

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.53 OF 2010

Indian Oil Corporation Ltd.

..Petitioner.

Vs.

The Deputy Commissioner of Income Tax  
and others

..Respondents.

....

Mr. R. Murlidharan with Mr. Atul K. Jasani for the Petitioner.

Mr. J.S. Saluja for the Respondents.

.....

**CORAM : DR.D.Y.CHANDRACHUD &  
J.P.DEVADHAR, JJ.**

10 June 2010.

**ORAL JUDGMENT (Per DR.D.Y. CHANDRACHUD, J.) :**

1. Rule, by consent returnable forthwith. With the consent of Counsel and at their request the Petition is taken up for hearing and final disposal.

2. These proceedings arise out of Assessment Year 2002-03. The assessee filed a return of income on 30 October 2002 declaring an income of Rs.2620.22 Crores. In the computation of taxable

income, the income from other sources was disclosed to comprise of a dividend income of Rs.206.95 Crores. During the course of the assessment proceedings, the Assessing Officer issued a notice to the assessee on 11 October 2004 seeking inter alia details of dividend claimed to be exempt under Section 10(33) without considering the disallowance under Section 14A. In its reply dated 17 January 2005 the assessee disclosed that during the previous year relevant to Assessment Year 2002-03 it had received a dividend income of Rs. 206.95 Crores. The assessee stated that investments were made out of internal accruals and no borrowings were made for the purpose of investment. Accordingly to the assessee no expenditure had been incurred for earning the dividend income from these investments and no administrative expenditure was involved. The assessee noted that in the course of the assessment made under Section 143(3) for Assessment Year 2001-02 the Assessing Officer had accepted the fact that no expenditure had been incurred for earning tax free dividend income.

3. An assessment order was passed under Section 143(3) on 10 March 2005 determining the total income at Rs.3031.14 Crores. No disallowance was made under Section 14A. On 22 March 2007 a revisional order was passed under Section 263 by the Commissioner directing the First Respondent to consider the applicability of Section 14A. No order was passed by the Assessing Officer to give effect to the order passed by the revisional authority. However, on 26 February 2009 a notice was issued to the Petitioner seeking to reopen the assessment for Assessment Year 2002-03 on the ground that there was reason to believe that income chargeable to tax had escaped assessment within the meaning of Section 147. The following reasons were recorded in support of the notice reopening the assessment on 2 April 2009 :

“It is noticed from the records that the assessee company had received dividend of Rs.20,695.14 lakhs, which did not form part of its total income. As per the provisions of Section 14A, the expenditure incurred by the assessee in relation to income which does not form part of the total income shall not be allowed as deduction under the Act. No expenditure had been allocated by the assessee company towards earning of the said exempt income. Hence,

appropriate disallowance on account of allocable administrative expenditure was required to be made u/s 14A of the Act, which remained to be done. Considering the facts of the case, nature of income not forming part of the total income, the expenses incurred and position of law, the appropriate disallowance @ 2% of the total administrative cost amounts to Rs.3,170.95 lakhs.

2. By not allocating any expenditure towards earning of dividend income and by claiming that whole of the expenditure incurred during the year was incurred for earning of the taxable income offered in the return filed, the assessee company has failed to disclose fully and truly all material facts necessary for its assessment for the year under consideration.”

4. The reopening of the assessment in the present case is beyond a period of four years of the expiry of the relevant Assessment Year. The validity of the invocation of the jurisdiction under Section 147 will therefore depend upon whether within the meaning of the proviso to the Section, there was a failure of the assessee “to disclose fully and truly all material facts necessary for the assessment for that assessment year”. Absent compliance with the jurisdictional condition the invocation of the power to reopen the assessment would be invalid.

5. Counsel appearing on behalf of the Petitioner, has urged four submissions. Firstly, it has been urged that during the course of the assessment proceedings the assessee had made a full disclosure of all the material facts necessary for the assessment and there was a due application of mind by the Assessing Officer. Secondly, in the case of the assessee on the very same issue, during the course of the assessment proceedings for Assessment Year 2001 and 2001-02 the Assessing Officer had accepted the contention of the assessee that the provisions of Section 14A did not apply. Thirdly, the assessee had taken recourse to an appeal against the exercise of the revisional jurisdiction under Section 263 and hence, under the second proviso to Section 147, it was not open to the Assessing Officer to assess or reassess income involving matters which are the subject matter of the appeal. Fourthly, the Assessing Officer in response to an audit objection had stated that he had correctly allowed the deduction. Consequently, recourse to the provisions of Sections 147 and 148 was not warranted.

6. On the other hand, it was urged on behalf of the Revenue that it is a settled principle of law that each Assessment Year constitutes an independent source of assessment and that consequently, the Assessing Officer was not bound by the view which was taken during Assessment Years 2000-01 and 2001-02.

