IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2017

Date of Reserving the Order
Date of Pronouncing the Order
09.10.2017
13.11.2017

Coram

The Hon'ble Mr.Justice T.S. SIVAGNANAM

W.P.Nos.1589, 1590, 1843 and 1855 of 2017
and W.M.P.Nos.1556 to 1559, 1833,
1851 and 1852 of 2017

W.P.No.1589 of 2017

Karti P.Chidambaram .. Petitioner

vs

The Assistant Commissioner of Income Tax,
Non Corporate Circle-3,
Room No.623-A, 6th Floor, Wanaparthy Block,
121, MG Road, Nungambakkam,
Chennai - 600 034. .. Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records relating to the notice issued by the respondent dated 31.03.2016, having Ref.No.PAN:AAAPC5488J to the petitioner under Section 148 of the Income Tax Act, 1961 and the consequential reassessment order dated 30.12.2016

passed by the respondent under Section 143(3) read with Section 147 of the Income Tax Act, 1961 for the assessment year 2009-10 in the case of the petitioner and quash the same.

W.P.No.1590 of 2017

Srinidhi Karti Chidambaram .. Petitioner

vs

The Assistant Commissioner of Income Tax,
Non Corporate Circle-3,
Room No.623-A, 6th Floor,
Wanaparthy Block,
121, MG Road, Nungambakkam,
Chennai - 600 034. .. Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records relating to the notice issued by the respondent dated 31.03.2016, having Ref.No.PAN:AASPS5251M to the petitioner under Section 148 of the Income Tax Act, 1961 and the consequential reassessment order dated 30.12.2016 passed by the respondent under Section 143(3) read with Section 147 of the Income Tax Act, 1961 for the assessment year 2009-10 in the case of the petitioner and quash the same.

W.P.No.1843 of 2017

Nalini Chidambaram .. Petitioner

vs

1.The Assistant Commissioner of Income Tax,

Non Corporate Circle-3,
Room No.623-A, 6th Floor,
Wanaparthy Block,
121, MG Road, Nungambakkam,
Chennai - 600 034.

2.The Joint Commissioner of Income Tax,
Non Corporate Circle-3,
121 MG Road,Nungambakkam,
Chennai - 600 034.

3.The Principal Commissioner of Income Tax,
Non Corporate Circle-3,
121 MG Road,Nungambakkam,
Chennai - 600 034. .. Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records relating to the notice issued by the 1st respondent dated 31.03.2016, having Ref.No.PAN:AAAPC5521E to the petitioner under Section 148 of the Income Tax Act, 1961 and the consequential reassessment order dated 30.12.2016 passed by the respondent under Section 143(3) read with Section 147 of the Income Tax Act, 1961 for the assessment year 2009-10 in the case of the petitioner and quash the same.

W.P.No.1855 of 2017

P.Chidambaram .. Petitioner

vs

The Assistant Commissioner of Income Tax,
Non Corporate Circle-3,
Room No.623-A, 6th Floor,

Wanaparthy Block,
121, MG Road, Nungambakkam,
Chennai - 600 034. .. Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records relating to the notice issued by the respondent dated 31.03.2016, having Ref.No.PAN:AAAPC5522H to the petitioner under Section 148 of the Income Tax Act, 1961 and the consequential reassessment order dated 30.12.2016 passed by the respondent under Section 143(3) read with Section 147 of the Income Tax Act, 1961 for the assessment year 2009-10 in the case of the petitioner and quash the same.

For Petitioner
in all W.Ps : Mr.Sathish Parasaran
Senior Counsel
for M/s.C.Uma

For Respondent
in all W.Ps. : M/s.Hema Muralikrishnan

COMMON ORDER

The petitioners in all these writ petitions have challenged the notices dated 31.03.2016 issued by the respondent under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for the assessment year 2009-2010 and the consequential reassessment order dated 30.12.2016. Since the facts are identical and all the petitioners are owners of coffee estates in Coorg, State of Karnataka, the writ petitions were heard together and disposed of by this common order.

