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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :02.08.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.10051 of 2015

and

M.P.No.1 of 2015

Cognizant Technology Solutions India Private Limited,
Menon Eternity Building,
6th Floor, New No.165,
Old No.110, St.Mary's Road,
Chennai - 600 018.

...Petitioner

Vs

1. Assistant Commissioner of Income Tax,
Large Tax Payer Unit-I,
1775, Jawaharwal Nehru Inner Ring Road,
Anna Nagar Western Extension,
Chennai - 600 101.

2. Commissioner of Income Tax,
Large Tax Payer Unit-I
1775, Jawaharwal Nehru Inner Ring Road,
Anna Nagar Western Extension,
Chennai - 600 101.

...Respondents

Prayer : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, calling for the records and proceedings of the case and after examining the legality, validity and propriety thereof be pleased to quash the Impugned Notice dated 28 March 2014 issued under Section 148 of the Income Tax Act, 1961 for Assessment Year 2007-08 by the respondent No.1 and the Impugned Order(s), disposing of Objections dated 5 June 2014 and 29 December 2014 passed by the respondent No.1, as being wholly without jurisdiction and legally invalid.

For Petitioner : Mr.Tushar Jarwal
For Mr.A.K.Raghavulu and
Mr.Rahul Sateeja

For Respondents : Mr.A.P.Srinivas
Senior Standing counsel
[For R1 & R2]



ORDER

The writ on hand filed, challenging the validity of the notice dated 28.03.2014 issued under Section 148 of the Income Tax Act, 1961 [hereinafter referred to as the 'Act'] for the Assessment Year 2007-08 and the order, disposing of the objection passed by the Assessing authority on 05.06.2014 and 29.12.2014.

2. The learned counsel for the petitioner commenced his arguments by stating that the writ petition is filed, challenging the legality and the jurisdiction of the authority under Section 147/148 of the Act to reassess the alleged escaped income for the Assessment Year 2007-08.

3. The petitioner is a Private Limited company engaged inter alia in the business of providing software development, maintenance and information technology services to its overseas entities business. Admittedly, the return of income for the Assessment Year 2007-08 along with Form 3CEB was filed. The petitioner has submitted all the Books of Accounts, materials relevant for the purpose of assessment and further, clarified the doubts raised by the Assessing authority. The final assessment order was passed by the first respondent on 24.10.2011 and deduction under Section 10A of the Act was examined in detail with reference to the materials submitted by the assessee and held against the assessee.

4. The learned counsel for the petitioner reiterated that in the succeeding Assessment Year 2008-09, also the Assessing authority disallowed 10-A deduction on software maintenance on 30.12.2011. An appeal was filed and the Commissioner, Income Tax (Appeals), [hereinafter referred to as 'CIT(A)'] reversed the orders of the Assessing Officer and allowed the deduction under Section 10A on Software maintenance. The Income Tax Appellate Tribunal [hereinafter referred to as 'ITAT'] upheld the orders passed by the CIT (A) and the said decision of the ITAT became final. The ITAT in its order dated 11.03.2014, ruled that the petitioner is entitled for the benefit and allowed deduction under Section 10A on Software maintenance. Thus, the issue reached finality as far as the Assessing Authority is concerned, since the order passed by the CIT (A) as well as the ITAT is to be followed scrupulously.

5. The learned counsel for the petitioner relying on the order passed by the CIT (A) and ITAT, made a submission that when the similar issue was decided in favour of the assessee by the higher forums, there is no reason whatsoever to issue a notice under Section 148 of the Act. Thus, the 'reason to believe as well as the reasons furnished by the Assessing



authority is directly in violation of the decision already, which reached finality through the order passed by the CIT (A) and ITAT. In view of the fact that the Assessing authority has issued notice under Section 148 of the Act without looking into the orders of the higher authorities including the ITAT, the Assessing authority lacks his jurisdiction and therefore, the very initiation of reopening proceedings itself in violation of the provisions of the Act and thus, liable to be set aside. As far as the disposal of objections are concerned, the assessee in detail raised all these objections by elaborately explaining the orders as well as the issues decided by the CIT(A) as well as ITAT with reference to Section 10A and 10AA of the Act. However, none of these objections raised by the assessee was considered by the Assessing authority and an order, disposing of the objections was passed in a mechanical manner and thus, the order lacks application of mind and on this ground also, the writ petition is to be considered.

