

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	22.01.2021
PRONOUNCED ON	25.02.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.NO.29542 OF 2010

AND

M.P.NO.1 OF 2010

(THROUGH VIDEO CONFERENCING)

M/s. Revathi Equipment Limited,
Rep. by its Assistant Manager (Taxation)
Mr.G.Prakash,
331, Pollachi Road,
Malumachampatti Post,
Coimbatore - 641 021.

...Petitioner

Vs.

The Assistant Commissioner of Income-tax,
Company Circle-I (1),
Race Course Road,
Coimbatore - 641 018.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the record in PAN : AABCR0624D/Co.Cir.I (1)/Cbe dated 15.12.2010 on the file of the respondent and quash the same.

For Petitioner : Mr.G.Baskar for
Mr.N.Muthukumar

For Respondent : Mr.A.P.Srinivas,
Senior Standing Counsel and
Mr.A.N.R.Jayaprathap, G.A.

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O R D E R

The petitioner has filed this Writ Petition to quash the impugned order dated 15.12.2010 passed by the respondent rejecting the objections of the petitioner dated 03.05.2010 against the reopening of the assessment. The impugned order has been passed for the Assessment Year 2003-2004. The operative portion of the impugned order reads as under:-

Consideration of objection and the findings thereon

In order to invoke jurisdiction u/s 147 of the Income-tax, the Assessing Officer must have reason to believe that some income chargeable to tax of an assessee has escaped assessment by reasons of the omission or failure on the part of the assessee either to make a return u/s 139 of the Act for the relevant Assessment year or to disclose fully and truly material facts necessary for that assessment year.

In this regard it is pertinent to mention that the Apex Court has laid in the case of Sri Krishna P. Ltd. Vs. ITO (221 ITR 538) that what is required is a full and true disclosure of all material facts necessary for making an assessment for that year. Further still, Supreme Court has also held in the case of Indo Aden Salt Mfg Co. & Trading Co. P. Ltd. V CIT (159 ITR 624) that 'mere production of evidence before the Assessing Officer is not enough. There may be omission or failure to make a true and full disclosure, if some material for the assessment lay embedded in the evidence which the assessee could have uncovered but did not, then it is the duty of the assessee to bring it to the notice of the assessing authority. The assessee knows all the material and relevant facts and the assessment authority may not. In respect of failure of disclosure, the omission to disclose may be deliberate or inadvertent. That is immaterial. But if there is omission to disclose the material facts, then jurisdiction to reopen is attracted"

The words 'omission or failure to disclose fully and truly all material facts necessary for his assessment for that year' postulate a duty on the assessee to disclose fully and truly all material facts for his assessment'.

In the case of the assessee-company, though the assessee has filed a detailed note on the non compete fee and submitted the agreement copies of the collaboration, nowhere in the note did the assessee speak of the overriding clause of the restrictions in the second agreement. Thus, the non disclosure of material facts fully and truly was the failure of the assessee to disclose the true intention behind the clause 2.4 of the second

agreement. Here what needs to be emphasized is that the obligation on the assessee was to disclose the full and true intention in the agreement. Since no mention was made in the note submitted there was a false assertion or statement of material fact. Hence it is clear this attracted the jurisdiction of the Assessing Officer to reopen the assessment u/s 147.

As per the decision of the Supreme Court, proceedings u/s 147 are for the benefit of Revenue only and are aimed at controlling the escapement of income of the assessee. The Assessing Officer had reasons to believe that income has escaped assessment in tune with the provisions to section 147 and this case falls squarely within the ambit of section 147.

To conclude, the decision of the Assessing Officer in reopening the assessment u/s 147 was made after he had reason to believe that there was a failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment year 2003-04.

Therefore, the objection of the assessee is not sustainable on law or facts and is overruled.

