



W.P.No.8014 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.07.2023

PRONOUNCED ON : 26.09.2023

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.8014 of 2022
and WMP.Nos.7995 & 7996 of 2022

Pharmazell (India) Private Limited
Represented by Authorised Signatory
Karthik.N

... Petitioner

VS.

1. The Assistant Commissioner of Income Tax,
Circle 1 Large Tax Payers Unit,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai.
- 2.The Principal Commissioner of Income Tax 4,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai.
3. The Additional/Joint/Deputy/Assistant Commissioner of
Income Tax/Income-Tax Officer,
National Faceless Assessment Centre,
Delhi.

... Respondents



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Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records on the file of the Respondents under Article 226 of the Constitution of India and quash the impugned notice issued by the first respondent under Section 148 of the Income Tax Act, 1961 in DIN & Notice No.ITBA/AST/S/148/2020-21/1031901893(1) dated 30.03.2021 for the Assessment Year 2014-15 along with the impugned order disposing off the objections of the petitioner dated 15.02.2022 in DIN & Letter No.ITBA/AST/F/17/2021-22/1039743824(1) for the Assessment Year 2014-15 passed by the third respondent.

For Petitioner : Mr.N.V.Balaji

For Respondents : Mr.V.Mahalingam
Senior Standing Counsel.

ORDER

The petitioner has filed this Writ Petition against the impugned notice dated 30.03.2021 issued under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') and impugned order dated 15.02.2022, over ruling the objection of the petitioner against re-opening of the assessment completed for the assessment year 2015-2016 on **17.10.2018**.



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2. By the impugned communication / order dated 15.02.2022, the objection of the petitioner has been over ruled. The respondents have justified the re-opening of the assessment. The relevant portion of the impugned order reads as under:

“2.2 The reply of the assessee has been perused and considered but found not tenable. In this case, though the assessment proceedings u/s 143(3) was completed, however, perusal of assessment order reveals that the issue was not examined by the Assessing Officer. Further, the assessee in its reply categorically accepted that the credit note amounting to Rs,6,54,75,440/- was reduced from the invoice value for the financial year under consideration, However, the net effect of credit note amounting to Rs. 11,96,04,791/- i.e. totalling of Rs.5,41,29,351/- and Rs. 6,54,75,440/-, was reduced from the invoice value of A.Y. 2013-14 itself and the details pertaining to that A.Y. was not before the Assessing Officer for examination. Therefore, neither the original return nor the revised return of A.Y. 2013-14 was examined by the Assessing Officer during the scrutiny proceeding of A.Y. 2014-15. During the assessment proceedings of A.Y. 2014-15 which is the assessment year under consideration the issue was neither examined by the AO nor this information was available with the AO that the credit note amounting to Rs. 6,54,75,440/-, has been reduced by the assessee in past and the assessee failed to true and complete disclosure during the scrutiny proceedings.



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2.3 At the stage of initiation of reassessment, the only thing required to be seen is that whether there is any *prima facie* material that the income has escaped assessment on the basis of which a case can be reopened. Since, the Assessing Officer gathered the information that the net effect of credit note amounting to Rs. 11,96,04,791/- i.e. totaling of Rs. 5,41,29,351/- and Rs. 6,54,75,440/-, was already reduced from the invoice value of A.Y. 2013-14 itself, therefore, claiming the part of that credit note amounting to Rs.6,54,75,440/-from the invoice value during A.Y. 2014-15 requires examination and the Assessing Officer is thoroughly justified in issuing a notice for re-assessment. Accordingly, from the perusal of material on record and the reply of the assessee, the objection is not tenable as the basic ingredients of reason to believe by the Assessing Officer that the income has escaped assessment is justified. It is also noteworthy that the final conclusion of the facts depends upon the outcome of the findings of the presently ongoing re-opening scrutiny proceedings for which the assessee would be accorded reasonable amount of opportunity to present his case before concluding the proceedings.

3.In this connection reference is made to the provisions of section 147 of the I. T. Act,1961, the relevant portion of which is reproduced below.

