IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2025

CORAM :

THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN

W.A.No.1321 of 2024
and C.M.P.No.9577 of 2024

Devaraj Ramasamy Mani .. Appellant

vs

The Assistant Commissioner of Income Tax,
Non-Corp, Circle-2, CBE,
Coimbatore Main Building,
63, Race Course Road,
Coimbatore-641 018. .. Respondent

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 23.01.2024 passed by the learned Single Judge in W.P.No.9618 of 2021.

For Appellant : Mr,Raghav Rajeev Menon

For Respondent : Dr.B.Ramaswamy
Sr. Standing Counsel

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

Appellant/assessee is an individual carrying on business as Sole Proprietor in the name and style of "D.R.M. Metals". Assessee carries on business, inter alia, of manufacture of Aluminum Alloy Auto Parts. Assessee filed return of income on 27.10.2013 for the Assessment Year 2013-2014 declaring a total income of Rs.64,77,470/-. The return was processed under Section 143(1) of the Income Tax Act, 1961 ["the said Act"]. Subsequently, the case was selected for scrutiny and notice dated 11.9.2014 was issued under Section 143(2) of the said Act. Notice contained a long list of 15 questions to be answered by assessee. Admittedly, assessee replied to the notice and provided all details. Subsequently, the assessment was completed and an assessment order dated 24.2.2016 under Section 143(3) of the said Act was passed.

2. Thereafter, assessee received a notice dated 13.3.2020 under

Section 148 of the said Act stating that there was reason to believe that income liable to be taxed has escaped assessment within the meaning of Section 147 of the said Act. Assessee also received a further notice dated 28.9.2020 under Section 142(1) of the said Act to furnish the details. Assessee called upon the Assessing Officer to provide the reason to believe. Instead of providing the reason to believe, assessee was issued a letter dated 26.10.2020, in which the reason to re-open the assessment was given as under:

> *"The assessee had claimed an expenditure of Rs.42,42,505/- towards bad debts written off in his profit & Loss account for the relevant previous year. However it is found that this amount of Rs.42,42,505/- and a sum of Rs.25,000/- had also been shown as provisions in Trial Balance for the relevant period. This amount to mean that the amount is not yet fully written off in the books of Accounts. Hence, the Bad Debt Written off Claim is not correct."*

3. Shri Sivaraman submitted that the reason to believe itself indicates that there was no failure on the part of assessee to disclose fully and truly all material facts necessary for his assessment for that assessment year.

4. Shri Sivaraman further submitted that under proviso to Section

147 of the said Act, where an assessment under Section 143(3) of the said Act has been made, no action shall be taken under Section 147 of the said Act 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 assessee to disclose fully and truly all material facts.

5. Counsel submitted that the re-opening pertains to Assessment Year 2013-14 and even the original notice allegedly under Section 148 of the said Act is dated 13.3.2020 and, therefore, certainly the proviso to Section 147 of the said Act shall apply.

6. Mr.Ramaswamy, in fairness, agreed.

7. From the reasons quoted above, it is quite clear that there has been no failure to disclose. It is because the reason itself says "*The assessee had claimed an expenditure of Rs.42,42,505/- towards bad debts written off in his profit & loss account ... However it is found that this amount ... had also been shown as provisions in Trial Balance ... Hence, the Bad Debt*

Written off Claim is not correct." Therefore, the basic requirement of "failure to disclose" to issue re-opening notice itself falls to the ground. The said view is fortified by a decision of the Bombay High Court in ***Ananta Landmark Pvt Ltd v. Deputy Commissioner of Income-tax and others***[1], in which one of us was a Member (Chief Justice).

8. Moreover, during the course of assessment proceedings, the Assessing Officer had issued a notice dated 25.5.2015 under Section 142(1) of the said Act calling upon assessee to furnish details, including profit and loss account and balance sheet, along with detailed schedules and statement of computation of total income. Assessee, by its Chartered Accountant's letter dated 19.6.2015, provided these details called for. The copy of the balance sheet provides for Rs.42,67,505/- under the head "Current Liabilities" towards "Provisions". The trial balance annexed also provides for bad and doubtful debts of Rs.42,42,505/-. The Assessing Officer, after considering these explanations, in the order dated 24.2.2016 passed under Section 143(3) of the said Act, in paragraph (3) records: "*During the course of assessment proceedings, the authorized*

1 (2021) 439 ITR 168

representative was asked to submit further details namely ... details of bad debts ... and the AR submitted the same and the case was discussed from time to time.”

