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W.A.No.2759 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.A.No.2759 of 2022 and
C.M.P.No.22409 of 2022

The Assistant Commissioner of Income Tax,
Circle-1,
Plot No.R.2, Nallappa Street,
Periyar Nagar, Erode-638 001.

.. Appellant

-VS-

M/s.Seshasayee Paper and Board Limited
rep. by its Director (Finance) & Secretary
Sri V.Pichai,
Cauvery R.S. Post,
Pallipalayam,
Erode-638 007.

... Respondent

Prayer: Writ Appeal filed under Clause 15 of Letter Patent to set aside the order dated 24.03.2021 passed in W.P.No.8620/2014 and allow the Writ Appeal.

For Appellant : Mr.Srinivas Babu A.P.

For Respondent : Mr.G.Baskar



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J U D G M E N T

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This Writ Appeal has been filed by the revenue challenging the order of the learned Single Judge passed in W.P.No.8620 of 2014 dated 24.03.2021 in and by which it has been held that the impugned proceeding dated 07.03.2014 is vitiated as there was no failure on the part of the writ petitioner/respondent/assessee in truly and fully disclosing the material facts required for assessment.

2. The brief facts of the case are as follows:

(a) The respondent herein/assessee is a Company registered under the provisions of the Indian Companies Act and carries on the business of manufacture and sale of paper and boards. The respondent maintains regular books of account and is an assessee on the file of the appellant under the Income Tax Act, 1961 (hereinafter referred to as "the Act"). It is stated that the respondent/assessee has been filing returns of income regularly and assessed to tax on the said basis.

(b) The present proceedings relates to the assessment year 2006-2007. For the said assessment year, a return of Income Tax was filed by the respondent/assessee on 04.11.2006 declaring a total income of Rs. 1,20,65,500/- under normal computation and



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Rs. 26,67,21,500/- under Section 115JB of the Act. The assessment was thereafter taken up for scrutiny. Notice under Section 143(2) of the Act was issued on 02.07.2008 calling upon the respondent/assessee to submit particulars that were duly complied with. The respondent/assessee, while computing the income under Section 115JB of the Act excluded the provision created towards bad and doubtful debts from the purview of 'Book Profits'.

(c) During the course of hearing, the Assessing Officer sought for details relating to computation of income under Section 115JB of the Act, including the provisions towards bad and doubtful debts vide notice under Section 143(2) of the Act dated 02.07.2008. The relevant portion is extracted here under:

"1. Copies of bills for addition to fixed assets.

....

10. Details for Bad Debts- Copies of Ledger Accounts with complete postal address."

(d) Further, there was a reference as to why the provision for bad and doubtful debts should not be included for computation of book profits as could be seen from the letter dated 12.08.2008 addressed by the respondent/assessee to the Deputy Commissioner of Income Tax, Company Circle, Salem which is extracted here under:



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"4. Note as to why provision for Bad and Doubtful Debts should not be included for Computation of Book Profit".

The respondent-assessee submitted his explanation highlighting the following:

"It is further submitted that the Finance Act, 2008 has made retrospective amendment with effect from 01.04.2001 by inserting Explanation 2 by which income tax shall include tax on distributed profits under section 115O for the purpose of clause (a) of Explanation 1, thus limiting it as income tax for the purposes of section 115 JB only and not for computing income under the normal provisions of the Act."

(e) The respondent/assessee submitted the following response which is extracted here under:

"Provision for Bad and Doubtful Debts made by the Company does not fall within the adjustments specified in Explanation 1 and, on the other hand, it is required to be made to comply with section 115 JB(2). The profit and loss account has also been certified by the Auditors in Form 29B. Therefore, no further adjustment is required to be made to the book profits in respect of bad and doubtful debts. The ITAT Calcutta Bench has also held that provision for bad and doubtful debts is a diminution in the value of the asset and therefore not a provision to be added back for the purpose of computing the book profits, in JCIT vs. Usha Martin Industries Ltd (2007) 288 ITAT (Cal)(SB).

The Delhi High Court in Commissioner of Income Tax vs. HCL Comnet Systems & Services Ltd. (2007) 292 ITR (Delhi) has held that provision for bad and doubtful debts is not includable in the book profits."



