IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.08.2022

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
AND
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

W.A. Nos.1081 and 1083 of 2021
and C.M.P. Nos.6837 and 6841 of 2021

M/s.Durr India Private Limited
Rep. by its Director Mr.Michael Berger
No.471, 2nd Floor, Prestige Polygon,
Anna Salai, Nandanam,
Chennai-600 038. ... Appellant in W.A.No.1081 of 2021

Vs.

1.Assistant Commissioner of Income Tax (OSD)
Corporate Range 1,121, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.

2.Principal Commissioner of Income Tax 1,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034. ... Respondents in W.A.No.1081 of 2021

M/s.Durr India Private Limited
Rep. by its Director Mr.Michael Berger
No.471, 2nd Floor, Prestige Polygon,
Anna Salai, Nandanam,
Chennai-600 038. .. Appellant in W.A.No.1083 of 2021

Vs.

1.Assistant Commissioner of Income Tax (OSD)

Corporate Range 1,121, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.

2.Additional Commissioner of Income Tax 1,
Corporate Range 1,121, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034. ... Respondents inW.A.No.1083 of 2021

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Common Prayer: Writ Appeals filed under Clause 15 of the Letter Patent Act, praying to set aside the order dated 24.02.2021 of the learned Single Judge in W.P.Nos.32797 and 32801 of 2018.

For Appellant in both W.As. : Mr.N.V.Balaji

For Respondents in both W.As. : Mr.Prabhu Mukunth Arunkumar

COMMON JUDGMENT

(Judgment of the Court was delivered by MOHAMMED SHAFFIQ, J.)

The present writ appeals are filed against the order of the learned Single Judge in W.P. Nos.32797 and 32801 of 2008, relating to the assessment year 2011-12 and 2012-13 insofar as the learned Judge had held that there were no justifiable reasons warranting interference under Article 226 of the Constitution of India while dismissing the writ petition which was filed challenging the rejection of the objection of the appellants questioning the initiation of reassessment proceedings

on the premise that the very assumption of jurisdiction is baseless and illegal.

The learned Judge has dismissed both the Writ Petitions. The contentions raised by the appellant questioning the initiation of reassessment is dealt with independently for the two assessment years, viz., 2011-12 and 2013-14.

Assessment Year 2011-12 – W.A.No.1081 of 2021:

2. The appellant is a Private Limited Company engaged in the business of providing Paint Finishing Systems and related services to automobile manufacturers. For the Assessment Year 2011-12, the appellant filed Income Tax return on 30.11.2011 returning a total income of Rs.68.44 Crores. The 1st Respondent proceeded with the assessment of the appellant under Section 143 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). During the course of the assessment proceedings, the appellant submitted the Audited Profit and Loss Account and the Balance Sheet, together with the Notes thereon as required by the 1st Respondent. The assessment under Section 143(3) read with Section 144C of the Act, was completed determining the total income at Rs.79.44 Crores vide order dated 27.01.2016.

3. Whileso, the 1st Respondent issued notice under Section 148 of the Act, dated 28.03.2018 proposing to initiate reassessment proceedings for the Assessment Year 2011-12. In response, the appellant filed a return of income and also sought for reasons in terms of the judgment of the Supreme Court in the case of *GKN Driveshafts* vide its letter dated 12.04.2018. The 1st Respondent furnished the reasons on 05.11.2018, which reads as under:

> *"For AY 2011-12 it is noted that under SCHEDULE 9 – current liabilities "billing in excess of revenue" was Rs.7,74,20,000/-. It has been identified that this represents the amount reduced from the billing assessee already made to its clients. Since assessee follows mercantile system of accounting, income accrues the moment bill is raised by the assessee. When the bill raised by the assessee is served on the client, liability to pay arises to the client. Thus income accrues in the legal perspective. If the assessee is reducing a part of the bill amount from the receipts credited to the P&L A/c and takes such sum to the liability side of the balance sheet for the purpose of better disclosure, it will not affect the income already accrued to the assessee as the accounting entries cannot change the accrual of income which happened already".*

4. The appellant submitted its objections to the above notice *inter-alia* raising the following objections on assumption of jurisdiction:

a) The appellant before setting out its objections had tabulated the

reasons for reopening and the material evidence for reopening as under:

Reasons for re-opening	***Material evidence relied upon by the Assessing Officer ('AO') as evident from your letter dated 6th July 2018***
Billing in excess of revenue: Reduction from amount credited to the Profit and Loss Account ('P&L A/c') and transfer to liability side of the Balance Sheet for the purpose of disclosure will not affect the income already accrued to the assessee.	Material evidence: Financial Statements The line item billing in excess of revenue has been reflected under Schedule 9 – 'Current Liabilities and provision'.

