



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **30.10.2019**

CORAM:

THE HONOURABLE MR.JUSTICE **M.GOVINDARAJ**

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**W.P. (MD)Nos.19202, 19825 and 19826 of 2018
and**

W.M.P. (MD)Nos.17030, 17605 and 17606 of 2018

W.P. (MD)No.19202 of 2018:

M/s.Dalmia Cement (Bharat) Limited,
Represented by its Deputy Executive Director (Finance)
and Authorized Signatory Shri.R.Gururajan,
Dalmiapuram,
Tiruchirapalli - 621 651. : Petitioner

Vs.

- 1.The Assistant Commissioner of Income Tax,
Circle 1, Trichy,
No.44, Williams Road, Cantonment,
Tiruchirapalli-620 001.
- 2.The Deputy Commissioner of Income Tax,
Central Circle -2,
New Delhi.
- 3.The Principal Commissioner of Income Tax 1 - Trichy,
No.44, Williams Road, Cantonment,
Tiruchirapalli-620 001. : Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records on the file of the first respondent and quash the impugned order in PAN:AADCA9414C/ACIT/TRY/2011-12, dated 26.07.2018 along with notice in PAN:AADCA9414C, dated 31.03.2018 issued under Section 148 of the Income Tax Act for the Assessment Year 2011-12.

W.P. (MD)No.19825 of 2018:

M/s.Dalmia Bharat Limited,
(Formerly Known as Dalmia Bharat Enterprises Limited),
Dalmiapuram,
Tiruchirapalli,
Tamil Nadu - 621 651. : Petitioner

Vs.

- 1.The Assistant Commissioner of Income Tax,
Circle 1, Trichy,
No.44, Williams Road, Cantonment,
Tiruchirapalli-620 001.



2.The Deputy Commissioner of Income Tax,
Central Circle -2,
New Delhi.

3.The Principal Commissioner of Income Tax 1 - Trichy,
No.44, Williams Road, Cantonment,
Tiruchirappalli-620 001.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records on the file of the first respondent and quash the impugned notice in PAN: AAJCS7366K, dated 31.03.2018 issued under Section 148 of the Income Tax Act for the Assessment Year 2011-12, along with the impugned order in PAN: AAJCS7366K/ACIT/TRY 2011-12, dated 30.07.2018.

W.P. (MD)No.19826 of 2018:

M/s.Dalmia Power Limited,
(Amalgamated Company of DCB Power Ventures Limited),
Dalmiapuram,
Tiruchirappalli,
Tamil Nadu - 621 651.

: Petitioner

Vs.

1.The Assistant Commissioner of Income Tax,
Circle 1, Trichy,
No.44, Williams Road, Cantonment,
Tiruchirappalli-620 001.

2.The Principal Commissioner of Income Tax 1 - Trichy,
No.44, Williams Road, Cantonment,
Tiruchirappalli-620 001.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records on the file of the first respondent and quash the impugned notice in PAN: AAJCS7367J, dated 31.03.2018 in notice number ITBA/AST/148/2017-18/1009600073(1) issued under Section 148 of the Income Tax Act for the Assessment Year 2011-12, along with the impugned order in PAN:AAJCS7367J/AAJCS2658E/ACIT/TRY/2011-12, dated 31.07.2018.

For Petitioner
in all WPs.

: Mr.N.Venkataraman,
Senior Counsel,
For Mr.N.V.Balaji



For Respondents
in all WPs.

: Mr.G.Rajagopalan,
Additional Solicitor General of India
For Mr.N.Dilip Kumar

COMMON ORDER

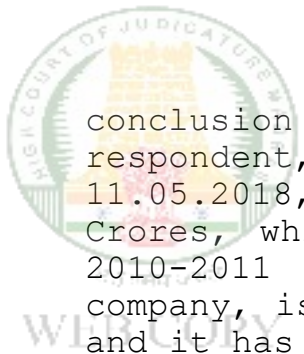
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Since the issue involved in all the three Writ Petitions is one and the same, they were heard together and are being disposed of by means of this common order.

