



W.P.No.4703 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.01.2025

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

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and

W.M.P.Nos.4818 and 4819 of 2022

M/s.Pon Pure Chemical India Pvt Limited,
Represented by its Managing Director,
Mr.Ponnuswami
No.32, H-Block, 15th Main Road,
Anna Nagar,
Chennai – 600 040.

... Petitioner

Vs.

1.The Assistant Commissioner of Income Tax,
Circle 1 LTU Chennai,
No.121, Mahatma Gandhi Road,
Nungambakkam,
Chennai – 600 034.

2.The Additional/Joint/Deputy/Assistant Commissioner
of Income Tax/Income Tax Officer,
National Faceless Assessment Centre,
Delhi.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India,
for issuance of a Writ of Certiorari, to call for the records on the file of
the respondents in PAN.No.AACCP3026E and quash the impugned



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notice in ITBA/AST/S/148/2020-21/1031777814(1) dated 26.03.2021 issued under Section 148 of the Income Tax Act, 1961 issued by the 1st respondent and the consequential proceedings in ITBA/AST/F/17/2021-22/1039023496(1) dated 24.01.2022 issued by the 2nd respondent.

For Petitioner : Mr.R.Sivaraman

For Respondents : Mr.S.Rajasekar
Standing Counsel
and
Mr.V.Mahalingam
Senior Standing Counsel

ORDER

In this Writ Petition, the petitioner has challenged the impugned speaking order dated 24.01.2022 passed by the second respondent and a Notice that preceded the impugned order under Section 148 of the Income Tax Act, 1961 dated 26.03.2021 for the Assessment Year 2016-2017.

2. The dispute pertains to the Assessment Year 2016-2017. The petitioner had filed return of income on 29.11.2016 under Section 139(1) of the Income Tax Act, 1961 which was scrutinised and ultimately the



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Assessment was completed on 17.12.2018. After the Assessment order was passed on 17.12.2018, the impugned notice dated 26.03.2021 was issued under the old regime as it stood prior to 01.04.2021. The reasons for issuance of the impugned notice dated 26.03.2021 as communicated to the petitioner which reads as under:-

“Since, the premium is a higher amount at which the forward contract is booked to secure against the risk of adverse fluctuation which as per AS 11 has to be accounted for separately and to be amortised over the life of the contract. It is not the actual exchange fluctuation loss to be recognised in the statement of Profit or loss. Hence, the amount debited in the Profit and Loss account should not be allowed as deduction and therefore the Premium on FC and Options and Foreign Exchange Loss is required to be disallowed and brought to tax. As it is notional in nature, the above needs to be disallowed.”

3. The aforesaid reasons was communicated to the petitioner as an annexure to a Notice dated 30.07.2021 issued under Section 143(2) read with Section 147 of the Income Tax Act, 1961.

4. The specific case of the petitioner is that the above reasons for re-opening of the Assessment was inspired from change of opinion. It is submitted that prior to the Assessment order dated 17.12.2018 passed



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under Section 143(3) of the Act, a series of notices were issued to the petitioner and calling upon the petitioner to furnish details. As far as the present dispute is concerned i.e., dispute relating to Foreign Exchange Loss and Forward Contracts are concerned, it is submitted that in the financial year i.e., in Note 19 to Notes forming part of statement of Profit and Loss Account, the petitioner has clearly stated as under:-

Statement of Profit and Loss For the Year Ended 31st March 2016			
	Notes	2015-2016 Rs	2014-2015 Rs.
Revenue from operations			
Sales and other operating income	15	12,805,297,824	13,495,188,484
Other Income	16	50,650,764	40,312,641
	Total	12,855,948,588	13,535,501,125
Expenses			
Purchase of Stock in Trade	17	11,784,361,705	12,365,177,004
Changes in Inventories	17	13,986,188	176,794,574
Employee Benefits Expense	18	242,565,731	225,233,992
Other Expenses	19	506,812,448	441,342,833
	Total	12,519,753,696	13,208,548,403
Finance Costs	20	222,266,594	266,071,549
Depreciation and Amortisation	7	26,373,832	41,157,799



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Statement of Profit and Loss For the Year Ended 31st March 2016

Expenses			
Profit/(Loss) Before Taxes		87,554,466	19,723,374
Less: Provision for taxation Deferred Tax		32,214,200	4,913,927
Minimum Alternate Tax		19,600,000	4,000,000
MAT credit Entitlement		17,800,000	4,000,000
Profit/(Loss) After Tax		53,540,266	14,809,447
Earnings Per Share (Basic & Diluted) (Face Value Rs.100/- each fully paid)		63	17

as other expenses for a sum of Rs.50,68,12,448/-.

