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

Reserved on : 8th December, 2011.
% **Date of Decision** : 15th February, 2012.

\+ W.P.(C) 12438/2009

SUN INVESTMENT PVT LTD ..... Petitioner
Through Mr. Ajay Vohra, Ms. Kavita Jha and Mr. Somnath Shukla, Advs.

versus

THE ASSISTANT COMMISSIONER OF INCOME TAX AND ORS ..... Respondents
Through Ms. Rashmi Chopra, sr. standing counsel

\+ W.P.(C) 12457/2009

SUN INVESTMENT P.LTD ..... Petitioner
Through Mr. Ajay Vohra, Ms. Kavita Jha and Mr. Somnath Shukla, Advs.

versus

THE ASSISTANT COMMISSIONER OF INCOME TAX & ANR. ..... Respondents
Through Ms. Rashmi Chopra, sr. standing counsel

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V. EASWAR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not ? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

R.V. EASWAR, J.:

W.P.(C) 12438/2009

M/s Sun Investment Pvt. Ltd. has filed the present writ petition seeking issue of a writ of mandamus or any other writ or order or direction in the nature of mandamus to the respondents to withdraw, cancel or resend the notice issued by them under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'Act'), in respect of the assessment year 2003-04. The petitioner has also prayed for issue of a writ of certiorari for quashing the aforesaid notice and for the issue of a writ of prohibition to forbear the respondents from giving effect to the notice and from doing anything in furtherance of the purported notice.

2. The relevant facts giving rise to the present writ petition may be noticed. The petitioner is an investment company registered with the Reserve Bank of India as a non-banking finance company. It deals in shares and securities and also makes investments. On 11.11.2003 it filed a return of income for the assessment year 2003-04 declaring Rs.Nil as its total income computed under the provisions of the Act. The return was accompanied by the computation of the income, the report of the chartered accountants in Form No.29-B and the annexures thereto as well as the annual financial accounts. The schedules forming part of the

balance sheet as on 31.3.2003 were also filed along with the annual accounts. It is relevant to mention that Note 3 of the Schedule H read as follows :

> "3. The market value of the certain quoted investments (as reflected in schedule E) is lower than the cost. Considering the strategic and the long term nature of the Investments and the asset base of the investee companies, such decline, in the opinion of the management has been considered to be of a temporary nature and hence not considered while valuing the same. As regard unquoted investments, in view of a permanent diminution in the value of certain cases, a provision to the extent considered appropriate by the management, has been made in the accounts."

On 20.6.2005, the Assessing Officer, who is the respondent No.2 herein, issued a questionnaire to the petitioner pursuant to the notice issued under Section 143(2) on 11.10.2004. A copy of the said questionnaire is marked as Annexure B to the writ petition. One of the queries raised in the questionnaire required the assessee to furnish "the details of investments, value of which has been diminished by Rs.15,33,22,500/- and reasons for the same". In response to the questionnaire the petitioner submitted a letter dated 25th August, 2005 to the Assessing Officer, a copy of which has been marked as Annexure C to the writ petition. Item No.8 of the letter stated that the details of diminution of the investment were contained at page 19 of the enclosure. The Assessing Officer thereafter passed an order under Section 143(3) of the Act on 26.12.2005 (Annexure D). In the first paragraph of the assessment order it was stated that notice

under Section 143(2) dated 11.10.2004 had been served on the assessee and that the authorized representative of the assessee "attended the proceedings and filed necessary details as called for". The assessment order also refers to the audited profit and loss account, balance sheet and the annexures filed along with the audit report as required under Section 44AB of the Act. Ultimately, the total income of the assessee company was computed at Rs.Nil after adjusting the brought forward losses from the assessment years 1998-99 and 1999-2000 to the extent of the income of Rs.15,07,36,430/- for the year under consideration.

3. On 19.5.2008, the second respondent issued a notice under Section 148 of the Act reopening the assessment for the assessment year 2003-04 on the ground that he had reason to believe that the petitioner's income had escaped assessment and called upon the petitioner to file the return of income in response to the notice. Accordingly the noticee, the petitioner filed a return of income declaring income as originally returned in the return filed on 11.11.2003 and also requested the first respondent to furnish the reasons recorded for reopening the assessment. The Assessing Officer, by letter dated 17.7.2009, informed the petitioner of the reasons for reopening the assessment and they are reproduced below :

> "It is noticed that the assessee has debited an amount of Rs.15,33,22,500/- in the Profit and Loss a/c on account of provision for diminution in value of investment to arrive at net profit. This provision was added back by the assessee for computing the income under normal provisions. However, while arriving at the book profits u/s 115JB, the same was not

added back by the assessee. This being unascertained liability according to sub section (c) to section 115JB should have been added back while computing the book profits u/s 115JB. The same is to be added to the book profits."