2. Before passing the impugned order, a notice dated 01.02.2010 was issued to the petitioner under Section 148 of the Income Tax Act, 1961 for the Assessment Year 2003-2004 to invoke the proviso to Section 148 of the Income Tax Act, 1961. Under these circumstances, the petitioner by a letter dated 19.02.2010 requested the respondent to furnish the reasons for reopening of the assessment as per the decision of the Hon'ble Supreme Court in G.K.N.Driveshafts (India) Limited Vs. ITO, (2003) 1 SCC 72 : (2003) 259 ITR 19. The respondent thus furnished the reasons to the petitioner vide a communication dated 05.03.2010 which reads as under:-

"Assessee had claimed that payment of non - corporate* fees vide two agreements, i.e., for Rs.75 crores and Rs.2.5 crores dated 17/08/2002, was only revenue expenditure and it is made only for restriction for a short period of 2 years and

5 years respectively and no permanent advantage or enduring benefit was obtained. The Assessing Officer has after hearing the arguments has accepted the claim. However, it is seen from the agreement for payment of Rs.2.5 crores that portion of it was for non-competition and a portion of it as per clause 2.4 for licence granted perpetually for right to manufacture products and also for right to sell products anywhere in world. The clause 2.4 was intended to override the restriction of period of licence and right to sell products contemplated as per collaboration agreement between the C.P. group and company entered into on 07/11/1997. Hence a portion of it is for purchase of licence and right to manufacture and sale. Hence it is capital in nature. The agreement copy though file before the Assessing Officer, the assessee did not point this out in the written reply and kept silent on this clause. The Assessing Officer was not aware of this aspect as is evident from his note on the file. So explanation (2) to second proviso to Section 148 is applicable. Income escaped assessment due to incorrect claim of the assessee that the entire payment of Rs.10 crores was for non-competition and was incorrect in nature."

* compete

3. The petitioner gave a detailed reply and stated that there was no case made out for invoking the proviso to Section 147 of the Income Tax Act, 1961 as there was no failure on the part of the petitioner to make a return under Section 139 or in response to a notice issued under Sub-Section (1) of Section 142 or Section 148 of Income Tax Act, 1961 to disclose fully and truly all material facts necessary for the purpose of assessment for that assessment year.

4. The dispute in this Writ Petition surrounds the claim of the petitioner in its accounts and the income tax returns that the amount of Rs.10 Crores (Rs.7.5 Crores and Rs.2.5 Crores) respectively was paid to its associate companies, namely, Atlas Copco India Limited and Chicago Pneumatic Tool Company. The amount was treated as a revenue expenditure by the petitioner. In its Annual Report for the year 2002-2003 (Assessment Year 2003-2004), the petitioner had disclosed the non solicitation / non compete fees of Rs.10 crores. In Note No.21 of the Annual report, it has been stated as follows:-

21. NON RECURRING & EXCEPTIONAL ITEMS

The exceptional charge of Rs.100,000 represents the Non compete / Non Solicitation fees paid to Atlas Copco India Ltd. based on the valuation report received from an independent valuer, so that Atlas Copco India Ltd. (including all companies associated with it or with Atlas Copco, Sweden) cannot compete with Revathi Equipment Ltd. for specified products, and solicit company's employees, customers for specified periods so as to allow the Company safeguard and maintain its competitive position. The expenditure being incurred for business expediency and entirely for the benefit of the business of the company have been charged to Profit and Loss Account and treated as revenue expenditure for taxation purpose.

5. The learned counsel for the petitioner submits that the amount paid by the petitioner was a revenue expenditure and therefore, there was no failure to disclose the material required for assessment to the respondent when it filed the returns for the Assessment Year 2003-2004. It is further submitted when the scrutiny assessment notice under Section 143 (2) of the Income Tax Act, 1961 was issued to the petitioner on 25.08.2004, the petitioner gave a detailed reply on 25.01.2005 and it is only thereafter the assessment was completed and the assessment order was passed on 28.03.2005.

