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W.P.No.1947 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2025

Coram

The Honourable **Mr.Justice Krishnan Ramasamy**

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and

W.M.P.Nos.2030 of 2025

Revathi Equipment Limited

Rep by its senior Manager-Finance and Accounts

Mr. A. Hari Shankar Davey S/o T.K.

Athmaram Davey 331 Pollachi Road

Malumachampatti Post, Coimbatore.

...Petitioner

Vs.

The Assistant Commissioner of Income Tax

Corporate Circle 1, Coimbatore

Main Building 63 Race Course Road

Coimbatore 641 018.

...Respondent

Prayer :-

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records in DIN & Letter No.: ITBA/AST/F/17/2022-23/1048406813(1) dated 03.01.2023 on the file of the respondent relating to the AY 2003-04 and to quash the same.

For Petitioner : Mr.L.Dinesh

For Respondent : Dr.B.Ramaswamy,
Senior Standing Counsel



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Order

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The challenge in this Writ Petition is to the order of rejection of the petitioner's objections filed for reopening of the assessment proceedings under Section 148 of the Income Tax Act, 1961 by the respondent vide order dated 03.01.2023.

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

i) The petitioner is a Company, registered under the Companies Act and is engaged in the business of manufacture and sale of drilling rigs and spares. The petitioner filed their return of income (ROI) for the AY 2003-04 on 27.11.2003, pursuant to which, an assessment order was passed by the respondent on 28.03.2005. The respondent issued a notice under Section 148 of the I.T.Act dated 01.02.2010, to which, the petitioner filed their objection dated 03.05.2010 to the reopening of the assessment, but, the respondent proceeded with re-assessment proceedings and therefore, the petitioner filed their detailed objection dated 09.09.2010, expressing its view on non-adjudication of the objections on jurisdictional issue.



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ii) After certain litigation, the respondent issued a notice under

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Section 142 (1) of the Act dated 28.04.2022 stating that no return was filed in response to the notice issued under Section 148 of the I.T.Act. The petitioner filed a reply dated 29.04.2022 stating that the return of income has already been filed in response to notice under Section 148 of the Act, consequent upon which, the respondent issued a notice under Section 143 (3) r/w Section 147 of the Act dated 29.04.2022, acknowledging the receipt of the return of income and requested the petitioner to file their response pertaining to the sole issue for non-recurring expenditure claimed by the petitioner/assessee to the tune of Rs.10,00,00,000/- on or before 02.05.2022. Thereafter, the petitioner also received a communication dated 29.04.2022, stating that the objection of the petitioner was disposed of.

iii) Aggrieved by the order of the respondent dated 29.04.2022, disposing of the objections to the reopening of assessment, the petitioner filed a Writ Petition in W.P.No.12949 of 2022 and the said Writ Petition was allowed by this Court vide order dated 17.08.2022. Therefore, the petitioner filed their additional objections dated 20.12.2022 against



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reopening of the assessment, which was disposed of by the respondent by virtue of the impugned order dated 03.01.2023, and later, the petitioner has been issued with an intimation regarding completion of assessment in accordance with the procedure under Section 144B of the Act, which has been followed by a notice under Section 142 (1) of the Act dated 10.01.2023 requiring the petitioner to file various details on or before 20.01.2023. Challenging the order of disposal of the objections of the petitioner's dated 03.01.2023, the present Writ Petition is filed.

3. Mr.L.Dinesh, the learned counsel appearing for the petitioner would submit that the petitioner-Company has entered into two non-compete agreements with Atlas Copco India Ltd., Chicago Pneumatic Tool Co. Ltd. (for short, CP group) both dated 17.08.2002; that the first agreement is for a period of two years for a consideration of Rs.7.5 crores and the second agreement is for a period of five years for a consideration of Rs.2.5 crores; that the petitioner has filed return of income (ROI) for the AY 2003-04 on 27.11.2003 claiming that the payment of non-compete fees vide two agreements dated 17.08.2002 were treated as revenue expenditure and



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the respondent also proceeded to pass an assessment under Section 143 (3)

of the Income Tax Act, (for short, 'I.T.Act') dated 28.03.2005.

