

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.13 OF 2002

State Bank of India ... Petitioner
Vs.
Vineet Agrawal, Assistant Commissioner of Income
Tax and others ... Respondents

Mr. Percy Pardiwala, Senior Advocate a/w. Mr. Nitesh Joshi and Ms. Disha
Shah i/b. Bhavé & Co. for Petitioner.
Mr. Suresh Kumar for Respondents.

**CORAM : UJJAL BHUYAN &
MILIND N. JADHAV, JJ.**
DATE : SEPTEMBER 21, 2020

JUDGMENT and ORDER : (Per Ujjal Bhuyan, J.)

Heard Mr. Percy Pardiwala, learned senior counsel along with Mr.
Joshi, learned counsel for the petitioner; and Mr. Suresh Kumar, learned
counsel for the respondents.

2. By filing this petition under Article 226 of the Constitution of
India, petitioner seeks quashing of notice dated 30.03.2001 issued by
respondent No.1 under section 148 of the Income Tax Act, 1961 (briefly
'the Act' hereinafter) for the assessment year 1990-91 and subsequent
notices issued under sections 143(2) and 142(1) of the said Act.

3. Petitioner is the State Bank of India. It is a corporation established
by and under the State Bank of India Act, 1955 having its corporate
office at Mumbai. Since its formation in the year 1955, petitioner is
mainly engaged in the business of banking activities in India as well as
in foreign countries through its branch offices. One of the major sources
of income of the petitioner is interest earned from its lending activities.

3.1 Petitioner is assessed to income tax under the Act with respondent

No.1 as the assessing officer.

3.2. For the assessment year 1990-91, petitioner filed its return of income declaring total income of Rs.230,49,30,716.00. It is stated that in the said return of income, petitioner had offered to tax the entire receipt of interest from money advanced as credit in the profit and loss account without claiming any exemption under section 10(15)(iv)(c), (d), (e) and (f) of the Act as the details were not fully collected. A note was made in the return to the effect that particulars of petitioner's claim of interest exempt under section 10(15)(iv) were being collected and would be submitted separately. Further, in the return of income petitioner also claimed exemption under section 10(15)(iv)(h) of the Act for an amount of Rs.20,58,08,915.00 being interest received on tax free bonds.

3.3. In the course of the assessment proceeding, respondent No.1 had issued letter dated 14.08.1992 calling upon the petitioner to explain that borrowed funds were not used for making investments to earn the exempt income. Petitioner submitted reply dated 22.08.1992 furnishing necessary details in respect of interest claimed as exempt under section 10(15)(iv)(c), (d), (e) and (f). Full details of exemption claimed were furnished. It is stated that exemption in respect of eligible interest was claimed on the gross amount as interest received from each of the parties were disclosed separately and exemption was claimed on the basis of the total of all those amounts without reducing any expenditure.

3.4. Respondent No.1 passed assessment order on 26.03.1993 under section 143(3) of the Act determining petitioner's total income at Rs.10,51,38,85,506.00. According to the petitioner, assessing officer overlooked the claim made by the petitioner for exemption under section 10(15)(iv) of the Act on the ground that details were not filed during the assessment proceeding though petitioner's claim to exemption of interest on tax free bonds was allowed.

3.5. When petitioner brought to the notice of respondent No.1 that all the details and information were furnished *vide* letter dated 22.08.1992, he passed an order under section 154 of the Act dated 23.06.1993 allowing exemption under section 10(15)(iv) for an amount of Rs.2,58,45,37,461.00.

3.6. On 23.12.1993, respondent No.1 issued a notice under section 148 of the Act seeking to reopen the assessment of the petitioner for the assessment year 1990-91. Following such notice, petitioner filed its return of income where it claimed exemption of interest under various clauses of section 10(15)(iv) to the extent of Rs.4,69,92,61,038.00, in addition to claiming exemption in respect of interest on tax free bonds amounting to Rs.20,58,08,915.00.

3.7. Pursuant to the above, respondent No.1 passed order dated 31.03.1994 under section 143(3) read with sections 147 and 154 of the Act determining the revised total income of the petitioner at Rs.7,46,80,10,649.00. In addition to the exemption granted in the order dated 23.06.1993, respondent No.1 granted further exemption under section 10(15)(iv) of an amount of Rs.90,97,32,802.00 accepting a part of petitioner's contention in respect of loans granted.

