

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	06.02.2020
Pronounced On	13.03.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.31722 of 2017
and
W.M.P.Nos.34867 of 2017
& W.M.P.No.13876 of 2018

Polaris Financial Technology Limited,
Represented by its Director,
M/s Polaris Presently Known as Consulting and Services Ltd
34, IT Highway, Navalur,
Chennai - 603 103. Petitioner

Vs.

1.The Assistant Commissioner of Income Tax,
Corporate Circle 5-2,
4th Floor, Aayakar Bhavan,
121, Mahatma Gandhi Road,
Nungambakkam,
Chennai 600 034.

2.The Deputy Commissioner of Income Tax,
Corporate Circle 5 (2),
4th Floor, Ayakar Bhavan, 121,
M.G.Road, Nungambakkam,
Chennai - 600 034.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the respondents pertaining to reopening Notice under Section 147 of the Act bearing No.ITBA/AST/S/148/2016-17/1003707383(1) dated 30.03.2017 issued by the 2nd respondent and the consequential order bearing ACIT.Co.CIR.5(2)/2017-18 dated 24.11.2017 issued by the 1st respondent and quash the same.

For Petitioner : Mr.Srinath Sridevan

For Respondents : Mr.D.Prabhu Mukunth Arunkumar
Senior Standing Counsel for
M/s.Hema Muralikrishnan
Standing Counsel.

O R D E R

The petitioner has challenged the impugned notice dated 30.03.2017 issued for the Assessment Year 2012-2013 seeking to re-open the assessment after a lapse of four years from the date of assessment.

2. The petitioner had requested the 1st respondent to provide reasons for re-opening of the assessment in terms of the decision of the Hon'ble Supreme Court in GKN Driveshafts (India) Ltd. Vs. Income Tax Officer and Others, (2003) 1 SCC 72.

3. As per the decision, an assessee who has been issued with a notice under Section 148 of the Income-tax Act, 1961 has to file a return and if he so desires, can ask for reasons for issuing notices and that the assessing officer is bound to furnish reasons within a reasonable time. In this case, the petitioner asked for such reasons.

4. By a communication dated 13.10.2017, the 1st respondent furnished the reasons for re-opening the assessment. It reads as under:

"The assessee company, M/s.Polaris Financial Technology Ltd., is engaged in the business of software development. It filed its Return of Income on 30/11/2012 admitting a total income of Rs.119,80,36,060/-. The assessment u/s 143(3) r.w.s.92CA(3) was made on 10.05.2016 after making addition of Rs.6,12,74,728 on account of TPO adjustment and Rs.2,64,68,238 towards disallowance u/s 14A. The assessee has claimed deduction u/s 80JJAA amounting to Rs.17,93,76,639/-. It was noticed that the assessee had treated many persons as a workmen, who were working in managerial or administrative capacity such as Senior Project Lead, Senior consultant, etc. As these employees are not regular "workmen", as contemplated in the Industrial Dispute Act, (hereinafter read as I.D.Act), 1947, the payment mode do not qualify for the deduction u/s 80JJAA of the I.T.Act. Further, the assessee failed to substantiate whether the said employees were actually receiving wages from the company less than Rs.6500 per month. As the said conditions (iii) & (iv) of the Section 2(s) of I.D.Act are not satisfied, the said payments do not qualify for deduction u/s 80JJAA of the I.T.Act.

The intention of the legislature as per the finance Act, 2013 was to provide deduction on the wages paid to blue collar workers employed

in industrial undertakings & not to white collar employees like the employees of the assessee company. Therefore, the payments made as wages to such employees who do not come under the purview of I.D.Act are also not eligible for deduction u/s 80JJAA of the I.T.Act. Hence, this amount of Rs.17,93,76,639/- need to be examined/disallowed in this year, i.e.A.Y.2012-13."

5. The petitioner filed its objection to the aforesaid reasons given for re-opening of the assessment, which culminated in the impugned communication dated 24.11.2017 of the 1st respondent overruling the objection of the petitioner against the re-opening of the assessment pursuant to the impugned notice dated 30.03.2017.

6. Challenging the impugned notice dated 30.03.2017 and the impugned communication dated 24.11.2017, overruling the objection for re-opening of the assessment, the petitioner has filed the present writ petition.

