IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.34891 & 34892 of 2007
and
M.P.Nos.1, 1, 2 and 2 of 2007 and
M.P.Nos.1 and 1 of 2008

M/s.Vedanta Limited,
Authorised Signatory Mr.G.R.Arun Kumar,
Core 6, 3rd Floor, Scope Complex,
7, Lodhi Road, New Delhi - 110 003.
.. Petitioner in both W.Ps.

-vs-

Assistant Director of Income Tax,
(International Taxation)
7th Floor, Room No.703,
Annexe Building, Aaykar Bhawan,
121, Mahatma Gandhi Road,
Chennai - 600 034. .. Respondent in both W.Ps.
[cause title amended as per order made
in W.M.P.Nos.23147/2019 and 23169/2019
dated 16.08.2019]

Petitions filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the impugned notice in G.I.No.10-C AAACC 3097L for the assessment year 2002-03 dated 24.10.2007 and 27.04.2006 respectively of the respondent and quash the same.

For Petitioner (In both W.Ps.)	:	Mr.C.S.Agarwal Senior Counsel for Mr.G.Baskar
For Respondent	:	M/s.Hema Muralikrishnan Senior Standing Counsel

COMMON ORDER

The writs on hand are filed by M/s.Vedanta Limited. The writ petitions are filed challenging the reopening proceedings initiated under Section 147 of the Income Tax Act [hereinafter referred to as "the Act'], more specifically, the order disposing of the rejections filed by the petitioner. Thus the writ petitions are heard together and common order is passed.

2.It is not in dispute that the final assessment order was passed in respect of the assessment year 2002-03. It is an admitted fact that the final assessment order was passed in respect of the assessment year. However the dispute raised due to the initiation of reopening of the assessment under Section 147 of the Act. Thus, it may not be required to record the other facts narrated in the affidavit filed in support of the writ petitions and this Court would confine the facts with reference to the dispute raised.

3.The learned senior counsel appearing on behalf of the writ petitioner has raised certain important grounds relatable to the provision of reopening of the assessment under Section 147 of the Act. It is contended that absolutely there is no reason for the purpose of reopening nor the reasons furnished are in compliance with the requirements contemplated under Section 147 of the Act. Even the reasons for reopening was furnished to the petitioner after a lapse of more than one year and the learned senior counsel by drawing an inference with reference to the conduct of the respondent made a submission that no reason was available, thus there was a delay. It is contended that it is a classic case of change of opinion. Once all the materials, books of accounts, details, informations, clarifications provided by the petitioner were considered by the Assessing Officer and after passing of the assessment order, reopening must be done strictly in accordance with the ingredients contemplated under Section 147 of the Act. Thus, the respondent have no option to change their opinion with reference to the materials already considered and the finding made in the original assessment order. The learned senior counsel resorted to differentiate the reason to believe and the change of opinion. It is contended that no reasons were recorded prior to the issuance of notice under Section 148 of the Act in the present case. The reasons communicated are recorded at later point of time and therefore, the impugned order providing reason is in violation of Section 148(2) of the Income Tax Act. Sub-clause (2) contemplates "the Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so". In view of the fact that the reasons are not recorded prior to the issuance of notice under Section 148 of the Act, the entire exercise is untenable.

