

(2012) 08 DEL CK 0140

In the Delhi High Court

Case No : Writ Petition (C) No. 8852 of 2011

Asia Satellite Telecommunications Co. Ltd

APPELLANT

Vs

Assistant Dit, International Taxation

RESPONDENT

Date of Decision : 23-08-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Income Tax Act, 1961 — Section 139, 142(1), 143, 143(3), 147

Citation : (2013) 215 TAXMAN 40

Hon'ble Judges : S. Ravindra Bhat, J;R.V. Easwar, J

Bench : Division Bench

Advocate : S. Ganesh with Ms. Anuradha Dutt and Mr. Anish Kapur, for the Appellant; Abhishek Maratha, Senior Standing Counsel with Ms. Anshul Sharma, for the Respondent

Judgement

R.V. Easwar, J.—This writ petition has been filed by Asia Satellite Telecommunication Company Limited (hereinafter referred to as "petitioner") under Articles 226 & 227 of the Constitution of India praying for issue of a writ of certiorari or any other writ, order or direction quashing the order dated 02.12.2011 as amended by order dated 12.12.2011 passed by the respondent, who is the Assistant Director of Income Tax, International Taxation, Circle-I (1), New Delhi. It is also prayed that the notice issued by the first respondent on 31.03.2010 u/s 148 of the Income Tax Act, 1961 ("the Act") and all further proceedings taken pursuant thereto may be quashed. The petitioner is a non-resident company, based in Hong Kong. In respect of the assessment year 2003-04, it filed a return of income declaring "nil" income. An assessment was made u/s 143 (3) of the Act by order dated 27.03.2006. In the assessment order the taxable income of the petitioner was determined at Rs. 64,99,26,627/- and a tax demand (including interest) of Rs. 33,98,99,070/- was raised. The petitioner owns and operates satellites and it provides satellite transponder capacity to its customers. The satellite is located in the geo-stationary orbit, 36000 km. above the equator. In making the assessment for the assessment year 2003-04 the

Assessing Officer referred to an order of the Income Tax Appellate Tribunal (hereinafter referred to as the "Tribunal") dated 01.11.2002 in the assessee's own case for the assessment year 1997-98. In this order certain directions had been given to the Assessing Officer as to how the income of the petitioner should be computed. It would appear that the Tribunal did not accept the contention of the petitioner that no part of its income can be brought to tax in India and therefore proceeded to give certain directions to the Assessing Officer to compute the income of the petitioner. The respondent while completing the assessment of the petitioner for the assessment year 2003-04 noticed that the facts of the petitioner's case were the same as in the assessment year 1997-98 in respect of which year the Tribunal had rejected the petitioner's claim that it was not assessable in India. In this view of the matter he proceeded to determine the income of the petitioner. To be more precise, the Assessing Officer held that the fees received by the petitioner from its customers for provision of satellite transmission services were exigible to tax in India as "royalty" as defined in Section 9(1)(vi) of the Act.

2. The assessee preferred an appeal against the assessment order to the CIT (Appeals). The CIT (Appeals) passed a consolidated appellate order on 29.02.2008 for the assessment years 1998-99 to 2005-06 holding, inter alia, that the income of the petitioner earned from its customers for providing satellite services was chargeable to tax in India as "royalty" as per the provisions of clause (iii) read with clause (vi) of Explanation 2 to Section 9(1)(vi) of the Act. The petitioner preferred further appeal against the order passed by the CIT (Appeals) to the Tribunal. While the appeal before the Tribunal was pending, the Assessing Officer on 17.07.2008 passed an order to give effect to the order passed by the CIT (Appeals) on 29.02.2008 and recomputed the taxable income of the petitioner at Rs. 61,19,71,423/- and raised a demand of tax and interest aggregating to Rs. 8,73,14,913/-. In arriving at the final tax liability as per the order passed on 17.07.2008, the Assessing officer allowed credit for tax deducted at source amounting to Rs. 2,11,16,426/-. The credit was given on the basis of the TDS certificates filed by the petitioner on 18.05.2005 in the course of the assessment proceedings u/s 143(3) of the Act which had been accepted by the respondent in an order passed u/s 154 of the Act on 26.06.2006.

