Neutral Citation No. (2024:HHC:3937)

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 772 of 2022.

Reserved on: 17.06.2024.

Date of decision: 25.06.2024.

J.B.J. Perfumes Private Limited …..**Petitioner.**

Versus

Principal Commissioner of Income Tax and another …..**Respondents.**

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.
The Hon'ble Mr. Justice Sushil Kukreja, Judge.

***Whether approved for reporting?*[1]** **Yes**

For the Petitioner : **Mr. Vishal Mohan, Senior Advocate with Mr. Aditya Sood and Mr. Abhinav Bajwaria, Advocates.**

For the Respondents : **Mr. Neeraj Sharma and Mr. Ishaan Kashyap, Advocates.**

Tarlok Singh Chauhan, Judge

The instant writ petition has been filed seeking quashing of notice dated 30.03.2021 issued under Section 148 of the Income Tax Act, 1961, (for short the "Act") for the assessment year 2013-14 and further for quashing the order vide which objections filed by the petitioner for reopening the case have been rejected.

[1]***Whether the reporters of the local papers may be allowed to see the Judgment?Yes***

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2. The petitioner is a private limited company registered under the Companies Act and is engaged in the business of manufacturing of perfumery compound and room fresheners etc.

3. The petitioner for the assessment year under consideration filed return declaring its net taxable income of Rs.1,01,50,780/- after claiming deductions of Rs.43,50,332/- under Section 80IC of the Act vide return of income filed on 28.09.2013.

4. The case of the petitioner-company was selected for scrutiny and the same was assessed vide order dated 28.03.2016 passed under Section 143(3) of the Act after making an addition of Rs.95,000/- to the taxable income of the petitioner-company at Rs.1,02,45,775/-. The petitioner-company was thereafter issued notice dated 30.03.2021 under Section 148 of the Act requiring it to file return of income within a period of 30 days.

5. The petitioner-company after filing return of income applied for the copy of reasons so recorded and accordingly the same was supplied to the petitioner-company. This led to filing of detailed objections by the petitioner-company regarding reopening of the case on both legal and factual aspects vide its submissions dated 06.02.2022 constraining the petitioner-company to file the instant petition seeking therein the following substantive reliefs:

> "a) This Hon'ble Court may be pleased to issue a writ in the nature of certiorari and the notice issued under Section 148 of the Income Tax Act, 1961 dated 30.03.2021 for the

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assessment year 2013-14 vide which case of the petitioner has been reopened be quashed.

b) That this Hon'ble Court may further be pleased to issue a writ in the nature of certiorari and the order vide which the objections had been rejected may kindly be quashed and held to be illegal."

6. The respondents filed the reply wherein they have raised various preliminary objections contending that the petition is pre-mature, writ against notice under Section 148 of the Act is not maintainable and that the petitioner-company has an alternative and efficacious remedy to file an appeal against the fresh assessment order which may be passed.

7. On merits, it is contended that during the audit vide LAR No.106-108 dated 11.07.2017, para 16, AQ No. 30 dated 29.05.2017, it has been revealed that the petitioner-company had purchased Plant and Machinery i.e. spray mount valve by way of import from M/s Majesty Packaging International Ltd. amounting to $ 83,922.00 (Rs.46,03,121/-) vide invoice No. JBJ01-12-7880 dated 10.10.2012 and custody duty of Rs.3,73,728/- was paid on this import of capital assets on 23.01.2013. The petitioner-company had not booked the imported machine in block of fixed assets. Therefore, as per the provisions of the Act, expenditure amounting to Rs.59,76,849/- (Rs.46,03,121+Rs.13,73,728/-) incurred by the petitioner-company during the assessment year 2013-14 was of capital in nature.