3.1 Therefore, it is the contention of the learned counsel for the petitioner that the respondent, during the course of assessment, called upon the petitioner to produce certain details with regard to the agreements entered into by the petitioner with CP group with consideration received and the petitioner also produced all the records, including the two agreements dated 17.08.2002 along with brief note, categorically stating that the consideration of Rs.7.5 crores and Rs.2.50 crores were received vide two agreements as revenue expenditure, and the same was also accepted by the respondent/Assessing Officer and an assessment order was passed on 28.03.2005, and hence, it is not open to the respondent to reopen the assessment once again by virtue of issuing notice under Section 148 of the Act dated 01.02.2010, when the reason for reopening is merely based on the materials that were already on record and when the documents were also scrutinized by the respondent.



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3.2 Further, the learned counsel for the petitioner would contend that

the respondent proposed to reopen the concluded assessment in respect of the AY 2003-04 by issuing notice under Section 148 on an erroneous assumption that a portion of payment of non-compete fees by one of the agreements, dated 17.08.2002 was capital in nature and not fully allowable as revenue expenditure; that the petitioner filed their objections stating that as per the terms of the second agreement for a consideration of Rs.2.5 crores, it is agreed that the CP group will not jointly or severally in any manner, assist any Competitor of the petitioner-Company in carrying on or developing any specified products or business to create Competition in the Indian Market, for the above covenant, the petitioner-Company agreed to pay the CP groups a sum of Rs.10 crores on 17.08.2002, the same was shown in the Annual Report for the year 2002-03 under non-recurring and exceptional items non solicitation, Non compete fees and this amount is received as compensation on the cancellation of the two agreements on 17.08.2002, therefore, the assumption of the respondent that such expenditure cannot be treated to have been incurred in the revenue field, which has neither directly enhanced the profit of the assessee nor can be



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treated as business expenditure and thereby, rejecting the petitioner's objections by disallowing the claim of Rs.10,00,00,000/- on the ground that the petitioner would receive enduring benefits by virtue of the said two agreements is incorrect.

3.3 Further, the learned counsel for the petitioner would submit that since the objections filed by the petitioner dated 19.04.2022 was disposed of by the respondent vide order dated 29.04.2022, without affording an opportunity of personal hearing, which is in violation of principles of natural the justice, the petitioner filed a Writ Petition in W.P.No.12949 of 2022 and this Court vide order dated 17.08.2022, set aside the impugned order of rejection of the petitioner's objections and remanded the matter to the respondent for fresh consideration, pursuant thereto, the petitioner filed additional objections against reopening of the assessment dated 15.12.2022 filed on 20.12.2022 inter alia stating that notice under Section 148 was issued beyond the period of four years from the end of the assessment year; that as per first proviso to section 147, no action shall be taken unless, any income chargeable to tax has escaped assessment by reason of the failure on



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the part of the assessee to disclose fully and truly the material facts necessary for the assessment, that in the present case, when there was no allegations of suppression of any material fact by the petitioner, the condition precedent for reopening of the assessment beyond four years is not satisfied, therefore, the notice under Section 148 seeking to reopen the assessment beyond the period of four years is barred by limitation. Further, it is contended that when the Assessing Officer has scrutinized the receipt of Rs.15 crores in the FY 2004-05 offered as income relevant to the assessment year 2005-06 and passed a speaking order about the compensation received towards non-compete fees, reopening of the same issue under the garb of re-assessment is illegal and untenable, especially, when the same was already answered by the petitioner/assessee and the scrutiny assessment was already completed based on the materials already on record. To buttress such contention, the learned counsel relied on a decision of the Hon'ble Supreme Court, in the case of **CIT Vs. Kelvinator of India Ltd.**, reported in **320 ITR 561**.



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3.4 Finally, the learned counsel for the petitioner summed up his

arguments by contending that when the respondent, while scrutinizing the assessment proceedings called upon the petitioner to produce all particulars/documents/details with regard to the two agreements entered into between the petitioner and the CP group, which were furnished by the petitioner and the same was gone through in a careful manner and after thorough examination of the same, passed the assessment order, and in the absence of any reasons recorded by the respondent either in the order disposing of the petitioner's objection dated 29.04.2022 or in the impugned order of rejection of the petitioner's additional objection dated 03.01.2023 that the petitioner has deliberately failed to disclose fully and truly the materials facts, the respondent has committed a gross error in merely holding that there was failure on the part of the petitioner to make a full disclosure of the facts, including the specificities of clause 2.4. of the second agreement, and therefore, the reason for reopening the assessment by interpreting clause 2.4 of the second agreement and stating that the petitioner made false averment, where, the petitioner has claimed that the agreements were only for a period of two years and five years respectively



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and the respondent/AO had no occasion to go through the same, treating non-compete fee paid by the petitioner as capital expenditure, merely based on materials that were already on record is liable to be quashed. Therefore, the learned counsel prays for setting aside the impugned order, inasmuch as, the notice issued under Section 148 itself is not sustainable in law on the ground that the same is barred by limitation, lacks jurisdiction and arbitrary in nature.

