

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **10.04.2018**

CORAM:

THE HON'BLE MR.JUSTICE **K.K.SASIDHARAN**
AND
THE HON'BLE MR.JUSTICE **R.SUBRAMANIAN**

W.A.Nos.1438 and 1439 of 2017 and
CMP Nos.19350 and 19351 of 2017

M/s.Alfa Investments
Rep. by its Partner
Shri Ahamed Shakir
4th Floor, Door Nos.10 & 11
Chennai CITI Centre,
Dr.Radhakrishnan Salai,
Mylapore, Chennai - 600 004.

...Appellant in both Appeals

Vs

The Income-Tax Officer,
Non-Corporate Ward-1 (1)
Room No.305, III Floor
Wanaparthi Block
121, Mahatma Gandhi Road,
Chennai - 600 034.

...Respondent in both Appeals

Prayer:- Writ Appeals filed under Clause 15 of Letters Patent Act, to
set aside the order passed by this Court in W.P.Nos.27549 and 27550 of
2017 dated 31.10.2017 respectively.

For Appellant : Mr.M.P.Senthil Kumar

For Respondent : Ms.Hema Muralishrishnan

J U D G M E N T

(Judgment of the Court was delivered by
K.K.SASIDHARAN, J.)

The appellant challenged the order passed by the Income Tax Officer, Non Corporate Ward 1(1), Chennai, dealing with the objections on re-opening the assessment for the Assessment Years 2010-2011 and 2011-2012 under Section 147 of the Income Tax Act, 1961, before the Writ Court primarily on the ground that notices issued under Section 148 of the Income Tax Act, would proceed as if it was issued pursuant to the direction given by the Commissioner of Income Tax (Appeals) [hereinafter referred to as CIT (A)] notwithstanding the fact that no such specific direction was given for re-opening the assessment. The learned single Judge dismissed the writ petitions with liberty to the Assessing Officer to complete the assessment in accordance with law. Feeling aggrieved, the assessee has come up with the intra court appeals.

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Brief Facts

2. The appellant is a partnership firm engaged in the business of commercial and trading activities including investing, acquiring and holding shares, stocks, assets and other securities. The appellant filed

Return of Income for the Assessment Year 2012-2013 declaring "Nil" income. The Assessing officer completed the assessment for the Assessment Year 2012-2013 under Section 143(3) of the Income Tax Act by adding Rs.108,35,05,000/- as unexplained credit under Section 68 of the Income Tax Act and computed the total income at Rs.108,35,05,000/-.

3. The order dated 31 March 2015 was challenged before the Commissioner of Income Tax (Appeals), Chennai. The CIT (A) while allowing the appeal by order dated 13 October 2016 indicated that the Capital was introduced in the course of the earlier two Financial Years 2009-2010 and 2010-2011 and as such, the Assessing Officer can only take cognizance of the matter by way of initiating suitable proceedings.

4. Thereafter, the Income Tax Officer issued a notice dated 19 January 2017 under Section 148 of the Income Tax Act for the Assessment Years 2010-11 and 2011-12. The appellant made a request for furnishing reasons for re-opening the assessment. The respondent provided the reasons for re-opening the assessment. Thereafter, taking into account the objections of the assessee, speaking orders were passed by the Assessing Officer. The order dated 11 October 2017 for

the Assessment Year 2010-11 was challenged in W.P.No.27549 of 2017. Similarly, the order dated 27 September 2017 for the Assessment Year 2011-2012 was challenged in W.P.No.27550 of 2017.

5. Before the learned single Judge, the appellant contended that there was no direction given by the CIT (A) in its order dated 13 October 2016 for re-opening the assessment. The Assessing Officer was therefore not correct in taking inspiration from the appellate order for re-opening the assessment for the Assessment Years 2010-2011 and 2011-2012.

6. The learned single Judge considered the contentions taken by the appellant in the light of the order passed by the CIT (A). The learned single Judge opined that the appellant succeeded in the appeal before the CIT (A) on the ground that the entire amount of Capital was actually introduced into the books of the firm during the Financial Years 2009-10 and 2010-11. The learned single Judge dismissed the writ petitions leaving it open to the Assessing Officer to complete the assessment in accordance with law. Feeling aggrieved by the common order dated 31 October 2017, the unsuccessful writ petitioner is before this Court.

