IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

**WRIT PETITION NO. 3551 OF 2019**

Oracle Financial Services Software Limited
Oracle Park, Off Western Express
Highway, Goregaon (E),
Mumbai-400 063. ....Petitioner

Vs.

1. Deputy Commissioner of India
Tax Circle 13(1) (1) having his
office at Room No.218, Aayakar
Bhavan, M.K. Road, Mumbai-
400 020.

2. Assistant Commissioner of Income
Tax, Circle 13(1)(1) having his
office at Room No. 218, Aayakar
Bhavan, M.K. Road, Mumbai-
400 020.

3. Additional Commissioner of Income
Tax, Range 13(1), Mumbai having
his office at Room No.221, Aayakar
Bhavan, M.K. Road, Mumbai
400 020.

4. Union of India, through the
Secretary, Department of Revenue,
Ministry of Finance, Government of
India, New Delhi-110001 ...Respondents

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Shri G.C. Srivastava a/w. Shri Sukhsagar Syal i/b Shri Sameer Dalal for petitioner.

Shri Akhileshwar Sharma for respondent Nos.1 and 2.

**CORAM : K.R. SHRIRAM &**
**N. J. JAMADAR, JJ.**
**DATE : 10th JANUARY, 2022**
**(THROUGH VIDEO CONFERENCE)**

JUDGMENT (PER N.J. JAMADAR, J.) :

1. Rule. Rule made returnable forthwith. With the consent of learned counsel for the parties, heard finally.

2. By virtue of this petition under Article 226 of the Constitution of India, the petitioner assails the notice dated 26th February 2019, under section 148 of the Income Tax Act, 1961 ('the Act, 1961'), issued by the respondent No.2-Assistant Commissioner of Income Tax, Circle 13(1)(1) seeking to reopen the assessment for the assessment year 2014-15, and the order dated 18th October 2019 passed by respondent No.2 (the Assessing Officer) rejecting the petitioner's objection to reopening of assessment for assessment year 2014-15.

3. The petition arises in the backdrop of the following facts :

(a) The petitioner-company is engaged in the business of providing comprehensive information technology solutions to banks and other financial institutions globally. The petitioner develops and markets software products and operates primarily in two business segments : (i) Products and (ii) Services. Under the product business, the petitioner

markets its package application software and derives revenue from license fee, customization fee and annual maintenance charges. Under the Service business, the petitioner provides services to customers which include IT solutions and consulting and professional services according to customer's requirements and standards.

(b) For the said business, the petitioner has subsidiaries in different countries. The installation and implementation of the product at the location of the overseas customers requires the presence and supervision of technical personnel. These personnel are temporarily seconded by petitioner on employment basis to the overseas subsidiaries to perform such functions. During the period of secondment, the personnel are kept on employment and payroll of the overseas subsidiaries. Their salary and related expenses are subsequently reimbursed by the petitioner to the said subsidiaries, on a cost to cost basis.

(c) For the assessment year 2014-2015, the petitioner filed its return of income on 28th November 2014. The petitioner's

case was selected for scrutiny assessment under the Computer Aided Scrutiny Selection (CASS) and one of the stated parameters for selection of the petitioner's case was, "large outward remittances made to non-residents".

(d) During the course of assessment, the petitioner filed, *inter-alia*, copies of its Audited Financial Statements, Tax Audit report in Form 3CD under section 44AB of the Act, 1961 and Accountant's report in Form 3CFB under section 92E of the Act, 1961.

(e) The Assessing Officer, in a notice dated 14th November 2017, specifically stated that large outward remittances to foreign companies was the prime reason for scrutiny assessment and called upon the petitioner to furnish necessary details and explanation. It is the case of the petitioner that the petitioner explained that the foreign remittances were, *inter-alia,* towards reimbursement of expenses incurred by its overseas subsidiaries on its behalf. Necessary details including particulars in Form No.15CA and Form 15CB were furnished. Copies of several invoices

and debit notes raised by the overseas subsidiaries on the petitioner for reimbursing the employee cost were also filed alongwith letter dated 11th December 2017.

