

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2791 OF 2019

M/s. Hindustan Unilever Ltd.
Unilever House,
B.D. Sawant Marg, Chakala,
Andheri East, Mumbai – 400 099

...Petitioner

Versus

1. Deputy Commissioner of Income Tax
Circle – 1(1)(2)
Aaykar Bhavan, M.K. Marg,
New Marinelines, Mumbai
2. Principal Commissioner of Income-tax
Range – 1
Aaykar Bhavan, M.K. Marg,
New Marinelines, Mumbai
3. The Union of India
Through the Secretary,
Government of India,
Ministry of Finance,
New Delhi – 110 001

...Respondents

SHARAYU
PANDURANG
KHOT

Mr. Nishant Thakkar a/w Mr. Hiten Chande i/by PDS Legal for the
Petitioner.

Mr. Suresh Kumar for the Respondents.

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signed by
SHARAYU
PANDURANG
KHOT
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CORAM : K.R. SHRIRAM &
R.I. CHAGLA, JJ.

DATE : 30 September 2021

JUDGMENT : (Per R.I. Chagla, J)

1. Since pleadings are complete, we decide to dispose of this Petition at the admission stage itself.

2. Rule. Rule made returnable forthwith.

3. The Petitioner is a company carrying on the business of manufacturing and selling fast moving consumer goods. The Petitioner had filed the return of income for the Assessment Year 2012-13 declaring total income of Rs. 20,56,92,90,230/-.

4. One of the subsidiary of the Petitioner namely Ponds Exports Limited made an application to the High Court of Madras for capital reduction under Section 100 of the Companies Act, 1956. It had proposed that the face value of 1,99,00,147 equity shares be reduced to Rs. 1/- and the shareholders be paid consideration of Rs. 0.20 per share. The reduction of capital was approved by the High Court of Madras vide order dated 26th March 2012.

5. It is the case of the Petitioner that the Petitioner was

holding 90% of the share capital of the subsidiary Ponds Exports Limited. In the return of income for Assessment Year 2012-13, the Petitioner had claimed long term capital loss on account of capital reduction in shares of the subsidiary. In the Profit & Loss Account, loss suffered on account of capital reduction was shown separately under the head “*exceptional items*”. The amount received from the subsidiary on account of capital reduction was shown separately in the notes of account under the head “*related party disclosure*”.

6. The return of income of the Petitioner for Assessment Year 2012-13 was selected for scrutiny assessment under Section 143(3) of the Income Tax Act, 1961 (“**the Act**”). During the assessment, the Petitioner vide letter dated 2nd December 2015 filed its final statement and computation of income wherein details regarding loss suffered on account of reduction of capital was disclosed. It was brought to the notice of Respondent No. 1 by the said letter that during the relevant year, the Petitioner received consideration on account of capital reduction by its subsidiary Ponds Exports Limited, wherein the face value of the shares of Ponds Exports Limited was reduced from Rs. 10/- to Re. 1/-. Since there was extinguishment of proportionate right in shares held by the

company, the long term capital loss arising on account of capital reduction had been claimed.

7. A draft assessment order dated 22nd March 2016 was passed by Respondent No. 1 without making any addition or disallowance of loss claimed on account of capital reduction. On 27th February 2017, the Respondent No. 1 passed final order under Section 143(3) read with 144C(13) of the Act giving effect to the direction of the Dispute Resolution Panel (“**DRP**”). In the final assessment order, there was no addition or disallowance with respect to the loss claimed by the Petitioner.

8. Four years after the end of the relevant Assessment Year 2012-13, the Petitioner received a notice dated 31st March 2019 under Section 148 of the Act informing the Petitioner that Respondent No. 1 had reason to believe that income had escaped assessment for Assessment Year 2012-13 and requested the Petitioner to file return of income in pursuance of the said notice.

9. The Petitioner by its letter dated 24th April 2019 informed the Respondent No. 1 that the return filed on 30th

November 2012 under Section 139(1) of the Act be treated as return of income in response to the notice dated 31st March 2019 under Section 148 of the Act. The Petitioner asked Respondent No. 1 to furnish a copy of the reasons recorded for reopening the assessment.