4.The learned senior counsel referred the other provisions of the Income Tax Act and solicited the attention of this Court regarding the details furnished by the petitioner before the Assessing Officer at the time of scrutiny of the return of income filed by the petitioner. In this regard, the learned senior counsel refer the return of income filed for the relevant assessment year 2002-03 and contended that loss from business or profession brought forward as well as the amounts stated and other expenditures with reference to the particular heads were elaborately furnished to the Assessing Officer. The learned senior counsel relied on the net profit/loss for the year before taxation and contended that the facts and figures furnished by the petitioner in their return of income is reflected in the order passed by the respondent providing reasons for reopening of assessment. Thus, by taking a different opinion on the same facts the reopening proceedings are initiated. Thus, it amounts to change of opinion and the requirement of reason to believe is not satisfied. The learned senior counsel referred the notes to the financial statements furnished by the petitioner Company and read out the portions with reference to the particulars furnished. The expenditures incurred during the year in foreign currency also has been furnished. The very same materials produced by the petitioner Company is relied upon for the purpose of reopening of assessment. Thus, the entire exercise is in violation of the provisions of the Income Tax Act and amounts to change of opinion. The objections submitted by the writ petitioner regarding the reasons furnished were also not considered in a right perspective with reference to the provisions of the Act, disposal of reasoning was undertaken in a routine manner and therefore, the impugned order disposing of the objections is also not in consonance with the facts as well as the provisions of the Income Tax Act. In this regard, the learned senior counsel read out the reasoning furnished as well as the order passed disposing of the objections. Comparatively submissions are made to establish that there was no proper application of mind on the part of the respondent in dealing with the objections and the grounds placed before the respondent were not even looked into.

5.The learned senior counsel relied on catena of judgments mainly to establish the legal proposition what amounts to change of opinion and what is reason to believe as contemplated under the Act. The judgments relied upon would show that the processes through which a decision is to be arrived in respect the reopening of proceedings under Section 147 of the Act. Curiously more than hundred judgments are cited. This Court also heard the learned senior counsel patiently with reference to the principles laid down in those judgments and some of the judgments are in support of the petitioner so as to establish that the authorities competent must have tangible materials and the phraseology 'reason to believe' must be interpreted pragmatically so as to ensure that there is a connection between the reason as well as the reopening. It is not as if every opinion can be construed as belief. The reason to believe indicates that such belief must be based on certain records or informations which would provide an opportunity for the authorities to reopen the concluded assessment proceedings. Thus the Courts have repeatedly ruled that “reason to believe” is not mere belief but belief with some materials. What are all the materials which can be brought within the phraseology 'reason to believe' is the subjective satisfaction and this Court is of the considered opinion that if there are some materials on records to establish or if there is some reasons which can be believed for the purpose of reopening of assessment, then the authorities must be allowed to exercise their powers under Section 147 of the Act.

6.The learned senior counsel relied on the judgment of the Hon'ble Supreme Court in Calcutta Discount Company Limited vs. Income Tax Officer [(1961) 41 ITR 191(SC)], Jeans Knit (P.) Limited vs. Deputy Commissoner of Iincome Tax [(2017) 77 Taxmann.com 176(SC)], GKN Driveshafts (India) Ltd., vs. Income Tax Officer [(2002) 125 Taxman 963(SC)] and other judgments. This Court is of the considered opinion that the principles laid down in those judgments are consistently followed by the subsequent Benches of various Courts and there is no contrary opinion. The principles relied upon by the petitioner are not disputed even by the respondent. Those principles regarding 'has reason to believe' and 'change of opinion' are well settled and ultimately this Court would draw the attention that interpretation and the principles are to be considered with reference to the facts and circumstances of each case.

7.The principles on one hand, facts and circumstances on the other hand and the facts alone would throw light with reference to the decision to be arrived by the Courts. Therefore, the principles relied on and settled cannot be applied directly so as to allow the petition or to dismiss the petition. The facts plays the major role in view of the fact that it is only a reopening of proceedings and not an appeal questioning the validity of the final order of assessment passed.

8.Whenever the very initiation of proceedings under the provisions of the statute is questioned, the Courts are expected to be slow and cautious. The power of initiation may be curbed if there is specific violation of the provisions of the Act. In the event of unnecessary intervention by the Courts, the same would derail the procedures to be followed which is to be of importance for the purpose of achieving the objectives of the statute. In normal circumstances, one would not prefer to pluck the flower at the budding stage unless it is infected. Thus, the intervention during the initial stage is to be exercised sparingly and if there is a blatant violation of the Act.

