

ITA-96-2012 (O&M)

2025.PHHC.151023-DB



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH]**

ITA-96-2012 (O&M)

Date of decision: 04.11.2025

M/S. KING EXPORTS

..... Appellant(s)

Versus

COMMISSIONER OF INCOME TAX, LUDHIANA Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

HON'BLE MRS. JUSTICE MEENAKSHI L. MEHTA

Argued by: Mr. S.K. Mukhi, Advocate counsel for appellant.

Mr. Ranvijay Singh, Advocate for respondents.

LISA GILL, J.

1. Prayer in this appeal is for setting aside order dated 04.01.2012 (Annexure A-4), passed by learned Income Tax Appellate Tribunal, Chandigarh Bench 'B', Chandigarh (for short "Tribunal), in Income Tax Appeal No.1005/CHD/2011, for assessment year 2003-04, whereby order dated 08.09.2011 (Annexure A-3), passed by Commissioner of Income Tax (Appeals)-I, Ludhiana (for short "CIT, Appeals") and order dated 18.10.2010 (Annexure A-2), passed by Assistant Commissioner of Income Tax, Circle-I, Ludhiana, (for short "ACIT, Ludhiana"), were confirmed.

2. This appeal was admitted on 23.04.2013 for consideration of following question of law:-

"Whether on the facts and in the circumstances of the case, the re-assessment proceedings can be initiated against the petitioner after the expiry of 4 years when there was no concealment on the part of the appellant as the original assessment has been finalized under Section 143(3) of the Act?"

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3. Brief facts necessary for adjudication of the matter are that for the assessment year 2003-04, appellant – assessee which claims to be engaged in the business of manufacturing and export of engineering goods, filed its return on 30.11.2003 declaring total income of ₹2,96,59,322/-. Appellant had claimed deduction under Sections 80-IB and 80HHC of Income Tax Act, 1961 (for short ‘the Act’). Return was processed under Section 143(1) of the Act, on 16.03.2004 at the same income. Matter was, however, selected for scrutiny and order was passed by Assessing Officer on 28.02.2006 (Annexure A-1) under Section 143(3) of the Act, assessing the income to be ₹4,35,32,840/-.

4. Thereafter, notice dated 18.03.2010 under Section 148 of the Act was issued and served on assessee on 19.03.2010. Reasons recorded therein and as reproduced in order dated 04.01.2012 (Annexure A-4), passed by learned Tribunal read as under:-

"The assessee filed return of income on 30.11.2003 at a return Income of Rs.2,96,59,322/-. The case was assessed u/s 143 (3) vide order dated 28.2.2006 at an assessed income of Rs.4,35,32,840/-. A test check of the assessment records of the case has revealed that the assessee had claimed deduction u/s 801B as well as Section 80HHC. The assessee has claimed deduction u/s 80IB amounting to Rs.78,82,237/-. But while computing deduction u/s 80HHC, the deduction claimed u/s 80IB has not been deducted from the profits and gains of business.

Section 801A(9) of income Tax, 1961 states that "where any amount of profits and gains of an (undertaking) or of an enterprise in the case of an assessee is claimed and allowed under this Section for any assessment year, deduction to the extent of such profits and gains shall not be allowed under any other provisions of this chapter under the head "C-Deduction in respect of certain income", and shall in no case exceed the profits and gains of such eligible business of (undertaking) or enterprise as the case may be,"

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In view of this provisions of the Income-tax Act, 1961 the amount of deduction claimed u/s 801B amounting to Rs 78,82,237/- was required to be deducted from profits and gains of business while calculating deduction u/s 80HHC. This has resulted in excess allowance of deduction u/s 80HHC to the extent of Rs 38,59,364/-

Keeping in view the above facts, I have reason to believe that income amounting to Rs 38,59,364/- has escaped assessment for assessment year 2003-04. I am of the opinion that it is a fit issue of issue of notice u/s 148."