147. If any income chargeable to tax, in the case of an assessee, has escaped assessment⁸ for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or re-compute the loss or the depreciation allowance or any



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other allowance or deduction for such assessment year (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year)

4. In the case of **Raymend Woollen Mills Ltd. Vs. ITO** [1999] reported in 236 ITR 34, the Hon'ble Supreme Court has held that at the stage of initiation of reassessment, the only thing required to be seen is that whether there is any prima facie material on the basis of which a case can be reopened. Further, in the case of **Punjab Tractors Ltd. vs. Joint CIT**(2002)254 ITR 242 it was held that the only condition precedent for proceeding under section 147 | 148 was that the Assessing Officer should have reason to believe that the income has escaped assessment.

5. In view of the above discussion and the judicial pronouncements, the objections raised by the assessee have been considered viz a viz the provisions of section 147 as reproduced above. In view of the unambiguous meaning of section 147 and the facts and circumstances of the case under which the reasons were recorded, the objections of the assessee against re-opening of assessment are not acceptable. It may be seen that while re-opening the assessment, proper procedure as per Income-tax law has been followed by the Assessing Officer. The case has been re-opened well within the time limit prescribed as per the provisions of the Income-tax Act, 1961 and also on account of the fact that there was reason to believe that the income chargeable to tax has escaped assessment.

6. Since this order has been passed covering all the objections raised by the assessee, all the ground/ contentions/ objections taken by the assessee in this regard may be treated as "disposed off". In view of the



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facts discussed above, the assessee's request to drop the proceedings initiated u/s. 147 of the Act is hereby rejected. The facts narrated by the assessee shall be verified and due cognizance and ample opportunity would be given before finalizing the case.”

3. The petitioner had applied to the Authorized Dealers on 05.11.2013 under the provisions of the Foreign Exchange Management Act, 1999 for reducing the values of export invoices retrospectively for exports made to M/s.Pharmazell GMBH (Germany) during the financial year 2012-13.

4. By a communication dated 26.12.2013, the Authorized Dealer namely the Indian Bank, MEPZ Branch, Tambaram, Chennai – 600 045 allowed reduction of the invoice value of exports made to M/s.Pharmazell GMBH (Germany) as follows:

Financial Year	Original value of the invoice for the exports already made to Pharmazell GMBH, Germany and O/s as on date INR	Reduction in invoice value requested INR	Bill wise reduction as per Annexure 'A' enclosed
FY 2012-13	216517403	54129351	
FY 2013-14	263053095	65763274	
	479570498	119892625	



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5. Thus, for the sales effected by the petitioner to the aforesaid company during the financial year 2012-13 which were earlier recognized as income earned by the petitioner during financial year 2012-13 (assessable during Assessment Year 2013-14) the petitioner allowed to be reduce the value retrospectively during the financial year 2012-2013 and financial year 2013-2014 for relevant to assessment years 2013-2014 and 2014-2015 respectively.

6. For the assessment year 2013-2014, (for relevant financial year 2012-13) the petitioner had earlier filed a return of income under Section 139 of the Act on 27.12.2013, wherein the petitioner had claimed a deduction of Rs.11,96,04,791/-. Pursuant to the aforesaid communication of the Authorized Dealer dated 26.12.2013, a revised return was filed by the petitioner on 27.11.2013 for the assessment year 2013-2014, the petitioner reduced a sum of Rs.6,54,75,440/- from Rs.11,96,04,791/-. This is evident from Sl.No.23 of the revised return filed by the petitioner on 27.11.2013 for the assessment year 2013-2014.

7. In other words, the petitioner confined the reduction of invoice value to



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Rs.5,41,29,351/- (Rs.11,96,04,791/- - Rs.6,54,75,440/-), in accordance with the permission of the Authorized Dealer dated 26.12.2013. Relevant portion of the revised return of the petitioner on 27.11.2013 for the assessment year 2013-14 is reproduced below:

Schedule BP	Computation of income from business or profession				
A	23	Any other income not included in profit and loss account/any other expense not allowable (including income from salary, commission, bonus and interest from firm in which company is a partner)	23	65475440	

8. For the assessment year 2014-2015, the petitioner filed regular return of income on 29.11.2014. In the returns filed by the petitioner for the assessment year 2014-2015 (for the relevant financial year 2013-2014), the petitioner thus deducted a sum of Rs.6,54,75,440/-.