6. The learned counsel for the petitioner drawn the attention of this Court with reference to the reasons furnished for reopening of assessment. It is contended that the reasons for initiation of reassessment proceedings under Section 147/148 is regarding Software maintenance, which is not eligible for Section 10A deduction. When the very same issue was decided already by the higher forums, the said reason cannot be a reason for the purpose of reopening of assessment as it is nothing but duplication and the Assessing authority had failed to consider these aspects and thus, the writ is to be considered on the ground of jurisdiction.

7. To substantiate the said grounds raised, the learned counsel for the petitioner relied on the assessment order passed by the authority competent for the Assessment Year 2008-09 on 30.12.2011, wherein the very same issue, which has been cited as reasons for reopening of assessment was dealt with by the Assessment officer and a finding was given that "While the export income derived by the assessee from export of computer software and provision of information technology enabled services are eligible for claim of deduction u/s.10A and 10AA, the other component of export income relating to software maintenance is not an eligible item of income to be considered for deduction under the said sections. The section no where contemplates allowability of deduction on such maintenance income, more so when the application maintenance is carried out on-site at the assessee's client's premises". The order passed by the ITAT, which is referred, would reveal that the said issue was adjudicated and the finding was given in paragraphs 9, 11 & 13, which were relied upon by the petitioners and the same are extracted hereunder:



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"9. The first substantive ground raised by the Revenue challenges the action of the CIT(A) in holding the assessee eligible for deduction u/s 10A in respect of income amounting to Rs.20.43 crores derived from on-site and off-shore software application maintenance in relevant previous year. It argues that as per Board's circular No.1/12013 dated 17.01.2013, the assessee did not qualify the essential conditions of having a direct and intimate nexus or connection of development of software done abroad with the eligible units set up in India; it had not signed any contractual agreement with its clients and merely relied upon a MoU entered with US holding company. The last submission is that the software in question allegedly produced had not been deployed at US holding company but at a different third party premises in the absence of any subsisting contract between them.

11. Relevant facts pertaining to this issue are that the assessee, a subsidiary of its USA based holding company had provided on-site and off-shore software application maintenance services to its associate companies abroad in the relevant previous year and derived income therefrom. There is no dispute between the parties that the rates charged by the assessee have already been found at arm's length in the course of assessment. In the course of 'scrutiny', the Assessing Officer was of the view that this application maintenance at its client's premises did not come within the purview of Section 10A of the Act. In assessment order, the Assessing Officer denied the claim of deduction qua this income inter alia, on three grounds i.e no conclusive proof had come demonstrating major part of the application maintenance to be from the concerned software technology park or the special economic zone unit, no separate billing or invoicing had been done qua on-site or off-shore work coupled with the fact that bifurcation had been arbitrarily shown. The third and last reason was presence of assessee's technical manpower from India at client's site was must whereas the maintenance activity in question had been supported by deputing its manpower from India after recruiting them here to the holding and other overseas associate companies. In this manner, the Assessing Officer excluded these receipts of Rs.20.43 crores from the purview of Section 10A of the Act.

13. We have heard both parties and gone through the case file as well as paper books placed on record.



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There is no dispute qua factual position narrated hereinabove. The assessee derives income from application and maintenance of software by deputing its staff for on-site and off-shore operations from India and the clients are its holding and associate companies in various locations like USA, Japan, Canada, etc. One of such agreement dated 08.06.2005 is at Pages 265 to 277 of the paper book, wherein its has undertaken on-site and off-shore services to M/s.Cognizant Technology Solutions U.S.Corporation. The assessee claims to have executed such agreements with each of the entities to whom it has rendered the services in question. On being pointed out, the Revenue has not drawn our attention to any material contrary to the same.

Coming to the first plea of the Revenue that there must exist a direct and intimate nexus or connection of development of software done abroad with the eligible units set up in India, we find that the same goes contrary to Explanation 3 to Section 10A read with Circular reproduced stipulating that profits and gains derived from on-site development of computer software outside India by deputing technical manpower are deemed as export profits.

The second argument of the Revenue is that there should be a contract for development of software between the client and the eligible unit. Needless to say, we have already observed about such agreements between assessee and its clients which is nowhere rebutted by the Revenue. So, this plea also fails.

