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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.31962 of 2017

and

W.M.P.No.35112 of 2017

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.

...Petitioner

Vs

1. The Deputy Commissioner of Income Tax,
Large Taxpayer Unit,
1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar Western Extension,
Chennai - 600 101
(Now at 7th Floor, Wanaparthi Block,
Aayakar Bhavan, Chennai - 600 034.

2. The Joint Commissioner of Income Tax,
Large Taxpayer Unit,
1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar Western Extension,
Chennai - 600 101
(Now at 7th Floor, Wanaparthi Block,
Aayakar Bhavan, Chennai - 600 034.

... Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, calling for the records of the 1st respondent pertaining to the reopening notice bearing No.PAN:AAACD3312M/2011-12 dated 28.03.2016 for the Assessment Year 2011-12 and consequential order bearing No. PAN:AAACD3312M dated 25.10.2017 issued by the 1st respondent herein and quash the same.

For Petitioner : Mr.Srinath Sridevan



For Respondents

: Mr.A.P.Srinivas
Senior Standing counsel
[For Income Tax]

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O R D E R

The writ on hand is instituted, questioning the legal validity of the notice issued under Section 148 of the Income Tax Act, 1961 [hereinafter referred to as the 'Act'] to the petitioner and also the order, disposing of the objections filed by the writ petitioner in proceedings dated 25.10.2017.

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 a variety of industries. The petitioner carried out the business activities through various units set up in Software Technology Parks (STPs) and Special Economic Zones (SEZ's) and claims deduction under Section 10A and 10AA of the Act. Certain SEZ Units of the petitioner had incurred losses, which were set-off against other taxable income of the petitioner.

3. The petitioner had filed its return of income for the Assessment Year 2011-12 on 30.11.2011, which was subsequently revised on 28.03.2013. The return of income was processed under Section 143(1) of the Act on 06.07.2012. The case of the petitioner was selected for scrutiny under Section 143(2) of the Act on 02.08.2012 and details were called for by the respondents under Section 142(1) of the Act on 24.09.2014 and 08.01.2015. Detailed submissions were made by the petitioner before the Assessing Officer from time to time. The case of the petitioner was referred to the Transfer Pricing Officer for necessary verification under Section 92CA of the Act, as the petitioner had international transactions with its group companies abroad. The Transfer Pricing Officer accepted the arm's length price of the international transactions entered into by the petitioner company for the subject year. Consequently, no Transfer Pricing adjustments were made by the second respondent. The second respondent thereafter took up the case of the petitioner for assessment and an assessment order was passed on 26.03.2015 under Section 143(3) read with Section 92CA of the Act for the Assessment Year 2011-12.

4. Suddenly, the first respondent issued a notice dated 28.03.2016 under Section 148 of the Act to initiate proceedings for reassessment under Section 147 of the Act. The petitioner responded to the notice requested for reasons, which were furnished by the Assessing authority. Detailed objections were submitted by the petitioner regarding the reasons furnished and



the said objections were also disposed of by the Assessing authority. Challenging the said disposal of objections, the petitioner is constrained to move the present writ petition.

5. The learned counsel appearing on behalf of the writ petitioner mainly raised three grounds, stating that there is absolutely no application of mind on the part of the Assessing authority, while initiating reopening proceedings under Section 147 of the Act. Secondly, the materials relied upon including the Audit party objection for the purpose of reopening of assessment, is nothing but change of opinion. Thirdly, the audit objection per se cannot be a reason for reopening of assessment. In the present case, the audit objection verbatim is taken into consideration for the purpose of reopening of assessment, which amounts to non-application of mind and further, impermissible under the provisions of the Act. Thus, the jurisdictional notice issued under Section 148 of the Act is untenable.

6. To substantiate the said grounds, the learned counsel for the petitioner drawn the attention of this Court with reference to the notice issued under Section 141(1) of the Act and the details regarding the scrutiny assessment proceedings in the case of the petitioner assessee.