7. It is the contention of the petitioner that the respondents cannot re-open the assessment merely based on change of opinion. Such an exercise was contrary to the decision of the Hon'ble Supreme Court in *Kelvinator of India Vs. Commissioner of Income Tax*, (2010) 187 Taxmann 312 (SC). It is further submitted that the decision of the Hon'ble Supreme Court rendered in *Calcutta Discount Co. Ltd. V. Income Tax Officer*, AIR 1961 SC 372 is still relevant, though rendered in the context of Section 34 of the Income Tax Act, 1961. It is submitted that there is jurisdictional error in re-opening of the assessment and therefore the impugned notice dated 30.03.2017 and the impugned notification dated 24.11.2017 are liable to be quashed.

8. It is submitted that the petitioner has claimed deduction under Section 80JJAA of the Income Tax Act, 1961 and had filed the Income Tax Returns on 30.11.2012, which culminated in scrutiny assessment on 30.05.2016 after elaborate exchange of communication pursuant to a notice u/s 142(1) of the Income Tax Act, 1961.

9. It is submitted that the petitioner had given all the details to the 2nd respondent for the purpose of assessment, while claiming deduction under Section 80JJAA and therefore a mere change in opinion by an Assessing Officer, did not entitle the said officer to re-open the assessment.

10. The learned counsel appearing for the petitioner drew

my attention to communication dated 03.03.2016, pursuant to a notice issued under Section 142(1) and after the personal hearing held on 15.02.2016 and 22.02.2016. It is the contention of the learned counsel appearing for the petitioner that the petitioner had clearly explained the basis on which the deduction under Section 80JJAA of the Income Tax Act was claimed by the petitioner. The learned counsel appearing for the petitioner relied on the following decisions:-

- i. Calcutta Discount Co. Ltd. V. Income Tax Officer, AIR 1961 SC 372.
- ii. Jeans Knit P. Ltd. V. CIT, 2018(12) SCC 36.
- iii. The Income Tax Officer V. Lakhmani Mewal Das, 1976(3) SCC 757.
- iv. Jindal Photo Films Ltd. V. The Deputy Commissioner of Income Tax, 1998 (46) DRJ (DB).
- v. Income Tax Officer V. Techspan India P. Ltd., (2018) 6 SCC 685.
- vi. CIT V. Kelvinator of India Ltd., (2010) 2 SCC 723
- vii. Deputy CIT V. Gay Travels (P) Ltd., in W.P.No.35606 and 35607 of 2002
- viii. CIT V. Usha International Ltd., (2012) 348 ITR 485
- ix. Asianet Star Communications Pvt. Ltd. V. Assistant Commissioner of Income Tax in reported judgment in W.P.Nos.25328 of 2018 etc.

11. On the other hand, the learned counsel appearing for the respondents submits that the impugned notice and the impugned communication overruling the objection cannot be interfered, inasmuch as it impedes the re-assessment proceedings under Section 148 of the Income Tax Act, 1961. It is submitted that it is open for the petitioner to make all its submissions on merits, which has been raised before this Court and in case, as has been contended by the petitioner that if there was a change of opinion and if the petitioner is liable to establish that there was no failure on the part of the petitioner to fully and truly disclose all materials required for assessment, the officer would be obliged to drop the proceedings.

12. I have considered the submissions of the learned counsel for the petitioner and the respondents and decisions cited by the learned counsel for the petitioner.

13. On the one hand, it is the contention of the learned counsel for the petitioner that the impugned proceedings are without jurisdiction and therefore the petitioner was entitled for the relief. On the other hand, it is the contention of the

respondents that the present Writ Petition is liable to be dismissed.

14. Though, the purpose of issuing notice under Section 148 of the Income Tax Act, 1961 is for passing an order of re-assessment under Section 147 of the Income Tax Act, 1961. Section 148 of the Income Tax Act, 1961 is however not governed by the restrictions contained in Section 147 of the Income Tax Act, 1961.

15. For the aforesaid purpose, the Assessing Officer has to merely issue a notice within the time limit prescribed under Section 149 of the Income Tax Act, 1961. Before issuing notice, he has to record reason. In view of the decision of the Honourable Supreme Court in GKN Drive Shafts referred to supra, an assessee is now entitled to ask for the reasons for reopening of the assessment after filing the returns. The Assessing Officer has to merely communicate the reasons for reopening the assessment if desired by the assessee. The communication of reasons for reopening of the assessment is merely to allow an assessee to participate in the re-assessment proceedings by giving effective reply. The overruling of the objection by the respondents through a speaking order is however not an order under Section 147 of the Income Tax Act, 1961.

