

Niti

**IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NOS.500 OF 2014 & 72 OF 2015**

WRIT PETITION NO.500 OF 2014

Shri Dinar Tarcar,
of major age, Indian National,
resident of 'Mangesh',
Fr. Agnelo Road, Altinho,
Panaji-Goa.

...Petitioner

Versus

1. Assistant Commissioner of Income Tax,
Central Circle, having office at First floor,
Pundalik Niwas, Rua de Ourem,
Panaji-Goa.

2. Joint Commissioner of Income Tax,
Central Range, First Floor,
Pundalik Niwas, Rua de Ourem,
Panaji-Goa.

3. Commissioner of Income Tax,
Karnataka (Central), Central Revenue
Building Queen's Road, Bangalore - 560
001.

4. Union of India, represented by its
Secretary, Ministry of Revenue,
Central Secretariat, North Block,
New Delhi - 110 001.

...Respondents

**AND
WRIT PETITION NO.72 OF 2015**

Mrs. Manisha Tarcar,
wife of Mr. Dinar Tarcar,
of major age, Indian National,
resident of 'Mangesh',
Fr. Agnelo Road, Altinho,
Panaji-Goa.

...Petitioner

Versus

Assistant Commissioner of Income
Tax, Central Circle – 1(1),
having office at Room No.207,
First Floor, Aayakar Bhavan,
Panaji-Goa.

...Respondents

**Mr. Devidas Pangam with Mr. Nikhil Vaze, Mr. Amogh
Arlekar and Mr. Ajay Borkar, Advocates for the Petitioner.**

Ms. Susan Linhares, Standing Counsel for the Respondents.

**CORAM: M. S. SONAK &
 R.N. LADDHA, JJ.
Reserved on : 23rd MARCH 2022
Pronounced on : 4th APRIL 2022**

JUDGMENT : (Per M.S. Sonak, J.)

- 1.** Heard learned Counsel for the parties.

- 2.** The rule was issued in both these petitions on 23.04.2015 and interim relief was granted in terms of prayer clause 'd'. The order made in Writ Petition No.500/2014, which is identical to

the order made in connected Writ Petition No.72/2015, reads as follows :

“Heard Shri Pangam, learned Counsel appearing for the Petitioner and Ms. Desai, learned Counsel appearing for the Respondents.

2. Rule.

3. Ms. Desai, learned Counsel, waives service on behalf of the Respondents.

4. The Petition challenges the notice dated 25.03.2014 issued under Section 148 of the Income Tax Act seeking to reopen the assessment for Assessment Year 2010-11. The reasons in support of the impugned notice do not indicate any directions from CIT (Appeals) to issue the re-opening notice. However, the Order dated 23.07.2014 disposing of the objections relies upon the directions of the CIT (Appeals) to make Section 150 of the Income Tax Act applicable to reject the objections. Thus, prima facie, the reasons in support not referring to the directions of the CIT (Appeals), cannot support the impugned notice. Therefore, interim relief in terms of prayer (d).”

3. Though Ms. Linhares, the learned Counsel for the respondents, tried to urge that the issues involved in both these petitions may not be the same, after extensively hearing the learned Counsel for the parties, we are satisfied that there is no substantial difference between the two matters. Therefore, we propose to dispose of both these petitions by this common judgment and order, no doubt, bearing in mind the points of distinction urged by Ms. Linhares. Writ Petition No.500/2014 will, however, be treated as the lead petition.

4. The petitioners' challenge notices under Section 148 of the Income Tax Act, 1961 (IT Act) dated 25.03.2014 and 10.03.2014 which seek to reopen the completed assessment for the assessment year 2010-2011 on the alleged ground that the income chargeable to tax for the said assessment year has escaped assessment within the meaning of Section 147 of the IT Act. The petitioner in Writ Petition No.72/2015 is the wife of the petitioner in Writ Petition No.500/2014. Both the petitioners are entitled to the benefit of the provisions of Section 5A of the IT Act concerning the apportionment of income between spouses governed by the Portuguese Civil Code about which, there is no dispute.

