

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH  
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.352/Mum/2024  
(Assessment Year :2012-13)**

M/s. ECGC Limited CTS No.393, 393/1 to 45 M.V. Road, Andheri East Mumbai- 400 069	Vs.	ACIT 3(1)(2) Mumbai Room No.608, 6 <sup>th</sup> Floor Aaykar Bhawan M.K.Road Mumbai - 400 020
<b>PAN/GIR No.AAACE0296K</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Vijay Mehta
Revenue by	Shri P.D. Chougule
<b>Date of Hearing</b>	<b>27/05/2024</b>
<b>Date of Pronouncement</b>	<b>22/08/2024</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid appeal has been filed by the assessee against order dated 18/12/2023 passed by NFAC, Delhi for the quantum of assessment passed u/s. 143(3) r.w.s. 147 for the A.Y.2012-13.

2. In the grounds of appeal assessee has raised the following grounds:-

*“1)The Ld. CIT(A) has erred in upholding the reopening of the assessment u/s. 147 of the Act. The Ld. CIT (A) ought to have held that the A.O. has erred "in reopening the assessment and passing the Assessment order, which is illegal and bad in law*

*2) The Ld. CIT(A) has erred in upholding the disallowance of expenditure of Rs. 2,35,50,000/- on account of Corporate Social Responsibility.*

*3) The Ld. CIT(A) has erred in passing the order without giving proper opportunity of hearing and without considering material and evidence available on record.”*

3. The brief facts are that Assessee Company is engaged in the business of export credit insurance for exporters and bankers. Assessee has filed its return of income for A.Y.2012-13 on 26/09/2012 declaring total income of Rs.361,04,10,630/-. The said case was selected for scrutiny and assessment was completed u/s. 143(3) after examining all the details and assessment order was passed on 16/02/2015. Thereafter, assessee's case was reopened u/s.147 and notice was issued u/s.148 dated 30/03/2019 after recording the following reasons:-

*Reasons for reopening in your case for assessment proceeding for AY 2012-13 are being provided as under-*

*1. The assessee company filed its return of income on 26-09-2012 declaring total income at Rs. 361,04,10,630/- and book profits u/s 115JB of Rs. 356,44,71,330/-. The scrutiny assessment proceedings were completed on 16-02-2015 revising the total income of the assessee at Rs. 6,34,30,513/-, The Assessee Company is engaged in the business export credit insurance for exporters and bankers.*

2. It was seen from the annual accounts that assessee had debited an amount of Rs.2,35,50,000/-on account of expenses towards Corporate Social Responsibility. It was seen from Sr. No. 27 of Schedule 17 to Notes to Account that assessee had claimed that in view of the circular of Ministry of Health Industries and Public Enterprises dt. 09-04-2010 to expend money on account of Corporate Social Responsibility and hence made a provision of Rs. 23550000/- to be expended as per circular. As this being mere a provision the same needs to be added back to the total income of the assessee. The income of Rs. 2,35,50,000/-has escaped assessment and consequently short levy of tax of Rs. 76,40,798/-, Therefore, I have reasons to believe that income amounting to Rs. 2,35,50,000/- has escaped assessment.

3. In this case a return of income was filed for the year under consideration and regular assessment u/s 143(3) was made on 16-02-2015. Since, 4 years from the end of the relevant year has expired in this case, the requirements to initiate proceeding u/s 147 of the Act are reason to believe that income for the year under consideration has escaped assessment because of failure on the part of the assessee to disclose fully and truly all material facts mention here that reasons to believe that income has escaped assessment for the year under consideration have been recorded above (Para 2). I have carefully considered the assessment records containing the submissions made by the assessee in response to various notices sued during the assessment proceedings and have noted that the assessee has not fully and truly disclosed the material facts necessary for assessment for the year under consideration

4. It is true that the assessee company had filed a copy of annual report and audited P&L A/c and balance sheet along with return of income where various information/material were disclosed. However, the requisite full and true disclosure of all material facts necessary for assessment has not been made as noted above. It is pertinent to mention here that even though the assessee has produced books of accounts, annual report, and balance sheet or other evidence as mentioned above, the requisite material facts as noted above in the reasons for reopening were embedded in such a manner that material evidence could not be discovered by the AO and could have been discovered with due diligence,

accordingly attracting provisions of Explanation 1 of section 147 of the Act.

