a position to reopen the assessment and impose tax. In the absence of any such lucid provision, enabling the Department reopening a case, there is a possibility of escapement of payment of tax by large number of Assesseees. The very nature of the Act is to ensure that the informations and the materials collected or received from various other sources are also dealt with by the Department of Income Tax appropriately and with reference to the provisions of the Act.

97. The power of reopening of the assessment is certainly wide in nature. If it is restricted, then the very purpose and object of the Income Tax Act will be defeated. The wide power provided to the authorities competent to reopening of the assessment and to ensure that all external materials and the informations received from various sources should also be dealt in accordance with the provisions of Law. Thus, it does not mean that the Income Tax Authorities may reopen at any point of time. In order to protect the Assesseees a definite time limit has been provided under the Act itself. Thus in the event of receiving any informations or materials from any other sources can be a ground for reopening of the assessment and the period of limitation is four years and six years respectively and in respect of the present writ petitions, it is six years.

98. The procedure of reopening of the assessment is contemplated under Sections 148 to 153 of the Act. Once again looking into the spirit of Section 147, it is unambiguously enumerated that "assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this Section, or recompute the loss or the depreciation allowance".

99. The language employed in Section 147(1) of the Act is that "which comes to his notice subsequently in the course of the proceedings under the Section". Thus even after initiation of reopening of assessment proceedings under Section 147 of the Act, if during the course of the proceedings if any materials or informations are received by the Assessing Officer that also can be taken into consideration for the purpose of reassessment. It is crystal clear that the reasons recorded before the initiation of the reopening of the assessment alone need not be a ground for reassessment. Even after reopening of the assessment if any materials or informations are received by the Assessing Officer that also shall be included part and parcel of the proceedings and sufficient explanations shall be called for from the Assessee and accordingly a reassessment order can be passed. Thus, two circumstances arise after the conclusion of the assessment. Firstly, if the assessment is finalised, the reopening in respect of the escaped assessments can be made if any new materials or suppression of materials are identified. On such reopening of the assessment and during the course of the proceedings, if the Assessing Officer noticed any other materials or informations in respect of escaped assessment and the same also can be treated as part and parcel of the reassessment proceedings which is reopened.

100. On going through the said ingredients of the Section 147, this Court has no hesitation to conclude that the Assessing Officer has got wider power in respect of covering the escaped assessments for the purpose of reopening the assessment. The proviso to Section 147 states that "provided further that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment". This also provides various circumstances enabling the Assessing Officer to assess or reassess such income other than the income involving the matters which are the subject matters of any appeal, reference or revision. The wideness of the power has been further clarified in the said proviso clause.

101. Explanation 2 sub-clause (b) to Section 147 also provides power to the Assessee where a return of income has been furnished by the Assessee but no assessment has been made and it is noticed by the Assessing Officer that the Assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return.

102. The circumstances are narrated wherein certain materials and informations are provided by the Assessee at the time of filing of the returns and if the same has not been assessed by the Assessing Officer during the relevant assessment year and if it is subsequently noticed, then also the Assessing Officer is empowered to reopen the assessment in respect of the escaped assessments.

103. On a perusal of various circumstances incorporated under Section 147 of the Act, for reopening of the escaped assessment, this Court is of an opinion that it is certainly flexible and wider power has been provided, enabling the Assessing Officer to reopen the assessment in the interest of revenue and to ensure that the Assessee pay the correct tax with reference to the provisions of the Act.

104. This Court is of a firm opinion that where certain doubts in respect of the reasons or otherwise have been raised by the Assessee, such benefit of doubt should be held in favour of the revenue and not in favour of the taxpayer. Contrariness is to be established by the Assessee, while scrutinising the materials available with the Assessing Officer.

105. It is for the Assessee to convince the Assessing Officer in respect of all such escaped assessments, informations and materials available and submit the returns. This being the legal principles to be followed, the provisions are to be interpreted to achieve its purpose and the object and therefore the wider powers provided under Section 147 of the Act, for reopening of the escaped assessments can never be restricted by imposing certain conditions on the Assessing Officer.