9.The learned senior counsel relied on various judgments of the High Court of Delhi and High Court of Madras to establish that the Courts have interfered in reopening of proceedings, more specifically, when there is a formation of opinion that it is change of opinion.

10.Certain judgments referred on behalf of the petitioner are disputed by the respondent on the ground that some judgments of the High Court of Madras relied on by the petitioner are against the tax case appeals challenging the order passed by the Income Tax Appellate Tribunal and therefore, those judgments cannot be relied upon as far as the present writ petition challenging the very reopening proceedings itself. It is further contended that the other judgments, the revenue has already preferred appeals and the said appeals are pending. However, this Court is of the considered opinion that all those judgments relied on are also based on the parent judgment of the Hon'ble Supreme Court of India in the cases cited supra. The Courts have elaborated the principles on various judgments based on those facts and circumstances. Elaboration of principles with reference to the facts may be applied if the facts are similar but not in a case where it is dissimilar. Thus, application of facts with reference to the provisions of the Income Tax Act are of paramount importance to form an opinion.

11.This Court with little experience finds that in respect of the writ petitions challenging the reopening proceedings hundreds of judgments are produced by the respective learned counsels appearing on behalf of the parties to the lis and in all those judgments, the Courts have formed an opinion with reference to the facts and circumstances and as well as based on the principles laid down by the Hon'ble Supeme Court. It is needless to stated that the principles are binding and the facts of each case is to be the deciding factor to form an opinion.

12.The learned senior standing counsel on behalf of the respondent in short submitted that the re-assessment proceedings are initiated within a period of four years and the notice under Section 148 of the Act was issued on 27.04.2006. The reasons furnished would establish that the details regarding the technical services submitted by the assesee were not properly considered and therefore, the Assessing Officer has reason to believe that there is an under assessment and Section 147 Explanation 2(c)(i) permits the Assessing Officer to initiate reopening proceedings under Section 147 of the Act. The learned senior standing counsel disputed the contentions raised on behalf of the petitioner by stating that the certification as claimed by the petitioner cannot be relied upon in view of the fact that the auditor's report would reveal that the Company has certified that there is no expenditure debited to the Profit and

Loss Account which is admissible under Section 40(a) of the Act. Therefore, the auditors have not independently scrutinized those expenditures debited, however, the auditors have stated that the Company has certified and therefore, they recorded the same. Thus, the reliance placed by the petitioner are untenable and the Assessing Officer has to consider all these aspects for the purpose of forming an opinion. The learned senior standing counsel referred Section 40(a) of the Act and the petitioner has not produced any details regarding the consulting fees and other expenditures stated. Regarding these particulars, reopening of assessment is imminent and therefore, there is no irregularity or otherwise in respect of the notice issued under Section 148 of the Act. Thus the writ petitions are to be dismissed.

13.The learned senior standing counsel relied on the judgments in the case of Kalyanji Mavji & Co. vs. Commissioner of Income Tax [(1976) 102 ITR 287 (SC)] and said that the principle No.4 laid down by the Apex Court would be applicable in respect of the present case. The said principle is that "where the information may be obtained even from the record of the original assessment from an investigation of the materials on record, or the facts disclosed thereby or from other enquiry or research into facts or law". Relying on the said principle which was not expunged by the Hon'ble Supreme Court in the subsequent case. The learned senior standing counsel said that even certain informations culled out from the record of the original assessment would be sufficient for reopening of assessment if the power under Section 147 of the Act is exercised within a period of four years. Therefore, the petitioner cannot contend that they have produced all the records and informations and therefore the exercise by the Assessing Officer is change of opinion. The learned senior standing counsel relied on the judgment of the High Court of Madras in the case of Dayanidhi Maran vs. Assistant Commissioner of Income Tax reported in [2018 (98) Taxman.com 202 (Mad)], wherein the said principles are reiterated. Relying on these judgments, the learned senior standing counsel contended that the revenue must be provided with an opportunity to examine all the records and files for the purpose of ascertaining the income escaped assessment with reference to the reasons furnished for reopening of assessment.