The appellant submitted that the notice dated 28.03.2018 was barred by limitation since in the reasons for reopening furnished to the appellant vide communication dated 12.11.2018 there is no finding or allegation of "failure on the part of the assessee/appellant to disclose fully and truly all material facts". It was submitted that in the absence of a finding on the above aspect, the exercise of power of reassessment beyond four years would be barred by limitation, since it is the existence of the above jurisdictional fact that would enable invoking the extended period of six years for reassessment in terms of the proviso to Section 147 of the Act.

b) It was submitted that the order under Section 143 of the Act was passed after scrutiny of the documents submitted and adjustments made thereafter. There is no new material in support of the proposal to make a reassessment. In other words, the reassessment is merely a change of opinion on the basis of the

material already furnished and examined by the assessing authority which is impermissible and beyond the jurisdiction relating to reassessment under Section 147 read with Section 148 of the Act.

5. The objections of the appellant was disposed of by the Respondent vide communication/order dated 26.11.2018 and the appellant was required to co-operate in the finalisation of reassessment by fixing the hearing on 03.12.2018. The respondents had rejected the objections raised by the appellant on the basis of the following:

a) Regarding the objection that the invocation of the extended period under Section 147 of the Act was unwarranted. It was observed that there has been under assessment of income and the said issue was not discussed nor any finding rendered in the assessment order nor any observations made in the order sheet. The respondents proceeded to place reliance on Explanation 1 to Section 147 of the Act, to state that though the billing in excess of revenue was shown in the financial statement, however the method of computation resulted in under assessment. It is thus a question of mistake in the method of computation of income.

b) Insofar as the objection relating to the reassessment being a mere

change of opinion, it was rejected by observing that mere production of books of accounts cannot by itself lead to a presumption that all the documents / Books were perused and examined. To the contrary a duty is cast on the assessee to disclose / show all relevant particulars in the books of accounts and mere production of documents is inadequate. Even though the assessee had filed a copy of Annual Report and Audited Profit and Loss Account and Balance Sheet along with return of income where various information / material were disclosed, however, the respondents observed that there was no full and true disclosure of all material facts necessary for assessment, inasmuch as the requisite material facts were embedded in the material disclosed and such material evidence / fact could be discovered with due diligence and it was thus observed that the provisions of Explanation 1 of Section 147 of the Act stood attracted. In other words, the submission that the reassessment was made on the basis of change of opinion was rejected as the material facts were embedded in the Annual report, Audited Profit and Loss Account, Balance Sheet and Books of Accounts in such manner that extracting material evidence necessary for assessment therefrom would require exercise of due diligence by the Assessing Authority / Respondents and thus the reassessment cannot be stated to be made on the basis of mere change of opinion.

6. Aggrieved by the rejection of the appellant as to the initation of reassessment proceedings on the ground of the same being barred by limitation, both in terms of issuance of notice and furnishing of reasons and also in any view the reasons for reassessment being mere change of opinion which does not warrant exercise of powers of reassessment, the appellant filed a writ petition challenging the same reiterating the above aspects.

7. The learned Single Judge however proceeded to dispose of the writ petitions holding that there were no justifiable reasons to interfere at this stage of the reassessment proceedings and directed the respondents to complete the reassessment after examining the documents produced by the appellant and pass orders on merits.

8. Though it appears that submissions were made before the learned Judge even on the merits apart from the question of jurisdiction, we would steer clear of examining the merits of the claim and confine ourselves to the question whether the assumption of jurisdiction is legal/ valid or otherwise.