Summary of Submissions

7. The learned counsel for the appellant contended that the reasons given by the respondent would proceed as if there was a specific direction given by the CIT (A) to re-open the assessment for the Assessment Years 2010-11 and 2011-12. There was no such direction given by the CIT (A). The respondent has not given any other reasons for re-opening the assessment. The respondent is therefore not entitled to re-open the assessment for the Assessment years 2010-11 and 2011-12.

8. The learned Standing Counsel for the Revenue contended that the order passed by the CIT (A) was challenged before the Income Tax Appellate Tribunal in I.T.A.No.3439/Mds/2016. The Income Tax Appellate Tribunal while dismissing the appeal filed by the Revenue indicated in its order that the Assessing Officer could only take cognizance of the matter by way of initiating scrutiny proceedings for the Assessment Years 2010-11 and 2011-12. The learned Standing Counsel contended that the assessee has not filed returns during the Assessment Years 2010-11 and 2011-12 declaring the Capital introduction as the investments made out of the sources. The Revenue was therefore had no opportunity to take cognizance or to examine the

transaction claimed to have been made by the assessee during the previous years.

Analysis

9. The Assessing Officer completed the assessment for the Assessment Year 2012-2013 by order dated 31 March 2015. Since the assessee failed to produce corroborative evidence for introduction of capital amount and its failure to co-relate the trail of funds, the Assessing Officer added Rs.108,35,05,000/- as unexplained credit under Section 68 of the Income Tax Act.

10. The assessment order dated 31 March 2015 was challenged before the CIT (A), Chennai. The Commissioner was of the view that the Capital was introduced in the course of the earlier two Financial Years and as such, the Assessing Officer can take cognizance of the matter only by way of initiating suitable proceedings for the Assessment Years 2010-11 and 2011-12. The CIT (A) therefore opined that the Assessing Officer was not justified in adding back the 'capital introduced' by treating it as unexplained credit under Section 68 of the Income Tax Act. Since there was no introduction of fresh capital whatsoever during the Assessment Year 2012-2013, the addition made

in the hands of the appellant was held to be unwarranted. The CIT (A) therefore allowed the appeal.

11. The order dated 13 October 2016 on the file of the CIT (A) was unsuccessfully challenged by the Revenue before the Income Tax Appellate Tribunal. While dismissing the appeal, the Tribunal noted the observation made by CIT (A) that the Assessing Officer could only take cognizance of the matter by way of initiating scrutiny proceedings for the Assessment Years 2010-11 and 2011-12.

12. The Income Tax Officer by notice dated 19 January 2017 initiated proceedings for re-opening the assessment. The notice was issued under Section 148 of the Income Tax Act to the appellant for the Assessment Years 2010-11 and 2011-12. The Income Tax Officer in the notice issued for the relevant years indicated that he has reasons to believe that income chargeable to tax for the relevant assessment years has escaped assessment within the meaning of Section 147 of the Income Tax Act.

13. The appellant on receipt of notices requested the Income Tax Officer to furnish reasons for re-opening the assessment.

14. The Income Tax Officer in the letter dated 7 June 2017 indicated that the firm has received a sum of Rs.64 crores as capital introduction made by Shri Hameed Syed Salahuddin, who is a partner of the firm. According to the Income Tax Officer, in the absence of return of income for the relevant Assessment Years and lack of verifiable proof with regard to the source of investment, the order for the Assessment Year 2012-13 had treated the entire opening balance of credit to the Capital Amount as on 1 April 2011 as unexplained credit and brought the same to tax under Section 68 of the Income Tax Act. The Income Tax Officer made an observation that the Appellate Authority in its order indicated that such additions under Section 68 cannot be undertaken in the subsequent year when no capital is introduced.

15. The contention of the appellant appears to be on account of the reference made in the letter dated 7 June 2017 about the order passed by the CIT (A).

16. The appellant succeeded in the appeal by contending that there was no fresh capital introduced during the Assessment year 2012-2013. It was the contention of the appellant before the CIT (A) that the entire amount of capital of Rs.108.35 crores was actually introduced into the books of the firm during the earlier two financial years 2009-2010 and 2010-2011. The appellant by demonstrating that the entire amount of capital referred to above was introduced during the two earlier financial years succeeded in the appeal.

