



W.P.No.19223 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2025

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.19223 of 2021
and W.M.P.No.20526 of 2021

M/s.Prabhu Spinning Mills Private Limited,
Represented by its Director
Mr.P.S.Veluswamy,
No.207/86, Mangalam Road, Karuvampalayam,
Tirupur, Tamil Nadu 641 601.

... Petitioner

vs.

The Joint Commissioner of Income Tax,
Circle – 1, TPR
No.121, Adams Building,
Sixty Feet Road, Tirupur,
Tamil Nadu – 641 602.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, pleaded to issue a Writ of Certiorari, calling for the records on the file of the Respondent in PAN No.: AABCP0750E and quash the impugned notice under Section 148 of the Income Tax Act, 1961 in



W.P.No.19223 of 2021

ITBA/AST/S/148/2020-21/1031857168(1) dated 28.03.2021 and the consequential proceedings in ITBA/AST/F/17/2021-22/1034501202 dated 29.07.2021 passed by the respondent as illegal and without jurisdiction.

For Petitioner : Mr.R.Sivaraman

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

ORDER

The petitioner has challenged the impugned notice dated 28.03.2021 issued under Section 148 of the Income Tax Act for the assessment year 2013-14. The petitioner has also challenged the consequential speaking order dated 29.07.2021, overruling the objection of the petitioner against re-opening the assessment that was completed under Section 143(3) of the Income Tax Act on 29.06.2015.

2. The reasons for issuance of the impugned notice dated 28.03.2021 reads as under:



W.P.No.19223 of 2021

“You have given interest free loans and advances to sister/related concerns and claimed interest on borrowed funds in the profit and loss account for the Asst. year 2013-14.”

3. This was communicated to the petitioner vide communication dated 12.07.2021. The petitioner has also replied to the same. However, by the impugned order dated 29.07.2021, the objection has been overruled with the following observation:

“It is clear from the above provisions that though the scrutiny assessment had already been made and the income chargeable to tax has been under assessed or assessed at too low a rate, the assessment can be re-opened.

In this case, it was found from the records that scrutiny assessment u/s.143(3) was completed on 29.06.2016. Though the assessee company had given loans to related concerns without any interest receipts, it had claimed interest to the extent of Rs.13,20,36,536/- on borrowed funds of Rs.100,66,54,245/- and hence interest claim of the assessee should be proportionately disallowed u/s.36(1)(iii) r.w.s 37(1) of Income-tax Act, 1961. During the course of assessment proceedings, the issue of proportionate disallowance of interest claimed with respect to the portion of loans given to related parties has not been discussed in the Assessment order



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W.P.No.19223 of 2021

u/s.143(3) dated 29.06.2015. During the assessment proceedings the assessee has not fully and truly disclosed the material facts necessary for its assessment for the year under consideration thereby necessitating reopening u/s.147 of the Act.

It is evident from the records that the issues under consideration were never examined during the course of regular assessment. It is important to highlight here that material facts relevant for the assessment on the issue(s) under consideration were not filled during the course of assessment proceeding and the same may be embedded in audited P&L Account, Balance Sheet and books of accounts in such a manner that it would require due diligence by the AO to extract these information. For above stated reasons, it is not a case of change of opinion by the AO.

Moreover, in exercise of powers u/s.119 of the Income-tax Act, 1961, the Central Board of Direct Taxes (CBDT) has extended the dates by 31.03.2021 for taking action u/s.148 of the Income-tax Act, 1961 vide F.No.225/40/2021/ITA-II dated 04.03.2021 and the same was further extended upto 30.06.2021 vide Notification dated 27.04.2021. Therefore,

case laws quoted by the assessee company are not related to the facts of the case.



W.P.No.19223 of 2021

The assessee is directed to furnish the documents and other evidences in support of loans and advances given to sister/related concerns during the course of assessment proceedings. In the above circumstances, objections filed by the assessee are rejected.”

4. Learned counsel for the petitioner would submit that the reopening of the assessment is contrary to the proviso of Section 147 of the Income Tax Act, 1961 as it is prior to 01.04.2021. Specifically, learned counsel for the petitioner would submit that despite adequate disclosure by the petitioner in the Return of Income dated 29.09.2013 in the form of Balance Sheet, Profit and Loss Account regarding the interest free loan given to the Group of Companies, the Department has invoked power and under Section 148 of the Income Tax Act has issued the impugned notice dated 28.03.2021 and justified the same vide impugned order.

