IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.09.2023

Pronounced on : 10.11.2023

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.8201 of 2021
and
W.M.P.Nos.8757 and 8759 of 2021

M/s. PVP Ventures Limited
Represented by its Authorised Signatory,
Mr.Karthikeyan Shanmugam
D.No.2, 9th Floor KRM Centre,
Harrington Road, Chetpet,
Chennai 600 031. ..Petitioner

Vs.

1.Deputy Commissioner of Income Tax,
Central Circle 5(2),
Chennai 600 034.

2.Deputy Commissioner of Income Tax -1(2)
National E-Assessment Centre
Delhi.

3.Assistant Commissioner of Income Tax,
Central Circle -1, LTU,
Chennai 600 034. ..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records in PAN: AAACS3101P and quash the impugned notice in ITBA/AST/S/148/2019-20/1026884043(1) issued on 24.03.2020 passed by the 1st respondent and the consequential proceedings in ITBA/AST/F/17/2020-1/1031075999(1) dated 27.02.2021 passed by the 3rd respondent as illegal and without jurisdiction.

For Petitioner : M/s Vandana Vyas

For Respondents : Mr.V.Mahalingam

ORDER

MOHAMMED SHAFFIQ,J.

The present writ petition is filed challenging the notice dated 24.03.2020 and the consequential proceeding dated 27.02.2021 rejecting the objections *inter alia* on the premise that the assumption of jurisdiction in the absence of a finding that the income chargeable to tax has escaped assessment by reason of the failure to fully and truly disclose material particulars which is a condition precedent for invoking the extended period of six years for re-assessment under Section 147 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") vitiates the impugned proceedings.

2. Brief facts:

2.1. The petitioner Company is stated to be engaged in the business of Real Estate and had investments in Media and Entertainment Sector through its Subsidiaries. The petitioner filed its return of income for the assessment year 2013-14 on 11.12.2013 declaring a total income of Rs.37.42 Crores and Rs.45.50 Crores under normal provisions and Section 115 JB of the Act respectively. The petitioner was selected for scrutiny under CASS. A notice under Section 143(2) of the Act dated 02.09.2014 was issued and a notice under Section 142(1) of the Act dated 26.06.2015 along with questionnaire was issued to the petitioner company. The petitioner submitted its reply to the above notices / communication. A notice under Section 142(1) of the Act was issued on 26.06.2015 wherein the petitioner was required to produce *inter alia* details of brought forward loss and unabsorbed depreciation. The petitioner in response to the above notice submitted the details sought for vide its letter dated 08.07.2015 *inter alia* including copy of the original return of income for the assessment year 2013-14, copy of Form 3CA and 3CD, details of TDS, details of payments made to directors and details of sister concern / group concern etc. Further, vide its letter dated 15.02.2016 the petitioner submitted that it had not claimed long term capital loss of Rs.9,36,04,656/- on account of sale of land during the assessment year 2013-14 in the subsequent assessment years.

2.2.The order of assessment under Section 143(3) came to be passed on 07.03.2016 disallowing the claim of deduction under Section 14A and recording that the petitioner had claimed current year loss of Rs.9.36 Crores in the return of income filed on 11.12.2013. Further, the assessee was found to be ineligible to carry forward the loss of Rs.9.36 Crores to the subsequent years since the return has not been filed within the due date in terms of Section 139(1) of the Act.

2.3.The petitioner preferred an appeal aggrieved by the order of assessment insofar as it disallowed the claim under Section 14A of the Act. During the pendency of the appeal, the Appellate Authority issued an enhancement notice under Section 250(2) of the Act, dated 19.01.2017 wherein a sum of Rs.9,36,04,656/- was noticed as being shown as loss under the head “long term capital gains” . It was further stated that the sale consideration for the sale of the said land was shown at Rs.21 Crores and as having been received on 27.06.2012 against which brokerage paid was reduced and indexed cost amounting to

Rs.30.36 Crores. The notice proceeds to state that perusal of Form 3CA and 3CD would reveal the nature of business is mentioned under the head "Sector as Builders and Sub Sector as Property Developers" and Code Number 0403 was also given. The petitioner was called upon to explain as to why the consideration received on sale of land should not be treated as business income in view of the company's nature of business and tax enhanced correspondingly. The petitioner submitted its written submission dated 30.01.2017 in respect of the above notice *inter alia* highlighting the fact that the appellant sold the subject land held as fixed asset. In this regard, the relevant portion of the written submissions is extracted hereunder:

> *"4. During the subject assessment year the appellant had sold the subject land held as fixed asset. Consequently, the loss on sale of the said land was claimed under the head "Capital Gain" as Long Term Capital Loss."*

2.4. Thereafter, the impugned notice dated 24.03.2020 was issued by the 1st Respondent under Section 148 of the Act on the premise that, for the assessment year 2013-14, there were reasons to believe that income chargeble to tax for the assessment year 2013-14 has escaped assessment within the meaning of Section 147 of the Act. The petitioner vide its letter dated 20.10.2020 filed a return of income in respect of the notice issued under Section 148 of the Act and also sought for reasons for reopening of the assessment. In response the petitioner was furnished with the reason for reopening the assessment vide communication dated 19.02.2021 wherein the very same transaction which is sought to be enhanced by the Appellate Authority by treating the sale of land as business income was once again sought to be reassessed / revisited. The relevant portion of the above communication is relevant and thus extracted hereunder :

> *The CIT(A) during the course of appellate proceedings in the said case, on prusal of the computation of income, on observation that the assessee has shown Long Term Capital Loss to the tune of Rs.9,36,04,656/-was shown. On further enquiry on the issue involved, the assessee had filed details of landsold during the previous year relevant to A.Y., it is seen that the assessee had sold 36.2400 acres of land at Pattipulam for a consideration of Rs.21,00,00,000/- and on perusal of the sale deed, it is noticed that the land has been purchased by ASV Dior Housing and Hospitality Private Limited and the notable fact is that the said sale deeds (9 nos.) were not registered and no stamp duty has not been paid. These facts reveal the fact the sale transaction of the said land was concluded between the assessee and the purchaser without any guideline value of fair market value.*

The informal enquiry as to the price per acre is at Rs.3 Crores per acre which reveal that majority of sale consideration has been out of books and suppressed. Prima facie there is a possibility of huge tax evasion.

Further, it is noticed that the assessee company has received investment from a group company called Platex Ltd. based at Mauritius. It cannot be ruled out that the cash generated from real estate transactions may have been routed through Mauritius company and the same is brough back. There is a possibility of round tripping in this case.

Based on the materia on record, it is essential to investigate the sale of land during the relevant A.Y. Therefore, I have reasons to believe that the income chargeable to tax have escaped assessment exceeding Rs.1 Lakh.

In this case a return of income was filed for the year under consideration and regular assessment u/s 143(3) was made on 07.03.2016. Since, 4 years from the end of the relevant year has expired in this case, the only requirement to initiate proceeding u/s 147 is reason to believe which has been recorded above.

2.5.The Petitioner submitted its reply vide letter dated 22.02.2021 *inter alia* highlighting the following:

a) The impugned notice invoking the extended period under Section 147 from the end of relevant assessment year is without jurisdiction inasmuch as income chargeable to tax had escaped assessment by reason of failure on the part of the assessee / petitioner to disclose fully and truly all material facts. Reliance was sought to be placed on the judgment of the Hon'ble Supreme Court in the case of *New Delhi Television Ltd. V. DCIT in [2020] 116 taxmann.com 151 (SC)*.

b) That the reopening is made on the basis of mere change of opinion without fresh tangible material only on the basis of the observation made by the appellate authority which is impermissible.

c) Insofar as the alleged investment in Platex Limited, Mauritius it was submitted that during the relevant financial year there was no fresh investment and hence the reasons set out for reopening the assessment are non-existent.

d) Reliance was placed on Section 50C of the Act to submit that the value adopted for the purpose of stamp duty, shall be deemed to be the full value of consideration received as a result of such transfer.

e) Further, considering the fact that the assessment year was mentioned as AY 2015-16 instead of AY 2013-14 in the reason for re-opening of assessment, would reveal that the above exercise has been carried out in a mechanical fashion. The 3rd Respondent on considering the objections rejected the same as being untenable in law and had directed the petitioner to cooperate in the assessment proceedings. It is at this stage that the notice dated 24.03.2020 and the consequential proceeding dated 27.02.2021 are challenged in the present Writ Petition.

