IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2025

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THE HON'BLE MR.K.R.SHRIRAM, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

TCA No.275 of 2016

P.Sundararajan : Appellant

versus

The Deputy Commissioner of Income Tax
Company Circle, Tiruppur : Respondent

Prayer: Appeal filed against the order of the Income Tax Appellate Tribunal, Madras "D" Bench, Chennai, dated 25.06.2015 in I.T.A.1666/Mds/2013.

For Appellant : Mr.I.Dinesh
for M/s.Philip George

For Respondent : Mr.V.Mahalingam

JUDGMENT

(Delivered by the Hon'ble Chief Justice)

Assessee, who is the appellant herein, is aggrieved with the order pronounced on 25.06.2015, by the Income Tax Appellate Tribunal (ITAT) with regard to AY 2006-07.

2. Assessee is an individual, Director in a company by name S.P.Apparels Ltd. Assessee had filed return of income on 13.03.2007 for AY 2006-07, by which assessee admitted total income of Rs.1,02,16,651/-. The case was selected for scrutiny and an assessment order dated 22.04.2008 under Section 143(3) of the Income Tax Act, 1961 ('the Act') came to be passed, wherein an addition of Rs.2,46,065/- under the head 'other expenses' was made.

3. During FY 2005-06, pertaining to AY 2006-07, assessee had paid interest on Rs.56,61,461/-. Assessee had also received interest income up to 30.11.2006, upon conversion of the capital account of assessee after allotment of share had become unsecured loan. For this unsecured loan, no interest was received from the company. Assessee was found to have debited interest expenses to the tune of Rs.26,52,520/- in the profit and loss account. All these were considered by the Assessing Officer and assessment order dated 22.04.2008, as noted above, came to be passed.

4. Assessee thereafter received notice dated 25.03.2010 under Section 148 of the Act, to which reply dated 22.04.2010 was filed.

Thereafter, assessee's representative appeared before the Assessing Officer and made oral submissions. Assessment order dated 23.12.2010 under Section 143(3) read with Section 147 of the Act came to be passed, by which assessee was called upon to pay additional tax plus interest. This was challenged by the assessee by way of an appeal before the CIT (A). The appeal came to be dismissed vide an order dated 25.06.2013. Aggrieved, assessee preferred an appeal before the Income Tax Appellate Tribunal, which came to be dismissed vide an order pronounced on 25.06.2015. It is this order which is in challenge.

5. On 05.04.2016, the following substantial questions of law were framed:

1. *Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in upholding the jurisdiction of the Assessing Officer in reopening the assessment under Section 147 of the Income Tax Act, 1961?*

2. *Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that there was no opinion formed by the Assessing Officer while completing the original assessment under Section 143(3) of the Income Tax Act, 1961 and there was no change of opinion in reopening the assessment? And*

3. *Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in upholding the dis-allowance of interest expenditure under Section 36(1)(iii) of the Income Tax Act, 1961?"*

6. If Question Nos.1 and 2 are answered in favour of the assessee, we need not go into the third question.

7. The reasons to believe has been reproduced by the Assistant Commissioner of Income Tax in a letter dated 29.12.2014 addressed to assessee and it reads as under:

> *"The assessee had shown sundry debtors of Rs.34.70 crores. He admitted interest received from M/s.S.P.Apparels of Rs.1,61,93,186/- vide his letter dated nil filed in this office on 22.04.2008, the assessee explained that he was deriving income as interest on capital from M/s.S.P.Apparels and interest from bank only. Further, vide letter dated 22.04.2008 the assessee explained that his sundry debtors include Rs.24,52,61,020/- from M/s.S.P.Apparels Ltd which is a closely held company.*
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> *In the balance sheet furnished as on 31.03.2006, the assessee has not mentioned anything about his assets or liabilities with the firm in which he is a partner. As already mentioned sundry debtors mainly consist of the investments with M/s.S.P.Apparels Ltd.*
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> *Assessee's admitted income includes only interest from bank and M/s.S.P.Apparels apart from the share of profit from the said firm. He has claimed interest paid of Rs.56,61,461/-. There is no detail available on record to indicate that the loans borrowed were utilized to make investment with M/s.S.P.Apparels (firm). Only the contrary, all the assets shown are not related to the purpose of any business activity. It is true that the assessee has made investments to the tune of Rs.12 crores in shares. But, he has not admitted any dividend income from such shares. Hence, the claim of interest paid is not related to investments in any business activity or in any income generating assets or activity. Thus, in the return furnished and as per the enclosures, the assessee has claimed an item of expenditure which is not allowable under law and thus the assessee's income has been made the subject of*

excessive relief under the Act as provided in sub-clause © of explanation 2 to Sec.147. Hence, I have reason to believe that income chargeable to tax has escaped assessment."