7. In respect of deduction claimed under Section 10A and 10AA of the Act for the Assessment Year 2011-12, the Assessing authority sought for details from the petitioner in proceedings dated 24.09.2014. In the said letter, there is a specific query on the point that in earlier Assessment Year(s), loss of 10A / 10AA units were not allowed to be set off against profits of other units. Show cause why similar stand should not be taken for the year under consideration. In Sl.No.14, another clarification is sought for, which the petitioner to provide the details of current year losses in connection with all STPI and SEZ units of Cognizant Technology Solutions India Private Limited. When the details are called for in respect of the disallowances and losses in connection with STPI and SEZ units of the petitioner and the petitioner has submitted details as well as the relevant documents and the Assessing Officer had taken note of all the details during the scrutiny proceedings and passed the final assessment order on merits and in accordance with law on 26.03.2015. While so, the very same material as well as the questions raised is relied on for the purpose of reopening of assessment under Section 147/148 of the Act and therefore, the very initiation amounts to change of opinion. It is contended that the assessment order also speaks about all these details and further, out of 10 units, except 1 Unit at Pune, all other units had incurred loss. Therefore, for the Unit at Pune, Section 10A is to be considered and in respect of other units incurred losses, Section 10AA is to be taken into



consideration for disallowance of loss for the computation of total income.

8. The learned counsel for the petitioner relied on the assessment order originally passed and the issues decided by the Assessing authority and contended that the initiation of reopening proceedings establishes total non-application of mind on the part of the respondents and the materials relied upon is change of opinion. Further, audit objections perse cannot be a source for reopening of assessment as the Assessing authority has not pulled out any new materials from and out of the said audit objections relied on for the purpose of reopening of assessment.

9. The reasons furnished in proceedings dated 14.07.2016 as well as the objections submitted by the petitioner on issue basis are relied upon. The disposal of objection is questioned by the petitioner on the ground that the last, but one paragraph itself would show that the authority has not applied their mind, while considering the objections. There is no independent opinion formed by the respondents for the purpose of reopening of assessment. They have extracted the objections and has stated simply that the income chargeable to tax has escaped assessment and therefore, the reopening proceedings are to be continued. In the absence of any independent opinion for reopening of assessment, the proceedings itself is untenable as the mandatory requirements contemplated under Section 147 of the Act is to be complied with. In the present case, the pre-requisite condition contemplated has not been complied with by the respondents. Contrarily, they have relied upon the audit objections and further, the materials already adjudicated and considered by the Assessing Officer at the time of passing the original assessment order and reopened the assessment and therefore, the exercise in entirety is bad in law.

10. In support of the contentions, the learned counsel for the petitioners relied on the judgments in the case of Income Tax Officer Vs. Techspan India Private Limited and another, reported in (2018) 6 SCC 685, wherein it is held as follows:

"14. The language of Section 147 makes it clear that the assessing officer certainly has the power to reassess any income which escaped assessment for any assessment year subject to the provisions of Sections 148 to 153. However, the use of this power is conditional upon the fact that the assessing officer has some reason to believe that the income has escaped assessment. The use of the words "reason to believe" in Section 147 has to be interpreted schematically as the liberal interpretation of the word would have the consequence of conferring arbitrary powers on the



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assessing officer who may even initiate such reassessment proceedings merely on his change of opinion on the basis of same facts and circumstances which has already been considered by him during the original assessment proceedings. Such could not be the intention of the legislature. The said provision was incorporated in the scheme of the IT Act so as to empower the assessing authorities to reassess any income on the ground which was not brought on record during the original proceedings and escaped his knowledge; and the said fact would have material bearing on the outcome of the relevant assessment order.

15. Section 147 of the IT Act does not allow the reassessment of an income merely because of the fact that the assessing officer has a change of opinion with regard to the interpretation of law differently on the facts that were well within his knowledge even at the time of assessment. Doing so would have the effect of giving the assessing officer the power of review and Section 147 confers the power to reassess and not the power to review.

16. To check whether it is a case of change of opinion or not one has to see its meaning in literal as well as legal terms. The words "change of opinion" imply formulation of opinion and then a change thereof. In terms of assessment proceedings, it means formulation of belief by an assessing officer resulting from what he thinks on a particular question. It is a result of understanding, experience and reflection."