The next argument of the Revenue is that the assessee had not signed any contractual argument with the clients and only placed on record a MoU between itself and the holding company. As discussed hereinabove, the assessee has signed agreements with all its clients (supra) and so far as the present MoU at pages 265 to 277 of the paper book is concerned, the same is, in fact, a Master Services Agreement which rejects the Revenue's arguments. Its last plea is that the software produced by the assessee had not been deployed at its US holding company but at a different third party premises in USA without any subsisting contract. There is no material to substantiate this plea. In our view, Section 10A is a deduction provision, which has to be liberally construed. In the course of arguments, the assessee has highlighted the fact that in preceding assessment



years, it has been getting benefit of deduction qua the same on-site application maintenance operations. Apart from this, the Revenue's argument only turns out to be a hyper technical approach since in the circular dated 17.01.2013, whose contents have already been reproduced hereinabove, it is nowhere necessary that the software in question has to be mandatorily deployed at the holding company or the agreement should be between the ultimate client and assessee. The latter argument of the Revenue that there was no subsisting contract already stand repelled in our findings hereinabove that indeed there existed agreements between the assessee and its clients/associated entities. In these circumstances, we find no merit in the ground raised by the Revenue that assessee's income of Rs.20.43 crores is not eligible for deduction u/s10A of the Act since it had arisen from on-site and off-shore software application maintenance activity."

8. It is contended that even the subsequent assessment order passed for the Assessment Year 2009-10, also the very same issue was considered. The assessment order was passed on 20.03.2014 by the Commissioner of Income Tax (Appeals) and with reference to the Assessment Year 2009-10, the said issue was elaborately considered and a finding was given, stating that 'since the facts are same for this year also, respectfully following the above decision, the ground is allowed'. When the commissioner of Income Tax (Appeals) as well as the ITAT categorically held that the issue is in favour of the assessee, the said benefit is to be extended. However, it is contended that the Assessing authority filed an appeal before the ITAT in respect of the Appellate order passed for the Assessment Year 2009-10 and the said appeal is now pending.

9. The learned counsel for the petitioner made a submission that the said appeal was filed by the same Assessing Officer, who issued the notice under Section 148 of the Income Tax Act in the present case. This apart, the issue relating to the maintenance was not raised in the said grounds of appeal. Therefore, the learned counsel for the petitioner is of an opinion that the said issue relating to Section 10A and 10-AA reached finality as far as the writ petitioner is concerned and it is binding on the Assessing authority. Thus, the very initiation of proceedings under Section 147 is untenable and without jurisdiction.

10. The learned counsel for the petitioner drawn the attention of this Court with reference to the reasons furnished, which is the same and was already adjudicated elaborately by the



Assessing officer and an order of assessment was passed and the appeal preferred also held in favour of the assessee. The disposal of the objections, which is impugned also shows that the objections raised by the petitioner are not considered with reference to the decision of the CIT (A) as well as the ITAT. For all these reasons, the initiation perse is without jurisdiction and in violation of the essential ingredients contemplated under the provisions of Section 147 of the Act.

11. In support of the said contentions, the learned counsel for the petitioner relied on the judgments of the Hon'ble Supreme Court of India:

(a) In the case of Raza Textiles Limited Vs. Income Tax Officer, Rampur, reported in (1973) 1 SCC 633, wherein, the Hon'ble Supreme Court held as follows:

"3.....No authority, much less a quasi-judicial authority, can confer jurisdiction on itself by deciding a jurisdictional fact wrongly. The question whether the Jurisdictional fact has been rightly decided or not is a question that is open for examination by the High Court in an application for a writ of certiorari. If the High Court comes to the conclusion, as the learned Single Judge has done in this case, that the Income Tax Officer had clutched at the Jurisdiction by deciding a jurisdictional fact erroneously, then the assessee was entitled for the writ of certiorari prayed for by him. It is incomprehensible to think that a quasi-judicial authority like the Income Tax Officer can erroneously decide a jurisdictional fact and thereafter proceed to impose a levy on a citizen."

(b) The petitioner relied on the case of Jeans Knit Private Limited Vs. Deputy Commissioner of Income Tax and others, reported in (2017) 390 ITR 10 (SC), and said that the Hon'ble Supreme Court set aside the orders passed by the High Court and remanded the matter back relying on the judgment by the Constitution Bench in the case of Calcutta Discount Co., Limited Vs. ITO, [1961] 41 ITR 191 (SC). In paragraph 4 of the Jeans Knit (cited supra), the Apex Court made an observation that "We are conscious of the fact that the High Court has referred to the judgment of this Court in CIT Vs. Chhabil Dass Agarwal [2013] 357 ITR 357 (SC). We find that the principle laid down in the said case does not apply to these cases."