(f) During the course of assessment, the Assessing Officer made a reference to Additional Commissioner of Income Tax, Transfer Pricing Officer, 3(1) ('TPO') under section 92CA(I) of the Act, 1961. Thereupon the petitioner filed a copy of transfer pricing study report. The TPO, in turn, called upon the petitioner to submit details in respect of reimbursement of expenses to the overseas subsidiaries. The petitioner again furnished the requisite information along with entity-wise break-up and details of employee cost and other costs reimbursed by the petitioner, vide letter dated 21st July 2017. The TPO passed an order under section 91CA(3) of the Act, 1961 on 30th October 2017.

(g) Eventually, final assessment order was passed on 6th February 2018.

(h) By the impugned notice dated 26th February 2019, the Assessing Officer sought to reopen the assessment on the

ground that he had reason to believe that the petitioner's income chargeable to tax for the assessment year 2014-15 has escaped assessment. Thereupon, the petitioner solicited the reasons for the proposed reopening of the assessment. Vide communication dated 18th February 2019, the Assessing Officer provided the petitioner with a copy of the reasons for the proposed reopening of the assessment. It was, *inter-alia,* recorded that from note 30, (expenditure in foreign currency) of the financial statement for the assessment year 2014-15, the petitioner had debited an amount of Rs.728.793 Crore as 'Employee Cost'. However, in Assessment Year 2015-16, under same head of 'Employee Cost', a sum of Rs.626.416 Crore had been disallowed under section 40(a)(i) of the Act, 1961, for non-deduction of TDS under section 195 of the Act, 1961. On parity of reasoning, for assessment year 2014-15, a sum of Rs.658.318 (which constituted 90.33% of total employee cost of Rs.728.793 Crore) was liable to be disallowed on pro-rata basis in Assessment Year 2014-15, being reimbursement of employee salary and related expenses. It was further noted that the said aspect was neither discussed nor considered and

examined during the course of assessment for the Assessment Year 2014-15. Hence, it was necessary to re-open the assessment.

(i) The petitioner filed the objections against the reasons for reopening recorded by Assessing Officer. By an order dated 18th October 2019, the Assessing Officer disposed of all the objections raised against the reopening of the assessment by ascribing reasons. It was concluded that the objections raised by the petitioner were not tenable.

4. Being aggrieved by the notice under section 148 for reopening of the assessment and the order disposing of the objections against reopening, the petitioner has invoked writ jurisdiction of this Court.

5. The substance of the challenge is that the assessment is proposed to be reopened on a mere change of opinion. All the relevant facts, documents and materials were present before and considered by the Assessing Officer, while passing the assessment order for the assessment year 2014-15. There is no tangible material which would warrant reopening of the assessment. The

Assessing Officer had no reason to believe that the income chargeable to tax escaped assessment in assessment year 2014-15. Thus, the jurisdictional condition for reopening the assessment is singularly absent.

6. Though an order was passed on 18th December 2019 granting time to the respondents to file an affidavit in reply, if found necessary, no affidavit in reply has been filed.

7. We have heard Shri G.C. Shrivastava, the learned counsel for the petitioner and Shri Akhileshwar Sharma, the learned counsel for respondent Nos.1 and 2 at length. With the assistance of the learned counsel, we have perused the material on record including the assessment order for assessment year 2014-15, notice under section 148, reasons recorded by the Assessing Officer, objections thereto, and the order disposing of the objections.