(b) In the case of Cholamandalam Investment and Finance Company Limited Vs. Assistant Commissioner of Income Tax, the Hon'ble High Court of Madras passed an order on 12.12.2017 in W.P.No.19375 of 2017, wherein the following observations are made:

"4.The impugned re-opening proceedings is on the basis of an audit objection, which was communicated to the Department. On receipt of the audit objection, the Central Board of Direct Taxes vide letter dated 10.06.2015, addressed the Director (RA), office of the C&AG of India, New Delhi, stating that the audit objection made by their Department has not been accepted by the Ministry (Ministry of Finance) for the reasons given in Annexure-A to the said letter dated 10.06.2015. The Annexure-A is a note submitted by the assessing officer of the petitioner. In the said Annexure, the assessing officer has clearly stated as to how the claim of the Revenue audit that Rs.323.53 crore was to be treated as a revenue receipt is not



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correct and unacceptable. Thus, the matter should have been allowed to rest at that stage, but however, the assessing officer thought fit to issue the impugned notice under Section 148 of the Act. The petitioner sought for reasons for re-opening vide letter dated 03.03.2017. On such request, the assessing officer furnished the reasons for reopening vide communication dated 10.03.2017.

5. What is interesting to note is that the reasons for reopening is verbatim repetition of the audit objections filed by the audit party. This position was clearly demonstrated by the learned counsel for the petitioner by comparing the audit objection and the reasons for re-opening. Thus, it is clear that the assessing officer did not have any independent material to re-open the assessment, but merely proceeded to re-open the assessment on the ground that there was an audit objection. Thus, two issues arise for consideration. Firstly, whether the re-opening proceedings have been made solely based upon the audit objection. Secondly, when CBDT had taken a stand that they do not accept the audit objection whether the respondent could proceed to initiate re-opening proceedings."

(c) In the case of Principal Commissioner of Income Tax Vs. K.R.Jayaram, reported in 2020 SCC Online Mad 1511, the Hon'ble High Court of Madras made the following observations:

"26. It would be worthwhile to remind ourselves about the decision of the Hon'ble Supreme Court in the case of Calcutta Discount Co., Ltd., vs. ITO [1961] 41 ITR 191 (SC), wherein the Hon'ble Supreme Court held that the duty of the assessee is to make full and true disclosure of all primary facts and once it is done, it is for the Assessing Authority to decide what inference of fact or law could be drawn there from. The law does not require the assessee to state the conclusion that could reasonably be drawn from the primary facts and if there were, in fact, some reasonable grounds for thinking that there had been any non-disclosure as regards any primary facts, which could have a material bearing on the question of "under assessment", that would be sufficient to give jurisdiction to the ITO to issue notices under Section 34 (1922 Act) and whether these grounds are adequate or not for arriving at a conclusion that there was a non-disclosure of material facts could not be opened for the Court's investigation."

(d) In the case of M/s.Seshasayee Paper & Boards Limited



Vs. Commissioner of Income Tax, the Hon'ble Division Bench of this Court delivered a judgment on 21.12.2020 in W.A.Nos.1632, 1633 & 1635 of 2019 and the paragraph relied on by the petitioner is as follows:

"36. In the decision of this Court in the case of Fenner (India) Ltd., it was pointed out that the duty of an assessee is limited to fully and truly disclose all material and he is not required to prepare a draft assessment order. We find that the assessee disclosed all relevant facts and the Assessing Officer considered them and after the search, which was conducted on 08.7.1996, the block assessment was framed, which was ultimately set aside. Parallely, the regular scrutiny assessments were done under Section 143(3) of the Act and thereafter the CIT exercised his power under Section 263 of the Act and passed an order, which was also set aside.

37. Therefore, the material, which was already placed on record, and considered in earlier two rounds of litigation can hardly be a reason to reopen the assessment and all that we can say is that the attempt of the Department is to reopen a settled issue solely based upon change of opinion. The Department is silent and has not disclosed as to what is the tangible material, which is now available with them more than those that were available with the Department in the earlier two rounds of litigation. Therefore, we can safely hold that what the Department seeks to do is not to reopen the assessment, but to review the earlier orders, which had attained finality. That apart, the tax case appeals filed by the assessee having been allowed by judgment dated 03.12.2013, the decision is binding upon the Department and the same reasons, for which, the CIT exercised his power under Section 263 of the Act, cannot be used for issuing the notices for reopening."

11. Relying on the above judgments, the learned counsel for the petitioner reiterated that the case on hand and its facts squarely falls under the principles laid down in the above judgments and the writ petition is to be allowed.

12. The learned Senior Standing counsel appearing on behalf of the respondents opposed the contentions raised by the petitioners by stating that the case of the petitioner is a regular case, where the authority has 'reason to believe' for reopening of assessment and by following the procedures, the reopening proceedings are progressed. Thus, there is no irregularity or illegality in reopening the assessment proceedings and the grounds raised by the petitioners in their



objections are considered by the authority competent and reasons are also furnished.