(C) In the case of Radhasoami Satsang Vs. Commissioner of Income Tax, reported in [1992] 193 ITR 321 (SC), the Apex Court held as follows:



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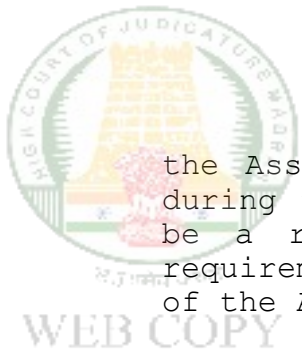
"13. One of the contentions which the learned senior counsel for the assessee-appellant raised at the hearing was that in the absence of any change in the circumstances, the Revenue should have felt bound by the previous decisions and no attempt should have been made to reopen the question. He relied upon some authorities in support of his stand. A Full Bench of the Madras High Court considered this question in T.M.M. Sankaralinga Nadar & Bros. v. CIT [4 ITC 226 (Mad) (FB)] . After dealing with the contention the Full Bench expressed the following opinion:"

15....."At the same time, we have to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi-judicial controversies as it must in other spheres of human activity."

16. We are aware of the fact that strictly speaking res judicata does not apply to income tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year."

12. Relying on the said judgments, it is contended that the reasons furnished for reopening of assessment for the Assessment Year 2007-08 is not in consonance with the provisions of the Act. The issues already decided by the CIT (A) as well as ITAT was taken as a reason for reopening of assessment and therefore, the authority lacks his jurisdiction and thus, the writ petition is to be allowed.

13. It is further contended that the scope of reopening within four years may be wider. However, in the present case, the reopening is made beyond the period of four years and within 6 years. Thus, the assessing authority is bound to follow the proviso clause, which contemplates that there is a failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment for his assessment for that Assessment Year. In the present case, the assessee has fully furnished the details, account books etc., at the time of original assessment and there was a specific question raised by



the Assessing authority and that was clarified by the assessee during the relevant point of time. Thus, the said ground cannot be a reason for the purpose of reopening of assessment as requirement contemplated under the Proviso clause to Section 147 of the Act has not been complied with.

14. In the case of Kone Elevators (India) Pvt.Ltd., Vs. Assistant Commissioner of Income Tax in W.P.No.43662 of 2016 dated 16.06.2021, this Court held as follows:

"14.The language employed in the Provision is to be interpreted constructively and pragmatically so as to understand the purpose and object. Plain meaning would not serve the purpose to meet out the object of the provision. Thus, this Court is of an opinion that the language employed under the Proviso to Section 147 i.e., "to disclose fully and truly all material facts" denotes that there must be an intention or motive on the part of the assessee to suppress certain facts at the time of passing an assessment order by the original authority.

15.Question may arise, if certain non-disclosure can be a ground for reopening. In this regard, absolutely there is no bar for reopening of assessment within a period of four years under Section 147 of the Act and if the reopening of assessment is to be made beyond four years, then it must be established that the assessee has not disclosed fully and truly all material evidence with an intention to escape from the payment of tax. Mere nondisclosure is insufficient in view of the fact that the assessee may have certain opinions in the matter of furnishing certain details to the Assessing Officer. Therefore, the motive or intention on the part of the assessee for such non-disclosure is also a material ground to be considered by the Courts as well as by the authority at the time of reopening of assessment beyond the period of four years."

15. The contentions raised on behalf of the petitioners are rebutted by the learned Senior Standing counsel appearing on behalf of the respondents/ Income Tax Department.

16. The learned Senior Standing counsel contended that when the Assessing authority has 'reason to believe' that the income chargeable to tax escaped assessment, then he is empowered to reopen the reassessment. The writ petition is filed, challenging the very notice as well as the disposal of objections. Thus, the contentions raised on merits are to be adjudicated by the Assessing authority and the writ petitioner has to submit all

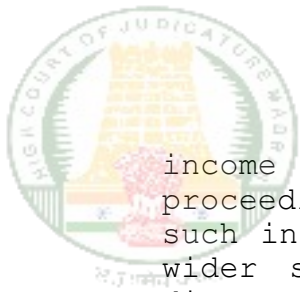


the materials for the purpose of consideration. Instead, this Court cannot considered merits and demerits involved in respect of the grounds for reopening of assessment.

17. The learned Senior Standing counsel drawn the attention of this Court with reference to the reasons furnished for reopening the assessment. The reasons furnished would reveal that the deduction under Section 10A, 10AA regarding the maintenance amount in the customers place are not eligible and the said amount is no way connected with the export income and thus, the said aspects are to be considered by the Assessing authority, while adjudicating the issues in the reassessment proceedings. The reasons furnished would show that the assessee company is engaged in the company of software development and related services / solutions including software/ application maintenance services. The Assessing authority observed that out of the profits earned from business more than 50% of the earnings from STPI unit was attributed to the software application maintenance activity in the relevant year. This specific activity is distinguishable to the computer software development as specified in the Income Tax Act 1961. Further, the said software maintenance services work carried out by the assessee company with the support of the technical manpower abroad. Since the software application maintenance activity was not carried out from the STPI unit, the proceeds from such software maintenance activity is not eligible for deduction under Section 10-A / 10-AA of the Act. This specific proceeds amounts to Rs.377,37,48,058/- for the instant year.

