



W.A.(MD)No.1001 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

RESERVED ON : 14.11.2025

DELIVERED ON : 27.11.2025

CORAM:

**THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
and
THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.A.(MD)No.1001 of 2020
and
C.M.P.(MD)No.5402 of 2020**

1. Assistant Commissioner of Income Tax,
Circle 1,Kumbakonam Income Tax Office,
1st Floor,No.31, Krishnaswamy Road,
Gandhi Nagar, Kumbakonam,
Tamil Nadu-612001.
(Now Merged With and to be shown as
Assistant Commissioner of Income Tax,
Circle 2(1), Tiruchirapalli Income Tax Office,
New No.44, Old No.4,
Williams Road, Cantonment,
Tiruchirapalli – 620 001.

2. Chief Commissioner of Income Tax,
New No.44, Old No. 4,
Williams Road, Cantonment,
Trichirapalli-620001.

... Appellants

(Cause title amended vide Court order dated
06.10.2020 made in C.M.P.(MD)No.4909/2020)



W.A.(MD)No.1001 of 2020

-VS-

City Union Bank Ltd.,
No.148-149, T.S.R.Big Street,
Kumbakonam – 612 001.

... Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent challenging the order passed in W.P.(MD)No.24160 of 2018, dated 18.11.2019.

For Appellants : Mr.N.Dilipkumar

For Respondent : Mr.T.Suryanarayana,
Senior Counsel for
M/s.King & Partridge

JUDGMENT

(Judgment of the Court was delivered by ***C.V.Karthikeyan, J.***)

The respondents, the Assistant Commissioner of Income Tax, Circle 2(1), Tiruchirapalli, Income Tax Office and the Chief Commissioner of Income Tax, Tiruchirapalli, in W.P.(MD)No.24160 of 2018 have filed the present Writ Appeal, aggrieved by the order dated 18.11.2019, by which order, the learned single Judge had allowed the Writ Petition and quashed the impugned proceeding dated 08.11.2018 and impugned notice dated 09.03.2018 issued by the first appellant under



W.A.(MD)No.1001 of 2020

Section 148 read with Section 147 of “the Income Tax Act, 1961” (hereinafter referred to as “the Act”) for the assessment year 2011-2012, admitting a total income of Rs.190,30, 75,570/-.

2. The Writ Petitioner, City Union Bank Limited at Kumbakonam/assessee is a banking company. It had filed its return of income on 30.09.2011, for the assessment year 2011-2012 admitting a total income of Rs.190,30, 75,570/-. The return was processed under Section 143(1) of the Act on 08.02.2012. The case was taken up for scrutiny and notice under Section 143(2) was issued on 02.08.2012. The assessee then filed necessary documents in response to the said notice. Thereafter, an order dated 14.03.2014 was passed under Section 143(3) of the Act, assessing the total income at Rs.268,45,50,527/-. That assessment order had been challenged before the appellate authority.

3. The Deputy Commissioner of Income Tax issued notice on 26.03.2015, under Section 148 of the Act, proposing to reassess the return for the assessment year 2011-2012. The Writ Petitioner addressed a letter dated 09.04.2015, calling upon the authority to furnish a copy of the reasons recorded for initiating proceedings under Section 147 of the



W.A.(MD)No.1001 of 2020

Act. They also filed return of income on 01.05.2015. A letter dated 06.01.2016 objecting to the initiation of the proceedings and requesting the Assessing Officer to drop the same was also issued. An order was passed on 22.03.2016, under Section 143(3) read with Section 147 of the Act reassessing the Writ Petitioner for the assessment year 2011-2012. Questioning the same, an appeal had been filed.

4. It had been thereafter contended that the Writ Petitioner received another notice dated 09.03.2018, from the first appellant herein under Section 148 of the Act proposing to initiate proceedings under Section 147 of the Act and calling upon the Writ Petitioner to file its return of income. The Writ Petitioner submitted a letter dated 11.07.2018, raising objections for reopening of the assessment. The primary contention raised was that the notice was issued beyond four years from the end of the assessment year/31.03.2012. The Writ Petitioner inferred that the reason for initiating the proceeding was that the disallowance made under Section 14A of the Act was not computed as per the method prescribed under the Income Tax Rules, 1962. The Writ Petitioner in their letter dated 11.07.2018, had stated that the disallowance was made in accordance with the method adopted in the



W.A.(MD)No.1001 of 2020

previous year and since the issue had been decided, now the regular assignment cannot be reopened by way of reassessment. The return of income was submitted to the notice dated 09.03.2018.