9. The aforesaid deduction has been made towards any other amount allowable as deduction. In Sl.No.31 under the Schedule BP for computation of income from business or profession reads as under:



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Schedule BP	Computation of income from business or profession				
A	31	Any other amount allowable as deduction	31	65475440	

10. The matter went up to the Dispute Resolution Panel, pursuant to which the assessment was completed on 17.10.2018 under Section 143(3) r/w Section 92CA(4) r/w Section 144C of the Act. Under these circumstances, a notice under Section 148 of the Act was issued to the petitioner on 30.03.2021.

11. The petitioner therefore asked the respondents for the reasons for re-opening the assessment vide letter dated 30.04.2021, in accordance with the decision of the Hon'ble Supreme Court in **GKN Driveshafts (India) Ltd., Vs. ITO**, 259 ITR 19 (SC).

12. By communication dated 19.08.2021, the respondents have given the following reasons for re-opening of the assessment:-

“It is seen from Export sales a sum of Rs.1,037,974,517/- was accounted stating that Exports sales is net of credit notes issued



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aggregating to Rs.65,763,274/-. In this regard in Note 33 it was stated as follows:

During the previous year, the Company had issued credit notes aggregating Rs.119,604,791/- on account of retroactive price revision, to one of its overseas customers, the terms of which require set-off of such credit notes against invoices outstanding as at March 31, 2013. Having regard to the nature of contractual arrangement, such set off had been correspondingly recorded as reduction to revenues in the financial statements. The Company's initial application to Authorized Dealer (AD) for making such adjustment was rejected. Subsequently, the company re-applied to Authorized Dealer and AD allowed adjustments of Rs.54,129,351/- in respect of FY 2012-13 and Rs.65,475,440/- relating to FY 2013-14. Consequently Company had reversed credit note of Rs.65,475,440/- relating to previous year and recorded as other income. In respect of ADs approval for current year, Company had raised credit note for Rs.65,763,274 and recorded the same as reduction to revenues.

In this regard it is stated that in the statement of computation of taxable income, a sum of Rs.6,54,75,440/ was deducted from the taxable income relating to "Reduction in invoice value as admitted in revised return". **It is to be pointed out that the same amount of Rs.6,54,75,440/- was already deducted against sales income for AY 2014-15. In AY 13-14 itself assessee had reduced Rs.119,604,791/- from sales stating Retroactive Price Revision.** Further, the credit note entry relates to FY 12-13, which is prior period. Hence, deduction of the same in the computation of the taxable income



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for FY 13-14 is not in order. Incidentally, it was noticed that in the transfer pricing order dated 30.10.2017 , this amount was treated as non-operating profit and not considered for transfer pricing addition. Hence, deduction of the amount of Rs.6,54,75,440/- requires dis allowance and needs to be brought to tax.

Hence, I have reason to believe that income has escaped assessment.”

13. It is the case of the petitioner that there is no case made out for income escaping assessment and therefore, invocation of Section 148 of the Act on 30.03.2021 was unjustified. It is stated that during the previous year relevant to the AY 2014-2015, the petitioner filed its original return of income returning a total income of Rs.21,06,88,820/-. The petitioner states that in the said return of income for the impugned AY 2014-2015, the petitioner had correctly claimed a sum of Rs.6,56,75,440/- as deduction.

14. It is further stated that the petitioner has reversed the amount in the respective assessment years (i.e,) 2013-2014 and 2014-2015, pursuant to the permission granted by the Authorized Dealer on 26.12.2013. It is the contention of the petitioner that the impugned order has been passed without considering the petitioner's objection against re-opening of the assessment. The 3rd respondent



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without application of mind summarily disposed off the objections of the petitioner. The petitioner states that even without considering the submissions on record, the 3rd respondent had stated in the impugned order that the issue on credit note amounting Rs.6,56,75,440/- was not considered during the course of original assessment. The 3rd respondent disposed off the objections filed by the petitioner even without independently considering all the objections raised.