3.8. When petitioner received further details in respect of interest exemption under section 10(15)(iv), it furnished those details to respondent No.1 on 06.09.1994 but respondent No.1 refused to consider the further claim of the petitioner.

3.9. At that stage, petitioner preferred appeal before the Commissioner of Income Tax (Appeals). The first appellate authority by his appellate order dated 30.03.1995 directed respondent No.1 to consider the claim of the petitioner in respect of interest exemption under section 10(15)(iv) of the Act on the basis of information furnished by the petitioner and to allow the deduction according to law.

3.10. Respondent No.1 thereafter passed order dated 20.11.1995 giving effect to the order of Commissioner of Income Tax (Appeals) by allowing further deduction of Rs.119,21,47,306.00 under section 10(15) (iv).

3.11. According to the petitioner, against its claim for exemption under section 10(15)(iv) of Rs.469,92,61,038.00, it was allowed exemption of Rs.468,64,17,569.00, the break-up of which has been furnished as under:-

- 1) Rs.258,45,37,461.00 *vide* order dated 23.06.1993 passed under section 154;
- 2) Rs.90,97,32,802.00 *vide* order dated 31.03.1994 passed under section 143(3) read with sections 147 and 154; and
- 3) Rs.119,21,47,306.00 *vide* order dated 20.11.1995 giving effect to the order of Commissioner of Income Tax (Appeals).

4. Section 14A was inserted in Chapter IV of the Act by the Finance Act, 2001 with retrospective effect from 01.04.1962. Chapter IV deals with computation of total income and section 14A which is in Chapter IV deals with expenditure incurred in relation to income not includible in total income. Sub-section (1) of section 14A says that for the purposes of computing the total income under Chapter IV, no deduction shall be allowed in respect of an expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. It may be mentioned that Finance Act, 2001 received the assent of the President on 11.05.2001.

5. Be that as it may, petitioner received a notice dated 30.03.2001 issued by respondent No.1 under section 148 of the Act. As per this notice, respondent No.1 stated that he had reason to believe that income of the petitioner chargeable to tax for the assessment year 1990-91 had

escaped assessment within the meaning of section 147 of the Act and, therefore, he proposed to re-assess the income. Petitioner was called upon to file return of income in terms of the said notice within 30 days.

5.1. Petitioner filed its return of income by mentioning that it was without prejudice and under protest. Contending that no income chargeable to tax had escaped assessment and that petitioner had disclosed fully and truly all material facts necessary for its assessment, request was made to respondent No.1 for furnishing the reasons on the basis of which the impugned notice was issued.

5.2. In the meanwhile, petitioner was served with notices under section 143(2) as well as under section 142(1) of the Act.

6. Central Board of Direct Taxes (CBDT) issued a circular dated 23.07.2001 regarding insertion of section 14A in the Act with effect from 01.04.1962 and its application. After noting that instances of re-opening of old assessments which had caused hardship to a large number of tax payers leading to increase in avoidable litigation had come to its notice, it directed that assessment proceedings which had attained finality before 01.04.2001 should not be re-opened under section 147 of the Act to disallow expenditure incurred to earn such exempt income by applying the newly inserted section 14A.

7. When the petitioner pointed out the above CBDT circular to respondent No.1, it was informed that the said circular was not applicable to the petitioner as the assessment of the petitioner was re-opened by issuing notice under section 148 of the Act on 30.03.2001, thus taking the view that the assessment proceeding was pending as on 01.04.2001.

8. After several rounds of communication, respondent No.1 *vide* letter dated 04.12.2001 furnished the reasons for re-opening of

assessment to the petitioner. As per the reasons furnished, respondent No.1 was of the view that by claiming gross receipts as exempt and claiming the cost of borrowing etc. from its business income, petitioner in fact claimed double deduction which is not permissible in law. It is also stated that petitioner had not furnished details of expenses incurred to earn interest on approved foreign exchange loans. However, based on the data from the assessment year 1998-99, the cost for earning interest on such lending comes to more than 80%. Thus, excess exemption was allowed by more than Rs.280 crores. This resulted in escapement of income by allowing excess exemption under section 10(15)(iv)(c) and (f) of the Act.