18. Relying on the reasonings, the learned Senior Standing counsel reiterated that the jurisdiction point raised by the assessee was considered by the authority competent, while disposing of the objections. Therefore, the assessee has to participate in the process of reassessment by submitting their grounds, materials, etc., enabling the authority to consider and pass assessment/ reassessment orders.

19. The learned Senior Standing counsel elaborated the scope of reopening of assessment under Section 147 of the Act. Explanation 1 & 2 would clarify that where an assessment has been made, but - (i) income chargeable to tax has been under assessed is also a ground for reopening of assessment. There are various several other grounds, which all are contemplated and it will be premature to decide all these aspects. It is contended that Section 147 perse would reveal that any income chargeable to tax has escaped assessment, the authority may subject to provisions of Sections 148, 153, assess or reassess such income and also any other income chargeable tax, which has escaped assessment and which comes to his notice subsequently in the course of proceedings. Therefore, even in case, where such



income escaped assessment is noticed during the course of proceedings, then also, the assessee is empowered to deal with such income escaped assessment for the purpose of reopening. The wider scope contemplated under Section 147 would reveal that disposal of objections submitted by the assessee is one aspect of the matter and beyond the objections submitted by the assessee, there is a possibility of culling out certain other truth regarding the transactions and therefore, the very initiation need not be interfered with as the assessee would get further opportunity to participate in the proceedings in order to defend his case.

20. In support of the said contentions, the learned Senior Standing counsel relied on the judgment of the Hon'ble Supreme Court of India in the case of Phool Chand Bajrang Lal Vs. Income Tax Officer, reported in [1993] 69 Taxman 627(SC), and the relevant paragraphs are extracted hereunder:

"21. We are not persuaded to accept the argument of Mr Sharma that the question regarding truthfulness or falsehood of the transactions reflected in the return can only be examined during the original assessment proceedings and not at any stage subsequent thereto. The argument is too broad and general in nature and does violence to the plain phraseology Sections 147(a) and 148 of the Act and is against the settled law by this Court. We have to look to the purpose and intent of the provisions. One of the purposes of Section 147, appears to us to be, to ensure that a party cannot get away by wilfully making a false or untrue statement at the time of original assessment and when that falsity comes to notice, to turn around and say "you accepted my lie, now your hands are tied and you can do nothing". It would be travesty of justice to allow the assessee that latitude."

(b) In the case of Sri Krishna (P) Ltd., Vs. Income-tax Officer, reported in [1996] 221 ITR 538 (SC), wherein the Hon'ble Supreme Court of India held as follows:

"10. A recent decision of this Court in Phool chand Bajranglal v. Income Tax officer [(1993) 203 I.T.R.456], we are gratified to note, adopts an identical view of law and we are in respectful agreement with it. The decision rightly emphasises the obligation of the assessee to disclose all material facts necessary for making his assessment fully and truly. A false disclosure, it is held, dose not satisfy the said requirement. We are also in respectful agreement with the following holding in the said decision:



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"Since the belief is that of the Income tax Officer, the Sufficiency of reasons for forming the belief is not for the court of judge but it is not for the court of judge but it is open to an assessee to establish that there in fact not at all a bona fide one or was based on vague, irrelevant and non-specific information. To that limited extent, the court may look into the conclusion arrived at by the Income-tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by the Income-tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief."

