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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18-08-2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.2024 of 2016

And

WMP No.1765 of 2016

M/s.Cognizant Technology Solutions India P. Ltd.,
6th Floor, New No.165/Old No.110,
Menon Eternity Building,
St. Mary's Road,
Chennai-600 018
Represented by its Director

..Petitioner

vs.

1. The Assistant Commissioner of Income Tax,
Large Taxpayer Unit,
1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar Western Extension,
Chennai-600 101.
2. The Deputy Commissioner of Income Tax,
Large Taxpayer Unit,
1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar Western Extension,
Chennai-600 101.
3. The Commissioner of Income Tax,
Large Taxpayer Unit,
1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar Western Extension,
Chennai-600 101.

..Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the first respondent pertaining to the reopening notice dated 28.03.2015 for AY 2010-2011 and the consequential communication dated 02.11.2015 (Prayer amended vide order of Court dated 29.04.2021 made in WMP No.10978 of 2021 in WP No.2024 of 2016).

For Petitioner : Mr.Srinath Sridevann

For Respondents : Mr.A.P.Srinivas, Senior Standing
Counsel for Income Tax.



O R D E R

The writ petition has been instituted to quash the initiation of reopening proceedings under Section 148 of the Income Tax Act, 1961 [hereinafter referred to as the 'Act', in short] and the consequential order disposing of the objections filed by the petitioner in proceedings dated 02.11.2015.

2. The petitioner is a Private Limited Company engaged in the business of development of computer software and related services and its export. It provides various software solutions to variety of industries. The petitioner carries out its business activities through various units set up in Software Technology Parks (STPs) and Special Economic Zones (SEZs) and claims deduction under Sections 10A and 10AA of the Act.

3. The petitioner filed its return of income for the assessment year 2010-2011 on 13.10.2010. It was processed under Section 143(1) of the Act, on 27.02.2012. The petitioner filed revised return of income on 31.03.2012 and the case was selected for scrutiny by the Deputy Commissioner of Income Tax/second respondent under Section 143(2) of the Act on 06.09.2011. The details were called for by the first respondent and the petitioner also furnished all details, informations, books of accounts etc.

4. The case of the petitioner was referred to the Transfer Pricing Officer for necessary verification under Section 92CA of the Act, as the petitioner has international transactions with its group of Companies abroad. The Transfer Pricing Officer vide his order dated 22.01.2014, accepted the arm's length price of the transactions of the petitioner with that of its group Companies abroad. Consequently, no transfer pricing adjustments were made by the second respondent.

5. The second respondent passed the assessment order under Section 143(3) r/w Section 92CA of the Act for the assessment year 2010-2011 on 31.03.2014, certain dis-allowances were made in the assessment order. After making dis-allowances and adjustments, the second respondent assessed the income of the petitioner at Rs.10,97,21,20,974/- under Section 115JB of the Act as against the returned income of Rs.10,95,97,24,038/-. Consequently, a demand of Rs.26,42,620/- was raised vide demand notice dated 31.03.2014 under Section 156 of the Act.

6. The first respondent issued the impugned notice under Section 148 of the Act for reopening of assessment for the assessment year 2010-2011. The petitioner responded to the notice and requested to furnish the reasons for reopening and the reasons sought for were provided by the respondents.



7. The petitioner submitted its detailed objections, questioning the legal validity of the initiation of reopening proceedings and the said objections were also disposed of by the first respondent in proceedings dated 02.11.2015. Thus, the petitioner is constrained to move the present writ petition.

8. The learned counsel appearing on behalf of the petitioner contended that the case on hand is a classic case of change of opinion and the reopening proceedings are initiated within a period of four years.

9. In order to establish the ground regarding the change of opinion, the petitioner has drawn the attention of this Court with reference to the issues adjudicated in the original assessment proceedings as well as in the assessment order. The audit objections were also taken into consideration for reopening, which is perverse. The petitioner, in its return of income, has clearly mentioned about the tax relief sought for and the block entitled for depreciation at 60%.

10. Perusal of the return of income submitted by the petitioner would reveal that the tax relief mentioned under Section 90 of the Act, is Rs.1,02,96,469/-. The block entitled for depreciation at 60% is mentioned as Rs.1,27,48,46,244/-. Similarly, in the revised return filed by the petitioner, any other benefit to employees in respect of which an expenditure has been incurred at 15J is stated as Rs.6,73,37,94,692/- In the same revised return, the petitioner has claimed the tax relief at 10(a) under Section 90 of the Act, as Rs.2,39,15,527/-.

11. Citing these particulars provided by the petitioner both in the original return of income as well as the revised return of income filed after correction, contended that the petitioner has not suppressed any facts, but provided those facts in detail for the purpose of assessment and the said particulars were scrutinised at length and an assessment order was passed. In proceedings dated 15.01.2014, issued under Section 142 (2) of the Act for scrutiny assessment, the said issues were elaborately considered.

12. In respect of stock compensation expenses, the petitioner relied on the query raised by the Assessing Officer at paragraph-7 in the proceedings dated 15.01.2014 and regarding forward contracts paragraph-1(g) is relied on, as far as depreciation of software is concerned, paragraph-8 of the said proceedings are relied upon and regarding excess double tax recovery under Section 90, paragraph-9 of the proceedings dated 15.01.2014 is relied upon.



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13. Regarding the reasons furnished for reopening of assessment, it is clarified that the very same materials were initially sought for by the original Assessment Officer, the petitioner in turn submitted the informations and the materials, which were considered by the Assessing officer and a final assessment order was passed on 31.03.2014 for the assessment year 2010-2011.

14. When the very same materials which were furnished, scrutinised, considered and a decision is taken, there is no reason for initiation of reopening proceedings and therefore, the respondents have miserably failed to establish that there is a tangible material for invoking Section 147 of the Act. Thus, the very initiation is in violation of the essential ingredients contemplated under Section 147 of the Act. Regarding the other grounds raised for reopening, depreciation claimed for the unit at Kolkatta Bantala (SEZ), the petitioner has stated that the said issue was also elaborately considered.

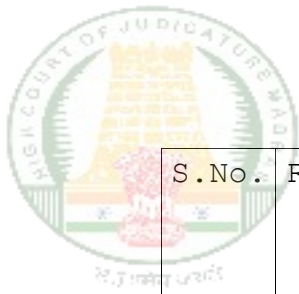
15. Relying on the assessment order, more specifically in tax computation form, the learned counsel for the petitioner has stated that the relief under Section 189(1)/under Section 90, under Section 91 of the Act, has been stated as Rs.2,39,15,527/-, which is tallying with the revised return of income filed by the petitioner.

16. It is contended that an audit objection, per se, cannot be a source for initiation of reopening proceedings.

17. In the present case, audit objection is relied upon without considering the fact that the subjects discussed in the audit objection were elaborately considered by the Assessing Officer and findings are provided in the assessment order. Thus, the entire exercise made for invoking Section 147 of the Act is based on the change of opinion and not on the basis of any tangible material as required under Section 147 of the Act.