17. The appellant has no case that a return of income was filed for the Assessment Years 2010-11 and 2011-12 explaining the capital of Rs.108,35,05,000/-

18. The appellant is now resisting the proceedings for re-opening the assessments on the ground that proper reasons were not given. It is true that specific direction was not given by the CIT (A) for re-opening the assessment for the assessment years 2010-11 and 2011-12. However, the reasons given by the Income Tax Officer would be sufficient for re-opening the assessment.

19. The Income Tax Officer in the order dealing with the objections indicating the reasons, justified the proceedings for re-opening the assessment. The Income Tax Officer made it clear that assessee did not file its returns of income for the Assessment Years 2010-2011 and 2011-2012. Therefore, there was no opportunity to verify the transactions claimed to have been made in those years. It was further indicated in the said order that the assessee was not maintaining any bank account and it failed to furnish any other proof to establish the link between the capital introduced and its withdrawals for the purpose of investments. The Income Tax Officer would be in a position to consider the introduction of capital for the relevant year only in case returns were filed by the appellant. The appellant having failed to file its return of income for the Assessment Years 2010-11 and 2011-12 cannot be heard to say that the Income Tax Officer was not correct in re-opening the assessment when it was made known at a later point of time that capital was introduced in the course of the earlier two financial years. The reasons given by the Income Tax Officer would satisfy the statutory requirements for re-opening the assessment. We are therefore of the view that the appellant has not made a case to interfere in the proceedings initiated by the Income Tax Officer for re-

opening the assessment for the Assessment Years 2010-11 and 2011-

12. We therefore confirm the order passed by the learned single Judge.

20. In the upshot, we dismiss the intra court appeals. No costs.

Consequently, connected miscellaneous petitions are closed.

(K.K.SASIDHARAN,J.) (R.SUBRAMANIAN,J.)
10 April 2018

Index : Yes/No
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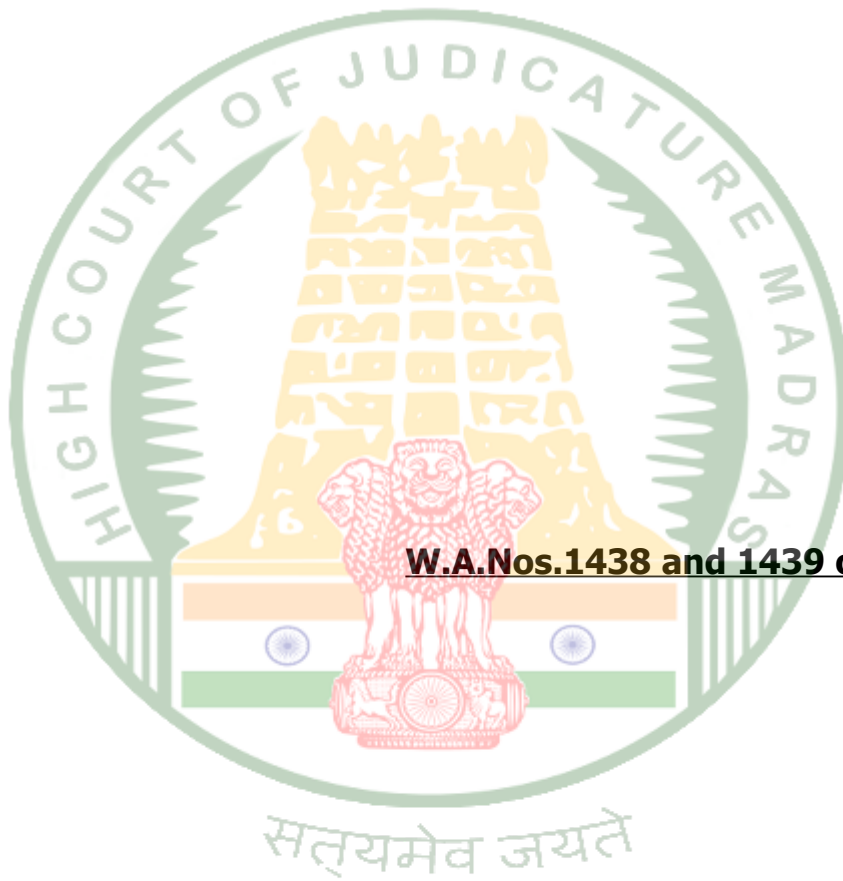
To

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**K.K.SASIDHARAN, J.
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(svki)



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