IN THE HIGH COURT OF DELHI AT NEW DELHI

RESERVED ON :16.08.2012
PRONOUNCED ON:06.12.2012

\+ **WP(C) 7677/2011**

MOSER BAER INDIA LIMITED ..... Petitioner

Through: Mr. Ajay Vohra & Ms. Kavita Jha, Advoctes

versus

DEPUTY COMMISSIONER OF INCOME TAX & ORS ..... Respondents

Through: Mr. Sanjeev Sabharwal, Sr. Standing counsel with
Mr. Puneet Gupta, Jr. Standing Counsel

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE R.V. EASWAR

MR. JUSTICE S.RAVINDRA BHAT
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1. The petitioner (hereinafter referred to as "assessee") by these writ proceedings claims a direction for quashing the impugned notice dated 23.07.2010 issued by the first respondent under Section 148 of the Income Tax Act proceedings as well as further orders including the order dated 07.09.2011 dismissing its objections. The assessee filed its income tax

return for assessment year 2004-2005 declaring a loss of ₹.83,36,69,556/- under the normal provisions of the Act, it declared a book loss under Section 115 JB to the tune of ₹.99,53,40,660/-. The assessee had computed and declared income in respect of its 3 units. All the three are 100% Export Oriented Units (EOU). The first one located at 66 Noida Special Economic Zone (NSEZ) yielded profit of ₹.10,65,03,063/- in respect of which deduction under Section 10A was claimed. For the second unit (another EOU) at A-164, Sector 80, Noida, the profit of ₹.2,24,72,84,842/- was declared and a deduction under Section 10 B was claimed for this entire amount. In respect of the third unit i.e. 100% EOU at 66 Udyog Vihar, Greater Noida, the assessee declared loss of ₹.50,53,96,992/- and did not claim any deduction. In the concerned form i.e. 56G, as against the column seeking particulars regarding eligibility for deduction under Section 10A, the assessee declared "Nil". The assessee later filed a revised return of income and declared ₹.86,29,74,037/- under normal provisions of the Act and stated that it had inadvertently omitted to claim deduction on previously incurred expenses. In the revised return it made the following claims for deductions under Sections 10A and 10B respectively :

Particulars of the Unit	Profit/(Loss) (In Rs.)	Remarks
66, NSEZ, Noida	10,65, 03,063	Deduction u/s 10A claimed
A-164, Sector-80, Noida	2,21,68, 52,725	Deduction u/s 10B claimed

66, Udyog Vihar, Greater Noida	(50, 75, 39, 374)	No deduction claimed – In Form 56G, amount eligible for deduction u/s 10A declared at NIL

2. It is averred that the petitioner annexed note 1(c) to its return detailing reasons why it was not claiming any deductions under Section 10B in respect of the EOU at 66 Udyog Vihar, Greater Noida. The reasons stated by it was as follows:

> *"No deduction under section 10B of the Act has been claimed in view of a loss situation. The required report in Form 56G in respect of said unit is enclosed."*

3. The revised return of the income of the asessee was selected for scrutiny and assessment was completed under Section 143(3) of the Income Tax Act by an order dated 29.12.2006 at a loss of ₹.89,11,28,550/-. Apparently the A.O. applied his mind and made detailed enquiry into various aspects after framing the assessment order.

4. In the assessment order the A.O. noted the claim for deduction and discussed the assessee's justification and thereafter formed the opinion that aggregation of scrap sales amounting to ₹.11,94,474 and ₹.4,64,24,305 had to be reduced from the eligible income derived from the EOU, the total of those two amounts worked out to ₹.4,76,18,779/- which was disallowed from the deductions under Section 10B. The book profit was assessed at ₹.141,56,63,623/-.