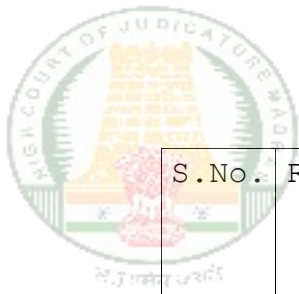
18. The learned counsel for the petitioner relied on the reasons furnished by the first respondent in proceeding dated 28.08.2015 for reopening of assessment and compared the said reasons with reference to the detailed objections filed by the petitioner vide letter dated 25.09.2015.

19. The petitioner submitted its objections for all the reasons stated by the first respondent for reopening of assessment and furnished reply with reference to the assessment order passed by the Assessing Officer. The details of the objections read as under:-

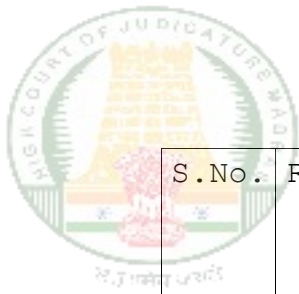


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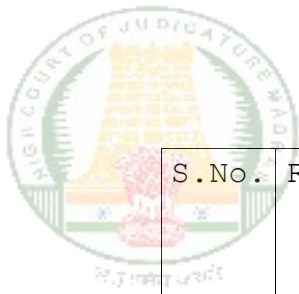
S.No.	Reason Provided	Materials/evidence relied on as evident from the letter dated 28 th August, 2015	Manner in which the issue was dealt with during the assessment proceedings under Section 143(3) of the Act
1.	Stock compensation recharge expense to be disallowed in computing the income under the head 'profits and gains of business or profession'. (Points 1 and 3 of the letter dated 28 th August, 2015)	* Schedule 13 to profit and loss account for the year ended 31 March 2010, wherein an amount of Rs.673,37,94,692/- has been claimed as Stock Compensation expense by the Assessee. * Disclosure of expenditure incurred in foreign currency as part of the Notes to accounts of the Financial Statements wherein stock compensation recharge expense is disclosed as expenditure incurred in foreign currency.	* In Point No.7 of the notice under Section 142(1) dated 15 January 2014 [enclosed as Annexure 4(a)] the Assessee was asked to show cause as to why stock compensation expense should not be treated as notional loss and also to produce a copy of the response filed with Transfer Pricing Officer. * In this regard, the Assessee had provided its responses vide submission dated 28 January 2014 (Para 7) and 7 February 2014 (Para 4, Annexure 5) as to why the stock compensation expenses debited in the profit and loss account shall be treated as an allowable expenditure in computing the income under the head 'profits and gains of business or profession' [copies of the aforesaid submissions are enclosed as Annexure 4(b)]. * The Assessee's submission was accepted and the stock compensation recharge expense was allowed as a deduction in computing the income of the Assessee.



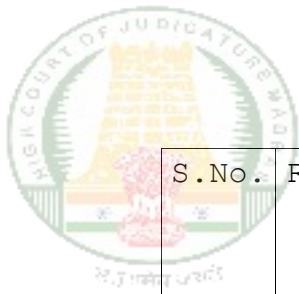
S.No.	Reason Provided	Materials/evidence relied on as evident from the letter dated 28 th August, 2015	Manner in which the issue was dealt with during the assessment proceedings under Section 143(3) of the Act
2.	Tax holiday deduction to be denied on the gain on restatement of forward contract in the AY 2010-11. (Point 2 of the letter dated 28 August 2015)	* Statement of computation of total income (under provisions other than Section 115JB of the Act) and Notes to accounts of Financial Statements (Note No.6) wherein the Assessee has disclosed the gain on restatement of forward contracts.	* In Point No.1(g) of the notice under Section 142(1) dated 15 January 2014 the Assessee was asked to furnish the unit-wise details of the foreign exchange gain/loss. * In this regard, the Assessee had provided its response vide submission dated 6 March 2014 (Annexure 1). * Your goodself's predecessor after pursuing the same, requested the Assessee to clarify its stand with regard to claim of tax holiday deduction on foreign exchange gain/loss on restatement of EEFC account balances, which was clarified by the Assessee vide its submission dated 28 March 2015 [copy of the submission enclosed as Annexure 4(c)]. *Thus, it is evident that there was application of mind by your predecessor on the various components of the foreign exchange gain/loss (including gain on restatement of forward contracts) and sought to probe further only into that relating to restatement of EEFC balances.



S.No.	Reason Provided	Materials/evidence relied on as evident from the letter dated 28 th August, 2015	Manner in which the issue was dealt with during the assessment proceedings under Section 143(3) of the Act
3.	Depreciation on computer software to be restricted to 25 percent as against 60 percent claimed by the Assessee. (Point 4 of the letter dated 28 August 2015).	* Depreciation schedule as per Form No.3CD (Schedule II) wherein the Assessee has claimed depreciation at the rate of 60 per cent on Computer software.	*In Point No.9 of the notice under Section 142(1) dated 15 January 2014 the Assessee was asked to furnish details of assets in the nature of 'UPS-Battery' included under the block 'Computers'. * In this regard, the Assessee had provided its response vide Para 8 to submission dated 28 January 2014 [copy of the submission enclosed as Annexure 4 (d)]. * It is evident that there was application of mind by your goodself on the depreciation schedule forming part of the tax audit report and decided to verify only whether depreciation on 'UPS-Battery' is claimed at higher rate as part of computers.

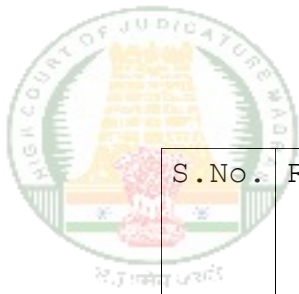


S.No.	Reason Provided	Materials/evidence relied on as evident from the letter dated 28 th August, 2015	Manner in which the issue was dealt with during the assessment proceedings under Section 143(3) of the Act
4.	Loss of Rs.50,38,20,000/- on account of restatement of forward contracts incurred in AY 2009-10 disallowed in the said year not to be excluded in computing the income for AY 2010-11. (Point 5 the letter dated 28 August 2015).	* Statement of Computation of total income wherein the said amount (disallowed in AY 2009-10) has been deducted to arrive at the income chargeable under the head 'profits and gains from business or profession'.	* In Point No.11 of the notice under Section 142(1) dated 15 January 2014 the Assessee was asked to furnish necessary reconciliation for unrealised loss on forward contracts disallowed in AY 2009-10. * In this regard, the Assessee had provided its response vide submission dated 016 March 2014. The statement of computation of total income for the AY 2009-10 wherein the said sum has been added back to arrive at the income under the head profits and gains of business or profession had been enclosed as Annexure 6 thereto [copy of the submission enclosed as Annexure 4(e)]. * Given that the amount of loss not claimed as a deduction in AY 2009-10 has now not been offered to tax in AY 2010-11 (when the same was reversed/credited to profit and loss account), the same was accepted by your goodself's predecessor and no adjustment was made.