5. It is evident from the above discussion that in this case, the issue under consideration was never examined by the AO during the course of regular assessment. This fact is corroborated from the contents of notices issued by the AO u/s 143(2) and order sheet entries up to 16.02.2015 recorded during the 143(3) proceedings. It is important to highlight here that material facts relevant for the assessment on the issue under consideration was not filed during the course of assessment proceeding and the same may be embedded in annual report, audited P&L A/c, balance sheet and books of account in such a manner that it would require due diligence by the AO to extract these information. For aforesaid reasons, it is not a case of change of opinion by the AO 6. In view of the above, it is a fit case for initiation of proceedings u/s. 147 of Income Tax Act, 1961, in order to frame proper assessment to bring to tax the amount of Rs. 2,35,50,000/- which has escaped assessment.

*In this case more than four years have lapsed from the end of the assessment year under consideration. Hence necessary sanction to issue the notice u/s 148 of the Income Tax Act, 1961 has been obtained separately from Pr. Commissioner of Income Tax-3, Mumbai as per provisions 151 of the Income Tax Act, 1961."*

4. Thereafter, assessee filed its return of income in compliance to notice issued u/s.148 dated 30/03/2019 and raised objections challenging the reopening of the completed assessment u/s 143(3). Besides many other objections, assessee has also challenged that, there is no tangible material coming on record and assessment has been reopened after the expiry of four years from the end of the relevant assessment year, therefore such a reopening is beyond the time limit and bad in law in terms of *first proviso* to section 147. It was further submitted during the course of original assessment proceedings assessee

vide letter dated 11/09/2014 had filed all the relevant details which was also included in the annual report of the company and profit and loss account wherein assessee has disclosed an amount of Rs.2,35,50,000/- as expenses on corporate social responsibility and following notes were highlighted:-

***“Provision for Corporate Social Responsibility***

***Government of India\_ Ministry of Heavy Industries and Public Enterprises (Department of Public Enterprises) vide their Circular No F.No 15(3)2007-DPE(GM) dated April 9, 2010 have issued guidelines to Public Sector Enterprises to expend money on account of Corporate Social Responsibility. The Corporation has made a provision of Rs 2,35,50,000 (Previous Year Rs 1,53,51,000) on account of money to be expended on Corporate Social Responsibility as per the terms of the said Circular.”***

5. Thus, it was submitted that there was no failure on the part of the assessee to disclose wholly and truly all material facts relating to sum of Rs.2,35,50,000/-. The assessee also relied upon the decision of the Hon’ble Bombay High Court in the case of **Dempo Brothers Pvt. Ltd vs. ACIT reported in 403 ITR 196**. However, ld. AO rejected the said objections vide order dated 26/11/2019 and accordingly, made the addition after observing as under:-

*“Since the assessee had debited an amount of Rs. 2,35,50,000/- on account of expenses towards Corporate Social Responsibility and as per Sr. No. 27 of Schedule 17 to Note to account the assessee had claimed that in view of the Circular of Ministry of Health Industries and Public Enterprise dated 09.04.2010 to expend money on account of Corporate Social Responsibility, and this being a mere provision, which is not allowable as expenditure u/s 37 of the Income Tax Act, the same is disallowed and added to the total income of the assessee.*

*In view of the above discussion, the amount of Rs.2,35,50,000/- debited to the P&L account, being expenses towards Corporate Social Responsibility which is a mere provision, the same is added back to the total income of the assessee. Penalty proceedings u/s.271(1)(c) of the I.T.Act are separately initiated for concealment and filing inaccurate particulars of income.”*