6. The learned counsel for the petitioner submits that the Assessing Officer examined the Annual Report for the financial year 2002-2003 and the agreements was called for during the scrutiny under Section 143(2) of the Income Tax Act, 1961 before passing the Assessment Order dated 28.03.2005.

7. The learned counsel for the petitioner further submits that in the Assessment Order dated 28.03.2005 for the Assessment Year 2003-2004, it has been concluded that the petitioner company was an affiliate company incorporated under the provisions of the Companies Act, in the year 1977 and it was in the business of manufacture and sale of Drills and it was an affiliate of the U.S. based company Chicago Pneumatic Tool Company (CP) and Atlas Copco India Ltd. (both are known as C.P. Group). It is submitted that the Assessment Order dated 28.03.2005 states that "after going through the details filed, discussion with the assessee's representation and perusal of the statements accompanying the return of income, the assessment is completed " implying true and full disclosure by the petitioner.

8. The learned counsel for the petitioner further submits that after going through the details filed, discussion with the petitioner's representation and the perusal of the statements accompanying return of income, the assessment was completed. In other words, the Officer was satisfied with the claim of the petitioner that the amount incurred towards a sum of Rs.10 crores under two agreements to the two companies was towards non - compete fees for a short period and therefore were in the nature of a revenue expenditure.

9. It is further case of the petitioner that for the Assessment Year 2005-2006, the petitioner treated an amount of Rs.15 Crores received from the two companies for cancellation of non - compete / non - solicitation as non recurring & exceptional income in Profit and Loss Account and paid tax and therefore, the issues was revenue neutral. It is submitted that in fact, the petitioner has paid the tax on Rs.15 Crores received from the two companies as the affiliate Companies were unable to honour their commitment under the two agreements for a sum of Rs.10 Crores was earlier paid by the petitioner and treated as revenue expenditure for computation of income.

10. In this connection, the learned counsel for the petitioner drew my attention to the Annual Returns for the year ending 2004-2005, wherein, according to him it has been disclosed a receipt of Rs.15 crores from M/s.Atlas Copco India Ltd. He drew my attention to Note 20 forming part of the Annual Report for the year ending 2004-2005. It is further submitted that the amount has been taxed during the Assessment Year 2005-2006 which has been accepted by the respondent and therefore, the petitioner cannot be subjected to tax on the same amount towards for the subject Assessment year 2003-2004.

11. The learned counsel for the petitioner further submits that an objection to invoke the proviso to Section 147 of the Income Tax Act, 1961 was sent vide its representation 03.05.2010, wherein, the petitioner has clearly brought out the reasons why there was no justification. Under these circumstances, the learned counsel for the petitioner submits that the impugned order was liable to be quashed on the assessment completed earlier was to be left untouched. In this connection, the learned counsel for the petitioner drew my attention to the following cases:-

Heads	Case Laws
Where a particular issue is examined by the Assessing Officer in scrutiny proceedings, reopening on same issue is illegal and untenable; especially if a query on the same is raised and answered by the Assessee.	i. Commissioner of Income Tax Vs. Rubix Trading (P.) Ltd., (2019) 108 taxmann.com 177 (SC). ii. Deputy Commissioner of Income-tax Vs. Sun Pharmaceutical Industries Ltd., (2020) 117 taxmann.com 116 (SC). iii. Commissioner of Income-tax, Trichy Vs. City Union Bank Ltd., (2019) 106 taxmann.com 311 (Madras). iv. Commissioner of Income-tax-LTU Vs. Hyundai Motor India Ltd., (2019) 110 taxmann.com 460 (Madras). v. International Flavours Fragrances India (P.) Ltd. Vs. Joint Commissioner, (2020) 118 taxmann.com 494 (Madras). vi. Deputy Commissioner of Income Tax Vs. Visvas Promoters (P.) Ltd., (2019) 105 taxmann.com 65 (Madras).
Duty of assessee is limited to fully and "truly disclose all material facts" failure of AO to reach warranted conclusion could not confer jurisdiction for reopening assessment.	i. Calcutta Discount Co. Ltd. Vs. Income Tax Officer, (1961) 41 ITR 191 (SC). ii. Fenner (India) Ltd. Vs. Deputy Commissioner of Income-tax, (2000) 241 ITR 672 (Madras) / (1999) 107 TAXMAN 53 (MAD.)
When the reopening is quashed further directions to AO to check for any other grounds is unnecessary.	T. Stanes and Company Ltd. Vs. Deputy Commissioner of Income Tax, Corporate Circle I (2), Coimbatore, (2021) 123 taxmann.com 39 (Madras).