9. Aggrieved, petitioner has preferred the present writ petition seeking the reliefs as indicated above.

10. This Court by order dated 05.03.2002 had passed an interim order staying the operation of the impugned notice dated 30.03.2001. Thereafter by order dated 27.06.2002, the writ petition was admitted for hearing and interim relief in terms of prayer clause (d) of the petition was granted meaning thereby that respondents were restrained from taking any steps in furtherance of or pursuant to the impugned notice dated 30.03.2001 and the subsequent notices issued under sections 143(2) and 142(1) of the Act.

11. Respondent No.1 has filed affidavit. It is stated that impugned notice under section 148 of the Act was issued on 30.03.2001 after duly recording reasons and after obtaining approval of the Commissioner of Income Tax under section 151 of the Act. Gist of the reasons recorded was supplied to the petitioner on 04.12.2001. Reference has been made to the assessment proceeding wherein the assessing officer had issued letter dated 14.08.1992 to the petitioner to explain that borrowed funds were not used for making the investments to earn such income. It was mentioned that failure to furnish particulars of interest paid on borrowed

funds attributable to such investments would result in the expenditure being disallowed as being laid out for earning income which is not to be included in the total income under section 10 of the Act. Petitioner in its reply dated 22.08.1992 had stated that the particulars would be submitted in due course after collecting the same from the different branches. Such details were never furnished and thus, petitioner had failed to disclose fully and truly all material facts necessary for its assessment for that assessment year. That apart, it is stated that petitioner had furnished only the details of gross interest income claimed to be exempted under section 10(15)(iv) without furnishing details of expenses incurred for earning such income.

11.1. In paragraph 12 of the affidavit it is clarified that the impugned notice under section 148 was not issued in view of proposed section 14A in the Finance Bill, 2001. Petitioner's case was examined in the light of facts of the case and various judicial pronouncements whereafter respondent No.1 came to the conclusion that there was reason to believe that by allowing exemption on the gross receipts in place of net receipts after adjustment of the expenditure, the income had escaped assessment. Reliance has been placed on the decision of the Supreme Court in the case of *Escorts Limited Vs. Union of India*, **199 ITR 43** contending that by claiming exemption on the gross income and getting the deduction of expenses incurred with respect to such income, petitioner had availed double deduction which could never have been the legislative intent. In so far CBDT circular dated 23.07.2001 is concerned, it is contended that the same is not applicable in the case of the petitioner. In the circumstances, respondent No.1 seeks dismissal of the writ petition.

12. Respondent No.1 has also filed additional affidavit in reply enclosing therewith the detailed reasons recorded for re-opening the assessment as well as the satisfaction recorded by Commissioner of Income Tax while granting approval to respondent No.1 for issuance of notice under section 148 of the Act.

13. Mr. Pardiwala, learned senior counsel for the petitioner has meticulously taken us to the materials on record and submits that issuance of the impugned notice is clearly without jurisdiction in as much as respondent No.1 could not have formed any reasonable belief that income chargeable to tax for the said assessment year had escaped assessment on account of petitioner failing to disclose fully and truly all material facts, this being a case of re-opening of an assessment made under section 143(3) of the Act after four years. Since the very foundation for initiation of the process of re-opening is absent, the impugned notice is liable to be set aside and quashed being without jurisdiction. That apart, he submits that it has been the consistent view of the courts that if an assessee earns both taxable and exempt income and the business generating the taxable and exempt income is regarded as one indivisible business and the expenditure is incurred for the purpose of the business of the assessee then there can be no disallowance of any part of the expenditure on the ground that a portion of the expenditure is relatable to the earning of exempt income. His further contention is that when the petitioner had made its claim that the sum of Rs.469,92,61,038.00 was not chargeable to tax, it had made it abundantly clear that the said amount represented the gross interest that was earned. This claim was considered by respondent No.1 and was allowed to the extent of Rs.468,64,17,569.00 at various stages. In such circumstances, respondent No.1 could not have formed any reasonable belief that income of the petitioner chargeable to tax had escaped assessment on account of failure on the part of the petitioner to furnish fully and truly all material facts necessary for the purpose of assessment particularly regarding claim of exemption under section 10(15)(iv) of the Act. In support of his submissions, Mr. Pardiwala has relied upon the following decisions:-