9. The appellant is before this Court challenging the order of the learned

Single Judge on the following premise:

a. That the learned Judge failed to appreciate that the notice is contrary to the provisions of Sections 147 and 148 of the Act.

b. That the initiation of reassessment proceedings were *void abinitio* and barred by limitation.

c. That the exercise of powers of reassessment is only on the basis of change of opinion which does not warrant exercise of powers of reassessment.

d. That the proposal if examined on merits would show that the same income would be taxed in more than one year and disturb the method of accounting followed by the appellant, which is in compliance with the Accounting Standards and the Income Computation and Disclosure Standards issued u/s.145 of the Act.

10. Before we proceed to examine the issue raised by the appellant on the erroneous assumption of jurisdiction, just to get a sight of the facts in issue, it may be relevant to state that the appellant was engaged in the business of providing Paint Finishing Systems and related services to automobile manufacturers. That the Respondent noted under Schedule 9 – Current liabilities 'billing in excess of revenue' to the extent of Rs.7.74 Crores, which represents

amounts reduced from billing already made to the customer by the appellant. The income was understood by the Respondent to have accrued the moment bill is raised in terms of mercantile system of accounting which the appellant was following. Any reduction in the bill amount from the receipts credited in the profit and loss account and taking the same to the liability side of the Balance Sheet for the purpose of better disclosure will not affect the income which accrued the moment bill was raised and accounting entries cannot change the accrual of income. The appellant's case was that the method of accounting which they have been following has been accepted in the past by the Department and that the accounting treatment was consistent with the Accounting Standard (AS) 7 issued by the Institute of Chartered Accountants in recognising its income, apart form being consistent with Standards 1 and 3 of the Income Computation and Disclosure Standards issued by the CBDT, though the standards were applicable only for the later assessment year.

11.1. With the above background, we shall now proceed to examine the contentions of the appellant that the initiation of reassessment proceedings/assumption of jurisdiction for reassessment is bad. To appreciate the issue/submission, it may be relevant to refer to Sections 147 and 148 of the Income

Tax Act, 1961, as it stood during the relevant period.

***"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 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:

1[Provided further 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;

(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.

2[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.]"

11.2. A reading of the above provision would show that while it is open to the Assessing Officer to invoke Section 147 of the Act within a period of four years, if the Assessing Officer has reason to believe that any income chargeable to

tax has escaped assessment, subject to the provisions of Sections 148 to 153 of the Act. The proviso to Section 147 of the Act, enables the Assessing Officer to make reassessment even after the expiry of four years from the end of the relevant assessment year, but, within six years from the relevant assessment year, if the income chargeable to tax has escaped assessment under the following circumstances, viz.,

a. Failure of the assessee to make a return under Section 139 of the Act.

b. Does not make a return in response to a notice issued under Sub-Section (1) to Section 142 or Section 148 of the Act.

c. Failure of the assessee to disclose fully and truly all material facts necessary for assessment.

11.3. In the present case, admittedly the extended period of six years is being invoked not under (a) or (b) set out above but only in view of (c) i.e., failure to disclose fully and truly all material facts necessary for assessment. It is submitted by the learned counsel for the appellant that while furnishing the reasons for reassessment vide its communication dated 05.11.2018, there is no finding that there was failure on the part of the appellant to fully and truly disclose all material facts necessary for assessment. It is submitted that in the absence of any finding

on the above jurisdictional fact, the entire proceeding would be void and a nullity. We find there is merit in the above submission inasmuch as the normal period of limitation for exercising the power of reassessment under Section 147 of the Act is four years. The extended period of six years could be invoked only under three circumstances set-out/ mentioned above. Admittedly, the only circumstance which could have enabled the respondents to invoke the extended period of 6 years in the present case is to bring the proceedings under clause (c). To invoke the extended period of six years for reassessment, the reasons furnished for reassessment ought to contain a finding that the appellant herein had failed to disclose fully and truly all material facts necessary for assessment. We say this since it appears to us that the whole idea of furnishing reasons before embarking on a full fledged exercise of reassessment was to ensure that the powers of reassessment are exercised only in circumstances which the statute permit. The above limitation/restriction on the power of reassessment was intended to ensure transparency in the proceeding and to avoid abuse of power. It is trite law that power of reassessment must be exercised with a degree of caution and an element of circumspection and must be strictly in compliance with the procedure and only in circumstances which warrants exercise of that power. In the present case, though admittedly the power to reassess has been exercised by invoking the extended period of limitation in