10. The Petitioner on 14th August 2019 received a letter dated 29th July 2019 from Respondent No. 1 wherein the reasons recorded for reopening the assessment for Assessment Year 2012-13 are provided to the Petitioner. In the said letter, it has been stated that *“However, it was noticed that the assessee while computing the Long Term Capital Gains, reduced Rs. 20,52,22,019/- as Long Term Capital Loss on capital reduction of shares (No. of shares- 1,79,10,132) of Ponds Exports Limited. However, it was noticed from the Balance sheet (Sch-14 Current Investments) that the number of 1,79,10,132 in Ponds Exports Limited is shown as investment under the head Investment in Subsidiaries. Hence, it shows that there is no transfer during the year as claimed by the assessee in their return of income.”* Thereafter, it has been concluded that the assessee has not incurred any Long Term Capital Loss during the year against equity shares of Ponds Exports Limited. The Long Term Capital Loss should have been disallowed while completing the

assessment under Section 143(3) of the Act. Omission to do so has resulted in under assessment of Long Term Capital Gains by Rs. 20,52,22,019/-.

11. On 16th August 2019 and 21st August 2019, the Petitioner filed letters with Respondent No. 1 requesting Respondent No. 1 to give 15 days time to file objections against the reopening under Section 148 of the Act for Assessment Year 2012-13. Thereafter, the Petitioner filed objections on 29th August 2019 against the reopening under Section 148 of the Act and submitted that reopening is based on change of opinion and full and true disclosure had been made by the Petitioner regarding the long term capital loss claimed in the return of income. It has been submitted in the said objections that the claim made for long term capital loss on reduction of capital is supported by many authorities and therefore, the reopening under Section 148 of the Act is bad in law.

12. Respondent No. 1 by its order dated 10th September 2019 rejected the objections filed by the Petitioner against the reopening of the assessment under Section 148 of the Act. Being aggrieved by the order dated 10th September 2019, the Petitioner

has filed the present Petition.

13. Mr. Nishant Thakkar, learned Counsel appearing for the Petitioner has submitted that the Petitioner had filed its income tax return on 30th November 2012. The Petitioner held 179,10,132 shares of Rs. 10/- each of Ponds Exports Limited. During the previous year under consideration, the Petitioner had received consideration on account of capital reduction by Ponds Exports Limited, wherein the face value of the share of Ponds Exports Limited was reduced from Rs. 10/- to Re. 1/- each. Since there is extinguishment of proportionate right in shares held by the company, the long term capital loss arising on account of capital reduction had been claimed by the Petitioner. Accordingly, the Petitioner had filed its return of income for Assessment Year 2012-13 claiming the long term capital loss Rs. 20,52,22,019/-. He has submitted that true and full disclosure of all material facts was made in the tax return. He has submitted that all details relating to the said transaction was filed by the Petitioner vide letter dated 2nd December 2015 during the course of assessment. Being satisfied with the details submitted by the Petitioner, the assessment under Section 143(3) of the Act was completed and long term capital loss claimed by the Petitioner was

allowed by the Assessing Officer.

14. Mr. Thakkar has submitted that the notice issued under Section 148 of the Act dated 30th March 2019 was received by the Petitioner on 31st March 2019, i.e., beyond the period of four years from the end of relevant Assessment Year 2012-13 under the provisions of Section 147 of the Act. In view thereof, the Assessing Officer should have had reason to believe that income had escaped assessment in the case of the assessee before proceeding to initiate the reassessment proceedings. It is settled law that this requirement relating to recording of reasons is a very significant one, based on which alone an Assessing Officer can assume jurisdiction to reopen the assessment. He has submitted that there is no failure to disclose truly and fully all material facts which is an essential requirement under the applicable first proviso to Section 147 of the Act where the reassessment has been initiated beyond the period of four years from the end of relevant assessment year. Under the first proviso, it is provided that the statement of income chargeable to tax should be due to failure on the part of assessee to disclose truly and fully all material facts and this requirement must be satisfied. He has submitted that the Petitioner had made full disclosure of the material

fact that it had claimed capital loss on account of capital reduction undertaken by Ponds Exports Limited. A detailed capital loss working was filed during the assessment proceedings vide submission dated 2nd December 2015. A detailed note on capital loss claim was also filed vide the submission dated 2nd December 2015. There was thus, no failure on the part of the Petitioner to disclose truly and fully all material facts.