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S.No.	Reason Provided	Materials/evidence relied on as evident from the letter dated 28 th August, 2015	Manner in which the issue was dealt with during the assessment proceedings under Section 143(3) of the Act
5.	Relief granted under Section 90 of the Act towards tax paid in foreign countries amounting to Rs.2,39,15,527/- to be withdrawn due to absence of details regarding the same and appropriate disallowance of deduction under Section 10A/10AA to be made. (Point 6 of the letter dated 28 August 2015).	* Statement of Computation of total income for the subject AY	* The relief has been granted in the intimation under Section 143(1) of the Act dated 27 February 2012 and the statement of computation of tax enclosed with the assessment order dated 31 March 2014.



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S.No.	Reason Provided	Materials/evidence relied on as evident from the letter dated 28 th August, 2015	Manner in which the issue was dealt with during the assessment proceedings under Section 143(3) of the Act
6.	Depreciation on fixed assets in respect of Kolkata Bantala SEZ unit to be restricted to 50 percent of the applicable rate of depreciation as the assets have been used for less than 180 days during the relevant previous year. (Point 7 of the letter dated 28 August 2015).	* Annexure A to Form 56F pertaining to the Kolkata Bantala SEZ unit.	* In Point No.9 of the notice under Section 142(1) dated 15 January 2014 the Assessee was asked to provide the details of addition to fixed assets. * In this regard, the Assessee had provided as Annexure 10(b) to the submission dated 28 January 2014, the detailed breakup of the additions to fixed assets at Kolkata Bantala SEZ Unit showing specifically the date on which the same have been put to use for claiming depreciation under Section 32 of the Act [copy of the submission enclosed as Annexure 4 (f)]. * The same were duly perused by your goodself's predecessor and the details provided were accepted. Accordingly, depreciation was allowed in the regular assessment made under Section 143(3) of the Act.

20. The petitioner has further submitted the rulings to establish its contentions and the grievances of the petitioner are that none of the objections raised are dealt with and, in an appropriate manner as per the directives of the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd vs. Income Tax



Officer and Others [(2003) 1 SCC 72]. In other words, the learned counsel for the petitioner reiterated that the Apex Court of India ruled that Competent Authority should pass a speaking order. The speaking order must be with reference to the objections raised. Thus, non-consideration of the objections in a subjective manner is improper and not in consonance with the directives issued for the disposal of the objections.

21. The learned counsel for the petitioner solicited the attention of this Court regarding the order impugned dated 02.11.2015, wherein the objections submitted by the petitioner were rejected. It is contended that the reasons furnished for reopening of assessment is verbatim reproduced and no findings are made available with reference to the objections raised by the petitioner. Thus, the said order impugned cannot be construed as a speaking order for the purpose of complying with the directives issued by the Apex Court of India.

22. In support of the grounds raised, the petitioner relied on the judgment in the case of Commissioner of Income Tax vs. Pentasoft Technologies Ltd [(2013) 33 Taxmann.com 570 (Madras)], wherein the Hon'ble Division Bench of this Court considered the question whether due to diminish in rupee value, the respondent-Assessee gained a higher sum in rupee value while earning foreign exchange and the said difference in rupee value was allowable as a deduction under Section 10A of the Income Tax Act, 1961.

23. In the present case also, regarding the foreign trade transactions, the petitioner was not subjected themselves to value fluctuations and as per the agreement, they are protected from such fluctuations. Therefore, the presumption created by the first respondent in this regard is far beyond the truth and hence the initiation is based on change of opinion and not based on any materials on record. Paragraph-5 of the abovesaid judgment, reads as under:-

"5. Viewed in that respect, the conclusion of the Tribunal, as held above, cannot be held to be illegal. We, therefore, do not find any question of law, much less substantial question of law, to be considered in this appeal. The appeal, therefore, fails and the same is rejected. Consequently, connected M.P.No.1 of 2010 is also dismissed.

24. Another case with regard to the same issue of foreign transactions in the case of Commissioner of Income Tax-16, Mumbai vs. D.Chetan and Co. [(2016) 75 Taxmann.com 300 (Bombay)], the Bombay High Court considered the speculative transactions (forward contracts) and made the following observations in paragraph-7 of its judgment, which reads as



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identical/similar to the present facts, then reliance would have been placed by the Revenue upon it at the hearing before the Tribunal. The impugned order does not indicate any such reliance. It appears that in S. Vinodkumar (supra), the Tribunal held the forward contract on facts before it to be speculative in nature in view of Section 43 (5) of the Act. However, it appears that the decision of this court in CIT v. Badridas Gauridas (P) Ltd. [(2003) 261 ITR 256] was not brought to the notice of the Tribunal when it rendered its decision in S. Vinodkumar (supra). In the above case, this court has held that forward contract in foreign exchange when incidental to carrying on business of cotton exporter and done to cover up losses on account of differences in foreign exchange valuations, would not be speculative activity but a business activity."

25. Regarding the grounds raised for 60% dis-allowance instead of 40% as claimed by the petitioner-Assessee, the judgment in the case of Deputy Commissioner of Income Tax vs. Cognizant Technology Solutions India Pvt Ltd (petitioner's case) [pronounced on 10.02.2012 in ITA No.1921/Mds/2010], the Income Tax Appellate Tribunal, Chennai Bench, in paragraph-5, held in favour of the petitioner as under:-

"5. We have considered the rival submissions. It is noticed that the issue of re-opening has been decided by the learned CIT (A) by following the decision of the Hon'ble Full Bench of the Delhi High Court in the case of Kelvinator of India Ltd. reported in 256 ITR 1 which has been approved by the Hon'ble Supreme Court in 320 ITR 561. It is also noticed that the learned CIT(A) following the decision of the Hon'ble Supreme Court in the case of GKN Driveshafts, reported in 259 ITR 19 (S.C) has held that as the Assessing Officer has not passed a speaking order in regard to the objections raised by the assessee, the assessment is quashed. This finding of the learned CIT(A) is not acceptable insofar as per the decision of the Hon'ble Supreme Court in the case of GKN I.T.A. No.1921/Mds/2010 Driveshafts, the Assessing Officer is duty bound to give the reasons recorded for the purpose of re-opening



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to the assessee as also pass a speaking order dealing with the assessee's objections, if any. Just because the Assessing Officer has not passed a speaking order in regard to the objections raised by the assessee, it would not mean that the re-opening would be invalid. However, in the present case as the facts are clearly available and as it is noticed that all the facts necessary for adjudicating the issue were available before the Assessing Officer when the original assessment order itself was passed u/s 143(3) on 17-03-2005, in view of the decision of the Hon'ble Supreme Court in the case of Kelvinator of India Ltd., referred to supra, the re-opening is liable to be held to be invalid as the same is beyond the period of 4 years and the re-opening is only on the basis of change of opinion. In the circumstances, the re-opening of the assessment stands quashed by following the principles laid down by the Hon'ble Supreme Court in the case of Kelvinator of India Ltd., referred to supra. In the circumstances, the appeal of the Revenue is dismissed."