5. The objections of the Writ Petitioner were rejected by the first appellant by an order dated 08.11.2018 and the Writ Petitioner was informed that the case stood reopened for proper disallowance under Section 14A of the Act. By a further communication dated 12.11.2018, the first appellant furnished a copy of the reasons recorded for initiating proceedings under Section 147 of the Act.

6. The notice dated 09.03.2018 issued under Section 148 of the Act and an order dated 08.11.2018 rejecting the objections were put to challenge by the Writ Petitioner, by invoking Article 226 of the Constitution of India and filing the Writ Petition.

7. The learned Single Judge, by a very detailed order, had expressed the view that the key to the problem lay in a proper reading of Section 14A(2) of the Act and further held that the duty to appropriately determine the amount of expenditure lay on the Assessing Officer. It had



W.A.(MD)No.1001 of 2020

been observed that the Writ Petitioner had placed all available relevant record books, materials and documents. It had been further observed that the Writ Petitioner/assessee can make any claim even wrong or fanciful regarding disallowance. It was held that the Assessing Officer should have applied Rule 8D of the Income Tax Rules, 1962 and determined the amount of expenditure filed for the purpose of disallowance. It had been held that there cannot be reopening of a concluded assessment. It was held that there was no failure on the part of the Writ Petitioner/assessee, but rather a failure on the part of the Assessing Officer to make appropriate determination of the amount of expenditure in terms of Section 14A of the Act. It was therefore held that there was no authority conferred to reopen the assessment after the expiry of four years from the end of the assessment year. It was held that the authority cannot take advantage of their own wrong. Holding as above, the Writ Petition was allowed and the notice dated 09.03.2018 issued under Sections 148 read with 147 of the Act and the order dated 08.11.2018 were both quashed. Challenging that particular order, the respondents in the Writ Petition/revenue have filed the present Writ Appeal.



W.A.(MD)No.1001 of 2020

8. Mr.N.Dilipkumar, learned Standing Counsel pointed out that a notice had been issued on 09.03.2018 of the Act, after obtaining appropriate sanction for the issuance of notice as contemplated under Section 151 of the Act. He further pointed out in response to the said notice, the respondent herein/assessee had also filed return of income on 16.04.2018. They had also filed their objections for reopening the assessment under Section 147 of the Act. They claimed that the notice under Section 148 of the Act was issued on 09.03.2018 beyond the four years from the end of the assessment year viz., 31.03.2012 for the assessment year 2011-2012. Quite apart from raising those objections, by a further communication dated 04.08.2018, the respondent/assessee had also stated that they had filed return of income in response to the notice and sought reasons for reopening the assessment for the assessment year 2011-2012.

9. It was further pointed out by the learned counsel that the appellants had then issued a notice under Section 143(2) of the Act on 27.10.2018 along with notice under Section 129 of the Act. They provided opportunity of being heard to the respondent. Thereafter, the appellants had also replied to the objections raised by the respondent by



W.A.(MD)No.1001 of 2020

their communication dated 11.07.2018. By a communication dated 08.11.2018, setting out in detail why the case was reopened for proper disallowance under Section 14A read with Rule 8D, the objections of the respondent by letter dated 11.07.2018 were overruled and rejected. Thereafter, a further notice had been issued by the appellants under Section 142(1) of the Act on 12.11.2018. The appellants also furnished reasons for reopening the assessment under Section 147 of the Act by communication dated 12.11.2018. The respondent raised their objections by their communication dated 24.11.2018 and claimed that the reassessment proceedings were not valid/not correct and they sought that the same may be dropped. The appellants by their communication dated 29.11.2018, after referring to all the earlier correspondences, had considered their reply to the objections and stated that the objections stood overruled and rejected. It was thereafter, the Writ Petition came to be filed.

10. Placing all the above materials, Mr.Dilip Kumar, learned counsel argued that having participated in the proceeding and without challenging the final order rejecting the objections, the Writ Petition has been filed questioning the notice issued under Section 148 of the Act



W.A.(MD)No.1001 of 2020

dated 09.03.2018 and the rejection of the objections dated 08.11.2018.

He contended that the respondent themselves had answered and raised further objections to the communication dated 08.08.2018 and therefore, final orders were passed rejecting all these objections. He therefore, contended that the Writ Petition was not maintainable.