5. Appellant raised an objection that re-assessment could not have been carried out after expiry of four years especially when there is no concealment on the part of appellant and original assessment was finalized under Section 143(3) of the Act by allowing deduction in question. Appeal against assessment order dated 28.02.2006 was filed but was dismissed by CIT, Appeal on 08.09.2011 (Annexure A-3). Learned Tribunal rejected the further appeal filed by appellant vide impugned order dated 04.01.2012 (Annexure A-4), leading to filing of present appeal.

6. Learned counsel for appellant vehemently argued that reassessment itself could not have been carried out while invoking provisions of Section 147 read with Section 148 of the Act, beyond the period of four years especially keeping in view the fact that assessment was finalized under Section 143(3) of the Act and there was no concealment on the part of appellant – assessee who had claimed and was afforded deduction under Sections 80-IB and 80HHC of the Act. It was thus prayed that this appeal be allowed.

7. Learned counsel for respondent refuted the arguments raised on behalf of appellant and submitted that dispute in this case was regarding

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deduction claimed under Section 80-IB of the Act and whether it is to be deducted from profits and gains of business while calculating deduction under Section 80HHC of the Act. This question has been answered against the respondent by Hon'ble the Supreme Court in *Shital Fibers Ltd. Vs. Commissioner of Income-tax (2025) 174 taxmann.com 807 (SC)*. It is further submitted that there is no prohibition to reassess the amount in question. Reference is made specifically to 1st proviso of Section 147 of the Act as well as first Explanation and Explanation 2-(c), to submit that reassessment has been correctly carried out. It was submitted that no substantial question of law is involved for consideration in this matter. Dismissal of appeal was sought.

8. We heard learned counsel for parties at length and perused the file with their able assistance. It is a matter of record and not denied that appellant – assessee filed its return on 30.11.2003. Return was processed under Section 143(1) of the Act on 16.03.2004. Subsequent to matter being selected for scrutiny and after adopting the procedure prescribed, assessment order was passed on 28.02.2006 allowing deduction claimed under Section 80-IB of the Act, to the tune of ₹78,82,237/-and deduction under Section 80 HHC of the Act at ₹1,87,45,329/-. Relevant portion of order dated 28.02.2006 reads as under:-

“2. Deduction u/s 80HHC on DEPB and Duty Draw Back:

2.1 The assessee company had received the export incentives on the sale of the following:-

- | | | |
|-----|-------------------------|------------------|
| i) | DEPB Entitlement | Rs.3,01,91,105/- |
| ii) | Duty Draw Back received | Rs. 1,49,961/- |

2.2 The assessee company had an export turnover of more than Rs.10 Crores. As per the information furnished by the assessee company in annexure 'A' attached to the report u/s 80HHC of I.T. Act, vide which total export turnover of the business has been shown at Rs.26,04,32,120/-. As per the amendment to section 80HHC profit on sale of DEPB can be treated at par with the duty draw back for the purposes of

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increase of profit derived from exports computed under clause (a) or clause (b) and clause (c) of sub-section (3) of section of Section 8HHC if the conditions are fulfilled:-

- a) It had an option to choose either duty draw back or duty entitlement pass book scheme; and
- b) The rate of draw back credit attributable to the custom duty was higher than the rate of credit allowable under duty entitlement passbook scheme.

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9. Explanation submitted by the assessee in writing, which is reproduced in para 2.3 of order dated 28.02.2006 (not reproduced for the sake of brevity) was considered by Assessing Officer who thereafter held as under:-

“2.4 I have gone through the written submissions of the assessee carefully and found no force in it as the assessee had not made any investment in procuring the DEPB/DDB licences and all the incentives received by the assessee which has been credited in the Profit & Loss Account represents profit of the assessee firm. Moreover, the assessee has also not given the option either to choose DEPB or DDB. As regards the request of the assessee to keep the assessment pending in abeyance, it is not accepted being the time-barring assessment is involved, which is decided keeping in view the Amendment No.55 dated 28.12.2005 of 80HHC of 1.T. Act, 1961.