5. On 30.07.2010, the petitioner filed income tax returns for the assessment year 2010-2011. The same was processed under Section 143(1) and notices under Sections 143(2) and 142(1) dated 22.06.2011 were served on the petitioners. The assessment was completed as evidenced by the assessment order dated 26.12.2011 made by the Assessing Officer (AO).

6. On 27.12.2011, the AO made another assessment order concerning the assessee company - Dinar Tarcar Resources (India) Private Ltd. (DTRPL) of which both the petitioners are Directors/shareholders. In this assessment order, an amount of ₹23,76,49,580/- that was advanced to the assessee company by M/s. Minescape Minerals Pvt. Ltd. (MMPL) was treated as deemed dividend under Section 2(22)(e) to the extent of ₹17,19,30,000/-.

7. Aggrieved by the assessment order dated 27.12.2011, DTRPL appealed to CIT (Appeals) on 24.01.2012. The CIT (Appeals) vide order dated 16.01.2013, allowed this appeal and held that deemed dividends could not have been brought to tax in the hands of DTRPL but that the same could have been brought to tax in the hands of the shareholders of DTRPL, that is, the petitioners in these two petitions. The CIT (Appeals) *left it open* to the AO to make such an assessment of deemed dividends in the hands of the two petitioners. Admittedly, neither of the petitioners were notified nor granted any opportunity of hearing in the appeal before the CIT (Appeals).

8. Based upon the appeal order dated 16.01.2013, the AO, on 22.07.2013 forwarded proposals to the Commissioner of Income Tax urging the exercise of revisional powers in respect of the assessment order dated 26.12.2011 concerning the petitioner's assessment for the assessment year 2010-2011. By order dated 10.03.2014, however, the Deputy Commissioner of Income Tax refused to exercise revisional jurisdiction by pointing out that the AO had a remedy under Section 148 read with Section 150 of the IT Act to reassess the petitioners.

9. Based on the order of the Deputy Commissioner of Income Tax, the AO issued the impugned notices to the petitioners seeking to reopen the assessment for the assessment year 2010-2011.

10. The petitioners, upon service of the impugned notice, requested the AO for furnish of reasons on 24.04.2014. Such reasons were furnished to the petitioner. The petitioner filed

objections which were rejected by the AO on 10.06.2014. This petition was instituted on 06.08.2014 and ad-interim relief was granted on 29.01.2015. This ad-interim relief was confirmed on 23.04.2015.

11. Mr. Pangam, the learned Counsel for the petitioners, submits that the impugned notice stands vitiated because the same was issued at the dictates of the Deputy Commissioner of Income Tax and there was no independent application of mind by the AO. He submits that, in any case, the AO has incorrectly invoked the provisions of Section 150 of the IT Act because in this case there was neither any *direction* nor any *finding* to reassess the returns filed by the petitioners. He submitted that neither of the petitioners was noticed nor heard by CIT (Appeals) and, therefore, findings, if any, could not have been made the basis for reopening the assessment. He submitted that any reliance upon such alleged finding would not only contravene the principles of natural justice and fair play but would amount to an express breach of explanation 3 of Section 153(3) of the IT Act. For all these reasons, Mr. Pangam submitted that the impugned notices are without jurisdiction and warrant interference.

12. Mr. Pangam submitted that, in any case, the entire material considering the transactions of advance and so-called deemed dividends were before the AO, who made the assessment order dated 26.12.2011, just a day before he made the assessment order dated 27.12.2011, in respect of DTRPL. He submits that this was not a case of any suppression of facts or material and no such case is even allowed against the petitioners. He, therefore, submitted that the AO, based on the very same material could

not have simply changed his opinion and based upon such a changed opinion seek to reopen the completed assessment. He submitted that this is an additional reason to interfere with the impugned notice.

13. Mr. Pangam relied on *Income Tax Officer, A Ward, Sitapur V/s. Murlidhar Bhagwand Das*¹, *Rajinder Nath & Ors. V/s. C.I.T. Delhi*², *Raj Kishore Prasad V/s. Income-tax Officer*³ and *Commissioner of Income Tax, Shimla V/s. Greenworld Corporation Parwanoo*⁴ in support of the above contentions.