14.The learned senior counsel for the petitioner referred the letters sent by the petitioner on 17.01.2005, wherein the details regarding various items are furnished by the petitioner. The petitioner referred deduction for the purpose of book of profit and the details furnished by the petitioner. In another letter dated 28.01.2005 the petitioner has elaborated the details regarding exploration and development expenditure contract area wise, interest received under Section 244A, Club membership fees and other details. In another letter dated

10.02.2005, the petitioner has furnished details regarding software purchase and maintenance, amount charged off under the area of interest method, details of exchange fluctuation and fixed asset purchase in foreign exchange. In yet another letter dated 07.03.2005, the petitioner had elaborated the details with regard to the items mentioned by the respondent, more specifically, the petitioner has stated that the impact of change in the accounting policy resulting in charging of Rs.2005.15 Million out of carry value of these expenses in the current year profit and loss account. To substantiate the said explanation, the petitioner has referred to the Notes to the Financial Statement for the year and further cited the judgments of the Hon'ble Supreme Court.

15.In reply, the learned senior standing counsel made a submission that all these details and particulars required an adjudication and the said details cannot be adjudicated in a writ proceedings by this Court. Thus the respondent must be allowed to proceed with the reopening proceedings for the purpose of culling out the truth or otherwise in respect of the informations provided by the petitioner.

16.Let us now consider the scope of Section 147 of the Act though this Court has considered on several occasions. The very scheme of the Act under Chapter XIV of the Income Tax Act pertains to the procedures for assessment. Section 139 deals with return of income. Thus the entire assessment proceedings are undertaken under Chapter XIV of the Income Tax Act based on the return of income filed by the respective assessment. In other words, the return of income filed by the assessee is to be trusted upon in all circumstances except where there is a possibility of doubt which should be on the basis of some reasoning and materials. Therefore, the assessment proceedings at the first instance is done based on the informations provided by the assessee in their return of income. The Department has no knowledge about the particulars and informations provided in the return of income at the first instance. Those return of income would provide a cause for reopening of assessment if there has been a reason to believe that the assessee has not produced certain materials or certain informations or inferences can be drawn with reference to the materials produced. Chapter XIV of the Act enumerates the procedures in a systematic manner so as to progress the development based on certain facts and circumstances as well as the informations received during the pending assessment or after assessment order or on account of such or otherwise. The cogent understanding of the entire procedures contemplated under Chapter XIV of the Act would reveal that at each stage the revenue is protected with an opportunity to assess or re-assess. The very purpose and object is to ensure that the income chargeable to tax escaped assessment is brought under the tax net. The Courts while interpreting Chapter XIV of the Act must borne in mind the very objectives of the procedures contemplated under Chapter XIV of the Act is met with and the income chargeable to tax escaped assessment must be assessed or re-assessed.

17.Chapter XIV of the Income Tax Act can be broadly classified into three set of procedures. The first phase of Chapter XIV is return of income filed by the assessee is either accepted or picked up for scrutiny assessment. In either of the case based on the informations provided in the return of income, assessments are made and accordingly the tax chargeable is determined. The second set of procedures would be reopening of assessment in respect of the closed assessment. Once the reopening of assessment is initiated then the procedures to be followed are enumerated in the second phase of procedure. The third phase would be search under Section 132 of the Act. If search operations are conducted then the procedures to be followed are enumerated in the third phase of Chapter XIV. Therefore, each stage has got its own importance with reference to the procedures which are all contemplated. The authorities competent thus bound to follow the procedures contemplated mandatorily and any deviation would vitiate the very proceedings itself. The importance of the procedures contemplated under Chapter XIV are repeatedly emphasized by the Constitutional Courts across the Country. Thus the High Court should ensure that the procedures contemplated are scrupulously followed and in the event of any violation reliefs are to be granted based on the facts and circumstances of each case. For instance, in some cases, remand may be required and in some other cases orders itself could be liable to be set aside.