terms of the proviso to Section 147 of the Act, there is no recording of the existence of the circumstances, viz., failure to disclose fully and truly all material particulars which would confer jurisdiction to proceed / initiate reassessment proceeding beyond four years and within six years. In this regard, it may be relevant to refer to the following judgments to appreciate the relevance and importance of existence of jurisdictional facts and an application of mind as to its existence by the authority concerned before assuming jurisdiction. It is relevant to extract the judgment of the Hon'ble Supreme Court in the case of ***Arun Kumar v. Union of India*** reported in ***(2007) 1 SCC 732,*** which reads as under:

> ***"74.*** *A "jurisdictional fact" is a fact which must exist before a court, tribunal or an authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess."*
>
> ***75.*** *In Halsbury's Laws of England, it has been stated: "Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of, the issue. If, at the*

inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive."

76. *The existence of jurisdictional fact is thus sine qua non or condition precedent for the exercise of power by a court of limited jurisdiction."*

(emphasis supplied)

11.4. The Hon'ble Supreme Court in the case of *Arun Kumar,* thereafter proceeded to rely upon the decision in the case of ***White & Collins vs. Minister of Health*** reported in ***(1939) 2 BK 838*** and observed as under:

"*80. The Court relied upon a decision in White & Collins v.Minister of Health [(1939) 2 KB 838 : 108 LJ KB 768 : (1939) 3 All ER 548 (CA) sub nom Ripon (Highfield) Housing Order, 1938, Re] wherein a question debated was whether the court had jurisdiction to review the finding of administrative authority on a question of fact. The relevant Act enabled the local authority to acquire land compulsorily for housing of working classes. But it was expressly provided that no land could be acquired which at the date of compulsory purchase formed part of park, garden or pleasure ground. An order of compulsory purchase was made which was challenged by the owner contending that the land was a part of park. The Minister directed public inquiry and on the basis of the report submitted, confirmed the order.*

81.Interfering with the finding of the Minister and setting aside the order, the Court of Appeal stated;

"The first and the most important matter to bear in mind is that the jurisdiction to make the order is dependent on a finding of fact; for, unless the land can be held not to be part of a park or not to be required for amenity or convenience, there is no jurisdiction in the borough council to make, or in the Minister to confirm, the order.""

(emphasis supplied)

11.5. While on the question of existence or otherwise of jurisdictional fact which would enable the authority to invoke the extended period of limitation of six years for reassessment, it may also be relevant to note that the question of limitation has been understood to be the one involving jurisdiction even under the Excise Law and in the absence of finding of the existence of the circumstances enabling the invoking of the extended period, it has been held by the Hon'ble Supreme Court that the issuance of Show Cause Notice itself is impermissible. In this regard, it may be relevant to refer the judgment in the case of ***ITW Signode India Ltd v. CCE*** reported in ***(2004) 3 SCC 48,*** wherein, after extracting the judgment of the Supreme Court in the case of *Easland Combines,* the Court proceeded to conclude as under:

"***68.*** *Even in Easland Combines [(2003) 3 SCC 410 : (2003) 152 ELT 39] this Court held: (SCC pp. 424-25, para 31)*

"31. It is settled law that for invoking the extended

period of limitation duty should not have been paid, short-levied or short-paid or erroneously refunded because of either fraud, collusion, wilful misstatement, suppression of facts or contravention of any provision or rules. This Court has held that these ingredients postulate a positive act and, therefore, mere failure to pay duty and/or take out a licence which is not due to any fraud, collusion or wilful misstatement or suppression of fact or contravention of any provision is not sufficient to attract the extended period of limitation."