4. On 18.8.2009, the petitioner wrote a letter to respondent No.1 objecting to the issue of notice under Section 148 and the reopening of the assessment proceedings. It was submitted in the objections that the provision of Rs.15,33,00,500/- debited to the profit and loss account for diminution in the value of investments was an ascertained liability and therefore while computing the book profit under Section 115JB of the Act, no adjustment was made since it was not postulated/mandated specifically by any of the adjustments stipulated by the Section, that the entry was separately and independently reflected in the profit and loss account and this fact had also been brought to the notice of the Assessing Officer by Note No.3 to Schedule H to the annual accounts filed at the time of the original assessment proceedings, that there was thus a full and complete disclosure of the entry as in the books of account, that the return of income was duly accompanied by a report of the chartered accountants in Form No.29-B as prescribed by the Act in which he had certified the computation of the book profit, that in the course of the original assessment proceedings the Assessing Officer had specifically sought clarification of the petitioner on this aspect which was also duly furnished by the assessee, that it was only after seeking clarification and verification in respect of the provision debited to the profit and loss account that the

Assessing Officer had, after due application of mind, come to the conclusion that no adjustment to the book profit was necessary as per the Explanation to Section 115JB and that in these circumstances, the assessee had made full and true disclosure of all material particulars at the time of the original assessment proceedings and there was no failure on the part of the petitioner to do so, and therefore, the notice issued under Section 148 of the Act on19.5.2008 after a period of 4 years from the end of the relevant assessment year was without jurisdiction and consequently the reassessment proceedings were invalid.

5. The objections of the petitioner to the reopening of the assessment and the reasons recorded under Section 148(2) of the Act were rejected by the Assessing Officer by order dated 4th September, 2009. The Assessing Officer rejected the objections in the following words :

> "I have perused the assessment order u/s 143(3) dated 26/12/2005 and the submission dated 18/09/2005 filed by the assessee. The assessee has failed to disclose the material facts necessary for completing the assessment and objection raised by the assessee that the proceeding is barred by limitation is not acceptable as the notice u/s 148 was issued after complying the condition stipulated in section 151 of the IT Act, 1961 and therefore, the objection raised by the assessee is rejected and asked to comply with the notice u/s 143(2) and 142(1) of the I.T.Act."

6. It is against the aforesaid order passed by the Assessing Officer that the petitioner has filed the present writ petition.

7. The contention of the petitioner is that there was no failure on its part to furnish full and true particulars necessary for its assessment and therefore, the reopening is invalid, the notice having been issued after a period of 4 years from the end of the relevant assessment year. In our opinion, the contention is well founded. We have already referred to the particulars submitted by the petitioner along with the return of income. In addition to the profit and loss account and the balance sheet as on 31.3.2003 along with the Schedules, the petitioner had submitted the audit report in Form No.29B. It is not denied on behalf of the respondents that the assessee submitted the above particulars along with the return of income. It is relevant to note that in Note No.3 to Schedule H to the balance sheet, pointed attention of the Assessing Officer had been drawn to the fact that the market value of certain quoted investments (as reflected in Schedule E) is lower than the cost and that in the opinion of the management and considering the strategic and long term nature of the investments and the asset base of the companies in which the petitioner had invested, the decline in the market value of the investments was considered to be temporary in nature. The attention of the Assessing Officer was also drawn to the unquoted investments in the last line of the note. It is stated in the note that since in the case of unquoted investments the diminution in the value thereof was permanent, it was considered appropriate by the management that a provision to the extent of the diminution should be made in the accounts. We are concerned only with the provision made for diminution in the value of the unquoted