18.With reference to Section 147 of the Act, if the Assessing Officer has reason to believe that any income chargeable to tax 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.

19.The wider scope provided for reopening of assessment under Section 148 of the Act is undoubtedly vibrant if the Assessing Officer has reason to believe. The reason to believe has been defined in umpteen number of judgments and in this context the reason to believe must be based on certain materials or informations and such informations or materials should have life link and therefore, the Assessing Officer is not empowered to reopen in all circumstances. The reason to believe cannot be change of opinion. The change of opinion is also defined in number of judgments. Normally the change of opinion would be that the opinion formed in the original assessment order is deviated and a different interpretation is given with reference to the finding or opinion already given, then it is to be construed as change of opinion. More precisely, the Assessing Officer considered the materials, informations produced by the assessee, formed an opinion and passed an assessment order with a particular finding. From and out of the same materials, if the Assessing Officer wants to have a different opinion, then it is to be construed as change of opinion, except the cases which all are falling under Explanation I & II to Section 147 of the Act.

20.As far as the reason to believe is concerned, the scope is again wider. The reason to believe is supported with many circumstances in the provision itself. Section 147 of the Act contemplates that the income chargeable to tax which has escaped assessment and which come to the notice subsequently in the course of the proceedings under this Section is also a ground. To elaborate the said ground in respect of escapement if it comes to the Assessing Officer subsequently after the proceedings, then also the authority is empowered to reopen the assessment under Section 147 of the Act. To re-compute the loss or the depreciation allowance or any other allowance as the case may be for the assessment year concerned is also a ground for reopening of assessment.

21.The proviso clause contemplates two circumstances, wherein if the reopening of assessment is made within four years and beyond four years but within six years. In such circumstances where reopening of assessment is to be made beyond four years, then certain additional requirements are contemplated. In view of the fact in the present case the reopening of assessment is made within four years those special circumstances became unnecessary. As far as the reopening of assessment within four years are concerned, explanation (1) to section 147 of the Act 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 the foregoing proviso. Thus mere production of materials or evidences are insufficient. Even with reference to the same materials, books of accounts, etc. scrutinized by the Assessing Officer may be a ground for reopening of assessment if the Assessing Officer has reason to believe that some materials which were not adjudicated are newly emerged or identified after passing of the assessment order. Therefore, even in respect of materials considered or scrutinized the Assessing Officer may cull out certain materials or informations for the purpose of reopening of assessment under section 147 of the Act. Explanation (2) to Section 147 of the Act stipulates for the purposes of section 147, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment. Sub-clause (c) where an assessment has been made, but (i) income chargeable to tax has been under assessed; 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.

22.Sub-clause (c)(i) states that income chargeable to tax if under assessed then also reopening under Section 147 is permissible. However, such an under assessment is made in the absence of consideration of any material alone would provide power to the Assessing Officer. In case the materials which were considered and an assessment is made and the opinion formed at the time of passing an assessment order cannot be a ground for reopening of assessment. The thin difference in the matter of culling out the truth makes all the difference under section 147 of the Act. The authorities are also expected to be cautious, while forming an opinion which is not formed at the time of passing an order of assessment. Therefore reopening of assessment under section 147 of the Act indicates that the reopening must be done if there is any new dimension not amounting to change of opinion is possible or informations are culled out or certain materials were not considered, then alone the reopening will fall under the mandatory clause of reason to believe.

23.With reference to such income had been assessed at too low rate would also indicate that certain new materials must be available for the purpose of reopening. At the outset, it is to be considered whether the reopening of assessment is made based on some informations or materials or based on certain interpretations of the provisions of the Act or the other circumstances contemplated under the Act. In all such circumstances, the Assessing Officer must establish that he has a reason to believe and such reasons must be legally acceptable and based on certain materials and informations, which were neither considered nor adjudicated and no findings are made in the original assessment order.