3. On 16.10.2009, a Special Bench of the Tribunal passed an order in the case of New Skies Satellite N.V. and Shin Satellites Public Co. Ltd., [319 ITR (AT) 269] (SB) in which an identical controversy was involved. The petitioner had intervened in this matter. The Special Bench held, inter alia, that payments received by the assessee from their customers under circumstances similar to the petitioner's case were taxable in India as "royalty" within the meaning of Section 9(1)(vi) of the Act.

4. When the appeals of the petitioner for the assessment years 1998-99 to 2005-06, which had been filed by the petitioner before the Tribunal, came up for hearing, the order of the Special Bench (supra) had already been passed and

since the facts of the petitioner's case were identical, the Tribunal passed orders on 23.03.2010 in the petitioner's case holding that the receipts were taxable in India as "royalty" as held by the Special Bench.

5. On 31.03.2010 the respondent issued notice u/s 148 of the Act for the assessment year 2003-04 calling upon the petitioner to file the return of income on the ground that income chargeable to tax had escaped assessment. In response to the notice, the petitioner addressed a letter to the respondent on 05.05.2010 stating that the return earlier filed on 30.10.2003 may be treated as return filed in response to the notice of reopening. The petitioner also requested the respondent to supply the reasons recorded for reopening the assessment. The respondent supplied the reasons for reopening the assessment which are as follows:

REASONS RECORDED FOR ISSUE OF NOTICE U/S 148 OF THE INCOME TAX ACT, 1961 IN THE CASE OF M/S ASIA SATELLITE TELECOMMUNICATION CO. LTD. - FOR A.Y. 2003-04

29.03.2010

Asia Satellite Telecommunications Company Limited, Hongkong is a company incorporated in Hong Kong and is listed on the Hong Kong and New York stock exchanges. The assessee had filed the Income Tax return at "Nil" income for the assessment year 2003-04 and had claimed credit for tax deducted at source of Rs. 2,40,46,661/- on estimated basis as TDS certificates of this amount were not available with the assessee at the time of filing return. During assessment u/s 143(3), royalty income from Indian concerns was determined and TDS of Rs. 2,11,16,426/- was allowed by the assessing officer. However, as the above income was not disclosed in the income tax return, TDS credit against this income should not have been allowed.

Section 155(14) of the Income Tax Act, 1961, provides that Wherein the assessment for any previous year or in any intimation or deemed intimation under sub-section (1) of section 143 for any previous year, credit for tax deducted (..) in accordance with the provisions of section 199 (....) has not been given on the ground that the certificate furnished u/s 203 (...) was not filed with the return and subsequently such certificate is produced before the assessing officer within two years from the end of the assessment year in which such income is assessable, the assessing officer shall amend the order of assessment or any intimation or deemed intimation under sub-section (1) of section 143, as the case may be

Provided that nothing contained in this sub-section shall apply unless the income from which the tax has been deducted (.....) has been disclosed in the return of income filed by the assessee for the relevant assessment year.

This office believes that in the light of the above facts the pre-requisite condition stated under explanation 2 to section 147 are satisfied. Relevant portion of

section 147 of the Act reads as below:

Explanation 2: For the purpose of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely: -

(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income tax;

(b) 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;

(c) Where an assessment has been made, but income chargeable to tax has been under assessed or

(ii) Such income has been assessed at too low a rate; or

(iii) Such income has been made the subject of excessive relief under this Act; or

In view of the above, I have reason to believe that the income of the assessee for A.Y. 2003-04 chargeable to tax has escaped assessment. In this case, not more than six years have elapsed from the end of the relevant Asstt. Year (i.e. A.Y. 2003-04) and income of more than 1 lakh has escaped assessment, therefore, the notice u/s 148 r.w.s. 147 of the I.T. Act, 1961 satisfies the limit for issue of notice as provided in Section 149 of the Act.

As required by section 151 of the Income Tax, 1961, the reasons are hereby put up for the kind perusal of recording of satisfaction.

Sd/-

(Alok Malviya)

ADIT, Cir-1(1), Intl. Taxation

New Delhi

The Addl. DIT, R-1, Intl. Taxation, N. Delhi

On the basis of the facts discussed by the AO I am satisfied on the reasons recorded by the AO that it is a fit case for issue of notice u/s 148 of the I.T. Act, Since, four years have expired for the end of the relevant assessment, your kind approval is solicited as u/s 151 of the I.T. Act.