2. W.P. No. 1855 of 2017 is taken up as a lead case and it would suffice to refer to the facts therein as the facts in the other cases are identical. The petitioner's case is that he grows coffee and after pulping and drying, sells the coffee as raw coffee and the process of pulping and drying is completely different from curing and mere pulping and drying the coffee seeds does not result in cured coffee. Proceeds of sale of raw coffee is an agricultural income exempted under Section 10(1) of the Act. In case of sale of cured coffee, 25% of the income is subjected to tax as business income under Rule 7B(1) of the Income Tax Rules (hereinafter referred to as "the Rules"). The petitioner had been assessed under the Act for several years including the subject assessment year 2009-2010, wherein the claim for exemption of income from sale of coffee subjected to only pulping and drying was accepted under Section 10(1) of the Act. The petitioner would state that there are several hundreds of coffee growers including the petitioner whose income has been exempted. However, the respondent chose to issue notice under Section 148 of the Act for the subject assessment year on the ground that income chargeable to tax has escaped assessment as the petitioner has failed to disclose fully and truly all the material particulars.

3. The petitioner challenges the notice issued by the respondent to be without jurisdiction as it has been issued after more than four years of the assessment year especially when the petitioner had disclosed fully and truly all the material facts relating to the receipt of income from sale of raw coffee after pulping and drying without curing which income is exempt as agricultural income under Section 10(1) of the Act. The assessment for the year 2009-2010 was subjected to scrutiny under Section 143(1) of the Act

and the Assessing Officer accepted the petitioner's claim for exemption and completed the assessment which is sought to be reopened by the respondent by issuing the impugned notice on the ground that the petitioner sold the cured coffee and hence 25% of the total receipts from sale of coffee is exigible to tax. This according to the petitioner is a case of change of opinion which is not permissible under Section 147 of the Act. The petitioner would further submit that he was obliged to disclose only primary facts and not obliged to indicate 'what factual or legal inference should be properly drawn from the primary facts and mere change of opinion with regard to the inference to be drawn from the disclosed facts cannot justify reassessment under Section 147 of the Act.

4. It is further submitted that the Assessing Officer does not have power of review on the same set of facts without any tangible material and the only material the respondent had for reopening the assessment was the decision of the Income Tax Appellate Tribunal (ITAT) in the case of ***ITO vs. TC Abraham, ITA No. 1132(MDS)/2013*** dated 18.09.2015 dealing with sun dried coffee which decision was re-considered by the ITAT and the matter has been remanded to the Assessing Officer for fresh consideration. It is further submitted that without disposing of the petitioner's objections to the reopening of assessment and without passing a speaking order, the assessment could not have been completed and this is in violation of the law laid down by the Hon'ble Supreme Court in ***GKN Drive Shafts (India) Limited vs. Income Tax Officer- 2002 Supp (4) SCR 359***. Thus, it is submitted that the instant case is a classical case of abuse of power under Section 147 of the Act.

5. It is further submitted that on receipt of the reasons for reopening the assessment, the petitioner submitted their objections dated 24.05.2016 through their authorized representative. The respondent by reply dated 30.08.2016 terming it as rebuttal for the objection did not agree with the submissions made by the petitioner and in case the petitioner wants to provide further submissions in support of his claim, the petitioner was directed to provide the same by 08.09.2016. The petitioner's authorized representative addressed the respondent by letter dated 07.09.2016 requesting for extension of time without prejudice to their challenge of the jurisdiction of the respondent to invoke Section 147 of the Act. Subsequently, a detailed submission was made on 29.09.2016 through the authorized representative explaining in detail the process involved in curing the coffee and referring to various texts in the Coffee Act. Subsequently, a notice under Section 143(2) of the Act was issued dated 28.12.2016 mentioning the assessment year as 2012-2013 for which a corrigendum was issued on 28.12.2016 correcting the assessment year as 2009-2010. The petitioner made a representation requesting the respondent to keep the notice under Section 143(2) of the Act in abeyance till a speaking order is passed on the objections given by the objections given by the petitioner for reopening the assessment by following the decision in the case of ***GKN Drive Shafts (India) Limited***, however, the assessment order came to be passed which is impugned in this writ petition.