3. Case of the Petitioner:

3.1. It is submitted by the learned counsel for the petitioner that in view of the proviso to Section 147 of the Act it is impermissible for the assessing authority to assess or reassess any income involving matters which are the subject matter of any appeal, reference or revision. In view of the above restriction/ embargo against invoking Section 147 of the Act, the notice dated 24.03.2020 and the order dated 27.02.2021 rejecting the objections raised by the petitioner is without jurisdiction.

3.2. The impugned proceedings invoking the extended period of limitation provided under Section 147 of the Act is without jurisdiction in the absence of a finding that income has escaped assessment by reason of failure on the part of the assessee / petitioner to disclose fully and truly material facts necessary for assessment. Reliance was placed on several decisions in support of the above proposition.

3.3. In any view, the impugned notice proposing reassessment cannot be sustained inasmuch as it is a mere change of opinion without any fresh / tangible material. In this regard reliance was placed on the fact that the petitioner vide its reply dated 15.02.2016 had submitted that he was not claiming the long term capital loss of Rs. 9,36,04,656/- on account of sale of land. Thus, the transaction of sale of land was within the knowledge of the assessing officer while making the assessment. In any event, the Appellate Authority has exercised the power of enhancement by treating the transaction as representing "business income" and thus any proceedings by the assessing officer invoking section 143 of the Act would be hit by the 3rd proviso to the said section.

4. To the contrary, it was submitted by the learned counsel for the Respondent that the reasons set forth for exercising the power of reassessment are made on the basis of new material as would be evident from the fact that the

reassessment looks to the fact that the petitioner had received investment from Platex Limited which is based in Mauritius a fact which was never discussed during the course of the original assessment.

4.1.Secondly, the assessee had sold 36.24 acres of land at Pattipulam for a consideration of Rs.21 Crores, however on perusal of the sale deed it was noticed that the land had been purchased by ASV DIOR Housing and Hospitality Private Limited and 9 Sale deeds were unregistered nor was any stamp duty paid which revealed that the sale was made without reference to guideline or fair market value. It is further stated that informal enquiry revealed that the market price was around Rs.3 Crores per acre which revealed under valuation of the sale consideration and suppression, thus there is a possibility of tax evasion. It was further stated that the petitioner had received investment from Platex based in Mauritius and it was thus stated that one cannot rule out the possibility of the cash generated from real estate transaction being routed through Mauritius company and being brought back. In other words there is a possiblity of round tripping. It was thus submitted that the reassessment is made on the basis of new material and not on mere change of opinion.

6. Heard both sides and perused the material on record.

7. On hearing both sides though submissions were advanced on a number of aspects / grounds, I would think it may not be necessary to deal with any other ground except the ground that the impugned proceeding is vitated in the absence of a finding that income chargeable to tax has escaped assessment by reason of failure on the part of the assessee to fully and truly disclose the material facts necessary for assessment. It may be relevant to note that the assessing authority has proceeded to record that the only requirement to initiate proceedings under Section 147 of the Act is reason to believe that income has escaped assessment. This would be evident from the following portions of the notice furnishing the reason for reassessment:

> *"In this case a return of income was filed for the year under consideration and regular assessment u/s 143(3) was made on 07.03.2016. Since, 4 years from the end of the relevant year has expired in this case, the only requirement to initiate proceeding u/s 147 is reason to believe which has been recorded above."*

7.1. The above reasoning is wholly misconceived inasmuch as failure to render a finding that income chargeable to tax has escaped assessment by reason of failure on the part of the assessee to fully and truly disclose the material facts necessary for assessment is a condition precedent to invoke the extended period beyond four years under section 147 of the Act. Absence of such finding would vitiate the reassessment proceeding. The above issue namely whether the absence of finding that income chargeable to tax has escaped assessment by reason of failure on the part of the assessee to fully and truly disclose the material facts necessary for assessment would render the assumption of jurisdiction under Section 147 of the Act bad and illegal stands resolved by a Division Bench of this Court in W.A.No.2759 of 2022 wherein it was held as under :

> *"8. We find that there is no illegality or infirmity in the order of the learned Single Judge warranting interference for the following reasons:*
>
> *a) That the impugned proceeding is admittedly initiated invoking the extended period under Section 147 of the Act. The relevant portion of the said Section is extracted below:*
>
> *"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 the assessment year."