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(f) Thereafter, assessment was made under Section 143(3) of the Act and a perusal of the order of assessment dated 10.12.2008 disclosed that the assessment was made after taking into account the provision of bad and doubtful debts to the extent of Rs. 29,35,473/-. The relevant portion of the order is extracted here under:

"Net Profit as per Profit and Loss Account	Rs.27,22,80,367
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Add: Items not allowable:

(i) Provision for Bad and Doubtful debts	Rs.29,35,473
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(ii) Assets discarded	Rs. 1,58,294
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Rs. 27,53,74,134

(g) The Hon'ble Supreme Court in the case of *CIT vs. HCL Commet Systems & Services Ltd*, reported in, 305 ITR 409 had held that bad and doubtful debts cannot be said to be a provision for liability because even if a debt is not recoverable no liability gets fastened upon the assessee.

(i) Consequent to the above declaration of the law by the Hon'ble Supreme Court, there was an amendment made to Section 115JB of the Act by which the above judgment was neutralized and as a result, bad and doubtful debts was to be added to the book profits with retrospective effect from 1.4.2001.



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(j) The said amendment was made in the year 2009 with retrospective effect from 01.04.2001. However, the same was not available at the time when the assessee/petitioner filed its return nor on the date when the notice under Section 148 of the Act was issued.

(k) Thereafter, notice under Section 148 of the Act, was issued on 20.03.2013 to which the respondent/assessee responded vide letter dated 25.03.2013 wherein the respondent/ assessee has sought for reasons to reopen. The reasons for reopening was furnished to the respondent/assessee on 06.01.2014. The same reads as follows:

"Please refer to the above.

As requested by you, I am providing herewith the reason for re-opening the assessment for the assessment year 2006-07 as under:-

*"It is seen from the record that the assessee had debited a sum of Rs.29,35,473/- in the P&L A/c. Being provision for bad and doubtful debts. However, the same was not added to the book profit u/s.115 JB based on the Supreme Court in the case of **CIT vs. HCL Commet Systems & Services Ltd reported in 305 ITR 409**)*

However, based on the latest amendment to the IT Act by the Finance Act, 2008 w.y.e.f. 01.04.01 book profit u/s.115JB requires to be increased by "the amount or amounts set-aside as provision for doubtful debts to the tune of Rs.29,35,473/- debited in the P&L A/c. requires to be added for the purpose of arriving book profit."



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following viz.,

i. The respondent/assessee has debited a sum of Rs. 29,35,473/- in the Profit & Loss Account being provision for bad and doubtful debts, however, the same was not added to the book profit under Section 115 JB of the Act based on the Hon'ble Supreme Court in the case of *HCL Commet Systems*.

ii. The Assessing Officer had made the assessment under Section 143(3) of the Act and did not add back the provision for bad and doubtful debts debited to the Profit and Loss Account and deducted from the Sundry debtors while computing income under Section 115JB of the Act, after going through the details and the note filed, as well as the Hon'ble Supreme Court decision in *HCL Commet Systems & Services Limited*.

iii. The initiation of proceedings under Section 148 of the Act on 20.03.2013 i.e. beyond the period of four years from the end of the assessment year is unwarranted and bad for want of jurisdiction in the facts of the case.

iv. It was submitted by the respondent/assessee that there was a full and true disclosing of all material facts and therefore, the impugned notice invoking the extended period is bad for want of jurisdiction and barred by limitation. It was further



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submitted that the assessment under Section 143(3) of the Act was completed on the basis of the law prevailing at the time of assessment proceedings and retrospective amendment of the Act cannot be the basis for re-opening of assessment proceedings. In support of his submissions, reference was made to various judgments. The respondent/assessee requested the Assessing Officer to drop the proposal.

The objections filed by the respondent/assessee to the reasons furnished were objected by the appellant herein on the following premise viz.,

"The reasons given for re-opening the assessment was that "based on the latest amendment to the IT Act by the Finance Act 2008 w.e.f. 01.04.01, book profit u/s.115JB requires to be increased by the amount or amounts set-aside as provision for diminution in the value of any asset, and hence, the provision for bad and doubtful debts to the tune of Rs.29,35,473/- debited in the P&L A/c. Requires to be added for the purpose of arriving book profit. Thus the reopening of the notice is in accordance with law. The intention of the legislature is that the provisions should be applied with particular date and for giving effect to that amendment, the re-opening notice was issued.