9. In this connection, the learned counsel placed strong reliance on the judgment of the Hon'ble Supreme Court reported in **(2003) 1 SCC 72 (GKN Driveshafts (India) Ltd. Vs. Income Tax Officer and Others)** and placed specific reference to paragraph 5. However, in the reply arguments, Mr.T.Suryanarayana, learned counsel for the respondent invited this Court to examine this order of the Hon'ble Supreme Court in its entirety and we would, therefore, extract the order in its entirety:

“1.Heard learned counsel for the parties.

2. Leave is granted.

3. By the order under challenge, a Division Bench of the High Court at Delhi dismissed the writ petition filed by the appellant challenging the validity of notices issued under Sections 148 and 143(2) of the Income Tax Act, 1961. The High Court took the view that the appellant could have taken all the objections in its reply to the notices and that, at that



stage, the writ petition was premature. Accordingly, the writ petition was dismissed on 31st January, 2001. Aggrieved by that order, the appellant is in appeal before us.

4. Mr. M.L.Verma, learned senior counsel appearing for the appellant, submits that the impugned notices relate to seven assessment years; that during the pendency of these appeals, in respect of two assessment years, viz., 1995-96 and 1996-97, assessment has been completed against which appeals have been filed. Notices relating to the other five assessment years, viz., 1992-93, 1993-94, 1994-95, 1997-98 and 1998-99, are now the subject-matter of these appeals.

5. We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under Section 148 of the Income tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, if filed, by passing a speaking Order before proceeding with the assessment in respect of the abovesaid five assessment years.

6. Insofar as the appeals filed against the order of assessment before the Commissioner (Appeals), we direct



W.A.(MD)No.1001 of 2020

the appellate authority to dispose of the same, expeditiously.

7. With the above observations, the civil appeals are dismissed.

8. No costs.”

10. It is thus seen that though challenges were made to the validity of the notices issued under Sections 148 and 243(2) of the Act and the Writ Petition had been dismissed, the Hon'ble Supreme Court thought it necessary to clarify the proper course of action to be taken when a notice issued under Section 148 of the Act. That had been stated in paragraph 5 of the order. A careful perusal of the dictum laid down by the Hon'ble Supreme Court would show that the proper course of action would be

(i) to file return;

(ii) to seek reasons for issuing notice; and

(iii) on receipt of reasons, to file objections to issuance of notice.

It had been further held that the Assessing Officer should dispose of the objections by passing a speaking order.



W.A.(MD)No.1001 of 2020

11. In the instance case, the respondent had taken recourse to all these three steps. But however, the respondent had not challenged the final order passed rejecting objections. They choose to challenge the initial order.

12. Mr.T.Suryanarayanan, learned Senior Counsel justifying that course of action stated that there was no justifiable reason given for issuance of notice under Section 148 of the Act. He placed specific reliance on Section 148(2) as was prevalent at the time when the notice was issued viz.,

“148. (2) The Assessing Officer shall, before issuing any notice under this Section, record his reasons for doing so.”

13. The learned Senior Counsel contended that no reasons had been recorded for issuing notice. In this connection, he placed reliance on the judgment of the Hon'ble Supreme Court reported in **[1961] 41 ITR 191 (SC) [Calcutta Discount Co. Ltd. Vs. Income-tax Officer]**, which was rendered by a Constitutional Bench. The



W.A.(MD)No.1001 of 2020

Constitutional Bench had held that if notices had been issued under Section 34 of the Income Tax Act, 1922, without jurisdiction, then they will liable to be quashed. But it was also held that “if there were reasonable grounds for thinking that there had been any non-disclosure as regards any primary facts, which could have a material bearing on question of 'under-assessment' that would be sufficient to give jurisdiction to ITO to issue notice under Section 34 of 1922 Act.”

14. Learned Senior Counsel placed reliance on the order of a learned Single Judge of this Court (*R.Jayasimha Babu, J.*) in the judgment reported in *(2000) 241 ITR 672 (Madras) [Fenner (India) Ltd., Vs. Deputy Commissioner of Income-tax]*, wherein it had been held that if it had not been recorded that the petitioner had failed to set out all the material facts necessary for its assessment and, therefore, the power under the proviso to Section 147(1) was being invoked. The pre conditions for issuance of a notice under the proviso to Section 147 were not fulfilled and therefore, the notice could be quashed.