69. *The question of limitation involves a question of jurisdiction. The finding of fact on the question of jurisdiction would be a jurisdictional fact. Such a jurisdictional question is to be determined having regard to both fact and law involved therein. The Tribunal, in our opinion, committed a manifest error in not determining the said question, particularly, when in the absence of any finding of fact that such short-levy of excise duty related to any positive act on the part of the appellant by way of fraud, collusion, wilful misstatement or suppression of facts, the extended period of limitation could not have been invoked and in that view of the matter no show-cause notice in terms of Rule 10 could have been issued."*

(*emphasis supplied*)

12. From the above decisions, it is clear that existence of "jurisdictional fact" is sine qua non for the exercise of power. If the jurisdictional fact exists, the

authority can proceed with the case and take an appropriate decision in accordance with law. It leaves no room for any doubt that to invoke the extended period, the Assessing Officer ought to show/ demonstrate the existence of any of the three circumstances set out in the proviso to Section 147. In this case, failure on the part of the assessee to fully and truly disclose all material particulars in our view would constitute the "jurisdictional fact" for invoking extended period of limitation and failure to record the existence of the above jurisditional fact while invoking the extended period under the proviso to Section 147 of the Act, would vitiate the entire proceedings. In this regard, it may be relevant to refer the following judgments, wherein it was held that failure to render a finding as to the existence of the above circumstance warranting invocation of the extended period in terms of the proviso to Section 147 of the Act would vitiate the entire proceedings.

a) Duli Chand Singhania vs ACIT (269 ITR 192) (Punjab and Haryana High Court):

...that the reasons recorded for issue of notice showed that the satisfaction recorded therein wes merely about the escapement of income. ***There was not even a whisper of an allegation that such escapement had occurred by reason of failure on the part of the assessee to disclose fully and truly all the material facts necessary for his assessment. Absence of this finding which is a "sine qua non" for assuming jurisdiction under section 147 of the Act in a case falling under the proviso thereto, made the action taken by the Assessing Officer wholly without jurisdiction.*** *The notice was not valid and was liable to be quashed. "*

(Emphasis Supplied)

b) Commissioner of Income Tax vs. Eigi Ultra industries Ltd. (296 ITR 573)*:*

"...the reopening of the assessment under s. 148 beyond the

period of four years at the end of the relevant assessment year ***can be sustained only if it is established that there is a failure on the part of the assessee*** *to disclose fully and truly all material facts. in this case there is no finding that there is failure on the part of the assessee to disclose fully and truly all material facts".*

(Emphasis supplied)

c) ***Commissioner of Income-Tax v. Premier Mills Ltd****., 2007 SCC OnLine Mad 1058 : (2008) 296 ITR 157 at page 160:*

"6*. In case where the assessment is completed under section 143(3) of the Income-tax Act, the reopening of the assessment under section 148 beyond the period of four years at the end of the relevant assessment year can be sustained only if it is established that there is a failure on the part of the assessee to disclose fully and truly all material facts. In this case there is no finding that there is failure on the part of the assessee to disclose fully and truly all material facts. Further, all the material facts are available at the time of making original assessment. The Tribunal has correctly followed the principles enunciated in the Supreme Court judgment reported in CIT v. Foramer France, [2003] 264 ITR 566, as well as this court judgment reported in the case of CIT v. Elgi Finance Ltd., [2006] 286 ITR 674 and came to the correct conclusion."*

(emphasis supplied)

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

"6. *The Tribunal has applied the correct principle of law and held as follows:*

"But whether recourse to section 147 could be made beyond four years is the real question in the present appeal. Circumstances for extending limitation beyond four years do not exist in the facts of the present case. As such on the ground of limitation assumption of jurisdiction under section 147 is bad. In the case of CIT v. Foramer France, [2003] 264 ITR 566 (SC), it was held that if there is no failure to file return or to disclose fully and truly all material facts, issuance of notice beyond the period of four years is barred by limitation. In the case of CIT v. Annamalai Finance Ltd., [2005] 275 ITR 451 (Mad) it was held that section 147 of the Act does not postulate conferment of power upon the Assessing Officer to initiate reassessment proceedings upon a mere change of opinion. It is incumbent on the Assessing Officer to prove that there was a failure to disclose material facts necessary for the assessment for the issuance of notice beyond the period of four years."