4. Dr.B.Ramaswamy, the learned Senior Standing Counsel for the respondent vehemently opposed the contentions putforth by the petitioner by contending that for the AY 2003-04, the petitioner has filed ROI claiming that the payment of non-compete fees vide two agreements dated 17.08.2002 were for Rs.7.5 crores and Rs.2.5 crores was only revenue expenditure and it was made only for restriction for a short period of two years and five years respectively and no permanent advantage or enduring benefit was obtained; that though the Assessing Officer after hearing the arguments has accepted the claim of the petitioner and completed the assessment, however, it is noted that when a letter dated 25.08.2004 was



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issued to the petitioner, calling for details of the claim of Rs.10 crores with regard to two non-recurring and exceptional items, the petitioner furnished copies of two agreements dated 17.08.2002 and also a note on the nature of the transaction, in the said note, it is noticed that the petitioner has claimed that the sum of Rs.10 crores paid vide two agreements entered into between the petitioner and the CP was for the purpose of preventing a potential competitor from entering the Indian Market but in the very said note, there was reference to clause 2.4 of the second agreement for a sum of Rs.2.5 crores, and in terms of the said clause, a part of the payment of Rs.2.5 crores made under this agreement is to confer an enduring benefits in perpetuity to the petitioner-Company by way of licence granted by CP group to the petitioner-Company and the CP also grants the petitioner-Company the right to licence to manufacture and supply the know-how to any person, however, on perusal of the note on these transaction dated 25.01.2005, furnished by the petitioner during the proceedings, this aspect of the agreement is seems to have been omitted; that neither in the details of the agreement or purpose of agreement, this aspect of grant of license in perpetuity takes place.



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4.1 Therefore, it is contended by the learned Senior Standing

WEB COPY Counsel that the clause 2.4 of the second agreement was intended to override the restriction of period of licence and right to sell the products contemplated as per collaboration agreement between C.P Group and the petitioner-Company entered into on 07.1.1997, hence, a portion of it was for purchase of licence and right to manufacture and sale and the same is capital in nature; that though the agreement copy was filed before the respondent/Assessing Officer, the petitioner did not point the aforesaid particular aspect in the written reply and kept silence on this clause, however, since the aforesaid aspect is evident from brief note submitted by the petitioner, explanation (2) to second proviso to Section 147 is applicable since the income escaped assessment due to incorrect claim of the petitioner by not disclosing fully and truly all the material facts, therefore, respondent is entitled to reopen the assessment by issuance of notice under Section 148 of the Act and the same is not barred by limitation.

4.2 Further, it is contention of the learned Senior Standing that the petitioner has admitted Rs.15 crore received from Atlas Copco India Ltd., as



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revenue income in AY 2005-06 and it is the claim of the petitioner that this amount is received as compensation on the cancellation of the two agreements on 17.08.2002, however, as per Article 4 (Remedies for Breach) and Article 7 (Indemnity) of the two agreements, the total consideration in damages indemnification or others on breach of the provisions of this agreement will not exceed the consideration paid, however, the petitioner has claimed that Rs.15 crores was received on cancellation of agreements, whereas, the agreements itself restricts the payment to a sum of Rs.10 crores only. Hence, there is no strict correlation between the revenue expenses of Rs.10 crores claimed as non-compete fee and receipt of Rs.15 crores as revenue income in the AY 2005-06, while that receipt of Rs.15 crore was admitted by the petitioner for AY 2005-06 as revenue income, though the same is accepted in scrutiny, the issue proposed to be examined in the reopening is to determine what portion of Rs.2.5 crores paid by the petitioner under the second agreement in AY 2003-04 is capital in nature.