6. Mr. Sathish Parasaran, learned senior counsel appearing for the petitioner after elaborately referring to factual matrix as set out in the preceding paragraphs submitted that after receiving the reasons for reopening from the respondent, the

petitioner had submitted a detailed objection dated 24.05.2016 requesting for dropping the proposal and in the event, the respondent is not inclined to accept the submissions of the petitioner request for personal hearing was specifically sought for. It is submitted that in terms of the directions issued by the Hon'ble Supreme Court in the case of GKN Drive Shafts (India) Limited, the respondent was required to pass a speaking order on the objections raised by the petitioner. However, the respondent sent a reply to the petitioner dated 30.08.2016 styled as a rebuttal to the objection for reopening of assessment. It is submitted that this rebuttal cannot be treated as a speaking order on the objections given by the petitioner for reopening as the respondent has given further opportunity to the petitioner to make submissions in support of their claim and also afforded an opportunity of personal hearing. Thus, the mandate in terms of the judgment of ***GKN Drive Shafts (India) Limited*** having not been complied with, the entire proceedings are vitiated. The reasons for reopening is based on the decision in the case of ***TC Abraham***, which case has been remanded to the Assessing Officer for fresh consideration. Therefore that cannot be a reason to reopen the proceedings. This was specifically pointed out by the petitioner vide their representation dated 29.09.2016 submitted through the authorized representative.

7. Referring to the decision in the case of ***Commissioner of Income Tax, Delhi vs. Kelvinator of India Limited*** reported in ***(2010) 2 SCC 723***, Mr.Sathish Parasaran, learned senior counsel for the petitioner submitted that the concept of change of opinion is an in-built test to check abuse of power by the Assessing Officer and from the reasons for reopening, it is clear that it is a change of opinion and

nothing else. Further, it is submitted that in the absence of any tangible material to come to the conclusion that income chargeable to tax has escaped assessment, the reassessment has to be held to be illegal. It is further submitted that the petitioner has been singled out and a discriminatory treatment has been adopted in respect of the assessment year 2009-2010. Several hundreds of coffee growers are not engaged in curing coffee seeds like the petitioner and they filed returns of income and claimed that the entire income from sale of such coffee seeds was exempted under Section 10(1) of the Act and the petitioner learns that there is no other case where reopening of assessment has been done in respect of the assessment year 2009-2010 and the respondent may be called upon to disclose as to whether they have issued notices to any other similarly placed person for reopening the assessment for the relevant year.

8. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of ***Calcutta Discount Company Limited vs. Income Tax Officer, Companies District I Calcutta and another*** reported in ***AIR 1961 SC 372*** with regard to all primary facts and what would be the effect of inferences one could draw from such disclosure. Referring to the decision of the Hon'ble Full Bench of High Court at Delhi in the case of ***Commissioner of Income Tax vs. Kelvinator of India Limited*** reported in ***(2002) 256 ITR 1*** with regard to the import of the expression "reason to believe" which judgment was affirmed by the Hon'ble Supreme Court in the decision reported in 2010 (2) SCC 723. Reliance was also placed on the decision of this Court in the case of ***M/s. Jayanthi Natarajan vs.***

Assistant Commissioner of Income Tax in W.P.No.1905 of 2017 dated 14.09.2017.

9. M/s. Hema Muralikrishnan, learned Senior Panel Counsel for the revenue submitted that the rebuttal which was issued by the respondent vide letter dated 30.08.2016 to the objections filed by the petitioner for reopening the assessment is a speaking order and a perusal of the same would clearly show that elaborate reasons have been given dealing with all the objections and if the petitioner was aggrieved, he ought to have challenged the same and therefore, the respondent has complied with the mandate in the case of ***GKN Drive Shafts (India) Limited***. By referring to the notice issued under Section 142(1) of the Act dated 23.05.2011, it is submitted that the particulars of the accounts and documents called for by the Assessing Officer did not pertain to the agricultural income and that was never an issue before the Assessing Officer at the time of scrutiny assessment and no opinion having been formed on the said issue, it is not a case of change of opinion. It is further submitted that the reopening is not barred by limitation in the light of the fact that in the Profit and Loss Account, agricultural income form part but the Assessing Officer did not form an opinion and therefore, the petitioner should file an appeal against the impugned assessment order. To support her contentions, the learned Senior Panel Counsel referred to the findings recorded by the Assessing Officer in the impugned assessment order. Thus, it is submitted that in the absence of full and true disclosure of all material facts, the respondent was justified in reopening the assessment by issuing the impugned notice and the respondent having fulfilled the directions issued in the case of ***GKN Drive Shafts***

(India) Limited, there is no ground to interfere with the impugned notice/assessment order.

10. Heard the learned counsels for the parties and carefully perused the materials placed on record.

11. Broadly three issues fall for consideration in this writ petition, namely,

1) Whether the impugned notice issued under Section 148 of the Act is on account of change of opinion of the Assessing Officer when the petitioner's case is that he has fully and truly disclosed all the details at the time of scrutiny assessment and whether any tangible material was available with the Assessing Officer to come to a conclusion that income chargeable to tax has escaped assessment during the relevant year?