14. Ms. Linhares, at the outset, pointed out that in the impugned notice dated 10.03.2014, issued to the petitioner in Writ Petition No.72/2015, there was no reference to invoking the provisions of Section 150 of the IT Act. She submitted that in that matter, information was received from Central Circle, Panaji by the AO based upon which the powers under Section 147 and 148 of the IT Act were invoked. She, therefore, submitted that there is a material difference in the facts involved in the two petitions. Based on this, Ms. Linhares submitted that the contentions about the applicability and invocation of Section 150 of the IT Act will not apply in Writ Petition No.72/2015.

15. Ms. Linhares, without prejudice to the aforesaid, submitted that both the petitioners were admittedly the only shareholders

1 AIR 1965 SC 342

2 (1979) 4 SCC 282

3 (1992) 195 ITR 438 (Allahabad)

4 2009 7 SCC 69

and Directors of the companies DTRPL and MMPL. She submitted that being such, neither could claim ignorance about the proceedings before CIT (Appeals) that culminated with the order dated 16.01.2013. She submitted that DTRPL was granted a full opportunity of hearing before CIT (Appeals) and the petitioners who are the only Directors and shareholders of this company should also be deemed to have been granted such opportunity by CIT (Appeals). She submits that the directions and findings recorded by CIT (Appeals), in its order dated 16.01.2013, therefore bind the petitioners, and based thereon the AO was fully competent to issue the impugned notices seeking to reassess the petitioners' returns for the assessment year 2010-2011. She relies on *Hungerford Investment Trust Ltd. V/s. Income Tax Officers & Ors.*⁵ in support of her contentions. She also pointed out that the decision in *Murlidhar Bhagwan Das* (supra), relied upon by Mr. Pangam, was considered, explained, and distinguished in *Hungerford Investment Trust Ltd.* (supra) and, therefore, it is this latter decision that should prevail.

16. Based on the aforesaid, Ms. Linhares submitted that both these petitions may be dismissed.

17. The rival contentions now fall for our determination.

18. As far as Ms. Linhares's contentions about the distinction in the facts in the two petitions are concerned, we find ourselves unable to accept the same. True, in the impugned notice dated 10.03.2014 or in the reasons furnished to the petitioner in Writ Petition No.72/2015, there is no express reference to the

5 (1998) 3 SCC 168

provisions of Section 150 of the IT Act. However, if the reasons are perused then it is quite apparent that the impugned notice is entirely based on an order dated 16.01.2013 issued by CIT (Appeals). The material on record also establishes that the AO, based upon this very order dated 16.01.2013, had applied to the Commissioner for invocation of the revisional jurisdiction. However, the Deputy Commissioner had refused to invoke the revisional jurisdiction on the ground that the AO had remedies to reopen the assessment even in the case of the petitioner in Writ Petition No.72/2015 by resorting to the provisions of Section 150 of the IT Act.

19. Therefore, the mere absence of specific reference to the provisions of Section 150 of the IT Act in the notice impugned in Writ Petition No.72/2015, or the reasons supplied to the petitioner in the said petition, does not mean that the facts in the two petitions are substantially different or that the issues involved in the two petitions are materially different. There is also no dispute that the petitioners in the two petitions are spouses and the provisions of Section 5A of the IT Act concerning the apportionment of income between spouses governed by the Portuguese Civil Code apply to them. For all these reasons, we are unable to accept Ms. Linhares's first contention about the distinction between the facts in the two petitions.

20. Now, the impugned notice in Writ Petition No.500/2014 specifically refers to Section 150 of the IT Act and the impugned notice in Writ Petition No.72 /2015, based on the material on record, can also be said to have been issued in terms of Section 150 of the IT Act. In both the petitions, it is quite clear that the

impugned notices, seeking to reopen the assessment of the assessment year 2010-2011, are based on the order dated 16.01.2013 made by CIT (Appeals).