2. For the sake of convenience, the facts leading to the filing of the Writ Petition in W.P.(MD)No.19202 of 2018 are taken into consideration for deciding the issue at hand.

3. The Writ Petition in W.P.(MD)No.19202 of 2018 challenges the order passed by the first respondent in PAN:AADCA9414C/ACIT/TRY/2011-12, dated 26.07.2018 along with notice in PAN:AADCA9414C, dated 31.03.2018, issued under Section 148 of the Income Tax Act, 1961, for the assessment year 2011-2012.

4. The petitioner filed his original return on 29.09.2011. Thereafter, vide F.No.ACIT/CC-2/2013-14, dated 14.10.2013, further details were sought for by the second respondent, which, he submitted on 26.10.2013 and 09.11.2013. In that letter, it is disclosed as to which are the companies holding shares above 10%. The petitioner has disclosed the allotment of shares, opening share capital, share capital raised during the year, closing share capital, total turnover, gross profit, net profit and all other details as required by the second respondent. He filed Form 2 to disclose all the details showing the shares allotted to other persons above 10%. After considering all these details, the second respondent passed an assessment order on 31.03.2014, wherein, it was found that a sum of Rs.84 Crores was treated as unexplained expenditure under Section 69C of the Income Tax Act, 1961, and another sum of Rs.55 Crores was treated as bribe on the basis of the documents seized by them, against which, the petitioner preferred an appeal, in which, Rs.84 Crores as well as Rs.55 Crores, totalling to Rs.1,39,00,00,000/-, was reversed and for the rest of the amount, penalty was imposed. This was given effect to by an order under Section 250/154/153A/143(3) of the Income Tax Act, 1961, dated 18.08.2015. Thereafter, on 31.03.2018, vide impugned proceedings in PAN:AADCA9414C, a notice under Section 148 of the Income Tax Act, 1961, was issued, calling upon the petitioner to deliver the return in the prescribed form for the assessment year 2011-2012, on the reason that the Assessing Officer had reason to believe that income chargeable to tax has escaped assessment. In response to this notice, the petitioner submitted his xerox copy of the return for the year 2011-2012 with acknowledgement due dated 13.04.2018, vide his letter dated 16.04.2018 and also sought for reasons to come to a



conclusion to initiate action under Section 148. The first respondent, by PAN:AADCA9414C/ACIT/Circle-1/TRY/2011-12, dated 11.05.2018, communicated the reasons. The allegation is that Rs.500 Crores, which was invested by a Company called 'KKR' in the year 2010-2011 and held 15% equity shares issued to the petitioner's company, is nothing but the black money of the petitioner's company and it has been circulated through the said company called 'KKR' and it was brought back at a value of more than Rs.1200 Crores. Further, on the basis of information, vide a charge sheet issued to Y.S.Jagan Mohan Reddy, credible proof of criminal conspiracy was obtained against Mr.Puneet Dalmia on account of a sum of Rs.95 Crores in the nature of illegal gratification paid for allotment of lime stone mining lease in favour of the petitioner company. Further reason is that it was widely believed that the petitioner company has tacit understanding with its distributors of cement by giving over discount on sale of cement so as to receive kickbacks in personal names and that it was widely believed that Dalmia Group has tacit understanding with its suppliers of coal, and other services to over invoice that charges so as to receive kickbacks in personal names and Dalmia Group is in the habit of booking bogus bills in the accounts. All these reasons are culminated in the initiation of proceedings under Section 148 and it is observed in closing paragraph as under:

"8. It is surprising as to why the Dalmia Bharat Ltd., paid 2.4 times to KKR for the buyback of its investment of Rs.500 crores in 2010 amounting to approx. Rs.1218 crores.