26. In the case of Commissioner of Income Tax-8 vs. I-Flex Solutions Ltd [(2014) 46 Taxmann.com 88 (Bombay)], the High Court of Bombay held that "Income Tax Rules computed software was clubbed with computers as the depreciable asset enjoying rate of depreciation at 60%". The High Court of Bombay, in paragraph-5 of its judgment, observed as under:-

"5. The question is therefore for a prior year was the position as understood otherwise. In the facts and circumstances of the Assessee's case, both the Commissioner of Income Tax (Appeals) and the Tribunal found that the software cannot be seen in isolation and delinked from the computer. The reasons that are assigned is that what has been always understood as obvious is now apparent by the amendment. The Commissioner of Income Tax (Appeals) found that in the case of the present Assessee, the software cannot be worked in isolation. It has to be loaded on the computer. Therefore, in the present case, it is an integral part of the computer. In these circumstances, the finding of fact does not require any interference in our appellate jurisdiction as the same does not raise any



substantial question of law.”

27. In the case of Commissioner of Income Tax vs. Computer Age Management Services (P) Ltd [(2019) 109 Taxmann.com 134 (Madras)], wherein this Court considered the depreciation allowance/rate of (software) and in paragraphs-3, 7, 8 and 10, made the following observations:-

“3. The Revenue has filed these appeals by raising the following substantial questions of law :

“Common Question in all the TCAs:

Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the software license acquired by the assessee are in the nature of software application and hence, the assessee was eligible to claim depreciation at 60% ?

Additional Question in TCA.No.412 of 2019 (AY 2014-15) :

Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the non compete fee was a revenue expenditure and had to be allowed in one go irrespective of the method of accounting adopted by the assessee?”

7. As noticed above, the assessee is in the business of registrar and transfer agent as licensed by the SEBI handling large volume of market sensitive data and information, which is available only through general customized application software. The assessee acquired software licenses capitalized during the relevant years in the books of accounts and claimed depreciation at 60%. In paragraph 20 of the order passed by the Tribunal, the nature of items, on which, the assessee claimed depreciation at 60%, has been listed out and they are 17 in number, from which, we find that substantial amount of server licences, which have been obtained by the assessee are customized and some of which are single user licenses.

8. The question would be as to whether the software application, which was acquired by



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the assessee would fall under Entry 5 of Part A of New Appendix I, which states that computers including computer software are entitled to depreciation at 60%. Note 7 of the Appendix defines the expression 'computer software' to mean any programs recorded on CD or disc, tape, perforated media or other information storage devices.

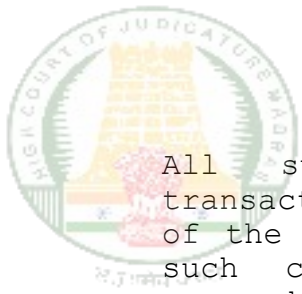
10. We find that Part B of New Appendix I is a general entry whereas Entry 5 of Part A of New Appendix I is a specific entry read with Note 7. In the instant case, the Tribunal, in our considered view, rightly held that the assessee is eligible to claim depreciation at 60%."

28. The grounds raised regarding the depreciation, the case of Assistant Commissioner of Income Tax vs. Ashima Syntex Ltd [2000 SCC OnLine Guj. 470], wherein the Gujarat High Court, in paragraph-16 of its judgment, observed as under:-

"16. Learned counsel for the Revenue placed strong reliance on the decision in the case of Additional CIT v. Speciality Paper Ltd., [1982] 133 ITR 879 (Guj) (Appex.) which is an appendix to the decision in the case of Hotel Alankar v. CIT, [1982] 133 ITR 866 (Guj). In the case of Speciality Papers Ltd., [1982] 133 ITR 879 (Guj), the question referred for opinion of the court was under (page 879):

"Whether, on the finding of the Tribunal that the assessee had been equipped with all the plant and machinery including wet press found necessary to produce the requisite quality of paper and substantial quantity of raw materials necessary for the manufacture of products by the end of June, 1966, the assessee must be held to have set up its business at that point of time, although only trial production followed thereafter and regular commercial production commenced some time later?"

29. Relying on the abovesaid judgments, the learned counsel for the petitioner reiterated that based on certain incorrect informations, the respondents have initiated reopening proceedings and not actually based on any tangible materials.



All such forward contracts details regarding foreign transactions, depreciation and 60% dis-allowance, every aspect of the matter was adjudicated by the Assessing Officer and all such clarifications were sought for during the scrutiny proceedings, and the petitioner furnished the required details. While-so, the respondents by drawing certain incorrect inferences initiated reopening proceedings, which is untenable. The reopening shall be made only if tangible materials are available on record. In the absence of any such materials, mere interpretation of the issues already adjudicated by the original Assessing Officer, reopening of assessment cannot be done and therefore, it is to be construed as change of opinion for all purposes and accordingly, the impugned orders are liable to be set aside.

30. As far as the abovesaid judgments, relied on on behalf of the writ petitioner, are concerned, the High Court of Bombay, in D.Chetan and Co. case (cited supra), considered the impugned order passed by the Tribunal while upholding the findings of the Commissioner (Appeals). In paragraph-7, the Bombay High Court held based on the case of S.Vinodkumar Diamonds (P) Ltd., that forward contract in foreign exchange when incidental to carrying on business of cotton exporter and done to cover up losses on account of differences in foreign exchange valuations, would not be speculative activity but a business activity. The Bombay High Court considered various facts in that particular case in view of the reason that the order of the Tribunal was under challenge and the Tribunal upheld the findings of the Commissioner (Appeals). Thus, the said judgment cannot be relied upon as the present writ petition is challenging the reopening proceedings. Therefore, adjudication of those facts in the case before the Bombay High Court is not applicable to the facts of the present case.

31. So also in the case of Pentasoft Technologies Ltd (cited supra), the Hon'ble Division of this Court considered the order passed by the Income Tax Appellate Tribunal (ITAT), wherein the question was raised whether on the facts and circumstances of the case, the ITAT was right in law in holding that gains on account of foreign exchange fluctuation held to have direct nexus with the export sales of the Assessee. In the present case also no doubt, the petitioner has stated that its foreign exchange transactions are protected by virtue of an agreement. However, those facts are to be adjudicated elaborately by the Assessing Officer in the present case. In the case of Pentasoft Technologies Ltd (cited supra), also was the tax case appeal, which was decided by the Division Bench and therefore, the said case cannot be applied without complete adjudication of facts and circumstances in the present case on hand.