16. The decision of the Hon'ble Supreme Court in Calcutta Discount Company Ltd. Vs. Income Tax Officer, Companies District I, Calcutta and Others, (1961) 2 SCR 241 was rendered in the context of Section 34(1)(a) of the Income Tax Act, 1922. The court there held that for an Assessing Officer to exercise his jurisdiction under Section 34(1)(a) of the Income Tax Act, 1922, the Assessing Officer has to satisfy two conditions co-exist, namely:-

- i. that he must have reason to believe that income, profits or gains had been under-assessed; and
- ii. that such under-assessment was due to non-disclosure of material facts by the assessee.

17. It must also be remembered that Section 148 of the Income Tax Act, 1961 as it stands now and Section 34 of the Income Tax Act, 1922 as it stood when the decision was rendered read differently. They are reproduced below for easy reference:-

Section 34 of the Income Tax Act, 1922	Section 148 of the Income Tax Act, 1961
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Section 34(1)

"If-

(a) the Income Tax Officer has reason to believe that by reason of the omission or failure on the part of an assessee to make a return of his income under Section 22 for any year or to disclose fully and truly all material facts necessary for his assessment for that year, income, profits or gains chargeable to income tax have escaped assessment for that year, or have been under assessed, or assessed at too low a rate, or have been made the subject of excessive relief under the Act, or excessive loss or depreciation allowance, has been computed, or

(b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the Income Tax Officer has in consequence of information in his possession reason to believe that income, profits or gains chargeable to income tax have been underassessed or assessed at too low a rate, or have been made the subject of excessive relief under this Act, or that excessive loss or depreciation allowance has been computed, he may in cases falling under clause (a) at any time within eight years and in cases falling under clause (b) at any time within four years of the end of that year, serve on the assessee,

Section 148. Issue of notice where income has escaped assessment.

(1) Before making the assessment, reassessment or recomputation under Section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under Section 139 :

Provided that in a case-

(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005 in response to a notice served under this Section, and

(b) subsequently a notice has been served under sub-Section (2) of Section 143 after the expiry of twelve months specified in the proviso to sub-Section (2) of Section

or, if the assessee is a company, on the principal officer, thereof, a notice containing all or any of the requirements which may be included in a notice under sub-Section (2) of Section 22 and may proceed to assess or reassess such income, profits or gains or recompute the loss or depreciation allowance; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-Section:

Provided that—

(i) the Income Tax Officer shall not issue a notice under this sub-Section, unless he has recorded his reasons for doing so and the Commissioner is satisfied on such reasons recorded that it is a fit case for the issue of such notice;

(ii) the tax shall be chargeable at the rate at which it would have been charged had the income, profits or gains not escaped assessment or full assessment, as the case may be; and

(iii) where the assessment made or to be made is an assessment made or to be made on a person deemed to be the agent of a non-resident person under Section 43, this sub-Section shall have effect as if for the periods of eight years and four years a period of one year was substituted.

Explanation.—Production before the Income Tax Officer of account books or other evidence from which material facts could with due diligence have been discovered by the Income Tax Officer will not necessarily amount to disclosure within the meaning of this Section.”

143, as it stood immediately before the amendment of said sub-Section by the Finance Act, 2002 (20 of 2002) but before the expiry of the time limit for making the assessment, re-assessment or recomputation as specified in sub-Section (2) of Section 153, every such notice referred to in this clause shall be deemed to be a valid notice:

Provided further that in a case—

(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005, in response to a notice served under this Section, and

(b) subsequently a notice has been served under clause (ii) of sub-Section (2) of Section 143 after the expiry of twelve months specified in the proviso to clause (ii) of sub-Section (2) of Section 143, but before the expiry of the time limit for making the assessment, reassessment or recomputation as specified in sub-Section (2) of Section 153, every such notice referred to in this clause shall be deemed to be a valid notice.

Explanation.—For the removal of doubts, it is hereby declared that nothing contained in the first proviso or the second proviso shall apply to any return which has been furnished on or after the 1st day of October, 2005 in response to a notice served under this Section.

(2) The Assessing Officer shall, before issuing any notice under this Section, record his reasons for doing so.

18. It was in the context of a provision which was a composite provision. It was further observed that where, however, the Income Tax Officer has prima facie reasonable grounds for believing that there has been a non-disclosure of a primary material fact, that by itself gives him the jurisdiction to issue a notice under Section 34 of the Act and the adequacy or otherwise of the grounds of such belief is not open to investigation by the Court.