15. It is further submitted that the 1st respondent has merely relied on the information which was already filed before him particularly the financial statements including the specific submissions made on the same issue which were on record and submitted during the course of assessment proceedings. Reopening of a completed assessment is impermissible, to reappraise the same material without any fresh evidence being brought on record. Change of opinion cannot be the basis for reopening an assessment proceeding. Apart from a statutory presumption under section 113 of the Indian Evidence Act, 1872 that a Quasi-judicial authority has considered all documents and materials on records, the 1st respondent has specifically spelt out in his assessment order as factually having considered all the documents. Hence, re-examining of the claim by the 1st



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respondent without any new/ tangible material would amount to review of the assessment order, which is not permissible under law. Further, where the 1st respondent re-opened the assessment based on audit objection, the same would be treated as without application of mind.

16. It is further submitted that notice under Section 148 of the Act was issued without obtaining prior approval of the 2nd respondent / Principal Commissioner of Income Tax under Section 151 (1) of the Act.

17. That apart, it is submitted that the attempt of the respondents is inspired from change of opinion and thus contrary to the decision of the Hon'ble Supreme Court in **CIT Vs. Kelvinator of India**, (2010) 2 SCC 723 and that of the Hon'ble Division Bench of this Court in the case of **PVP Ventures limited**, (2016) (65 Taxmann.com 21).

18. It is submitted that mere change in opinion would not give a license to re-open the completed assessment. In this connection, a reference was also made to Circular No.549, dated 31.10.1989, issued by the Central Board of Direct Taxes



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(“CBDT”), wherein the CBDT had clarified that mere change of opinion cannot constitute reason to believe so as to justify re-opening of an assessment proceeding.

19. It is further submitted that the impugned order disposing off the petitioner's objection is contrary to the principles laid down by this Court in **Fenner (India) Ltd., Vs. Deputy Commissioner of Income Tax**, (1999) 107 TAXMAN 53 and **Schwing Stetter India P.Ltd.**, 378 ITR 380.

20. Per contra, the learned Senior Standing Counsel for the respondents on instructions submit that the impugned order is well reasoned and requires no interference.

21. The learned Senior Standing Counsel for respondents has drawn attention to the returns filed by the petitioner for the assessment year 2014-2015 on 29.11.2014.



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22. I have examined the Return of Income filed by the petitioner for the Assessment Year 2013-2014 on 27.11.2013 and the revised Return of Income filed by the petitioner for the same Assessment Year on 15.12.2014 after a letter was issued by the Authorised Dealer to the petitioner on 26.12.2013. I have also perused the Return of Income filed by the petitioner for the Assessment Year 2014-15 on 29.11.2014.

23. In the Balance Sheet and the Profit and Loss Account for the financial year 2012-13, the petitioner had reduced the value of exports sale by a sum of Rs.11,96,04,791/- to arrive at the net export sale value of Rs.84,41,09,706/-. This is evident from the Notes to Financial Statements for the year ended March 31, 2013.

24. Based on the above, the petitioner had filed its regular return under Section 139 of the Income Tax Act for the Assessment year 2013-14 on 27.11.2013. Mean while, the Authorised Dealer (AD) namely Indian Bank accepted the reduction in the invoice value of exports to M/s.Pharmazell GMBH (Germany) vide letter dated 26.12.2013 by a sum of Rs.11,98,92,625/- as detailed



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below:-

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<i>Assessment Year</i>	<i>Financial Year</i>	<i>Original value of the invoice for the exports already made to Pharmazell GMBH, Germany and O/s as on date INR</i>	<i>Reduction in Invoice value requested INR</i>	<i>Bill wise reduction as per Annexure 'A' enclosed</i>
2013-14	2012-13	216517403	5,41,29,351	
2014-15	2013-14	263053095	6,57,63,274	
		479570498	11,98,92,625	

25. In the light of the above permission granted by the Authorised Dealer namely, Indian Bank on 26.12.2013, the petitioner filed a revised Assessment for the Year 2013-14 on 15.12.2014.