investments. The profit and loss account contained a debit of Rs.15,33,22,500/- towards provision for diminution in the value of unquoted investments. This provision has been made, according to the petitioner, in terms of accounting standards No.13. In the statement of income (Annexure A to the writ petition), the petitioner has first computed the total income under the normal provisions of the Act, that is to say, under the provisions of the Act in Chapter IV-D which provide for computation of "profits and gains of business or profession". The provisions of Section 115JB do not fall under this Chapter. While computing the total income under the normal provisions of the Act, the petitioner started the computation from the figure of net loss of Rs.28,58,179/- as per the profit and loss account and, interalia, added back the provision of Rs.15,33,22,500/- made for diminution in the value of investments. This statement of total income undeniably was before the Assessing Officer when he completed the assessment under Section 143(3). In fact, in the assessment order passed on 26.1.2005 under Section 143(3), he has noticed the statement of income enclosed with the return and has adopted the figure of Rs.15,07,36,430/- as the total income only as per the statement of income enclosed with the return of income. Therefore, the Assessing Officer was quite aware of the provision made by the petitioner in the profit and loss for diminution in the value of unquoted investments. In the details relating to the computation of book profit for the purpose of Section 115JB of the Act enclosed to Form No.29-B, which is the audit report submitted along with the return of

income at the time of original assessment proceedings, the book profit has been shown at a negative figure of Rs.28,58,179/-. This is the figure arrived at in the profit and loss account as net loss after debiting the provision for diminution in the value of the unquoted investments. Thus, at the time of completing the original assessment under Section 143(3), the Assessing Officer had before him not only the profit and loss account and the balance sheet along with the Schedules and notes on account, but also had before him, the statement of total income filed by the petitioner, which contained the normal computation of total income as per the Act as also the computation of the book profit in Annexure A to the audit report in Form No.29-B furnished under Rule 40B of the Income Tax Rules for the purposes of Section 115JB. There was thus no failure on the part of the assessee to furnish full and true particulars necessary for its assessment.

8. The Assessing Officer has stated in the reasons recorded for reopening the assessment that the provision for diminution in the value of the unquoted investments was an unascertained liability and therefore, the assessee ought to have added it back to the net profit as shown in the profit and loss account in terms of Clause (c) of Explanation 1 to Section 115JB. Under this provision the amount or amounts set aside to meet provisions made towards liabilities other than ascertained liabilities had to be added back to the net profit shown in the profit and loss account. Whether the provision made for diminution in the value of unquoted

investments amounts to a provision made for meeting an unascertained liability is a legal and accounting issue which had to be decided by the Assessing Officer on the basis of the particulars and accounts submitted by the assessee. The duty of the assessee extends to the furnishing of true and full material facts necessary for the purpose of its assessment. It does not extend to informing the Assessing Officer as to what decision he should take as to the applicability of the relevant provisions of the statute on the basis of the material facts submitted by the assessee. It is not for the assessee to instruct the Assessing Officer as to what inferences the latter should draw from the full and true material facts submitted by him. Inferences of fact and law from the disclosed facts and the applicability of the relevant provisions of the statute are the domain of the Assessing Officer. The assessee cannot be blamed for not informing or instructing the Assessing Officer as to what inferences the latter should draw or as to what provisions of the statute the latter should apply in making the assessment. All this is, of course, subject to the basic condition that the assessee should have submitted full and true material facts before the Assessing Officer along with the return or in the course of the assessment proceedings. It is necessary and useful to recapitulate what the Supreme Court observed in the case of ***Calcutta Discount Company Ltd. Vs. ITO, Companies District I, Calcutta and Anr.***, (1961) 41 ITR 191, which is the "locus classicus" on the subject. In this case, the majority opinion was expressed by Das Gupta, J., in the following words :

"There can be no doubt that the duty of disclosing all the primary facts relevant to the decision of the question before the assessing authority lies on the assessee. To meet the possible contention that when some account books or other evidence has been produced, there is no duty on the assessee to disclose further facts, which on due diligence, the Incometax Officer might have discovered, the Legislature has put in the Explanation, which has been set out above. In view of the Explanation, it will not be open to the assessee to say, for example-"I have produced the account books and the documents: You, the assessing officer, examine them, and find out the facts necessary for your purpose: My duty is done with disclosing these account books and the documents." His omission to bring to the assessing authority's attention those particular items in the account books, or the particular portions of the documents, which are relevant, will amount to "omission to disclose fully and truly all material facts necessary for his assessment." Nor will he be able to contend successfully that by disclosing certain evidence, he should be deemed to have disclosed other evidence, which might have been discovered by the assessing authority if he had pursued investigation on the basis of what has been disclosed. The Explanation to the section gives a quietus to all such contentions; and the position remains that so far as primary facts are concerned, it is the assessee's duty to disclose all of them-including particular entries in account books, particular portions documents, and documents and other evidence which could have on discovered by the assessing authority, from the documents and other evidence disclosed.