(emphasis supplied)

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

*"**8.** The Assessing Officer seeks to reopen the assessment after a period of four years from the end of the assessment year and in view of the judgment of this court in the case of IPCA Laboratories Ltd. v. Gajanand Meena, Deputy CIT (No. 2)[2001] 251 ITR 416, the Assessing Officer cannot act in the matter of reopening of assessment beyond four years, unless he has reason to believe that income has escaped assessment by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. He submitted that a bare reading of the reasons shows that reopening is sought to be effected only on the basis of the case records. He submitted that on two out of three points mentioned in the reasons, the Assessing Officer merely states "that the issue needs to be looked into". That, on those two issues regarding subsidy and provident fund being disallowed, the Assessing Officer does not even say that there is escapement of income from assessment. He therefore submits that the proviso to section 147 is not attracted. That, on the said two points, there is nothing to indicate escapement of income. That, on the said two points, there is nothing to indicate failure on the part of the assessee to disclose fully and truly all material facts. That, on these two points, there is nothing to show as to on what basis the Assessing Officer has formed his belief regarding escapement of income from assessment. It is submitted that on the face of the given reasons, there is a total non-application of mind on the part of the Assessing Officer.*

(emphasis supplied)

13. We have not examined the question of the reassessment proceeding being bad for having been made on mere change of opinion in view of the fact that we have even otherwise found that the initiation of reassessment proceedings is in excess of jurisdiction.

Assessment year 2013-14 – W.A.No.1083 of 2021:

14. We shall now examine the challenge to the assessment year 2013-2014. For the Assessment Year 2013-14, the order disposing of the objections was challenged by way of a writ petition in W.P.No.32801 of 2008 on the premise that

the initiation of reassessment proceeding is without jurisdiction as it is made on the basis of mere change of opinion. It may be relevant to note that the original assessment was made under Section 143(3) of the Act accepting the return filed by the appellant without reference to any issues. This would be evident from a reading of the following paragraph of the order made under Section 143(3) of the Income Tax Act, 1961 :

> *"3. In response to the notice u/s.143(2) and subsequent opportunities, Shri/Smt/Kum.B.GANESH, DEPUTY MANAGER, the Authorised Representative of the assessee company appeared and was heard on various dates. on examination of the details filed by the assessee, the assessment is completed u/s.143(3) of the Income-tax Act, 1961 accepting the income returned."*

15. Thereafter, notice was issued proposing to initiate reassessment and in response to the appellant's request to furnish the reasons, the reasons for reopening were stated to be the following:

16. The 1st respondent furnished the reasons on 05.11.2018.

> *"For AY 2013-14 it is noted that under schedule 9 – current liabilities "billing in excess of revenue" was Rs.58,45,26,000/-. It has been identified that this represents the amount reduced from the billing assessee already made to its clients. Since assessee follows mercantile system of accounting, income accrues the moment bill is raised by the*

assessee. When the bill raised by the assessee is served on the client, liability to pay arises to the client. Thus income accrues in the legal perspective. If the assessee is reducing a part of the bill amount from the receipts credited to the P&L A/c and takes such sum to the liability side of the balance sheet for the purpose of better disclosure, it will not affect the income already accrued to the assessee as the accounting entries cannot change the accrual of income which happened already".

17. In response to the same, the appellant had submitted its objection to the initiation of reassessment on the premise that the reasons for reopening is based on the details already submitted during assessment proceedings. That there are no new materials on record to initiate reassessment proceedings and thus, the reassessment proceedings is nothing but is one made on the basis of mere change of opinion which is impermissible. It was further submitted that the appellant had maintained and produced its books of accounts as per Schedule VI of the Companies Act and had explained the method of recognition of revenue for the billing done in excess in terms of Financial Statements. That the accounting was in compliance and in consonance with the Accounting Standard AS-7 which governs construction contract. It was further submitted that the reasons for reopening would reveal that the reasons have been sourced from the Financial Statements submitted during the course of assessment proceedings and the financial statement along with the notice and Schedule had been submitted to the Assessing Officer

vide communication dated 06.01.2016, it was thus submitted that the reopening being on the basis of change of opinion, the same is bad for want of jurisdiction and contrary to the law laid down by the Hon'ble Supreme Court and this Court.