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8. It has been further contended that vide AQ No. 53 dated 30.05.2017, it was revealed that the petitioner-company had derived income from damaged goods claim amounting to Rs.2,01,884/-, discount received of Rs.13,50,871/- and rounded off amounting to Rs.3,564/-. The above incomes had no nexus and were not derived by the petitioner-company from manufacturing activities. Hence, the above income of Rs.4,66,896/- (30% of 15,56,320/-) could not have been allowed while computing eligible profits for claim of deduction under Section 80IC of the Act. Since, an income of Rs.64,43,745/- had been escaped during the year under consideration and the Assessing Officer (for short "A.O.") had reasons to believe and had rightly assumed jurisdiction over the case by recording reasons for reopening the case under Section 147 of the Act beyond the period of four years but within six years after taking appropriate approval as envisaged under the Act. The notice was issued after fulfilling all statutory requirements of the Act.

9. The petitioner-company filed rejoinder wherein it is averred that the respondents have not placed anything on record to show that it had concealed or did not disclose true and correct particulars, as were required under Sections 147 and 148 of the Act. It is further averred that the rejection of the objections and reopening of the case by the respondents are amenable to the writ jurisdiction of this Court.

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10. On merits, it has been averred that the objections raised by the petitioner-company have been rejected in a mechanical way without actually taking into consideration the objections so filed. It is further averred that the income derived from the damaged goods claim, discounts received and rounded off are not attributable to manufacturing activities of the petitioner-company and as such the Assessing Officer had rightly allowed deductions under Section 80IC while passing the order under Section 143(3) of the Act.

11. As far as the import made outside India is concerned, it is averred that the petitioner-company had not imported any machinery but the raw material required in the production of the manufacturing which has been duly made in the purchases by the petitioner-company. The Assessing Officer in the first inning had duly taken into consideration all the facts while framing the assessment. Thus, there was no occasion for reopening of the case on the same facts which amounts to change of opinion and is not permissible in the eyes of law. It is further averred that the capital goods had not been purchased and only raw material had been purchased which was required and utilized in packing of perfumes and treating the same to be capital expenditure is absolutely wrong and not sustainable in the eyes of law. It is reiterated that the damaged goods claim, discounts received and rounding off are an integral part of manufacturing activities and as

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such qualifies for its deductions under Section 80IC and the same has rightly been allowed to the petitioner-company by the Assessing Officer.

12. We have heard the learned counsel for the parties and have also gone through the records of the case.

13. Before adverting to the merits of the case, we find it appropriate to briefly traverse through Section 147 of the Act to understand the nature, scope and intent behind enacting of the said provision. For the sake of clarity, the relevant portion of Section 147 of the Act, as it stood prior to the substitution by Act No.13 of 2021 is culled out as under:

> "**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 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

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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 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, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of Section 148."

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14. A perusal of the aforesaid provisions reveals that it empowers the Assessing Officer to assess or reassess any income which had escaped assessment. However, the said authority is circumscribed with a predominant condition that the Assessing Officer must be in possession of reasons to believe that any income chargeable to tax has escaped assessment for the relevant assessment year. Further, the first proviso to Section 147 of the Act stipulates that where the assessment has been done under Section 143(3) or Section 147 of the Act, no action shall be taken after the expiry of four years unless there exists inter alia, a failure of the assessee to fully and truly disclose all the necessary facts necessary for assessment of the concerned assessment year.

15. In order to ascertain, the meaning of full disclosure in the context of Section 147 of the Act, it is noteworthy to refer to Explanation 1 to the said provision which indicates that the production of books and accounts before the Assessing Officer would not necessarily amount to disclosure within the meaning of the first proviso.

16. The meaning of the phrase "*true and full disclosure*" has been succinctly encapsulated by the Hon"ble Supreme Court in its decision in ***M/s Mangalam Publications, Kottayam vs. Commissioner of Income Tax, Kottayam, AIR 2024 SC 813***

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wherein the Hon'ble Supreme Court took a view that mere production of books of accounts or other material evidence cannot be said to be a true and full disclosure. It shall be apt to reproduce the relevant paragraph of the said decision which reads as under:

> "31. At this stage, we deem it necessary to expound on the meaning of disclosure. As per the P. Ramanatha Aiyar, Advanced Law Lexicon, Volume 2, Edition 6, "to disclose" is to expose to view or knowledge, anything which before was secret, hidden or concealed. The word "disclosure" means to disclose, reveal, unravel or bring to notice, vide CIT Vs. Bimal Kumar Damani, (2003) 261 ITR 87 (Cal). The word "true" qualifies a fact or averment as correct, exact, actual, genuine or honest. The word "full" means complete. True disclosure of concealed income must relate to the assessee concerned. Full disclosure, in the context of financial documents, means that all material or significant information should be disclosed. Therefore, the meaning of "full and true disclosure" is the voluntary filing of a return of income that the assessee earnestly believes to be true. Production of books of accounts or other material evidence that could ordinarily be discovered by the assessing officer does not amount to a true and full disclosure."