15. Mr. Thakkar has further submitted that reading of the notice under Section 148 of the Act shows that it has been issued on a mere change of opinion by the Tax Authorities. He has placed reliance upon several decisions of the Supreme Court and this Court. He has relied upon the recent decision of the Division Bench of this Court in **Ananta Landmark Pvt.Ltd. Vs. Deputy Commissioner of Income Tax**¹. He has submitted that the reasons recorded in the notice under Section 148 of the Act are *ex facie* contrary to the settled law.

16. In the case of **Vania Silk Mills Pvt.Ltd. Vs. CIT 191 ITR 647**, the Supreme Court observed that the definition of transfer

1 Writ Petition No. 2814 of 2019 Jt. dt. 14.09.2021

clearly contemplates extinguishment of rights in a capital asset distinct and independent of such extinguishment consequent upon the transfer thereof. The Supreme Court has observed that “*extinguishment of any right therein*” can be extended to mean extinguishment of right independent of or otherwise on account of transfer. Thus, even extinguishment of right in a capital asset would amount to transfer and in the present case, the Petitioner’s right having been extinguished proportionately to the reduction of capital, would amount to a transfer. He has accordingly, submitted that it has been erroneously held in the reasons for the reopening of the assessment that there is no transfer of shares during the year as claimed by the assessee in the return of income and that the assessee has not incurred any long term capital loss during the year against equity shares of Ponds Exports Limited. Further, it has been erroneously held that the long term capital loss should have been disallowed by completing the assessment under Section 143(3) of the Act and that omission to do so has resulted in under assessment of long term capital gain by Rs. 20,52,22,019/-.

17. Mr. Thakkar has submitted that in view of the erroneous findings in the reasons for reopening of assessment, the Respondent

No. 1 had concluded that he has reason to believe that the income chargeable to tax amounting to Rs. 20.52 cr. had escaped assessment under Section 147 of the Act. He has submitted that the objections of the Petitioner has been erroneously rejected by the Respondent No. 1 in the impugned order dated 10th September 2019. He has submitted that the impugned notice and impugned order are *ex facie* bad in law and deserves to be set aside.

18. Mr. Suresh Kumar, learned Counsel appearing for the Respondents has relied upon the Affidavit of Neeraj Kumar Agarwal, the Assistant Commissioner of Income Tax-1(1)(1), Mumbai dated 25th August 2021 in Reply to the Petition. He has submitted that full and true disclosure had not been made by the Petitioner, as the Petitioner had failed to disclose that the Petitioner held 100% shares in the subsidiary Ponds Exports Limited and since the Petitioner held 100% shares in the subsidiary as per provisions of Section 47(iv) of the Act, there is no transfer under the Act and therefore, there cannot be any loss under the head “*capital gains*”. He has submitted that the share holding of the Petitioner remained unchanged during Financial Year 2011-2012, its right in Ponds Exports Limited remained undisturbed and the Petitioner’s annual

reports for Financial Year 2010-2011 and 2011-2012 expose the Petitioner inasmuch as they show that Ponds Exports Limited was a 100% subsidiary of the Petitioner Company. He has submitted that in view of the Petitioner's failure to fully and truly disclosed this material fact, the Respondent No. 1 had issued the notice under Section 148 of the Act for reassessing the assessment for Financial Year 2012-2013.

19. Mr. Suresh Kumar has submitted that mere production of books of accounts or other evidence from which the Assessing Officer could have with due diligence, inferred material facts, does not amount to disclosure within the meaning of proviso of Section 147 of the Act. He has submitted that the Petitioner had not incurred any long term capital loss during the year against the equity shares of Ponds Exports Limited, as there was no transfer of shares during the year as claimed by the Petitioner in the return of income and such long term capital loss should have been disallowed while completing the assessment under Section 143(3) of the Act. Thus, Respondent No. 1 has expressed reasons to believe that income chargeable to tax amounting to Rs. 20.52 cr. had escaped assessment within the meaning of Section 147 of the Act read with proviso

therewith. He has accordingly submitted that there is no merit in the Petition.

