

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 29.04.2021
CORAM
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
W.P.No.31352 of 2014
and
M.P.No.1 of 2014

M/s.Sutherland Global Services (P) Ltd,
Rep.by its Authorised Signatory,
Mr.V.N.Achutarama Gupta
No.45A, Velachery Main Road,
Velachery,
Chennai-600 042.

.. Petitioner

vs.

1.The Commissioner of Income Tax,
Chennai-VI
Income Tax Department
121 Mahatma Gandhi Road,
Nungambakkam,
Chennai-600 034.

2.The Deputy Commissioner of Income Tax/
The Assistant Commissioner of Income Tax,
Company Circle VI(4),
Income Tax Department
121 Mahatma Gandhi Road,
Nungambakkam,
Chennai-600 034.

3.The Income Tax Officer (OSD-III)
Range-VI,
Income Tax Department
121 Mahatma Gandhi Road,
Nungambakkam,
Chennai-600 034.

.. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records of the second respondent in PAN:AAECS8093A to quash the impugned notice dated 26.03.2014 issued in terms of Section 148 of the Income Tax Act, 1961 on the assumption of jurisdiction u/s 147 of the said Income Tax Act, 1961 for framing re-assessment for the Assessment Year 2007-08 and further direct the second and third respondents to drop the proceedings initiated under 147 of the Act for the said Assessment year 2007-08.

For Petitioner : Mr.N.V.Balaji

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

O R D E R

The Notice issued under Section 148 of the Income Tax Act in proceedings dated 26.03.2014 for reopening of the assessment for the assessment year 2007-08 is sought to be quashed in the present writ petition.

2. The petitioner/Company was incorporated under the Companies Act, 1956, with the main object to carry on the business of providing information technology enable services and such other activities morefully described in the Memorandum and Articles of Association.

3. The writ on hand is filed mainly on the ground that the reopening of the assessment by the respondents under Section 147 and issuance of notice under Section 148 are untenable, which is based on change of opinion and there is no reason to believe as mandated under Section 147 of the Act. In order to substantiate the said ground, the learned counsel appearing for the petitioner elaborately contended that several circumstances in the present case would establish that it is a case of change of opinion. In fact, similar issues now raised in the impugned proceedings were already adjudicated and a finding in specific was provided. In this regard, the learned counsel appearing for the petitioner contended that the question is about the Business Development Commission. Regarding the Business Development Commission, the petitioner has already provided information, details and documents even during the original assessment and the assessment order was passed with a specific finding in this regard. Thus, the facts as well as the informations and the documents provided with reference to the Business Development Commission which is raised as grounds for reopening assessment were adjudicated in depth by the Assessing Officer and a finding was also given. Thus, there is no reason to believe for invoking Section 147 of the Act and it is nothing but change of opinion. The petitioner contended that with reference to the assessment year 2007-08, the assessment order dated 15.12.2010 passed under Section 143(3) read with 92CA(4) of the Income Tax Act, 1961 elaborately provides answer and the Business Development Commission was also considered. This apart, even in the appeal filed by the petitioner/Company, the Income Tax Appellate Tribunal, Chennai made a reference with regard to the Business Development Commission and with reference to the assessment year 2012-13. A specific finding was also given in this regard by the Income Tax Appellate Tribunal holding that "therefore the question of deduction of tax at source does not arise u/s 195. I find, in this regard, that the AO has not succeeded to lawfully declare the business development commission under discussion as taxable in the hands of the recipient". Relying on the findings of the order passed by the Income Tax Appellate Tribunal, the learned counsel appearing for the petitioner reiterated that the respondents, in the present case, have exceeded their jurisdiction by superseding

the findings given by the Appellate Authorities, more specifically, in the appeal wherein the petitioner itself is a party. In other words, it is contended that in the case of the petitioner itself, the specific finding is made with reference to the subsequent assessment order and even, the said findings are not taken into consideration. Thus, the very exercise made by the respondents in this case is futile and cannot be considered as within the provisions of Section 147 of the Act. It is contended that the above order passed by the Commissioner of Police became final and no further appeal is preferred.