17. 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 for initiating action under Section 147 of the Act would essentially mean those facts, if taken into account, would have an adverse effect on the assessee

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by the higher assessment of income than the one actually made. They ought to be proximate and not have any remote bearing on the assessment. Omission to disclose could be deliberate or even inadvertent. However, this is not at all relevant provided there is omission or failure on the part of the assessee. The latter confers jurisdiction to reopen the assessment.

18. The decision of the Hon'ble Constitution Bench in ***Calcutta Discount Co. Ltd. vs. Income Tax Officer, Companies District I, Calcutta and another (1961) Vol. 41 ITR 191*** explicitly burdens the assessee with a responsibility to disclose fully and truly all the material facts.

19. Having examined the scope and extent of true and full disclosure as per Section 147 of the Act, we may now proceed to examine the factual facts essential in the instant petition.

20. The reasons for issuing notice under Section 147 of the Act are contained in paras 2 and 2.1 thereof which read as under:

> "2. Subsequently, it was noted that in the assessment record revealed that assessee firm derives income from damaged goods claim amounting to Rs.201884/-, discount of Rs.1350871/- and rounded off amounting to Rs.3564/- for the period ending 31st March 2013. The income on account of claim on damaged goods, discount receipt and sundry round off were not derived by the assessee from manufacturing activities. The above income had no direct

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> nexus with the manufacturing activity. Hence, the deduction u/s 80IC on above income of Rs.466896/- (30% of 1556320/-) needed to be disallowed for computation of eligible profits for 80IC deduction.
>
> 2.1. As per copy of account of Import of Spray mount & heads aerosol valve forming part of the audited accounts as on 31.03.2013 revealed that assessee company had imported spray mount valve from M/s Majesty Packaging International Ltd. Amounting to Rs.4603121/- on 25.01.2013 and custom duty of Rs.1373728/- was paid on this import of capital asset. Scrutiny of chart of depreciation chart revealed that assessee company had not booked the imported machine in block of fixed assets whereas in accounting note No.4 forming part of audited balance sheet revealed that assessee company had imported machinery equipment during the year. Thus assessee company had not included such capital asset Schedule of fixed assets rather the same had taken in purchase imported and treated it as revenue expenditure. As per provisions of Income-Tax Act, expenditure amounting to Rs.5976849/- incurred was of capital in nature. Hence, the same needed to be disallowed."

21. The reasons have been recorded in paragraphs 3.1 and 4 of the order which read as under:

> "3.1. A perusal analysis of the information in para-2 above reveals that there was failure/omission on the part of the assessee to disclose fully and truly all necessary facts essential for its assessment, as a result of which the provisions of Section-147 of the Income Tax Act, 1961 shall apply in this case.

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> 4. In view of the above, I have reason to believe that due to failure/omission on the part of the assessee to disclose fully and truly all necessary facts essential for his assessment, income to the extent of Rs.64,43,745/- [Rs.4,66,896+Rs.59,76,849] has escaped assessment under Section 147 of the Income Tax Act, 1961 for the A.Y. 2013-14."