21. Section 150 of the IT Act is concerned with provision for cases where assessment is in pursuance of an order on appeal, etc. Section 150 of the IT Act as it was then obtained, reads as follows:-

*“150. (1) Notwithstanding anything contained in section 149, the notice under section 148 may be issued at any time for the purpose of making an assessment or reassessment or recomputation in consequence of or to give effect to **any finding or direction** contained in an order passed by any authority in any proceeding under this Act by way of appeal, reference or revision [or by a Court in any proceeding under any other law].*

(2) The provisions of sub-section (1) shall not apply in any case where any such assessment, reassessment or recomputation as is referred to in that sub-section relates to an assessment year in respect of which an assessment, reassessment or recomputation could not have been made at the time the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or recomputation may be taken.”

22. Section 150 will have to be read along with Section 153 of the IT Act which is concerned with the time limit for completion of assessments and reassessments. Explanation 3 to this Section provides that :

*Where, by an order [referred to in clause (ii) of sub-section (3)] any income is excluded from the total income of one person and held to be the income of another person, then, an assessment of such income on such other person shall, for the purposes of section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order, **provided such other person was given an opportunity of being heard before the said order was passed.***

Emphasis supplied.

23. Therefore, the conjoint reading of Section 150 and explanation 3 to Section 153 would mean that to sustain a reassessment in terms of Section 150 of the IT Act, the respondent needs to satisfy two conditions amongst others:- (a) The assessment or reassessment or recomputation must be in consequence of or to give effect to any *finding or direction* contained in an order passed by any authority in any proceedings under this Act by way of appeal, reference or revision or by a Court in any proceeding under any other law; and (b) The *finding or direction* contained in the order referred to above must have been rendered after the person whose return is now sought to be reassessed was given an opportunity of being heard before the said order was passed.

24. Since the impugned notices are based on an order dated 16.01.2013, made by CIT (Appeals), it is necessary to find out whether, in the said orders, the CIT (Appeals) had indeed issued any *direction* for a reassessment of the returns filed by the petitioner for the assessment year 2010-2011 or recorded any finding affecting the petitioners after the petitioners were given an opportunity of being heard before the order containing such finding was passed.

25. In the aforesaid regard, it is necessary to transcribe below paragraphs 20 to 24 of the order dated 16.01.2013 made by CIT (Appeals), because it is the case of the respondent that the findings and directions are to be found in these paragraphs.

“20. The provisions of section 2(22)(e) which brought in a new category of payment which was to be considered as dividend as introduced by the Finance Act, 1987 with effect from 1.4.1988 viz., payment by a company ‘to any concern in which such shareholder is a member or a partner and in which he has a substantial interest’ do not say as to in whose hands the dividend has to be brought to tax, whether in the hands of the ‘concern’ or the ‘shareholder’.

However, this confusion has been clarified by the Board in the CBDT circular no.495 dated 22nd September 1987. That is the year when the new limb of section 2(22)(e) was introduced. The circular states that the ‘further, deemed dividend would be taxed in

the hands of the concern receiving where all the following conditions are satisfied....”

The Assessing Officer has discussed in detail in assessment order that in the present case of the appellant, the conditions mentioned in section 2(22) (e) of the Act are fulfilled to hold that the advances received by the assessment company constitutes to be deemed dividend to the extent of ₹17,09,30,012/-.

Therefore, hold that the entire advance made by M/s Minescape Minerals Pvt. Ltd. to the extent of its accumulated profit fits into the definition of advance which qualifies to be a deemed dividend as per sec. 2(22)(e).

21. This view has been upheld by Delhi High Court in the decisions of National Travel Services (2011)(202 Taxman 327) and Bharti Overseas Trading Co. (2012) (249 CTR 554).