6. The ld. CIT(A) has not only confirmed the action of the ld. AO for reopening u/s.147 but also on merits has confirmed the addition made by the ld. AO holding as under:-

*“In course of appeal proceedings neither the appellant nor its authorized representative could have furnished any evidence regarding actual expenditure incurred under this head. Therefore I am inclined to accept the observation and decision of the AO in as much as provision for expenditure under the head CSR debited in its accounts is not as per law Accordingly I hold that mere provision of tentative expenditure is not an allowable expenditure under section 37 of the I.T. Act. Accordingly I do not find any infirmity in the order of the AO and find the same is justified in as much as the addition being made in accordance with law Considering the entire conspectus of the case I hold that the appellant has no proper explanation of not incurring expenditure of Rs. 2,35,50,000/- under the head CSR and debited one provision of expenditure without actual incurring of expenditure. Accordingly addition of Rs2,35,50,000/- invoking provision of section 37 of IT Act stand confirmed and the ground relating to this issue is dismissed.”*

7. We have heard both the parties at length, perused the material referred to before us and the finding given in the impugned orders. Before us, ld. Counsel has challenged the validity of reopening u/s.147 contending that under the first proviso to Section 147, the reopening is not permissible beyond the period of four years from the end of the relevant assessment

year unless there is a failure on the part of the assessee to disclose fully and truly all material facts. Here in this case, assessee had duly disclosed the provision for CSR in the annual accounts and the profit and loss account stating that in line of the circular issued by the Government of Ministry of Heavy Industries and Public Enterprises wherein PSUs were required to spend money on account of CSR and accordingly, assessee has only made provision of Rs.2,35,50,000/-. This fact and material were duly disclosed before the ld. AO during the course of original assessment proceedings and also in the reply filed before the ld. AO. Thus, there was no failure on the part of the assessee to disclose fully and truly all material facts at the time of assessment.

8. From the perusal of the documents, it is seen that assessee had duly disclosed this provision of Rs.2,35,50,000/- in the audited annual accounts and also before the ld. AO and thus, it cannot be held that there was any failure on the part of the assessee to disclose fully and truly material facts relating to provision made for CSR of Rs.2,35,50,000/-. Once assessee has made disclosures then it was upon the ld. AO to draw inference both factual and legal inferences. Once all the primary facts were before the ld. AO, then unless he requires further details from the assessee, there is no requirement to give further assistance by way of disclosure. It is the ld. AO who has to decide all the factual inferences or the legal inferences. This view has been held by the Hon'ble Supreme Court in the case of **Gemini Leather Store vs. ITO (1975) 100 ITR 1** wherein the Hon'ble Supreme

Court has held that *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 inference 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.* It was held that, *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.* The apex court has thus concluded that the Income-tax Officer in that case thus had all the material facts before him when he made the original assessment and he cannot now take recourse to section 147(a) to remedy the error resulting from his own oversight. This view was reiterated by the **Hon'ble Bombay High Court** in the case of **Dempo Brothers Pvt. Ltd vs. ACIT (supra)** wherein the Hon'ble High Court observed as under:-

***“If the primary facts are placed before the Assessing Officer, the Assessing Officer is in a position to take decision thereupon, it cannot amount to failure on the part of the assessee to withhold to furnish the material particulars.*** The Assessing Officer, in the impugned order has referred to various decisions, however, none of the decisions lay

*down that even though the primary facts were placed before the Assessing Officer at the time of scrutiny, on account of non-furnishing of the Form at the time of the original assessment, the assessment can be reopened, neither any such decision is brought to our notice.*

*Therefore, we are of the opinion that the petitioner had placed on record the necessary information for the purpose of assessing income as regards the transfer of shares. What is sought to be done by the Assessing Officer now is a reopening of assessment after four years, on a mere change of opinion. The non-furnishing of the form is only an excuse given by the Assessing Officer to attempt to exercise a non-existent power.*