2.5 Further, the assessee has failed to fulfill the condition contained in Third proviso inserted by The Taxation Laws (Amendment) Act, 2005. The counsel was confronted as to why deduction u/s 80HHC should not be disallowed on profit on transfer of DEPB when the condition laid down by the new amendment is not fulfilled. In this connection, the assessee has submitted that he has already filed the written submission on the issue and requested that deduction u/s 80HHC may be allowed. As per the Third proviso the assessee has to fulfill the condition that there was an option to choose between DEPB and duty drawback, when the assessee company was allowed both the incentives. By virtue of the Third proviso inserted by The Taxation Laws (Amendment) Act, 2005, I am constrained to re-compute the deduction u/s 80HHC by reducing 90% of DEPB as other receipt and not increasing the profits computed u/s 80HHC(3)(a) by 90% of profits on transfer of DEPB. Accordingly, the deduction u/s 80HHC is computed as per annexure 'A' attached to this order.

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3. The second issue is that while computing the profits of the business for computation of deduction under sec.80-HHC, the assessee company has not reduced 90% of the following amounts from the profits of the business:

Receipts	Amount
Interest on FDRs received	Rs.53,03,159/-

3.1 The assessee was asked to explain that why 90% of the above amount was not reduced from the profits and gains of business while calculating deduction u/s 80HHC, as according to Explanation (baa) below section 80-HHC(4B) 90% of such receipts should be reduced from the profits of the business. The text is reproduced below:

Explanation to section 80 HHC (baa): "profits of the business" means the profits of the business as computed under the head "Profits and gains of business or profession" as reduced by-

(1) ninety percent of any sum referred to in clauses (iiia), (iiib) and (iiic) of section 28 or of any receipts by way of brokerage, commission, interest, rent, charges or any other receipt of similar nature included in such profits;"

3.2 In this connection, the assessee has stated that all the receipts are on account of business and cannot be treated as income from other sources.

3.3 The submissions of the assessee are not acceptable. The following facts are important in this regard.

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“From the above explanatory circular, it is clear that legislature has specifically mentioned that interest is one of the receipts which to be reduced from the profits of the business. The legislature in its wisdom has considered adhoc 10% deduction as expenditure out of the interest receipt. Therefore, as per the provisions of Explanation (baa) to Section 80-HHC(4B) for calculation of profits of business for computation of deduction u/s.80-HHC, 90% of interest receipts has to be reduced from the profits and gains of the business or profession."

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7.Deduction u/s 801B:

At the time of computing the deduction u/s 80IB while claiming this deduction on both the units i.e. at C-142 & C-166, Focal Point, Ludhiana, the assessee has reduced the value of incentive received as per the judgment of Supreme Court in the case of CIT Vs. Sterling Foods (237 ITR 579) and also reduced the trading profits. But in its reply filed by the assessee on 14.02.2006 the assessee has submitted that in view of the amendment made in section 28 by inserting sub section (iiid) & (iiie) by the Taxation Laws Amendment Bill, 2005 DEPB & DFRC are now specifically included in the definition of business income so the amount of DEPB

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should not be deducted from the profits and deduction should be allowed on the amount of DEPB/PFRC.

8. I have gone through the written submission of the assessee and found no force in it, as there is no effect of insertion of sub-section (iiid) & (iiie) by the Taxation Laws Amendment Act, 2005, on the case of the assessee. Since the amount of DEPB does not come in the definition of business income "derived" but the same is income from other sources. The judgment of Supreme Court in the case of CIT Vs. Sterling Foods is clearly applicable in the case of the assessee, as the assessee had rightly claimed the deduction u/s 80IB at the time of filing the return and subsequent plea of the assessee taken during the course of assessment proceedings on 14.02.2006 that the DEPB represents the business income is not tenable, and as such is rejected.