A reading of the above provision would show that while it is open to the Assessing Officer to invoke Section 147 of the Act within a period of four years, if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment, subject to the provisions of Sections 148 to 153 of the Act. The proviso to Section 147 of the Act, enables the Assessing Officer to make reassessment even after the expiry of four years from the end of the relevant assessment year, but, within six years from the relevant assessment year, if the income chargeable to tax has escaped assessment under the following circumstances, viz.,

a. Failure of the assessee to make a return under Section 139 of the Act.

b. Does not make a return in response to a notice issued under Sub~Section (1) to Section 142 or Section 148 of the Act.

c. Failure of the assessee to disclose fully and truly all material facts necessary for assessment.

9. In the present case, admittedly the extended period of six years is being invoked not under (a) or (b) set out above but only in view of (c) i.e., failure to disclose fully and truly all material facts necessary for assessment. It is submitted by the learned counsel for the respondent/assessee that while furnishing the reasons for reassessment vide its communication dated 06.01.2014, there is no finding that there was failure on the part of the appellant to fully and truly disclose all material facts necessary for assessment. It is submitted that in the *absence of any finding on the above jurisdictional fact, the entire proceeding would be void and a nullity. We find there is merit in the above submission inasmuch as the normal period of limitation for exercising the power of reassessment under Section 147 of the Act is four years. The extended period of six years could be invoked only under three circumstances set~out/ mentioned above. Admittedly, the only circumstance which could have enabled the respondents to invoke the extended period of 6 years in the present case is to bring the proceedings under clause (c). To invoke the extended period of six years for reassessment, the reasons furnished for reassessment ought to contain a finding that the appellant herein had failed to disclose fully and truly all material facts necessary for assessment. We say this, since it appears to us that the whole idea of furnishing reasons before embarking on a full fledged exercise of reassessment was to ensure that the powers of reassessment are exercised only in circumstances which the statute permit. The above limitation/restriction on the power of reassessment was intended to ensure transparency in the proceeding and to avoid abuse of power. It is trite law that power of reassessment must be exercised with a degree of caution and an element of circumspection and must be strictly in compliance with the procedure and only in circumstances which warrants exercise of that power. In the present case, though admittedly the power to reassess has been exercised by invoking the extended period of limitation in terms of the proviso to Section 147 of the Act, there is no recording of the existence of the circumstances, viz., failure to disclose fully and truly all material particulars which would confer jurisdiction to proceed / initiate reassessment proceeding beyond four years and within six years. In this* *regard, it may be relevant to refer to the following judgments to appreciate the relevance and importance of existence of jurisdictional facts and an application of mind as to its existence by the authority concerned before assuming jurisdiction. It is relevant to extract the judgment of the Hon-ble Supreme Court in the case of Arun Kumar v. Union of India reported in (2007) 1 SCC 732, which reads as under:*

"74. A "jurisdictional fact" is a fact which must exist before a court, tribunal or an authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non~existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency-s power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess."

75. In Halsbury-s Laws of England, it has been stated: "Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of, the issue. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive."?

76. The existence of jurisdictional fact is thus sine qua non or condition

precedent for the exercise of power by a court of limited jurisdiction."
(emphasis supplied)

10. The Hon-ble Supreme Court in the case of Arun Kumar, thereafter proceeded to rely upon the decision in the case of White & Collins vs. Minister of Health reported in (1939) 2 BK 838 and observed as under:

80. The Court relied upon a decision in White & Collins v.Minister of Health [(1939) 2 KB 838] wherein a question debated was whether the court had jurisdiction to review the finding of administrative authority on a question of fact. The relevant Act enabled the local authority to acquire land compulsorily for housing of working classes. But it was expressly provided that no land could be acquired which at the date of compulsory purchase formed part of park, garden or pleasure ground. An order of compulsory purchase was made which was challenged by the owner contending that the land was a part of park. The Minister directed public inquiry and on the basis of the report submitted, confirmed the order.