5. After completion of assessment, on 23.07.2010, the assessee was issued with a notice under Section 148 by the first respondent stating that he had reasons to believe that the assessee's income had escaped assessment and consequently, proposed to re-assess the income. The petitioner requested that its revised return of income filed earlier on 30.03.2006 could be treated as return in response to the notice under Section 148 and further requested for a copy of the reasons recorded by the first respondent to re-open the assessment. On 27.06.2011 the first respondent furnished a copy of the reasons recorded under Section 147, for re-opening the assessment. The reasons are as follows :

> *"i) While making the assessment order under section 143 (3) the income from other sources and short term capital gains of Rs.8,54,39,339/- was not added in the total income. The mistake resulted in over assessment of loss of Rs.8,54,39,339/- involving potential tax of Rs.3,06,51, 369/-.*
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> *ii) The assessee had claimed and was allowed deduction of Rs.227,57,37,009/- u/s 10A & 10B in respect of two units. However, the loss of Rs.50,75,39,374/- of third unit was not reduced from the profit of other two units. Thus the assessee has claimed excess exemption u/s 10B of Rs.50,72,19,040/-. This has resulted in over assessment of loss of Rs.50,72,19,040/- involving potential tax effect of Rs.18,19,65,133/-. Further the assessee has paid tax u/s 115JB and excess allowance of exemption u/s 10B has resulted in underassessment of book profit of Rs.50, 72, 19, 040/- involving tax effect of Rs. 5,18,92,728/-."*

6. The petitioner objected to re-opening of the assessment contending that no grounds were validly made out; the first respondent rejected the objections on 15.07.2011. That action was impugned in a writ petition (i.e. WP(C) No.5183/2011). By an order dated 02.08.2011 this Court set aside the rejection of the petitioner's objection (by the first respondent's order 15.07.2011) and directed the latter to hear the objections afresh and pass fresh order dealing with them. The petitioner again approached the first respondent through letter dated 24.08.2011 objecting to assumption of jurisdiction contending *inter alia* that as regards the question of short term capital gains mentioned in the reasons i.e. of pertaining to the sum of ₹.8,54,39,339/- the mistake had been rectified by the A.O. through order dated 22.07.2010, i.e. one day prior to the issuance of notice under Section 148 and that as regards the other issue, it really amounted to change of opinion and there was no new information received by the first respondent to proceed to continue with re-assessment proceedings.

7. The first respondent by his letter/order dated 27.09.2011 rejected the assessee's contention. The relevant part of the order is as follows :

> *"8. In the submissions made on behalf of the assessee company, the AR of the assessee, in his letter dated 24.08.2011 has also submitted that the assessee has three units eligible for claim of deduction under section 10A/10B of the Act. These are i) 66, NSEZ, Noida, ii) A-164, Sector-80, Noida & iii) 66, Udyog Vihar, Greater Noida. Deductions under section 10A/10B of the Act were claimed in respect of units at 66, NSE2 and A-164. Sector-80, which had profits. Since third Unit at 66, Udyog Vihar, Greater Noida had suffered losses, no deduction under Sections 10A/10B of the Act was admissible nor claimed in*

respect of such units. The factum that the assessee had three units which were eligible for deduction u/s 10A/10B of the Act, the fact of deduction being awaited qua profits of two units only, without setting off the losses suffered in the third unit, was duly disclosed in the return of income. It has further been submitted by the AR of the assessee that even assuming for the sake of the argument, though not conceding that the profits of the eligible units have to be set off by the losses suffered in the third eligible unit and deduction under sections 10A/10B of the Act quantified with reference to the aggregate profit of all the units, it was not the duty of the assessee to suggest, the inference to be drawn from the primary facts, viz. that the assessee had three units eligible for deduction under section 10A/10B of the Act, out of which two units had derived profits while the third unit had suffered losses. It is also been submitted that while claiming deduction qua this stand alone profits of the eligible unit (s) and ignoring losses suffered by the third eligible unit, the assessee could not been said to have made in correct computation of reduction under Sections-10A/10B of the Act.