The income of the assessee is computed as under: -

Net profit as per Profit & Loss Account.	Rs.6,98,76,994/-	
Add: i) Charity & donation.	Rs.1,68,169/-	
ii) Interest on TDS	Rs. 2,120/-	
iii) Car expenses for personal use .	Rs. 53,179/-	
iv) Expenses of earlier year.	Rs. 782/-	
v) The assessee has claimed depreciation on car at Rs.7,61,573/-, 1/10th is disallowed for personal use of the car.	Rs. 76,157/-	Rs.3,00,407/-
	C/F....	Rs.7,01,77,401/-
	B/F....	Rs.7,01,77,401/-
Less: Deduction u/s 80HHC as per annexure 'A' enclosed.	Rs.1,87,45,329/-	
Deduction u/s 80G as discussed in para 6.	Rs. 17,000/-	
Deduction u/s 80IB as claimed:	Rs. 78.82.237/-	Rs.2.66.44,566/-
	Total Income:	Rs.4,35,32,835/-
	Rounded off:	Rs.4,35,32,840/-

Charge interest u/s 234B & 234C (on disallowance other than 80HHC).

Assessed. Issue demand notice & challan alongwith copy of this order to the assessee.”

10. At this stage, it is relevant to refer to Sections 147 and 148 of the Act, which are reproduced as under:-

“Income escaping assessment.

147. 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) :

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

Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year:

Provided also that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.

Explanation 1.—Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

Explanation 2.—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely :—

- (a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax ;
- (b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return ;
- (ba) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under [section 92E](#);
- (c) where an assessment has been made, but—
 - (i) income chargeable to tax has been underassessed ; or
 - (ii) such income has been assessed at too low a rate ; or
 - (iii) such income has been made the subject of excessive relief under this Act ; or
 - (iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed;
- (ca) where a return of income has not been furnished by the assessee or a return of income has been furnished by him and on the basis of information or document received from the prescribed income-tax authority, under sub-section (2) of [section 133C](#), it is noticed by the Assessing Officer that the income of the assessee exceeds the maximum amount not chargeable to tax, or as the case may be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;
- (d) where a person is found to have any asset (including financial interest in any entity) located outside India.

Explanation 3.—For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section,

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notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of [section 148](#).

Explanation 4.—For the removal of doubts, it is hereby clarified that the provisions of this section, as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.

Issue of notice where income has escaped assessment-

148. (1) Before making the assessment, reassessment or recomputation under [section 147](#), the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under [section 139](#) :

Provided that in a case—

- (a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005 in response to a notice served under this section, and
- (b) subsequently a notice has been served under sub-section (2) of [section 143](#) after the expiry of twelve months specified in the proviso to sub-section (2) of [section 143](#), as it stood immediately before the amendment of said sub-section by the Finance Act, 2002 (20 of 2002) but before the expiry of the time limit for making the assessment, re-assessment or recomputation as specified in sub-section (2) of [section 153](#), every such notice referred to in this clause shall be deemed to be a valid notice:

Provided further that in a case—

- (a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005, in response to a notice served under this section, and
- (b) subsequently a notice has been served under clause (ii) of sub-section (2) of [section 143](#) after the expiry of twelve months specified in the proviso to clause (ii) of sub-section (2) of [section 143](#), but before the expiry of the time limit for making the assessment, reassessment or recomputation as specified in sub-section (2) of [section 153](#), every such notice referred to in this clause shall be deemed to be a valid notice.

Explanation.—For the removal of doubts, it is hereby declared that nothing contained in the first proviso or the second proviso shall apply to any return which has been furnished on or after the 1st day of October, 2005 in response to a notice served under this section.

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

11. Notice under Section 148 for assessment year 2003-2004 was then issued on 18.03.2010 and served on the assessee on 19.03.2010. At this stage, it is relevant to refer to judgment of Hon’ble the Supreme Court in *M/s.*

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Mangalam Publications, Kottayam Vs. Commissioner of Income Tax, Kottayam 2024 AIR SC 813, whereby question of reopening of a concluded assessment i.e. re-assessment under Section 147 of the Act, following issuance of notice under Section 148 of the Act, was yet again considered.