1. *CIT Vs. Industrial Investment Trust Company Limited*, **67 ITR 436**;
2. *CIT Vs. New Great Insurance Company Limited*, **90 ITR 348**;

3. *CIT Vs. Indian Bank Limited*, **56 ITR 77 (SC)**;
4. *State Bank of India, Mumbai Vs. Joint Commissioner of Income Tax*, ITAT, Mumbai Bench, **ITA Nos.1292 and 1293 / Mumbai / 2001** decided on **06.06.2002**;
5. **Escorts Limited** (*supra*);
6. *DIL Limited Vs. Assistant Commissioner of Income Tax*, **343 ITR 296**;
7. *Ajanta Pharma Limited Vs. Assistant Commissioner of Income Tax*, **267 ITR 200**; and
8. *Caprihans India Limited Vs. Tarun Singh, Deputy Commissioner of Income Tax*, **266 ITR 566**.

13.1. Mr. Pardiwala has also drawn our attention to the proviso to sub-section (3) of section 14A of the Act which was inserted by the Finance Act, 2002 with retrospective effect from 11.05.2001. He submits that even as per this proviso, the assessing officers are restrained from re-opening assessment for any assessment year concluded on or before 01.04.2001. Therefore, this is also a prohibition for respondent No.1 from seeking to re-open the completed assessment of the petitioner for the assessment year 1990-91.

14. Mr. Suresh Kumar, learned standing counsel, Revenue submits that the writ petition filed is not maintainable in as much as the procedure laid down in *GKN Driveshafts (India) Limited Vs. Income Tax Officer*, **259 ITR 19** has not been followed by the petitioner. In that case, Supreme Court had clarified that when a notice under section 148 of the 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 notice. In such an eventuality, assessing officer is bound to furnish reasons within a reasonable time to which noticee would be entitled to file objections. If objections are filed, assessing officer is bound to dispose off the same by passing a speaking order. This procedure having not been availed of by the petitioner, Court may not invoke its extra-ordinary jurisdiction under Article 226 of the Constitution of India. Referring to a decision of this Court in *Ajanta Pharma Limited Vs. Assistant Commissioner of Income*

Tax, **295 ITR 218**, he submits that in that case this Court had relegated the petitioner to avail the procedure laid down in **GKN Driveshafts (India) Limited** (*supra*). In such circumstances, he submits that the writ petition may not be entertained.

15. Submissions made by learned counsel for the parties have been considered. Also perused the materials on record and carefully considered the decisions cited at the Bar.

16. We find that Mr. Suresh Kumar has basically raised a preliminary objection regarding non-availing of the procedure by the petitioner as laid down by the Supreme Court in **GKN Driveshafts (India) Limited** (*supra*). But before dealing with this aspect, it would be apposite to first dilate on the relevant provisions of section 147 of the Act. The present case deals with assessment year 1990-91 where the initial assessment order was passed on 26.03.1993 under section 143(3) of the Act. Impugned notice under section 148 of the Act was issued on 30.03.2001. It is in that context that we will have to discuss and analyze section 147. It says that if the assessing officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may assess or re-assess such income. However, as per the first proviso, where an assessment under sub-section (3) of section 143 or section 147 has been made for the relevant assessment year, no action shall be taken under section 147 after expiry of four years from the end of the relevant assessment year unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for its assessment for that assessment year.

17. The present case is one where the impugned notice issued under section 148 of the Act is clearly beyond four years from the end of the

assessment year in question. Therefore, what is relevant to note is that the assessing officer must have or form reason to believe that any income of the petitioner chargeable to tax has escaped assessment by reason of the failure on the part of the petitioner to disclose fully and truly all material facts.

18. The expressions 'reason to believe' and 'failure on the part of the assessee to disclose fully and truly all material facts' have been subjected to numerous judicial pronouncements, and it is not necessary to burden this judgment by making reference to the long line of judicial precedents. Suffice it say that there must be a live link between the reasons recorded and formation of the belief that income chargeable to tax has escaped assessment because of failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment which must not be fanciful or based on suspicion. Both the conditions must co-exist in order to confer jurisdiction on the assessing officer. Of course, the assessee is required to make a true and full disclosure of the primary facts at the time of the original assessment. Production before the assessing officer books of accounts or other materials from which the required evidence with due diligence could have been discovered by the assessing officer would not necessarily amount to disclosure contemplated by law. But the duty of the assessee in any case does not extend beyond making a true and full disclosure of primary facts. Once he has done that, his duty ends. It is for the assessing officer to draw the correct inference from the primary facts. Once such an inference is drawn which may appear subsequently to be erroneous that could not be a basis for initiation of action for re-opening assessment as it would amount to change of opinion and change of opinion cannot be a ground for re-opening concluded assessment.