11. The learned counsel for the assessee, Sri Gupta placed strong reliance upon the decisions of this Court in [Chhugamal Rajpal v. S.P. Chaliha & Ors](#) [(1971) 79 I.T.R.603], [Income Tax Officer, I Word, Dist. VI, Calcutta v. Lakhmani Mewal Das](#) [(1976) 103 I.T.R.437] and [Commissioner of Income Tax, Calcutta v. Burlop Dealers Limited](#) [(1971) 79 I.T.R.609] as laying down propositions contrary to those laid down in Phool Chand Bajranglal. We cannot agree. The principle is well-settled by Calcutta Discount and it is not reasonable to suggest that any different proposition was sought to be enunciated in the said decisions. Calcutta Discount emphasises repeatedly the assessee's obligation to disclose all material facts necessary for his assessment fully and truly in the context of the two requirements - called conditions precedent which must be satisfied before the Income Tax Officer gets the jurisdiction to re-open the assessment under [Section 147/148](#). This obligation can neither be ignored nor watered down. Nor can anyone suggest that a false disclosure satisfies the requirement of full and true disclosure. All the requirement stipulated by [Section 147](#) must be given due and equal weight. Finality of proceedings is certainly a consideration but that avails one who has fully and truly disclosed all material facts necessary for his assessment for that year - and not to others. All the decisions relied upon by Sri Gupta have been elaborately discussed and distinguished in Phool Chand Bajranglal and we fully agree with the same. We think it unnecessary to repeat those reasons. In particular, we agree with the reasons given in Phool Chand Bajranglal



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for holding that the decision of this Court in Burlop delears must be confined to the particular fact-situation of that case and that it cannot be construed to be of universal application irrespective of the facts and circumstances of the case before the Court."

(c) The Apex Court in the case of Raymond Woollen Mills Limited Vs. Income Tax Officer, reported in [1999] 236 ITR 34 (SC), held as follows:

"In this case, we do not have to give a final decision as to whether there is suppression of material facts by the assessee or not. We have only to see whether there was prima facie some material on the basis of which the Department could reopen the case. The sufficiency or correctness of the material is not a thing to be considered at this stage. We are of the view that the court cannot strike down the reopening of the case in the facts of this case. It will be open to the assessee to prove that the assumption of facts made in the notice was erroneous. The assessee may also prove that no new facts came to the knowledge of the Income-tax Officer after completion of the assessment proceeding. We are not expressing any opinion on the merits of the case. The questions of fact and law are left open to be investigated and decided by the assessing authority. The appellant will be entitled to take all the points before the assessing authority. The appeals are dismissed. There will be no order as to costs."

(d) The High Court of Madras in the case of Jayaram Paper Mills Limited Vs. Commissioner of Income Tax, Chennai, reported in [2010] 191 Taxman 38 (Madras), held as follows:

"25. Thus it is clear that the scope of the deeming fiction which was found in Explanation 1 under section 147, before its amendment, was enlarged in the form of Explanation 2, by the amendment under Act No. 4 of 1988. The effect of this deeming fiction did not fall for consideration in any of the decisions that arose even up to Sri Krishna Private Ltd.. Therefore, even while keeping in mind the elementary principles laid down in the aforesaid decisions, we may have to apply them to the extent that they are now permissible in view of Explanation 2."

21. Relying on the said judgments, the learned Senior Standing counsel made a submission that the assessee has to participate in the process of re-assessment proceedings and he may raise all these grounds for the purpose of effective



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been assessed on too low a rate or such income has been made the subject of excessive relief under the Income Tax Act or excessive loss or depreciation allowance or any other allowance under this Act has been computed.

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27. Therefore, the circumstances, which enumerates and if the Assessing Officer has 'reason to believe' that there are materials on record to reopen the assessment, which would be sufficient for invoking Section 147/148 and if at all the assessee is having contra opinion, it is for them to submit the materials to rebut the reasonings and therefore, quashing of the notice on initiation stage cannot be done in a routine manner.

28. The procedures contemplated for furnishing reasons, submitting objections and disposal of the objections are based on the Directives of the Hon'ble Supreme Court of India in the case of GKN Driveshafts (India) Ltd., vs. Income Tax Officer [(2002) 125 Taxman 963(SC)]. Such directives are issued, in order to own the compliance of the Principles of Natural Justice and therefore, the assessee cannot make a complaint that the objections in entirety on merits are adjudicated and discussed in the order of disposal of objections. Disposal of objections cannot be construed as a final order passed in the reassessment proceedings. Disposal of objections with reference to the jurisdiction in the present case has been considered. As far as the merits are concerned, it is inappropriate to form an opinion that the competent authority shall adjudicate the merits, while disposing of the objections filed by the assessee on reopening of assessment under Section 147/148 of the Act.