12. After a detailed discussion of relevant provisions of law including Circular no.549 dated 31.10.1989 of Central Board of Direct Taxes (CBDT), it was held by Hon'ble the Supreme Court that once obligation of assessee to disclose all material facts had been discharged and assessment carried out under Section 143(3) of the Act, there could not be any reassessment only on the basis of change of opinion. Assessing officer has the power to reopen provided there is tangible material to come to the conclusion that there is escapement of income assessment. Assessment order under Section 143(3) of the Act, it was noted is preceded by notice, inquiry and hearing under Section 142(1), (2) and (3) as well as under Section 143(2) of the Act. Therefore, in this situation where assessee had not made any false declaration, a subsequent subjective analysis by the Assessing Officer would amount to a mere change of opinion which cannot be a ground for reopening of assessment. Relevant portion of judgment in M/s. Mangalam Publication's case (supra) reads as under:-

“32. Let us now discuss some of the judgments cited at the bar. First and foremost is the decision of a constitution bench of this Court in Calcutta Discount Company Limited (supra). That was a case under Section 34 of the Indian Income Tax Act, 1922 which is in pari-materia to Section 147 of the Act. The constitution bench explained the purport of Section 34 of the Indian Income Tax Act, 1922 and highlighted two conditions which would have to be satisfied before issuing a notice to reopen an assessment beyond four years but within eight years (as was the then limitation). The first condition was that the income tax officer must have reason to believe that income, profits or gains chargeable to

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income tax had been under-assessed. The second condition was that he must have also reason to believe that such under-assessment had occurred by reason of either (i) omission or failure on the part of the assessee to make a return of his income under Section 22, or (ii) omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for that year. It was emphasized that both these were conditions precedent to be satisfied before the income tax officer could have jurisdiction to issue a notice for the assessment or re-assessment beyond the period of four years but within the period of eight years from the end of the year in question. The words used in the expression "omission or failure to disclose fully and truly all material facts necessary for his assessment for that year" would postulate a duty on every assessee to disclose fully and truly all material facts necessary for his assessment though what facts are material and necessary for assessment would differ from case to case. On the above basis, this Court came to the conclusion that while the duty of the assessee is to disclose fully and truly all primary facts, it does not extend beyond this. This position has been reiterated in subsequent decisions by this Court including in *Income Tax Officer v. Lakhmani Mewal Das*, 1976 (3) SCC 757; 1976 (103) ITR 437. The expression "reason to believe" has also been explained to mean reasons deducible from the materials on record and which have a live link to the formation of the belief that income chargeable to tax has escaped assessment. Such reasons must be based on material and specific information obtained subsequently and not on the basis of surmises, conjectures or gossip. The reasons formed must be bona fide.

33. In *Phool Chand Bajrang Lal* (supra), this Court examined the purport of Section 147 of the Act and observed that the object of Section 147 is to ensure that a party cannot get away by willfully making a false or untrue statement at the time of original assessment and when that falsity comes to notice, to turn around and say "you accepted my lie, now your hands are tied and you can do nothing". This Court opined that it would be a travesty of justice to allow an assessee such latitude. After adverting to various previous decisions, this Court held that an income tax officer acquires jurisdiction to reopen an assessment under

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Section 147(a) read with Section 148 of the Act only if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons, which he must record, to believe that due to omission or failure on the part of the assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profit or gains chargeable to income tax has escaped assessment. In the above context, Supreme Court has held as under:

25.He may start reassessment proceedings either because some fresh facts come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those facts. In such situations, it is not a case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available but acting on fresh information. Since, the belief is that of the Income Tax Officer, the sufficiency of reasons for forming the belief, is not for the Court to judge but it is open to an assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non-specific information. To that limited extent, the Court may look into the conclusion arrived at by the Income Tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by the Income Tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief. It would be immaterial whether the Income Tax Officer at the time of making the original assessment could or, could not have found by further enquiry or investigation, whether the transaction was genuine or not, if on the basis of subsequent information, the Income Tax Officer arrives at a conclusion, after satisfying the twin conditions prescribed in Section 147(a) of the Act, that the assessee had not made a full and true disclosure of the material

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facts at the time of original assessment and therefore income chargeable to tax had escaped assessment.....