110. In the present cases on hand, the request made by the writ petitioner had been complied with and the reasons for reopening of the escaped assessment had been communicated to the writ petitioner. The said propositions are

very well recognised by the Supreme Court of India in the case of GKN Driveshafts (India) Ltd. Thus the very provision stating that the Assessing Officer should record the reasons does not mean that the same should be communicated along with the notice itself. The provision is incorporated in order to ensure that the Assessing Officers act with responsibility and make sure that they are reopening the assessment only based on some reasons and the materials available on record. Such provisions provided to avoid the arbitrariness on the part of the Assessing Officer cannot be taken advantage by the Assessee by contemplating the procedures that the reasons so recorded by the Assessing Officer should be communicated to the Assessee along with the notice issued under Section 148 (1) of the Act. Such a proposition cannot be appreciated and that is not the intention of the Act itself. Thus, the very arguments advanced in this regard by the writ petitioner deserve no merit consideration.

111. In case of M/S. Phool Chand Bajrang Lal vs Income-Tax Officer And Another [1993 203 ITR 456], it has been held as follows:-

"One of the purposes of Section 147, appears to us to be, to ensure that a party cannot get away by wilfully making a false or untrue statement at the time of original assessment and when that falsity comes to notice, to turn around and say "you accepted my lie, now your hands are tied and you can do nothing". It would be travesty of justice to allow the assessee that latitude."

112. On careful consideration of all the judgments, cited supra, this Court is of an undoubted opinion that if the Assessing Officer has reason to believe that income has escaped assessment, it confers jurisdiction to reopen the assessment. It is however, to be noted that the conditions stipulated in the Act must be fulfilled if the case falls within the ambit of Section 147.

113. Considering the fact that there are some materials on record and the informations with the Department of Income Tax, the reopening of the assessment in the writ petitions with reference to Sections 147 to 153 of the Act, is in accordance with law and there is no infirmity, as such. Thus, the writ petitioner is

bound to respond to the Assessing Officer for the purpose of arriving a conclusion and for taking a decision. In the event of passing an order of assessment or reassessment, then the writ petitioner is entitled to prefer an appeal contemplated under the provisions of the Act. Contrarily, based on the preliminary informations gathered by the Assessing Officer, the notices issued for the purpose of reopening of the assessment would not provide a cause of action for filing of the present writ petitions and this Court has no hesitation in holding that the writ petitions are not only premature, even on merits the writ petitioner has failed to establish any acceptable reason to grant the relief, as such, sought for".

29. The learned counsel for the respondents further contented that the writ petitioner has raised several grounds, including the point of jurisdiction and with reference to the returns filed by him during the assessment year 1996-1997 and also for the assessment year 1997-1998. All the legal grounds and the factual circumstances submitted by the writ petitioner are to be considered by Assessing Officer, while taking a final decision and at the time of passing the assessment order under the provisions of the Income Tax Act, 1961.

30. It is brought to the notice of this Court that the writ petitioner had already submitted an application, seeking the reasons recorded by the Assessing Officer and the reasons were already provided to the writ petitioner. On receipt of the reasons for issuance of the reopening of assessment under Section 147 of the Act, the writ petitioner also had submitted his objections in respect of the notice as well as the reasons communicated by the Department.

31. Further, it is contended that the Assessing Officer had passed an order, rejecting the objections submitted by the writ petitioner. Therefore, the Assessing Officer has to complete the process of assessment and accordingly, take a decision and pass final orders by providing further opportunity to the assessee concerned. The writ petitioner, who is an assessee, is entitled to submit all his further objections,

documents or materials available with him, enabling the Assessing Officer to consider his case independently and with reference to the documents and materials produced by the writ petitioner and also the documents and materials available with the Income Tax Department. The Assessing Officer is empowered to consider the issue relating to jurisdiction, time limit and all other legal grounds raised by the writ petitioner at the time of passing the final orders.

32. Under these circumstances, this Court has no hesitation in coming to the conclusion that the writ petitioner is entitled to submit all his objections and legal grounds and materials, enabling the Assessing Officer to consider the same and pass an assessment order under the provisions of the Income Tax Act, 1961, without causing any undue delay.

33. With the above observations, the writ petitions stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

17. Considering the arguments of the learned Senior Counsel for the petitioners as well as the learned Senior Standing Counsel for the respondents, this Court is of an opinion that the legal principles in this regard are settled in the case of Dayanidhi Maran vs The Assistant Commissioner of Income Tax also.