12. Per contra, Mr.A.P.Srinivas, the learned counsel for the respondent submits that the petitioner failed to make true and full disclosure before Assessing Officer during scrutiny. He further submits that the scrutiny was based on a reply to notice dated 25.08.2004 issued under Section 143(2) of the Income Tax Act, 1961. It is further submitted that the petitioner was specifically called upon to furnish the following details:-

1.....

17. Non-Recurring and Exceptional Items

(a) A claim of Rs.10 Crores under this head was made representing fees paid to Atlas Copco India Ltd. based on the valuation report received from an independent valuer for not competing with you for specified products. In this connection, you are requested to furnish the following:-

- i. Brief Note incorporating the circumstances under which the payment was made
- ii. Valuation report from the independent valuer based on which the payment is made.
- iii. Copy of agreement entered into by with Atlas Copco India Ltd. including all companies associated with it or with Atlas Copco, Sweden.
- iv. The details of the payment indicating the mode of payment made to each party with date of pay order / cheque etc.

13. In response to the same, the petitioner replied and misrepresented before Assessing Officer as follows:-

- i. Not to engage or to participate financially or technically or otherwise in any manner in participating in the manufacturing, production or design or marketing fields for a short period of time.
- ii. Not to provide any know how, technology, design or drawings in the matter of manufacture or production of similar products for a short period.
- iii. Not to assist in any competition of REL in carrying on or developing the specified products in the domestic market.
- iv. Not to canvass, solicit, approach or endeavour to entice supply or deal with these products for a specific period.
- v. Not to solicit for employment with CP group any person who is an employee of REL or employ any key employee of REL for a specific period.

14. He submits that Clause 2.4 of the II Agreement dated 17.08.2002 signed between the petitioner and two affiliate companies contemplated not only the payment of amount towards non-compete fee for a period of two years but also amounts towards the license granted by Chicago Pneumatic Tool Co. Ltd. to the petitioner under a Collaboration Agreement dated 07.11.1977. It is submitted that the right conferred therein

were perpetual and enduring in nature and the petitioner was free to license the right to manufacture and/or sell the specified products and/or disclose, impart and supply the know how received by it under the collaboration agreement to any person. It is therefore submitted that there was no restriction on manufacture and/or sale of the specified products in any part of the world by the petitioner. The Clause 2.4 of the said Agreement is reproduced below:-

2.4. Notwithstanding anything contained in the agreement dated 7th November, 1977 entered into between CP and REL (the petitioner) under which CP has inter alia granted to REL a license and know how to manufacture and sell the Specified Products ("Collaboration Agreement") CP and REL agree as follows:-

- (a) The license granted by CP to REL under the Collaboration agreement is perpetual and that REL shall be free to license the right to manufacture and/or sell the Specified Products and/or disclose, impart and supply the know how received by it under the Collaboration Agreement to any Person;
- (b) There shall be no restrictions on the manufacture and/or sale of the Specified Products in any part of the world by REL.

15. He therefore submits that there was material suppression of facts and therefore, there was no scope for interference. The learned counsel for the respondents further refers to the following decisions:-

- i. Indi-Aden Salt Mfg. & Trading Co. (P.) Ltd. Vs. Commissioner of Income Tax, (1986) 159 ITR 624 (SC) : (1986) 25 Taxman 356 (SC).
- ii. Sri Krishna (P.) Ltd. Vs. Income Tax Officer, (1996) 221 ITR 538 (SC) : (1996) 87 Taxman 315 (SC).
- iii. M/s. Phool Chand Bajrang Lal and Another Vs. Income Tax Officer and Another, (1993) 203 ITR 456 (SC) : (1993) 4 SCC 77.