34. This Court in the case of Srikrishna Private Limited (supra) emphasized that what is required of an assessee in the course of assessment proceedings is a full and true disclosure of all material facts necessary for making assessment for that year. It was emphasized that it is the obligation of the assessee to disclose the material facts or what are called primary facts. It is not a mere disclosure but a disclosure which is full and true. Referring to the decision in Phool Chand Bajrang Lal (supra), it has been highlighted that a false disclosure is not a true disclosure and would not satisfy the requirement of making a full and true disclosure. The obligation of the assessee to disclose the primary facts necessary for his assessment fully and truly can neither be ignored nor watered down. All the requirements stipulated by Section 147 must be given due and equal weight.

35. Kelvinator of India Limited (supra) is a case where this Court examined the question as to whether the concept of "change of opinion" stands obliterated with effect from 01.04.1989 i.e. after substitution of Section 147 of the Act by the Direct Tax Laws (Amendment) Act, 1987. This Court considered the changes made in Section 147 and found that prior to the Direct Tax Laws (Amendment) Act, 1987, reopening could be done under two conditions i.e., (a) the Income Tax Officer had reason to believe that by reason of omission or failure on the part of the assessee to make a return under Section 139 for any assessment year or to disclose fully and truly all material facts necessary for his assessment for that year, income chargeable to tax had escaped assessment for that year, or (b) notwithstanding that there was no such omission or failure on the part of the assessee, the Income Tax Officer had in consequence of information in his possession reason to believe that income chargeable to tax had escaped assessment for any assessment year. Fulfillment of the above two conditions alone conferred jurisdiction on the assessing officer to make a re-assessment. But with effect from 01.04.1989, the above two conditions have been given a go-by in Section 147 and only one condition has remained, viz, that where the assessing

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officer has reason to believe that income has escaped assessment, that would be enough to confer jurisdiction on the assessing officer to reopen the assessment. Therefore, post 01.04.1989, power to reopen assessment is much wider. However, this Court cautioned that one needs to give a schematic interpretation to the words "reason to believe", otherwise Section 147 would give arbitrary powers to the assessing officer to reopen assessments on the basis of "mere change of opinion", which cannot be per se reason to reopen.

35.1. This Court also referred to Circular No.549 dated 31.10.1989 of the Central Board of Direct Taxes (CBDT) to allay the apprehension that omission of the expression "reason to believe" from Section 147 and its substitution by the word "opinion" would give arbitrary powers to the assessing officer to reopen past assessments on mere change of opinion and pointed out that in 1989 Section 147 was once again amended to reintroduce the expression "has reason to believe" in place of the expression "for reasons to be recorded by him in writing, is of the opinion". This Court thereafter explained as under:

6. We must also keep in mind the conceptual difference between power to review and power to reassess. The assessing officer has no power to review; he has the power to reassess. But reassessment has to be based on fulfilment of certain precondition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of reopening the assessment, review would take place.

7. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the assessing officer. Hence, after 1-4-1989, the assessing officer has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief. Our view gets support from the changes made to Section 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in Section 147 of

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the Act. However, on receipt of representations from the companies against omission of the words "reason to believe", Parliament reintroduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the assessing officer.

36. Elaborating further on the expression "change of opinion", this Court in Techspan India Private Limited (supra) observed that to check whether it is a case of change of opinion or not one would have to see its meaning in literal as well as legal terms. The expression "change of opinion" would imply formulation of opinion and then a change thereof. In terms of assessment proceedings, it means formulation of belief by the assessing officer resulting from what he thinks on a particular question. Therefore, before interfering with the proposed reopening of the assessment on the ground that the same is based only on a change of opinion, the court ought to verify whether the assessment earlier made has either expressly or by necessary implication expressed an opinion on a matter which is the basis of the alleged escapement of income that was taxable. If the assessment order is non-speaking, cryptic or perfunctory in nature, it may be difficult to attribute to the assessing officer any opinion on the questions that are raised in the proposed reassessment proceedings.”