18. Issuance of notice under Section 148 of the Income Tax Act is nothing but initiation of the proceedings for reopening of the assessment already concluded. Undoubtedly, such reopenings are to be done cautiously and the reasons for reopening is also mandatory. In the absence of any substantial reason, the Assessing Officer is not empowered to re-open the assessment, which were closed already.

19. The very object of the provision under the Income Tax Act is to ensure that the suppressed materials or facts and the new availability of materials to the Department are also to be dealt with for the purpose of taxation. In order to cover the loopholes in the Tax Regime, and to control and evasion of tax by the individuals, the provision of reopening of assessments are made and such provisions are to be invoked by following procedures contemplated under the Act.

20. Undoubtedly, the writ petitioners in the present writ petitions, on hand had filed the returns for the respective assessment years within the time limit prescribed under Section 139 of the Income Tax Act, 1961. It is an admitted fact that the impugned notices were issued beyond the period of four years and within a period of six years as contemplated under Section 149(1)(b) of the Income Tax Act. Thus, the notice was issued informing the assesseees to take note of the fact that the department possesses some materials in respect of the assessment of the particular assessment years cited in the impugned notices and therefore the Assessing Officer has got every reason to believe to reopen the assessment.

21. Mere issuance of notice can never be construed as a final order. Initiation of proceedings are to be construed as informations to the assessee and can never be concluded as a final proceedings. Thus, the issuance of notice is an information provided to the assessee, enabling the assessee to avail of all further opportunities contemplated under the Statutes.

22. Thus, the Court cannot come to the conclusion that non quoting of the reasons by the Assessing Officer in the impugned notice will vitiate the entire proceedings. If such a proposition is adopted, then it would be certainly difficult for the executives to reopen the cases as per the provisions of the Act. The procedures are contemplated under the Act, enabling the assessee to avail the opportunity and defend their respective cases in accordance with the provisions contemplated.

23. Certain aspects which are all contemplated under the provisions of the Act, cannot be interpreted, so as to defeat the purpose for which such a provisions were enacted by the Legislators. Constructive interpretation of the Statutes and the rules are of paramount importance. The rule of constructive interpretation requires that the possible object and the purpose to be achieved is met out by adopting not only the balancing approach, but also by providing all reasonable opportunities to the persons, who are all connected or aggrieved.

24. The purpose of Income Tax Act, more specifically, Sections 147 and 148 of the Act, is to ensure that the assesseees, who have suppressed the fact are not provided the information at the time of filing of the returns or if the Department is in possession of certain new materials in respect of assessment of a particular year, then the assessee must be informed about the decision taken by the Department to reopen the assessment and after such information is provided, the procedures contemplated must be followed for the purpose of concluding the reassessment by reopening the proceedings.

25. Admittedly, in the present writ petitions, the reopening proceedings have not reached finality. It is only an initiation of the proceedings under Sections 147 and 148 of the Act. The very initiation cannot be interfered with by the Court in a routine manner. Judicial review against such initiations under the provisions of the Act, is certainly limited. The Court cannot intervene on such initiations in a routine manner in the absence of any valid and acceptable legal grounds. Thus, the exercise of judicial review in such matters regarding the initiation of the proceedings are to be exercised cautiously and in order to ensure that the taxations are done properly and the assessee is made to pay the income tax in accordance with the provisions of the Income Tax Act. The amended phraseology of "reason to believe" must be interpreted that the Assessing Officer on receipt of any such new material or materials in relation to the non furnishing of fact by the assessee has made out a prima facie opinion that it is the case for reopening of the assessment, then he can issue notice under Section 148 and thereafter, the procedure of furnishing the reasons, receiving objections and conducting scrutiny and all other procedures contemplated under the provisions of the Act will suit as follow. Thus, it is not as if at the very issuance of notice requires that the reasons must be recorded in the notice itself. The reasons can be furnished on request as held by the Supreme Court in the case of GKN Driveshafts (India) Ltd. vs. Income Tax Officer & others.

26. The very meaning of the word "Notice" is that "information that tells you or warns you about something that is going to happen". Thus, the mere notice providing an information to the assessee that the authorities have got every reason to believe to reopen the assessments does not mean that all opinions and reasons formulated by the Assessing Officer must be communicated to the assessee in the very notice issued under Section 148 of the Act. The very concept of notice is that the authorities while issuing notice should not predetermine the issues or arrive a conclusion.