However, In view of the decision, In the case of CIT vs Universal Medicare (P) Ltd (2010) 190 Taxman 144 (Bom) by the Bombay High Court, which is the Jurisdictional High Court In respect of cases of Panaji Goa, this issue needs to be re-examined. The High Court of Bombay in coming to a conclusion has relied on the decision of Special Bench of ITAT in the case of and Bhaumik Color Pvt Ltd (217 SOT 270 (Mum SB)], which has been upheld by

the High Court of Mumbai and also Hon'ble Rajasthan High Court in the case of Hotel Hilltop (313 ITR 116) and Ankitech P. Ltd (340 ITR 14(Del) holding that deemed dividend can be assessed only In the hands of a person who is a shareholder of the lender company and not in the hands of a person other than a shareholder and also that the expression 'shareholder' referred to in section 2(22)(e) refers to both a registered shareholder and a beneficial shareholder.

22. This has also been followed by the Hon'ble ITAT, Panaji (which is the jurisdictional Tribunal in respect of cases pertaining to Panaji) in the case of M/s Britto Amusements Pvt Ltd (supra). Accordingly, it was held that deemed dividends cannot be taxed in the hands of a concern who is not a shareholder but is to be taxed in the hands of the shareholder.

23. Respectfully, following the said decision in respect of this case which lies in Panaji jurisdiction, in the present case also it is clear that though deemed dividend u/s 2(22)(e) arises with respect to advances of Rs.23,76,49,580/- made to the appellant by M/s Minescape Minerals Pvt Ltd to an extent of its accumulated profits of Rs,17,09,30,012/- as held by the Assessing Officer in this case, it has to be brought to tax in the hands of the shareholders i.e. Sri Dinar Tarcar and Mrs. Manisha Tarcar and not in the hands of the appellant company receiving the advance who is

not a shareholder in the Company making the advance. Therefore, the addition of deemed dividend in hands of the appellant Company, is deleted. This decision leaves it open for the Assessing Officer to make an assessment of such deemed dividend in the hands of the shareholders as held by Hon'ble Bombay High Court in the case of CIT vs Universal Medicare (P) Ltd (2010) 190 Taxman 144 (Bom) (supra).

24. In the result, the appeal is treated as allowed.

*Sd/-
(Preeti Garg)*

*Commissioner of Income Tax
(Appeals)-VI, Bangalore.”*

26. The ambit and scope of the expression *finding or direction* have been discussed and explained by the Hon'ble Supreme Court in *Murlidhar Bhagwan Das (Supra)* and *Rajinder Nath (Supra)*.

27. In *Murlidhar Bhagwan Das (supra)*, the Constitution Bench of the Hon'ble Supreme Court has interpreted the expression *finding or direction* in Section 34(1) of the Income Tax Act, 1908. This provision was more or less similar to the provision now contained in Section 150 of the IT Act. The Court approved the decision of the Division Bench of the Allahabad High Court in *Pt. Hazari Lal V/s. Income Tax Officer, Kanpur*⁶ in which it was held that the word *finding* will

6 (1960) 39 ITR 265

only cover material questions which arise in a particular case for decision by the authority hearing the case or the appeal which, being necessary for passing the final order or giving the final decision in the appeal, has been the subject of controversy between the interested parties or on which the parties concerned have been given a hearing.

28. The Court further held that a *finding*, therefore, can be only that which is necessary for the disposal of an appeal in respect of the assessment of a particular year. The Court gave an instance where the Appellate Assistant Commissioner may hold, on the evidence, that the income shown by the assessee is not the income for the relevant year and thereby exclude that income from the assessment of the year under appeal. The finding in that context is that income does not belong to the relevant year. He may incidentally find that the income belongs to another year, but that is not a finding necessary for the disposal of an appeal in respect of the year of assessment in question.

29. The Court in the context of the expression *direction* held that the same cannot be construed in a vacuum, but must be collated to the directions that the Appellate Assistant Commissioner can give under Section 31. Under that Section, he can give directions, *inter alia*, under Section 31(3)(b),(c), or (e) or Section 31(4). The expression *direction* in the proviso can only refer to the directions that the Appellate Assistant Commissioner or other Tribunals can issue under the powers conferred on him or them under the respective sections.

