UNREPORTED

I-2 and I-3

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **ITA No. 277/2008**

CIT ..... Appellant
Through: Ms. Rashmi Chopra, Advocate.

versus

M/s.VLS Finance ltd. ..... Respondent
Through: Mr. O.S. Bajpai, Sr. Advocate, with
Mr. B.K. Singh, Advocates.

AND

\+ **ITA No. 278/2008**

CIT ..... Appellant
Through: Ms. Rashmi Chopra, Advocate.

versus

M/s.VLS Finance ltd. ..... Respondent
Through: Mr. O.S. Bajpai, Sr. Advocate, with
Mr. B.K. Singh, Advocates.

% **DATE OF DECISION: August 18, 2010**

CORAM:
HON'BLE MR. JUSTICE A.K.SIKRI
HON'BLE MS. JUSTICE REVA KHETRAPAL

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether judgment should be reported in Digest?

J U D G M E N T (ORAL)
18.08.2010

: A.K.SIKRI, J.

The respondent-assessee had filed its return of income for the assessment year 1996-97 which was assessed and the order was passed under Section 143(3) of the Income Tax Act, 1961 on 31st March, 2000. In this return, the assessee had also claimed deductions under Section 35D of the Income Tax Act. The assessee was allowed this deduction by the Assessing Officer treating the assessee as an "industrial undertaking". In a similar manner, claim under Section 35D was made for the assessment year 1997-98 also and was allowed. However, after a lapse of more than four years, a notice was issued to the assessee under Section 148 of the Act proposing to withdraw the claims of deduction allowed under Section 35D of the Act on the ground that the assessee was a finance company engaged in hire-purchase and leasing business and was not an industrial undertaking. Re-assessment order was passed on that basis which was challenged by the assessee. The CIT(A) allowed the appeal on the ground that the notice under Section 148 was issued beyond a period of four years and the assessment could be re-opened only if there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment for that assessment year. The CIT(A) found that no such case was made out by

reasons to believe as furnished by the Assessing Officer to the assessee, not even a whisper was made that the assessee had suppressed any facts or had not disclosed full and true facts, on the basis of which the assessee made claim for deductions under Section 35D of the Act. This decision of CIT(A) has been upheld by the Tribunal also giving the same reason, in the following words: -

> "As per proviso to sec. 147 of the Act if an assessment has been made u/s 143(3) for a particular assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment in such assessment year by reason of failure on the part of the assessee to make a return u/s 139 or in response to a notice issued under sub-section (1) of 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment for that assessment year. A time limit has been prescribed for opening a completed case and thereafter only on default on the part of the assessee. This is so because the policy of law is that there must be point of finality in all legal proceedings. In the reasons recorded for both the years, there is not even an allegation by the AO that the assessee failed to disclose fully and truly all material facts necessary for its assessment. Nothing of this sort has been alluded to in the reasons recorded. The conjunction "and" used between fully and truly is important and has to be interpreted as a strict prescription of law. The material disclosed should not only be full, but also be true. It is not enough if it is only fully, for, it may contain untrue material. It is not equally enough if it is

invariably be present. We found that in the A.Ys. 1996-97 and 1997-98, the assessee had claimed certain expenses relating to public issue and advertisement, etc., as revenue expenditure. All the details were made available to the AO. The AO did not allow this expenditure as revenue expenditure; however, he allowed the same being 1/10th of the total expenditure in the A.Y. 1995-96 u/s 35D. Then, in subsequent years, the assessee claimed 1/10th of this expenditure u/s 35D. Now, coming to the claim of bad debts for A.Y. 1997-98, the details with regard to bad debts were called for by the AO and the same were filed by the assessee vide letter dated 15.03.2000. Thereafter, the AO allowed the claim of the assessee. Thereafter, no material has come into the possession of the department that there was some falsity in the claim made by the assessee. For both these years the reasons recorded u/s 147 of the Act for reopening the assessments there is not even a whisper that the assessee had not disclosed the material facts truly and fully, which is clear from the reasons as recorded by the AO. In the case of Garden Silk Mills Ltd. v. CIT, 1995 Tax LR 1205(Guj), the High Court held that condition precedent for acquiring jurisdiction by the assessing authority for issuing notice u/s 147 after the expiry of four years from the end of the relevant assessment years did not exist as the ITO had also not held any belief that such escapement has arisen on account of any failure or omission on the part of the assessee as envisaged u/s 147 and therefore, he did not acquire any jurisdiction to issue notices, other case laws supporting this proposition of law (i) Parsharam Pottery Works Co. Ltd. v. ITO, 106 ITR (SC); Siesa Inds. v.CIT, 178 ITR 437; and (ii) Berger Paints India Ltd. & Ors. v. JCIT, 245 ITR 645(Cal).”

2. The learned counsel for the appellant made a vehement submission to the effect that when the assessee was a finance company, making a claim under Section 35D on the premise that it was an industrial undertaking clearly amounted to not making true disclosure and therefore the assessment could be re-opened even beyond the period of four years and the proviso to Section 147 of the Act was not applicable in a case like this. However, we are not able to accept this submission of the learned counsel. Again she could not dispute that in so far as the supply of information about the nature of business of the assessee is concerned, all necessary facts, completely and truly, were disclosed by the assessee. The assessee made full and complete disclosure, clearly stating that it was a hire-purchase company. On that basis, it had made a claim under Section 35D of the Act as the submission of the assessee was that such activity would make the assessee an 'industrial undertaking'. This was, it appears that, accepted by the Assessing Officer and for this reason the Assessing Officer allowed the claim under Section 35D of the Act. Whether the assessee should have been treated as an industrial undertaking or not is entirely a different issue. We are concerned here with the question as to whether the assessee had made a complete, full and true disclosure of the material facts or not. It cannot be disputed that this was so done. If on the basis of the opinion supplied by the assessee, it is treated as an industrial

mean that on the basis of the facts disclosed by the assessee, the Assessing Officer has come to a particular conclusion. If the said conclusion/opinion is wrong that cannot be the basis of re-opening of the assessment after a period of four years, unless it is shown that there was no full and true disclosure of the information which led to escaping the income tax.

3. We may note that the learned counsel for the assessee has also argued that at best it would be a case of change of the opinion and in this regard he has relied upon a judgment of the Supreme Court in the case of ***CIT vs. Kelvinator India Pvt. Ltd. 320 ITR 561.***

No question of law arises. The appeals are accordingly dismissed.

A.K. SIKRI
(JUDGE)

REVA KHETRAPAL
(JUDGE)

August 18, 2010
sk