As the transaction mentioned above is important due to the sensitivity it attracts and for the requirement of deep digging of data to retrieve the final information through the means of exchange of information forum the issue needs to be relooked through reopening of the case for reassessment of Dalmia Cement Bharat Ltd., Dalmia Bharat Ltd., Dalmia Bharat Enterprises Ltd. and Avnija Properties Ltd.

9. Another allegation pertains to the Dalmia Group investing around Rs.5000 crores by way of capital expenditure on setting up cement manufacturing facility and various part of the country in "last 4 years". As the TEP was received in F.Y.2016-17 in the office of DGIT (Inv.), Mumbai therefore the aforementioned "last 4 years" may be considered as, from F.Y. 2012-13 to F.Y.2015-16. However as this is a generalized allegation therefore only the specific issue in this allegation may be looked into. The specific issue in this allegation is that "Calcom Cement India Limited, one of the subsidiary of DCBL awarded a contract for mechanical erection and fabrication to Gannon Dunkerley & Co Limited at a rate almost double of market rate. Copy of contract awarded, copy of



comparable contract and a comparison chart is attached as Annexure - D where contract of Rs.21 Crores has been given at Rs.43 Crores. On going through the Annexure - E, of this TEP name of other contractors were found, however as no specific or incriminating information or amount of transaction is present against these parties, hence information in their case is generalized in nature hence does not invite any further action at this stage only in case of Gannon Dunkerley & Co Limited, the issue is specific. Therefore, the contract awarded and payment received by Gannon Dunkerley & Co Limited may be verified by passing on the information to its jurisdictional assessing officer to take an appropriate action under the relevant section of I.T. Act, 1961.

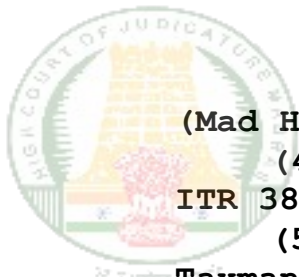
10. There is another allegation that Subhshri Road Carriers Pvt. Ltd., a known and related entity of Dalmia Group has been given the contracts of major transportation work by the Dalmia Group. The contracts are given at the higher rates than the prevailing market rates and kickbacks are received in the personal name of the promoters."

5. Against the reasons given by the first respondent, the petitioner company filed his objections by communication dated 19.06.2018, stating that the proceedings initiated is,
(a) barred by limitation;
(b) without jurisdiction; and
(c) vague and bereft of specific details.

6. The first respondent, by his proceedings in PAN:AADCA9414C/ACIT/TRY/2011-12, dated 26.07.2018, rejected the objections, against which, the present Writ Petition came to be filed.

7. The learned Senior Counsel appearing for the petitioner would submit that the relevant assessment year is 2011-2012. The petitioner submitted all the books of accounts and all other details, as sought for by the respondents even at the time of processing the assessment. Once all the required documents are given, it is for the Assessing Authority with due diligence, to mention, what is not disclosed and the definite reason to arrive at a decision as to the escaped assessment. It cannot be based on the information generally known by believing or on wild belief. In support of his contention, he would rely on the following judgments:

- (1) **Asianet Star Communications (P) Ltd. vs. ACIT (2019) 106 Taxmann.Com 293 (Mad-HC);**
- (2) **Sterlite Industries (India) Ltd. vs. ACIT (2008) 305 ITC 339 (Mad HC);**
- (3) **Fenner (India) Ltd. vs. DCIT (2000)241 ITR 672**



(Mad HC) ;

(4) CIT vs. Schwing Stetter India P. Ltd. (2015) 378 ITR 380 (Mad HC) ;

(5) NuPower Renewables (P.) Ltd. vs. ACIT (2019) 104 Taxmann.com 307 (Bom HC) ;

(6) CIT vs. S & S Power Switchgear Ltd. (2018) 92 Taxmann.com 429 (Mad) ;