22. As regards observations in para 3.1 of the order, the petitioner-company after placing reliance on various judgments of the Hon'ble Supreme Court submitted as under:

> "3.4. Your Honour, it is submitted that the assessee was issued notice dated 30/03/2021 under Section 148 of the Act saying that there are reasons to believe that income of the assessee is chargeable to tax for A.Y. 2013-2014 has escaped assessment within the meaning of Section 147 of the Act. Since the notice has been issued after the expiry of 4 years from the relevant assessment year and assessee has already been assessed under Section 143(3) of the Act, the proviso to Section 147 as it was then existing on the Statute Book, would apply. As per the proviso, the onus is on the department to show that there was failure on the part of the assessee to fully and truly disclose all material facts required for assessment. Your Honour, the duty of disclosing all the primary facts relevant to the decision of the question before the assessing authority lies on the assessee. To meet a possible contention that when books of account or other evidence in the form of bills & vouchers, have been produced, there is no duty on the assessee to disclose further facts, which on due diligence, the AO might have discovered, the Legislature has put in Explanation to Section 147. The duty, however, does not extend beyond

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the full and truthful disclosure of all primary facts. Once all the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else-far less the assessee to tell the assessing authority what inferences, whether of facts or law, should be drawn. Indeed, when it is remembered that people often differ as what inferences should be drawn from given facts, it will be meaningless to demand that the assessee must disclose what inferences-whether of facts or law-he would draw from the primary facts. If from primary facts more inferences than one could be drawn, it would not be possible to say that the assessee should have drawn any particular inference and communicated it to the assessing authority. How could an assessee be charged with failure to communicate an inference, which he might or might not drawn? It may be pointed out that the Explanation to the sub-section has nothing to do with "inferences" and deals only with the question whether primary material facts not disclosed could still be said to be constructively disclosed on the ground that with due diligence the Income-Tax Officer could have discovered them from the facts actually disclosed. The Explanation cannot enlarge the scope of the section by casting a duty on the assessee to disclose "inferences", to draw the proper inferences being the duty imposed on the Income Tax Officer. Therefore, it can be concluded that while the duty of the assessee is to disclose fully and truly all primary relevant facts, it does not extend beyond this."

23. The objections so filed by the petitioner-company were rejected by according the following reasons:

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"6. Even if it is presumed, without admitting that all the information/details were placed before the Assessing Officer during the original assessment proceedings, the Assessing Officer is not precluded from reopening the case on the basis of material already on record provided the formation of such opinion is consequent on "information" in the shape of some light thrown on aspect of facts or law which the AO was not earlier conscious of . In this regard reliance is placed on the decision in the case of A.L.A. Firm vs. Commissioner of Income-Tax (1991) 55 Taxman 497 (SC). Hence, on this account also assessee's contention that there was no failure to disclose fully and truly all material facts at the time of assessment is not acceptable.

7. With regard to the contention that the reopening is based on change of opinion, it needs to be verified whether the assessment made earlier has either expressly or by necessary implication expressed an opinion on a matter on the basis of which the assessment is sought to be reopened. In a case where the assessment order is non speaking cryptic or perfunctory in nature, it would be difficult to attribute to the AO any opinion on question that are raised in the proposed reassessment proceedings. In such cases, the reopening has been held to be in order. In this regard, reliance is placed on the decision of the Hon'ble Supreme Court in the case of Income Tax Officer, Ward No.16(2) vs. Techspan India (P.) Ltd. [2018] 92 Taxmann. Com 371(SC). Considering the facts and circumstances of the present case as discussed above, the various decisions relied upon by the assessee are not applicable as the facts are distinguishable.

11. Further, on the issue of "the assessee has already been assessed under Section 143(3) of the Act and notice has been issued after the expiry of 4 years from the relevant

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> assessment year, the proviso to Section 147 as it was then existing on the Statute Book, would apply". It is to mention that the case was reopened as per the time limits as existed in the old regime only and there is no lapse on this issue as raised by the assessee."

24. It was thereafter observed that an analysis of the aforesaid paras revealed that there was failure on the part of the petitioner-company to disclose truly and fully all necessary facts essential for its assessment, as a result of which, the provisions of Section 147 of the Act shall apply in this case. Therefore, due to omission/failure on the part of the petitioner-company to disclose fully and truly all necessary facts essential for its assessment, income to the extent of Rs.64,43,745/- (Rs.4,66,896 +Rs.59,76,849/-) had escaped assessment under Section 147 of the Act for the assessment year 2013-14.