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.

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?

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 Incometax 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-tax Officer.

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."

It is pertinent to note that the judgment also explains the object of the Explanation below Section 34 of the 1922 Act, which is now Explanation 1 below Section 147, as it presently stands. Even under the Explanation it is not for the assessee to inform the Assessing Officer of the inferences of

fact or law to be drawn by the latter. The duty under the said Explanation, placed on the assessee, is only to disclose primary facts and not inferences. The caveat, however, is that the material facts which could have been or even should have been discovered and unearthed by the Assessing Officer, with due diligence from the books of accounts or other evidence, does not amount to disclosure. The assessee cannot plead and defend that he had produced all the books of accounts and other evidence before the Assessing Officer. It is note-worthy that the Supreme Court, in the aforesaid judgment, has pointed out that the Explanation has nothing to do with the "inferences" which the Assessing Officer is required to draw from the primary facts disclosed by the assessee.

9. In the present case, as the facts narrated hereinabove would show the petitioner has disclosed the fact that the profit and loss account contains a debit towards the provision for diminution in the value of unquoted investments. It is not a case where the entry was imbedded in the account books and required some more diligence than a cursory look at the accounts to find it out. Pointed attention of the Assessing Officer had been drawn to the Note No.3 of Schedule H appended to the balance sheet. The note clearly explained the entry made in the profit and loss account. There was no ambiguity or doubt. A copy of the profit and loss account is placed at pages 60-61 of the paper book which contains the entry "diminution in value of investments Rs.15,33,22,500/-" in the expenditure side. These are the primary facts which were disclosed by the

petitioner at the time of the original assessment. The Assessing Officer examined and enquired into the said diminution in value in the original assessment proceedings. It was not for the petitioner to inform the Assessing Officer that on these facts the legal inference to be drawn is that the provision should be disallowed and added back to the book profit in terms of Clause (c) to Explanation 1 below the Section 115JB. That inference or decision was for the Assessing Officer to take. Nothing prevented him from applying the relevant clause of Explanation 1 below Section 115JB and add back the provision on the ground that it had been made for meeting an ascertained liability. It was not for the petitioner to inform the Assessing Officer to take a decision as to whether the provision can be considered as one for meeting an unascertained liability. That question, as it would appear from the later amendment of law, was debatable at the time when the original assessment was completed. There was a view or a school of thought which considered that the provision was not one made for a liability at all since the erosion in the market value of the investment cannot fit into the description of liability as it is understood in accounting or commercial circles. The revenue adopted a different view and interpreted Clause (c) of Explanation 1 below Section 115JB to include the provision made for diminution in the value of the investment or asset. The matter was debated and it had reached the Income Tax Appellate Tribunal in several cases and considering the divergence of views a Special Bench was constituted which ruled in Joint ***CIT vs. Usha Martin Industries Ltd. (104 ITD 249) (SB)***, that the provision made for

diminution in the value of the asset or investment cannot be considered as a liability, much less an unascertained liability. The law was thus in a fluid state and the legislature stepped in by inserting Clause (i) to Explanation 1 below Section 115JB. This Clause provided that any provision made or set aside for diminution in the value of any asset should be added back to the book profit as per the profit and loss account. This Clause was inserted by the Finance (2) Act, 2009 with retrospective fact from 1.4.2001. The assessee cannot be said to have omitted to inform the Assessing Officer of the existence of this clause because at the time when the assessment was made under Section 143(3), this Clause which specifically covered the provision for diminution in the value of the asset was not in existence in the Section. The assessee cannot be expected to anticipate statutory amendments made later and this is the view taken by a Division Bench of this Court in ***CIT Vs. SIL Investments Ltd.*** in ITA Nos.700 & 701 of 2010, dated 7th May, 2010. The Division Bench approved of the tribunal's view that the law cannot contemplate the performance of an impossible act and therefore, it was not expected of the assessee to foresee or forecast a future amendment which was to be brought into effect retrospectively. A similar view has been expressed by the Bombay High Court in WP(C) 2514 of 2009 in the case of ***Rallis India Ltd. Vs. ACIT and Anr***. In the absence of any specific provision in Section 115JB at the time when the original assessment was made and having regard to the debatable nature of the issue as to whether Clause (c) of Explanation 1 to Section 115JB would cover cases of amounts set aside