4.3 Further, it is contended by the learned Senior Standing Counsel for the respondent that mere production of evidence before the



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respondent/Assessing Officer and leaving him to find out the position by further probing into the issues is not enough; that if some material fact for the assessment lay embedded in the evidence, which the Assessing Officer could not able to trace out, then, it is duty on the part of the petitioner to bring it to the notice of the assessing authority, and in support of his contention, the learned Senior Standing Counsel for the respondent placed reliance on the decision of the Hon'ble Supreme Court, in re **Indo Aden Salt Mfg Co. Trading P. Ltd., Vs. CIT** reported in **159 ITR 624**.

4.4 Therefore, it is contended by the learned Senior Standing Counsel for the respondent that the aspect of clause 2.4 of the second agreement dated 17.08.2002 for a consideration of Rs.2.5 crores, which confers the enduring benefits in perpetuity to the petitioner-Company was purposely omitted and that the petitioner has made a false averment to the extent, where, the petitioner has claimed that the agreements are only for a period of two years and five years respectively and the respondent/AO had no occasion to go through the same and therefore, treated the non-compete fee paid by the petitioner as capital expenditures. Therefore, the objection



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raised by the petitioner that once the assessment is completed, the same cannot be opened, and that explanation 2 to section 147 will not apply, inasmuch as there is no fresh material in possession of AO to reopen the assessment proceedings, and that the proceedings under Section 148 is barred by limitation were overruled by the respondent. Therefore, the learned Senior Standing Counsel prays for for dismissal of the Writ Petition.

5. In reply, the learned counsel for the petitioner would submit that the petitioner has admitted the receipt of Rs.15 crore amount from Atlas Copco India Ltd., and disclosed the same as revenue income for AY 2005-06, but, now, the issue for reopening of the assessment under section 148 pertains to the year 2003-04, therefore, the receipt of Rs.15 crore has nothing to do with the income of Rs.2.5 crores, shown as revenue expenditure, which was the consideration received for the AY 2003-04. Further, the learned counsel would submit that if the income of Rs.2.5 crores is treated as capital expenditure, then, the amount of Rs.15 crores received as compensation on cancellation of the two agreements needs to be treated as capital receipt and not liable for taxation, and if done so, there is



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no escapement of taxable income and the same will be detrimental to the interest of the revenue.

6. I have given due consideration to the submissions made by Mr.L.Dinesh learned counsel appearing for the petitioner and Dr.B.Ramaswamy, learned Senior Standing Counsel for the respondent and perused the materials placed on record.

7. The issue that arise for consideration in the present Writ Petition is as to whether the respondent is entitled to reopen the assessment proceedings for the AY 2003-04 by invoking the power under Section 148 of the I.T.Act by seeking refuge under Section 147 explanation 2 alleging that the income chargeable to tax has escaped assessment on account of failure on the part of the assessee to disclose fully and truly all material facts, necessary for assessment?

8. The petitioner, viz., Revathi Equipment Ltd., is a Company, registered under the Companies Act and engaged in the business of



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manufacture and sale of drilling rigs and spares. For the AY 2003-04, the petitioner filed their (ROI) on 27.11.2003, claiming that the payment of non-compete fees vide two agreements dated 17.08.2002 entered into between the petitioner and CP group was only revenue expenditure and it was made only for restriction for a short period of two years and five years respectively and no permanent advantage or enduring benefit was obtained. It has to be noted that, pursuant to filing of such ROI, the respondent/Assessing Officer posted the matter for discussions and the petitioner also appeared from time to time and produced the details sought for. During the course of said proceedings, a letter dated 25.08.2004 was issued to the petitioner, specifically, raising a query on the issue of non-compete fees paid to M/s.Atlas Copco and calling for details of the claim of Rs.10 crores two non-recurring and exceptional items. The petitioner, in response to the said letter dated 25.08.2004 furnished copies of two tripartite agreements dated 17.08.2002 along with a brief note, categorically stating nature of the transaction that the petitioner has claimed that the sum of Rs.10 crores paid vide two agreements entered into between the petitioner and the CP was for the purpose of preventing a potential

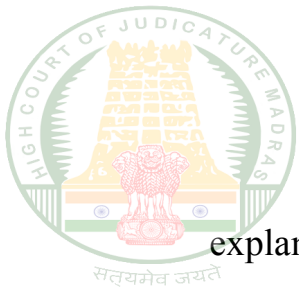


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competitor from entering into the Indian Market; that the first agreement was for a period of two years for a consideration of Rs.7.5 crores and the second agreement was for a period of five years for a consideration of Rs.2.5 crores. The respondent/Assessing Officer, after a detailed examination of the submission of documents by the petitioner and after considering the explanation offered by the petitioner, proceeded to complete the assessment under Section 143 (3) of the I.T.Act on 28.03.2005.