Sd/-

SUSHIL KUMAR

(ADDL DIT R-1)

DIT - INT. TAX, NEW DELHI

On the basis of the facts discussed by the AO I am satisfied on the reasons recorded by the AO that it is a fit case for issue of notice u/s 148 of the I.T. Act.

Sd/-

GOPAL KAMAL

(DIT-I, INTL. TAX, DELHI)

6. On receipt of the reasons for reopening the assessment, the petitioner submitted its objections to the same as envisaged by the Supreme Court in GKN Driveshafts (India) Ltd. Vs. Income Tax Officer and Others, . The respondent passed an order on the objections on 02.12.2011, which is the impugned order which was modified later by issuance of a corrigendum on 12.12.2011 which is also impugned in the present writ petition. Briefly speaking, the respondent took the following position vis-?-vis the objections filed by the petitioner:

(a) Even when the petitioner filed its return of income on 30.10.2003, declaring "nil" income, the Tribunal had already pronounced its order on 01.11.2002 for the assessment year 1997-98 holding that the receipts earned from satellite transmission services fall within the ambit of royalty. This order should have been followed and the return of income should have been filed by the petitioner on that basis.

(b). Mere filing of an appeal against the order of the Tribunal to the High Court on 28.07.2010, which was a much later event, does not operate as the stay of the Tribunal's order.

(c) The petitioner was bound by the Tribunal's order but still preferred not to disclose its income on the basis of the Tribunal's order, which amounted to failure on the part of the assessee to fully and truly disclose all material facts necessary for the assessment.

(d) The petitioner failed to furnish the TDS certificates along with the return of income, and they were filed only on 18.05.2005. No credit could have been given to the tax deducted at source in view of Section 155 (14) of the Act since the petitioner had not declared the income corresponding to the TDS certificates.

(e) So far as the tax deduction certificates are concerned, clause (c) to Explanation 2 to Section 147 of the Act covers a situation where the income of the assessee is assessed at too low a rate, without involving any change in the taxable income and even in such a case a notice to reopen the assessment on the ground of escapement of income can be issued. Therefore, the petitioner's contention that no income chargeable to tax had escaped assessment and that the mere giving credit for TDS certificates does not result in escapement of income is not correct.

7. The above is the gist of reasons given by the respondent for rejecting the

objections raised by the petitioner. In the order dated 02.12.2011 rejecting the petitioner's objections, the respondent had erroneously mentioned the date of the assessment order as 27.03.2005. This error was corrected in the corrigendum issued on 12.12.2011, to 27.03.2006. It was admitted by the respondent in the corrigendum that the petitioner had filed the TDS certificates claiming credit for Rs. 2,11,16,426/- even during the assessment proceedings. He further adverted to the fact that since no credit was given in the assessment order, the petitioner filed an application u/s 154 on 12.05.2006 asking for rectification of the assessment order by giving credit for the TDS amount on the basis of certificates filed prior to the passing of the assessment order. The respondent accepted the application for rectification and passed an order u/s 154 of the Act on 26.06.2006. These facts were brought out in the corrigendum issued by the respondent. The respondent, however, refuted the allegations of the petitioner that the reassessment notice was prompted by a mere change of opinion. He observed that no opinion had been formed by him in the course of the original assessment proceedings on the issue of TDS credit allowable, and it was for the first time an opinion was formed as to the allowability of the TDS credit on 26.06.2006 when the rectification order was passed. Thus the substance of the corrigendum was that there was no change of opinion on the part of the assessing officer resulting in the issue of notice u/s 148 of the Act.