*In these circumstances, since the jurisdictional requirements for invoking the provisions of sections 147 and 148 of the Act are not met, as the petitioner did not fail to disclose all the material facts necessary for the assessment, the petitioner is entitled to succeed. Accordingly, the writ petition is allowed in terms of prayer clauses (a) and (b).*

9. From the perusal of the reasons recorded, it is seen that there is no material coming on record except that there is a re-appraisal of annual accounts by the ld. AO, which has already been scrutinized and examined. In the reasoning given by him in para 4 of the reasons, nowhere it has been substantiated by the AO that how the requisite full and true disclosure of all material facts has not been disclosed. He further held that even though assessee has produced books of accounts, annual report and balance sheet and other evidences and if the ld. AO could not have discovered by due intelligence and therefore, in view of Explanation-1 to Section 147 of such reopening is valid. First of all before invoking provision of Explanation-1, the main provision of Section 147 has to be seen where there is a time limit provided

to reopen under the *proviso* that the assessment which has been completed u/s. 143(3) cannot be reopened after the expiry of four years from the end of the relevant assessment year, unless the conditions provided therein are satisfied, that is, failure to disclose fully and truly all material facts by the assessee. This view has been upheld by the Hon'ble Bombay High Court in the case of **Hindustan Lever Limited vs. ACIT reported in 268 ITR 332** and further in the case of **Kalpatatru Plus Sharyans vs. Dy. CIT vs. DCIT reported in (2022) 448 ITR 269** wherein the reopening was done on the basis of re-appraisal of the audited accounts filed by the assessee earlier before the ld. AO. Here in this case there is no whisper by the ld. AO as to what has not been disclosed. The Hon'ble High Court has relied upon the earlier decision of the Bombay High Court in the case of Ananta Landmark Pvt. Ltd. vs. CIT reported in 439 ITR 168 and made the following observation:-

*This Division Bench in Ananta Landmark Pvt. Ltd. has considered the 15 various decisions of the Supreme Court as well as this court in matters concerning reopening of assessment under section 147 and proviso thereto of the Act. It is clear from the settled law that where a period of four years has been lapsed from the end of the relevant assessment year, the Assessing Officer has to mention what was the tangible material to come to the conclusion that there is escapement of income from assessment and that there has been a failure to disclose fully and truly material facts as per the requirement stipulated in the proviso to section 147 of the Act, prior to amendment, which is applicable in the present case. After a period of four years even if the Assessing Officer has some tangible material to come to the conclusion that there is an*

*escapement of income from assessment, he cannot exercise the power to reopen unless he discloses what was the material fact which was not truly and fully disclosed by the assessee. In the reasons for reopening in the present case as well as in the case of Ananta Landmark Pvt. Ltd. except stating that income which was chargeable to tax has escaped assessment by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary, there is nothing else in the reasons.*

*16 The Supreme Court in Calcutta Discount Co. Ltd. v. ITO [1961] 41 ITR 191 (SC) has held that there can be no doubt that the duty of disclosing all primary facts relevant to the decision of the question before the assessment authority lies on the assessee. To meet all possible contentions that when some account books or other evidence have been produced, there is no duty of the assessee to disclose further facts which on due diligence, the Income-tax Officer might have discovered, the Legislature has put in Explanation to section 34(1). The duty, however, does not extend beyond the full and truthful disclosure of all primary facts 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.*

10. Thus, in view of the settled proposition of law that in the case where reopening is done beyond the period of four years from the end of the relevant assessment year where assessment has been completed u/s.143(3), reopening of assessment u/s.147 cannot be done. Here in this case as held above there has been no failure on the part of the assessee to disclose fully and truly all material facts and neither it is covered by the

Explanation -1 to section u/s.147. Accordingly, the entire assessment proceedings initiated by the ld. AO u/s.147/148 is quashed.

**11. In the result, appeal of the assessee is allowed.**

Order pronounced on 22<sup>nd</sup> August, 2024.

**Sd/-**  
**(RATNESH NANDAN SAHAY)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 22/08/2024  
KARUNA, sr.ps

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**