2) Whether the respondent had complied with the mandate laid down by the Hon'ble Supreme Court in the case of ***GKN Drive Shafts (India) Limited vs. Income Tax Officer - 2002 Supp (4) SCR 359?***

3) Whether the impugned reopening proceedings and the consequential assessment order amounts to discrimination by singling out the petitioner and taking up the case for reopening the assessment for the relevant year when there are several hundreds of similar coffee growers whose claim for exemption has not been questions or reopened?

12. In the decision in the case of ***Commissioner of Income Tax vs. Dinesh Chandra H.Shah and others*** reported in ***1971 (82) ITR 367 ITR***, the matter arose under the Income Tax Act, 1922 pertains to an action under Section 34(1)(b) of the

1922 Act (which is in paramateria with Section 147 of the Income Tax Act, 1961). The question which was referred to the High Court was whether on the facts and circumstances of the case, the Tribunal was justified in holding that the action under Section 34(1)(b) of the 1922 Act was legal and valid. The High Court opined that there may be information existing on record or brought to the notice which does not become informative at the first sight and requires further consideration and in such cases, realisation of the fact of the information subsequently may give to the Income Tax Officer the jurisdiction to start proceedings under Section 34(1)(b) of the 1922 Act but the mere fact that the Income Tax Officer changes his opinion subsequently or the fact that he fails to notice a palpable or glaring matter earlier should not be treated as additional information coming to his notice subsequent to the assessment order and accordingly the question was answered against the revenue. The Hon'ble Supreme Court while dismissing the appeal filed by the revenue held that a mere change of opinion regarding the chargeability of income on the part of the reassessing Officer, different from his own opinion or that of his predecessor in office, does not justify the action under Section 34(1)(b) of the 1922 Act.

13. In the case of ***Commissioner of Income Tax, Delhi vs. Kelvinator of India Limited***, the Hon'ble Supreme Court pointed out that the conceptual difference between power to review and power to reassess has to be kept in mind. The Assessing Officer has no power to review; he has the power to reassess. But reassessment has to be based on fulfilment of certain precondition and if the concept of "change of opinion" is removed, then in the garb of reopening the assessment, review would take place. It

was further pointed out that the concept of change of opinion should be treated as an in-built test to check abuse of power by the Assessing Officer. Hence, after 01.04.1989 the Assessing Officer has the power to reopen, provided there is tangible material to come to the conclusion that there is an escapement of income from assessment. The reasons must have a live link with the formation of the belief.

14. In the case of ***Calcutta Discount Company Limited***, the Hon'ble Supreme Court examined the words used in the provision "omission or failure to disclose fully and truly all material facts necessary for assessment for that year" and held as follows:

"10. Does the duty however extend beyond the full and truthful disclosure of all primary facts ? In our opinion, the answer to this question must be in the negative. Once all the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else- far less the assessee- to tell the assessing authority what inferences whether of facts or- law should be drawn. Indeed, when it is remembered that people often differ as regards what inferences should be drawn from given facts, it will be meaningless to demand that the assessee must disclose what inferences- whether of facts or law he would draw from the primary facts.

11. If from primary facts more inferences than one could be drawn, it would not be possible to say that the assessee should have drawn any particular inference and communicated it to the assessing

authority. How could an assessee be charged with failure to communicate an inference, which he might or might not have drawn ?

Thus, if primary facts have been disclosed before the Assessing Officer, he would require no further assistance by way of disclosure and he has to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. Thus, if from the primary facts more than one inferences can be drawn, it would not be possible to say the assessee should have drawn a particular inference nor can he be charged for any failure.

15. Having steered clear of the legal position, we need to apply the same to the facts of the present case. Two conditions are required to be satisfied before the respondent could issue notice under Section 148 of the Act, namely, (1) he must have reason to believe that income chargeable to tax has escaped assessment and (2) such income has escaped assessment by reason of omission or failure on the part of the assessee to disclose fully and truly material facts necessary for assessment for the year. The settled legal position is that both these conditions must co-exist in order to confer jurisdiction on the respondent. Further, the respondent should record his reasons before initiating proceedings under Section 148(2) of the Act; before issuing the notice after the expiry of four years from the end of the relevant assessment year. The assessee is expected to make a true and full disclosure of the primary facts. It is thereafter for the respondent to draw an inference from those primary facts. If on a further examination either by the same officer or by a successor, the inference arrived at appears to be

erroneous, mere change of opinion would not be a justification to reopen the assessment.