8. The assessee's stand, apart from on merits, is that the reopening itself was not permissible. Shri Dinesh submitted that even though the reopening was within four years from the end of the relevant assessment year, the reopening is purely based on change of opinion and all materials available for assessment had already been available with the Assessing Officer before he passed the original assessment order.

9. Relying on ***CIT vs. Kelvinator of India Ltd***[1], Shri Dinesh submitted that the reasons must have a live link with the formation of the belief. Even though the Assessing Officer has power to reopen, there has to be tangible material to come to the conclusion that there is escapement of income from assessment. Counsel submitted that there has to be some new ground, otherwise, it would vest arbitrary powers in the Assessing Officer, who, in the garb of reopening, will end up reviewing the assessment order.

1 ***[2010] 320 ITR 561***

10. Counsel also relied on a judgment of the Apex Court in ***Calcutta Discount Co.Ltd vs. ITO***[2], to submit that though there can be no doubt that the duty of disclosing all the primary facts relevant to the decision of the question before the assessing authority lies on the assessee, there is no duty on the assessee to disclose further facts, which on due diligence, the Income Tax Officer might have discovered. He further submitted that the duty, however, does not extend beyond 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 the Assessing Officer to decide what inferences of facts can reasonably be drawn and what legal inferences have ultimately to be drawn.

11. Counsel submitted that during the course of original assessment proceedings on the same issue which formed the basis for reason to believe, queries were raised and assessee, vide a letter dated 22.04.2008, provided further particulars. Counsel submitted that the details of the debtors, as also expenses incurred towards interest income were given in the said letter and it clearly says that interest paid was Rs.56,61,461/- apart from

2 ***[1961] 41 ITR 191 (SC)***

other expenses. These details also find a mention in the income and expenditure account filed along with the returns.

12. Shri Dinesh submitted that after considering these further particulars, the assessment order came to be passed accepting the returns, except adding a sum of Rs.2,46,065/- claimed as other expenses other than interest payment which was disallowed.

13. Counsel also submitted that once a query is raised during the assessment proceedings, and the assessee has replied to it, it follows that the query raised was a subject of consideration of the Assessing Officer, while completing the assessment. It is not necessary that an assessment order should contain reference and/or discussion to disclose its satisfaction in respect of the query raised.

14. Shri Mahalingam's submissions were more on merits. Of course, he also submitted that the claim of interest paid is not reflected as investment in any business activities or in any income generating expenses and hence, there was excessive relief claimed by the assessee in the form of

interest payments. The original assessment order does not reflect any application of mind by the Assessing Officer to the claim of interest payment. Mere production before the Assessing Officer of account books or other evidence from which material facts could with due diligence has been discovered by the Assessing Officer, will not necessarily amount to disclosure within the meaning of the Section 147 of the Act.

15. Shri Mahalingam also submitted that had the assessee disclosed the interest payment bifurcation to the Assessing Officer at the time of the original assessment, then it could have been said that the assessee has done his duty and it is for the Assessing Officer to draw any inference on the facts placed before him. But the assessee has not done so and therefore, there was a failure on the part of the assessee to disclose the fact that the assessee made investment in firm/companies and had not derived any benefit though assessee incurred heavy interest expenditure and it was this failure on the part of the assessee that was the reason to reopen the original assessment.

16. In our view, the duty of an assessee does not extend beyond 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 Officer what inferences, whether of facts or law, should be drawn. The Apex Court in *Calcutta Discount Co. Ltd (supra)*, observed, *"Indeed, when it is remembered that people often differ as regards 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 have drawn. The explanation to Section 147 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 has not the effect of enlarging 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".

17. Here is a case, where, in the income and expenditure account filed along with the return of income, assessee had mentioned about the interest paid of Rs.56,61,461/-. During the course of assessment proceedings, query was raised and assessee vide a letter dated 22.04.2008, again gave the particulars. The Assessing Officer did not consider it necessary to ask for further details like indication that the loans borrowed were utilised to make investments in the firm. As held in *Calcutta Discount Ltd (supra)*, which was followed by a Division Bench of the Bombay High Court in ***Ananta Landmark (P) Ltd vs. Deputy Commissioner of Income Tax, Central Circle 5(3), Mumbai***[3], while the duty of the assessee is to disclose fully and truly all primary relevant facts, it does not extend beyond that.