30. Therefore, the expression *finding* as well as the expression *direction* can be given full meaning, namely, that the *finding* is a finding necessary for giving relief in respect of the assessment of the year in question and the *direction* is a direction which the appellate or revisional authority, as the case may be, is empowered to give under the sections mentioned therein. Even the expression “in consequence of or to give effect to” does not create any difficulty, for they have to be collated with, and cannot enlarge, the scope of the *finding* or *direction* under the proviso. If the scope is limited as aforesaid, the said words also must be related to the scope of the findings and directions.

31. In *Rajinder Nath* (supra), the Hon'ble Supreme Court held that the expressions *finding* and *direction* are limited in meaning. A *finding* given in an appeal, revision, or reference arising out of an assessment must be a *finding* necessary for the disposal of the particular case, that is to say, in respect of the particular assessee and in relation to the particular assessment year. To be a necessary *finding* it must be directly involved in the disposal of the case. It is possible in certain cases that in order to render a *finding* in respect of A, a *finding* in respect of B may be called for, which is intimately involved as a step in the process of reaching the ultimate *finding* respecting A. If, however, the *finding* as to A's liability can be directly arrived at without necessitating a *finding* in respect of B, then a *finding* made in respect of B is an incidental *finding* only. The same principles seem to apply when the question is whether the income under enquiry is taxable in the assessment year under consideration or any other assessment year.

32. In the context of the expression *direction*, the Court held that a direction in Section 153(3)(ii) must be an express direction necessary for the disposal of the case before the authority or court, and must be one which the authority or court is empowered to give while deciding the case before it. A *direction* by a statutory authority is in the nature of an order requiring positive compliance. When it is left to the option and discretion of the ITO whether or not to take action, it cannot be described as a *direction*.

33. In *Rajinder Nath* (supra), the Hon'ble Supreme Court also held that the AAC's observation that the ITO was “*free to take action*” to assess the excess in the hands of the co-owners cannot be described as a *direction*. The discussion on this issue is to be found in paragraph 13 which reads as follows: -

“13. It is also not possible to say that the order of the Appellate Assistant Commissioner contains a direction that the excess should be assessed in the hands of the co-owners. What is a direction for the purposes of Section 153(3)(ii) of the Act has already been discussed. In any event, whatever else it may amount to, on its very terms the observation that the Income Tax Officer “is free to take action” to assess the excess in the hands of the co-owners cannot be described as a direction. A direction by a statutory authority is in the nature of an order requiring positive compliance. When it is left to the option and discretion of the Income Tax Officer whether or

not to take action it cannot, in our opinion, be described as a direction.”

34. The Court also found that the *finding* in the AAC's order based upon which the assessee's returns were sought to be re-assessed was recorded without giving the assessee an opportunity of being heard. The contention that the assesseees were nothing but the partners in the partnership firm in whose case the AAC had made the order and, therefore, the assesseees were deemed to have been heard by the AAC was also rejected by the Court. The Court relied upon *Murlidhar Bhagwan Das* (supra) and held:

“It is one thing for the partners of a firm to be required to explain the source of a receipt by the firm, it is quite another for them in their individual status to be asked to explain the source of amounts received by them as separate individuals. On such opportunity being provided it would have been open to the assesseees to show that the excess alleged over the disclosed cost of construction did not constitute any taxable income.”

35. Applying the aforesaid principles to the facts of the present cases, it is quite clear that CIT (Appeals) in his order dated 16.01.2013 cannot be said to have issued any *direction* as contemplated by Section 150 read with Explanation 3 of Section 153 of the IT Act. This is because the CIT (Appeals) after deleting the addition of deemed dividends in the hands of DTRPL, only made the following observations: -

*“This decision **leaves it open** for the Assessing Officer to make an assessment of such deemed dividend in the hands of the shareholders as held by Hon’ble Bombay High Court in the case of CIT vs Universal Medicare (P) Ltd (2010) 190 Taxman 144 (Bom) (supra).”*

36. Following the law laid down in *Murlidhar Bhagwan Das* (supra) and *Rajinder Nath* (supra), the aforesaid observations cannot be called a *direction* based upon which the impugned notices can be sustained.

37. Now, the next question is whether there is any *finding* in the order dated 16.01.2013 made by CIT (Appeals) based upon which issuance of the impugned notices could be sustained.