9. Therefore, it is the contention of the petitioner that when the respondent/AO already completed the assessment for the year 2003-04 on scrutinisation of documents, which were already produced by the petitioner, it is not open to the respondent/AO reopen the assessment based on the same materials, which were already on record and the same is arbitrary, barred by limitation and lacks jurisdiction.

10. Per contra, it is the contention of the learned Senior Counsel for the respondent that there was failure on the part of the petitioner/assessee in not disclosing all the materials facts fully and truly and in terms of



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explanation 2 to section 147, the respondent is entitled to reopen the assessment by virtue of notice under Section 148 of the Act and the same is permissible in law.

11. At this stage, it would be apposite to refer to the reasons assigned by the respondent for reopening the assessment by issuance of notice under Section 148 for the assessment year 2003-04 vide communication dated 05.03.2010 are as follows:-

"The assessee had claimed that payment of non-compete fees vide two agreements is for 7.5 crores and Rs.2.5 crores dated 17.08.2002 was only revenue expenditure and it is made only for restriction for a short period of two years and five years respectively and no permanent advantage or enduring benefit was obtained. The assessing officer has after hearing the arguments has accepted the claim. However, it is seen from the agreement for payment of Rs.2.5 crores that a portion of it was for non-competition and a portion of it as per clause 2.4 for licence granted perpetually for right to manufacture products and also for right to sell products anywhere in World. The clause 2.4 was intended to override the restriction of period of licence



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and right to sell products contemplated as per collaboration agreement between C.P Group and Company entered into on 07.11.1997. Hence, a portion of it is for purchase of licence and right to manufacture and sale. Hence, it is capital in nature. The agreement copy though filed before the assessing officer, the assessee did not point this out in the written reply and kept silence on this clause. The Assessing Officer was not aware of this aspect as it evidence from his note on the file. So explanation (2) to second proviso to Section 148 is applicable. Income escaped assessment due to incorrect claim of the assessee that the entire payment of Rs.10 crores was for non-compete fee was incorrect in nature."

12. Thus, on a perusal of the same, it is clear that the entire issue revolves around on the interpretation of clause 2.4 of the second agreement dated 17.08.2002, which formed the basis for reopening of the assessment.

13. It is the case of the petitioner that the payment of non-compete fees vide two agreements dated 17.08.2002 for Rs.7.5 crores and Rs.2.5 crores was only revenue expenditure and it was made only for restriction for a short period of two years and five years respectively and no permanent



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advantage or enduring benefit was obtained; whereas, according to the respondent, clause 2.4 of the second agreement dated 17.08.2002, confers an enduring benefit in perpetuity to the petitioner-Company by way of licence granted by CP group and CP groups also grants right of licence to the petitioner-Company for manufacture and sale of products to know-how.

14. The petitioner further submits that the ROI filed by the petitioner for the subject assessment year was scrutinized by the respondent/AO, explanation called for was submitted, details required for were also produced, viz., two agreements dated 17.08.2002; that when the respondent/Assessing Officer himself concedes that the agreements were produced during the original assessment proceedings; once the primary facts are placed before the AO, the duty of the petitioner/assessee stands discharged and it is for the AO to draw inferences therefrom; that the respondent/AO having inferred that the expenditure is wholly revenue, such inference cannot now be reviewed under the garb of re-assessment. To buttress such contention, the learned counsel relied on a decision of the Hon'ble Supreme Court, in the case of **CIT Vs. Kelvinator of India Ltd.,**



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reported in **320 ITR 561.**

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15. Therefore, it is contended by the learned counsel for the petitioner that, if at all, the AO has drawn a wrong inferences, the only recourse available to the AO to set right the same by reviewin the assessment under Section 263 of the Act, and the same is not permissible by invoking section 148 of the Act, by seeking refuge under Section 147.