3 ***[2021] (131) taxmann.com 52 (Bombay)***

18. Paragraph 13 of *Ananta Landmark (P) Ltd (supra)* reads as under:

> "13. As regards ground nos.(iv) to (vi) that the disclosure of material facts with respect to the setting off of the interest expenses under Section 57 of the Act might be full but it cannot be considered as true and hence, it is failure on the part of the assessee, mere production of books of accounts or other documents are not enough in view of explanation 1 to Section 147 etc., these can be dealt with together. The Apex Court in Calcutta Discount Co. Ltd. vs. Income Tax Officer [1961] 41 ITR 191, relied upon by Mr. Pardiwalla, has held that there can be no doubt that 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 some account books or other evidence has been produced, there is no duty on the assessee to disclose further facts, which on due diligence, the Income Tax Officer might have discovered, the Legislature has put in the Explanation to Section 34 (1). The duty, however, does not extend beyond the full and truthful disclosure of all c 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 regards 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 have 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 has not the effect of enlarging 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.

The relevant portion of Calcutta Discount Co. Ltd. (Supra) reads as under :

> Before we proceed to consider the materials on record to see whether the appellant has succeeded ,in showing that the Income-tax Officer could have no reason, on the materials before him, to believe that there had been any omission to disclose material facts, as mentioned in the section, it is necessary to examine the precise scope of disclosure which the section demands. The words used are " omission or failure to disclose fully and truly all material facts necessary for his assessment for that year ". It postulates a duty on every assessee to disclose fully and truly all material facts necessary for his assessment. What facts are material, and necessary for assessment will differ from case to case. In every assessment proceeding, the assessing authority will, for the purpose of computing or determining the proper tax due from an assessee, require to know all the facts which help him in coming to the correct conclusion. From the primary facts in his Possession, whether on disclosure by the assessee, or discovered by him on the basis of the facts disclosed, or otherwise-the assessing authority has to draw inferences as regards certain other facts; and ultimately, from the primary facts and the further facts inferred from them, the authority has to draw the proper legal inferences, and ascertain on a correct interpretation of the taxing enactment, the proper tax leviable. Thus, when a question arises whether certain income received by an assessee is capital receipt, or revenue receipt, the assessing authority has to find out what primary facts have been proved, what other facts can be inferred from them, and taking all these together, to decide what the legal inference should be.
>
> There can be no doubt that 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 some account books or other evidence has been produced, there is no duty on the assessee to disclose further facts, which on due diligence, the Income- tax Officer might

have discovered, the Legislature has put in the Explanation, which has been set out above., In view of the Explanation, it will not be open to the assessee to say, for example-" I have produced the account books and the documents: You, the Assessing Officer examine them, and find out the facts necessary for your purpose: My duty is done with disclosing these account-books and the documents". His omission to bring to the assessing authority's attention these particular items in the account books, or the particular portions of the documents, which are relevant, amount to " omission to disclose fully and truly all material facts necessary for his assessment." Nor will he be able to contend successfully that by disclosing certain evidence, he should be deemed to have disclosed other evidence, which might have been discovered by the assessing authority if he had pursued investigation on the basis of what has been disclosed. The Explanation to the section, gives a quietus to all such contentions; and the position remains that so far as primary facts are concerned, it is the assessee's duty to disclose all of them-including particular entries in account books, particular portions of documents and documents, and other evidence, which could have been discovered by the assessing authority, from the documents and other evidence disclosed.

Does the duty however extend beyond the full and truthful disclosure of all primary facts ? In our opinion, the answer to this question must be in the negative. 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 regards 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 have 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* has not the effect of enlarging the section, by casting a duty on the assessee to disclose " inferences "-to draw the proper inferences being the duty imposed on the Income-fax Officer.

We have therefore come to the Conclusion that while the duty of the assessee is to disclose fully and truly all primary relevant facts, it does not extend beyond this.

The position, therefore, is that if there were in fact some reasonable grounds for thinking that there had been any non- disclosure as regards any primary fact, which could have a material bearing on the question of "under assessments that would be sufficient to give jurisdiction to the Income-tax Officer to issue the notice under Section 34. Whether these grounds were adequate or not for arriving at the conclusion that there was a non disclosure of material facts would not be open for the court's investigation. In other words, all that is necessary to give this special jurisdiction is that the Income- tax officer had when he assumed jurisdiction some prima facie grounds for thinking that there had been some non- disclosure of material facts.

.....

Both the conditions, (i) the Income-tax Officer having reason to believe that there has been under assessment and (ii) his having reason to believe that such under assessment has resulted from nondisclosure of material facts, must co-exist before the Income-tax Officer has jurisdiction to start proceedings after the

> expiry of 4 years. The argument that the Court ought not to investigate the existence of one of these conditions, viz., that the Income-tax Officer has reason to believe that under assessment has resulted from non-disclosure of material facts, cannot therefore be accepted."
>
> (emphasis supplied)