18. The objections were disposed of vide order dated 26.11.2018, whereby, the objections filed by the appellant against the reassessment was rejected on the premise that in the assessment under Section 143(3) of the Act, there were no discussions with reference to the issues for initiation of reassessment namely billing in excess of revenue during assessment year 2013-14. In the absence of any discussion either in the assessment order or in the order sheet, it cannot be assumed that the Assessing Authority while framing the assessment under Section 143(3) of the Act had formed an opinion in relation to the above aspect/ claim for the appellant to take the plea/defence of change of opinion.

19. Secondly, it was submitted that mere production of books of accounts may not by itself lead to the presumption that all books furnished / produced were perused and examined by the Appellate Authority to the contrary it was stated that there was a duty cast on the assessee to show relevant particulars in the books of accounts. It was thus submitted that the plea of change of opinion may not be available to the appellant.

20. While there can be no doubt that change of opinion would not confer

the authority to exercise powers of re-assessment and also the fact that reassessment proceedings will be invalid in case an issue or query is raised and answered by assessee in the original assessment proceeding and the assessing officer does not make any addition in the assessment order despite the fact that the assessment order does not contain reference/discussion with regard to the above aspect. There is merit in the submission of the learned counsel for the Revenue inasmuch as for challenging the initiation of reassessment or assumption of jurisdiction of reassessment it may be necessary to show / demonstrate that while framing the original assessment the Assessing Officer had applied its mind and formed an opinion and the reassessment was with reference to the very same issue and on the basis of mere change of opinion, without any new material which in the facts of the present case can be arrived at only on the basis of deep/close scrutiny of the documents and books of accounts.

21. It is trite law that reassessment cannot be on the basis of mere change of opinion. However, the above aspect may require investigation into facts namely as to what were the documents furnished before the Assessing Officer or whether details relevant for assessment and embedded in the books of accounts or other evidence were brought to the notice of the Assessing Officer while framing the original assessment (or) whether an opinion was formed by the Assessing

Officer while framing the assessment on the issues forming the subject matter of reassessment, for the reassessment to constitute one being made on change of opinion and thus impermissible. There is no room for any doubt that reassessment under Section 147 of the Act, cannot be made on the basis of mere change of opinion but, whether there is change of opinion or otherwise could either be apparent on the face of the record or may require an investigation of facts to arrive at the said conclusion. The present case falls under the latter category and to decide the above issue namely whether the assessment is on the basis of change of opinion, a close scrutiny of documents and books of accounts is necessary. Therefore, it is only appropriate for the appellant to participate in the proceedings before the statutory authorities. In view of the same, while affirming the order of the learned Single Judge, it is open to the appellant to raise the question of the reassessment being bad for change of opinion before the appropriate statutory authorities.

22. In fine, the order of the learned Single Judge with regard to the assessment year 2011-12 is set aside in view of the fact that the initiation of reassessment proceeding invoking the extended period of six years itself is bad in the absence of a finding as to the existence of the jurisdictional fact viz., that the

escapement had occurred by reason of failure on the part of the assessee to disclose fully and truly all the material facts necessary.

23. For the assessment year 2013-14, we are not inclined to interfere with the order of the learned Single Judge relegating the matter to the assessing authority. It is open to the appellant to make his submission before the appropriate authority on all aspects.

24. In the result, the Writ Appeal in W.A.No.1081 of 2021 is allowed and the Writ Appeal in W.A.No.1083 of 2021 is disposed of on the above terms. No costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D., J.] [M.S.Q., J.]
29.08.2022

Index : Yes/No
Speaking/Non-Speaking Order
ssn/mka/Lm
To:
1.Assistant Commissioner of Income Tax (OSD)
Corporate Range 1,121, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.

2.Principal Commissioner of Income Tax 1,
121, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.

3.Additional Commissioner of Income Tax 1,
Corporate Range 1,121, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.

R. MAHADEVAN, J.
and
MOHAMMED SHAFFIQ, J.

ssn/mka/Lm

W.A. Nos.1081 and 1083 of 2021
and C.M.P. Nos.6837 and 6841 of 2021

29.08.2022