19. If an assessee wants to challenge such jurisdiction, he has to establish that the Income Tax Officer had no material for such belief. It observed as under:-

"6. To confer jurisdiction under this section to issue notice in respect of assessments beyond the period of four years, but within a period of eight years, from the end of the relevant year two conditions have therefore to be satisfied. The first is that the Income Tax Officer must have reason to believe that income, profits or gains chargeable to income tax have been under-assessed. The second is that he must have also reason to believe that such "underassessment" has occurred by reason of either (i) omission or failure on the part of an assessee to make a return of his income under Section 22, or (ii) omission or failure on the part of an assessee to disclose fully and truly all material facts necessary for his assessment for that year. Both these conditions are conditions precedent to be satisfied before the Income Tax Officer could have jurisdiction to issue a notice for the assessment or reassessment beyond the period of four years but within the period of eight years, from the end of the year in question."

20. It was further observed as follows:-

"14. The position therefore is that if there were in fact some reasonable grounds for thinking that there had been any non-disclosure as regards any primary fact, which could have a material bearing on the question of "underassessment" that would be sufficient to give jurisdiction to the Income Tax Officer to issue the notices under Section 34. Whether these grounds were adequate or not for arriving at the conclusion that there was a non disclosure of material facts would not be open for the court's investigation. In other words, all that is necessary to give this special

jurisdiction is that the Income Tax Officer had when he assumed jurisdiction some prima facie grounds for thinking that there had been some non-disclosure of material facts."

21. Thus, it is clear that for issuing a notice under Section 148 of the Income Tax Act, 1961 as it stands today, the Assessing Officer has to satisfy the requirements of Section 149 of the Income Tax Act, 1961.

22. However, while passing final order of re-assessment under Section 147 of the Income Tax Act, 1961, the Assessing Officer has to bear in mind the express language of the 1st proviso to Section 147 of the Act. As per the 1st proviso to Section 147 of the Income Tax Act, 1961, no action shall be taken under the said Section after expiry of four years from the end of the relevant assessment year, unless 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 148 or to disclose fully and truly all material facts necessary for that assessment year.

23. Unlike Section 34 of the Income Tax Act, 1922, Section 148 of the Income Tax Act, 1961 is a standalone provision. Reopening of the assessment begins with a notice under Section 148 of the Income Tax Act, 1961. It culminates with an order under Section 147 of the Income Tax Act, 1961 with either dropping or confirming the proposal. Section 148 is not restricted by Section 147 of the Income Tax Act, 1961.

24. The Honourable Supreme Court while passing order in The Income Tax Officer Vs. Lakhmani Mewal Das, (1976) 3 SCC 757, has concluded that Sections 147 to 153 of the Income Tax Act, 1961 corresponded with Section 34 of the Income Tax Act, 1922.

25. At the time when the above decision was rendered, Section 147 of the Income Tax Act, 1961 was not as comprehensive as it reads now. The provision did not have all the sub-clauses which came to be inserted subsequently.

26. There is a vast different between language of Section 147 during the period in dispute in the said case and as it stands today. Under Section 147 as it stands today, any other income chargeable to tax which had escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section also can be taxed. For comparison, they are reproduced below:-

Provisions as it stood when the decision rendered Sections 147 & 148 of the Income Tax	Provision as it stands today Sections 147 & 148 of the Income Tax
147. Income escaping assessment.—If— (a) the Income Tax Officer has reason to believe that, by reason of the omission or failure on the part of an assessee to make a return under Section 139 for any assessment year to the Income Tax Officer or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax has escaped assessment for that year, or (b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the Income Tax Officer has in consequence of information in his possession reason to believe that income chargeable to tax has escaped assessment for any assessment year,	147. Income escaping assessment. If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of Sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this Section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this Section and in Sections 148 to 153 referred to as the relevant assessment year) : Provided that where an assessment under sub-Section (3) of Section 143 or this Section has been made for the relevant assessment year, no action shall be taken under this Section after the 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

he may, subject to the provisions of Sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance, as the case may be, for the assessment year concerned (hereafter in Sections 148 to 153 referred to as the relevant assessment year).

Explanation 1.— For the purposes of this Section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:

- (a) where income chargeable to tax has been underassessed; or
- (b) where such income has been assessed at too low a rate; or
- (c) where such income has been made the subject of excessive relief under this Act or under the Indian Income Tax Act, 1922 (11 of 1922); or
- (d) where excessive loss or depreciation allowance has been computed.

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 his assessment, for that assessment year:

Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year:

Provided also that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.

Explanation 1.—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.