(7) PCIT v. Manzil Dineshkumar Shah (2018) 406 ITR 326 (Guj) ;

(8) Krupesh Ghanshyambhai Thakkar vs. DCIT (2017) 77 Taxmann.com 293 (Guj HC) ;

(9) CIT vs. Kelvinator of India Limited (2010) 320 ITR 561 (SC) ;

(10) Rubix Trading vs. ITO [W.P.No.3130 of 2018, dated 20.12.2018] (Bom HC) ;

(11) CIT vs. Usha International Ltd. (2012) 253 CTR 113 (Del-HC) ;

(12) Ganga Saran & Sons (P) Ltd. vs. ITO [(1981) 130 ITR 1 (SC)] ;

(13) South Yarra Holdings vs. ITO (2019) 104 Taxmann.com 216 (Bom HC) ;

(14) PCIT vs. Meenakshi Overseas (P) Ltd. (2017) 395 ITR 677 (Del-HC) ;

(15) ITO vs. Lakhmani Mewal Das (1976) 103 ITR 437 (SC) ;

(16) SMCC Construction India Ltd. vs. ACIT (2014) 220 Taxman 354 (Del.HC) ;

(17) Novo Nordisk India (P) Ltd. (2018) 95 Taxmann.com 225 (Kar-HC) ;

(18) Mahesh Kumar Gupta vs. CIT (2014) 363 ITR 300 (All-HC) ;

(19) Haryana Acrylic Manufacturing Co vs. CIT (2009) 308 ITR 38 (Del) ;

(20) CIT, Delhi vs. Kelvinator India Ltd. 256 ITR 1 (Del) ;

(21) Calcutta Discount Co. Ltd. vs. ITO 41 ITR 191 (SC) ;

(22) Jindal Photo Films Ltd. vs. DCIT 234 ITR 170 (Del) ;

(23) Garden Silk Mills P. Ltd. vs DCIT 237 ITR 668 (Guj) ;

(24) PCIT vs. Santech Solutions P Ltd 97 Taxmann. com 179 (Mad) ;

(25) Union of India vs. Ajit Jain 260 ITR 80 (SC) ;

(26) Ajit Jain vs. Union of India 242 ITR 302 (Del) ;

(27) CIT vs. Indo Arab Air Services 283 CTR 92 (Del) ;

(28) PCIT vs. Shodiman Investments (P) Ltd. 93 Taxmann. com 153 (Bom) ;

(29) CIT vs. Sfil Stock Broking Ltd 325 ITR 285 (Del) ;



(30) CIT vs. Batra Bhatta Company 321 ITR 526 (Del);

(31) Vipran Khanna vs. CIT 255 ITR 220 (Pun & Har);

(32) National Dairy Development Board vs. DCIT 356 ITR 413 (Guj);

(33) Ashkijyot Oxygen (P) Ltd. vs. H.N.Patel, ITO 346 ITR 199 (Guj);

(34) Madras Suspension Ltd. vs. DCIT 88 Taxmann.com 256 (Madurai);

(35) Sri. C.M.Mahadeva S/o.Sri Manche Gowda vs. The CIT, Mysore (2015) Taxcorp (DT) 62455 (KAR);

(36) CIT vs. Elgi Tread (India) Ltd 96 Taxmann.com 254 (Mad);

(37) JCIT vs. Kalanithi Maran 366 ITR 453 (Madras);

(38) Jeans Knit P Ltd vs. DCIT Bangalore 390 ITR 10 (SC);

(39) CIT vs. M/s.Spice Infotainment Ltd., Civil Appeal No.285 of 2014-SC;

(40) Spice Infotainment Ltd. vs. CIT 65 DTR 391 (Delhi);

(41) Jitendra Chandrala Navlani vs. Union of India 386 ITR 288 (Bom);

(42) PCIT New Delhi vs. Maruti Suzuki India Ltd. 397 ITR 681 (Delhi); and

(43) Indian & Eastern Newspaper Society vs. Commissioner of Income Tax [1979]2 Taxman 197(SC).