8. Shri Shrivastava, the learned counsel for the petitioner, submitted that the order disposing of the objections of the petitioner to the reasons recorded for reopening the assessment

for assessment year 2014-15 is wholly unsustainable. The impugned notice under section 148 of the Act, 1961 and the reasons recorded, preceding the issue of the said notice, suffer from the vice of mere change of opinion. Amplifying the submission, Shri Shrivastava would urge that the issue of remittance of employee cost was duly considered during the course of assessment for assessment year 2014-15. All the relevant material facts and documents, which were solicited during the course of assessment, were placed before the Assessing Officer by the petitioner. The bold stand of the Assessing Officer, in the reasons, that the aspect of employee cost was not adverted to and considered by the Assessing Officer, during the course of assessment for the Assessment Year 2014-15, is against the weight of the material on record. Laying emphasis on the queries raised during the course of assessment and the response of the petitioner thereto, Shri Shrivastava strenuously submitted that the impugned action is nothing but an endeavour of taking a different view of the matter on the same set of facts without there being an iota of tangible material. Thus, it cannot be said that there was tangible material to form a reason to believe that income chargeable to tax had escaped assessment for the

assessment year 2014-15.

9. In opposition to this, Shri Sharma, the learned counsel for respondent Nos.1 and 2 supported the impugned action. It was urged that the Assessing Officer was well within his rights in issuing the notice under section 148 of the Act, 1961 as an identical claim under head “Employees Cost” was disallowed by the Assessing Officer in succeeding assessment years. In the backdrop of the material on record, according to Shri Sharma, it cannot be said that there was no tangible material to reopen the assessment. Shri Sharma would further urge that the assessment being reopened within four years of the end of assessment year 2014-15, the additional requirement, under the proviso, of failure on the part of the assessee to disclose fully and truly all the material facts, is not required to be fulfilled. Thus, the challenge to the impugned notice and order disposing of the objections to reopen the assessment is without any substance, urged Shri Sharma.

10. On a plain reading, section 147 of the Act 1961 enables the Assessing Officer to assess or reassess any income chargeable to

tax which, he has reason to believe, has escaped assessment in an assessment year. The first proviso to section 147 imposes certain additional conditions, where an assessment is sought to be reopened beyond a period of four years from the end of the relevant assessment year. In the instant case, the power under section 147 is sought to be exercised within the period of four years and, therefore, the additional requirement envisaged by the first proviso does not come into play. Nonetheless, where the Assessing Officer professes to exercise the power under section 147, even within a period of four years of the end of relevant assessment year, the condition precedent to the exercise of the said power is the formation of a reason to believe that any income chargeable to tax has escaped assessment.

11. The legality, propriety and correctness of the action under section 147 hinges upon the existence of the reason to believe. However, the said exercise is neither unregulated nor uncanalized. The Assessing Officer has no unfettered discretion to resort to section 147 on the premise that on a fresh consideration of the same set of material, he has formed a reasonable belief that income has escaped assessment. A principle has emerged and

well ingrained that “a mere change of opinion”, cannot justify the recourse to the provisions contained under section 147 of the Act, 1961.

12. ‘Existence of reason to believe’ can be judged on the basis of the reasons recorded by the Assessing Officer. The test to be applied to judge the reasonability of belief is whether there is tangible material for the Assessing Officer to resort to the power under section 147 of the Act, 1961. Lest, the exercise of power suffers from the vice of arbitrariness.

13. A profitable reference, in this context, can be made to the judgment of the Supreme Court in the case of ***Commissioner of Income-Tax Vs. Kelvinator of India Ltd. & Anr.*** [1], wherein the test of “tangible material” to save the power under section 147 from the vice of arbitrariness, was enunciated. The observations of the Supreme Court in paragraph 6 are instructive and thus extracted below :

> *“6.....However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, Section 147 would give arbitrary powers to the Assessing Officer to re-open assessments on the basis of "mere change of opinion", which cannot be per*

1 [2010] 320 ITR 561 (SC)

> *se reason to re-open. We must also keep in mind the conceptual difference between power to review and power to re-assess. The Assessing Officer has no power to review; he has the power to re-assess. But reassessment has to be based on fulfillment 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 re-opening the assessment, review would take place. 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 1st April, 1989, Assessing Officer has power to re-open, 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....."*