13. The learned Senior Standing counsel contended that, if the Assessing Officer has 'reason to believe' that the income chargeable to tax has escaped assessment, such reason would be sufficient for the purpose of initiation of proceedings under Section 147/148 of the Act. In the present case, the reasons furnished are independent and cannot be construed as verbatim of the audit objections. The Assessing Officer could able to trace out certain reasons for reopening of assessment and such reasons are formulated independently by considering the informations and materials made available. The audit objections undoubtedly may be a source for reopening of assessment. However, the requirement would be that the Assessing Officer must have 'reason to believe' that the income chargeable to tax has escaped assessment. In the present case, the reasons are furnished to the petitioner, which would reveal that the authority has taken an independent decision for reopening of assessment. The reasons furnished perse reveals that the information gathered by the Assessing Officer recorded in the first four lines and thereafter, findings of the Assessing Officer is recorded and finally, the effect and consequences and the implications under the provisions of the Act was also considered. Thus, there is a definite 'reason to believe' for the purpose of reopening of assessment by the competent authority. Once the reasons furnished reveals that the informations received by the Assessing Officer is considered and he could able to give a finding, which is to be construed as new material and the effect and consequences under the Act finally and if these three are satisfied, then the reopening is to be held as valid and rest of the grounds raised are to be adjudicated during the course of the proceedings.

14. The learned Senior Standing counsel emphasized that the complete adjudication of facts at the stage of reopening in a writ proceedings may not be proper and the assessee has to avail the opportunity and establish his case on merits before the Assessing Officer. Once the Assessing Officer has 'reason to believe', such reasons are within the ambit of Section 147 of the Act, then it is sufficient for the purpose of the continuance of reopening proceedings and rest of the grounds on merits are to be adjudicated by the Assessing Officer during the course of proceedings for forming a final opinion and to pass assessment / reassessment orders.

15. The objections submitted by the petitioner would reveal that they have not raised any vital grounds, except by stating that the reasons are change of opinion and the audit objections verbatim relied upon and there is no application of mind on the



part of the assessee. Such general grounds are raised commonly, and the petitioner has not substantiated the said grounds with sufficient materials. However, the Assessing Officer has considered all such grounds independently and disposed of the objections filed by the petitioner. What is required is the consideration to be deliberated, while disposing of the objections and not adjudication of the entire facts and evidences. Therefore, in the present case, the petitioner has not established any valid ground for the purpose of assailing the reopening proceedings and thus, the writ petition is to be rejected.

16. The learned Senior Standing counsel relied on the very same judgments cited by the writ petitioner i.e., Techspan India Private Limited (Cited supra), wherein in paragraph 13, the Hon'ble Supreme Court made a finding is as follows:

"13. To appreciate the present controversy between the parties, it would be appropriate to refer to Sections 147 and 148 of the IT Act. For ready reference, relevant portions of Sections 147 and 148 of the Act are reproduced below:

"147. Income escaping assessment.— 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 (hereafter in this section and in Sections 148 to 153 referred to as the relevant assessment year):

Provided 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 the relevant assessment year, unless 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:

148. Issue of notice where income has escaped assessment.—(1) Before making the assessment,



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reassessment or recomputation under Section 147, the assessing officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed, and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under Section 139:

(2) The assessing officer shall, before issuing any notice under this section, record his reasons for doing so."

17. Relying on the above judgment, the learned Senior Standing counsel contended that the Income Tax officer must determine for himself what is the effect and consequences of law mentioned in the audit note and whether any consequences, which is now comes to his notice and the income has escaped assessment. Therefore, the audit objection is also a ground for initiation of reopening proceedings. What is required is the satisfaction of the Assessing Officer and if he has 'reason to believe', then reopening is permissible.

18. The learned Senior Standing counsel referred the case of Raymond Woollen Mills Vs. Income Tax Officer, reported in [1999] 236 ITR 34 (SC), wherein the Hon'ble Supreme Court of India made the following observations:

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



costs."