81.Interfering with the finding of the Minister and setting aside the order, the Court of Appeal stated;

"The first and the most important matter to bear in mind is that the jurisdiction to make the order is dependent on a finding of fact; for, unless the land can be held not to be part of a park or not to be required for amenity or convenience, there is no jurisdiction in the borough council to make, or in the Minister to confirm, the order."

(emphasis supplied)

11. While on the question of existence or otherwise of jurisdictional fact which would enable the authority to invoke the extended period of limitation of six years for reassessment, it may also be relevant to note that the question of limitation has been understood to be one involving jurisdiction even under the Excise Law and in the absence of finding of the existence of the circumstances enabling the invoking of the extended period, it has been held by the Hon-ble Supreme Court that the issuance of Show Cause Notice itself is impermissible. In this regard, it may be relevant to refer the judgment in the case of ITW Signode India Ltd v. CCE reported in (2004) 3 SCC 48, wherein, after extracting the judgment of the Hpn-ble Supreme Court in the case of Easland Combines, the Court proceeded to conclude as under:

"68. Even in Easland Combines [(2003) 3 SCC 410] this Court held: (SCC pp. 424~25, para 31)

"31. It is settled law that for invoking the extended period of limitation duty should not have been paid, short~levied or short~paid or erroneously refunded because of either fraud, collusion, wilful misstatement, suppression of facts or contravention of any provision or rules. This Court has held that these ingredients postulate a positive act and, therefore, mere failure to pay duty and/or take out a licence which is not due to any fraud, collusion or wilful misstatement or suppression of fact or contravention of any provision is not sufficient to attract the extended period of limitation.

69. The question of limitation involves a question of jurisdiction. The finding of fact on the question of jurisdiction would be a jurisdictional fact. Such a jurisdictional question is to be determined having regard to both fact and law involved therein. The Tribunal, in our opinion, *committed a manifest error in not determining the said question, particularly, when in the absence of any finding of fact that such short~levy of excise duty related to any positive act on the part of the appellant by way of fraud, collusion, wilful misstatement or suppression of facts, the extended period of limitation could not have been invoked and in that view of the matter no show~cause notice in terms of Rule 10 could have been issued.“*

(emphasis supplied)

12. From the above decisions, it is clear that existence of -- jurisdictional fact-- is sine qua non for the exercise of power. If the jurisdictional fact exists, only then the authority can proceed with the case and take an appropriate decision in accordance with law. It leaves no room for any doubt that to invoke the extended period, the Assessing Officer ought to show/ demonstrate the existence of any of the three circumstances set out in the proviso to Section 147 of the Act. In this case, failure on the part of the assessee to fully and truly disclose all material particulars in our view would constitute the "jurisdictional fact" for invoking extended period of limitation and failure to record the existence of the above jurisditional fact while invoking the extended period under the proviso to Section 147 of the Act, would vitiate the entire proceedings. In this regard, it may be relevant to refer the following judgments, wherein it was held that failure to render a finding as to the existence of the above circumstance warranting invocation of the extended period in terms of the proviso to Section 147 of the Act would vitiate the entire proceedings. In this regard, it may be relevant to refer to the following judgements:

a) Duli Chand Singhania vs ACIT (269 ITR 192):

...that the reasons recorded for issue of notice showed that the satisfaction recorded therein wes merely about the escapement of income. There was not even a whisper of an allegation that such escapement had occurred by reason of failure on the part of the assessee to disclose fully and truly all the material facts necessary for his assessment. Absence of this finding which is a "sine qua non" for assuming jurisdiction under section 147 of the Act in a case falling under the proviso thereto, made the action taken by the Assessing Officer wholly without jurisdiction. The notice was not valid and was liable to be quashed. "

(emphasis Supplied)

b) Commissioner of Income Tax vs. Eigi Ultra industries Ltd. (296 ITR 573):

"...the reopening of the assessment under s. 148 beyond the period of four years at the end of the relevant assessment year can be sustained only if it is established that there is a failure on the part of the assessee to disclose fully and truly all material facts. in this case there is no finding that there is failure on the part of the assessee to disclose fully and truly all material facts".