5. Learned counsel for the petitioner has drawn the attention copy of the undated letter, wherein, the petitioner has informed the Deputy Commissioner of Income Tax Act regarding the ledger copies and entire regarding interest free loans and advances to group company which were



W.P.No.19223 of 2021

enclosed as Annexure 1 and 2 respectively.

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6. It is submitted that in the balance sheet, profit and loss account, was disclosures about the interest free loan first the surplus and that the petitioner was entitled to give interest free loan to the company in terms of the decision of the *Bombay High Court in Commissioner of Income Tax (LTU) Vs. Reliance Industries Ltd [2017]86 taxmann.com 24*, which has been upheld by the Hon'ble Supreme Court in *Commissioner of Income Tax v. Reliance Industries Ltd [2019]102 taxmann.com S2 (SC)*. That apart learned counsel for the petitioner has also produced information regarding the audit objections qua interest free loan advanced by the petitioner.

7. It is specifically submitted that in response to the audit objections to the Assessment Order passed on 29.06.2015 under Section 143(3) of the Income Tax Act, the Assessing Officer namely the Assistant Commissioner of Income Tax in his response dated 28.07.2017 addressed to the Director (Direct Taxes – 1) has stated that the petitioner's transaction of giving interest free loan to sister concerns as because of commercial expediency of



W.P.No.19223 of 2021

the business. The balance outstanding has not exceeded free reserves of the company during the year. Further, the company had reserves and surplus to the extent of Rs.1,11,45,00,000/- which was sufficient to cover the loan amount of Rs.6,72,80,528/-. Hence, the short term loans and advances given to sister concerns which was made out of from free reserves only and therefore question of disallowance of interest u/s.36(1)(iii) does not arise. The relevant extract is reproduced below:

“The assessee's transactions of giving interest free loans to sister concerns as because of commercial expediency of the business. The balance outstanding has not exceeded free reserves of the company during the year. Further, the company has reserves and surplus to the extent of Rs.1,11,45,00,000/- which is sufficient to cover the loan amount of Rs.6,72,80,528/-. Hence, the short term loans and advances given to sister concerns is made out of from free reserves only and question of disallowance of interest u/s.36(1)(iii) does not arise.”

8. Learned counsel for the petitioner would submit that the similar submissions were also sent by the Assessing Officer, anearlier order 2020



W.P.No.19223 of 2021

and 2018.

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9. On the other hand, learned counsel for the respondent would submit that the impugned order does not suffer from any infirmity to warrant an interference under Article 226 of the Constitution of India. He reiterates the observation in the impugned order justifying the reopening of the assessment. It is submitted that there is no clear decision against the petitioner at this stage and therefore the Department was justified in issuing the impugned notice dated 28.03.2021 and the impugned speaking order.

10. This Court is of the view that the exercise in the impugned notice dated 28.03.2021 issued under Section 143 of the Income Tax Act and the consequential speaking order dated 29.07.2021 which is impugned in the present are unsustainable primarily because the petitioner has made adequate declarations not only in the returns filed by the petitioner on 29.09.2013 which accompanied the balance sheet, profit and loss account. They were submitted to the Assessing Officer before the assessment order was passed under Section 143(3) on 29.06.2015. Even though the assessment order



W.P.No.19223 of 2021

dated 29.06.2015 has not discussed all the points that were raised before the assessment was completed, the information obtained by the petitioner under RTI which was narrated above and indicates that the assessing officer formed an opinion regarding the interest free loans to group company. Thus, was true and full disclosure of all intimation by the petitioner along with the return filed by the petitioner on 29.07.2021.

11. The information available on file particularly the information secured by the petitioner under RTI clearly indicates that the invocation of Section 148 read with Section 147 of the Income Tax Act was unwarranted. The officer has also justified the conclusion arrived in the assessment order dated 29.06.2015 in his response to audit objection. Unless there was a failure on the part of the petitioner to fully and truly disclosure all material facts necessary for completing the assessment, the invocation of the machinery under Section 148 read with 147 was not available. Thus, the impugned notice and speaking order are liable to be quashed.

12. Therefore, this Writ Petition is allowed. No costs. Consequently,



W.P.No.19223 of 2021

the connected Writ Miscellaneous Petition is closed.

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24.01.2025

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Index : Yes / No

Internet : Yes / No

Neutral Citation : Yes / No

To

The Joint Commissioner of Income Tax,
Circle – 1, TPR
No.121, Adams Building,
Sixty Feet Road, Tirupur,
Tamil Nadu – 641 602.

C.SARAVANAN, J.,

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W.P.No.19223 of 2021

W.P.No.19223 of 2021
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