20. Having considered the submissions, in our view, the notice and order impugned requires to be set aside by ruling that the Assessing Officer had no jurisdiction to issue the notice under Section 148 of the Act. This is particularly the case where the assessment is sought to be reopened after the expiry of period of four years from the end of the relevant assessment year. The proviso of Section 147 of the Act prior to amendment of Section 147 of the Act which would be applicable in the present case stipulates the requirement that there must be a failure on the part of the assessee to disclose fully and truly all material facts necessary. In the present case, the Petitioner assessee has disclosed fully and truly all material facts necessary. It can be seen from the reasons for reopening of the assessment by issuance of notice under Section 148 of the Act that Respondent No. 1-Assessing Officer has based his reliance on the Balance Sheet produced by the Petitioner assessee during the assessment proceedings to contend that *“However, it was noticed from the Balance Sheet (Sch-14 Current Investments) that the number of equity shares of 1,79,10,132 in Ponds Exports Limited is*

shown as investment under the head Investment in Subsidiaries. Hence, it shows that there is no transfer of shares during the year as claimed by the assessee in their return of income. Thus, assess has not incurred any Long Term Capital Loss during the year against equity shares of PEL. Therefore, the long term capital loss should have been disallowed while completing the assessment u/s 143(3) of the Act. Omission to do so has resulted in under assessment of LTCG by Rs. 20,52,22,019/-. It is, therefore, inferred from the above discussion that the assessee has failed to disclose fully and truly all material facts necessary for its assessment for the A.Y. 2012-13. Therefore, the issue could not be verified by the Assessing Officer during the course of assessment proceedings.”.

21. It is further apparent from the reasons for the reopening of the assessment that the Respondent No. 1 merely stated that the assessee has failed to disclose fully and truly all the material facts necessary for its assessment for Assessment Year 2012-13.

22. It is settled law that as per Section 147 of the Act and proviso thereto, where the assessment is sought to be reopened after the expiry of a period of four years from the end of the relevant

assessment year, the Assessing Officer has to mention what was the tangible material to come to the conclusion that there is an escapement of income from assessment and that there has been a failure to truly and fully disclose material fact. He cannot exercise power to reopen unless he discloses what was the material fact which was not fully and truly disclosed by the assessee. If we consider the reasons for reopening, except stating that in the Balance Sheet, it was noticed that the number of equity shares of 1,79,10,132 in Ponds Exports Limited were shown as investment under the head Investment in Subsidiary, and hence, there was no transfer of shares during the year, there is non disclosure of the material fact which was not truly and fully disclosed by the Petitioner/Assessee. The Petitioner assessee had in fact disclosed the material facts in the Balance Sheet and based on which an opinion had been arrived at by the Assessing Officer.

23. In the reason for reopening of the assessment the Respondent No. 1 has stated *“Even otherwise, it is pertinent to mention that Explanation 1 to Section 147 provides that production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been*

discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of proviso to the said Section.”.

24. The Supreme Court in **Calcutta Discount Co. Ltd. V/s. Income Tax Officer**² has held that there can be no doubt that the duty of disclosing all the primary facts relevant to the decision of the question before the assessing authority lies on the assessee. The Supreme Court has held that to meet a possible contention that when some account books has been produced, there is no duty on the assessee to disclose further facts, which on due diligence, the Income Tax Officer might have discovered, the Legislature has put in the Explanation to Section 34(1). The duty, however, does not extend beyond the full and truthful disclosure of all primary facts. 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 that 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.

2 (1961) 41 ITR 191 (SC)

25. The relevant portion of **Calcutta Discount Co. Ltd.**

(Supra) reads as under :

“Before we proceed to consider the materials on record to see whether the appellant has succeeded, in showing that the Income-tax Officer could have no reason, on the materials before him, to believe that there had been any omission to disclose material facts, as mentioned in the section, it is necessary to examine the precise scope of disclosure which the section demands. The words used are "omission or failure to disclose fully and truly all material facts necessary for his assessment for that year ". It postulates a duty on every assessee to disclose fully and truly all material facts necessary for his assessment. What facts are material, and necessary for assessment will differ from case to case. In every assessment proceeding, the assessing authority will, for the purpose of computing or determining the proper tax due from an assessee, require to know all the facts which help him in coming to the correct conclusion. From the primary facts in his Possession, whether on disclosure by the assessee, or discovered by him on the basis of the facts disclosed, or otherwise-the assessing authority has to draw inferences as regards certain other facts; and ultimately, from the primary facts and the further facts inferred from them, the authority has to draw the proper legal inferences, and ascertain on a correct interpretation of the taxing enactment, the proper tax leviable. Thus, when a question arises whether certain income received by an assessee is capital receipt, or revenue receipt, the assessing authority has to find out what primary facts have been proved, what other facts can be inferred from them, and taking all these together, to decide what the legal inference should be.