26. In the revised returns, the petitioner thus added a sum of Rs.6,54,75,440/- (11,98,92,625/- _ 5,41,29,351/-) to the income under heading “Computation of Income” from “Business or Profession” and thus restricted the deduction to Rs.5,41,29,351/- for the Assessment year 2013-2014. In the revised return to the Schedule BP re-read as under:-

Schedule BP : Computation of Income from business or profession .



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23	Any other income not included in profit and loss account/any other expense not allowable (including income from salary, commission, bonus and interest from firm in which company is a partner)	23	6,54,75,440
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Thus, by adding a sum of Rs.6,54,75,440/- to the income, the deduction was restricted to Rs,5,41,29,351/- [11,96,04,791 – 6,54,75,440] out of Rs,1,96,04,791 for the Assessment Year 2013-14..

27. Having restricted the deduction to Rs.5,41,29,351/- for the Assessment Year 2013-2014, pursuant to the permission of the Authorised Dealer dated 26.12.2013 the petitioner was entitled to reduce the balance amount Rs.6,54,75,440/- from the income for the subsequent Assessment Year 2014-2015. The petitioner was thus entitled to claim deduction in the revised Returns filed for the Assessment Year 2013-2014 on 15.12.2014.

28. In the Financial Statement dated 18.09.2014, for the Financial Year 2013-2014, in the Balance Sheet, Profit and Loss Account, Cash Flow Statement and Notes to Financial Statement for year ended March 31, 2014, the petitioner has however claimed deduction twice. A reading of the Notes to the Financial Statement for the year ended 31.03.2014, indicates that the petitioner had already



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reduced a sum of Rs.6,57,63,274/- from Rs.11,96,04,791/- the total export sales till March 31, 2014 to arrive at net export sales as Rs.1,03,79,74,577/- and filed a return on 29.11.2014.

29. Sl.Nos.13 & 14 to the Notes to Financial Statements for the year ended 31.0.2014 refers to Note 33. Relevant information in Sl.Nos.13 & 14 along with Note 33 are reproduced below:-

13. Revenue from operation		14. Other income	
	March 31, 2014		March 31, 2014
Sale of products Export sales*	1037974517	Interest income – Others	7,225
Domestic Sales	18,642,590	Exchange differences (net)	51,731,300
Other operating revenue	1461810	Income tax refund	-
Revenue from operations	1058078917	Other Income (refer note 33)	73,166,598
			124,905,123
Export sales is net of credit notes issued aggregating to Rs.65,763,274 (March 31, 2013 : Rs.119,604,791). Also refer to Note 33			

“33. During the previous year, the Company had issued credit notes aggregating Rs.119,604,791 on account of retroactive price revision, to one of its overseas customers, the terms of which require set-off of such



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*credit notes against invoices outstanding as at March 31, 2013. Having regard to the nature of the contractual arrangement, such set-off had been correspondingly recorded as a reduction to revenues in the financial statements. The Company's initial application to Authorized Dealer ("AD") for making such adjustment was rejected. Subsequently Company re-applied to Authorized Dealer. Authorized Dealer allowed adjustments of Rs.54,129,351 in respect of Financial Year 2012-2013 and **Rs.65,763,274** in respect of financial year 2013-2014. Consequently Company has reversed credit note of Rs.65,475,440 relating to previous year and recorded as other income. In respect of AD's approval for current year, Company has raised credit notes for Rs.65,763,274 and recorded the same as reduction to revenues."*

30. In accordance to Note-33 mentioned in Notes to Financial Statement dated 18.09.2014 for the year ended March 31, 2014, the petitioner company has reversed a sum of Rs.6,57,63,274/- . However, in Sl.No.14, the petitioner has recorded a sum of Rs.6,54,75,440/- as other income.