24.The wider scope of Section 147 of the Act cannot be narrowed down by the Courts by way of restrictive interpretations. While interpreting Section 147 of the Act more specifically the Courts must adopt constructive interpretation in consonance with the purpose and object of Chapter XIV as well as the Act as a whole. Therefore the purpose and object of the procedures contemplated under Chapter XIV of the Act is of paramount importance to understand the widerness of the provisions contemplated to determine the tax with reference to the income chargeable to tax escaped assessment.

25.Referring to Section 148(2), the learned senior counsel for the petitioner made a submission that the respondent had failed to record reasons before issuance of notice under Section 148 of the Act and therfore the impugned orders are liable to be side.

26.The learned senior standing counsel pointed out that the reasons communicated to the petitioner would reveal that the reasons to believe that income chargeable to tax has escaped assessment in the case of the petitioner was recorded by the predecessor of the order passed in letter dated 05.10.2007. Such reasons are furnished by one Shri.C.Vatchala, Assistant Director of Income Tax [International Taxation], Chennai. The said Officer has clearly stated that the reasons to believe were recorded by her predecessor and such reasons were communicated to the petitioner. Under these circumstances, this Court has no reason to believe that the reasons were recorded subsequently unless the petitioner establishes the contrary with proof. A mere statement in this regard would be insufficient to form an opinion.

27.In this backdrop, this Court has to consider the reasons furnished for the purpose of reopening of assessment which reads as under:

> “It is seen from Clause 15 of Notes to the Financial Statements accompanying the return of income that the assessee had incurred expenditure during the period relevant for the above assessment year in foreign currency under the following heads:
>
> | | | |
> |---|---|---|
> | (i) | Interest | Rs.2.4 Crores |
> | (ii) | Professional fees | Rs.0.2 Crores |
> | (iii) | Consulting fees | Rs.5.3 Crores |
> | (iv) | Others | Rs.47.6 Crores |
>
> It was also provided as a foot note that the above information relates only to the activities of CEIPL India and do not include the CEIPL India's share in the respective joint ventures.
>
> There is no indication either in the return of income or the accompanying statements or the details filed that the assessee has deducted tax on the above payments. Besides the assessee company itself had stated that the information relating to the expenditure incurred as stated above does not relate to assessee's share. In the respective joint ventures and the assessee has not stated that tax has been deducted in respect of the assessee's share of expenditure in the joint venture. As per

> section 40(a)(i) the above expenditure on which tax has not been deducted or after deduction has not been paid before expiry of time prescribed under sub-section (1) of section 200 are not allowable as a deduction. In view of this, the above payments incurred in foreign currency have to be disallowed.
>
> The assessee has stated in the Notes to the Financial Statement that as a result of the change in accounting principle, the Company has written off general exploration cost such as geological and seismic Interpretation cost and dryhole cost of Rs.200.5 Crores pertaining to earlier years. This requires to be examined in detail as to whether the write off fits into any of the adjustments to book profit as specified in clause (a) to (f) of the explanation to section 115 JB of the Income Tax Act, 1961.
>
> In view of the above I have reason to believe that the assessee's income chargeable to tax have escaped assessment for the assessment year 2002-03."

28.The petitioner filed their objections for the reasons. The learned senior counsel refer the objections and contended that all the objections are relatable to the informations furnished by the petitioner at the time of original assessment and the learned senior counsel compared the objections as well as the informations produced by the assessee at the first instance before passing the assessment order.

29.The order impugned dated 24.10.2000 disposing of the objections and its rejection were attacked by the learned senior counsel by stating that none of the objections raised are met with by the Assessing Officer with reference to the documents relied on by the petitioner.

