

Mr.Akhileshwar Sharma, Advocate for respondents.

CORAM : DHIRAJ SINGH THAKUR &
 VALMIKI SA MENEZES, JJ.

PRONOUNCED ON : 9th JANUARY, 2023

J U D G M E N T

PER DHIRAJ SINGH THAKUR, J.

1. The petition is taken up for final disposal.
2. In the present petition, the petitioner challenges the notice dated 31st March 2021 issued under section 148 of the Income Tax Act, 1961 ('the Act'), whereby it sought to reopen the assessment of the assessment year 2014-15. The petitioner also challenges the order dated 7th February 2022, whereby the objections to the issuance of notice under section 148 of the Act were rejected.
3. Briefly stated the material facts are as under :
 - (a) The petitioner is a public limited company engaged *inter-alia* in the business of manufacturing and selling of paints, varnish, primer etc. The

business is carried on through various dealers who purchase the goods from the petitioner on the principal-to-principal basis and sell the same to the ultimate customers.

(b) With a view to promote its brand and the products, manufactured and with a view to increase the sales, the petitioner claims that it evolved a marketing strategy/scheme called as 'Colour Idea Stores'. This scheme envisages a specified and designated areas in the shops of the dealers for exclusive display of the petitioner's products. As per the scheme, the petitioner had to enter into the agreement with dealers as regards sharing of costs incurred for setting up of the designated area for use and display of the petitioner's products. The costs incurred comprised of civil work, furniture and fittings, electrical fittings, signboards, advertisement material etc. It is stated that even though the petitioner incurred expenditure, on setting up of the stores, the stores continue to be belonged to the

dealers. It is also stated that the costs incurred by the petitioner as its shares in the development of the Colour Idea Store would be debited to the profit and loss account as advertising and sales promotion expenses and claim as deduction in computing the income of the petitioner.

(c) A return of income for the assessment year 2014-15 came to be filed by the petitioner declaring a total income of Rs.1403.68 crores which was subsequently revised to Rs.1382.57 crores. The case of the petitioner is stated to have been selected for scrutiny assessment during the course of which a show cause notice dated 7th October 2016 was issued by the Assessing Officer ('AO') requiring it, *inter-alia*, to submit the details of the 'advertisement and sales promotion expenses'.

(d) In response to the said show cause notice, the petitioner filed its reply on 17th October 2016 giving details regarding advertising and sales promotion expenses, a break-up of which did reflect that an

amount of Rs.22,50,16,050/- was spent under the head "Colour Idea Stores".

4. The AO finally passed the order of assessment dated 19th December 2016 under section 143(3) read with section 144C(3) of the Act for the assessment year 2014-15 computing the total income of the petitioner at Rs.1654.08 crores, after making certain disallowances reflected in the advertisement and sales promotion expenses. However, it is stated that the claim of expenses under the head "Colour Idea Stores" was accepted.

5. Notice under section 148 of the Act dated 31st March 2021 was issued seeking to reopen the assessment for the assessment year 2014-15. The reasons for reopening read as under :

Reasons for reopening of the assessment in case of M/s. Asian Paints Ltd. for A.Y. 2014-15 u/s 147 of the Income-tax Act, 1961 :

The original return of income has been filed electronically on 27.11.2014 declaring total income at Rs.14,03,67,70,690/-. Subsequently, return of income was revised on 21.03.2016 declaring total income at Rs.13,82,57,02,410/-. The case of the assessee was selected for scrutiny under CASS and assessment

under section 143(3) was completed on 19.12.2016 determining income at Rs.16,54,07,53,234/-.

2. During the assessment proceedings u/s 143(3) of the Act in AY 2015-16, it was seen that the assessee has incurred expenses of Rs.32,44,46,533/- towards "Colour Idea Store" and debited these expenses in the P & L A/c. In A.Y. 2015,16. After thorough examination and verification during the scrutiny assessment proceedings of A.Y. 2015-16, the expenses for "Colour Idea Store" were considered as capital expenditure as against the claim of revenue expenditure by the assessee and Rs.29,20,01,880/- was added to the total income of the assessee after allowing depreciation of 10%. Further, based on the above disallowance, the case was reopened for A.Y. 2012-13 to examine the above stated issue.

3. The assessee furnished the details regarding the amounts involved to the above mentioned issue for A.Y. 2014-15. On perusal of the same, it is seen that an amount of Rs.22.50 crores escaped assessment as the assessee failed to disclose such information during the course of assessment proceedings.

4. In view of the above, the undersigned has reason to believe that the income exceeding Rs.1,00,000/- has escaped assessment within the meaning of Section 147 of the Act. Therefore, proposal for reopening of A.Y. 2013-14 by issuing notice u/s 148 of the Act is being made u/s 151 of the Act for your kind perusal and approval.

5. In view of the reasons recorded above, I am of the opinion that income chargeable to tax has escaped assessment for A.Y. 2014-15 by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for A.Y. 2014-15.

6. The petitioner filed its objections to the reopening notice which were rejected by virtue of the order dated 7th February 2022. Counsel for the petitioner urged that there was no failure to disclose fully and truly any material fact necessary for the assessment which was a condition precedent for reopening the assessment in terms of section 148 of the Act.

It is stated that based upon a similar reasoning, the respondents had sought to reopen assessment relevant to assessment year 2011-12 and 2012-13, was challenged in writ proceeding, which came to be allowed by virtue of judgment and order dated 17th January 2019 and 29th October 2021 and the proceedings were quashed. An SLP preferred against the said judgment and order too, is stated to have been dismissed by virtue of order dated 4th October 2019 and subsequently a review petition seeking review of the said order was also dismissed.

7. Counsel for the respondents, on the other hand, generally supported the reassessment proceedings initiated by the AO. It was stated that the reassessment proceedings would not be held to be bad as the AO, while passing the

order of assessment, had not expressed any specific opinion in regard to the expenditure incurred on “Colour Idea Stores”, and therefore, at this stage, the reassessment proceedings could not be permitted to be scuttled.

8. Proviso to section 147 of the Act, as it stood then, envisaged that no action under section 147 of the Act shall be taken 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.

9. In *Hindustan Lever Ltd. Vs. R.B. Wadkar, Assistant Commissioner of Income-Tax and Others*¹, this Court held :

“The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. The reasons are the manifestation of the mind of the Assessing

1 2004 ITR 332 Vol.268

Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide the link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish the vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment.”

10. From the record, it is clear that during the scrutiny assessment, the AO had sought from the petitioner the relevant details with regard to the advertisement and sales promotion expenses which details were furnished by the petitioner vide its response dated 17th October 2016. It can also be seen that the AO had disallowed some of the expenses which had been reflected in the break-up under the head “details of advertisement and sales promotion expenses” while passing the final order of assessment, which reflects that the AO had applied its mind to the appellant’s claim while passing the order under section 143(3) of the Act. Moreover, the reasons do not disclose as to

what material or fact was not disclosed by the assessee. It, therefore, clear that there was, in fact, a complete disclosure of all the primary material facts on the part of the petitioner and it cannot be said that there was any failure on the part of the petitioner to disclose fully and truly facts which were material and necessary for assessment.

11. Be that as it may, the notice impugned does not satisfy the jurisdictional requirement of section 147 of the Act and, therefore, is held to be unsustainable, and is accordingly quashed.

12. The petition is allowed. No costs.

[VALMIKI SA MENEZES, J.]

[DHIRAJ SINGH THAKUR, J.]