Explanation 2.—For the purposes 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;

Explanation 2.— Production before the Income Tax Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Income Tax Officer will not necessarily amount to disclosure within the meaning of this Section.	(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 ; (ba) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under Section 92E; (c) where an assessment has been made, but— (i) income chargeable to tax has been underassessed; 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 (iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed; (ca) where a return of income has not been furnished by the assessee or a return of income has been furnished by him and on the basis of information or document received from the prescribed income-tax authority, under sub-Section (2) of Section 133C, it is noticed by the Assessing Officer that the income of the assessee exceeds the maximum amount not chargeable to tax, or as the case may be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;
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	(d) where a person is found to have any asset (including financial interest in any entity) located outside India. Explanation 3.—For the purpose of assessment or reassessment under this Section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this Section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-Section (2) of Section 148. Explanation 4.—For the removal of doubts, it is hereby clarified that the provisions of this Section, as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.
148. Issue of notice where income has escaped assessment.— (1) Before making the assessment, reassessment or recomputation under Section 147, the Income Tax Officer shall serve on the assessee a notice containing all or any of the requirements which may be included in a notice under sub-Section (2) of Section 139 ; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-Section.	Section 148. Issue of notice where income has escaped assessment. (1) Before making the reassessment or recomputation under Section 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under Section 139 :

(2) The Income Tax Officer shall, before issuing any notice under this Section, record his reason for doing so." Sub-Section (1) of Section 149 prescribes the time limit for notice and reads as under: "(1) No notice under Section 148 shall be issued, (a) in cases falling under clause (a) of Section 147— (i) for the relevant assessment year, if eight years have elapsed from the end of that year, unless the case falls under sub-clause (ii); (ii) for the relevant assessment year, where eight years, but not more than sixteen years, have elapsed from the end of that year, unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to rupees fifty thousand or more for that year; (b) in cases falling under clause (b) of Section 147, at any time after the expiry of four years from the end of the relevant assessment year."	Provided that in a case— (a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005 in response to a notice served under this Section, and (b) subsequently a notice has been served under sub-Section (2) of Section 143 after the expiry of twelve months specified in the proviso to sub-Section (2) of Section 143, as it stood immediately before the amendment of said sub-Section by the Finance Act, 2002 (20 of 2002) but before the expiry of the time limit for making the assessment, re-assessment or recomputation as specified in sub-Section (2) of Section 153, every such notice referred to in this clause shall be deemed to be a valid notice: Provided further that in a case— (a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005, in response to a notice served under this Section, and (b) subsequently a notice has been served under clause (ii) of sub-Section (2) of Section 143 after the expiry of twelve months specified in the proviso to clause (ii) of sub-Section (2) of Section 143, but before the expiry of the time limit for making the assessment, reassessment or recomputation as specified in sub-Section (2) of Section 153, every such notice referred to in this clause shall be deemed to be a valid notice. Explanation.—For the removal of doubts, it is hereby declared that nothing contained in the first proviso or the second proviso shall apply to any return which has been furnished on or after the 1st day of October, 2005 in response to a notice served under this Section. (2) The Assessing Officer shall, before issuing any notice under this Section, record his reasons for doing so.
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27. There a notice was issued under Section 148 of the Income Tax Act, 1961 on 14.03.1967 for the purpose of re-assessment under Section 147 of the Income Tax Act, 1961. By the time the above decision was rendered on 30.03.1976, the

provisions of the Income Tax Act, 1961 had undergone several changes.

28. The Hon'ble Supreme Court in Income Tax Officer Vs. Lakhmani Mewal Das, (1976) 3 SCC 757 clearly mentioned that for the purpose of the disposal of the said case, they were not relevant. The Court was concerned with the Assessment Year 1958-59 under Income Tax Act, 1961.

29. Therefore, the ratio of the Hon'ble Supreme Court in the above case in the Income Tax Officer Vs. Lakhmani Mewal Das (1976) 3 SCC 757, cannot be straightaway applied under the amended provision as it stands today. The Supreme Court merely followed the views of the Hon'ble Supreme Court in Calcutta Discount Company Ltd. Vs. Income Tax Officer, Companies District I, Calcutta and Others, (1961) 2 SCR 241.

30. Whether the notice that has been issued to the petitioner was on account of change of opinion or on account of failure on the part of the petitioner to fully and truly disclose all material required for the assessment is to be determined by the Assessing Officer while passing order under Section 147 of the Income Tax Act, 1961.