30.This Court is of the considered opinion that what is under challenge is the initiation of reopening proceedings under section 147 of the Act. The High Court is not expected to conduct a rowing enquiry in respect of facts and circumstances as narrated by the respective parties to the lis on hand. It is improper on the part of the Courts to form an opinion with reference to the disputed facts at this point of time as several alternate and efficacious remedies are available to the assessee under the provisions of the Income Tax Act and only after exhausting all those remedies the High Court can rely on those findings of the appellate authorities for the purpose of forming an opinion with reference to the facts. In other words, it would be premature to form an opinion as accounting technicalities and intricacies are to be considered by the authorities competent while proceeding with the reopening of assessment. The endeavour of the High Court is to ensure that reopening of assessment is made by following the procedures contemplated or not, but not otherwise. The confinement of the scope of judicial review under Article 226 of the Constitution of India is imminent and venturing in to the adjudication of facts would lead to commissions, omissions and errors. Thus the High Court is expected to refrain itself from venturing it into the disputed facts at the initiation stage more specifically with reference to the reopening of assessment initiated under Section 147 of the Act.

31.As far as the reasons are concerned, it is elaborated in proceedings dated 05.10.2007, wherein the Assessing Officer has stated that it is seen from Clause 15 to Notes of the Financial Statements accompanying the return of income that the assessee had incurred expenditure during the period relevant for the above assessment year in foreign currency under the heads of interest Rs.2.4 Crores, professional fees Rs.0.2 Crores, consulting fees Rs.5.3 Crores and Others Rs.47.6 Crores. The Notes of the Financial Statement furnished before this Court would state that expenditure incurred during the year in foreign currency wherein the petitioner had furnished particulars regarding interest, professional fees, consulting fees and other expenses. The said particulars provided by the petitioner are the reason to believe that the income chargeable to tax escaped assessment. The reasons furnished by the Assessing Officer would also show that the assessee has not given satisfactory explanations or materials to substantiate the said expenses. It is stated that "there is no indication either in the return of income or the accompanying statement or the details that the assessee has deducted tax on the above payments". Thus the claim of the petitioner with reference to the disallowance is to be considered by the authorities competent with reference to Section 40(a) of the Act.

32.Under these circumstances, this Court is of the considered opinion that the assessee is bound to furnish further details or the documents or materials so as to establish the expenditure, which are all now considered as the reason for the purpose of reopening of assessment. This Court cannot go into the factual details now furnished by the petitioner at the time of original assessment nor made a comparison with reference to the original explanations or submissions along with inferences drawn by the Assessing Officer for reopening of assessment. However, the reasoning furnished for reopening of assessment would reveal that there is no indication either in the return of income or the accompanying statement or the details filed that the assessee had deducted tax on the above payments. If at all the Assessing Officer's finding in this regard is not in consonance with the facts and circumstances, it is for the assessee to place all materials and at any stage, there is a possibility of dropping of further proceedings by the Assessing Officer if he is satisfied. Therefore, the petitioner need not shy away from participation and to explain before the Assessing Officer that the reasons to believe is incorrect as the petitioner is having materials to establish the contrary.

33.Thus the reasons for reopening as stated has got sum and substance and the said differences or inferences are to be answered and explained by the assessee by participating in the process of re-assessment. Contrarily the High Court cannot form an opinion with reference to the doubt raised by the Assessing Officer in the impugned orders and made a finding with reference to the documents relied on by the petitioner. This being the scope of the provisions of Sections 147/148 of the Act, this Court has no hesitation in forming an opinion that the petitioner has to participate in the process of re-assessment and establish their case in the manner known to law and by availing the opportunities to be provided by the respondent. The respondent is directed to continue the reopening proceedings and conclude the same as expeditiously as possible.

34.With the above direction, the writ petitions are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Director of Income Tax,
(International Taxation)
7th Floor, Room No.703,
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Chennai – 600 034.

+2ccs to Mr.G.Baskar, Advocate SR No.33029
+1cc to M/s.Hema Muralikrishnan, Senior Standing Counsel
SR No.33087

W.P.Nos.34891 & 34892 of 2007

LN (CO)
PR (23/08/2021)