29. Therefore, two circumstances, are to be considered. Firstly, the grounds raised on merits and grounds raised on jurisdiction. In order to overcome the liability or to escape from the liability, the aggrieved person may raise the point of jurisdiction etc., However, the point of jurisdiction, if to be adjudicated along with the facts, that is to be adjudicated by the competent authority and not by the High Court in a writ proceedings. The jurisdiction point directly hitting the provisions of the Income Tax Act, then the High Court may entertain a writ petition and set aside on the ground that the authority, who issued an order, has no jurisdiction to issue such an order and remand the matter back for fresh consideration. At the outset, if any notice or order is issued by an authority incompetent having no jurisdiction, then the writ is entertainable and if the jurisdiction point is raised along with the factual aspects, which require an elaborate adjudication, then the High Court would not venture into such an adjudication in a writ proceedings. More over, such adjudication requires examination of original records and evidences. However, the writ petitions are mostly filed by raising a ground of



jurisdiction. The ground of jurisdiction are raised, linked with the factual aspects and such factual aspects requires some adjudication and in those circumstances, the authorities must be allowed to proceed with the reassessment proceedings by affording opportunity to the assessee and therefore, this Court is of an opinion that merely raising a point of jurisdiction is insufficient and the jurisdiction raised directly hitting the provisions of the Income Tax Act alone is entertainable and not otherwise.

30. Regarding the scope of reopening of the assessment, Section 147 contemplates wider scope and enumerates circumstances. The Assessing authority must have 'reason to believe' means that the 'reasons to believe' must have nexus with the materials available on record. However, the sufficiency of the reasons cannot be gone into by the High Court in a writ proceedings. The in-between procedures contemplated in GKN Driveshafts (cited supra) case is to comply with the Principles of Natural Justice and not to complete the entire adjudication for the purpose of passing the reassessment orders. To make it clear, once reopening of proceedings are initiated under Section 147 and a notice was issued under Section 148, the assessee seeking reasons, the Assessing Officer, furnishing reasons, the assessee submitting objections and authority disposing of the objections are to make the assessee to understand the reasons, for which, the reopening of assessment is made and not beyond that. Rest of the grounds are to be adjudicated only after disposal of the objections. In most of the cases, the assessee are making an attempt to adjudicate the entire issues on merits at the stage of filing objections and while disposing of the objections by the competent authority. It is to be borne in mind that even at the time of disposing of the objections, the Assessing Officer himself may not be knowing about certain factual details, there is a possibility. That is the reason why Section 147 contemplates that "any other income chargeable to tax, which has escaped assessment and which comes to his notice subsequently in the course of the proceedings". When the Assessing authority is empowered to adjudicate the other income chargeable to tax, which has escaped assessment, and which comes to his notice subsequently in the course of the proceedings, High Court is expected to give scope for such adjudication for the Assessing authority, then only, the said provision can be complied with.

31. For instance, if a writ petition is decided based on the objections raised and the disposal of the objections by the Assessing Officer, this Court is of an opinion that the Revenue is deprived of an opportunity to cull out the truth at the time of adjudication of the issues. During the proceedings, if the Revenue found that the income chargeable to tax, which has



escaped assessment and which comes to his notice subsequently in the case of the proceedings, is also subject matter for reassessment. The wider scope of the Section cannot be crippled down by quashing the reopening proceedings at the budding stage and in all circumstances, the Assessing authority shall be allowed to proceed with the reassessment proceedings, except in extraordinary circumstances, where the initiation itself is found without jurisdiction and directly hitting the provisions of the Income Tax Act.

32. Even, where the income chargeable to tax has been under assessed, and such income has been assessed at too low a rate, or such income has been made the subject of excessive relief under the Act or excessive loss or depreciation allowance or any other allowance under this Act also grounds for reopening of assessment. Under these circumstances, the reasons furnished by the authority for reopening of assessment is one aspect of the matter. There is a possibility of identifying other income chargeable to tax during the course of tax are the other aspect of the matter. Thirdly, there are certain intricacies and accounting technicalities, which are to be gone into by the competent authority, who has possessing expertise in the matter of scrutinizing the materials for the purpose of assessment or reassessment. Undoubtedly, High Court cannot adjudicate the intricacies of accounting on merits. Admittedly, the Income tax officials are trained to deal with such issues. Thus, they need not be restrained at the budding stage and no prejudice would be caused even if the Assessing Officer is allowed to complete the proceedings, after affording opportunity to the writ petitioner. The assessee would get opportunity to explain and their ground and to submit the materials before the authority for effective adjudication. Contrarily, in a writ proceedings, High Court cannot gone into and scrutinize such materials with reference to the records.