9. I have carefully considered these submissions made on behalf of the assessee company. The issue under consideration is the computation of deduction allowable under section 10B of the IT Act, 1961. For this purpose, a reference to sub-section 4 to 8 of section 10B of the IT Act, considered necessary. The provisions of clause (ii) of sub-section 6 of section 10B provide for carry forward and set off of losses pertaining to the 100 % export oriented units eligible for deduction under the said section. When the facts of the present cases are analyzed in the light of the provision of sub-sections (3) to (8) of sub-section 10B, more particularly clause (ii) of sub-section 6, the losses of eligible units are to be set off against the profits of such eligible unit. Reliance is placed on the ratio laid down by the Hon'ble Karnataka High Court in the case of CIT vs. Himatasingike Seide Ltd. 286 ITR 0255 and of Hon'ble ITAT Chennai in the case of Sword Global (I) P Ltd Vs. ITO 306 ITR (AT) 286. Therefore, the assessee

was not correct in not setting off of losses of one eligible unit against the profits of another eligible unit, which is against the scheme of the provisions of section 10B of the IT Act.

10. In view of the above, in pursuant to the directions of the Hon'ble High Court of Delhi, the assessee's objection to initiation of proceedings under section 147 and issuance of notice under section 148 stands disposed off. The assessee is now, therefore, again requested to comply with the proceedings initiated under section 147/148 in their case for the year under consideration."

8. The Petitioner argued that the Respondents' reason for re-opening assessment, as given in letter dated 27.06.2011, was two fold, i.e:

1. The income from other source and short term capital gains of ₹.8,54,39,339 was not added in the total income.
2. The loss of the third unit was not reduced from the profit of the other two units which resulted in excess exemption u/s 10A/10B.

Counsel submitted that the first reason for re-opening assessment does not exist as the Income Tax Office by order dated 22.07.2010 rectified the assessment to correct the aforesaid mistake; the mistake was rectified before issuance of Section 148 notice dated 23.07.2010. As far as the second reason goes, the Assessing Officer at the time of the original assessment was fully aware that NIL deduction was claimed in respect of the Udyog Vihar Unit therefore re-opening of assessment on that ground is bad in law. The Petitioner submitted that at the time of the original assessment the Petitioner submitted the return of income wherein Petitioner had claimed deductions

u/s 10A/10B in respect of two units whereas NIL deduction was claimed in respect of the third unit. Further, the return of income was accompanied by Form 56F/56G wherein the Petitioner had specifically claimed deduction u/s 10A/10B in respect of profits of two units whereas NIL deduction for the third unit. Further, in a note dated 12.01.2005, (filed along with the return), the Petitioner specifically disclosed at Point 1(c) that,

> *"1. Claim of benefit u/s 10A/10B of the Income-tax Act, 1961 ("the Act")*
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> *(c) 66, Udyog Vihar, Greater Noida- The said unit is registered as a 100% Export Oriented Unit (on November 28, 2001) and is accordingly eligible for claiming tax-holiday benefits u/s 10B of the Act. No deduction u/s 10B of the Act has been claimed in view of a loss situation. The required Report in Form 56G in respect of the said unit is enclosed."*

9. It is also urged that in response to a query raised by Respondent No.1, the Petitioner by letter dated 21.02.2005 furnished information regarding the units eligible for deduction u/s 10A/10B. In the reply the Petitioner listed all 3 units as units eligible for claiming deduction. The issue of deduction u/s 10A/10B was specifically examined by the Assessing Officer during the original assessment. Many queries regarding deduction u/s 10A/10B were raised by the Respondent No.1 and the same were replied to by the Petitioner. The Assessing Officer after having gone through the return of income filed, replies to the queries and the notes annexed to the return of income reached the conclusion that the Petitioner was entitled to deduction

u/s 10A/10B as claimed subject to certain modifications. As a result, the re-assessment proceedings are bad in law and impermissible as being barred by limitation. In this regard, it is contended that Section 147empowers the assessing officer to reassess the income chargeable to tax if he has reason to believe that the income for such assessment year has escaped assessment. However the proviso to Section 147 restricts the powers of the assessing officer to initiate reassessment proceedings beyond 4 years from the end of the relevant assessment year unless the income has escaped assessment due to the failure of the assessee to disclose fully and truly all material facts necessary for assessment. The proviso to Section 147 permits action after expiry of 4 years from the end of the relevant assessment year, only if