(emphasis supplied)

c) Commissioner of Income~Tax v. Premier Mills Ltd., (2008) 296 ITR 157:

"6. In case where the assessment is completed under section 143(3) of the Income tax Act, the reopening of the assessment under section 148 beyond the period of four years at the end of the relevant assessment year can be sustained only if it is established that there is a failure on the part of the assessee to disclose fully and truly all material

facts. In this case there is no finding that there is failure on the part of the assessee to disclose fully and truly all material facts. Further, all the material facts are available at the time of making original assessment. The Tribunal has correctly followed the principles enunciated in the Supreme Court judgment reported in CIT v. Foramer France, [2003] 264 ITR 566, as well as this court judgment reported in the case of CIT v. Elgi Finance Ltd., [2006] 286 ITR 674 and came to the correct conclusion."

(emphasis supplied)

d) CIT v. A.V. Thomas Exports Ltd., (2008) 296 ITR 603:

"6. The Tribunal has applied the correct principle of law and held as follows:

But whether recourse to section 147 could be made beyond four years is the real question in the present appeal. Circumstances for extending limitation beyond four years do not exist in the facts of the present case. As such on the ground of limitation assumption of jurisdiction under section 147 is bad. In the case of CIT v. Foramer France, [2003] 264 ITR 566 (SC), it was held that if there is no failure to file return or to disclose fully and truly all material facts, issuance of notice beyond the period of four years is barred by limitation. In the case of CIT v. Annamalai Finance Ltd., [2005] 275 ITR 451 (Mad) it was held that section 147 of the Act does not postulate conferment of power upon the Assessing Officer to initiate reassessment proceedings upon a mere change of opinion. It is incumbent on the Assessing Officer to prove that there was a failure to disclose material facts necessary for the assessment for the issuance of notice beyond the period of four years."

e) Caprihans India Ltd. v. Tarun Seem, Deputy Commissioner of Income Tax, (2004) 266 ITR 566 :

"8. The Assessing Officer seeks to reopen the assessment after a period of four years from the end of the assessment year and in view of the judgment of this court in the case of IPCA Laboratories Ltd. v. Gajanand Meena, Deputy CIT (No. 2)[2001] 251 ITR 416, the Assessing Officer cannot act in the matter of reopening of assessment beyond four years, unless he has reason to believe that income has escaped assessment by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. He submitted that a bare reading of the reasons shows that reopening is sought to be effected only on the basis of the case records. He submitted that on two out of three points mentioned in the reasons, the Assessing Officer merely states that the issue needs to be looked into. That, on those two issues regarding subsidy and provident fund being disallowed, the Assessing Officer does not even say that there is escapement of income from assessment. He therefore submits that the proviso to section 147 is not attracted. That, on the said two points, there is nothing to indicate escapement of income. That, on the said two points, there is nothing to indicate failure on the part of the assessee to disclose fully and truly all material facts. That, on these two points, there is nothing to show as to on what basis the Assessing Officer has formed his belief regarding escapement of income from assessment. It is submitted that on the face of the given reasons, there is a total non~application of mind on the part of the Assessing Officer. "

(emphasis supplied)

8. Applying the reason contained in the above judgment, I would think that the impugned notice dated 24.03.2020 and consequential proceedings dated 27.02.2021 invoking the extended period of limitation beyond 4 years for making a reassessment under Section 147 readwith Section 148 of the Act in the absence of any finding as to the existence of the condition precedent viz., that income chargeable to tax has escaped assessment by reason of failure on the part of the assessee to fully and truly disclose the material particulars vitiates the entire proceedings and thus liable to be set aside.

9. In view of the above, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

10.11.2023

Index: Yes/No
Internet: Yes/No
Speaking order/ Non speaking order
spp/shk

MOHAMMED SHAFFIQ, J.

spp/shk

To:

1.Deputy Commissioner of Income Tax,
Central Circle 5(2),
Chennai 600 034.

2.Deputy Commissioner of Income Tax -1(2)
National E-Assessment Centre
Delhi.

3.Assistant Commissioner of Income Tax,
Central Circle -1, LTU,
Chennai 600 034.

W.P. No.8201 of 2021
and
W.M.P.Nos.8757 and 8759 of 2021

10.11.2023