7. From the record before the Court it is evident that during the course of the assessment proceedings for Assessment Year 2002-03 the assessee had while computing its taxable income and tax liability disclosed a dividend income of Rs.206.95 Crores under the head of income from other sources. This was also disclosed in Schedule N to the balance sheet of the assessee as of 31 March 2002. The Assessing Officer by his letter dated 11 October 2004 specifically sought a disclosure of the details of dividend claimed to be exempt under Section 10(33), without considering the disallowance under Section 14A. In response to the questionnaire of the Assessing Officer, the assessee specifically noted that the dividend income of Rs.

206.95 Crores was generated out of investments which were made through internal accruals and that no borrowings had been made for the purpose of the investments. From the following extract of the reply of the assessee, it is evident that a fair disclosure was made of the case of the assessee that no expenditure had been incurred in earning the dividend income and that even for Assessment Year 2001-02 the Assessing Officer had accepted the same plea :

“It is submitted that no expenditure has been incurred for earning the dividend income from such investments. The amount invested in the securities from which the dividend is received is out of the own funds. Also, there is no administrative expenditure incurred for the receipt of the above dividend income. Hence, we are to submit that we have not incurred any expenditure specifically for the purpose of earning dividend income.

In view of the above, it is submitted that there is no nexus between dividend earned and any expenditure incurred. Therefore, it is submitted that no expenditure should be netted off against the above dividend income. In this connection, reliance is placed on the decision of Bombay High Court in the case of CIT v. General Insurance Corporation of India 254 ITR 203 (Bom.).

Further, reference is made to the assessment made under Section 143(3) for the assessment year 2001-2002 where the assessing officer had accepted the fact that no expenditure was incurred for earning tax free dividend income.”

8. The record therefore clearly shows that the assessee disclosed fully and truly all the material facts necessary for the assessment insofar as it had a bearing on the issue in question. The Assessing Officer specifically applied his mind to the question as to whether the entire dividend income could be claimed as exempt without a disallowance for expenditure. As a matter of fact, even during the course of Assessment Year 2000-01 the Assessing Officer has applied his mind to the same issue while passing the order of assessment under Section 143(3) on 25 February 2003. Under Section 147 the Assessing Officer must have a reason to believe that any income chargeable to tax has escaped assessment for any Assessment Year. Where an assessment has been made under subsection (3) of Section 143 for the relevant Assessment Year, no action can be taken after the expiry of four years from the end of the relevant Assessment Year unless inter alia there has been a failure of the assessee to disclose fully and truly all material facts necessary for his assessment for that Assessment Year. This is a condition



precedent to a valid exercise of the statutory power to reopen an assessment after the expiry of four years from the end of the relevant Assessment Year. Evidently this condition has not been fulfilled. The record of the Court would clearly show that there was a full and true disclosure by the assessee of all the material facts and that the Assessing Officer has brought his mind to bear upon the issue on which the assessment is now sought to be reopened.

9. As a matter of fact it also emerges from the record that the Commissioner had by an order dated 22 March 2007 passed under Section 263 inter alia called upon the Assessing Officer to consider the disallowance under Section 14A of administrative expenses attributable to dividend income claimed as exempt under Section 10(33). The Assessing Officer did not pass an order giving effect to the directions of the Commissioner. Against the order passed by the Commissioner under Section 263 the assessee had filed an appeal before the Tribunal. The assessee sought liberty before the Tribunal to withdraw the appeal with permission to revive the appeal in the

event that the Assessing Officer passed an order in compliance with the directions of the Commissioner under Section 263. Since the Assessing Officer had not passed an order giving effect to the order of the Commissioner within the period of limitation under Section 153(2)(A), the appeal was stated to have become academic and was consequently allowed to be withdrawn on 18 May 2009. It was in the meantime on 26 February 2009 that the Assessing Officer sought to invoke the jurisdiction under Section 147 by issuing a notice under Section 148. Under the second proviso to Section 147, it is open to the Assessing Officer to assess or reassess such income, other than income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment. The power under Section 147 was exercised on 26 February 2009 during the pendency of the appellate proceedings before the Tribunal. Be that as it may, for the reasons already indicated earlier, we have also come to the conclusion that the condition precedent to the exercise of the statutory power to reopen an assessment after the expiry of four years was not fulfilled in the

facts of this case. Before concluding, it may also be necessary to note that on 1 December 2006 the Assessing Officer had in response to an audit query stated that the explanation of the assessee had been duly considered and no expenses had been disallowed under Section 14A.

10. For the aforesaid reasons, we are of the view that the Petitioner would be entitled to succeed. Rule is accordingly made absolute by setting aside the notice dated 26 February 2009 issued by the First Respondent under Section 148 seeking to reopen the assessment for Assessment Year 2002-03.

There shall, in the circumstances of the case, be no order as to costs.

(Dr. D.Y.Chandrachud, J.)

(J.P. Devadhar, J.)