8. The contention of the petitioner is that this Court has pronounced orders in ITA Nos.131/2003 and 134/2003 pertaining to the assessment year 1997-98 on 31.01.2011 holding that the income of the petitioner is not taxable in India under the provisions of Section 9(1)(vi) of the Act. It was also pointed out that relying on this order, this Court has also taken a similar view in the petitioner's appeals for the assessment year 1998-99 to 2005-06 and held that the petitioner is not assessable in respect of the receipts from its customers in India on the footing that they represented "royalty" income within the meaning of Explanation 2 to Section 9(1)(vi) of the Act. It was also urged that the notice u/s 148 of the Act has been issued after a period of four years from the end of the assessment year 2003-04 and, therefore, it was incumbent upon the respondent to demonstrate in the reasons recorded that there was failure on the part of the petitioner to furnish fully and truly all material facts necessary for its assessment. According to the counsel, the reasons recorded do not contain any such allegation. It was further urged that the reference, in the reasons recorded, to allowance of credit for TDS of Rs. 2,11,16,426/- was wholly irrelevant and cannot be the basis for reopening the assessment as it had nothing to do with escapement of "income" chargeable to tax. According to the counsel for the petitioner, Section 147 of the Act comes into operation only where "income" chargeable to tax has escaped assessment and it cannot be invoked, in the absence of any specific provision authorising the same, on the ground that credit for TDS was erroneously given.

9. We think there is good deal of force in the contentions of the counsel for the petitioner. We are concerned with the assessment year 2003-04. The notice u/s 148 of the Act was issued on 31.03.2010, after a lapse of four years from the

end of the assessment year. It is, therefore, a case where the first proviso to Section 147 of the Act applies. In a case to which the proviso applies and notice is issued after a period of four years from the end of the assessment year, it is for the Assessing Officer to allege and demonstrate that the assessee had either failed to file the return of income u/s 139 or Section 142(1) or Section 148 of the Act or "to disclose fully and truly all material facts necessary for his assessment, for that assessment year". Explanation 1 says that production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso. A perusal of the return of income filed by the petitioner on 30.10.2003 (Annexure-D to the writ petition) and the statement of total income filed along with the return, which is also part of the annexure, reveals that the petitioner had taken the position that since all its operations are carried out in Hongkong and it did not have any office or branch or subsidiary in India nor did it receive any amount in India, it was not assessable to tax in India. In the notes to the statement of total income it was pointed out that the satellites of the petitioner are located in the orbit at a height of 36000 km above Moscow to Auckland and from Cyprus to Tokio. This is in Note No.4 to the statement of total income. On this basis it was claimed that the petitioner was not liable to tax in India as per the provisions of the Act and, therefore, the return was being filed showing "nil" income. Note No.6 to the statement of total income is important since in the order rejecting the objections the respondent has taken the plea that the petitioner, by filing a nil return of income despite the order of the Tribunal in its own case by the assessment year 1997-98 holding that the assessee was liable to tax in India, failed to furnish full and true material facts and, therefore, the notice u/s 148 of the Act was valid.

10. Two aspects fall for consideration on this issue: firstly, whether it is legally permissible for the AO to improve upon the reasons recorded for reopening the assessment in his order rejecting the petitioner's objections and secondly, whether the allegation is factually correct. Taking the second aspect first, we find that the allegation is factually incorrect. Note No.6 to the statement of total income filed along with the return of income on 30.10.2003 reads as under: -

8. The return is filed without prejudice to the claim that the assessee is not liable to tax in India. It is submitted that in the order of the Tribunal for the assessment year 1997-98, the assessee's income has been held to be in the nature of "royalty" as defined in section 9(1)(vi) of the income tax Act.

It is submitted that the assessee's income is not in the nature of "royalty" as defined in Explanation 2 to section 9(1)(vi) of the income tax Act and does not fall within the definition of "royalty" even after the insertion of clause (iva) therein because there is no user of the transponder by the customer. Without prejudice, it is further submitted that the provisions of section 9(1)(vi)(c) are not applicable to the assessee as the conditions in sub-clause (c) are not satisfied.

The assessee has filed an appeal before the High Court on the issue as to whether the assessee's income is in the nature of "royalty" as defined in Explanation 2 to section 9(1)(vi) and whether the assessee's non-resident customers are carrying on business in India or have a source of income in India. As regards the applicability of clause (iva), the Tribunal has held that a transponder is not "equipment" and that the assessee's case is not covered under clause (iva). Against the finding of the Tribunal regarding clause (iva), the income tax Department has filed appeal before the High Court. Both appeals have been admitted.