4. The learned counsel appearing for the petitioner reiterated that the concept of reason to believe is the statutory mandate, wherein the officer for reopening the assessment must have new material on hand to invoke the provision. It is not sufficient, if there is any suspicion. Suspicion only if supported with any evidence, then alone, the Authority is empowered to invoke Section 147 of the Act and not otherwise. This apart, the authority have not formed an opinion nor recorded that the assessee has not made full and true disclosure. It is contended that the impugned notice does not contain the term "full and true disclosure" which is mandatory.

5. The learned counsel appearing for the petitioner made a submission that the case of the petitioner falls beyond four years and within six years. Thus, under proviso to Section 147 of the Act, the Authority must state in clear terms that the assessee has not made full and true disclosure. Only in such circumstances, the initiation of notice under Section 148 may be validated and in the present case, there is no such mentioning in the impugned order and non-mentioning of the mandatory term "true and full disclosure" would vitiate the entire proceedings.

6. The petitioner referred the impugned notice which merely states that the Authority has reason to believe that "the income chargeable to tax for the assessment year 2007-08 has escaped assessment". However, there is no mentioning even in 148 notice or in respect of order dated 11.04.2014, providing reasons for reopening, regarding mandatory requirement and true and full disclosure as contemplated under proviso to Section 147 of the Act. Thus, the order impugned is void as the mandatory conditions stipulated for invoking Section 147 remain absent. Thus, the writ petition is to be allowed.

7. The learned counsel appearing for the petitioner further relied on the circular issued by the CBDT dated 23.07.1969. It is contended that "non-residents-Income accruing or arising through or from business connection in India-Liability to tax-Section 9 of the Income-Tax Act, 1961 was clarified in the said circular". Even the contentions and

the directions issued in the said circular have not been followed by the respondents while invoking powers under Section 147 of the Act. Paragraph No.3 of the circular contains the clarifications with reference to Section 9. The specific situations are also narrated and the case of the petitioner is falling under the said circular and the Competent Authority has failed to consider even the circular and the Hon'ble Apex Court as well as the High Court have repeatedly held that the circulars issued by the CBDT are binding on all the Authorities of the Income Tax Department and the same is to be implemented scrupulously. It is further contended that in various judgments, the scope of reopening of assessment has been elaborated by the Courts and in the event of change of opinion, reopening of assessment is impermissible. It is contended that none of the principles laid down in those judgments were not taken into consideration by the respondents as well as the circulars issued by the CBDT were also violated. Thus, the impugned orders are to be declared as non-est and the writ petition is to be allowed.

8. The learned Senior Standing Counsel appearing on behalf of the respondents objected the contention raised on behalf of the petitioner by stating that all the judgments in the matter of reopening of assessment under Section 147 and issuance of notice under Section 148 are decided based on particular facts and circumstances. There are many number of judgments that the initiation of proceedings under Section 147 and 148 must be based on particular facts and circumstances of each case. Therefore, the findings in certain judgments selectively would not be of any avail to the writ petitioner. The learned Senior Standing Counsel further contended that for and against judgments are available in the present case. However, all such judgments are to be considered with reference to those facts and circumstances and the facts prevailing in the present writ petition are to be considered with reference to the provisions of the Income Tax Act, more specifically, Sections 147 and 148 of the Act.

9. It is reiterated that with reference to the facts and circumstances of the case on hand, the provisions are to be considered as the petitioner has raised a ground that the mandatory requirement under proviso to Section 147 is missing in the impugned order. Therefore, the order is liable to be set aside. Mere non-quoting the word "true and full disclosure" would not vitiate the entire proceedings. Whether the requirement of non-disclosure of true and full income is established or not is the fact, which is to be considered for the purpose of arriving a decision. Thus, the very argument in this regard deserves to be rejected.

10. The learned Senior Standing Counsel further made a submission that the scope of Section itself is self-explanatory and it is sufficient, if the Authorities are able to find a reason to believe and such a reason to believe must

be based on evidence or new materials not considered earlier. However, if all such materials, informations, documents are identified for initiation of proceedings by reopening the assessment, it is for the Assessee to submit his returns explaining the stand taken and to defend his case by availing the opportunities to be provided. Contrarily, at the initiation stage itself, the assessee cannot expect that the entire discussions are to be made. If the entire adjudication made by the assessee prior to issuance of notice, the same would violate the principles of natural justice. Therefore, the Section contemplates that if there is any reason to believe, then the reopening is permissible and after reopening, the opportunities are to be provided to the assessee and by availing the opportunity, the assessee is at liberty to defend his case by producing documents, evidence and statements etc., This being the scope of the provisions, the contentions raised regarding the merits, more specifically, Business Development Commission etc., are to be adjudicated by the Assessing Officer and those documents, information, and materials are not made available before this Court for an adjudication and such an exercise need not be done by the High Court.