19. Having discussed the above, let us now address the preliminary issue raised by Mr. Suresh Kumar. In **GKN Driveshafts (India) Limited** (*supra*), writ petition filed by the noticee challenging the notice

issued under section 148 of the Act was dismissed by the High Court. Declining to interfere with such decision of the High Court, Supreme Court clarified that when a notice is issued under section 148 of the Act, the proper course of action for the assessee is to file return and if he so desires, he may seek the reasons for issuing notice. If reasons are sought for, assessing officer is bound to furnish the reasons within a reasonable time. On receipt of reasons, noticee is entitled to file objection to issuance of notice in which event assessing officer would be bound to dispose off the same by passing a speaking order. In that case since reasons were disclosed, it was held that assessing officer had to dispose off the objection, if filed, by passing a speaking order before proceeding with the assessment. This decision was rendered by the Supreme Court on 25.11.2002. It was applied by this Court in the second *Ajanta Pharma* case i.e., **295 ITR 218** wherein the matter was remanded to the assessing officer to grant opportunity to the petitioner to file additional objections and thereafter to dispose off the same in terms of judgment of the Supreme Court in **GKN Driveshafts (India) Limited** (*supra*).

20. In the instant case, the impugned notice was issued on 30.03.2001 and the reasons were furnished by respondent No.1 to the petitioner on 04.12.2001; all before the judgment was rendered in **GKN Driveshafts (India) Limited** (*supra*). Therefore, a view can be taken that since the impugned notice and furnishing of reasons had preceded the judgment in **GKN Driveshafts (India) Limited**, the later may not have applicability in the present case. That apart, in the first *Ajanta Pharma* case i.e., **267 ITR 200**, this Court after referring to the Constitution Bench judgment in *Calcutta Discount Company Limited Vs. Income Tax Officer*, **41 ITR 191** held that Supreme Court in **GKN Driveshafts (India) Limited** (*supra*) nowhere lays down the law to the effect that the noticee is totally debarred from approaching the High Court under Article 226 of the Constitution of India when the exercise of power by the authority under section 148 of the Act *ex-facie* appears to be without jurisdiction. It was reiterated that mere availability of an alternative remedy can be no bar

for exercise of writ jurisdiction when the authority seeks to assume jurisdiction which it does not possess or act in totally arbitrary manner. It was held thus,

“15. If one reads the decision of the apex Court in GKN's case (*supra*), as rightly submitted by the learned advocate for the petitioners, it nowhere lays down the law to the effect that the party is totally debarred from approaching this Court under Article 226 of the Constitution of India when an exercise of powers by the authority under Section 148 of the said Act *ex facie* appears to be without jurisdiction. Undoubtedly, whether such an exercise is with or without jurisdiction will have to be revealed from the notice and reasons on the face thereof. At the same time, it is also well-settled and the decision of the Constitution Bench of apex Court in Calcutta Discount Co.'s case (*supra*) is very clear on the point that mere availability of an alternative relief can be no bar for exercise of a writ jurisdiction when the authorities seek to assume jurisdiction which they do not possess or act in totally arbitrary manner. The decision in GKN's case (*supra*) certainly reminds the assessee that when a notice under Section 148 is issued, the proper course of action is to file a reply with his objections including those in relation to the absence of jurisdiction. However, it does not lay down the law to the effect that when such an objection is in relation to absence of jurisdiction and the same is revealed *ex facie* or apparent on the face of notice or reasons in support thereof, the assessee has compulsorily to invite an order from the Assessing Officer in relation to the absence of jurisdiction. It is another case that when certain facts are to be ascertained or various other materials are to be gone through to arrive at a finding about the absence of jurisdiction, in which case, certainly, the assessee will have to approach the Assessing Officer. It is so because, the jurisdiction under Article 226 of the Constitution of India being an extraordinary jurisdiction cannot be allowed to be availed as a matter of course. In order to decide an issue of jurisdiction, findings of the authority on the factual aspect may be necessary. In that case, certainly primarily the assessee will have to approach the Assessing Officer. That does not mean that the assessee is invariably bound to approach the Assessing Officer in each and every case. There can be the cases, like the one in hand, where he may be entitled to approach the Court directly under Article 226 of the Constitution of India.”