32. In the case of Computer Age Management Services (P) Ltd (cited supra), the Hon'ble Division Bench of this Court considered the findings of the Income Tax Appellate Tribunal that the nature of items, on which, the Assessee claimed depreciation at 60%, has been listed out and they are 17 in number, from which, we find that substantial amount of server licenses, which have been obtained by the Assessee are customised and some of which are single user licenses. On the basis of the above facts, the Hon'ble Division Bench of this Court held that the Tribunal was right in holding that the Assessee is eligible to claim depreciation at 60%. However, in the present case, what was disposed by the Assessing Officer is the objections filed on the reasons to believe and there was no complete adjudication. The facts and circumstances in depth are to be adjudicated during the course of reopening proceedings. In the absence of any such elaborate adjudication, one cannot form an opinion that whether the petitioner is entitled for the relief or not. Therefore, the disposal of objections in the present case, cannot be compared with the case where the Courts have examined the validity of the order passed by the Commissioner (Appeals) and the Income Tax Appellate Tribunal. Therefore, the petitioner has to place all these judgments and facts before the Assessing Authority, who in turn shall consider the same and pass an assessment order. Only with the said assessment order, the Assessee will come to know the reason for dropping of further actions or its acceptance or otherwise.

33. In petitioner's own case before the Income Tax Appellate Tribunal also, the Tribunal formed an opinion that it was change of opinion. This Court is of the considered opinion that whether the reasons furnished for reopening of assessment is change of opinion or the Assessment Officer has reason to believe is to be decided independently and as the facts and circumstances of each case differs from one and the other. Thus the said judgments are of no avail to the case of the petitioner. All the cases cited by the petitioner and its principles may be placed before the Authorities Competent during the course of reassessment proceedings. However, this Court, at this juncture, cannot appreciate the facts in detail for the purpose of application of the judgments, unless those facts are completely adjudicated and findings are arrived. In the absence of any factual findings, the principles in certain circumstances cannot be applied for the purpose of grant of exoneration from the reopening proceedings. As the writ petition is filed challenging the very reopening of assessment, this Court is of an opinion that the judgments, relied on by the petitioner, are of no avail to the petitioner.

34. The learned Senior Standing Counsel, appearing on behalf of the respondents, disputed the grounds raised on behalf



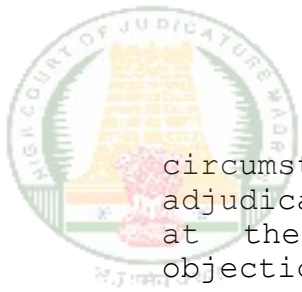
of the petitioner and contended that the reopening was not made based on change of opinion. It is a case where the Assessing Officer has reason to believe for reopening of assessment. The reasons were furnished as per the directives of the Apex Court in the case of GKN Driveshafts (India) Ltd vs. Income Tax Officer and Others [(2003) 1 SCC 72] has been scrupulously followed. The objectives submitted by the petitioner were also considered by the Assessing Officer as required under law and therefore, there is no infirmity as such and the reopening proceedings initiated may be allowed to be concluded by following the procedures as contemplated under the Act.

35. To substantiate the said contention, the learned Senior Standing Counsel directly referred to the reasons furnished for reopening of assessment. The reasons furnished would establish that in computing the total income of the Assessee for the assessment year 2010-2011, part of the expenses amounting to Rs.2,43,69,22,379/- which related to the assessment year 2009-2010 were not excluded. This has resulted in under computation of income for the assessment year 2010-2011 by Rs.2,43,69,22,379/-.

36. In paragraph-2 also the Assessing Officer has stated that in the computation of income in respect of the STP and other units located in SEZs, the Assessee has claimed a total deduction of Rs.12,17,34,81,284/- under Sections 10A and 10AA of the Act. The above deduction included, deduction claimed on the amount of Rs.2,82,23,12,353/- claimed as gain from outstanding forward contracts. It is observed from the Notes on Accounts that the Company uses foreign exchange forward contracts to hedge its exposure to movements in foreign exchange rates. Forward contracts are fair valued at each reporting date. The resultant gain or loss from these transactions is recognised in the profit and loss account.

37. The Assessing Officer has stated that the income from forward contract is not derived from the business of the undertakings, proportionate dis-allowance of deduction under Section 10A/10AA of the Act, based on the method adopted by the Assessing Officer in dis-allowances made under Section 14A and 40(a)(i), which worked out to Rs.2,24,81,46,496/- as detailed needs to be made and the income brought to tax as per the regular provisions of the Act.

38. Citing other reasons as stated by the first respondent in proceedings dated 28.08.2015, the learned Senior Standing Counsel reiterated that the reasons in entirety furnished to the Assessee would reveal that there is a case for reason to believe and accordingly, the Assessing Officer initiated proceedings under Section 147/148 of the Act. In such



circumstances, the disputed facts, if any, raised are to be adjudicated during the course of reopening proceedings and not at the stage of furnishing reasons and disposal of the objections filed by the petitioner.

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39. The learned Senior Standing Counsel drew a distinction between an assessment order to be passed and the order disposing of the objections filed by the petitioner on initiation of reopening proceedings under Section 147/148 of the Act. It is not as if all the merits disputed facts raised by way of an objection needs to be adjudicated in entirety. While disposing of the objections, what is required under the provisions of the Act is that the Assessing Officer must have reason to believe for reopening of assessment and therefore, the contentions raised in this regard by the petitioner that the objections were not considered in entirety is far beyond the truth.

40. The Assessing Officer, while disposing of the objections filed by the petitioner, considered the same and passed orders. However, adjudication of the disputed facts on merits need not be done at the stage of disposing of the objections filed with reference to the reasons furnished for reopening of assessment. The petitioner/Assessee would be getting further opportunity to furnish further documents and informations for the purpose of completing the reassessment proceedings. Therefore, what is required is to submit objections on the reasons to believe and such objections are to be disposed of objectively. The disposal of the objections submitted by the Assessee on the reasons furnished cannot be compared with the final assessment/reassessment orders to be passed after complete adjudication of disputed facts and the materials available on record.

41. Drawing distinction in this regard, the learned Senior Standing Counsel pointed out the manner in which the objections filed by the petitioner was disposed of in the impugned proceedings dated 02.11.2015. The learned Senior Standing Counsel contended that broadly, two objections are raised by the petitioner. One relating to audit objections/queries and the other is about the change of opinion.

42. To substantiate the said two objections, the Assessee has furnished certain details and relying on the materials already adjudicated by the Assessing Officer. No doubt, the Assessee/petitioner had furnished the factual details, which were submitted and scrutinised by the Assessing Officer while passing the original assessment order. However, the authority on reopening of assessment, found that the Assessee's objections are not acceptable in view of the fact



that certain new materials emerged from and out of the same materials, which were produced and such new informations or materials required reopening of assessment, as the Competent Authority has reason to believe that the income chargeable to tax escaped assessment. When the Assessing Officer has reason to believe with reference to certain materials or informations not adjudicated in a manner such materials are to be adjudicated, then the authority is empowered to initiate the reopening proceedings.