> *"... 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 to disclose fully and truly all material facts necessary for his assessment for that assessment year."*

In the present case the notice for re-assessment was issued on 23.07.2010 i.e. more than 5 years from the relevant assessment year. Therefore as per section 147 no reassessment of income is permissible as 4 years have lapsed from the end of the relevant assessment year i.e. 2004-05. The proviso to section 147 allows reassessment after expiry of 4 years from the end of the relevant assessment year only where income chargeable to tax has escaped assessment "*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." It is argued that in this case there was no failure on the part of the Petitioner to disclose fully and truly all material facts therefore no reassessment of income of Petitioner is permissible after expiry of 4 years from the end of the relevant assessment year.

10. It was contended that in the present case all material facts were disclosed and the Petitioner submitted various documents relating to the deductions available under Section 10A/10B. The Petitioner submitted that:

i. The return of income wherein deduction was claimed from two units and NIL deduction was claimed from the third unit (Udyog Vihar unit).

ii. Form 56F/56G was also submitted along-with the return of income. In the forms the Petitioner had specifically claimed deduction u/s 10A/10B in respect of profits of two units whereas NIL deduction for the third unit.

iii. In a Note dated 12.01.2005, appended to the return of income, Petitioner specifically disclosed at Point 1(c) that, the claim for benefit under Sections 10A/10B of the Act, in respect of 66, Udyog Vihar, Greater Noida- (registered as a 100% Export Oriented Unit on November 28, 2001) was eligible for claiming tax-holiday benefits u/s 10B of the Act. No deduction under Section 10B of the Act was claimed in view of a loss situation. The Report in Form 56G for the said unit was enclosed. Further on 27.12.2006 the Petitioner filed approval letter from the competent authority regarding eligibility of

the units for deduction u/s 10A/10B; approval letters regarding all three units were submitted.

11. It was emphasized that the Assessing Officer after examining the return of income, documents accompanying the return of income, Form 56F/56G, notes and various other documents submitted in the course of the original assessment accepted the deduction claimed u/s 10A/10B after some modification. The Assessing Officer applied his mind and after taking into consideration all documents on record passed an assessment order dated 29.12.2006 wherein he specifically altered the deduction claimed u/s 10A/10B. At the time of the original assessment, the Assessing Officer was aware that there were three units which were eligible for claiming deduction under Sections 10A/10B. The Assessing Officer was also aware of the fact that NIL deduction was claimed with respect to one unit. Therefore the reassessment under Section 147 is unjustifiable. The petitioner relied on *Calcutta Discount Company Limited v Income-tax Officer & others,* **(**AIR 1961 SC 372) to the effect that:

> *"11. 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.

12. 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. Further, Section 147 does not allow reopening of a completed assessment merely on change on opinion. The Assessing Officer does not have the power to review the previous assessment order. The Assessing Officer has to have "reason to believe" that the income has escaped assessment. In this connection, reliance was placed on the judgment of the Supreme Court in *Income tax Officer, Calcutta and Ors.Vs. Lakhmani Mewal Das* (AIR 1976 SC 1753) to the following effect:

"7-Another requirement is that before notice is issued after the expiry of four years from the end of the relevant assessment years, the Commissioner should be satisfied on the reasons recorded by the Income-tax Officer that it is a fit case for the issue of such notice. We may add that the duty which is cast upon the assessee is to make a true and full disclosure of the primary facts at the time of the original assessment. Production before the Income-tax Officer of the account book or other evidence from which material evidence could with due diligence have been discovered by the Income-tax Officer will not necessarily amount to disclosure contemplated by law. The duty of the assessee in any case does not extend beyond making a true and full disclosure of primary facts. Once he has done that his duty ends. It is

for the Income-tax Officer to draw the correct inference from the primary facts. It is no responsibility of the assessee to advise the Income-tax Officer with regard to the inference which he should draw from the primary facts. If an Income-tax Officer draws an inference which appears subsequently to be erroneous, mere change of opinion with regard to that inference would not justify initiation of action for reopening assessment."