19. Finally, in the case of Jayaram Paper Mills Limited Vs. Commissioner of Income Tax, Chennai, reported in [2010] 191 Taxman 38 (Madras), the following observations are made:

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

27. In the light of the above deeming fiction, if we now look at the order dated August 31, 2009, passed by the second respondent, overruling the objections of the petitioner to the initiation of proceedings, it is seen that the petitioner admittedly earned income solely from interest on fixed deposits and intercorporate deposits and debited significant amount of expenditure. The Assessing Officer has taken a stand, prima facie, that the expenditure debited to the profit and loss account under various heads is not incidental to the earning of interest income. Therefore the stand taken by the second respondent that he has reason to believe that certain income chargeable to tax escaped assessment, cannot be said to be vague, irrational or devoid of any basis.

31. In any event, the petitioner is only at the threshold. Once it is found that the Assessing Officer had reason to believe that there was income escaping assessment, it is not open to this court to make a roving enquiry, since the reasons are not justiciable. All that can happen, by allowing the proceedings to continue, is that the Assessing Officer may pass an order of assessment or reassessment. The petitioner would then have a spate of statutory remedies. Therefore, the case on hand, in my opinion, is not one that warrants interference at this stage."

20. Relying on the above judgments, the learned Senior Standing counsel is of an opinion that the case on hand is also a regular case of reopening of assessment based on the tangible materials available on record and therefore, the Assessing Officer may be allowed to continue the proceedings and pass assessment / reassessment orders by following the procedures as contemplated.



21. Considering the arguments as advanced by the respective learned counsels appearing on behalf of the petitioner as well as the learned Senior Standing counsel, this Court is of the considered opinion that the case on hand is a case, wherein reopening proceedings are initiated within a period of four years. Therefore, the conditions stipulated in Proviso Clause to Section 147 are not applicable. Thus, it is sufficient if the Assessing Officer has 'reason to believe' that any income chargeable to tax has escaped assessment. However, whether the Assessing Officer has 'reason to believe' or the reasons furnished for reopening of assessment has no substance for the purpose of continuance of reopening of proceedings are the consideration to be shown in the present writ petition.

22. Let us now consider the reasons furnished for reopening of assessment in proceedings dated 14.07.2016 and the reasons are recorded as under:

Reasons for Reopening

"Perusal of the records revealed that as per sec.115JB (6), provisions of Sec.115JB will not apply to the income from business carried on by an entrepreneur in an SEZ. Claiming deduction u/s 10AA or opting out of benefit of sec.10AA is not a criterion to enforce this section. In line with the above sub-section, while computing income u/s 115JB, you have added back expenses related to some SEZ units and reduced the revenue from such units. However expenses and revenue in relation to the 9 SEZ units were not given similar treatment. Since loss incurred by these 9 units amount to Rs.13,06,30,230, adding back of expenses incurred by these 9 units and reducing revenue from such units will result in income u/s.115JB going up by sum of 13,06,30,230.

Therefore, I have a reason to believe that Income has escaped assessment within the meaning of Sec.147 of the IT Act, 1961.

The reasons for reopening the assessment as per the records of this office were not provided verbatim to the assessee but the reasons communicated to the assessee vide letter dated 14.07.2016 didn't change the content or meaning of the reasons to believe formed by the erstwhile officer. Thus, as the notice was issued and the reasons for reopening were formed by the erstwhile officer there is no lack of 'reason to believe'. The successor is duty bound to continue the assessments initiated by his predecessors and thus the objection of the assessee is rejected."



23. The petitioner submitted their objections and the objections were disposed of by the authority in proceedings dated 25.10.2017. The reasons furnished would reveal that perusal of the records revealed that as per Section 115JB(6), provisions of Sec.115JB will not apply to the income from business carried on by an entrepreneur in an SEZ. Claiming deduction u/s 10AA or opting out of benefit of sec.10AA is not a criterion to enforce this section.

24. Therefore, the Assessing Officer has considered the issue relating to the claiming of deduction under Section 10AA and based on the informations collected from the records, he forms an opinion that claiming of deduction under Section 10AA or opting out of benefit of Section 10AA is not a criterion to enforce this section. Further, he proceeds by stating that in line with the above sub-section, while computing income u/w115JB, the petitioner have added back expenses related to some SEZ units and reduced the revenue from such units.

25. This exactly is the findings of the Assessing Officer with reference to the informations collected for the purpose of reopening. Thus, the informations are made available and based on the informations, clear findings are also given. Thereafter, the Assessing Officer states that Since loss incurred by these 9 units amount to Rs.13,06,30,230/- adding back of expenses incurred by these 9 units and reducing revenue from such units will result in income u/s.115JB going up by sum of 13,06,30,230/-. The effect and consequences, which resulted income chargeable to tax has escaped assessment is also recorded in the order, furnishing reasons. Thus, the three components are made available in the reasons furnished for reopening of assessment. Regarding the informations, an independent finding is recorded and thereafter, the effect and consequences of the income escaped assessment was also taken into consideration for the purpose of reopening of assessment. On these reasons, the Assessing Officer arrived a conclusion that he has 'reason to believe' that the income has escaped assessment and accordingly, issued notice under section 148 of the Act.