15. However, this very order of the learned single Judge was referred in yet another Writ Petition before another learned single Judge



W.A.(MD)No.1001 of 2020

of this Court (*P.Shanmugam, J.*) reported in **2000 SCC OnLine Mad 938: [2005] 273 ITR 347, [Precot Mils Ltd. Vs. Commissioner of Income-tax and another]** and the learned Single Judge had stated that in the judgment reported in **(2000) 241 ITR 672 (Madras) [Fenner (India) Ltd., Vs. Deputy Commissioner of Income-tax], referred supra**, there was no examination of explanations 1 and 2 of Section 147 of the Act and therefore, had proceeded to dismiss the Writ Petition, which had been filed challenging the notice issue under Section 148 of the Income Tax Act, 1961. As a matter of fact, in a subsequent order reported in **2001 SCC OnLine Mad 1154 : (2001) 250 ITR 33 [Sri Krishna Mahal Vs. Assistant Commissioner of Income Tax]**, the learned single Judge (*R.Jayasimha Babu, J.*) when examining a Writ challenging a notice issued under Section 148 of the Act, and when his earlier order in **Fenner (India) Ltd., referred supra** was placed for contention, held as follows:

“10. Section 147 of the Act provides that if the Assessing Officer "has reason to believe" that any income chargeable to tax has escaped assessment for any assessment year, he may assess or reassess such income as also other income chargeable to tax coming to his notice subsequently in the course of the proceedings under Section 147 of the Act, subject to the provisions of Sections



W.A.(MD)No.1001 of 2020

148 to 153. The power, therefore, is a wide power which includes the power to assess or reassess the income. The officer is not to act arbitrarily, but he must have some reason to believe that there has been escapement of income chargeable to tax. Reliance placed by the Assessing Officer on the report of an expert regarding the cost of construction of the building cannot be said to be improper, nor can it be said that the report would not provide sufficient justification for that belief that there had been escapement of income, as that report showed a substantial gap between what had been estimated by the valuer and what had been returned by the assessee as the cost of construction. The notice issued, therefore, was not in any way illegal. The writ petition is dismissed.

16. It is thus seen the scope and power of proceeding under Section 147 of the Act subject to the provisions of Sections 148-153 is a wide power which includes the power to assess or reassess the income. In the instant case, the appellants had also obtained sanction as required under Section 151 of the Act and the Additional Commissioner of Income Tax, Kumbakonam Range and Principal Commissioner of Income Tax, Trichy had both granted sanction after examining the relevant records and recommended notice to be issued under Section 148 of the Act. One of the contentions raised by the learned Senior Counsel



W.A.(MD)No.1001 of 2020

for the respondent is that the notice had been issued beyond the period of four years from the assessment year. However, Section 147 of the Act is quite comprehensive and the proviso which stipulates that no action shall be taken after the expiry of four years also has an exception clause viz., if there is income chargeable to tax and had escaped assessment for such assessment year, then action can be taken even after the expiry of those four years. Section 147 of the Act as it stood and its first proviso are extracted below:

“147. Income escaping assessment.- If the Assessing Officer has reason to believe “that any income chargeable to tax has escaped assessment” for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess “such” income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the



W.A.(MD)No.1001 of 2020

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 material facts necessary for his assessment, for that assessment year.”

17. In (2012) 12 SCC 762, [Honda Siel Power Products Limited Vs. Deputy Commissioner of Income Tax and Another], the Hon'ble Supreme Court of India dismissed a Special Leave Petition challenging the dismissal of a Writ Petition filed by the assessee, before the Delhi High Court, questioning the reassessment notice issued under Sections 147/148 of the Act.

18. The judgment of the Division Bench of the Delhi High Court had been published in the citation referred supra.

19. It had been held by the Division Bench of the Delhi High Court as follows:



“16. The term “failure” on the part of the assessee is not restricted only to the income-tax return and the columns of the income-tax return or the tax audit report. This is the first stage. The said expression “failure to fully and truly disclose material facts” also relate to the stage of the assessment proceedings, the second stage. There can be omission and failure on the part of the assessee to disclose fully and truly material facts during the course of the assessment proceedings. This can happen when the assessee does not disclose or furnish to the Assessing Officer complete and correct information and details it is required and under an obligation to disclose. Burden is on the assessee to make full and true disclosure.