16. The learned counsel for the respondents further submits that the decision of the Hon'ble Supreme Court in Calcutta Discount Co. Ltd. Vs. Income Tax Officer, (1961) 41 ITR 191 (SC) which was cited by the learned counsel for the petitioner, has itself answered the issue against the petitioner as follows:-

9. 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.

17. It is submitted that in the facts of the case, the respondents directed the petitioner to disclose the particulars. However, there was no clarity in the reply given by the petitioner to the notice issued under Section 143(2) of the Income Tax Act, 1961.

18. By way of rejoinder, the learned counsel for the petitioner submits that the decision of the Hon'ble Supreme Court in Calcutta Discount Co. Ltd. Vs. Income Tax Officer, (1961) 41 ITR 191 (SC) has also answered the issue as follows:-

20. To ascertain whether the Income Tax Officer could have had in mind any non-disclosure as a ground for thinking that by reason of such non-disclosure an underassessment had occurred – apart from what was mentioned in the affidavit – we enquired from respondent's counsel whether he could suggest any other non-disclosure that might have taken place. Mr Sastri suggested two. One is that the sales had not been disclosed; the other that the memorandum and articles of association of the Company had not been shown. This suggestion is against the record and we have no hesitation in repelling it. Not only is it not the ground set out by the Income Tax Officer at any stage not even in the affidavit in court, but the matters mentioned by the officer that the assessee had claimed that the profits realised were of a casual nature obviously indicate that the assessee disclosed that a surplus resulted from the sales which were also disclosed.

21. The assessment orders it is true do not mention the details of the sales. They state however that the audited accounts of the Company were furnished. The sales of shares were expressly mentioned in the report. In these circumstances it is reasonable to believe that as regards sale of shares full details were in fact disclosed.

22. Nor can we believe that the two Income Tax Officers L.D. Rozario and K.D. Banerjee concluded the proceedings without referring to the memorandum and articles of association of the company. These officers knew well that the Company was claiming to be an investment company only. They had to consider the question whether sales were of the nature of trade or of the nature of change of investment. It is unthinkable that they would not examine the memorandum of association. Besides, it is pertinent to note that in para 4 of his affidavit Kanakendra Narayan Banerjee refers

to the memorandum and articles of association and states that "by its memorandum of association the Company has been authorised to carry on the various kinds of business which have been specified in sub-section (1) and (2) of clause 3 of the said memorandum of associations". He does not say that the articles or the memorandum of association were not shown during the assessment proceedings for the years 1942-43, 1943-44 and 1944-45. If he had any reason to believe that these were not shown he would have certainly mentioned that fact. For that would undoubtedly amount to non-disclosure of a material fact.

23. It must therefore be held that the Income Tax Officer who issued the notices had not before him any non-disclosure of a material fact and so he could have no material before him for believing that there had been any material non-disclosure by reason of which an under-assessment had taken place.

19. I have considered the arguments advanced by the learned counsel for the petitioner and the learned standing counsel for the respondents.

20. This is the case where the petitioner had claimed that it had paid a sum of Rs.10 crores vide two agreements dated 17.08.2002 signed between the petitioner and its affiliate companies, namely, Atlas Copco India Limited and Chicago Pneumatic Tool Company (a company organized under the laws of the State of New Jersey, one of the United States of America).