16. In the instant case, the petitioner's assessment for the subject assessment year was taken up for scrutiny. All primary facts were available with the Assessing Officer. The Assessing Officer completed the scrutiny assessment vide order dated 30.12.2011. After the expiry of four years, the impugned notice dated 31.03.2016 was issued. The petitioner requested for the copy of the reasons for reopening vide representation dated 13.04.2016. The respondent by communication dated 19.04.2016 furnished the reasons for reopening. On a perusal of the reasons, I find that the respondent on verification of the assessment records and the order sheet entries inferred that the Assessing Officer on scrutiny had failed to examine and deliberate on the correctness of the income reported under the head agricultural income. Further, the respondent would state that even though the assessee had derived the predominant portion of the agricultural income from sale of coffee seeds, the aspect as to whether the income so derived is completely exempt or is it a case falling under Rule 7B was also omitted to be verified. Added to this, the Assessing Officer was inspired by a direction issued by the ITAT in the case of one ***TC Abraham***. Thus, on a mere reading on the reasons for reopening clearly show that there is no allegation against the petitioner that there has been omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment for that year. The so called reason to believe that income chargeable to tax has escaped assessment is on the ground that the Assessing Officer at the time of scrutiny assessment did not examine as to whether the entire agricultural income was completely

exempted or not. This can hardly be a reason to believe that income chargeable to tax has escaped assessment as it is a clear case of change of opinion by the respondent. As pointed out in the case of Calcutta Discount Company Limited, the obligation on the part of the assessee does not extend beyond fully and truly disclosing all primary facts. It is for the Assessing Officer to take an inference on facts and law based on such disclosure. If according to the respondent, his predecessor did not come to a proper inference on the facts disclosed, it is no ground to reopen the assessment, as if permitted and it would amount to a clear case of change of opinion. In the light of the above discussion, the first issue framed for consideration is answered in favour of the petitioner and against the revenue.

17. The second issue is whether the respondent has complied with the directives in the case of ***GKN Drive Shafts (India) Limited***. The Hon'ble Supreme Court pointed out that if the assessee desires and seeks for reasons for reopening, the Assessing Officer is bound to furnish reasons within a reasonable time and on receipt of the reasons, the assessee is entitled to file objections for issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order. The reasons were furnished to the petitioner vide communication dated 19.04.2016. The petitioner through their authorized representative submitted objections dated 24.05.2016. The petitioner also sought for an opportunity of personal hearing in case the officer is not satisfied with the explanation. The next step that the respondent should have undertaken is to pass a speaking order on the objections. Unfortunately, the respondent did not do so, but sent a communication to the petitioner

dated 30.08.2016 terming it as a rebuttal for objections for reopening the assessment.

18. The revenue's case is that the communication dated 30.08.2016 is an order with reasons and it is a speaking order and the respondent has complied with the directives in the case of ***GKN Drive Shafts (India) Limited***. While it may be true that the rebuttal dated 30.08.2016 has given certain reasons and the merits of which cannot be gone into at this stage, but the respondent has not rejected the objections outright but afforded further opportunity to the petitioner to make further submissions and fixed the outer time limit as 08.09.2016 to make further submissions. This rebuttal dated 30.08.2016 cannot be treated to be an order as required to be passed in terms of the directives in the case of ***GKN Drive Shafts (India) Limited*** as the respondent himself did not attach any finality to it. The petitioner sought for extension of time to make further submissions and accordingly the same was made on 29.09.2016. This submission appears to be an elaborate submissions bringing out the distinction between pulping and drying of coffee and curing of coffee. Further it was pointed out that the Assessing Officer erred in referring to the decision of ITAT in the case of ***TC Abraham*** as one of the reasons for reopening when the said order was modified by the Tribunal and the matter has been remitted for reconsideration by the concerned Assessing Officer. Though the respondent gave an opportunity to the assessee to make further submission which the petitioner had availed and submitted the same on 29.09.2016, without reference to the said submission, notice dated 28.12.2016 was issued under Section 143(2) of the Act directing the petitioner to attend the office of the respondent on the very next day, i.e. on 29.12.2016 at 10.30 a.m.