25. The petitioner-company filed objections wherein it submitted that the petitioner-company was engaged in the manufacturing and trading in perfumery products, perfumery compounds and room refresheners etc. and during the period under reference, return of income for the period under reference based on the audit report and financial statements extracted by the Chartered Accountant on audit of regularly maintained books of account had been filed originally on 28.09.2013. It is further stated that the assessment in the case of the petitioner-company was framed under

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Section 143(3) for the year under consideration vide order dated 28.03.2016 and during the assessment proceedings by the Assessing Officer, the requisite information/details as per the questionnaire had been furnished which included the claim of deduction under Section 80IC and the deduction was allowed by the Assessing Officer (DCIT) after full verification of documents furnished by the petitioner-company during those proceedings and are distinctively so recorded in para-2 of the assessment order.

26. It is further averred that the letter dated 28.07.2017 was issued by the respondents to the petitioner-company wherein the objections were raised by the Audit Party seeking further clarification post assessment and the petitioner-company was asked to submit clarification on certain issues raised by the Audit Party. These objections were duly replied to the concerned Officer by furnishing detailed written submissions with cogent and corroborative documentary evidence in the form of invoices at that point of time. It is well settled that the objections so raised by the Audit Party somehow are the root cause of the current reassessment as per the reasons so recorded and provided to the petitioner-company again vide letter dated 04.01.2022 which almost is akin to the letter dated 28.07.2017 issued by the then Assessing Officer.

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27. It is also averred that the so-called reasons have been recorded on the borrowed satisfaction of the Audit Party, that too in a mechanical manner, without remotely appreciating the facts and circumstances of the case. Lastly, it is averred that as per the provisions of law the onus was on the respondent-department to show that there was failure on the part of the petitioner-company to fully and truly disclose all facts required for assessment and this duty however does not extend beyond the full and truthful disclosure of all primary facts. Once, all the primary facts were before the assessing authority, it required no further assistance by way of disclosure. It was for the authority to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn.

28. It is more than settled that after amendment with effect from 01.04.1989 in the Act, the Assessing Officer has reasons to believe that the income has escaped assessment, but this does not imply that the Assessing Officer can reopen an assessment on a mere change of opinion. The concept of "change of opinion" must be treated as an in-built test to check the abuse of power and hence the Assessing Officer even after the amendments made in the relevant provisions from 01.04.1989 has the power to reopen an assessment provided there is tangible material to come to the conclusion that there was escapement of income from assessment.

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The ambit and scope of Section 147 has been considered in detail by the Hon'ble Supreme Court in ***Mangalam Publications' case (supra)*** and it shall be apt to reproduce the relevant observations as contained in paras 32 to 36 thereof which read 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 vs. Income Tax Officer, Companies District I, Calcutta and another 1961, Vol.41 ITR 191. 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 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

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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 Vs. 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 M/s Phool Chand Bajrang Lal Vs. Income Tax Officer, (1993) 4 SCC 77, 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 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

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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 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 Vs. ITO, Calcutta, (1996) 9 SCC 534 emphasized that what is

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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. CIT, Delhi Vs. Kelvinator of India Limited, (2010) 2 SCC 723, 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. Fulfilment of the

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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 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.

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> 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 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 ITO vs. TechSpan India Private Limited (AIR 2018 SC 2113) 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."

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29. It is not in dispute that the original assessment by the Assessing Officer in this case was framed vide assessment order dated 28.03.2016 and during the course of these proceedings, entire books of accounts, bills and vouchers have been duly perused by the then Assessing Officer. It is after perusal of the books of accounts, bills and vouchers that the Assessing Officer had formed a view that the parts imported from Majesty Packaging International Ltd. were used in the manufacturing of product. Therefore, reopening of the case, that too, on the ground that expenditure of Rs.59,76,849/- was incurred for acquisition of capital, is not liable to be treated as revenue expenditure, is absolutely wrong as admittedly what was imported was perfume pumps to be installed for packing and sale of the product of the petitioner-company and the same could not have been held to be capital expenditure at all and the same, therefore, has rightly been booked as revenue expenditure.