14. A useful reference can also be made to a Division Bench judgment of this Court in the case of ***Aroni Commercials Ltd. Vs. Deputy Commissioner of Income-tax 2(1)***[2], wherein, after adverting to the provisions contained in sections 147 and 148 of the Act, 1961, and the aforesaid pronouncement of the Supreme Court in the case of ***Kelvinator of India Ltd.*** (Supra), the Division Bench expounded the law, in the following words :

> *"11 .....The law with regard to reopening of assessment is fairly settled by decisions of Courts. The power of the Assessing Officers under Sections 147 and 148 of the Act to reopen an assessment is classified into two :-*
>
> *(a) Reopening of assessment within a period of 4 years from the end of the relevant assessment year and*
>
> *(b) Reopening of assessment beyond a period of 4 years from the end of the relevant assessment year.*
>
> *The common jurisdictional requirement for reopening of assessment both within and beyond a period of 4 years has to be on the basis of reason to believe that income chargeable to tax has escaped assessment and the reason*

2 [2014] 44 taxmann.com 304 (Bombay)

*for issuing a notice to reopen are recorded before issuing a notice. However, there is one additional jurisdictional requirement to be satisfied while seeking to reopen the assessment beyond the period of 4 years from the end of the relevant assessment year viz. that there must have been a failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment during the original assessment proceedings. Thus the primary requirement to reopen any assessment is a reason to believe that income chargeable to tax has escaped assessment. However, as observed by the Supreme Court in the case of CIT vs. Kelvinator India Limited 320 ITR 561 in the context of Sections 147/148 of the Act that reason to believe found therein does not give arbitrary powers to reopen an assessment. The concept of change of opinion is excluded/omitted from the words reason to believe. Thus a change of opinion would not be reason to believe that income chargeable to tax has escaped assessment. Besides the power to reassess is not a power to review. Further reopening must be on the basis of tangible material.*

*12. Therefore the power to reassess cannot be exercised on the basis of mere change of opinion i.e. if all facts are available on record and a particular opinion is formed, then merely because there is change of opinion on the part of the Assessing Officer notice under Section 147/148 of the Act is not permissible. The powers under Section-147/148 of the Act cannot be exercised to correct errors/mistakes on the part of the Assessing Officer while passing the original order of assessment. There is a sanctity bestowed on an order of assessment and the same can be disturbed by exercise of powers under Sections 147/148 of the Act only on satisfaction of the jurisdictional requirements. Further, the reasons for reopening an assessment has to be tested/examined only on the basis of the reasons recorded at the time of issuing a notice under Section 148 of the Act seeking to reopen an assessment. These reasons cannot be improved upon and/or supplemented much less substituted by affidavit and /or oral submissions. Moreover, the reasons for reopening an assessment should be that of the Assessing Officer alone who is issuing the notice and he cannot act merely on the dictates of any another person in issuing the notice. Moreover, the tangible material upon the basis of which the Assessing Officer comes to the reason to believe that income chargeable to tax has escaped assessment can come to him from any source, however, reasons for the reopening has to be only of the Assessing Officer issuing the notice. At the stage of issuing notice*

> *under Section 148 of the Act to reopen a concluded assessment the satisfaction of the Assessing Officer issuing the notice is of primary importance. This satisfaction must be prima facie satisfaction of having a reason to believe that income chargeable to tax has escaped assessment. At the stage of the issuing of the notice under Section 148 of the Act it is not necessary for the Assessing officer to establish beyond doubt that income indeed has escaped assessment."*

15. The principles which emerge from the aforesaid pronouncements and a plethora of decisions of this Court and the Supreme Court, can be summarized as under :