20.1. Thereafter this Court referred to the decision in **Caprihans India Limited** (*supra*) in support of the above view. That was also a case where notice issued under section 148 of the Act was put to challenge in writ proceeding and the revenue had relied upon **GKN Driveshafts**

(India) Limited (*supra*). After discussing *GKN Driveshafts (India) Limited*, this Court observed that the assessee should have filed its return pursuant to the impugned notice and should have sought for the reasons for issuing such notice. This Court further observed that it would have rejected the writ petition on this ground but the reasons having been disclosed by the assessing officer *prima facie* showed that there was nothing in the reasons to indicate failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. On that ground this Court declined to dismiss the writ petition in *limine*.

21. There is one more reason for us to adopt a similar view. As already noted above, this writ petition was admitted for hearing by issuing rule way back on 27.06.2002. Having admitted the petition for hearing and such a long period having elapsed, it would neither be fair nor reasonable to relegate the petitioner to file objection to the reasons recorded before respondent No.1. This is more so because respondent No.1 has filed affidavits justifying the reasons recorded and issuance of the impugned notice. In other words, to direct the petitioner to file objection before respondent No.1 would be a mere formality, respondent No.1 having already disclosed his mind.

22. In the circumstances, we are unable to accept the preliminary objection raised on behalf of the revenue.

23. This brings us to the substance of the issue i.e., whether respondent No.1 could form an opinion that he had reason to believe that income of the petitioner chargeable to tax for the assessment year 1990-91 had escaped assessment by reason of failure on the part of the petitioner to disclose fully and truly all material facts necessary for assessment?

24. In our view, the facts or the materials on record say otherwise. As already noted above, in the petitioner's return of income for the

assessment year 1990-91, it had mentioned that particulars of its claim to interest exempt under section 10(15)(iv) were being collected and would be submitted separately. In the said return of income petitioner had claimed exemption of Rs.20,58,08,915.00 under section 10(15)(iv)(h) being interest received on tax free bonds. It has been noted that in the course of the assessment proceeding, respondent No.1 had written to the petitioner on 14.08.1992 calling upon the petitioner to explain that borrowed funds were not used for making investments to earn income, exemption of which was sought under section 10. Petitioner *vide* letter dated 22.08.1992 submitted necessary details with regard to interest claimed as exemption under section 10(15)(iv)(c), (d), (e) and (f) of the Act. Besides furnishing copies of loan agreements, branch-wise details in respect of the borrowers, clause under which exemption for interest income was sought and the amount of interest earned from each of the parties were pointed out. It is the petitioner's case that exemption in respect of eligible interest was claimed on the gross amount. As interest received from each of the parties was disclosed separately, exemption was claimed on the basis of the total amount without reducing any expenditure. It was thereafter that assessment order was passed on 26.03.1993 under section 143(3) of the Act. While determining the total income of the petitioner at Rs.10,51,38,85,506.00, claim of the petitioner to exemption under section 10(15)(iv) was overlooked on the ground that though petitioner had stated in the return of income that it would be filing relevant details and information in support of such claim, no such details and information were filed.

25. When the petitioner brought to the notice of respondent No.1 the details and information furnished by it *vide* letter dated 22.08.1992, respondent No.1 rectified the assessment order by an order dated 23.06.1993 passed under section 154 wherein it was held that relevant details were filed by the petitioner and after going through the documents, allowed exemption under section 10(15)(iv) of the Act to the extent of Rs.2,58,45,37,461.00. It may be mentioned that along with the

said letter, a list was annexed which furnished branch-wise information of borrowers, the clause under which interest income was treated as exempt and borrower-wise amount of interest. From this list it was evident that interest was allowed as exempt under section 10(15)(iv) of the Act on gross basis.

