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

Date of decision: 31st July, 2013

\+ **W.P.(C) 2768/2012**

CANON INDIA PVT. LTD AND ANR ..... Petitioners
Through Mr. C.S. Aggarwala, Sr. Advocate with Mr. Prakash Kumar, Advocate.

versus

ASSISTANT COMMISSIONER OF INCOME TAX ..... Respondent
Through Mr. N.P. Sahni, Sr. Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJIV KHANNA, J (ORAL)

1. Canon India Pvt. Ltd. impugns reassessment proceedings initiated vide notice dated 01.02.2010 under Section 148 of the Income Tax Act, 1961 ('Act' for short) as well as order dated 11.04.2012 passed by the respondent – Assistant Commissioner of Income Tax, Circle 3(1) in respect of the Assessment Year 2003-04.

2. For the sake of clarity, we note that the reassessment proceedings have been initiated after four years from the end of the relevant assessment year. On 02.12.2003 the petitioner had filed the return for Assessment Year 2003-04 declaring a loss of Rs.1,59,49,178/. By the revised return filed on 30.10.2004 the loss was revised to Rs.4,48,34,310/-. This revised return was selected for scrutiny and on 31.03.2006 assessment order under Section 143(3) of the Act was passed, computing the income of the petitioner at nil and after setting off brought forward losses.

3. The Assessing Officer recorded the following "reasons to believ before issuing of the impugned notice dated 1st February, 2010 for reopening the regular assessment finalised on 31st March, 2006:-

> "The return in this case for the AY 2003-04 was filed on 2.12.2003 declaring a Loss of Rs.12949178/- which was processed u/s 143(1) of the I.T. Act, 1961 on 26.03.2004. The case was selected for scrutiny and the asstt. Was completed u/s 143(3) of the Act on 31.03.2006 at NIL income after setting of B/f Losses.
> The perusal of asstt. Records for the AY 2003-04 reveals that as per schedule 16 SI. No.19 of the Notes to the accounts and clause 17 of 3CD report, Cannon Inc. had deducted tax at source relating to contracts in connection with developing software, amounting to Rs.203937900/- and deposited to the revenue authorities in Japan. The amount of tax deducted by Canon Inc. was to be only as a set off against any income tax liability which might arise in India but due to the significant losses the company was not able to utilize the benefit of tax deducted and debited the same amount to the profit and loss account, which was not admissible and should be added back to the total income of the assessee.
> Section 40(a) (ij) of the I.T. Act, 1961 specifically prohibits *"any deduction of income tax paid on a/c of any rate or tax levied on the profits or gains of any business or profession or assessed at a proportion of or otherwise on the basis of any such profits or gains."*
> Further, on perusal of asstt. Records for the same year, it was revealed that while making asstt., the assessee was allowed exemption under section 10A amounting to Rs.30482745/- before setting off B/f Losses/unabsorbed depreciation amounting to Rs.340139124/- which was not correct and the same should be changed.
> The section 10A of the I.T. Act, 1961 provides that *"subject to the provision of this section, a deduction of such profits and gains as are derived by the undertaking from the export of articles or things or computer software, as the case may be, shall be allowed from the total income of the assessee."*
> In view of above facts of the case, I have reasons to believe that the total income to the tune of 234420645/- (203937900 + 30482745) has escaped assessment owing to the failure on part of assessee to disclose fully and truly material facts necessary for asstt. and hence notice u/s 148 is hereby issued for reopening the asstt. u/s 147 of the I.T. Act for the AY 2003-04."

4. The petitioner, vide letter dated 08.06.2010 filed objections against

initiation of the reassessment proceedings. However, the objections were rejected by order dated 13.09.2010. The petitioner then filed writ petition No.6860/2010 which was allowed by the order dated 13.03.2012 recording that the assessing officer had not dealt with or considered the objections at the time of rejection. An order of remit was passed directing the Assessing Officer to reconsider the said objections and pass a speaking order.

5. The respondent has subsequently rejected the objections vide impugned order dated 11.04.2012 and observed that the reassessment proceedings, pursuant to the reasons recorded above, have been validly initiated.

6. The petitioner contends that full and true disclosure of material facts was made at the time of original assessment and it is a case of change of opinion. The petitioner's counsel argued that there is no new tangible material which has come on record and to the knowledge of the Assessing Officer after passing of the first assessment order and hence there is no basis for re-assessment.

7. Revenue, on the other hand, has contested the said contentions and submitted that once there is under-assessment then the Assessing Officer must issue reassessment notice, in order to bring the undisclosed income to tax. Reliance is placed by the Revenue on the reasons given in the impugned order dated 11.04.2012, wherein the Assessing Officer has observed that reassessment proceedings can be initiated when an Assessing Officer, on the basis of some material forms a prima facie or tentative view that income chargeable has escaped assessment. At this stage i.e. at the stage of recording of the reasons only relevancy of the reasons can be

looked into and not its sufficiency. Further under Explanation 1 Section 147 of the Act, mere production of Books of Account and the other evidence, from which inference could be drawn or with due diligence material could be discovered, do not necessarily amount to disclosure. Thus, failure on the part of the Assessing Officer to notice an entry or a statement in the balance sheet or profit and loss account does not bar initiation of reassessment proceedings. Our attention was drawn specifically to the following observations in the order dated 11th April, 2012.