8. Secondly, on the point of limitation, the learned Senior Counsel would draw the attention of this Court to proviso to Section 147, which contemplates only three circumstances in which the assessment can be re-visited within four years i.e.,

(a) failure on the part of the assessee to make a return under Section 139; or

(b) in response to a notice issued under sub-section (1) of section 142 or section 148; or

(c) to disclose fully and truly all material facts necessary for his assessment, for that assessment year.

9. The learned Senior Counsel would further submit that in respect of required things, namely (a) and (b), the assessee has filed his return under Section 139 and he has filed his reply in response to the notice issued under Section 142 as well as Section 148.

10. The only issue, which is to be decided, is as to whether the assessee has disclosed fully and truly what material facts necessary for his assessment, for that assessment year or not.



11. In that aspect, the petitioner would submit that he has submitted all the necessary details in Form-2 with all other attachments including the reply given to the notice issued under Section 142. Against the order passed by the Assessing Authority, the petitioner also filed an appeal to the Commissioner of Income Tax, in which, all these points were elaborately discussed and thereafter, the order charging tax under Section 139 was set aside and the appeal was partly allowed and consequent upon the order, it was given effect to by the other consequential order under Section 250/154/153A/143(3) of the Income Tax Act, 1961. In those circumstances, it should be construed that the petitioner has given all the materials fully and truly. As per the explanation to Section 147, if at all the Assessing Officer with his due diligence discovers that there is some escaped assessment, then, on the basis of that, he can initiate proceedings. But the impugned orders do not disclose the main reasons given by the Assessing Authority and the same also do not disclose any escaped assessment. Further, the assessment order for 2011-2012, ended with 31.03.2012. As per Section 147, proceedings, if any, should have been commenced within four years from the date of end of the assessment year. But, in the instant case, the proceedings were initiated on 31.03.2018. Therefore, it is barred by limitation.

12. It is contended that the further reason given pertains to the Calcom Cement India Limited, which is an independent legal entity and that does not have any connection with the return filed for the assessment year 2011-2012. Even assuming that it is a sister concern, then, for the transaction done by the sister concern, proceedings should have been initiated against that independent legal entity and it cannot be initiated against the petitioner company. Therefore, the impugned orders are barred by limitation.

13. Further, in respect of the allegation given with respect to the contracts, Paragraph 10 of the reasons that the contracts are given at the higher rates than the prevailing market rates and kickbacks are received in the personal name of the promoters, does not disclose any specific transaction which happened between the petitioner and other company. The date of transaction, the amount which said to have been received higher than the market value, the quantum of kickbacks that was received in the personal name of the promoters, the date and time when it was received and all other specific details, are missing. Therefore, he prays that the impugned proceedings are likely to be quashed.

14. The learned Senior Counsel would also contend that once in a concluded assessment where the Assessing Authority discovers undisclosed material evidence and has a reason to believe that there is an escaped assessment, then only, he can initiate proceedings. However, in the cases at hand, the impugned proceedings are based on



wild belief without any materials.

15. In response to the arguments, the learned Additional Solicitor General of India appearing for the respondents would contend that after issuance of notice under Section 148, the petitioner has not chosen to challenge the same in time. But, whereas, he has submitted himself to the proceedings and filed returns, as directed by the authorities and also filed his objections. Once he submitted himself to the jurisdiction, he shall await the orders of the Assessing Authority and he cannot rush to the Court without awaiting the orders. Therefore, once the matter is subjudice before the fact finding authority, challenging the notice issued under Section 148 is without cause of action and hence, the Writ Petitions are not maintainable.