11. The learned Senior Standing Counsel solicited the attention of this Court with reference to the proceedings dated 11.04.2014 providing reasons for reopening of the case of the petitioner. In the said proceedings, it is stated that "Hence, I have reasons to believe that income has escaped assessment within the meaning of Section 147 of the Income Tax Act". Relying on the said submission made in proceedings dated 11.04.2014, the learned Senior Standing Counsel reiterated that the Authorities Competent has specifically mentioned that the true and full disclosure is the term contemplated under Section 147. Therefore, it is suffice, if the provision is mentioned in the order. Admittedly, it is stated that the reason to believe that the income chargeable to tax has escaped assessment within the meaning of Section 147 would indicate that the assessee has not disclosed the true and full disclosure. Therefore, mere absence of very word "true and full disclosure" would not vitiate the entire proceedings.

12. Relying on the order passed in proceedings dated 07.10.2014, it is contended that as per Section 9(i) of the Income Tax Act, necessary tax has not been deducted on the business development commission paid to non-resident. Therefore, the said information provide a cause for reopening of the assessment for the year 2007-08. During the course of assessment proceedings under Section 143(3), the matter of non-deduction of tax on business development commission paid to a non-resident was not looked into. This matter was not discussed in the Assessment Order. Therefore, there is no change of opinion but clearly there was an escapement of income to be brought to tax. The said provision indicates that the matter of non-deduction on the business development

Commission paid to a non-resident was not even considered in the original assessment order and therefore, it is a new material to be considered for the purpose of tax. Thus, the reopening of assessment is necessary, which resulted initiation of proceedings under Section 147. Thus, there is no infirmity as such. Consequently, the writ petition is liable to be dismissed.

13. In reply, the learned counsel appearing for the petitioner referred another Circular No.786 dated 07.02.2000 issued by the CBDT, wherein deduction of tax u/s 195 and the taxability of export commission payable to non-resident agents rendering services abroad was considered and a clarification was issued in detail by the CBDT. The learned counsel appearing for the petitioner in this regard relied on the judgment of the Hon'ble Supreme Court of India in the case of Commissioner of Income Tax vs. Toshoku Limited [1980] 125 ITR 525(SC). The said judgment was followed by the Hon'ble Division Bench of this Court. The Hon'ble Supreme Court of India held that "amount of commission was later remitted to non-resident agents- Whether, since non-resident assessee did not carry on any business operations in India, amounts earned for services rendered outside India could not be deemed to be incomes which had either accrued or arisen in India,-held yes". It is held that "the assessee could not be charged to tax on basis of receipt of income, actual or constructive, in taxable on basis of receipt of income, actual or constructive, in taxable territories during relevant accounting period as they neither received nor could be deemed to have received sums in question when their accounts with Indian exporter were credited-Held yes". Relying on the said judgment, the learned counsel for the petitioner contended that the propositions laid down by the Hon'ble Supreme Court are violated by the respondent. The circular relied on by the petitioner is important, vital and those two circulars were not even looked into by the respondents for the purpose of taking a decision regarding the initiation of proceedings under Section 147 of the Act. It is further contended that the Hon'ble Division Bench of this Court is also relied on the said judgment and passed an order and those orders were not considered. In this regard, the learned Counsel for the petitioner expressed his anguish by saying that the Income Tax Authorities are violating not only the CBDT circulars but violating the Judgment of the Hon'ble Supreme Court of India.