for diminution in the value of investment, it can never be postulated that it was the duty of the assessee to have instructed or informed the Assessing Officer as to the legal inference which he should draw from the primary facts. There was thus no failure on the part of the petitioner to disclose full and true primary particulars at the time of the completion of the original assessment. The notice issued under Section 148 of the Act is therefore, declared to be without jurisdiction. Accordingly, a writ of certiorari will issue to quash the notice issued by the Assessing Officer under Section 148 of the Income Tax Act. The writ petition is allowed with no order as to costs.

W.P.(C) 12457/2009

In this writ petition the prayer of the petitioner is the same as in WP(C) 12438/2009. It relates to the assessment year 2006-07. The controversy is substantially the same as in WP(C) 12438/2009, but with relevant factual differences. We may note the essential facts and dates for the sake of completeness. For this year the petitioner filed its return of income on 20.10.2006 through e-filing, declaring its total income at Rs.Nil. This return was accompanied by the computation of the income under the normal provisions of the Act, the computation of book profit under Section 115JB supported by the audit certificate in Form No. 29-B, the profit and loss account and the balance sheet along with the Schedules thereto etc. In the computation of income under the normal provisions of the Act, the petitioner disallowed and added back the provision of

Rs.3,11,865/- for doubtful debts and the provision of Rs.8,99,15,733/- for non-performing assets. The total income was computed at a negative figure of Rs.4,57,39,948/-. In the computation of the book profit under Section 115JB, attached as Annexure A to the audit report in Form No.29B, the petitioner did not add back the two provisions. In the notes to accounts under Schedule L to the balance sheet, under the head "significant accounting policies and notes forming part of the accounts", the petitioner did not record any specific note or explanation as to the nature of the two provisions made in the profit and loss account. The Assessing Officer would appear to have processed the return under Section 143(1)(a) of the Act.

2. On 23.5.2008, the Assessing Officer issued notice under Section 148 of the Act and called upon the petitioner to submit a return of income. The petitioner filed a return of income in response to the notice and it is not in dispute that the return of income was the same as was filed originally on 20.10.2006. The petitioner also requested the Assessing Officer (respondent No.1) to furnish a copy of the reasons recorded for reopening the assessment. The Assessing Officer under cover of letter dated 17.7.2009 informed the petitioner of the reasons which are reproduced below :

> "It is noticed that provision for doubtful debts amounting to Rs.3,11,865/- and other provisions amounting to Rs.8,99,15,732/- have not been added back while computing to the Book Profits u/s

115JB of the Act. The samer (sic) is to be added to the book profits for computation of income u/s 115JB of the Act.

Therefore, you are required to comply with notice u/s 142(1) of /he (sic) Act."

3. The petitioner filed objections to the reasons recorded by the Assessing Officer and submitted that the Assessing Officer did not properly assume jurisdiction to reopen the assessment, that the issue of notice under Section 148 was not in accordance with law, that the provision for non-performing assets and for doubtful debts were ascertained liabilities and therefore no adjustment was made to the book profit in terms of Clause (c) of Explanation 1 below Section 115JB, that the provisions were separately and independently reflected in the profit and loss account and were clearly brought out in the notes to the accounts in Schedule L to the balance sheet and thus all the primary facts have been disclosed fully and truly at the time of the original assessment. It was further submitted that even though no assessment under Section 143(3) had been framed earlier and the return filed originally was only processed under Section 143(1)(a), still the basic requirements of Section 147 were to be fulfilled and there has to be "reason to believe" that income chargeable to tax had escaped assessment add this condition was not fulfilled and therefore, the action taken under Section 148 was without jurisdiction. The Assessing Officer, however, rejected the petitioner's objections by order dated 24.9.2009. In this order, he stated that as per

information available on record no original assessment had been made under Section 143(3) of the Act and the return filed originally by the petitioner had merely been processed under Section 143(1)(a).