2. *The case laws submitted in support of the respondent assessee's claim is perused. In his opinion, wherever the legislature does not want the application of law retrospectively, the provisions are provided in the Act, as given in section 14A of the I.T. Act. In this case, there is no specific provision provided by the legislature in the Act.*

3. *The contention that the provision for doubtful debts debited in the Profit & Loss Account is meeting the requirements for write off of bad debts by applying the principles laid down by the Hon'ble Supreme Court in the case of **Southern Technologies Limited (320 ITR 577)** is examined. The Hon'ble Supreme Court had pronounced the order with relate to Non Banking Finance Companies (NFBCs) and other case law relied were also pronounced in **Vijaya Bank case (323 ITR 166)**.*



However, the assess company's business is entirely different from banking business and thus, these decisions would not be applicable.

4. It is also specifically brought to the notice of the assessee that the provision for doubtful debts was added back in regular computation. If the assessee company have a belief that "provision for doubtful debts" had fulfilled the criteria for bad debts to be written off, then the same should have been shown under bad debts written off and there is no reason to follow different accounting treatment having same status.

5. I understand that there must be a proper reason for classifying certain debts as doubtful debts and because of the same, in regular computation of income, it was added back. Therefore, it is an attempt to match the principles of Hon'ble Supreme Court with the facts of this case, which was not proved.

6. In view of the above reasons, there is a failure on the part of the assessee to disclose fully and truly all materials facts. Hence, rejecting the objections raised, proceeded with the assessment proceedings."

3. The above order was challenged before the learned Single Judge. We find that the learned Judge after setting out the facts has proceeded to hold that the impugned proceeding is without jurisdiction cannot be sustained and it would warrant interference by invoking Article 226 of the Constitution of India for the following reasons:

"14. In the light of the aforesaid judgment of the Hon'ble Supreme Court, provisions of Section 115JB of the IT Act was amended. The amended provision was amended retrospectively and is deemed to have been in force all along during the period commencing from 1st April of 2017.

15. Though the provisions stands amended with retrospective effect, it cannot be said that the petitioner had failed true and full disclosure of all material facts that were required for completing the assessment. The petitioner has taken a bonafide stand that



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the amount debited in Profit and Loss Account towards provisions of bad and doubtful debts were not be included under Section 115JB of the IT Act. This was scrutinized and the assessment order came to be passed on 10.12.2008.

16. Therefore, even if, the amended provision as it stands amended, vide Finance Act, 2009 in the Income Tax Act, 1961, it cannot be said that there was a failure on the part of the petitioner to truly and fully disclose all material facts/informations required for assessment.

17. I am therefore of the view, there is no merits in the impugned order. The writ petition filed by the petitioner therefore deserves to be allowed and is accordingly allowed. No costs. Consequently, conneted Miscellaneous Petition is closed."

4. The above order of the learned Single Judge is challenged in the present Writ Appeal.

5. CASE OF THE APPELLANT:-

a. That the order of the learned Single Judge had erred in holding that this was a case where the assessee / respondent cannot be held to have failed to truly and fully disclose all the materials facts/information on the basis of a retrospective amendment.

b. The amendment to the Section 115JB of the Act is made retrospectively the effect of a retrospective law is to look backwards and would apply to past periods and govern past transactions.



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c. Any lapse on the part of the assessee to comply with the retrospective law by itself would confer jurisdiction to make re-assessment. Therefore, it would not be open to the assessee to submit that re-assessment cannot be made on the basis of the retrospective amendment.

6. Per contra, it was submitted by the learned counsel for the respondent/assessee that the Writ Appeal must fail for the following reasons:

a. Initiation of proceedings by way of change of opinion is impermissible in view of the catena of judgments of the Hon'ble Supreme Court and various High Courts wherein it has been consistently held that power to reassess cannot be examined on change of opinion.

b. A reading of Section 147 of the Act would reveal that there are two periods of limitation, with regard to escaped assessment 4 years and 6 years. To invoke the extended period of six years it is also required to be demonstrated *inter alia* among other aspects that there was failure on the part of the assessee to disclose fully and truly all materials facts necessary for making assessment.

c. That there was no finding while furnishing the reasons for reassessment that there was a failure on the part of the assessee to fully and truly disclose all the



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material particulars.

d. That the view which was taken and followed by the assessee was also the view which has been accepted and applied by various Courts including the Hon'ble Supreme Court.

e. That the retrospective amendment cannot be the basis to issue notice imputing motives, thereby invoking the extended period of limitation.