14. The learned Senior Standing counsel contended that the Circulars issued by the CBDT are in the nature of guidelines issued to the authorities to take a decision with reference to the particular facts and circumstances. The clarifications are to be followed in consonance with the provisions of the Income Tax Act regarding the facts and circumstances. Thus, mere circular would not be of any avail to the writ petitioner and the authorities competent are bound by the provisions of the Income Tax Act in the matter of

reopening of assessment. Regarding the judgments relied on by the petitioner, the learned Senior standing counsel is of an opinion that the principles laid down in the case would be applicable to the facts and circumstances of those cases, which all are not comparable. Thus, this Court has to consider the facts and circumstances as well as the reasonings furnished for reopening of assessment in the context of Sections 147 and 148 of the Income Tax Act. Thus, the facts and circumstances raised on merits by the petitioner need not be considered by this Court for the purpose of Section 147 of the Act.

15. Considering the arguments, this Court would prefer to look into the effect of Sections 147 and 148 of the Income Tax Act. The case of the petitioner is falling under proviso clause as the reopening of assessment is made beyond four years but within 6 years. Thus, the Authorities have to satisfy the requirements contemplated in proviso to Section 147.

16. In this context, Section 147 stipulates that "if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned".

17. The spirit of Section 147 would reveal that the reason to believe is a wider term so as to cover the circumstances which would provide some materials or informations for the Authorities to invoke Section 147 of the Act. The word "reason" would indicate that the reason must be based on certain information, materials or evidences etc. Such reason must result in a belief and only in such eventuality, the Authority Competent would invoke Section 147 of the Act.

18. The dictionary meaning of the word "belief" is that "a state of mind that regards the existence or truth of something as likely or relatively certain; conviction about the truth of something."

19. With reference to the phrases adopted under Section 147 of the Act, belief should not be superstitious, but must be reasonable and such reason must be based on certain materials or informations or otherwise for the purpose of reopening of assessment.

20. The meaning of the term "reasonable belief" is that a sensible belief that accords that with or result from using the faculty of reason. Thus, the belief must be based on

reasons and the said reasons must be sensible and results from using the faculty of reasons.

21. Thus, the phraseology of "reason to believe" is to be interpreted, so as to understand that the reasons must be not only be satisfactory, but based on certain materials, informations, documents, etc., which all are acceptable for the purpose of reopening of assessment. The belief must be reasonable and such reasonable belief must be in consonance with the reasons identified by the authorities. Only if these ingredients are satisfied, then alone, the authorities competent is empowered to form an opinion that there is a reason to believe for invoking Section 147 of the Act.

22. Section 147 contemplates that the Assessing Officer may assess or reassess. Thus, Section 147 provides the scope for assessment and for reassessment. Assessment would arise in cases, where no return of income is filed. Reassessment would arise, if the assessment order is passed under the provisions of the Income Tax Act. Even in such cases, the Assessing Officer is empowered to invoke Section 147, if any other income chargeable to the tax, which has escaped assessment. Thus, even after initiation of proceedings under Section 147 of the Act, if the Assessing Officer identified that any other income chargeable to tax has escaped assessment, and such informations, comes to his notice, subsequently during the course of the proceedings, then also, the authority is empowered to exercise the powers. Thus, the provision contemplates that during the course of the proceedings, if any other information is identified regarding the tax, which has escaped assessment, then also, he can recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned. The language employed in Section 147 of the Income Tax Act would provide not only wider meaning and power to the competent authority, but the provision adopts a holistic approach, so as to confer powers to the Assessing Officer to cull out the truth with reference to certain informations, documents, evidences, which were either provided by the assessee or not provided by the assessee or not considered during the original assessment. Various complex circumstances prevailing can be fit in with the provision, in view of the wider concept contemplated under Section 147 of the Act.

23. Let us now consider the proviso to Section 147 of the Income Tax Act which contemplates that "where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of relevant assessment year". Thus, four years time is granted for initiation of reopening proceedings under proviso to Section 147 of the Act. However, the proviso further contemplates that "if any income chargeable to tax has escaped assessment for such assessment

year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment for that assessment year". Therefore, beyond four years, the Assessing Officer is empowered to invoke Section 147 of the Act within a period of six years, if any income chargeable to the tax has escaped assessment on account of failure on the part of the assessee to make return under Section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148. This apart, if the assessee failed to disclose truly and fully all material facts necessary for his assessment, then, the power is provided to the Assessing Officer for reopening under Section 147 of the Act. Thus, it is made clear that if any assessee failed to disclose fully and truly all material facts necessary for assessment, then Section 147 may be invoked by the Assessing Officer.