16. In this context, it would be apposite to refer to Section 147 along with first proviso, which are as hereunder:-

'If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any 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)



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Proviso 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 materials facts necessary for his assessment, for that assessment year. "

17. As already discussed above, it is an undisputed fact that the ROI filed by the petitioner for the assessment year 2003-04 was scrutinized, and respondent/AO sought for certain details regarding the said two tripartite agreements dated 17.08.2002 vide letter dated 25.08.2004 before making the original assessment and the petitioner also, in response to such letter, furnished the copies of two tripartite agreements dated 17.08.2002 along with a brief note, categorically stating nature of the transaction and the same was also gone through by the respondent in a careful manner, and having satisfied with the explanation offered by the petitioner and being convinced with the documents produced by the petitioner, the AO



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completed the assessment on 28.03.2005 by arriving a conclusion that the

income of Rs.2.5 crores and 7.5 crores paid by the petitioner was non-compete fees and treated the same as revenue expenditure. Therefore, as rightly pointed out by the learned counsel for the petitioner that the respondent/AO having inferred that the expenditure is wholly revenue, such a view cannot be reviewed under the guise of re-assessment, unless and until, the respondent/AO fulfills the requirement of first proviso to Section 147, and hence, the assessment cannot be reopened and the same can be only reviewed under Section 263 of the Act. This Court is in complete agreement with the submission of the learned counsel for the petitioner.

18. Further, it is seen that the respondent has issued a notice under Section 148 on an erroneous assumption that non-recurring expenditure claimed by the petitioner to a tune of Rs.10,00,00,000/- in the income statement was partly utilized for purchase of licence, which is capital in nature and the same cannot be claimed as a deduction as revenue expenditure during the FY 2002-03. This aspect was cleared by the petitioner by way of filing objection stating that as per the terms of the both



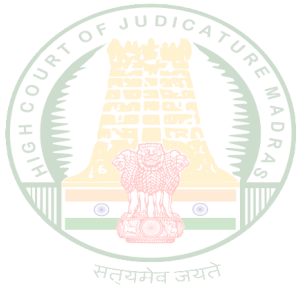
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agreements for a consideration of Rs.7.5 crores and Rs.2.5 crores respectively, it is agreed that the CP group will not jointly or severally in any manner, assist any Competitor of the petitioner-Company in carrying on or developing any specified products or business to create Competition in the Indian Market, for the above covenant, the petitioner-Company agreed to pay the CP groups a sum of Rs.10 crores on 17.08.2002, the same was shown in the Annual Report for the year 2002-03 under non-recurring and exceptional items non solicitation, Non compete fees and this amount was paid in terms of the two agreements on 17.08.2002, therefore, the assumption of the respondent that such expenditure cannot be treated to have been incurred in the revenue field, which has neither directly enhanced the profit of the assessee nor can be treated as business expenditure and thereby, rejecting the petitioner's objections by disallowing the claim of Rs.10,00,00,000/- on the ground that a portion of a payment of non-compete by virtue of one of the agreement dated 17.08.2002 was capital in nature and not fully allowable as revenue expenditure and that the petitioner would receive enduring benefits by virtue of the said two agreements is also untenable.



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19. So far as the contention of the learned Senior Standing of the respondent that the petitioner has offered Rs.15 crore received from Atlas Copco India Ltd., as revenue income in AY 2005-06, whereas, the agreement itself restricts the payment to be received only at Rs.10 crores hence, there is no strict correlation between the revenue expenses of Rs.10 crores claimed as non-compete fee and receipt of Rs.15 crores as revenue income in the AY 2005-06 is concerned, as rightly pointed out by the learned counsel for the petitioner, the receipt of Rs.15 crore amount from Atlas Copco India Ltd., as revenue income pertains to the AY 2005-06, and the same has no nexus with reopening of the assessment for the year 2003-04, when the facts remains that the receipt of Rs.15 crore was accepted in the scrutiny as revenue for the AY 2004-05. Therefore, as rightly contended by the learned counsel for the petitioner the respondent has grossly erred in observing that there is no strict correlation between the revenue expense of Rs.10 crores claimed as non-compete fee in AY 2003-04 and the receipt of Rs.15 crores admitted as revenue income in the AY 2005-06.