21. In the first agreement, the petitioner had paid a sum of Rs.7.5 Crores as non compete fees for a period of two years to the Atlas Copco India Limited and in the second agreement, it had paid a sum of Rs.2.5 Crores to the same Company. It is not clear as to why two tripartite agreements were signed. Clause 2 of the respective agreements slightly varies. They are reproduced below:-

Clause 2 in the I Agreement	Clause 2 in the II Agreement
Restrictions 2.1. In consideration of the payment of the sum stated in Article 3 hereof, CP Group covenants with, agrees and undertakes to and in favour of REL that they will not, jointly or severally, and cause that their Affiliates do not, directly or indirectly alone or in combination with others: (a) for a period of two years from the date hereof canvass, solicit or entice, supply or deal with the Specified Products to or in relation to (i) any person who as of the date hereof or at any time during the period of two years prior to the date hereof is or has been a substantial customer of REL in the Territory or (ii) any of the persons listed in Schedule 2.1 (a) hereto and/or any of such persons affiliates; (b) for a period of two years from the date hereof, knowingly solicit for employment with CP Group any person who is an employee of REL at the date hereof or employ any of the key employees of REL listed in the Schedule 2.1 (b) hereto;	Restrictions 2.1. In consideration of the payment of the sum stated in Article 3 hereof, CP Group covenants with, agrees and undertakes to and in favour of REL that they will not, jointly or severally, and cause that their Affiliates do not, directly or indirectly alone or in combination with others: (a) for a period of five years from the date hereof engage or participate in, financially, technically or otherwise, in any manner whatsoever, in the manufacture, production, assembly and/or design of the Specified Products in an/or for the Territory or providing any services in connection therewith in and/or for the Territory; (b) for a period of five years from the date hereof provide any know how, technology, design, drawings or other assistance for the manufacture, production, assembly, design, marketing and sale of the Product in the Territory and in the event any know how, technology, design, drawings or other assistance for manufacture, production, assembly, design, marketing and sale of the Specified Products outside the Territory is provided, it will be on the condition that the Specified Products cannot be sold in India during the said five year period;

Clause 2 in the I Agreement	Clause 2 in the II Agreement
2.2. In the event that CP Group, or any Affiliate thereof, after the date of this Agreement shall acquire, whether by merger, asset purchase or stock purchase, any company or other business entity that is engaged in substantially, either in whole or in part, in the Business in the Territory, the conduct of such Business by such acquired company or other business entity shall not be subject to the provisions of this Agreement, provided that not more than ten percent (10%) of its gross revenues are derived from such Business conducted within the Territory.	(c) for a period of five years from the date hereof, assist any competitor of REL in carrying on or developing any Specified Products or Business which may in any way be the same or similar to and in competition with the Business in the Territory. 2.2. To the extent legally permissible to do so CP Group agrees and undertakes to and in favour of REL that they will, and will cause their Affiliates to, for a period of five years from the date hereof, not sell any Specified Products outside the Territory to any person which the CP Group knows or has reason to believe that the Specified Products sold will be re-sold in the Territory in any manner directly or indirectly CP Group shall discontinue any future sales of any Specified Products if REL brings to the notice of the CP Group of any such resale in the Territory of the Specified Products. 2.3. The CP Group acknowledge and agree with REL that each of the sub clauses contained in Clause 2.1 above constitutes an entirely separate severable and independent covenant by and restriction on them but the term of each shall run concurrently.

Clause 2 in the I Agreement	Clause 2 in the II Agreement
	2.4. Notwithstanding anything contained in the agreement dated 7th November, 1977 entered into between CP and REL (the petitioner) under which CP has inter alia granted to REL a license and know how to manufacture and sell the Specified Products ("Collaboration Agreement") CP and REL agree as follows: (a) The license granted by CP to REL under the Collaboration agreement is perpetual and that REL shall be free to license the right to manufacture and/or sell the Specified Products and/or disclose, impart and supply the know how received by it under the Collaboration Agreement to any Person; (b) There shall be no restrictions on the manufacture and/or sale of the Specified Products in any part of the world by REL.
Rs.7,50,00,000/-	Rs.2,50,00,000/-

22. It is not clear as to why two agreements were signed with the same parties and the payments were made only to the same Indian Company, namely, Atlas Copco India Limited. Clause 2.4 of the II Agreement seems to indicate that earlier a collaboration agreement dated 07.11.1977 was entered into between the petitioner and the Chicago Pneumatic Tool Company which had granted a license and know how to manufacture and sell the specified products which was being transferred permanently.