There can be no doubt that the duty of disclosing all the primary facts relevant to the decision of the question before the assessing authority lies on the assessee. To meet a possible contention that when some account books or other evidence has been produced, there is no duty on the assessee to disclose further facts, which on due diligence, the Income-tax Officer might have discovered, the Legislature has put in the Explanation, which has been set out above., In view of the Explanation, it will not be open to the assessee to say, for example-" I have produced the account books and the documents: You, the assessing officer examine them, and find out the facts necessary for your purpose: My duty is done with

disclosing these account-books and the documents". His omission to bring to the assessing authority's attention these particular items in the account books, or the particular portions of the documents, which are relevant, amount to "omission to disclose fully and truly all material facts necessary for his assessment." Nor will he be able to contend successfully that by disclosing certain evidence, he should be deemed to have disclosed other evidence, which might have been discovered by the assessing authority if he had pursued investigation on the basis of what has been disclosed. The Explanation to the section, gives a quietus to all such contentions; and the position remains that so far as primary facts are concerned, it is the assessee's duty to disclose all of them-including particular entries in account books, particular portions of documents and documents, and other evidence, which could have been discovered by the assessing authority, from the documents and other evidence disclosed.

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 charged 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.

We have therefore come to the Conclusion that while the duty of the assessee is to disclose fully and truly all primary relevant facts, it does not extend beyond this.

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 "under assessments that would be sufficient to give jurisdiction to the Income-tax Officer to issue the notice 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.

.....

Both the conditions, (i) the Income-tax Officer having reason to believe that there has been under assessment and (ii) his having reason to believe that such under assessment has resulted from nondisclosure of material facts, must co-exist before the Income-tax Officer has jurisdiction to start proceedings after the expiry of 4 years. The argument that the Court ought not to investigate the existence of one of these conditions, viz., that the Income-tax Officer has reason to believe that under assessment has resulted from non-disclosure of material facts, cannot therefore be accepted."

26. It can thus, be concluded that while the duty of the assessee is to disclose fully and truly all primary relevant facts, it does not extend beyond this. Thus, it can be said that the Petitioner assessee in the present case has by production before the Assessing Officer of account books and other evidence from which the material evidence could with due diligence have been discovered by the Assessing Officer does amount to disclosure within the meaning of

proviso to Section 147 of the Act.

27. It can be seen from the reasons for reopening of the assessment that there is no mention of Ponds Exports Limited being a 100% subsidiary of the Petitioner. This has been mentioned for the first time in the impugned order dated 20th September 2019 rejecting the objections of the Petitioner assessee and later stated in the Affidavit in Reply to the Petition. It has been held in **First Source Solutions Limited V/s. The Assistant Commissioner of Income Tax – 12 (2) (1) and Anr.**³ that the reasons for reopening an assessment has to be tested/examined only on the basis of the reasons recorded at the time of issuing a notice under Section 148 of the Act seeking to reopen an assessment. These reasons cannot be improved upon and/or supplemented much less substituted by affidavit and/or oral submissions.

28. In the present case, the deponent of the Affidavit in Reply Neeraj Kumar Agarwal, the Assistant Commissioner of Income Tax-1(1)(1), Mumbai has sought to improve upon the reasons for reopening the assessment recorded at the time of

3 Writ Petition No.2762 of 2019 dated 31.08.2021

issuance of notice under Section 148 of the Act and which is clearly impermissible according to the decision of this Court in **First Source Solutions Limited** (supra).