Unfortunately, the respondent committed a mistake in the assessment order compelling him to issue a corrigendum. On 29.12.2016, the petitioner through its authorized representative appeared before the respondent and submitted a written request to keep the notice under Section 143(3) of the Act in abeyance till a speaking order is passed on the petitioner's further representation dated 29.09.2016. However, on 30.12.2016 without any opportunity to the petitioner, the impugned assessment order has been passed. Thus the facts clearly demonstrate that the respondent has not followed the directives in the case of ***GKN Drive Shafts (India) Limited***. The rebuttal dated 30.08.2016 cannot taken as an order required to be passed on the objections given by the petitioner for reopening the assessment and the manner in which the impugned assessment order has been passed is wholly illegal and the entire proceedings are flawed. The respondent while issuing the rebuttal dated 30.08.2016 did not attach any finality to the proceedings but gave an opportunity to the petitioner to make further submission. On account of this, the petitioner had no opportunity to challenge the rebuttal dated 30.08.2016. This is one more ground to state that the proceedings are in violation of principles of natural justice. Accordingly this issue is answered in favour of the petitioner and against the revenue.

19. The third issue is whether there has been discrimination. The petitioner in the affidavit filed in support of the writ petition in more than one place has indicated that the petitioner has been singled out where several hundreds of coffee growers who are only doing pulping and drying of coffee seeds and not engaged in curing coffee seeds and not in a single case for the assessment year 2009-2010, reopening

has been done. Though such an averment has been specifically raised by the petitioner, the same has not been controverted in the counter affidavit, thereby deemed to have been accepted. In the reply affidavit filed by the petitioner to the counter affidavit filed by the respondent in paragraph No. 20 therein, the petitioner has referred to an application filed under the Right to Information Act by one Mr. Radhakrishnan who had made an application on 25.01.2017 requesting information as to in how many cases notice under Section 148 of the Act has been issued for reopening the assessment beyond four years of the relevant assessment years for the reason that sale proceeds of coffee seeds after drying and pulping in effect amounts to sale of cured coffee seeds, in how may cases the Department construed that an assessee who has sold raw coffee after pulping and drying and has disclosed in the return that the coffee was subjected to pulping and drying disclosing the expenditure incurred thereon and claimed exemption under Section 10(1) of the Act has not disclosed fully and truly all material facts for his/her assessment warranting reassessment and also warrants penalty and in how many cases the Department has reopened the assessment relying on the decision of the ITAT in the case of ***TC Abraham***. Reply for the first question as given by the Information Officer, dated 01.02.2017, is Nil For the second question, it was stated that no case has been reopened under Section 148 of the Act for the reason mentioned supra and there is no case in the concerned ward where application of Rule 7B(1) of the Rules has been levied by the Assessing Officer. The above facts would clearly establish that the reopening proceedings are clearly discriminatory. Accordingly this issue is answered in favour of the petitioner and against the revenue.

20. For all the above reasons, the impugned proceedings, namely, the notice for reopening and the consequential assessment orders are held to be illegal, unsustainable and a clear case of change of opinion. The facts of the other three writ petitions, viz. W.P. Nos. 1589, 1590 and 1843 of 2017, being identical, the conclusion arrived at by this Court in W.P. No. 1855 of 2017 will equally apply to the other cases as well.

21. In the result, the writ petitions are allowed and the impugned proceedings are quashed. No costs. Consequently, connected miscellaneous petitions are closed.

13.11.2017
cse
Speaking order / Non-speaking Order
Index :Yes
Internet:Yes

To

1.The Assistant Commissioner of Income Tax,
Non Corporate Circle-3,
Room No.623-A, 6th Floor, Wanaparthy Block,
121, MG Road, Nungambakkam, Chennai - 600 034.

2.The Joint Commissioner of Income Tax,
Non Corporate Circle-3,
121 MG Road,Nungambakkam, Chennai - 600 034.

3.The Principal Commissioner of Income Tax,
Non Corporate Circle-3,

121 MG Road,Nungambakkam, Chennai - 600 034.

T.S.SIVAGNANAM, J.

cse

Pre-Delivery Order in

W.P.Nos.1589, 1590, 1843 and 1855 of 2017
and W.M.P.Nos.1556 to 1559, 1833,
1851 and 1852 of 2017

13.11.2017