24. In respect of the case on hand, the same falls beyond the period of four years and within a period of six years. Thus, the ingredients contemplated for invoking Section 147 beyond four years are to be complied with. The contention of the writ petitioner is that the materials, which are all now forms part and parcel of the reopening proceedings, had already been disclosed by the assessee and those materials were considered and a finding was given by the Assessing Officer and with reference to same facts, the Appellate Commissioner has also adjudicated and made a finding which became final. Thus, there is no reason to institute an action under Section 147, in view of the fact that the element of true and full disclosure of all materials would not arise at all.

25. It is further contended by the writ petitioner that the notice issued under Section 148 as well as the reasons furnished for reopening did not speak anything about non-disclosure of true and full disclosure of materials. Therefore, there is no specific search mentioning and the order impugned cannot be sustained. It is contended that the non-disclosure of fully and truly all material facts is not established. Therefore, there cannot be any reason to believe for reopening beyond the period of four years.

26. This Court is of the considered opinion that mere non-quoting of provision of law would not vitiate the entire proceedings. Undoubtedly, the Authorities Competent are expected to quote the provisions of law. However, by mistake or omission, if the provisions or statute are mentioned in the order of notice, per se would not vitiate the entire proceedings. Thus, it is to be established whether there is a true and full disclosure of all materials by the assessee or

not. Such an adjudication cannot be done in entirety in a writ proceedings under Article 226 of the Constitution of India. The power of the High Court is to scrutinize the process through which a decision is taken by the Authorities Competent in consonance with the Statute and not the decision itself. Thus, how to test the component of true and full disclosure. Thus, if such a non-disclosure of true and full income by the assessee provide a reason to believe to the Assessing Officer, then it is to be construed that the provision of Section 147 is satisfied and thereafter, the Assessing Officer is empowered to issue notice under Section 148.

27. It is pertinent to note that Section 147 is only initiation of proceedings for reopening of assessment. Reopening of assessment can be questioned, but on certain limited grounds. Mere reopening would not provide a cause for adjudication of all material facts. If any reopening of the assessment is made without jurisdiction or no prima facie material available for such reopening, then alone, the High Court can intervene and not otherwise. Thus, the scope of writ petition under Article 226 of the Constitution of India in respect of reopening of assessment under Section 147 is limited and only on certain jurisdictional grounds or non-availability of any prima facie case with reference to ingredients contemplated under Section 147, then alone, writ can be entertained and not otherwise.

28. Let us now consider the Deemed accruing contemplated in Explanations 1 and 2 to Section 147 of the Income Tax Act. Explanation 1 to Section 147 contemplates that "Production before the Assessing Officer of account books or other evidence from which material evidence could, with due diligence, have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso". Explanation 1 clarifies that certain 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. Deemed accruing is contemplated in order to extend the power of the Assessing Officer to cull out certain material, evidence or facts with reference to the account books or other evidence produced by the assessee even at the time of original assessment. For instance, certain information or account books or other evidences are produced by the assessee and from and out of such evidences or account books, the Assessing Officer could able to cull out certain new materials or information or otherwise which resulted that any income chargeable to the tax has escaped assessment, then also, the power under Section 147 shall be invoked. Therefore, an assessee cannot raise a contention that the facts resulted in initiation of reopening proceedings were already adjudicated in the original assessment order and cannot be a valid ground per se for the purpose of quashing the entire proceedings initiated under Section 147 of the Act.

29. Explanation 2 contemplates various circumstances which are all considered as deemed cases where income chargeable to tax has escaped assessment. Circumstances are self-explanatory and even sub-clause (c)(i) to Explanation 2 contemplates income chargeable to tax has been under-assessed. Thus, even under-assessment is a ground for reopening of the assessment. Various circumstances contemplated under the Deemed accruing clause are also to be taken into consideration, while dealing with the cases for reopening of assessment.

30. Therefore, an assessee cannot come forward by stating that the materials, which are all forming part and parcel of reopening of assessment are already adjudicated in the original assessment. Therefore, the reopening of assessment is impermissible. Such a ground cannot be entertained per se, in view of the fact that from and out of any such materials already produced by the assessee during the original assessment, the Assessing Officer is able to cull out some new materials or fresh informations, then also, it is to be construed that the Assessing Officer has reason to believe that the income chargeable to the tax has escaped assessment, which may result in initiation of proceedings under Section 147 of the Act.