29. In the Petition, the Petitioner has in paragraph 6 stated that the Petitioner was holding 90% of the share capital of Ponds Exports Limited and accordingly, in the return of income for Assessment Year 2012-13, the Petitioner had claimed long term capital loss on account of reduction in the shares of the subsidiary. In the Profit and Loss Accounts, loss suffered in the capital reduction was shown separately under the head “*exceptional items*”. Also the amount received from the subsidiary on account of the capital reduction was shown separately in the notes to accounts under the head “*related party disclosure*”. Thus it is the case of the Petitioner that Ponds Exports Limited was never a fully owned subsidiary of the Petitioner. This submission of the Petitioner in paragraph 6 of the Petitioner has been dealt with paragraph 4.4 of the said Affidavit in Reply on behalf of the Respondents wherein it is stated that the Petitioner has submitted the factual aspect of the subsidiary of the Petitioner, application made to the High Court for capital reduction, order of the High Court, share holding of the Petitioner and loss

suffered on account of capital reduction to the Petitioner for Assessment Year 2012-13. Hence, no comments are offered. Thus, the Respondents have not controverted what is stated in paragraph 6 of the Petition.

30. The Petitioner has further stated in ground B of the Petition that Ponds Exports Limited was not a 100% subsidiary and this is borne out from Schedule 14 to the Balance Sheet, Schedule 35 of the Profit and Loss Accounts and Schedule 54 disclosing related party transactions. The factum of loss suffered by the Petitioner on the shares of the subsidiary on account of capital reduction has also been mentioned in the above books of accounts. Here too in response at paragraph 4.13 of the Affidavit in Reply, Respondent No. 1 has not offered any comments and the statement in Ground B of the Petition has also not been controverted.

31. It has been held by this Division Bench in **Ananta Landmark Pvt.Ltd.** (supra) after considering the law laid down by the Supreme Court as well as this Court on reopening of assessment under Section 147 of the Act and proviso thereto, that where the assessee has disclosed truly and fully all material facts necessary for

computation of income, the assessment cannot be reopened on account of change of opinion of the Assessing Officer about the manner of computation of reduction under Section 57 of the Act. It has been further held by this Division Bench that when on consideration of material on record, one view is conclusively taken by the Assessing Officer, it would not be open to reopen the assessment based on the very same material with a view to take another view. In the present case, the Assessing Officer had taken a view that the assessee had incurred long term capital loss during the year against the equity shares of Ponds Exports Limited on account of capital reduction of Ponds Exports Limited wherein the face value of the shares of Ponds Exports Limited was reduced from Rs. 10/- to Re. 1/- each and thus, there was an extinguishment of the proportionate right in the shares held by the Petitioner. This resulted in long term capital loss on account of capital reduction. The Assessing Officer had based its assessment on the accounts books and arrived at conclusion that the Petitioner had incurred long term capital loss and had allowed such long term capital loss while completing the assessment under Section 143(3) of the Act.

32. Respondent No. 1 in the reopening of the

assessment on account of change of opinion placed reliance on the same account books to opine that the Petitioner assessee had not incurred any long term capital loss during the year against the equity shares of Ponds Exports Limited and there had been no transfer of shares during the year as claimed by the Petitioner assessee. Thus, a different view has been taken from the view conclusively taken by the Assessing Officer and as held in **Ananta Landmark Pvt.Ltd.** (supra), it would not be open to reopen the assessment based on the very same material with a view to take another view.

33. We are satisfied that the Petitioner had truly and fully disclosed all the material facts necessary for the purpose of assessment and that this was a case where the assessment was sought to be reopened on account of change of opinion of Respondent No. 1.

34. We are of the view that the Respondent No. 1 by recording that "*I have reason to believe that income chargeable to tax amounting to Rs. 20.52 cr. had escaped assessment within the meaning of Section 147 of the Act read with proviso thereto*" has not referred to any material fact not disclosed and merely stated that the Petitioner had failed to disclose fully and truly all the material facts

necessary for its assessment for Assessment Year 2012-13. This statement is clearly made with an attempt to take the case out of the restrictions imposed by the proviso to Section 147 of the Act.

35. Consequently, the Petition deserves to be allowed. The impugned notice dated 31st March 2019 seeking to reopen the assessment for Assessment Year 2012-13 and the impugned order dated 10th September 2019 are quashed and set aside.

36. Writ Petition is disposed of with no order as to costs.

[R.I. CHAGLA J.]

[K.R. SHRIRAM, J.]