> "Since, the assessing officer in the original assessment order did not form any view or any opinion with regard to the items of income which escaped its notice, it will not amount, to review of the order or change of opinion. When no opinion was formed by the Assessing Authority how can there be any change of opinion. Where the assessment order has been passed and certain items of income were not at all discussed and it escaped the notice of the assessing officer as a result of which, the reassessment order is passed in respect to those items of income, in the circumstances, it cannot be said that it would amount to review. In case where the Assessing Officer has not made an assessment of any item of income chargeable to tax while passing the assessment order in the relevant assessment year, it cannot be said that such income was subjected to an assessment proceedings. In the assessment proceedings, the Assessing Officer would ascertain on consideration of all relevant circumstances the amount of tax chargeable to a given taxpayer. The word assessment would mean the ascertainment of the amount of taxable income and of the tax payable thereon. In other words, where there is no ascertaining of the amount of taxable income and the tax payable thereon it can never be said that such income was assessed. Merely because during the assessment proceedings the relevant material was on record and could have been with due diligence discerned by the assessing officer for the purpose of assessing a particular item of income chargeable to tax, it cannot be inferred that the Assessing Officer must necessarily have deliberated over it and taken it out while ascertaining the taxable income or that he had formed any opinion in respect thereof. If looking back it appears to the Assessing Officer that a particular item even though

> reflected on the record was not subjected to assessment and was left out while working out the taxable income and the tax is payable thereon i.e., while making the final assessment order, that would enable him to initiate the proceedings irrespective of the question of non-disclosure of material facts by the assessee.
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> Initiation of reassessment proceedings is permissible where it is found that the Assessing Officer had passed an order of assessment without any application of mind and such application of mind can be found out from the order of assessment itself in as much as in the event the order of assessment does not contain any discussion on a particular issue, the same may be held to have been rendered without any application of mind.

8. It is true that when allegation of change of opinion is made one should expect full and true disclosure of primary and material facts but it would be incorrect to hold that if there is full and true disclosure of material facts it can be assumed that there was formation of opinion. Formation of opinion necessitates due examination of subject matter, where as in a case there is full and true disclosure of primary/material facts, the question whether there was formation of opinion need not be examined and answered. In **CIT v. Usha International Ltd. (2012) 348 ITR 485**, where the majority opinion authored by one of us (Sanjiv Khanna, J.), drew a distinction between the additional requirements stipulated in the first proviso i.e. 'full and true disclosure of material facts' and 'change of opinion' in the following words:-

> "24. Distinction between disclosure/declaration of material facts made by the assessee and the effect thereof and the principle of change of opinion is apparent and recognized. Failure to make full and true disclosure of material facts is a precondition which should be satisfied if the reopening is after four years of the end of the assessment year. The explanation stipulates that mere production of books of accounts and other documents, from which the Assessing Officer could have with due diligence inferred facts does not amount to full and true disclosure. Thus in cases of reopening after 4

> years as per the proviso, conduct of the assessee and disclosures made by him are relevant. However, when the proviso is not applicable, the said precondition is not applicable. This additional requirement is not to be satisfied when re-assessment proceedings are initiated within four years of the end of the assessment year. The sequitor is that when the proviso does not apply, the re-assessment proceedings cannot be declared invalid on the ground that the full and true disclosure of material facts was made. In such cases, re-assessment proceedings can be declared invalid when there is a change of opinion. As a matter of abundant caution we clarify that failure to state true and correct facts can vitiate and make the principle of change of opinion inapplicable. This does not require reference to and the proviso is not invoked. The difference is this; when proviso applies the condition stated therein must be satisfied and in other cases it is not a prerequisite or condition precedent but the defence/plea of change of opinion shall not be available and will be rejected."

9. Assessment is a tedious and complex process wherein examination of several subject matters, claims, entries or deductions is required. It is not wholly implausible that, in spite of best efforts and intention, the Assessing Officer may miss out and not examine a particular subject matter, claim, entry or deduction. It is not unknown that an entry, claim or statement may remain hidden in the reams of paper or documents. Therefore, by simply producing voluminous records before the Assessing Officer, an assessee cannot escape the re-assessment notice, unless it is apparent and evident from the records that the matter, claim, entry or deduction had come to the notice of the assessing officer. When a matter, claim, entry or deduction had not come to knowledge of the assessing officer previously or he was not aware of the claim etc., then it would be an oddity to call it "change of opinion". Awareness and knowledge of facts by the assessing officer is necessary for

"change of opinion". On the other hand, the first proviso operat on its own strength and conduct of the assessee is the core or the central question as the proviso alludes to disclosure of true and full material facts by the assessee and not application of mind or "change of opinion" by the assessing officer.