11. It is thus seen that not only has the petitioner drawn the attention of the Assessing Officer to the fact that in the assessment year 1997-98 the Tribunal has held that its receipts were in the nature of "royalty" as defined in Section 9(1)(vi) of the Act, but the petitioner has also stated that it has not accepted the order of the Tribunal and has filed an appeal to the High Court and that notwithstanding the adverse order of the Tribunal, it is still keeping its claim alive. Thus the material fact that for an earlier assessment year there was an adverse order of the Tribunal has been brought to the attention of the respondent in the return of income itself. As far as the legal aspect is concerned, there are several authorities to the effect that the reasons recorded prior to the issue of notice u/s 148 cannot be improved upon and the gaps cannot be supplied later. The validity of the reasons has to be judged only on the basis of what was originally recorded u/s 148(2): In *Signature hotels (P) Ltd. Vs. Income Tax Officer and Another*, Division Bench of this Court, speaking through Sanjiv Khanna, J. observed as follows: -

The reasons which are recorded by the Assessing Officer for reopening an assessment are the only reasons which can be considered when the formation of the belief is impugned. The recording of reasons distinguishes an objective from a subjective exercise of power. The requirement of recording reasons is a check against arbitrary exercise of power. For it is on the basis of the reasons recorded and on those reasons alone that the validity of the order reopening the assessment is to be decided. The reasons recorded while reopening the assessment cannot be allowed to grow with age and ingenuity, by devising new grounds in replies and affidavits not envisaged when the reasons for reopening an assessment were recorded. The principle of law, therefore, is well settled that the question as to whether there was reason to believe, within the meaning of section 147 that income has escaped assessment, must be determined with reference to the reasons recorded by the Assessing Officer. The reasons which are recorded cannot be supplemented by affidavits. The imposition of that requirement ensures against an arbitrary exercise of powers u/s 148.

It has been held in the following cases that the reasons cannot be added or improved upon subsequently and the validity of the reopening of the assessment must be judged only with reference to or on the basis of the reasons recorded by the Assessing Officer u/s 148(2) prior to the issue of the notice: -

- (a) Commissioner of Income Tax Vs. Agarwalla Brothers,
- (b) East Coast Commercial Company Ltd. Vs. Income Tax Officer and Others,
- (c) EQUITABLE INVESTMENT CO. (P.) LTD. Vs. Income Tax OFFICER, G. WARD, AND OTHERS.,
- (d) JAMNA LAL KABRA Vs. Income Tax OFFICER, B WARD, BAREILLY, AND OTHERS.,
- (e) H.A. Nanji and Co. Vs. Income Tax Officer, "A" Ward and Others,
- (f) C.M. Rajgharia and Another Vs. Income Tax Officer and Others,
- (g) Saradbhai M. Lakhani Vs. Income Tax Officer,

12. In the present case we have searched in vain the reasons recorded by the Assessing Officer for the allegation that the petitioner did not bring to the notice of the Assessing Officer the fact that for the assessment year 1997-98 there was an adverse order of the Tribunal.

13. Turning now to the validity of the reasons recorded, that credit for TDS of Rs. 2,11,16,426/- was wrongly allowed to the petitioner, counsel for the petitioner is right in his submission that Section 147 of the Act can be invoked only "if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year" and that there is no authority given by the section enabling the Assessing Officer to reopen the assessment on the ground that credit for TDS was wrongly allowed in the original assessment. In the reasons recorded, reference has been made to Explanation 2 to Section 147. We are not reproducing the said Explanation as the same has been reproduced in the reasons recorded, which have been quoted earlier. In our opinion, none of the three clauses of the Explanation applies to the present case. Clause (a) speaks of no return having been filed; that is not the case here. Clause (b) speaks of a return having been filed without an assessment being made and the assessee had understated the income or has claimed excessive loss, deduction, allowance or relief in the return. This also is not the case here. Clause (c) has several sub-clauses and none of the situations applies to the petitioner's case. Reference is then made to Section 155 (14) of the Act in the reasons recorded. A careful reading thereof shows that it is intended for the benefit of the assessee who had omitted to file the TDS certificate along with the return of income but subsequently produces the same before the Assessing Officer within two years from the end of the assessment year in which the income relevant to the TDS is assessable, in which case the Assessing Officer can amend the assessment order and grant the relief, invoking the powers u/s 154 of the Act. The proviso to Section 155(14), however, places a condition, namely that the credit for TDS can be given by the Assessing only if the corresponding income is disclosed by the assessee in the return of income. What perhaps the respondent in the present case had in mind - we are only surmising - is that the assessee has not disclosed the income corresponding to the TDS of Rs.