26. Thereafter notice under section 148 of the Act was issued to the petitioner on 23.12.1993 for re-opening the assessment for the assessment year 1990-91. Pursuant thereto petitioner filed its return of income wherein it claimed exemption of interest under section 10(15)(iv)(c), (d), (e) and (f) of the Act to the extent of Rs.4,69,92,61,038.00; besides claiming exemption in respect of interest on tax free bonds of Rs.20,58,08,915.00. On completion of re-assessment proceeding, respondent No.1 passed order dated 31.03.1994 under section 143(3) read with sections 147 and 154 of the Act determining revised total income at Rs.7,46,80,10,649.00.

27. When the petitioner received further details from its branches, those were submitted to respondent No.1 in furtherance of its claim to exemption of interest under section 10(15)(iv) of the Act to the extent of Rs.1,18,46,53,220.00. When respondent No.1 refused to consider the same, petitioner preferred appeal before the Commissioner of Income Tax (Appeals) against the order passed under section 143(3) read with sections 147 and 154 of the Act wherein petitioner claimed that it was eligible for an exemption of Rs.4,69,92,61,038.00 under section 10(15)(iv) of the Act in the assessment order as was originally passed. Appeal of the petitioner was allowed by the Commissioner of Income Tax (Appeals) who by his order dated 30.03.1995 directed respondent No.1 to consider the claim of the petitioner in respect of interest under section 10(15)(iv) of the Act. Thereafter respondent No.1 passed the consequential order on 20.11.1995 giving effect to the order of the appellate authority. By the said order, he allowed further deduction of Rs.119,20,47,306.00 under section 10(15)(iv) of the Act.

28. Given the above scenario, can it be reasonably construed that there was failure on the part of the petitioner to disclose fully and truly all material facts necessary for its assessment? We are afraid answer to the above has to be in the negative. As rightly held by this Court in **DIL Limited** (*supra*), beyond the period of four years when an assessment is sought to be re-opened, there must be failure on the part of the assessee to fully and truly disclose all material facts necessary for assessment.

29. Even otherwise also, in **Indian Bank Limited** (*supra*), Supreme Court had held that no general principle is deducible for the proposition that if a part of the income of a business is tax free, expenditure incurred for the purpose of earning its income is outside the purview of section 10.

30. In **Industrial Investment Trust Company Limited** (*supra*), this Court held that if expenses are allowable as business expenses, those would be allowed to be deducted from the income of the business which is liable to tax; the circumstance that the business activity has produced income, a part of which is liable to tax and a part of which is free from tax, will not permit the allocation of the expenses between these two parts of income and allow only that part which is attributable to earning of the taxable income. This view was followed by this Court in **New Great Insurance Company Limited** (*supra*). The question which arose in that case was whether dividends received by the assessee company which otherwise satisfied the requirements of section 99 of the Act were upon the terms of that section gross dividends in the hands of the assessee or net dividends after deducting proportionate management expenses? After careful analysis, this Court held that the assessee company was entitled to a rebate on the gross dividends and not on the net dividends i.e., not after deducting proportionate management expenses.

31. Though section 14A was inserted in the Act by Finance Act, 2001

with retrospective effect from 01.04.1962, the same may not be of any assistance to the revenue in as much as the retrospective amendment of law would only negate the inference sought to be drawn of the failure to disclose material facts, which aspect was highlighted by this Court in **DIL Limited** (*supra*). As a matter of fact, respondent No.1 has stated in the affidavit that its action of seeking to reopen the assessment is not based on section 14A of the Act.

32. That being the position, we are of the considered opinion that no reasonable view can be taken that there was failure on the part of the petitioner to disclose fully and truly all material facts necessary for its assessment for the assessment year 1990-91. If that be so then respondent No.1 could not have formed any reason to believe that any income of the petitioner chargeable to tax for the said assessment year had escaped assessment. Thus the condition precedent for re-opening the concluded assessment of the petitioner is absent in the present case. In such circumstances, issuance of the impugned notice under section 148 of the Act is clearly without jurisdiction and is therefore illegal and invalid.

33. Consequently, the impugned notice dated 30.03.2001 issued by respondent No.1 under section 148 of the Act as well as the subsequent notices issued under sections 143(2) and 142(1) of the Act are hereby set aside and quashed.

34. Rule is made absolute. However, there shall be no order as to costs.

35. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(MILIND N. JADHAV, J.)

(UJJAL BHUYAN, J.)