Existence of the reason to believe that income chargeable to tax has escaped assessment is a jurisdictional condition for invoking the power under section 147 of the Act, 1961, both within and beyond a period of four years from the end of relevant assessment year. The Assessing Officer is enjoined to record reasons before a notice to reopen the assessment under section 148 of the Act is issued. In case, the assessment is reopened beyond the period of four years, where the assessment was completed under section 143(3) of the Act, an additional condition that the income must have escaped assessment on account of failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment is required to be fulfilled. The existence of reason to believe is further qualified by the fact

that it should be based on tangible material. Firstly, it cannot be the product of mere *ipse dixit* of the Assessing Officer. Secondly, it should not partake the character of a mere change in opinion as regards the same material and facts, which were considered at the time of original assessment. For the power is of reassessment and not review. Once the primary facts necessary for assessment are fully and truly disclosed and the Assessing Officer takes a conclusive view thereon, it is not permissible to reopen the assessment based on the very same material on the premise that it is susceptible to a different opinion favourable to the revenue.

16. On the aforesaid touchstone, reverting to the facts of the case, it may be apposite to note the reasons for reopening the assessment communicated vide communication dated 18th February 2019. The relevant part reads as under :

> *"2 It is found from Note 30 (expenditure in foreign currency) of the Financial Statements for A.Y.2014-15 of the assessee company that the assessee has debited an amount of Rs.728.793 Crore as 'Employee Costs'*
>
> *3 It is pertinent to mention here that in A.Y. 2015-16, an amount of Rs.693.406 Crore is debited as employee cost. Out of the total employee cost of Rs.693.406 Crore, a sum of Rs.626.416 Crore (90.33% of 693.406) has been disallowed u/s.40(a)(i) of the Act and as per various Double Taxation Avoidance Agreement (DTAAs) for non-deduction of TDS u/s.195 of the Act in assessment order u/s.143(3) of*

*the Act. This amount of Rs.626.416 Crore is termed as 'reimbursement of the employee salary and related expenses' as per submission made by the assessee company.*

*5 The nature of expenses under the head 'Employee Cost' in Note 30 in both the financial years i.e. F.Y. 2014-15 and F.Y. 2013-14 is the same. Although further break-up of employee cost of Rs.728.793 Crore in A.Y. 2014-15 is not available on record, a sum of Rs.658.318 Crore (90.33% of total employee cost) is liable to be disallowed on pro rata basis in A.Y. 2014-15 being reimbursement of employee salary and related expenses as it is similar to the nature of amount of Rs.626.416 Crore in the A.Y. 2015-16.*

*Therefore, applying the same reasons in A.Y. 2014-15 also for the transaction of similar nature, i.e., payment of Employees Cost made by the assessee company to its NRs subsidiaries, is dis-allowable u/s. 40(a)(i) of the Act and as per various Double Taxation Avoidance Agreements (DTAAs) for non-deduction of TDS u/s.195 of the Act.*

*6 It is pertinent to mention here that assessment records of A.Y. 2014-15 is duly perused and it is found that the issue in question here is neither discussed nor considered and examined by way of any questionnaire, order-sheet, noting an assessee's submission during the assessment proceedings and the assessing officer has not given any opinion on the issue in A.Y. 2014-15. Therefore, reopening of assessment does not involve any change of opinion.*

*Further, on perusal of the assessment records of A.Y. 2014-15, it is seen that the assessee company had not provided the details/ break-up of Employee Cost during the course of assessment proceedings. Hence, issue of 'reimbursement of the employee salary and related expenses' which is embedded in employee cost of and not separately mentioned, was not examined by the assessing officer due to failure on the part of assessee to disclose fully and truly all the material and facts necessary for the assessment of A.Y. 2014-15. Therefore, the case falls under the purview of income which has escaped assessment as prescribed in Explanation 1 to Sec. 147 of the Act which is reproduced as under :*

> *"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."*

*In any case the above provision is not applicable as the case is being reopened within 4 years from the end of the relevant assessment year."*

17. Shri Shrivastava, the learned counsel for the petitioner submitted that the assertion of the Assessing Officer, in the aforesaid reasons, especially in paragraph 6 extracted above, that the issue in question was neither discussed nor considered and examined by any questionnaire, order-sheet, noting and assessee's submission, during the original assessment proceedings, and consequently the Assessing Officer had no opportunity to consider the issue in the assessment order for assessment year 2014-15 is plainly against the weight of the material on record. This factually incorrect premise vitiates the impugned action as the said exercise clearly falls within the ambit of "mere change of opinion" on the same set of material facts.