43. The case of the petitioner for reopening of assessment is falling within a period of four years and thus the conditions stipulated under the proviso clause to Section 147 of the Act, would not be applicable. If the Assessing Officer has reason to believe for reopening, then it is sufficient for such reopening of assessment and further adjudication on merits are to be undertaken during the course of reassessment proceedings. The learned Senior Standing Counsel raised a question by stating that if all such materials in entirety are adjudicated, while disposing of the objections submitted on the reasons furnished, then nothing would remain for further adjudication and that exactly is not the objective of the opportunity to be provided to the Assessee. What is required is that whether the objections are considered in a genuine manner or not. Subjective satisfaction may not be required at the stage of disposal of the objections filed on the reasons furnished. If the reasons to believe exist it is sufficient enough for reopening of assessment, and the sufficiency of the reasons cannot be gone into at that stage. In this context, the spirit of the directives issued in GKN Driveshafts case (cited supra) is to be looked into and applied.

44. Considering the arguments advanced in this regard, it is necessary to understand the spirit of the directives issued by the Hon'ble Supreme Court of India in GKN Driveshafts case (cited supra). As per the directives, the Assessing Officer is bound to furnish the reasons for reopening within a reasonable time. On receipt of the reasons, the Noticee is entitled to file objections, if any, to the Assessing Officer, who is bound to dispose of the same by passing a speaking order.

45. The Hon'ble Supreme Court of India formulated procedures for disposing of the objections in order to ensure that the principles of natural justice has been complied with. Thus, the directives in GKN Driveshafts case (cited supra) must be understood in its context and certainly not beyond the context in which the directives are issued. Admittedly, the Income Tax Act, 1961 itself contemplates an opportunity to be provided to an Assessee. Such an opportunity provided is elaborated by the Apex Court to ensure the compliance of



principles of natural justice through GKN Driveshafts case (cited supra). Accordingly, the reasons must be provided, objections may be filed and it is to be disposed of by passing a speaking order. However, the speaking order as contemplated, cannot be compared with the final assessment/reassessment order to be passed after complete adjudication of disputed facts and other documents. Thus, 'speaking order' in GKN Driveshafts case (cited supra) means the speaking order to be passed in the context of reasons furnished, objections submitted by the Assessee and the decision taken while disposing of the objections, but not beyond that. In other words, it is not necessary that all the disputed facts raised in the objections need to be answered in the order disposing the objections submitted on the reasons furnished. It is sufficient if the Authority Competent is satisfied that the objections filed are not sufficient to disprove the reasons furnished for reopening of assessment. The opportunity to file objections is provided to disprove the decision of the Assessing Officer that he has reason to believe for reopening of assessment. If the objections submitted by the Assessee are not sufficient enough to disprove the initiation of reopening proceedings, then such disposal is to be considered as a speaking order as contemplated under the directives issued by the Apex Court in GKN Driveshafts case (cited supra). A distinction in this regard is imminent. Thus, 'speaking order' as stated in GKN Driveshafts case (cited supra) is to be understood with reference to the initiation of reopening proceedings, reasons furnished, objections submitted and to ascertain whether the Assessee could able to disprove the reopening proceedings on the basis that the Assessing Officer has reason to believe. Rest of the adjudication on disputed facts are to be done during the course of reassessment proceedings and the Assessee would be getting further opportunity to defend his case in the manner known to law.

46. The order disposing of the objections must be done in an objective manner, so as to understand whether the reasons to believe formed by the Assessing Officer is sufficient enough for reopening of assessment. Sufficiency of the reasons need not be gone into in writ proceedings under Article 226 of the Constitution of India, as the writ proceedings are filed challenging the very reopening itself.

47. As the case on hand is falling within the period of four years, the other conditions contemplated under the proviso clause, is not required. What is required is reasons to believe. The reasons furnished by the respondents in the present case, are elaborate in nature and the relevant portions of such reasons are extracted as under:-

"It is observed from Schedule 13 to the Profit and Loss Account for the year ended March 31, 2010 that the Assessee



claimed a sum of Rs.6,73,37,94,692/- towards stock compensation expenses, the year wise details of which with a difference of Rs.53 are as under:-

Particulars	AY 2009-10 (Rs.)	AY 2010-11 (Rs.)	Total (Rs.)
Towards ESO	2,42,35,33,959	4,11,60,05,775	6,53,95,39,734
Towards RSU	1,33,88,420	18,08,66,486	19,42,54,906
Total	2,43,69,22,379	4,29,68,72,261	6,73,37,94,639

It was observed that in computing the total income of the Assessee for the AY 2010-11, part of the expenses amounting to Rs.2,43,69,22,379/- which related to AY 2009-10 were not excluded. This has resulted in under computation of income for AY 2010-11 by Rs.2,43,69,22,379/-.

.. ...

So, since the income from Forward Contract is not derived from the business of the undertakings, proportionate dis-allowance of deduction under Section 10A/10AA based on the method adopted by the Assessing Officer in allowing the said deduction on the enhanced income arising on dis-allowances made under Section 14A and 40(a)(i), which worked out to Rs.2,24,81,46,496/- as detailed below needs to be made and the income brought to tax as per the regular provisions of the Act:-

Rs.

Export turnover of the units claiming tax holiday	49,62,77,94,208 (A)
Total turnover of the Assessee as as per financial statement	62,30,24,95,360 (B)
Gain on Forward Contract to be excluded	2,82,23,12,353 ©
Disallowance from deduction under Section 10A/10AA required = (A) * (C) / (B)	2,24,81,46,496

However, to compute the correct quantum or deduction allowable to the eligible undertaking under Section 10A/10AA, arrangements may be made to exclude the above amount of Rs. 2,82,23,12,353/- which was realised as profit on forward contract, from the profit and gains of the business of the Assessee for the purpose of arriving at the profits of the undertakings, export turnover and total turnover in the computation of deduction under Section 10A/10AA for the eligible undertakings.

It is observed from Schedule 13 to the Profit and Loss Account for the year ended March 31, 2010 that the Assessee



claimed a sum of Rs.6,73,37,94,692/- towards stock compensation expenses, the year wise details of which with a difference of Rs.53 are as under:-

Particulars	AY 2009-10 (Rs.)	AY 2010-11 (Rs.)	Total (Rs.)
Towards ESO	2,42,35,33,959	4,11,60,05,775	6,53,95,39,734
Towards RSU	1,33,88,420	18,08,66,486	19,42,54,906
Total	2,43,69,22,379	4,29,68,72,261	6,73,37,94,639

It is seen from the Notes on Account that in September 2009, the company entered into an agreement with the holding company (Cognizant Technology Solutions Corporation) for recharge of stock issued by the holding company to settle stock awards exercised by or distributed to employees of the Assessee Company as compensation. The recharge expense is equal to the difference between fair market value on the date of exercise for stock options or distribution date for the stock awards as reduced by the grant price. Based on this agreement, the holding company has recharged an amount of Rs.6,73,37,94,639/- for the equity compensation expense relating to all the exercise made by the employees of the company during the period April 1, 2008 till March 31, 2010.