26. Regarding the objections submitted, no doubt the petitioner has raised the ground of change of opinion and the audit objections as well as the non-application of mind. The objections raised in this regard were also considered by the authority, while disposing of the objections. The disposal of the objections would reveal that the reason for reopening of assessment was considered and the petitioner's/assessee's objections, raising four grounds are specifically recorded and considered by the respondents in the impugned order, disposing of the objections. Thereafter, the impugned order, proceeds by



stating that the ground taken by the assessee regarding change of opinion is untenable.

27. In this regard, a finding is given that at the time of finalizing the assessment under section 143(3) read with Section 92CA on 26.03.2015, the then Assessing Officer had not formed any opinion on this issue leading to reassessment under Section 147 and thus, it does not amount to change of opinion and also to review of the assessment already completed. The findings are given with reference to the reasons furnished for reopening of assessment. Further, the findings in the order impugned proceeds by stating that it is clear that the reassessment is permissible, when Assessing Officer did not form opinion on any issue during first assessment and if any reason to believe is formed for escapement of income chargeable to tax that itself is sufficient enough to initiate reassessment proceedings. Recording the findings, the respondents came to the conclusion that the ground raised regarding change of opinion is untenable. Regarding the second ground raised by the petitioners, reassessment proceedings based on audit objections is bad in law, the objections are recorded and the respondents arrived a conclusion that the assessee's objection is carefully considered, however, it is not accepted as the reopening was initiated on the basis of factual information and the same had been communicated to the assessee vide letter dated 14.07.2016. In this regard, the Revenue relied on the judgment of the Hon'ble Supreme Court of India in the case of CIT Vs. PVS Beedies P Ltd (SC), 237 ITR 3, wherein the Apex Court made the following observations:

".....There can be no dispute that the audit party is entitled to point out a factual error or omission in the assessment. Reopening of the case on the basis of a factual error pointed out by the audit party is permissible under law. In view of that we hold that reopening of the case under Section 147(b) in the facts of this case was on the basis of factual information given by the internal audit party and was valid in law. The judgment under appeal is set aside to this extent."

27a. Further, in the case of M/s.Larsen & Toubro Limited Vs. State of Jharkhand and Ors (SC), in Civil Appeal No.5390 of 2007, the Hon'ble Supreme Court has held that:

".....The contention whether finding the information from the very facts that were already available on record amounts to information for the purpose of Section 19 of the State Act, it would be



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sufficient to refer to a judgment of this Court in Anandjiharidas & Co. vs. S.P. Kasture AIR 1968 SC 565 wherein it was held that a fact which was already there in records doesn't by its mere availability becomes an item of "information" till the time it has been brought to the notice of assessing authority. Hence, the audit objections were well within the parameters of being construed as 'information' for the purpose of section 19 of the State Act.

(27) The expression 'information' means instruction or knowledge derived from an external source concerning facts or parties or as to law relating to and/or after bearing on the assessment. We are of the clear view that on the basis of information received and if the assessing officer is satisfied that reasonable ground exists to believe, then in that case the power of the assessing authority extends to re-opening of assessment, if for any reason, the whole or any part of the turnover of the business of the dealer has escaped assessment or has been under assessed and the assessment in such a case would be valid....."

28. Relying on the above judgment of the Hon'ble Apex Court of India, the Assessing Officer arrived a conclusion that the reassessment is permissible when assessing officer has factual information indicating the escapement of income. In the instant case, the reasons for reopening have been duly recorded and they have also been conveyed to the assessee. In view of the above discussion, the said objection was also rejected.