16. In support of the contention, he would rely on the judgment of the Hon'ble Supreme Court in **GKN Driveshafts (India) Ltd., vs. Income Tax Officer and others** reported in **2003(1) SCC 72**, wherein the Hon'ble Supreme Court has held that the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices and on receipt of notice, he can file objection and he cannot rush to the Court without awaiting for the orders to be passed in the matter.

17. He would further submit that against the order passed by the authority, there is an appeal provision available to the petitioner and without exhausting the alternative remedy, the petitioner shall not rush to the Court. In this regard, he would rely on the judgment of the Hon'ble Supreme Court in **CIT v. Chhabil Dass Agarwal** reported in **2014(1) SCC 603**, wherein it is held that when there is an efficacious alternative remedy available, the High Court should not interfere in the proceedings of Income Tax Department, pursuant to a notice issued under Sections 246, 246-A, 143, 144, 147 and 148. Therefore, the Writ Petitions are not maintainable.

18. Further, explanation to Section 147 would clarify the position that there are material evidences, which were discovered by the Assessing Authority, for which, action should be initiated. Paragraph 8 of the reasons adduced by the Assessing Authority clearly shows that there is suppression of income to the tune of Rs.1218 crores for the investment of Rs.500 Crores, which definitely is the re-circulation of black money. As there are material evidences, it cannot be said that it is without reason.

19. Insofar as the issue at hand is concerned, it is a disputed question of fact and it can be decided only by the authority and the Writ Court cannot delve into the disputed questions of facts and, therefore, the Writ Petition shall not be entertained.



20. I have considered the rival submissions made by both parties.

21. This Court has dealt with the issue of change of opinion after considering the various judgments of the Hon'ble Supreme Court and the other Courts, in **Asianet Star Communications (P) Ltd. vs. ACIT (2019) 106 Taxmann.Com 293 (Mad-HC)**. The relevant portion reads thus:

"26. In similar circumstances, the Supreme Court, in the case of **ACIT v. ICICI Securities Primary Dealership Ltd. ([2012] 348 ITR 229)** has held as follows:

The assessee had disclosed full details in the Return of Income in the matter of its dealing in stocks and shares. According to the assessee, the loss incurred was a business loss, whereas, according to the Revenue, the loss incurred was a speculative loss. Rejection of the objections of the assessee to the re-opening of the assessment by the Assessing Officer vide his Order dated 23rd June, 2006, is clearly a change of opinion. In the circumstances, we are of the view that the order re-opening the assessment was not maintainable.

27. The Supreme Court, in **Commissioner of Income Tax v. Corporation Bank [254 ITR 791]** has had occasion to consider a similar issue holding as follows:

Turning attention to the first question as regards the provisions under Section 147(a) be it noted and as the facts depict, there is no failure on the part of the assessee in furnishing the particulars pertaining to the above noted sum as not recoverable for the relevant accounting year and the statements filed along with the original return disclosed the full details of the aforesaid account. There is, therefore, no failure on the part of the assessee to disclose fully and truly the material facts necessary for the assessment years for the respective years and as such Section 147(a) has no manner of application and is not attracted in the facts of the matter under consideration. The High Court on consideration of the facts came to the conclusion that the Tribunal was justified in coming to the said finding and we also record our concurrence therewith.

28. The Supreme Court in the case of **Commissioner of Income Tax v. Kelvinator of India Ltd., and another ([2010] 320 ITR 561 (SC))** has held thus:

However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, Section 147 would give arbitrary powers to the Assessing Officer to re-open assessments on the basis of



"mere change of opinion", which cannot be per se reason to re-open. We must also keep in mind the conceptual difference between power to review and power to re-assess. The Assessing Officer has no power to review; he has the power to re-assess. But re-assessment has to be based on fulfilment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1st April, 1989, Assessing Officer has power to re-open, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief.