23. Clause 2.4 which has been extracted above also seems to indicate that the license granted by the Chicago Pneumatic Tool

Company to the petitioner was perpetual and that the petitioner was free to license the right to manufacture and sell the specified products and to disclose, impart and supply the know how received by it under the Collaboration Agreement to any person.

24. The valuation in the Agreement has not been clearly explained by the petitioner. In the above background, it is to be noted that when the detailed questionnaire was issued by the Assessing Officer under Section 143(2) of the Income Tax Act, 1961 to the petitioner, in its reply dated 25.01.2005, the petitioner did not make true and full disclosure inasmuch as reference to Clause 2.4 of the II Agreement dated 17.08.2002 was not made.

25. That apart, as per the decision of the Hon'ble Supreme Court in Calcutta Discount Co. Ltd. Vs. Income Tax Officer, (1961) 41 ITR 191 (SC), "it is not open to an assessee to say, I have produced account books and documents: You, the Assessing Officer, examine them, and find out the facts necessary particular for the 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".

26. Passages from paragraph Nos.20 to 23 extracted above of the above decision were made in the context of facts and peculiar to the case in Calcutta Discount Co. Ltd. Vs. Income Tax Officer, (1961) 41 ITR 191 (SC). Therefore, they cannot be relied upon.

27. However, though it was submitted that the Indian Company, namely Atlas Copco India Limited had paid a sum of Rs.15 Crores to the petitioner, it is noticed from the Annual Report filed for the financial year ending on 31.03.2005 that only a sum of Rs.1,50,000/- was paid under the II Agreement dated 17.08.2002. Further, it is also not clear whether the tax was indeed paid in the returns filed for the previous year 2004-2005/for the Assessment Year 2005-2006 as the total income declared was about Rs.9 Crores. Therefore, there are also disputed questions of facts involved in the present case as to whether the tax has been paid by the petitioner during the succeeding assessment years.

28. In my view, the decision of the Hon'ble Supreme Court in Indi-Aden Salt Mfg. & Trading Co. (P.) Ltd. Vs. Commissioner of Income Tax, (1986) 159 ITR 624 (SC) : (1986) 25 Taxman 356 (SC) cited by the learned counsel for the respondent squarely applies

to the facts of the present case. I therefore conclude that the respondent had correctly invoked the jurisdiction under Section 148 for the purpose of Proviso 2 to Section 147 of the Income Tax Act, 1961.

29. In the light of the above observations, I am inclined to dismiss this Writ Petition. Though this Writ Petition is being dismissed, it is made clear that the respondent shall pass the re-assessment order in accordance with law uninfluenced by the observations contained herein as reasoning given in this order is only to come to a conclusion that there is no case made out for interference under Article 226 of the Constitution of India. Therefore, all the issues are left open for the petitioner to canvass its case before the respondent to pass a speaking order of re-assessment. While passing the re-assessment order, the respondent shall confine itself only to the reasons given for reopening the assessment vide communication dated 05.03.2010 for the subject Assessment Year 2003-2004.

30. Since the dispute pertains to the Assessment Year 2003-2004, the respondent is directed to pass such re-assessment order, within a period of three months from the date of receipt of a copy of this order. Needless to state, before such re-assessment order is passed, the petitioner shall be heard in accordance with law.

31. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner of Income-tax,
Company Circle-I (1), Race Course Road, Coimbatore - 641 018.

+1cc to Mr.G.Baskar, Advocate, Sr.No.11301

+1cc to M/s.Hema Muralikrishnan,

Senior Standing Counsel, Sr.No.11336

W.P.No.29542 of 2010
and M.P.No.1 of 2010

GPL(CO)
KKV/24/03/2021