13. It is lastly urged that the Supreme Court while upholding the view of the Full Bench of this Court, in *Commissioner of Income Tax, Delhi Vs. Kelvinator of India Limited* (2010) 2 SCC 723 observed that,

"6. On going through the changes, quoted above, made to Section 147 of the Act, we find that, prior to Direct Tax Laws (Amendment) Act, 1987, re-opening could be done under above two conditions and fulfillment of the said conditions alone conferred jurisdiction on the Assessing Officer to make a back assessment, but in Section 147 of the Act [with effect from 1st April, 1989], they are given a go-by and only one condition has remained, viz., that where the Assessing Officer has reason to believe that income has escaped assessment, confers jurisdiction to re-open the assessment. Therefore, post-1st April, 1989, power to re-open is much wider. 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 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 re-assessment has to be based on fulfillment of certain pre-condition 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. Our view gets support from the changes made to Section 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in Section 147 of the Act. However, on receipt of representations from the Companies against omission of the words "reason to believe", Parliament re-introduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the Assessing Officer. We quote herein below the relevant portion of Circular No. 549 dated 31st October, 1989, which reads as follows:

7.2 Amendment made by the Amending Act, 1989, to reintroduce the expression `reason to believe' in Section 147.--A number of representations were received against the omission of the words `reason to believe' from Section 147 and their substitution by the `opinion' of the Assessing Officer. It was pointed out that the meaning of the expression, `reason to believe' had been explained in a number of court rulings in the past and was well settled and its omission from Section 147 would give arbitrary powers to the Assessing Officer to reopen past assessments on mere change of opinion. To allay these fears, the Amending Act, 1989, has again amended Section 147 to reintroduce the expression `has reason to believe' in place of the words `for reasons to be recorded by him in writing, is of the opinion'. Other provisions of the new Section 147, however, remain the same."

14. In the present case the Assessing Officer passed the assessment order knowing that there were three units eligible for deduction u/s 10A/10B and that only 2 of the 3 units had claimed deduction; the third unit claimed NIL

deduction. The Assessing Officer passed the assessment order and specifically altered the deduction claimed u/s 10A/10B. At the time of the original assessment the Assessing Officer did not think of setting off the loss of the third unit with the other two units and therefore the reassessment on a mere change of opinion is invalid.

15. Counsel for the revenue relied on the reasons given by the AO in rejecting the Petitioner's contentions. It was argued that the fact that the assessee had three units which were eligible for deduction under Sections 10A/10B of the Act, the fact of deduction being awaited in respect of profits of two units only, without setting off the losses suffered in the third unit, was not as clearly disclosed in the return of income as is sought to be argued by the petitioner. Counsel for the revenue argued that the issue under consideration was the computation of deduction allowable under Section 10B of the Act. For that purpose, he relied on Section 10-B (6) (ii) which provided for carry forward and set off of losses pertaining to the 100 % export oriented units eligible for deduction under the said section. When the facts of the present cases were seen in the light of the provision of sub-sections (3) to (8) of sub-section 10B, more particularly Section 10-B (6) (ii) the losses of the units were to be set off against the profits of such eligible unit. It was contended that this view was supported by the decisions relied on by the AO, i.e. *CIT vs. Himatasingike Seide Ltd.* 286 ITR 0255 and of the Chennai Bench of the Tribunal in *Sword Global (I) P Ltd Vs. ITO* 306

ITR (AT) 286. Therefore, the assessee was not correct in not setting off of losses of one eligible unit against the profits of another eligible unit, which is contrary to the scheme of Section 10B. This clearly constituted failure on the part of the assessee to make full and true disclosure, which necessitated re-opening of assessment, under Sections 147/148.