In this connection, it is to be pointed out that with effect from AY 2010-11, sub-clause (vi) was introduced to Section 17(2), to tax the stock option benefits extended to the employees. Under Section 192, any person responsible for paying any income tax from the amount payable. In the Notes on Accounts, under expenditure in foreign currency, the entire amount of stock compensation expenses amount to Rs.6,73,37,94,692/- was shown as expenditure incurred in foreign currency implying the fact that no tax was recovered on the said expenses. Part of the above expenses amounting to Rs.4,29,68,72,261/- related to AY 2010-11 and as no tax was deducted on the expenditure so incurred, the amount of Rs.4,29,68,72,261/- requires disallowance under Section 40(a) (iii).

..

A review of the depreciation schedule as per the income tax revealed that for the software purchased during the previous years relevant to the above assessment years, the Assessee had claimed depreciation at the rate of 60% applicable to computer software.

According to Entry III(5) of Part A of the New Appendix I to the Income Tax Rules, computer including computer software are eligible for depreciation at the rate of 60% of the written



down value. In the note below the table, 'computer software' has been explained to mean any computer program recorded on any disc, tape, perforated media or other information storage device. In the case of the Assessee, verification of the details of software purchases revealed that the additions to the software description represented only software licenses acquired by the company. In the books of accounts maintained, for the purpose of depreciation, the Assessee has classified the software purchased as 'intangible asses'.

Hence, in accordance with the Entry under Part B of the New Appendix I, the software licenses are required to be considered as intangible assets and depreciation on such assets are needs to be allowed at the rate 25% only against the claim of 60% by the Assessee. The details relating to excess claim of depreciation by the Assessee for the AY 2008-09 to AY 2010-11 is appended in the Annexure enclosed.

.. ...

Actually, the Assessee enters into forward contract with the bankers directly and not through recognised stock exchange, to be eligible to claim the same as a transaction covered under Section 43(5)(d). According to the P&L account for the year ended 31.03.2009, as per the cash flow statement the unrealised foreign exchange gain was Rs.25.04 crores and there was no evidence to state that the Assessee entered into a forward contract and sustained a loss of Rs.50.38 crores in the previous year relevant to AY 2009-10. But in the cash flow statement of the P&L account for the year ended 31.03.2010, the above foreign exchange gain of Rs.25.04 crores was shown as a loss of Rs.50.38 crores as on 31.03.2009. Detailed reason for the variation was not furnished by the Assessee before claiming such deduction of loss amounting to Rs.50.38 crores in AY 2010-11.

It is seen from the statement of income that while computing the tax payable under Section 115JB, the Assessee had claimed a sum of Rs.1,02,96,469/- at the rate of 16.995% as relief under Section 90, evidently on an income of Rs.6,05,85,284/- which was doubly taxed. But, in the income tax computation from which is appended to the assessment order, relief under Section 90 was allowed to the extent of Rs.23,91,75,527/-, resulting in excessive allowance of relief under Section 90 to the tune of Rs.1,36,19,058/-.

.. ...

In the computation of income, the Assessee was allowed a total deduction of Rs.12,17,34,81,284/- under Section 10A/10AA. In computing the said deduction, the loss of undertakings which were within the tax holiday regime was set off against the income of the out of holiday units. One such unit was KALKATTA



BANTALLA SEZ (IN223) which incurred a loss of Rs.23,01,71,774/-. The loss of the SEZ unit which is eligible to claim deduction under Section 10AA was set off against the income of the non-eligible units.

Scrutiny of the computation of depreciation of the said undertaking under the income tax revealed that being the initial year, the undertaking had accounted for the addition to fixed assets as under and claimed appropriate depreciation at the rate of 100%/50% applicable for more than 180 days/less than 180 days as the case may be:-

Asset Block	Additions/deletions during the year		Total	Depreciation during the year		
	Additions 1-4-2009 to 2-10-2009	Additions 3-10-2009 to 31-3-2010		On addition Greater than 180 days	On addition Less than 180 days	Total Depreciation
Buildings	1,41,20,92,060	56,59,415	1,41,77,51,475	14,12,09,206	2,82,971	14,14,92,177
Equipment	25,13,72,951	2,21,69,531	27,40,42,482	4,23,34,550	60,72,400	4,84,06,950
Furniture and fixture	24,94,20,308	44,080	24,94,64,388	2,49,42,031	2,204	2,49,44,235
Grand total	1,91,33,85,319	2,78,73,026	1,94,12,58,345	20,84,85,787	63,57,575	21,48,43,362

It is seen from Annexure-A to Form 56F pertaining to the unit that the date of commencement of manufacture or production was 5th October 2009. In the case of the undertaking, since the period of usage of the asset in the AY 2010-11 was confined to less than 180 days only, the Assessee was not entitled to claim depreciation at full rates for the value of assets amounting to Rs.1,91,33,85,319/- which were stated to have been added to the block of asset in the first half of the assessment year. The incorrect claim of depreciation has resulted in the excess claim depreciation of Rs.10,42,42,894/- (50% of Rs.20,84,85,787/-) with resultant overstatement of the loss of the undertaking to like amount. This has also resulted in incorrect set off of loss to an extent of Rs.10,42,42,894/- against the income of the non-tax holiday units."

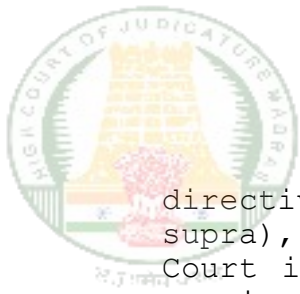
48. The reasons recorded by the Assessing Officer as stated above would reveal that certain informations and materials within or not were considered by the Assessing Officer or not, shall be taken into consideration while passing the assessment order.

49. The petitioner, undoubtedly, submitted its objections in detail with reference to the point adjudicated by the original Assessing Authority by citing the reasons furnished for reopening of assessment. However, the Assessing Officer relying on certain intricacies in accounting has reason to



50. Regarding the impugned order of disposal of objections vide proceedings dated 02.11.2015, the Authority Competent has recorded the objections broadly raised by the petitioner, more specifically, the audit objections and change of opinion. The decisions relied on by the petitioner were also taken into consideration. The Authority has stated that the Assessee's submissions are carefully considered separately and not accepted for the reasons stated. No doubt, in the initial paragraph, the authority has reproduced the reasons furnished to the Assessee in proceedings dated 28.08.2015, however, after considering the reasonings, the Authority Competent formed an opinion that on the issues raised by the Assessing Officer for reopening of assessment, certain informations/materials are not considered in the manner the said materials or facts are to be considered and accordingly rejected by stating that the question of change of opinion does not arise at all.