18. Shri Shrivastava, the learned counsel for the petitioner would urge that aspect of expenses under the head 'Employee Cost' was not only considered by the Assessing Officer during the course of assessment year 2014-15, but the said issue was also considered by the TPO. In fact, the assessment order refers to the

observations of the TPO as regards remittances, the volume of which was admittedly the cause for scrutiny assessment.

19. We find that the aforesaid submissions of Shri Shrivastava are borne out by the material on record. On the core issue of overseas remittances, vide notice dated 14th November 2017, the Assessing Officer had called the petitioner to furnish the information and explanations. It was *inter-alia* mentioned therein that the case was selected for scrutiny under CASS on following TP risk parameter :

> (i) Large Relief Claimed u/s. 90/91.
> (ii) Large outward remittances to a non resident not being a company, or to a foreign company.

20. In response thereto, vide communication dated 11th December 2017, the petitioner furnished details of the remittances along with the sample copies of Form 15CA/15CB and relevant invoices copies, which evidence the nature of the remittances, with the following explanation :

> *"(ii) In this regard, we submit that details of the remittance (i.e. purpose of remittances, amounts etc.) are appearing in the copy of ITS provided to us. As would be noted from the ITS form, the foreign remittances made by the company during the year are towards reimbursement of expenses incurred by foreign group companies on the company's behalf, fees for professional and technical services, procurement of fixed*

> *assets, rent payments, insurance premium, membership, fees etc. In this regard, we are enclosing* ***Annexure 5,*** *sample copies of Form 15CA/15CB, along with relevant invoice copies, which evidence the nature of the remittance."*

21. In form No.15CA, against the nature of reimbursement, it was mentioned that "reimbursement of payroll incurred outside India". In form No.15CB, the following note was added :

> *"The payment was to be made on account of reimbursement of expenses incurred outside India and paid by Oracle Financial Services Software b.v. on behalf of Oracle Financial Services Software Limited. Since the payment is to be made on account of reimbursement only, no Tax is required to be deducted."*

22. The order under section 92CA(3) of the Act, 1961 passed by TPO also indicates that the petitioner had filed detailed submissions and furnished the details of reimbursement made to foreign subsidiaries. The break-up of total employee cost reimbursement and other costs reimbursement was also furnished.

23. The TPO, in his order dated 30th October 2017, *inter-alia,* recorded as under :

> *"5.6.6 It is further evident that the Assessee pays huge reimbursement cost to the AEson account of salary reimbursement cost of its employees every year. During the year, the Assessee made reimbursement of Rs.7,30,36,09,522/-. This*

> *reimbursement charges payment to the AE's indicates that the Assessee routinely send its employees for onsite work to various countries, where the AEs actually concluded the deal on behalf of the Assessee. Accordingly, it is clear that the salary of the employee paid by the AE is reimbursed by the Assessee to AE. This clearly shows that the entire business activity has been carried out only by the Assessee in those countries and the AEs are mere conduit for the Assessee to carry out its operation in those countries."*

24. It is imperative to note that the Assessing Officer in the assessment order dated 6th February 2018, adverted to the aforesaid order passed by the TPO, in paragraph 4.1.3. The aforesaid material would thus indicate that the petitioner was called upon by the Assessing Officer, by raising a query, to furnish explanation as regards the foreign remittances, to which petitioner had submitted the requisite information and details thereof.