31. Plain reading of the provision would throw light on the legislative intention. Importantly, various amendments are introduced under the provisions of the Act one after another and periodically, in view of the reasons that Income Tax Department and its authority experienced practical difficulties in dealing with the cases, where large scale evasions of tax were being traced out on many occasions.

32. Evasion of tax is a common phenomena in our great Nation. On account of erroneous mindset of certain greedy people, undoubtedly, dealing with such evasions and the evaders are difficult and a challenging job for the authorities competent of the Income Tax Department. The original assessments are made based on the return of income filed by the assessee and believing the documents and evidences produced by the assessee, the assessments are made by the Revenue. Thus, the Income Tax Department must be conferred with ample provisions and powers to the authorities to deal with such cases, where non-payment of tax or otherwise due to non-production of true and full disclosure of income in a genuine manner. Amendments after amendments are introduced to fill up the lacuna and the gaps, which all were created by legally trained and accountancy brains of this great Nation. Thus, legislative intention for such amendments are made to ensure that the evasion and falsified informations are crippled down to the extent possible, so as to send a message to the citizen that they are liable to pay tax in the interest of Nation and for the welfare of the society at large. We, the

people of India, resolved to achieve the constitutional goals, Philosophies and Ethos and such achievements of constitutional goals are possible only when the people respect the law of the land. Mostly, greediness leads to non-payment of taxes and lack of Nationalism also is a reason for such violations.

33. Section 148 denotes issuance of notice, where the income tax chargeable to the tax has escaped assessment. Once the Assessing Officer satisfies himself regarding the ingredients contemplated under Section 147, then he is empowered to issue notice under Section 148 of the Act. Once a notice under Section 148 is served on the assessee, then he is bound to cooperate for reassessment in respect of reasons to be furnished by the Competent Authority. In this context, the principles laid down by the Hon'ble Supreme Court of India in the case of DKN Driveshafts (India) Limited vs. ITR and others, [2003] 259 ITR 19(SC), are to be followed. The reasons are to be furnished to the assessee and the assessee must be provided with an opportunity to submit their objections and such objections submitted are to be disposed of and all such procedures are to be completed by following the principles laid down in the case cited supra and in compliance with the mandatory requirements of the provision of the Act.

34. Considering the scope of Sections 147 and 148 of the Act, it is to be borne in mind that interference by the High Court at the initiation stage without any strong and acceptable ground, would create a situation, wherein the Income Tax Department would be deprived of exercise of their rightful powers to deal with certain facts and circumstances, which were not adjudicated during the original assessment and with reference to the non-disclosure of true and full disclosure of income by the assessee. The purpose and object of Section 147 providing wider powers to the authorities competent is to cull out the truth and deal with suppression, evasion, under assessment etc., in the matter of payment of Income tax. Thus, the High Courts are expected to be cautious, while exercising the powers under Article 226 of the Constitution of India, more specifically, for interfering in such matters at the initiation stage. At the initiation stage, the entire facts and circumstances, may not be made available even before the High Court. Certain facts placed by the assessee before the High Court cannot be wholly trusted upon. The Department without conducting an enquiry and scrutinizing the documents, may not be in a position to place all the facts before the High Court. Thus, the scope of interference on initiation of reopening of assessment proceedings is certainly limited and therefore, the High Court in such circumstances are expected to exercise restraint in preventing the authorities competent to conduct further enquiry by following the procedures as contemplated on initiation of proceedings under Section 147 of the Act. As discussed earlier, interference is permissible, if there is no absolute jurisdiction or the Revenue could not able to establish a

prima facie case for reopening of assessment. Once a prima facie case is made available, then it is not preferable for the High Courts to go into the facts and circumstances, which requires a deeper adjudication by the authorities competent of the Income Tax Department.