19. Therefore, it cannot be stated that the assessee failed in its primary duty of disclosing relevant facts.

20. Moreover, as held by the Bombay High Court in ***Aroni Commercials Ltd. vs. Deputy Commissioner of Income Tax 2(1)***[4], once a query is raised during the assessment proceedings and the assessee has replied to it, it follows that the query raised was a subject of consideration of the Assessing Officer while completing the assessment. It is not necessary that an assessment order should contain reference and/or discussion to disclose its satisfaction in respect of the query raised. As held in *Aroni Commercials (supra), "the manner in which an assessment order is to be drafted is the sole domain of the Assessing Officer and it is not open to an assessee to insist that the assessment order must record all the questions raised and the satisfaction in respect thereof of the Assessing Officer. The only requirement is that the Assessing Officer ought to have*

4 ***[2014] 44 taxmann.com 304 (Bombay)***

considered the objection now raised in the grounds for issuing notice under Section 148 of the Act, during the original assessment proceedings".

Paragraph 14 of the order reads as under:

> *"14) We find that during the assessment proceedings the petitioner had by a letter dated 9 July 2010 pointed out that they were engaged in the business of financing trading and investment in shares and securities. Further, by a letter dated 8 September 2010 during the course of assessment proceedings on a specific query made by the Assessing Officer, the petitioner has disclosed in detail as to why its profit on sale of investments should not be taxed as business profits but charged to tax under the head capital gain. In support of its contention the petitioner had also relied upon CBDT Circular No.4/2007 dated 15 June 2007. (The reasons for reopening furnished by the Assessing Officer also places reliance upon CBDT Circular dated 15 June 2007). It would therefore, be noticed that the very ground on which the notice dated 28 March 2013 seeks to reopen the assessment for assessment year 2008-09 was considered by the Assessing Officer while originally passing assessment order dated 12 October 2010. This by itself demonstrates the fact that notice dated 28 March 2013 under Section 148 of the Act seeking to reopen assessment for A.Y. 2008-09 is based on mere change of opinion. However, according to Mr. Chhotaray, learned Counsel for the revenue the aforesaid issue now raised has not been considered earlier as the same is not referred to in the assessment order dated 12 October 2010 passed for A.Y. 2008-09. We are of the view that once a query is raised during the assessment proceedings and the assessee has replied to it, it follows that the query raised was a subject of consideration of the Assessing Officer while completing the assessment. It is not necessary that an assessment order should contain reference and/or discussion to disclose its satisfaction in respect of the query raised. If an Assessing Officer has to record the consideration bestowed by him on all issues raised by him during the assessment proceeding even where he is satisfied then it would be impossible for the Assessing Officer to complete all the assessments which are required to be scrutinized by him under Section 143(3) of the Act. Moreover, one must not forget that the manner in which an assessment order is to be drafted is the sole domain of the Assessing Officer and it is not open to an assessee to insist that the assessment order must record all the questions raised and the satisfaction in respect thereof of*

the Assessing Officer. The only requirement is that the Assessing Officer ought to have considered the objection now raised in the grounds for issuing notice under Section 148 of the Act, during the original assessment proceedings. There can be no doubt in the present facts as evidenced by a letter dated 8 September 2012 the very issue of taxability of sale of shares under the head capital gain or the head profits and gains from business was a subject matter of consideration by the Assessing Officer during the original assessment proceedings leading to an order dated 12 October 2010. It would therefore, follow that the reopening of the assessment by impugned notice dated 28 March 2013 is merely on the basis of change of opinion of the Assessing Officer from that held earlier during the course of assessment proceeding leading to the order dated 12 October 2010. This change of opinion does not constitute justification and/or reasons to believe that income chargeable to tax has escaped assessment."

21. The fact that during the original assessment proceedings, assessee had addressed a communication dated 22.04.2008 on the same grounds, based on which this notice under Section 148 of the Act has been issued, itself confirms the fact that this issue was a subject of consideration of the Assessing Officer while completing the original assessment.

22. Having considered the reasons, we would opine that the reopening of the assessment was merely on the basis of change of opinion of the Assessing Officer from that, as held earlier during the course of assessment proceedings, leading to the assessment order dated 22.04.2008. This change of opinion does not constitute justification and/or

reasons to believe that income chargeable to tax has escaped assessment.

23. In the circumstances, in our view, Question Nos.1 and 2 have to be answered in favour of the assessee and it is so answered. In view of our answer to Question Nos.1 and 2, in our opinion, Question No.3 need not be answered.

24. Appeal stands disposed of. There shall be no order as to costs.

(K.R.SHRIRAM, CJ.) (SUNDER MOHAN, J.)
10.07.2025

Index : Yes/No
Neutral Citation : Yes/No
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To

1.The Deputy Commissioner of Income Tax
Company Circle, Tiruppur

2.The Income Tax Appellate Tribunal,
Madras “D” Bench, Chennai

THE HON'BLE CHIEF JUSTICE
AND
SUNDER MOHAN, J.

(tar)

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