16. The primary duty of the AO, while invoking his power under Sections 147/148 is to be satisfied, on the basis of something on the record ("reasons to believe") that the assessee had withheld particulars, which led to income escaping assessment. The AO's reasoning appears to be that the assessee acted incorrectly in not setting off losses of one eligible unit against the profits of another eligible unit. However, the "reasons to believe" note, which initiated the reassessment proceeding, is silent as to what were the materials which persuaded the revenue to invoke the extraordinary powers under proviso to Section 147 of the Act. Now, *Kelvinator of India (supra)* is authority that the Assessing Officer can re-open assessment under Section 147 of the Act, only if there is 'tangible material' to show that income has escaped assessment. The Assessing Officer is not allowed to arbitrarily re-open assessment. This aspect had been emphasized much earlier, in *Lakhmani Mewal Das* that

> *"The expression 'reason to believe' does not mean a purely subjective satisfaction on the part of the Income Tax Officer. The reason must be held in good faith. It cannot be merely a pretence. It is open to the court to examine whether the reasons for the formation of the belief have a rational connection with or a relevant bearing on the*

formation of the belief and are not extraneous or irrelevant for the purpose of the section."

17. In the present case, the original return of the assessee was subjected to scrutiny assessment, under Section 143 (3). The assessee was apparently closely questioned on various aspects, including its claim for treatment of the three units, under Sections 10-A/10B of the Act. In response to a query raised by Respondent No.1, the Petitioner by letter dated 21.02.2005 furnished information regarding the units eligible for deduction u/s 10A/10B. In the reply the Petitioner listed all three units as units eligible for claiming deduction. The issue of deduction under Sections 10A/10B was specifically examined by the Assessing Officer during the original assessment. Furthermore, Form 56F/56G was also submitted along-with the return of income. In the forms the Petitioner had specifically claimed deduction u/s 10A/10B in respect of profits of two units whereas NIL deduction for the third unit. Furthermore, in a Note (dated 12.01.2005), appended to the return of income, the writ petitioner specifically disclosed at Point 1(c) that, the claim for benefit under Sections 10A/10B of the Act, in respect of 66, Udyog Vihar, Greater Noida- was eligible for claiming tax-holiday benefits under Section 10B of the Act. No deduction under Section 10B of the Act was claimed in view of a loss situation. The Report in Form 56G for the said unit to was enclosed. On 27.12.2006 the Petitioner filed an approval letter from the competent authority regarding eligibility of the units

for deduction u/s 10A/10B; approval letters regarding all three units were submitted.

18. In the above background of facts, when there was intensive examination in the first instance in respect of the issue, which was the basis for re-opening of assessment, it was necessary for the AO to indicate, what other material, or objective facts, constituted reasons to believe that the assessee had failed to disclose a material fact, necessitating reassessment proceedings. That is precisely the *"tangible material"* which have to exist on the record for the "reasons" (to believe" bearing a *"live link with the formation of the belief"* as spelt out in *Kelvinator*. When the assessment is completed, as in the present instance, under Section 143 (3), after the AO goes through all the necessary steps of inquiring into the same issue, the reasons for concluding that reassessment is necessary, have to be strong, compelling, and in all cases objective tangible material. This court discerns no such tangible materials which have a live link that can validate a legitimate formation of opinion, in this case. It is not enough that the AO in the previous instance followed a view which no longer finds favour, or if the latter view is suitable to the revenue; those would squarely be change in opinion. Perhaps, in given fact situations, they can be legitimate grounds for revising an order of assessment under Section 263; but not for re-opening it, under proviso to Section 147.

19. As a result of the above discussion, it is held that the impugned notice, under proviso to Section 147, and consequent reassessment proceedings, are beyond jurisdiction. They are unsustainable, and are hereby quashed. The writ petition is allowed in these terms, without any order as to costs.

S. RAVINDRA BHAT
(JUDGE)

R.V. EASWAR
(JUDGE)

6th December, 2012