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20. Therefore, the reasons cited by the respondent for reopening of the assessment that the brief note on the transaction dated 25.01.2005 submitted by the petitioner during the assessment proceedings does not specifically states about clause 2.4 and that particular clause is seen to be omitted and that the petitioner did not point the said aspect in the written reply and kept silence on this particular clause; that the wrongful interpretation of clause 2.4 stating that purpose of the said tripartite agreement is to confer an enduring benefits in perpetuity to the petitioner-Company by way of licence granted by CP group to the petitioner-Company and the CP also grants the petitioner-Company the right to licence to manufacture and supply the know-how to any person are untenable, and the same cannot be treated as failure on the part of the petitioner to disclose the material facts fully and truly and therefore, the re-assessment in terms of first proviso to Section 147 is not permissible is law, inasmuch as, the question of non-disclosure of the materials facts by the petitioner itself does not arise.



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The Tripartite agreement dated 17.08.2002 deals with the aspect of receipt of Non-compete fee, Technical Know-How, Licence etc., to an extent of Rs.10 crores. When scrutiny was made by the Assessing Officer initially before passing the assessment order dated 28.03.2005, the Assessing Officer had called for explanation with brief note along with two agreements. The documents as sought for by the Assessing Officer was also produced by the petitioner and there is no dispute on that aspect. Thus, in the said agreements, when clause 2.4. of the agreement categorically states that a consideration of Rs.7.5 crores and Rs.2.5 crores respectively were paid by the petitioner to the CP group towards Non-compete fees, Technical Know-How, Licence fee, etc., and the same were treated as revenue expenditure and when the same was also brought to the notice of the concerned Assessing Officer and the Assessing Officer, after perusal of the same, accepted the claim of the petitioner and passed the assessment order dated 28.03.2005, when such being the case, now, the respondent cannot have any case for reopening of the assessment by wrongly holding that the petitioner has failed to disclose all the materials fact. Had the petitioner not



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disclosed those agreements to the Assessing Officer concerned and concealed the same, in such case, the respondent can have a case for re-opening of the assessment under Section 148.

22. On the other hand, the petitioner had disclosed the two agreements dated 17.08.2002, and in the brief note appended thereto, has clearly stated that payment of non-compete fee, Technical-know how and licence as expenditure incurred towards revenue, and the Assessing Officer having gone through the same and accepted the claim of Rs.10,000,000/- as expenditure incurred towards revenue and passed the impugned order dated 28.03.2005, thereafter, he cannot resile from his earlier view and to say that the petitioner had not disclosed fully, the material facts with regard to the payment made towards Non-compete fees, Technical Know-How, Licence fee. In the event, any mistake or error in the original assessment order, the same can be revised by way of revision under Section 263 of the Act and not by invoking power under Section 148 of the Act. Therefore, in the present case, there is no question of non-disclosure of the material facts, which were



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already disclosed at the time of making original assessment so as to invoke section 148 of the Act by the respondent and to proceed accordingly. The petitioner has disclosed all the materials, particularly, the said two non-compete agreements, when such being the case, again, based on the said two non-compete agreements, reopening of the case under Section 148 of the Act is not proper, and that, if the respondent was not able to go through the agreements at the time of making assessment, for the said negligence on the part of the Assessing Officer, the petitioner cannot be mulcted with any liability under the garb of re-assessment, that too, based on the said two agreements again.

23. Therefore, this Court holds that the respondent is not entitled to reopen the assessment proceedings for the AY 2003-04 by virtue of issuance of notice under Section 148 of the I.T.Act by seeking refuge neither under explanation 2 or first proviso to section 147 of the Act, inasmuch as, the specific issue was scrutinized by the respondent/AO, explanation was called for which was submitted along with the relevant agreements, and entire materials were disclosed and the respondent/AO himself conceded that the



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agreements submitted during the original assessment proceedings were gone through and completed the assessment by treating the entire expenditure as revenue expenditure, therefore, the question of non-disclosure itself does not arise. Hence, the entire re-assessment proceedings initiated by the respondent, which ultimately culminated in the impugned proceedings deserve to be quashed.

24. In the result, the Writ Petition is allowed, the impugned order is set aside. No costs. Consequently, connected miscellaneous petition is closed.

25.06.2025

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Index : yes/no

Neutral Citation : yes/no

To
The Assistant Commissioner of Income Tax
Corporate Circle 1, Coimbatore
Main Building 63 race Course Road
Coimbatore 641 018.



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Krishnan Ramasamy,J.,

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