4. The contention of the petitioner before us is that the Assessing Officer had no "reason to believe" that income chargeable to tax had escaped assessment. We are unable to accept the contention. In this year there was no assessment under Section 143(3) of the Act in the first place. The return filed by the petitioner was only "processed" under Section 143(1)(a), which does not amount to an "assessment". The notice issued under Section 148 on 23.5.2008 is within the period of 4 years from the end of relevant assessment year. The proviso to Section 147 is not applicable. Failure or omission on the part of the assessee to disclose material facts is not a relevant aspect for consideration. In the reasons recorded, the Assessing Officer has alleged that the provision for doubtful debts and the provision for non-performing assets were not added back while computing the book profit under Section 115 JB. Since it is a case of the Assessing Officer not having applied the relevant statutory provisions, it cannot be held that he did not have "reason to believe" that income chargeable to tax had escaped assessment. "Reason to believe" refers to the prima facie or tentative belief which the Assessing Officer is required to form at the time of recording the reasons and issuing the notice under Section 148. The belief should not be mere pretence or sham. It should not amount to a mere suspicion or surmise. Under Clause

(c) of Explanation 1 to Section 115 JB, any provision made or amount set aside for meeting unascertained liabilities has to be added back to the book profit shown in the profit and loss account. Whether or not under this provision the Assessing Officer should add back the provision in question to the book profit is something which has not been adverted to and examined by him as there was no occasion for him to do so since the return was merely processed under Section 143(1)(a) of the Act, there being no scrutiny assessment under Section 143(3). In the reasons recorded for reopening the assessment, the Assessing Officer has referred to the statutory provision which in his view is applicable. It may be that the issue whether the provisions in question should be added back in terms of the relevant clause in the Explanation-1 below Section 115JB is debatable but the fact remains that it could not be examined since the return filed by the assessee was merely processed under Section 143(1)(a). No notice under Section 143(2) had been issued and no assessment under Section 143(3) had been framed. As already pointed out, at the time of recording the reasons for reopening the assessment, the Assessing Officer is expected to form only a prima facie opinion or belief regarding the applicability of the above mentioned clause to the provisions in question. At that stage it is not necessary for him to conclusively establish that his belief or opinion is correct even on merits. The merits of the matter will have to be decided in the course of the reassessment proceedings after hearing the assessee and in accordance with law. Since no opinion could have been formed by him when the

return was processed under Section 143(1)(a), it cannot also be contended that the reassessment proceedings were prompted by a change of opinion.

5. In WP(C) No.12438/2009 the position was different. In that case for the assessment year 2003-04 the Assessing Officer had made a regular assessment under Section 143(3) of the Act on 26th December, 2005. All the primary facts had been furnished by the assessee in the return including the relevant annexures regarding the provision made for diminution in the value of unquoted investments. There was no failure on the part of the assessee thus to furnish fully and truly all material particulars at the time of the original assessment. It was for the Assessing Officer to draw the appropriate inferences, both factually and legally, from those primary facts. The notice under Section 148 which was issued after 4 years from the end of the assessment year could not be sustained since there was no failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment. In the present writ petition, which relates to the assessment year 2006-07, the position is different. Herein, it is not the case of the Assessing Officer that the assessee had not furnished the primary and material facts fully and truly. The case is that those facts could not have been examined by him since the return was only processed under Section 143(1)(a) and, therefore, no inference or opinion could have been formed by him as to the disallowbility of the provisions. The fact that the notice under Section 148 was issued beyond a period of 4 years from the end of the assessment

year 2003-04 and the further fact that the assessment was completed under Section 143(3) of the Act on 26th December, 2005, in the other writ petition, are features distinguishing WP(C) No.12438/2009 from the present writ petition. In contrast, in the present writ petition the return was merely processed under Section 143(1)(a) there being no assessment under Section 143(3) and further the notice under Section 148 has been issued within a period of four years from the end of the assessment year 2006-07.

6. Accordingly, we are unable to accept the contention put forward on behalf of the petitioner in this writ petition. The same is accordingly dismissed. All interim orders are vacated. There shall be no order as to costs.

To sum up : WP(C) No.12438/2009 is allowed and

WP(C) No.12457/2009 is dismissed.

(R.V. EASWAR)
JUDGE

(SANJIV KHANNA)
JUDGE

February 15, 2012
vld/Bisht