31. It is seen that the Statement in Schedule to BP in Sl.No.31 under the Head Computation of Income from Business or Profession, a sum of



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Rs.6,54,75,440/- was claimed as deduction. It reads as under:-

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Schedule BP Computation of income from business or profession

A	From business or profession other than speculative business and specified business	
31	Any other amount allowable as deduction	31 65475440

32. Thus, after deducting a sum of Rs.6,57,65,273/- from export sales, the petitioner has further claimed a deduction for the second time for a sum of Rs.6,54,75,440/- at Sl.No.31 in Schedule BP 'Computation of Income from Business or Profession.

33. The petitioner has thus availed the deduction twice in the same Assessment Year once while net computing export sales in the Notes to Financial Statement dated 18.09.2014 and again in Sl.No.31 under the head “Computation of Income” from business or profession. Thus, the Regular Returns of Income filed for the assessment year 2014-15 on 29.11.2014 contained incorrect particulars for computation of income.



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34. The reasons given by the respondents for reopening the assessment for the year 2014-15, that a sum of Rs.6,54,75,440/- had already been deducted against the sale income for the Assessment Year 2014-2015 merits consideration.

35. The above Notes of the petitioner gives a confusing picture and was intended to mislead the Assessing Officer. The petitioner had already deducted a sum of Rs.6,57,63,274/- to arrive at the net export sales value of 1,03,79,74,517/- and again for a sum of Rs.6,54,75,440/-. In the original returns dated 29.11.2014 for the assessment year 2014-15, the petitioner has declared a sale of products/goods under the category Sale/Gross receipts of business (net of returns and refunds and duty or tax, if any) as Rs.1,05,66,17,107/- which is the total of (1,03,79,74,517 + 1,86,42,590). Relevant portion of the returns dated 29.11.2014 reads as under:-

Part A-P & L

Profit and Loss Account for the financial year 2013-14 (fill items 1 to 52 in a case where regular books of accounts are maintained, otherwise fill item 53)

1	Revenue from operations	
A	Sales/Gross receipts of business (<i>net of returns and refunds and duty of tax, if any</i>)	



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1	Revenue from operations				
	i	Sale of products/goods	i	1056617107	
	ii	Sale of services	ii	0	
	iii	Other operating revenues (specify nature and amount)			
	a	SCRAP SALES	iiia	1461810	
	b	Total	iiib	1461810	
	iv	Interest (in case of finance company)	iv	0	
	v	Other financial services (in case of finance company)	v	0	
	vi	Total (i+ii+iiib+iv+v)			Avi 1058078917

36. Thus, the claim for deduction for a sum of Rs.6,57,63,274 based on the letter dated 26.12.2013 of the Authorised Dealer and for a further sum of Rs.6,54,75,440/- was impermissible.

37. Thus, assessment that was completed on 17.10.2018 for Assessment Year 2014-15 under Section 143(3) read with Section 92(CA)(4) read with Section 144(C)(4) of the Income Tax Act, 1961 warranted re-opening of the assessment.

38. The decision of the Hon'ble Supreme Court in **Calcutta Discount Co. Ltd. v. ITO**, (1961) 41 ITR 191 (SC) which has been heavily relied upon by the learned counsel for the petitioner along with a host of other decision cannot be



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applied as the said decision was rendered in the context of the provisions under the Income Tax Act, 1922.

39. The Hon'ble Supreme Court in the above case considered Section 34 of the Income Tax Act, 1922 as it stood after it was amended in 1948 for the Assessment Years 1942-43, 1943-44 and 1944-45 respectively. There notices were issued on 28.03.1951 under the amended provision. It read as follows:-

“34. Income escaping assessment. - (1) if-

(a) the Income-tax Officer has reason to believe that by reason of the omission or failure on the part of an assessee to make a return of his income under Section 22 for any year or to disclose fully and truly all material facts necessary for his assessment for that year, income, profits or gains chargeable to income-tax have escaped assessment for that year, or have been under-assessed, or assessed at too low a rate, or have been made the subject of excessive relief under the Act, or excessive loss or depreciation allowance has been computed, or

