IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

WP. No.31892 of 2022
and
WMP No.31339 of 2022

PPN Power Generating Company Private Limited,
Represented by its Joint Managing Director,
Mr.Harshad Reddy,
S/o.P.Vijaykumar Reddy ... Petitioner

vs

The Assistant Commissioner of Income Tax,
Central Circle 3(1),
3rd Floor, Investigation Building,
No.46, (Old No.108), Mahatma Gandhi Road,
Nungambakkam,
Chennai-600 034. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of a writ of Certiorari, calling for the records in DIN & Letter No.ITBA/AST/F/17/2022-23/1047546186(1) dated 21.11.2022 on the file of the respondent relating to the A.Y.2004-05 and quash the same and pass orders.

For the Petitioner :Mr.R.Sandeep Bagmar

For the Respondent :Mr.A.P.Srinivas
Senior Standing Counsel

ORDER

The present writ petition is filed challenging the impugned proceedings invoking the power of re-assessment under Section 148 of the Act on the limited ground that though the notice is beyond the period of four years, however, there is no finding that there was failure on the part of the petitioner to fully and truly disclose all material particulars for assessment.

2. It is submitted that assessment under Section 148 of the Act beyond 4 years can be made only on finding that there was failure on the part of the petitioner to fully and truly disclose all material particulars for assessment. The above finding is a condition precedent, jurisdictional fact/*sine qua non* for exercise of the power of re-assessment. In the absence of a finding on the above aspect, the entire proceedings for reassessment would suffer from want of jurisdiction. The petitioner would submit that the question stands resolved by the Division Bench of this Court in ***Durr India Pvt. Ltd. v.***

Asst. CIT, reported in (2023) 455 ITR 460:

3. To the contrary, learned Senior Panel Counsel for the respondent would submit that merely because the notice does not set out that the petitioner had failed to fully and truly disclose material particulars that by itself would not render the proceedings bad for want of jurisdiction.

4. The impugned proceedings are also challenged on the ground that it is made on the basis of change of opinion. Further reasons which prompts respondent authority to invoke power of re-assessment as disclosed in the present notice is different from that which was set out originally. Thus, limitation ought to be reckoned on the basis of the present notice, if so, the proceeding would be barred by limitation.

5. I do not propose to go into the above question inasmuch as on the first issue, viz., whether a finding of failure on the part of the assessee to fully and truly disclose material particulars, is a jurisdictional fact and whether the absence of such a finding would vitiate the proceedings stands

resolved by this Court in the case ***Durr India Pvt. Ltd. v. Asst. CIT***, reported in ***(2023) 455 ITR 460***, wherein it was held as under:

> *"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, 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. 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 jurisditional 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.*
>
> *a) Duli Chand Singhania vs ACIT (269 ITR 192) (Punjab and Haryana High Court):*
>
> *"...that the reasons recorded for issue of notice showed that the satisfaction recorded therein wes 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. Eigi 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., 2007 SCC OnLine Mad 1058 : (2008) 296 ITR 157 at page 160:

"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) Commissioner of Income-Tax v. A.V. Thomas Exports Ltd., 2007 SCC OnLine Mad 1078 : (2008) 296 ITR 603 : (2007) 212 CTR 164 at page 606:

"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." (emphasis supplied)

e) Caprihans India Ltd. v. Tarun Seem, Deputy Commissioner of Income-Tax, 2003 SCC OnLine Bom 692 : (2004) 266 ITR 566 : (2003) 6 Bom CR 559 : (2003) 185 CTR 157 at page 569:

"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 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)

6. Following the Division Bench order of this Court, the impugned

proceedings are set aside. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

21.04.2025

Index : Yes/No
Neutral Citation : Yes/No
mrn

To:
The Assistant Commissioner of Income Tax,
Central Circle 3(1),
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Nungambakkam,
Chennai-600 034.

<u>MOHAMMED SHAFFIQ, J.</u>

(mrn)

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