13. In the present case, notice under Section 148 of the Act had been issued for the reasons as are reproduced in para 3 above. Assessing authority vide order dated 18.10.2010 held as under:-

“The reply of the assessee has been considered and is found to be unacceptable. Section 80IA(9) clearly states that:-

"Where any amount of profits and gains of an (undertaking) or of an enterprise in the case of an assessee is claimed and allowed under this section for any assessment year. deduction to the extent of such profits and gains shall not be allowed under any other provisions of this Chapter under the heading "C- Deduction in respect of certain

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incomes", and shall in no case exceed the profits and gains of such eligible business of (undertaking) or enterprise, as the case may be.”

In a recent case the Hon'ble ITAT, Chennai has held that the profits eligible for deduction u/s 80IA have to be reduced while computing deduction u/s 80HHC. The decision is being reproduced as follows:-

"Hon'ble jurisdictional High Court in the case of CIT v. Sharon Vancers P. Ltd. T.C. (A) No. 62 of 2004 dt. 26-02-2007, has made it clear that it is not correct to say that Section 80HHC of the Act is a self-contained provision. The deduction cannot be allowed ignoring the restrictive clause contained in Section 80-IA(9). The restrictive clause in Section 80-IA makes it abundantly clear that wherever deduction under any other section of Chapter VI-A(C) is claimed, the computation will be subject to the restrictions laid down in Section 80-1A(9). It precludes pro tanto, all the deductions of such profits and gains claimed under Chapter VI-A(C), Section 80HHC is part of Chapter VI-A(C). It is not a self-contained provision. There is absolutely no ambiguity on this aspect. We are therefore of the opinion that relief under Section 80-IA should be deducted from the profits and gains of the business before computing relief under Section 80HHC of the Act”.

In view of the provisions of Law and the decision of the Hon'ble Tribunal, it is held that profits amounting to Rs.78,82,237/- on which deduction u/s 80IB is being claimed and allowed are to be reduced from profits while computing deduction u/s 80HHC. Therefore, the allowable deduction u/s 80HHC and the taxable income has been computed as in the computation below. It is seen that as per the computation the assessee has claimed excess deduction amounting to Rs.38,59,360/- which is being disallowed and added back to the income of the assessee.

Penalty proceedings u/s 271(1)(c) are being initiated separately for furnishing of inaccurate particulars of income.

The income is recomputed as under:-

	Net profit as per P&L a/c		Rs.7,01,77,401
Less:	Deduction u/s 80HHC as per Annexure-A, enclosed	Rs.1,48,85,965	
	Deduction u/s 80G allowed as per order u/s 154 dated 30.6.2006	Rs.47,050	
	Deduction u/s 80IB as claimed	Rs.78.82,237	
	Relief allowed by ld.CIT(A) vide order dt.16.3.07	Rs. 18,179	
	Total taxable income		Rs.4,73,43,970

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Assessed as above u/s 143(3) of the I.T. Act, 1961.

Penalty proceedings u/s 271(1)(c) have been initiated separately.

Issue show cause notice u/s 274.

Charge interest as per provisions of I.T. Act 1961.

Issue demand notice and challan.”

14. It is apparent that in the present case, there is nothing other than a change of opinion which has taken place. Learned counsel for respondent was unable to point out any concealment or non-disclosure on the part of appellant.

15. In our considered opinion, there is merit in the arguments raised on behalf of appellant. Re-assessment could not have been carried out after expiry of four years especially keeping in view the fact that there is no concealment or false declaration on the part of assessee. Assessing Officer had indeed made an independent analysis of income of assessee for assessment year 2003-2004, vide assessment order dated 28.02.2006. The question of law as formulated is accordingly answered in favour of appellant – assessee and against respondent – Department. Once this question is decided in favour of assessee, there is no requirement of delving into the controversy in respect to deduction under Section 80-IB and 80HHC of the Act. Impugned orders are, thus, set aside.

16. No other argument was addressed.

17. Appeal is accordingly allowed.

(LISA GILL)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

04.11.2025

Sunil

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No