29. I am thus of the view that, in the light of the proviso to section 147, the assessee having made a complete disclosure of all relevant facts along with the return of income, the impugned proceedings are barred by limitation and also constitute a review of the original order of assessment, impermissible in law. In fact, the Assessing Officer is seen to have applied his mind to the issue in question and the original order of assessment confirms the position that various materials have been called for, such as accounts, financials, tax audit report, etc. and the assessee has also engaged in discussions with the Assessing Officer in regard to the issues that arise therefrom. The full and true disclosure of the assessee is thus not in doubt.

35. The Full Bench has specifically gone into the question whether an order of assessment must contain detailed discussion in regard to a specific issue in order that the Assessing Authority may be said to have initially 'considered the issue'. The Bench cites the provisions of section 114(e) of the Indian Evidence Act 1872 to bring home the position that all acts performed by a Judicial Officer in the discharge of his regular functions would be legally presumed to have been properly and regularly performed and executed. Thus, even in cases where there is no discussion in regard to specific issues, if it is established by the assessee that all material relevant and germane to that issue were available before the Assessing Officer, easily discernible and part of the record, reassessment is impermissible. Then again, it does not stand to reason that an officer, once convinced by the submissions of an assessee, will proceed to devote time to recording is agreement in a detailed and reasoned fashion.



The legitimate and reasonable expectation is that a detailed and speaking order is passed in cases where he differs and dissents from the stand of the assessee. On this score, the arguments of Mr.J.Narayanasamy in this regard have no merit and are rejected.

41. In fine, all relevant, primary particulars have been produced/filed/furnished by the petitioner at the first instance before the authorities, in a transparent fashion. It is for the officer to have appreciated the same and arrived at the necessary and appropriate inferences at that juncture. Having missed the bus at that point, the Department cannot seek to re-assess the income as culled from material already on record, as this constitutes a review of the original assessment. Admittedly, and even as per the reasons stated, there is no new material that has come to the notice of the authorities and the impugned exercise is undertaken solely on the basis of the materials already supplied by the petitioners and available on the records of the department. This argument of the revenue is also consequently rejected."

22. It is pertinent to note that insofar as the judgments relied on by the respondents that the Writ Petitions are not maintainable against the notices issued under Section 148 of the Income Tax Act, 1961, are concerned, the Hon'ble Supreme Court in its judgment reported in [2017] 77 taxmann.com 176 (SC) [Jeans Knit (P.) Ltd. vs. Deputy Commissioner of Income-Tax, Bangalore], has held as under:

"2. We find that the High Courts in all these cases have dismissed the writ petitions preferred by the appellant/assessee herein challenging the issuance of notice under section 148 of the Income Tax Act, 1961 and the reasons which were recorded by the Assessing Officer for reopening the assessment. These writ petitions are dismissed by the High Courts as not maintainable. The aforesaid view taken is contrary to the law laid down by this Court in *Calcutta Discount Ltd. Co. v. ITO* [1961]41 ITR 191 (SC). We, thus, set aside the impugned judgments and remit the cases to the respective High Courts to decide the writ petitions on merits.

3. We may make it clear that this Court has not made any observations on the merits of the cases, i.e. the contentions which are raised by the appellant challenging the move of the Income Tax Authorities to re-open the assessment. Each case shall be examined on its own merits keeping in view the scope of judicial review while entertaining such matters, as laid down by this Court in



various judgments."

In the above referred judgment, it was observed that the judgment referred to by the High Court in **CIT v. Chhabil Dass Agarwal [2013] 357 ITR 357/217 Taxman 143/36 taxmann.com 36**, does not apply to the case. Therefore, a writ against the notice issued under Section 148 is maintainable.

