

**AFR**

**Court No.37**

**Income Tax Appeal No.413 of 2010**

The Commissioner of Income Tax & Anr..... Petitioner

Vs.

M/s Jubilant Organosys Ltd. .... Respondent

**Hon'ble Tarun Agarwala, J.**

**Hon'ble Surya Prakash Keserwani, J.**

**(Per: Tarun Agarwala, J.)**

We have heard Sri Shubham Agrawal, the learned counsel for the appellant and Sri R.S.Agrawal, the learned counsel with Sri Rupesh Jain, the learned counsel for the assessee.

The original assessment order was passed under Section 143(3) of the Income Tax Act (hereinafter referred to as the Act). Subsequently, proceedings under Section 148 of the Act were initiated and, after considering the matter, an assessment order was

passed. The assessee, being aggrieved, filed an appeal, which was partly allowed. Thereafter, the assessee as well as the revenue filed an appeal before the Tribunal. The appeal of the assessee was allowed and the appeal of the revenue was dismissed. The Tribunal held that the jurisdictional condition for reopening the assessment beyond four years had not been fulfilled and that the assessment could not be reopened merely on change of the opinion without pointing out any failure on the part of the assessee to disclose fully and truly all material facts for the assessment. The revenue, being aggrieved by the order of the Tribunal, has filed the present appeal under Section 260-A of the Act.

Sri Shubham Agrawal, the learned counsel for the appellant contended that a question of law arises, namely, that the Tribunal had committed a manifest error in holding that the foundational requirement of Section 147 of the Act was lacking .

Reasons for initiating the proceedings under Section 148 of the Act as depicted in the assessment order is extracted hereunder:

*“(i) The dividend income was assessed at Rs. 1,55,39,795/- under the head “Income from other sources” and deduction of the same amount*

was allowed u/s 80M. On a perusal of balance sheet for the period ending 31.03.1994, it is seen that there were secured loans as per details given here as under:

(a) Non-convertible debentures Rs.2391.64 lakhs

(b) Term loan Rs. 988.94 lakhs

Total Rs. 3380.58 lakhs

The assessee had also invested Rs. 793.11 lakhs in purchase of shares of UTI, Housing Development Finance Corpn. And India Glycols Ltd. as on 31.3.94. From the balance sheet, it is apparent that the assessee had made investments in these shares out of funds available after raising loans on non convertible debenture and term loan only. Investment in shares could not be made out of these two loans as one loan (cash credit) is meant for business only and unsecured loans could not be invested for long term period investments i.e. shares. It is, thus, apparent that the assessee had made investment in purchase of shares out of loan on debentures and term loans.

(ii) The assessee had paid interest on these two loans as under:-

On debentures Rs. 351.26 lakhs

On Term loan Rs. 39.74 lakhs  
Rs. 390.00 lakhs

*Thus, the part of this interest pertains to the investment in shares on which the assessee earned dividend income and disclosed in the returned income and assessed. The proportionate amount of interest is deductible while computing the dividend income as laid down u/s 52(i) & (iii) of I.T.Act 1961 as under:-*

$$\frac{3.90 \times 7.93}{33.81} \text{ Crores} = 0.91 \text{ crores}$$

*(iii) In view of the above facts, the dividend is assessable at Rs. 64 lakhs (1.55 -0.91 crores) and deduction u/s 80M was allowable at Rs. 63 lakhs (1.54-0.91 crores), which was allowed at Rs. 1.54 crores. The income under the head “profit & gains” computed at Rs. 6.59,18,414/- as per order dated 28.1.98 is to be increased by Rs. 91 lakh and due to this, the assessee will be entitled for extra deduction u/s 80HH and 80I & 80 IA at Rs.84,92,766/-. The deductions u/s 80M has been allowed in excess by Rs. 91 lakhs and assessee is entitled for further deduction of Rs. 53 lakhs, which resulted into under assessment by Rs. 36 lakh (91-55).”*

The scope and effect of Section 147 of the Act as

substituted with effect from 01.04.1989 and also Section 148 of the Act are substantially different from the provisions as they stood prior to such substitution. Clause (a) and (b) of Section 147 of the Act laid down the circumstances under which income escaped assessment could be assessed or reassessed. Section 147 contemplated two conditions which were required to be satisfied, namely, that the Assessing Officer must have reasons to believe that income, profit or gain chargeable to tax have escaped assessment, and secondly, he has reasons to believe that such escapement had occurred by reason of omission or failure on the part of the assessee to disclose fully or truly all material facts necessary for the assessment. Both these conditions are conditions precedent and are required to be satisfied before the Assessing Officer could assume jurisdiction under Section 148 of the Act read with Section 147 of the Act. After 01.04.1989 only the first condition is required, namely, "reasons to believe", but both the conditions are required to be fulfilled in the event the case falls within the ambit of the proviso to Section 148 of the Act. In the instant case, the case is covered by the proviso.

The "reasons to believe" as recorded by the Assessing Officer does not aver that the assessee had

failed to fully and truly disclose all material facts necessary for the assessment, which is a condition precedent for reopening the assessment after four years. The reason to believe only indicates that the reasons for reopening is based on the assessment records and the balance sheet. In our view, the foundational requirement for reopening an assessment beyond four years had not been fulfilled, as per the proviso to Section 147, which is a condition precedent. Consequently, we are of the opinion that the notice issued for reopening the assessment was contrary to law since it did not meet with the foundational requirement of the proviso to Section 147. Similar view was held by this Court in **ACI Oils P.Ltd. Vs. DCIT and Anr., 370 ITR 561 (All.)**, which is fully applicable in the present case.

The learned counsel for the appellant has placed reliance upon the decisions in **Ema India Ltd. Vs. Assistant Commissioner of Income Tax, (2009) 226 CTR (All) 659** and in **Nickunj Eximp Enterprises (P) Ltd. Vs. Assistant Commissioner of Income Tax & Anr.,(2014) 270 CTR (Bom) 494**, which are not applicable.

In the light of the aforesaid, no substantial question of law arises for consideration. The appeal is

dismissed.

Dt: 17.09.2015/-MAA/-

**(Surya Prakash Kesarwani,J.) (Tarun Agarwala,J.)**