35. A balancing approach is required. One can presume that in the event of allowing the Department to proceed with the reopening proceedings by affording opportunity to the assessee, there is a possibility of culling out the truth with reference to any suppression, evasion, under assessment etc., Equally, the rights of the assessee is also protected as the assessee is at liberty to defend their case in the manner known to law and by availing the opportunities to be provided. Contrarily, in the eventuality of not allowing the Income Tax Department to proceed with the reopening proceedings, the same would cause prejudice to the interest of the Revenue and the Department is loosing its opportunity from probing the issues further. This exactly is the reason, where the High Court is expected to exercise restraint in the matter of reopening of assessment by the Department when they could able to establish that there is a prima facie material available on record for such reopening.

36. It is needless to state that High Court under Article 226 of the Constitution of India, cannot adjudicate the facts and circumstances with reference to the documents and evidences. This apart, the High Court is not an expert body, so as to go deeper into the intricacies of the accounting system and the manner, in which, the returns are filed and the materials are taken out by the Department for the purpose of reopening of assessment. In the event of establishing a prima facie case that some materials are made available on record for reopening of the assessment, then High Court must allow the authority to go on with such materials by following the procedures as contemplated and the assessee will get an opportunity to defend his case and establish his innocence or otherwise. Thus, only on exceptional circumstances, where the authorities have exercised jurisdiction erroneously or there is no material on record, which would provide cause for reason to believe the question of entertainability of the writ petition would arise.

37. As far as the writ on hand is concerned, Section 148 notice received by the assessee was responded by an application seeking reason for reopening. The respondents furnished reasons for reopening, wherein they have clearly stated that there is reason to believe that the income chargeable to tax has escaped assessment within the meaning of Section 147 of the Act, which would reveal that the case falls under beyond four years. This apart, the reasons stated in the said proceedings dated 11.04.2014 reveals that no TDS has been

made on the Business Development Commission and the same needs to be disallowed as per Section 40(a)(ia). The objections submitted by the writ petitioner on 29.04.2014 in detail was also disposed of by the respondents in vide proceedings dated 07.10.2014. In the said proceedings, the respondents have clearly stated that "the matter of non-deduction of tax on business development commission paid to a non-resident was not looked into. This matter was not discussed in the Assessment Order." Further, relying on Section 9(1), the respondents have stated that "necessary tax has not deducted on the business development commission paid to non-resident. The business development commission is in the nature of technical services fees paid to the parent entity. The non-deduction of tax in the above payment, raised the liability to tax, which is escaped to assessment". This Court is of the opinion that the reasons furnished for reopening of the assessment cannot be gone into disputed facts and circumstances in the writ petition. Sufficiency of reasons cannot be gone into by the High Court. If there is a reason to believe and such reason to believe is sensible, then it is sufficient to invoke the provisions of Section 147 of the Income Tax Act and the High Court cannot go into 'sufficiency' of the reasons provided for reopening of such assessment. Sufficiency of the reasons deserves complete adjudication of the disputed facts, which cannot be gone into. Thus, this Court has no hesitation in arriving a conclusion that the Revenue has to establish the reason to believe for reopening of assessment and it is for the petitioner to establish that such reasons are insufficient for reopening or he has already disclosed truly and fully all materials facts necessary for assessment or under the provisions of the Act, he has got enough defence to rebut the reasons furnished for reopening of the assessment. The writ petitioner is at liberty to avail the opportunities to be provided under the provisions of the Income Tax Act, to do so.

38. This being the factum established, this Court do not find any acceptable reason for the purpose of interfering with the initiation of proceedings under Section 147 of the Act for reopening of assessment and accordingly, the respondents are empowered to proceed with the process of assessment and conclude the same as expeditiously as possible.

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

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ssb/kak

To

1.The Commissioner of Income Tax,
Chennai-VI
Income Tax Department
121 Mahatma Gandhi Road,
Nungambakkam,
Chennai-600 034.

2.The Deputy Commissioner of Income Tax/
The Assistant Commissioner of Income Tax,
Company Circle VI(4),
Income Tax Department
121 Mahatma Gandhi Road,
Nungambakkam,
Chennai-600 034.

3.The Income Tax Officer (OSD-III)
Range-VI
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121 Mahatma Gandhi Road,
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Chennai-600 034.

+1cc to Mr.N.V.Balaji, Advocate Sr.No.26528

+1cc to Mr.A.P.Srinivas, Advocate Sr.No.26414

W.P.No.31352 of 2014

RK(CO)

A.SK(12.07.2021)

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