27. In the event of stating the reasons elaborately, it is to be construed that such reasonings are recorded without providing an opportunity to the assessee and such a procedure now argued, deserves no merit consideration. However, the notice issued must be based on certain materials available with the Income Tax Department and on receipt of the notice, the assessee has got every right to seek for the reasons from the Department and the Department is bound to provide reasons, enabling the assessee to submit his explanations/objections in order to defend his case in the manner known to law.

28. In the present cases, as contended by the learned Senior Counsel, further, on receipt of the notices impugned, the writ petitioners had filed their respective returns. They are requested to furnish the reasons for reopening of the assessment which were finalized. However, the Department rejected the application during the year 2002.

29. However, the learned Senior Standing Counsel, now fairly made a submission that in view of the judgment of the Supreme Court in the case of GKN Driveshafts (India) Ltd. vs. Income Tax Officer & others, now the Department is bound to provide the reasons for reopening the assessment and in the present case also the Assessing Officer will provide the same to the writ petitioners, soon after the disposal of the writ petitions and on receipt of the reasonings, the assessee/writ petitioners are entitled to submit their explanations/objections and thereafter defend their case in the manner prescribed.

30. In respect of the grounds raised by the learned Senior Counsel, on behalf of the writ petitioners that the notice is beyond the period of limitation of four years, the same cannot be accepted in view of the fact that the notice was issued within a period of six years. As the present case falls under Section 149(1)(b) of the Income Tax Act, the period of limitation prescribed is six years. In view of the fact that the notice has been issued within a period of six years, the ground of limitation raised on behalf of the writ petitioners, fails. As far as the ground in relation to the change of opinion, it is premature on the part of the writ petitioners to come to such a conclusion whether it is a change of opinion or the reopening is made based on the new or additional material available with the Income Tax Department, the same can be ascertained only after furnishing objections to the Income Tax Department by the assessee. In the absence of having knowledge about the reasons, the writ petitioners cannot come to the conclusion that there is no new material or reason to reopen the assessment already closed. Such a ground raised is not only presumptive but premature. The Income Tax Department has to furnish the reasons to the writ petitioners and on receipt of the reasons, if the writ petitioners are of the opinion and there are no additional material or new materials are available then they can submit their objections in respect of the change of opinion or reason to believe. The objections to be submitted in this regard may contain all such explanations or grounds raised in the present writ petitions before the Assessing Officers. This being the legal principles settled by the Hon'ble Supreme Court as well as by this Court, as per the judgment cited supra, this Court has no hesitation in holding that the writ petitioners are not substituted any acceptable legal ground

for the purpose of interfering with the notices issued under Section 148 of the Income Tax Act. Thus, the writ petitioners are bound to face the reopening proceedings by availing the opportunities to be provided by the Income Tax Department.

31. Accordingly, the following orders are passed:

a) The relief sought for in these writ petitions stand rejected.

b) The respondent/Income Tax Department is directed to furnish the reasons for reopening of the assessment for the years referred in the impugned notices to the writ petitioners, within a period of four weeks from the date of receipt of a copy of this order.

c) On receipt of the reasons from the Income Tax Department, the writ petitioners are directed to submit their objections/explanations and the documents if any, within a period of four weeks from the date of receipt of the reasons from the Income Tax Department.

32. The Assessing Officer shall adjudicate the matter by providing opportunity to all the parties concerned and take a decision and pass assessment orders on merits and in accordance with law, without causing any undue delay, as the writ petitions itself were pending for a considerable length of time, without any progress. With these directions, the writ petitions stand disposed of. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sni/gsi

To

1. The Commissioner of Income Tax, (Central II)
108, Uttamar Gandhi Road, Chennai-600034.

2. The Assistant Commissioner of Income Tax
Central Circle II (1)
108, Uttamar Gandhi Road, Chennai-600034.

+1cc to M/S.A.P.Srinivas, Advocate Sr.6142

+3ccs to M/S.G.Baskar, Advocate sr.5883

W.P.Nos.12603, 12604 & 33239 of 2002

kan[co]

srg 25/02/2019