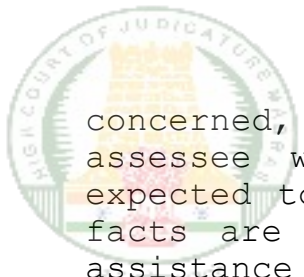
23. Insofar as the contention of the respondents that the assessee shall await for the orders to be passed by the Assessing Officer, as held by the Hon'ble Supreme Court in **GKN Driveshafts (India) Ltd., vs. Income Tax Officer and others** reported in **2003(1) SCC 72**, is concerned, Paragraph No.5 of the order, the Supreme Court has observed as under:

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

24. In the instant cases, notices under Section 148 are issued, against which, the petitioner filed the return of the particular assessment year and also filed his reply seeking reasons. The first respondent has given the reasons for the same, against which, the petitioner filed his objections, which were rejected by the Assessing Authority by a speaking order. That particular orders are under challenge.

25. It is pertinent to note that all the requirements, as observed by the Hon'ble Supreme Court, have been followed by the petitioner and it is only the rejection order which is challenged now, against which, in the opinion of this Court, the Writ is maintainable and it cannot be said that the petitioner has rushed to the Court without availing the alternative remedy.

26. Further, insofar as the contention raised by the respondents that as per explanation 1, once the Assessing Authority with due diligence has discovered some material evidence, it will not amount to disclose the same within the meaning of Section 147 is



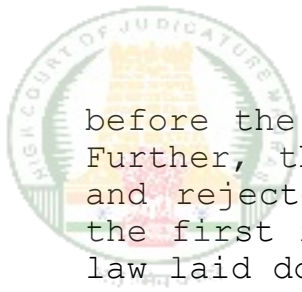
concerned, the Hon'ble Supreme Court has held that it is the assessee who can only produce the documents and he cannot be expected to give inference to the disclosure. Once all the primary facts are before the Assessing Authority, he requires no further assistance by way of disclosure and it is not possible for the assessee to draw any particular inference and communicate the same to the Assessing Authority and explanation given to Section 147, does not cast a duty upon the assessee to disclose the inferences in the following lines:

"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.

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 charge with failure to communicate an inference, which he might or might not have drawn?

It may be pointed out that the Explanation to the sub-section has nothing to do with "inferences" and deals only with the question whether primary material facts not disclosed could still be said to be constructively disclosed on the ground that with due diligence the income-tax Officer could have discovered them from the facts actually disclosed. The Explanation has not the effect of enlarging the section, by casting a duty on the assessee to disclose "inferences" - to draw the proper inferences being the duty imposed on the income-tax officer."

27. In the instant cases, the assessee has submitted Form-2 disclosing all the materials giving all the explanations. In such circumstances, it cannot be said that he has not submitted all the materials fully and truly. Therefore, once the assessee has submitted reply; once he submitted the returns for the assessment year; and once he has filed a reply to the notice under Section 148 and files his objections to the reasons for issuance of 148 notice



before the very same authority, Section 147 is fully complied with. Further, the objections raised by the assessee had been considered and rejected by the Assessing Authority, but the reasons given by the first respondent are contrary to the well settled principles of law laid down by the Hon'ble Supreme Court.

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28. In view of the foregoing reasons, this Court is of the view that the impugned orders along with notices dated 31.03.2018, are liable to be set aside and accordingly, set aside and consequently, the Writ Petitions are allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

SML

To

1.The Assistant Commissioner of Income Tax,
Circle 1, Trichy,
No.44, Williams Road, Cantonment,
Tiruchirapalli-620 001.

2.The Deputy Commissioner of Income Tax,
Central Circle -2,
New Delhi.

3.The Principal Commissioner of Income Tax 1 - Trichy,
No.44, Williams Road, Cantonment,
Tiruchirappalli-620 001.

+3 CC to M/s.N.DILIP KUMAR, Advocate (SR-95052[F],SR-95053[F] SR-95054[F] dated 31/10/2019)

+3 CC to M/s.N.V.BALAJI, Advocate (SR-95314[F],SR-95315[F],SR-95316[F] dated 31/10/2019)

**W.P. (MD)Nos.19202, 19825
and 19826 of 2018
Dated: 30.10.2019**

KMV(CO)

KK(20.10.2020) 15P 10C