29. Regarding the other ground raised that reasons on reopening has not been provided within a reasonable time that was also not substantiated. The learned counsel for the petitioner states that the findings in this regard are vague. However, this Court is of the considered opinion that the order, disposing of the objections, cannot be construed as a final order of assessment and the mandatory requirement of 'reason to believe' if satisfied with reference to Section 147 of the Act, then the authority shall be allowed to continue the reassessment proceedings. The reasons to the satisfaction are contemplated and the 'sufficiency' of the reasons need not be gone into by the High Court. Thus, if the Revenue could able to establish that the Assessing Officer has 'reason to believe' that the income chargeable to tax has escaped assessment, the same would be sufficient for reopening of assessment and rest of the grounds on merits may be adjudicated elaborately during the course of proceedings. Thus, High Court cannot conduct an elaborate enquiry in respect of such disputed facts and circumstances relatable to the documents and evidences. Only if



any jurisdictional error is established on reopening of assessment, then alone, a writ proceedings are entertainable and not otherwise. Regarding the ground raised by the assessee that the condition of 'reason to believe' is not satisfied, the Assessing Officer has made a finding that the reasons for reopening was recorded by the erstwhile officer as per the records of the office:

Reasons for Reopening

"Perusal of the records revealed that as per sec.115JB (6), provisions of Sec.115JB will not apply to the income from business carried on by an entrepreneur in an SEZ. Claiming deduction u/s 10AA or opting out of benefit of sec.10AA is not a criterion to enforce this section. In line with the above sub-section, while computing income u/w115JB, you have added back expenses related to some SEZ units and reduced the revenue from such units. However expenses and revenue in relation to the 9 SEZ units were not given similar treatment. Since loss incurred by these 9 units amount to Rs.13,06,30,230, adding back of expenses incurred by these 9 units and reducing revenue from such units will result in income u/s.115JB going up by sum of 13,06,30,230.

Therefore, I have a reason to believe that Income has escaped assessment within the meaning of Sec.147 of the IT Act, 1961.

The reasons for reopening the assessment as per the records of this office were not provided verbatim to the assessee but the reasons communicated to the assessee vide letter dated 14.07.2016 didn't change the content or meaning of the reasons to believe formed by the erstwhile officer. Thus, as the notice was issued and the reasons for reopening were formed by the erstwhile officer there is no lack of 'reason to believe'. The successor is duty bound to continue the assessments initiated by his predecessors and thus the objection of the assessee is rejected."

30. However, in this regard, the learned Standing counsel made a submission that the said paragraph may not be relevant as far as the case of the petitioner is concerned. However, the same would not cause any prejudice to the interest of the petitioner in the reopening proceedings. Since the reopening proceedings are initiated for other assessment years, the said paragraph is adopted in this case and therefore, the said ground cannot be a valid ground for the purpose of setting aside the entire reopening proceedings. The learned Senior Standing counsel has made a submission that though such paragraph is



31. This Court is of the considered opinion that the 'reason to believe' has contemplated if complied with or not, is to be examined with reference to the reasons furnished and once, the reasons furnished based on certain informations or materials, then it is sufficient for the continuance of reopening proceedings. The sufficiency of the reasons need not be gone into at the stages of reopening. Thus, if prima facie the Revenue could able to establish that the Assessing Officer has 'reason to believe' and such reasons are sufficient enough, then this Court is of the considered opinion that the assessee must co-operate for the completion of reassessment proceedings. The other grounds raised on merits are to be adjudicated elaborately by the authority competent and High Court cannot venture into an adjudication of those disputed facts in a writ proceedings under Article 226 of the Constitution of India. Even after such adjudication, further avenues are available for redressal of his grievances under the provisions of the Act. This being the redressal mechanism as contemplated under the Act, the initiation of reopening proceedings are to be tested strictly with reference to the conditions as contemplated under Section 147 of the Act.

<https://hcservices.ecourts.gov.in/hcservices/>



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

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Sd/-
Assistant Registrar (CS-III)

// True Copy//

Sub Assistant Registrar

Kak
To

1. The Deputy Commissioner of Income Tax,
Large Taxpayer Unit,
1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar Western Extension,
Chennai - 600 101
(Now at 7th Floor, Wanaparthi Block,
Aayakar Bhavan, Chennai - 600 034.
2. The Joint Commissioner of Income Tax,
Large Taxpayer Unit,
1775, Jawaharlal Nehru Inner Ring Road,
Anna Nagar Western Extension,
Chennai - 600 101
(Now at 7th Floor, Wanaparthi Block,
Aayakar Bhavan, Chennai - 600 034.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.39517

+1cc to Mr.Srinath Sridevan, Advocate, S.R.No.39717

W.P.No.31962 of 2017

PCH(CO)
SU(07/09/2021)