38. Even if we proceed based on the premise that there are findings in the said order to the effect that the deemed dividends that arose could be taxed in the hands of the petitioners, who were the shareholders and directors of DTRPL, the real question is whether such findings were recorded by CIT (Appeals) after the petitioners were given an opportunity of being heard before the CIT (Appeals) made its order dated 16.01.2013 in terms of Explanation 3 to Section 153 of the IT Act. As noted earlier, this explanation makes a specific reference to Section 150 of the IT Act.

39. There can be no dispute that the petitioners were not granted an opportunity of being heard before the aforesaid findings were recorded by the CIT (Appeals) in the order dated 16.01.2013. Ms. Linhares, however, contended that since the

petitioners were nothing but the directors and shareholders in DTRPL, the opportunity of hearing granted to DTRPL should be deemed to include the opportunity of hearing to the petitioners herein as well. In support of this contention, she relied on *Hungerford Investment Trust Ltd.* (supra).

40. According to us, an almost identical contention was raised on behalf of the Revenue in *Rajinder Nath* (supra) and the same was turned down by the Hon'ble Supreme Court. There, an order was made by the AAC in a matter concerning the partnership firm. The AAC finally concluded that the income ought to have been taxed in the hands of the individual partners. Based on such findings, the Revenue sought to reopen the assessment of returns filed by the individual partners. The individual partners resisted, *inter alia*, by pointing out that the *finding* recorded by the AAC was without granting them an opportunity of being heard. This resistance was ultimately upheld by the Court by holding that it is one thing for the partners of a firm to be required to explain the source of receipt by the firm and it is quite another for them in their individual capacities to be asked to explain the source of amounts received by them as separate individuals. This was in the context of a firm and its partners. In the present matters, the petitioners are on a firmer wicket because even in law a company like DTRPL has its separate identity independent of the shareholders that might comprise it.

41. *Hungerford Investment Trust Ltd.* (supra) is distinguishable on facts because there are clear and repeated findings therein that M/s. Turner Morrison and Company Ltd. was nothing but the

agent for Hungerford Investment Trust Ltd. The Hon'ble Supreme Court noted that notice to this agent was nothing but notice to Hungerford Investment Trust Ltd. And, therefore, Hungerford Investment Trust Ltd. could not have claimed that it was not provided an opportunity of being heard before the order passed on which its income was sought to be re-assessed was made. Such a factual position does not arise in the present case and, therefore, based upon some stray observations in *Hungerford Investment Trust Ltd.* (supra), the respondent cannot seek to distinguish either *Murlidhar Bhagwan Das* (supra) or *Rajinder Nath* (supra). *Rajinder Nath* (supra) was not even noticed in *Hungerford Investment Trust Ltd.* (supra) entirely on account of the factual circumstance that notices were issued to M/s. Turner Morrison and Company Ltd. as agents in *Hungerford Investment Trust Ltd.* (supra) and therefore, such an issue did not even arise.

42. Thus, in the present cases, it is apparent that the respondent has invoked the provisions of Section 150 of the IT Act for issuing the impugned notices. This invocation was in turn based on an order dated 16.01.2013 made by CIT (Appeals). This order dated 16.01.2013 contains no *direction* as contemplated by Section 150 of the IT Act. Even assuming that this order dated 16.01.2013 contains a finding affecting the petitioners, it is apparent that such a finding came to be recorded without granting the petitioners any opportunity of being heard. Such finding, therefore, was not only in breach of principles of natural justice and fair play, but also contrary to Explanation 3 to Section 153 of the IT Act and could not have formed the basis for invoking the provisions of Section 150 of the IT Act.

43. For all the aforesaid reasons, the impugned notices are liable to be set aside and are hereby set aside.

44. The Rule is made absolute in both these petitions in terms of prayer clauses (A) and (B) thereof. There shall be no order for costs.

R.N. LADDHA, J.

NITI K
HALDANKAR

Digitally signed by NITI K
HALDANKAR
Date: 2022.04.04 16:32:47
+05'30'

M. S. SONAK, J.