9. Therefore, the very ground on which the notice dated 13.3.2020 under 148 of the said Act was issued to re-open the assessment was considered by the Assessing Officer while originally passing the assessment order dated 24.2.2016. This itself demonstrates the fact that notice dated 13.3.2020 under Section 148 of the said Act seeking to re-open the assessment for the Assessment Year 2013-2014 is based on mere change of opinion. It will be pertinent to reproduce paragraph (14) of a judgment of the Bombay High Court in ***Aroni Commercials Ltd v. Deputy Commissioner of Income-tax-2(1)***[2] and it reads as under:

> *“14. We find that during the assessment proceedings the petitioner had by a letter dated July 9, 2010, pointed out that they were engaged in the business of financing, trading and investment in shares and securities. Further, by a letter dated September 8, 2010, during the course of the assessment proceedings on a specific query made by the Assessing Officer, the petitioner has disclosed in detail as to why its profit on sale of investments should not be taxed as*

2 (2014) 44 taxmann.com 304 (Bombay)

business profits but charged to tax under the head "Capital gains". In support of its contention the petitioner had also relied upon the Central Board of Direct Taxes Circular No.4 of 2007, dated June 15, 2007 (The reasons for reopening furnished by the Assessing Officer also places reliance upon the Central Board of Direct Taxes Circular dated June 15, 2007). It would, therefore, be noticed that the very ground on which the notice dated March 28, 2013, seeks to reopen the assessment for the assessment year 2008-09 was considered by the Assessing Officer while originally passing the assessment order dated October 12, 2010. This by itself demonstrates the fact that the notice dated March 28, 2013, under section 148 of the Act seeking to reopen the assessment for the assessment year 2008-09 is based on mere change of opinion. However, according to Mr.Chhotaray, learned counsel for the Revenue, the aforesaid issue now raised has not been considered earlier as the same is not referred to in the assessment order dated October 12, 2010, passed for the assessment year 2008-09. We are of the view that once a query is raised during the assessment proceedings and the assessee has replied to it, it follows that the query raised was a subject of consideration of the Assessing Officer while completing the assessment. It is not necessary that an assessment order should contain reference and/or discussion to disclose its satisfaction in respect of the query raised. If an Assessing Officer has to record the consideration bestowed by him on all issues raised by him during the assessment proceedings even where he is satisfied then it would be impossible for the Assessing Officer to complete all the assessments which are required to be scrutinised by him under section 143(3) of the Act. Moreover, one must not forget that the manner in which an assessment order is to be drafted is the sole domain of the Assessing Officer and it is not open to an assessee to insist that the assessment order must record all the questions raised and the satisfaction in respect thereof of the Assessing Officer. The only requirement is that the Assessing Officer ought to have considered the objection now raised in the grounds for issuing notice under section 148 of the Act, during the original assessment proceedings. There can be no doubt in the present facts as evidenced by a letter dated September 8, 2012, the very issue of taxability of sale of shares under the head "Capital gains" or the head "Profits and gains from business" was a subject matter of consideration by the Assessing Officer during the original assessment proceedings leading to an order dated October 12, 2010. It would, therefore, follow that the reopening of the assessment by the impugned notice dated March 28, 2013, is merely on the basis of change of opinion of the Assessing Officer from that held earlier during the course of assessment proceeding leading to the order *dated October 12, 2010. This change of opinion does not constitute justification and/or reasons to believe that income chargeable to tax has escaped assessment."*

10. Therefore, this change of opinion does not constitute justification or reason to believe that income chargeable to tax has escaped assessment.

11. When the entire basis of issuing the notice under Section 148 of the said Act was not sustainable, we are afraid, the learned Single Judge could not have gone into the merits and made observations against assessee that assessee has misled the department.

The appeal is allowed and the impugned order dated 23.1.2024 is hereby quashed and set aside. There shall be no order as to costs. Consequently, interim application stands closed.

(K.R.SHRIRAM, CJ.) (SUNDER MOHAN, J.)
17.06.2025

Index : Yes/No
NC : Yes/No
sasi

To

The Assistant Commissioner of Income Tax,
Non-Corp, Circle-2, CBE,
Coimbatore Main Building,
63, Race Course Road,
Coimbatore-641 018.

THE HON'BLE CHIEF JUSTICE
AND
SUNDER MOHAN,J.

(sasi)

W.A.No.1321 of 2024

17.06.2025