17. In Consolidated Photo and Finvest Ltd. v. Asst. CIT,, the Delhi High Court has referred to several decisions of the Supreme Court and observed :-

“14. In Kantamani Venkata Narayana and Sons v. ITO ([1967] 63 ITR 638), the apex court held that in proceedings under article 226 of the Constitution of India challenging the jurisdiction of the Income-tax Officer to issue a notice for reopening the assessment, the High Court was only concerned with examining whether the conditions which invested the Income-tax Officer with the powers to reopen the assessment existed. It is not, observed the court, within the province of the High Court to record a final decision about the failure to disclose fully and truly all material facts bearing on the assessment and consequent escapement of income from assessment and tax. The court also held that from a mere production of the books of account, it could not be inferred that there had been full disclosure of the material facts necessary for the



purposes of assessment. The terms of the Explanation, declared the court, were too plain to permit an argument that the duty of the assessee to disclose fully and truly all material facts would stand discharged when he produces the books of account or evidence which has a material bearing on the assessment. The court observed :

“10..It is the duty of the assessee to bring to the notice of the Incometax Officer particular items in the books of account or portions of documents which are relevant. Even if it be assumed that from the books produced, the Income-tax Officer, if he had been circumspect, could have found out the truth, the Income-tax Officer may not on that account be precluded from exercising the power to assess income which had escaped assessment.”

15. To the same effect is the decision of the Supreme Court in Malegaon Electricity Co. P. Ltd. v. CIT wherein the court observed :

“8.....It is true that if the Income-tax Officer had made some investigation, particularly if he had looked into the previous assessment records, he would have been able to find out what the written down value of the assets sold was and consequently he would have been able to find out the price in excess of their written down value realised by the assessee. It can be said that the Incometax Officer if he had been diligent could have got all the necessary information from his records. But that is not the same thing as saying that the assessee had placed before the Income-tax Officer truly and fully all material facts necessary for the purpose of assessment. The law casts a duty on the assessee to „disclose fully and truly all material facts necessary for his assessment for that year”. ”
(emphasis supplied)

18. The law postulates a duty on every assessee to disclose fully and truly all material facts for its assessment. The disclosure must be full and true. Material facts are those facts which if taken into accounts they would have an adverse affect on assessee by the higher assessment of income than



the one actually made. They should be proximate and not have any remote bearing on the assessment. Omission to disclose may be deliberate or inadvertent. This is not relevant, provided there is omission or failure on the part of assessee. The latter confers jurisdiction to reopen assessment.

19. Whether or not there was a failure or omission to disclose fully and truly material facts, is essentially a question of fact. Section 14A was introduced with retrospective effect by Finance Act, 2001, which was tabled in the Parliament on 28.02.2001 and was passed by the Parliament on 01.04.2001. The petitioner is a multinational company and it is difficult to perceive and accept that their tax or the legal department was not aware and did not have knowledge about Section 14A of the Act.

...

21. The Explanation to section 147 stipulates that mere production of books of accounts or other evidence is not sufficient. (Refer paragraph 11 above wherein judgment in the Consolidated Photo and Finvest Ltd. (supra) has been quoted). Therefore merely because material lies imbedded in material or evidence, which the Assessing Officer could have uncovered but did not uncover is not a good ground to deny or strike down a notice for reassessment. Whether the Assessing Officer could have found the truth but he did not, does not preclude the Assessing Officer from exercising the power of reassessment to bring to tax the escaped income.



W.A.(MD)No.1001 of 2020

22. There was an omission and failure on the part of the petitioner to point out the expenses incurred relatable to tax free/exempt income which prima facie have been claimed as a deduction in the income and expenditure account. There was, therefore, omission and failure on the part of the petitioner to disclose fully and truly material facts.”

20. The Hon'ble Supreme Court had very clearly held that a duty was cast on every assessee to disclose truly and fully all materials facts for its assessment. In the instance case, having filed its return in response to the notice and having raised objections and the objections having been overruled and at that stage challenging the notice issued would render, in our considered opinion, the Writ Petition as not maintainable. The respondent had progressed sufficiently far enough in answering and responding to the notice issued. The proceedings have to go forward to reach a logical conclusion. The proceedings cannot be curtailed by re-appreciation of facts or sitting in review over the subjective satisfaction of the Assessment Officer.

21. In view of these reasons, we hold that the order of the learned single Judge cannot be sustained and accordingly, the same is set



W.A.(MD)No.1001 of 2020

aside.

WEB COPY

22. The Writ Appeal is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[C.V.K., J.] [R.V., J.]
27.11.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/No

vsm



WEB COPY



W.A.(MD)No.1001 of 2020

To

City Union Bank Ltd.,
No.148-149, T.S.R.Big Street,
Kumbakonam – 612 001.



WEB COPY



W.A.(MD)No.1001 of 2020

C.V.KARTHIKEYAN, J.
and
R.VIJAYAKUMAR, J.

vsm

W.A.(MD)No.1001 of 2020

27.11.2025