5. Under the heading other expenses in Note 19, expenses towards following has been disclosed:-

(i) Foreign Exchange Loss : Rs.26,635,063/-

(ii) Premium on FC & Options : Rs.57,862,116/-



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6. The learned counsel for the petitioner drew attention to Note 19 to statement of Profit and Loss Account for the year ended on 31.03.2016 for other expenses. The other expenses in Note 19 relating to Foreign Exchange Loss of Rs.26,635,063/- and Premium on FC & Options of Rs.57,862,116/-.

7. It is further submitted that in the Notes forming part of Balance Sheet and Statement of Profit and Loss Account also, it has been stated as under:-

(e) Foreign Currency Transactions:

Foreign Currency Transactions are accounted at the rate prevailing at the date of transaction. Any profit or loss on account of exchange difference between the date of transaction and on settlement is recognised in the Statement of Profit and Loss. Monetary liabilities/assets related to foreign currency transaction remaining unsettled at the end of the year are translated at the year-end rate.

The company uses foreign exchange forwards and currency option contracts to hedge its risk associated with foreign currency fluctuations relating to certain firm commitments. Premium or Discount on the contracts are amortized and recognised in the Statement of Profit and Loss over the period of the contract. Forward exchange contract outstanding at the balance sheet date are stated at the year-end rate and any gains or losses are recognised in the profit and loss account and option contracts outstanding at the



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balance sheet date are marked to marked and the losses if any are recognised in the Statement of Profit and Loss in pursuance of the announcement of the Institute of Chartered Accountants of India on “Accounting for Derivatives” in March 2008.

in accordance with the accounting standards notified under Section 133 of the Companies Act, 2013 read with Rule 7 of the Companies (Accounts) Rules, 2014.

8. It is further submitted that this was also subject of the aforesaid Assessment order dated 17.12.2018. Once again, the petitioner was called upon to furnish certain details including break up of other expenses claimed in the return to which the petitioner has replied on 13.04.2018 and filed it as Annexure-8 in the aforesaid reply. It is in this background, the Assessment was completed on 17.12.2018 for the Assessment Year 2016-2017. It is therefore submitted that the impugned Notice dated 26.03.2021 was inspired from change of opinion.

9. On the other hand, the learned Standing Counsel for the respondents would submit that there was no formation of opinion on the other expenses when the Assessment order was passed on 17.12.2018



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under Section 143(3) of the Income Tax Act, 1961 and therefore re-opening of the Assessment that was completed on 17.12.2018 cannot be either questioned or challenged. It is submitted that the impugned order has not given a conclusion on facts as to whether indeed the stand of the petitioner was correct or not.

10. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Standing Counsel for the respondents and the learned Senior Standing Counsel for the respondents.

11. A reading of the documents that have been filed before this Court which have been referred to supra indicates that all the informations that were required for completing the Assessments were furnished by the petitioner in response to specific notices issued to the petitioner under Section 143(2) of the Income Tax Act, 1961.



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12. Specifically, information relating to Foreign Currency transactions and the loss based on which the expenses was claimed as the deduction under Section 37 of the Act was claimed was subject matter of the query by the Department pursuant to which Assessment Order came to be passed on 17.12.2018. Merely because, no opinion is expressed in the Assessment Order would not mean that the Assessment was completed without forming any opinion on the queries raised by the Department before the Assessment was completed. The Courts have taken a categorical stand that it cannot be assumed that Assessments were completed without forming an opinion. Merely because, opinion is not reflected in the Assessment that was completed earlier will not mean no opinion was formed earlier. If indeed no opinion was formed, as has been stated the remedy to correct such order lies by way of revision under Section 263 of the Income Tax Act, 1961. Therefore, I am of the view, the impugned order has to go as the issue was considered before the Assessment Order dated 17.12.2018 was passed. Therefore, the impugned order is liable to be set aside.



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13. Accordingly, this Writ Petition stands allowed. No costs.

Consequently, connected Writ Miscellaneous Petitions are closed.

09.01.2025

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No

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To:

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No.121, Mahatma Gandhi Road,
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C.SARAVANAN, J.

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