(b) notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the assessee, the Income-tax Officer has in consequence of information in his possession reason to believe that income, profits or gains chargeable to income tax have escaped assessment for any year, or have been under-assessed, or assessed at too low a rate, or have been



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made the subject of excessive relief under this Act, or that excessive loss or depreciation allowance has been computed,

he may in cases falling under Clause (a) at any time within eight years and in cases falling under clause (b) at any time within four years of the end of that year, serve on the assessee, or, if the assessee is a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice under subsection (2) of Section 22 and may proceed to assess or reassess such income profits or gains or recompute the loss or depreciation allowance; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section:

Provided that-

- i. the Income-tax Officer shall not issue a notice under this subsection, unless he has recorded his reasons for doing so and the Commissioner is satisfied on such reasons recorded that it is a fit case for the issue of such notice;
- ii. the tax shall be chargeable at the rate at which it would have been charged had the income, profits or gains not escaped assessment or full assessment, as the case may be; and
- iii. where the assessment made or to be made is an assessment made or to be made on a person deemed to be the agent of a non resident person under Section 43, this sub-section shall have effect as if for the periods of eight years and four years a period of one year was substituted.



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Explanation:- Production before the Income-Tax Officer of account-books or other evidence from which material facts could with due diligence have been discovered by the Income-tax Officer will not necessarily amount to disclosure within the meaning of this Section”.

40. There Assessment Orders were passed on 26.01.1944, 12.02.1944 and 15.02.1945 respectively for the Assessment Year 1942-1943, 1943-1944 and 1944-1945 much before the amendment in the year 1948.

41. After the assessment were completed on these dates, three notices were issued to the assessee on 28.03.1951 under Section 34 of the Income Tax Act, 1922 under the amended provision. These notices called upon the assessee to submit a fresh Return of Income for the three accounting years.

42. By a majority decision in **Calcutta Discount Co. Ltd. v. ITO**, (1961) 41 ITR 191 (SC), it was held that **Once all the primary facts are before the assessing authority, the assessing authority requires no further assistance by way of disclosure. It is for him to decide what inferences of facts can be**



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reasonably drawn and what legal inferences have ultimately to be drawn.

The Court also observed that it is true that the Income Tax Officer could have made further enquiry into the matter but the fact that he did not make any further enquiry does not take the case out of Section 34(1)(a) particularly when the assessee had failed to place truly and fully all the material facts before him.

43. Dealing with issue, Hon'ble Mr. Justice Das Gupta, explained the position in Paragraph Nos.9 to 12. They are extracted as under:-

9. There can be no doubt that the duty of disclosing all the primary facts relevant to the decision of the question before the assessing authority lies on the assessee. To meet a possible contention that when some account books or other evidence has been produced, there is no duty on the assessee to disclose further facts, which on due diligence, the Income Tax Officer might have discovered, the legislature has put in the Explanation, which has been set out above. **In view of the Explanation, it will not be open to the assessee to say, for example — “I have produced the account books and the documents : You, the assessing officer examine them, and find out the facts necessary for your purpose : My duty is done with disclosing these account-books and the documents”. His omission to bring to the assessing authority's attention these particular items in the account books, or the particular portions of the documents, which are relevant, amount to**



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“omission to disclose fully and truly all material facts necessary for his assessment”. Nor will he be able to contend successfully that by disclosing certain evidence, he should be deemed to have disclosed other evidence, which might have been discovered by the assessing authority if he had pursued investigation on the basis of what has been disclosed. The Explanation to the section, gives a quietus to all such contentions; and the position remains that so far as primary facts are concerned, it is the assessee's duty to disclose all of them — including particular entries in account books, particular portions of documents and documents, and other evidence, which could have been discovered by the assessing authority, from the documents and other evidence disclosed.