30. As regards an amount of Rs.4,66,896/- towards earned receipt of damaged goods that was claimed by the petitioner-company, there was nothing on record to suggest that the sale of damaged stock had not been derived from an industrial activity and, therefore, not admissible for deduction under Section 80IC.

31. Here again, while framing initial assessment of the petitioner-company, the Assessing Officer had made independent

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analysis of the books of accounts and other relevant material. As a matter of fact, a detailed notice had been issued to the petitioner-company on 28.03.2021 qua this very aspect of the matter to which detailed written submissions along with cogent and corroborative documentary evidence in the form of invoices etc. had been duly supplied by the petitioner-company.

32. Record reveals that the objections were raised only by the Audit Party and, therefore, reasons have been recorded on borrowed satisfaction of the Audit Party and not that of the respondent-department. A perusal of the reasons for reopening the case would make it evidently clear that all the material have been culled out from the assessment record submitted by the petitioner. Therefore, in absence of new facts coming to the knowledge of the Assessing Officer subsequent to the original assessment proceedings, the reopening of the case cannot be done on the basis of the same material. (Refer: **Income Tax Officer, Ward No.16(2) vs. M/s TechSpan India Private Limited and another, AIR 2018 SC 2113).**

33. Moreover, as noticed above, the assessment order in the instant case is not the one which could be termed to be non-speaking, cryptic or perfunctory in nature and, therefore, it can easily be inferred and attributed to the Assessing Officer that he was fully

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aware of the questions that have been raised in the proposed re-assessment proceedings.

34. Once, there is a conscious application of mind after taking into consideration the relevant facts and material available and existing at the relevant point of time while making assessment, a different and divergent view cannot again be taken as this would amount to "*change of opinion*". If the assessing authority forms an opinion during the original assessment proceedings on the basis of the material facts and subsequently finds it to be erroneous, then "it is not a valid reason under the law for re-assessment".

35. From a overall reading of facts, it is clear that the respondents have sought to resurrect a stale issue which has already been examined during the course of regular assessment pursuant to which the assessment order was passed on 28.03.2016.

36. As regards maintainability of the writ petition, this question need not detain us any longer in view of the judgment rendered by the Constitution Bench of the Hon'ble Supreme Court in ***Calcutta Discount Co. Ltd.'s case (supra)*** whereby a similar contention as raised herein was rejected in the following manner:

> "Mr. Sastri next pointed out that at the stage when the Income-tax Officer issued the notices he was not acting judicially or quasi-judicially and so a writ of certiorari or prohibition cannot issue. It is well settled however that

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though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Courts, it is well settled, will issue appropriate orders or directions to prevent such consequences.

Mr. Sastri mentioned more than once the fact that the company would have sufficient opportunity to raise this question, viz., whether the Income-tax Officer had reason to believe that under assessment had resulted from non-disclosure of material facts, before the Income-tax Officer himself in the assessment proceedings and, if unsuccessful there, before the appellate officer or the appellate tribunal or in the High Court under section 66(2) of the Indian Income-tax Act. The existence of such alternative remedy is not however always a sufficient reason for refusing a party quick relief by a writ or order prohibiting an authority acting without jurisdiction from continuing such action.

In the present case the company contends that the conditions precedent for the assumption of jurisdiction under s. 34 were not satisfied and come to the court at the earliest opportunity. There is nothing in its conduct which would justify the refusal of proper relief under Art. 226. When the Constitution confers on the High Courts the power to give relief it becomes the duty of the courts to give such relief in fit cases and the courts would be failing to perform their duty if relief is refused without adequate reasons. In the present case we can find no reason for which relief should be refused."

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37. In view of the aforesaid discussion and for the reasons stated hereinabove, the writ petition is allowed. Accordingly, the order passed by the respondents on 30.03.2021 for the assessment year 2013-14, vide which the case of the petitioner had been reopened, is ordered to be quashed. Consequently, the order vide which the objections as raised by the petitioner-company regarding reopening of the case have been rejected, is also quashed and set aside.

38. Pending application, if any, shall also stand disposed of.

(Tarlok Singh Chauhan)
Judge

(Sushil Kukreja)
Judge

June 25th, 2024.
(krt)

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