7. Heard both sides and perused the materials available on record.

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."

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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



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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



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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,



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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 : 108 LJ KB 768 : (1939) 3 All ER 548 (CA) sub nom *Ripon (Highfield) Housing Order, 1938, Re*] 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



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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 Hon'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 : (2003) 152 ELT 39] 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



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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 jurisdictional 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 was 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. Egi 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.



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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)

12.1. Secondly, when the view taken by the assessee is also the view taken by the Hon'ble Supreme Court, it would not be open to the Revenue to state that there is failure on the part of the assessee to fully and truly disclose all material particulars. Afortiori there is a legislative affirmation of the view taken by the assessee by way of an amendment introduced to Section 115 JB of the Act with regard to the treatment to bad and doubtful debts whereby the above position of law declared by the Hon'ble Supreme Court was neutralized with retrospective effect from 01.04.2010. In this regard, it may be useful to refer to the following judgments:

a. State of Rajasthan v. Jaipur Udyog Ltd., (1974) 3 SCC 247:

“4. Assuming, without deciding, that the view taken by them is incorrect, even then it is impossible to say under the circumstances of the case that the Respondent was guilty of making any false representation. The view of the law, which he is contending for, is supported by the view taken by two Judges of the High Court and one Member of the Board of Revenue. Hence we fail to see how such a view of the law can be taken as false representation”

b. Vodafone West Ltd., vs. ACIT (2013) 33 taxmann.com 67 (Gujarat):

"13. The third reason is to be referred only for summary rejection. Third ground was retrospective amendment in section 115JB of the Act. Surely, beyond a period of four years this cannot be a ground for reassessment on assessment. Such legal proposition requires no authority of law. Nevertheless, we may refer to decision of Division Bench of this Court in case of Denish Industries Ltd. v. ITO [2004] 271 ITR



340/140 Taxman 456, wherein it was held and observed as under:

"It is true that when there is a statutory amendment with retrospective effect, the statutory amendment has to operate as if the law as amended was there on the statute book/However, as per the settled legal position the fiction is to operate within the field for which it is meant. Hence, if the proceedings were pending on 1st April, 1986 when the statutory amendment was made, whether assessment proceedings or proceedings by way of appeal or revision or reference, Explan. 8 would have certainly operated. However, on the question whether the assessee had failed to disclose fully and truly all material facts necessary for assessment, it is obvious that when the assessee had filed its return in 1983 it could not have assumed that such a legislative amendment was going to be made in the year 1986 with retrospective effect from the year 1974. In the facts of the present case, it could never be said by any stretch of imagination that in the year 1983, when the assessee filed return claiming investment allowance on the capitalisation of interest paid after the date on which the machinery was first installed and put to use, the assessee had failed to disclose all material facts. On the contrary, the assessee would have got the benefit of the entire interest amount for the post-installation period as revenue expenditure which would have been much higher than the amount of investment allowance and depreciation allowance taken together."

(emphasis supplied)

In the circumstance, we agree with the finding of the learned Single Judge that the condition precedent to invoke extended period of limitation under Section 147 of the Act viz., failure on the part of the respondent /assessee to disclose fully and truly all material particular is absent in the facts of the case.



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13. In view of the above, the order of the learned Single Judge is affirmed as we find no reason to interfere with the same. The Writ Appeal stands dismissed.

Consequently, connected Miscellaneous Petition is closed. No costs.

[S.V.N., J.] [M.S.Q., J.]
11.01.2023

Index: Yes / No
Internet: Yes / No
tsi

To:
The Assistant Commissioner of Income Tax,
Circle-1,
Plot No.R.2, Nallappa Street,
Periyar Nagar, Erode-638 001.



WEB COPY



W.A.No.2759 of 2022

S. VAIDYANATHAN, J.
and
MOHAMMED SHAFFIQ, J.

tsi

W.A.No.2759 of 2022
and
C.M.P.No.22409 of 2022

11.01.2023