10. Does the duty however extend beyond the full and truthful disclosure of all primary facts? In our opinion, the answer to this question must be in the negative. **Once all the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn.** It is not for somebody else — far less the assessee — to tell the assessing authority what inferences whether of facts or — law should be drawn. Indeed, when it is remembered that people often differ as regards what inferences should be drawn from given facts, it will be meaningless to demand that the assessee must disclose what inferences — whether of facts or law he would draw from the primary facts.



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11. If from primary facts more inferences than one could be drawn, it would not be possible to say that the assessee should have drawn any particular inference and communicated it to the assessing authority. How could an assessee be charged with failure to communicate an inference, which he might or might not have drawn?

12. It may be pointed out that the Explanation to the sub-section has nothing to do with “inferences” and deals only with the question whether primary material facts not disclosed could still be said to be constructively disclosed on the ground that with due diligence the Income Tax Officer could have discovered them from the facts actually disclosed. The Explanation has not the effect of enlarging the section, by casting a duty on the assessee to disclose “inferences” to draw the proper inferences being the duty imposed on the Income Tax Officer.

13. We have therefore come to the conclusion that while the duty of the assessee is to disclose fully and truly all primary relevant facts, it does not extend beyond this .

44. Although materials were disclosed during the course of assessment, the prima facie fact reveals that the deduction was wrongly claimed twice in the primary material and contains incorrect particulars. Since there was no proper declaration of Income in the Return of Income filed on 29.11.2014 by the



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petitioner, the observation of the Hon'ble Supreme Court in **Calcutta Discount Co. Ltd. v. ITO**, (1961) 41 ITR 191 (SC), in para 9 is relevant. It was held that in view of the Explanation to Section 34 of the Income Tax Act, 1922, it will not be open to the assessee to say, — *“I have produced the account books and the documents : You, the assessing officer examine them, and find out the facts necessary for your purpose : My duty is done with disclosing these account-books and the documents”*. The Court further observed that his omission to bring to the assessing authority's attention these particular items in the account books, or the particular portions of the documents, which are relevant, amount to “omission to disclose fully and truly all material facts necessary for his assessment” (emphasis applied). The Court further observed that nor will he be able to contend successfully that by disclosing certain evidence, he should be deemed to have disclosed other evidence, which might have been discovered by the assessing authority if he had pursued investigation on the basis of what has been disclosed. The Court further observed that the Explanation to the Section 34 of the Income Tax Act, 1932 gives a quietus to all such contentions; and the position remains that so far as primary facts are concerned, it is the assessee's duty to disclose all of them — including particular entries in account books, particular



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portions of documents and documents, and other evidence, which could have been discovered by the assessing authority, from the documents and other evidence disclosed. Thus, it is clear income had escaped assessment as the primary material filed itself has not given a true and correct picture of income of the petitioner.

45. In **Phool Chand Bajrang Lal vs. ITO** , ITO, (1993) 4 SCC 77, the Hon'ble Supreme Court held as under:-

“One of the purposes of Section 147, appears to us to be, to ensure that a party cannot get away by wilfully making a false or untrue statement at the time of original assessment and when that falsity comes to notice, to turn around and say “you accepted my lie, now your hands are tied and you can do nothing” .

46. The Assessing Officer cannot be faulted while reopening the Assessment and over rule the objection of the petitioner. Further, Explanation to Section 147 of the Income Tax Act, 1961 makes it clear were filing of information is not sufficient.



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47. In the result, this writ petition is dismissed . No costs. Consequently,
connected miscellaneous petitions are closed.

26.09.2023

Index : Yes/No
Neutral Citation : Yes/No
kkd
To

1. The Assistant Commissioner of Income Tax,
Circle 1 Large Tax Payers Unit,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai.
- 2.The Principal Commissioner of Income Tax 4,
No.121, Mahatma Gandhi Road,
Nungambakkam, Chennai.
3. The Additional/Joint/Deputy/Assistant Commissioner of
Income Tax/Income-Tax Officer,
National Faceless Assessment Centre,
Delhi.



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C.SARAVANAN, J.

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Pre-delivery Order in
W.PNo.8014 of 2022

26.09.2023