25. Shri Sharma, the learned counsel for respondent Nos.1 and 2 was justified in canvassing a submission that the order under section 92CA(3) was restricted to ascertain correctness of the amount paid to the companies outside India. However, the fact remains that the issue of remittances concerning the employee cost was also agitated before and considered by the TPO, and the observations of the TPO were, in turn, adverted to by the Assessing Officer. In the circumstances, an inference becomes

justifiable that the entire issue regarding the reimbursement of employee cost was under the active consideration of the Assessing Officer.

26. There can be no duality of opinion that it is the assessee's duty to disclose all primary facts. Once the assessee discloses all the primary facts, the inferences to be drawn thereon is a matter within the exclusive province of authority of the Assessing Officer. This duty of assessee does not extend beyond disclosure of primary facts. The assessee is not expected to suggest an inference on those facts, correct or otherwise. In a given case, the fact that the assessee had suggested a particular inference, which upon reconsideration, does not find favour with the Assessing Officer subsequently, may not furnish a justifiable ground to hold that there was non-disclosure of primary facts.

27. A profitable reference, in this context, can be made to the pronouncement of the Supreme Court in the case of ***Calcutta Discount Co. Ltd. Vs. Income Tax Officer*** [3]**,** wherein the aforesaid aspect was illuminatingly postulated :

*(10) Does the duty however extend beyond the*

3 (1961) 41 ITR 191 (SC)

*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.*

*(11) 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 ?*

*(12) 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.*

*(13-14) 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."*

(emphasis supplied)

28. Undoubtedly, as pointed out by Shri Sharma, the issue has

not been specifically dealt with in the assessment order. However, the said consideration is not decisive. As laid down in the case of ***Aroni Commercials Ltd.*** (Supra), once a query is raised during the assessment proceedings and the assessee has furnished a reply thereto, it implies that the query so raised was a subject matter of consideration of the Assessing Authority. It is not an immutable rule that an assessment order should contain reference and/or discussion on such query.

29. For the foregoing reasons, we are satisfied that, in the peculiar facts of the case, the impugned notice under section 148 of the Act, 1961 can be said to be based on a mere change of opinion. In view of the settled legal position that mere change of opinion does not furnish a justification for formation of reason to believe that income chargeable to tax has escaped assessment, we find the impugned action legally unsustainable.

30. Shri Sharma attempted to salvage the position by canvassing a submission that for the assessment year 2015-16, the Assessing Officer has rejected the petitioner's contention as regards the employee cost and that constitutes a tangible material

for reopening the assessment. We are afraid to accede to this submission. In our view, the aforesaid submission overlooks the fact that the Assessing Officer who passed the original assessment order for assessment year 2014-15 can be said to have been satisfied with the explanation furnished by the petitioner. Looking at the issue from a slightly different perspective, it can be said that the Assessing Officer could have called for the material and information, sought by the Assessing Officer who carried out the assessment for the year 2015-16, and yet would have formed the same opinion, different from the one formed by the Assessing Officer for the assessment year 2015-16. The issue, thus, squarely falls in the realm “change of opinion”. In our view, the only reason that in the succeeding assessment years, the Assessing Officer has come to a different opinion, by itself, may not be a ground to reopen the assessment for an earlier year, wherein a view was conclusively recorded by the concerned Assessing Officer.

31. The upshot of the aforesaid consideration is that the petition deserves to be allowed.

32. Hence, the following order :

## O R D E R

The petition stands allowed in terms of prayer clause (a), which reads as under :

> *"(a) this Hon'ble Court may be pleased to issue a Writ of Certiorari or writ in the nature of Certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India calling for the records of the Petitioner's case and after examining the legality and validity thereof quash the notice dated 26th February 2019 issued by Respondent No.2 under section 148 of the Act seeking to reopen the assessment for the assessment year 2014-15 and the order dated 18th October 2019 passed by Respondent No.2, disposing off the objections raised by the Petitioner."*

In the circumstances, there shall be no order as to costs.

Rule made absolute to the aforesaid extent.

**(N. J. JAMADAR, J.)** **(K.R. SHRIRAM, J.)**