31. In the recent decision, the Honourable Supreme Court in Jeans Knit Private Limited Vs. Deputy Commissioner of Income Tax, (2018) 12 SCC 36, has held that the Karnataka High Court had taken a view contrary to the law laid down by the Honourable Supreme Court in Calcutta Discount Co-Limited Vs. CIT referred to supra. At the same time, the Hon'ble Supreme Court has also refrained from making any observation on the merits of the case and remitted the case back to the concerned High Court. Therefore, the said decision does not further the case of the petitioner.

32. In Asianet Star Communications Pvt. Ltd. V. Assistant Commissioner of Income Tax, order dated 16.04.2019 passed by this Court in W.P.Nos.25328 of 2018 etc. referred by the learned counsel for the petitioner, the Court concluded that the responsibility was on the assessee to make true and full disclose and thereafter, mantle would shift on the Assessing Officer and is expected to complete the assessment. The Court there quashed the notice as all material was available to open sight.

33. In the facts of the case, though the petitioner had furnished certain details at the time of re-assessment, the question still remains to be answered is whether there was full and true disclosure by the petitioner as is contemplated under proviso to Section 147 of the Income Tax Act, 1961.

34. In this case, mere filing to the annexure by the petitioner in response to notice during scrutiny assessment by itself may or may not have been sufficient to come to the conclusion that there was full and true disclosure by the petitioner if the information furnished was neither complete nor true.

35. It is therefore best left open for the petitioner to demonstrate before the 1st respondent that the details furnished by the petitioner vide letter dated 03.03.2016 in annexure 2 meets the requirements of full and true disclosure for the Assessing Officer to drop the proceedings in terms of 1st proviso to Section 147 of the Income Tax Act, 1961.

36. In case there is a change of opinion, the 1st respondent cannot proceed in the light of the decision of the Hon'ble Supreme Court in CIT Vs. Kelvinator of India Ltd., (2010) 2 SCC 723. The Hon'ble Supreme Court cautioned the Assessing Officers with the following observation:-

"On going through the changes, quoted above, made to Section 147 of the Act, we find that, prior to Direct Tax Laws (Amendment) Act, 1987, re-opening could be done under above two conditions and fulfilment of the said conditions alone conferred jurisdiction on the Assessing Officer to make a back assessment, but in Section 147 of the Act (with effect from 1st April, 1989), they are given a go-by and only one condition has remained, viz., that where the Assessing Officer has reason to believe that income has escaped assessment, confers jurisdiction to re-open the assessment. Therefore, post-1st April, 1989, power to re-open is much wider. 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."

37. In case indeed there is a mere change in opinion, the 1st respondent will be obliged to drop the proceeding. However, to ascertain whether is a mere change of opinion or not first it has to be established that there was true and full disclosure by the petitioner. This can be demonstrated by the petitioner only before the 2nd respondent and not in a proceeding under Art.226 of the Constitution of India as scope of judicial review is limited and it is not possible to conduct roving enquiry on facts.

38. Under these circumstances, I do not find any merits in quashing the impugned notice dated 13.03.2017 and the communication dated 24.11.2017 overruling the objection of the petitioner.

39. In the light of the above observation, I relegate the petitioner to participate in the proceedings before the 1st respondent by filing appropriate representations/objections within a period of thirty days from the date of receipt of a copy of this order. The 1st respondent is obliged to pass orders on merits in accordance with law. It is made clear that in case the circumstance do not justify invocation of proviso to Section 147, the 1st respondent shall drop the proceedings. At the same time, while passing orders under Section 147 of the Income Tax Act, the 1st respondent can pass assessment order as per Explanation 3 to Section 147 of the Income Tax Act, 1961.

40. Since the dispute pertains to the Assessment Year 2012-13, the 1st respondent is requested to pass appropriate order within a period of sixty days from the date of receipt of a copy of this order.

41. The Writ Petition stands disposed of with the above observations. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

jen

To

1.The Assistant Commissioner of Income Tax,
Corporate Circle 5-2, 4th Floor, Aayakar Bhavan,
121, Mahatma Gandhi Road, Nungambakkam,
Chennai 600 034.

2.The Deputy Commissioner of Income Tax,
Corporate Circle 5 (2), 4th Floor, Ayakar Bhavan, 121,
M.G.Road, Nungambakkam, Chennai - 600 034.

+1cc to Mr.Hema Muralikrishnan, Advocate, S.R.No. 22629

+1cc to Mr.Srinath Sridevan, Advocate, S.R.No. 22568

W.P.No.31722 of 2017
and W.M.P.Nos.34867 of 2017
& W.M.P.No.13876 of 2018

SAI (CO)

GN(06/08/2020)



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