52. The first respondent has reason to believe that reopening of assessment is necessary to consider an issue, which was never dealt with in the regular proceedings is legally sustainable. The claim of the Assessee that it believes reopening is based on objections/queries raised by the audit wing is merely a surmise and this reason to believe was taken by the Assessing Officer independently after following the due process of law and obtaining necessary sanction as mandated under Section 151 of the Act. There is no bar in law if some information is provided by external agency that could be made use of by the Assessing Officer so long as the same is genuine. What is mandated under Section 147 is that the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year. It has also been expressively provided in Explanation 1 of Section 147 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 proviso.



53. The Competent Authority even considered the directives of the Apex Court in GKN Driveshafts case (cited supra), the scope of Section 147 was also elaborated and this Court is of an opinion that reopening of assessment proceedings required that the Assessing Officer must have reason to believe and such reasons must have live link with the materials relied upon.

54. It is not necessary that the tangible material as required for reopening of assessment must be understood as the new materials which were not considered by the original Assessing Authority and subsequently brought to the notice for initiation of Section 147 proceedings. The provision unambiguously denotes that from and out of the materials, account books informations already furnished by the Assessee during the course of original assessment proceedings may also form reasons to believe for reopening of assessment. Therefore, the context in which reopening of assessment is made in consonance with the provisions of the Income Tax Act, is to be identified for the purpose of interfering with the reopening proceedings.

55. The very purpose and object of reopening of assessment is to ensure that the income chargeable to tax escaped assessment is brought under the tax network. Undoubtedly, the original assessment order has been passed based on the return of income filed by the Assessee. Therefore, there are possibilities to gather further informations and materials after passing an assessment order. In such circumstances, if the Assessing Officer has reason to believe that the particular issue has not been considered or scrutinised during the course of original assessment proceedings, then he is empowered to reopen the assessment under Section 147/148 of the Act. Thus, Section 147 provides an opportunity to the Revenue to reopen the proceedings if the Revenue is able to trace out new informations or materials within or from any other source for the purpose of reopening. The very same materials in which certain issues were not considered and such non-consideration resulted in escapement, then also reopening is permissible.

56. However, change of opinion is a ground for setting aside the reopening of assessment. Change of opinion is nothing but if the Assessing Authority adjudicated an issue, formed an opinion and given a finding in the assessment order and the very same opinion formed in respect of any material, cannot be a ground for reopening of assessment. Therefore, the Courts are expected to be cautious while considering the ground of change of opinion. It is always possible to misunderstand the concept of change of opinion. To make it very clear, change of opinion is that the issue, intricacies in accounts on a particular



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material or issues adjudicated and an assessment order is passed and the very same intricacy or issue wherein a clear finding has been arrived by the Assessing Authority cannot be a ground for reopening of assessment. However, from and out of the same issue and on the same material, if the Assessing Authority identified some under-assessment or the other reasons as contemplated under Section 147 of the Act, then reopening is permissible. Therefore, materials may be one and the same, issue may be one and the same and in respect of final conclusion, if there was any non-consideration resulted escapement in the original assessment order and the Assessing Authority found that there was an under-assessment, which resulted loss of revenue, then also reopening of assessment is certainly possible. Under these circumstances, mere comparison of issues already adjudicated in the original assessment proceedings always may not be a ground for the purpose of setting aside the entire reopening proceedings. Whether from and out of the said issue, a different dimension is identified to establish that there was a loss of revenue due to non-consideration of a particular issue within or the intricacy in some accounting system, then the Assessing Officer is undoubtedly empowered to initiate reopening proceedings by issuing notice under Section 148 of the Act. Thus, the wider scope contemplated under Section 147 for reopening of assessment to protect the interest of Revenue is to be interpreted pragmatically, so as to ensure that if the Assessing Officer has reason to believe, which is not change of opinion, then he must be allowed to complete the reassessment proceedings as contemplated under the provisions of the Act.

57. As elaborately discussed in the aforementioned paragraphs, disposal of objections submitted by the petitioner on the reasons furnished is to be done based on objective satisfaction and not on subjective satisfaction. An elaborate adjudication is required and such adjudications are to be done during the course of reopening proceedings and certainly not at the stage of disposal of objections filed by the Assessee on the reasons furnished. Once the Assessing Officer prima facie arrived a conclusion that he has reason to believe and reasons are furnished, objections received and disposed of by the authority, the said procedure as directed by the Hon'ble Supreme Court of India in GKN Driveshafts case (cited supra), is to be construed as completion of compliance of the principles of natural justice.

58. To clarify the objective satisfaction, which is required for the disposal of the objections filed on the reasons furnished, the Authority Competent cannot simply reject the objections without providing convincing reasons for rejection. The disposal of objections must contain an acceptable reason in the point of view of a prudent man and such rejection must be in the context of the reopening proceedings and the reasons



furnished. To further clarify, the disposal does not mean mere disposal of objection and such disposal must be meaningful and sensible and relatable to the reasons furnished for reopening of assessment and to the objective satisfaction of the Authority Competent.

59. Considering the initiation of reopening proceedings, reasons furnished and the disposal of objections in the impugned proceedings dated 02.11.2015, this Court has no hesitation in arriving a conclusion that the respondents have established the reasons to believe for reopening of assessment, which is a pre-condition contemplated under Section 147 of the Act. Further adjudications with reference to the disputed facts are to be done during the course of reopening proceedings and the High Court cannot venture into an adjudication of such disputed facts with reference to the intricacies in accounting system based on certain original documents in the writ proceedings under Article 226 of the Constitution of India. The power of judicial review under Article 226 of the Constitution of India is to ensure that the processes through which a decision is taken by the Competent Authority in consonance with the provisions of the Act, but not the decision itself. This being the scope of power of judicial review, the High Court is not expected to adjudicate certain disputed facts with reference to original documents and evidences, which is to be done by the Competent Original Authority and thereafter by the Appellate Authority in the manner known to law. Once the adjudications are done by the Original Authority and by the Appellate Authorities as contemplated under the Statutes, then those findings of the Authorities at various stages would be of greater assistance to the High Court for the purpose of exercise of the power of judicial review under Article 226 of the Constitution of India in an effective and efficient manner.

60. Based on the elaborate discussions made in the aforementioned paragraphs, the petitioner has to cooperate for the completion of the reopening proceedings, which is to be done as expeditiously as possible.

61. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

Svn



To

1. The Assistant Commissioner of Income Tax,
Large Taxpayer Unit,
1775, Jawaharlal Nehru Inner Ring Road,
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Chennai-600 101.
2. The Deputy Commissioner of Income Tax,
Large Taxpayer Unit,
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3. The Commissioner of Income Tax,
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+1cc to Mr.Srinath Sridevan , Advocate, S.R.No.41590

+1cc to Mr.A.P.Srinivas , Advocate, S.R.No.41702

W.P.No. 2024 of 2016

PVS (CO)
SU(09/09/2021)