2,11,16,426/-; and when credit was given for the same by the order passed on 26.06.2006 u/s 154 of the Act, the petitioner was allowed "excessive relief" within the meaning of clause (b) of Explanation 2 to Section 147 of the Act. We are just assuming that this was in the mind of the Assessing Officer though in the reasons recorded it has not been so articulated. Even assuming this was the basis for issuing the notice, it cannot be validated for several reasons. The first assumption we have to make is that the petitioner claimed the relief in the return of income. Factually this is not so in the present case. No claim for the TDS of Rs. 2,11,16,426/- was made by the petitioner "in the return" nor was any credit given in the demand notice for any TDS. This is clear from the income tax computation form dated 26.03.2006 placed at pages 68 - 69 of the writ petition. The petitioner had filed the TDS certificates with the respondent on 18.05.2005 which is obviously in the course of the original assessment proceedings. Despite this, and despite rejecting the assessee's claim that its income was not taxable in India and thereby bringing to tax the sum of Rs. 64,99,26,627/- in the assessment order passed on 27.03.2006, the respondent did not allow credit for the TDS of Rs. 2,11,16,426/-. It was because of this - not giving credit for TDS despite assessing the income - that the petitioner was compelled to move an application for rectification of the assessment u/s 154 of the Act on 12.05.2006. The claim was accepted by the Assessing Officer and an order u/s 154 of the Act was passed on 26.06.2006 wherein credit for the TDS was allowed (income tax computation form placed at pages 83-84 of Annexure-G to the writ petition). The petitioner thus claimed the relief for TDS not in the return of income but by means of a separate application u/s 154 after the passing of the assessment order. Obviously it was the stand of the petitioner that if the income is in fact assessed, though according to it the same is not assessable, the corresponding credit has to be given for the related TDS. This is the purport and object of Section 155 (14) of the Act. The order passed by the respondent on 27.06.2006 is traceable to Section 155 (14) read with Section 154 of the Act and by claiming credit for TDS the petitioner cannot be said to have furnished untrue or incorrect particulars of its income; nor can it be said that by allowing credit for the TDS the Assessing Officer has given excessive relief. The other assumption which we have to make is that the relief was allowed to the petitioner in the original assessment order, which would be an erroneous assumption since no credit for TDS was allowed in the original assessment order dated 27.03.2006. The credit given for TDS in an order passed u/s 155 (14) read with Section 154 cannot be construed as a relief given in the original assessment order. Section 155 of the Act provides for various situations under which an order can be amended because of developments taking place subsequent to the date on which the order was originally passed. It was this power of amendment which was invoked by the petitioner; thereby the petitioner was not claiming any relief in the return. Lastly, if we were to uphold the reasoning of the respondent we have to make a further assumption that claiming credit for TDS amounts to claiming excessive loss, deduction, allowance or relief. The respondent has not demonstrated in the reasons recorded as to how such an assumption can be validly made.

Explanation 2 to Section 147 of the Act cannot travel beyond the main provision. The main provision empowers the Assessing Officer to reopen the assessment if he has reason to believe that any income chargeable to tax has escaped assessment for any assessment year. Explanation 2 merely enumerates cases which are deemed to be cases where "income chargeable to tax has escaped assessment". Therefore, the cases enumerated in the Explanation should also be cases where income chargeable to tax had escaped assessment. It cannot be so construed as to rope in cases where credit for TDS, which is a credit given against the tax payable and is not any allowance or deduction or loss or relief against the income chargeable to tax was erroneously given. There is, therefore, no merit in the reasons recorded by the respondent for reopening the assessment. For the aforesaid reasons, we quash the impugned notice issued by the respondent u/s 148 of the Act on 30.03.2010 and all proceedings consequent thereto and allow the writ petition with no order as to costs.