33. In the present case, the following reasons were furnished in proceedings dated 18.09.2014:

"The assessee Cognizant Technology Solutions India Private Limited (CTS) claimed deduction U/s 10A/10AA of the IT Act to the tune of Rs747,88,97,793 for the assessment year 2007-08. The assessee company is engaged in the business of software development and related services / solutions including software/application maintenance services. It is observed that out of the profits earned from business more than 50% of the earnings from STPI unit was attributed to the software application maintenance activity in the relevant year. This specific activity is distinguishable to the computer software development



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as specified in the Income Tax Act, 1961 Further, the said software maintenance services work earned out by the assessee company with the support of the technical manpower abroad. Since this software application maintenance activity was not carried out from the STPI unit, the proceeds from such software maintenance activity is not eligible for deduction U/S.10A/10AA of the IT Act This specific proceeds amounts to Rs.377,37,48,058 for the instant_year.-

While the export income derived by the assessee from export of computer software and provision of information technology enabled services are eligible for claim of deduction U/s 10A and 10AA of the Income Tax Act the other component of export income relating to software maintenance is not an eligible item of income to be considered for deduction under the said sections. The relevant provisions of section 10A or 10AA nowhere contemplates allowability of deduction on such maintenance income, more so when the application maintenance is carried out on-site at the assessee client's premises.

In view of these reasons, it is held that the export earnings of the assessee company from application maintenance is not eligible for deduction U/s.10A & 10AA. Moreover, it is seen that the assessee gets its entire project work order/project work from its holding company and overseas subsidiary companies namely CTS USA, CTS France, CTS Germany etc. The assessee is deputing manpower from India after recruiting them in India to its holding company and other overseas associate companies. Though these technical persons are on the pay rolls of its holding company and other overseas associate companies, apparently the maintenance activity carried out by the assessee company are supported by these very technical manpower from abroad.

In light of these facts, I have reason to believe that income chargeable has escaped assessment and accordingly need to be brought to taxation. Hence, the assessment was reopened as per the provisions of section 147 of the Income Tax Act; and Notice U/s 148 dated 28.03.2014 was issued."

34. No doubt, the petitioner has raised a ground that the said issue has been already considered in favour of the assessee by the CIT (A) as well as the ITAT with reference to other assessment years. However, those details are to be gone into elaborately for the purpose of appreciation of the grounds



raised by the assessee. This Court blanketly comparing the grounds raised by the assessee as well as the findings of the Commissioner of Income Tax (Appeals) and form an opinion that the very initiation of reassessment proceedings is not in accordance with the provisions of the Act. If such a conclusion is arrived, undoubtedly, the parties would not be getting an opportunity for an effective adjudication of issues. Therefore, the grounds raised by the petitioner with reference to the orders passed by the CIT (A) and the ITAT are required to be gone into in detail with reference to the reasons furnished for the purpose of reopening of assessment. Such an exercise cannot be done in a writ proceedings by the High Court under Article 226 of the Constitution of India. In the event of any finding on merits, the same would affect either of the parties to the lis and such an adjudication must be done by the competent authority by scrutinizing the original documents and evidences.

35. This being the principles to be followed, the petitioner may of an opinion that the grounds raised are stronger enough to repudiate the reopening proceedings, this Court cannot offer any finding on that and it is for the petitioner to raise all these grounds by submitting supporting material, evidences in order to complete the reassessment proceedings. However, the reasons furnished by the authorities in proceedings dated 18.09.2014 are enough for the purpose of reopening of assessment. However, the sufficiency of the reasons are to be considered only during the course of proceedings and not by this Court in the present writ proceedings.

36. The High Courts are expected to slow in interfering during the intermittent period when a reassessment proceedings are undertaken. The original assessment orders are passed, merely based on the return of income as well as the materials furnished by the assessee. It is a first stage, where the Income Tax Department is able to get some materials or informations for the purpose of reopening of assessment. Therefore, in all circumstances, the original assessment orders are passed only based on the return of income and the informations provided by the assessee. When the Assessing authority would able to cull out certain informations or materials after passing an assessment order, then the power of reopening is confirmed. This being the very scope and purpose of the Act, this Court is of an opinion that an adjudication in the reopening of assessment proceedings are of paramount importance in order to find out, whether any income chargeable to tax has escaped assessment or not. This is a first stage, where the Revenue gets an opportunity to investigate the matter elaborately. Therefore, such an investigation need not be crippled down for the purpose of completion of the proceedings.



37. This being the principles to be followed, the petitioner has to participate in the reassessment proceedings by availing the opportunities to be provided by the Assessing authority. As far as the other grounds raised in the writ petition are concerned, the petitioner is at liberty to raise all those grounds before the Assessing authority for the completion of reassessment proceedings.

38. With these observations, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

Kak

To

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W.P.No.10051 of 2015

VSNII(CO)
RGA(26/08/2021)