10. But then we have Explanation 1, which articulates that production of books or accounts or other evidences from which material facts could have been discovered had due diligence been exercised by the assessing officer, does not necessarily amount to disclosure of the material facts. Short contention and issue is when the disclosure can be regarded as full and true disclosure and when lack of due diligence of the Assessing Officer is covered by Explanation 1 to Section 147 of the Act.

11. In order to decide the said controversy, we would like to reproduce the first proviso and Explanation 1 to Section 147 of the Act, which read as under:

> **Provided** that where an assessment under sub-section (3) of Section 143 or this section has been made for the relevant 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 for such assessment year 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.
> XXXX
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> "Explanation 1. – Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso."

Proviso 1 to Section 147 of the Act postulates that reassessment

proceedings cannot be validly initiated, after the expiry of fo years, unless there were true and full disclosure of facts by an assessee. This full and true disclosure of facts has to be made at the time of filing of return and the assessment proceedings. The proviso has to be read along with Explanation 1 and we have to examine the interplay between the proviso and the explanation to Section 147 of the Act.

12. In ***3i Infotech Ltd. Vs. Assistant Commissioner of Income Tax & Others (2010) 329 ITR 257 (Bom.)*** it has been elucidated:

> "Explanation 1 to section 147 stipulates that the production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to a disclosure within the meaning of the first proviso. In other words, an assessee cannot rest content merely with the production of account books or other evidence during the course of the assessment proceedings and challenge the reopening of the assessment on the ground that if the Assessing Officer were to initiate a line of enquiry, he could with due diligence have arrived at material evidence. The primary obligation to disclose is on the assessee and the burden of making a full and true disclosure of material facts does not shift to the Assessing Officer. The assessee has to disclose fully and truly all material facts. Producing voluminous records before the Assessing Officer does not absolve the assessee of the obligation to disclose and the assessee, therefore, cannot be heard to say that if the Assessing Officer were to conduct a further enquiry, he would come into possession of material evidence with the exercise of due diligence. An assessee cannot

throw reams of paper at the Assessing Officer and rest content in the belief that the officer better beware or ignore the hidden crevices in the pointed material at his peril.

Parliament has used the word "necessarily" in Explanation 1. The expression "necessarily" means inevitably or as a matter of a compelling inference. The Oxford English Dictionary defines the expression "necessarily" as meaning (i) by force of necessity ; unavoidably ; (ii) as a necessary aid or concomitant ; indispensably ; (iii) by a necessary connexion ; (iv) in accordance with a necessary law or operative principle ; (v) as a necessary result or consequence ; and (vi) of necessity ; inevitably. The production of account books or other evidence before the Assessing Officer will not, therefore, inevitably amount to an inference of disclosure within the meaning of the first proviso. As a Division Bench of the Calcutta High Court observed in Imperial Chemical Industries Ltd. v. ITO [1978] 111 ITR 614, the words "not necessarily" indicate that "whether it is a disclosure or not within the meaning of the said section . . . would depend on the facts and circumstances of each case, that is the nature of the document and circumstances in which it is produced." (at page 639). In Rakesh Agarwal v. Asst. CIT [1996] 221 ITR 492, the Delhi High Court held that the nature of the documents and the circumstances in which these are produced before the Assessing Officer will determine the question. If the material is not writ large on the document, but is embedded in voluminous records or books of account which require careful scrutiny by the Assessing Officer, it is quite possible that having regard to the nature of the documents, material evidence cannot be discovered from such records despite due diligence and the

case would attract the Explanation."

13. Having noticed the statutory provisions, and the decision of the Bombay High Court, we deem it necessary to first mention/record the basic facts, before we elucidate and explain the legal position.

14. The petitioner had filed balance sheet and profit and loss account along with return of income. On the first issue, as recorded in the reasons to believe, it has been rightly pointed out that the Assessing Officer has quoted a part of the note which was attached to computation of income enclosed with the return. Note No.5 to the computation of income, reads as under:-

> "5. During the year, Canon Inc. Japan has deducted tax at source on payments made for software development to the assessee since 1 May 1998. Consequently, Canon Inc. Japan has deducted and deposited tax amounting to Rs.203,937,900 to the revenue authorities in Japan. (Refer Note No.19 of Schedule 16 to the audited accounts). Both the parties have agreed for a retrospective revision of the consideration for software development w.e.f 1 May 1998, for an amount equivalent to the amount of withholding taxes to be deducted by Canon Inc. Japan.
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> In the Profit & Loss Account for the current year, an amount of Rs.203,937,900 has been included in the "Sales – such contracted projects/self developed projects" (Refer Schedule 10 to the audited accounts). The assessee has also written off Rs.203,937,900 in its Profit & Loss Account (Refer Schedule 13 to the audited accounts) in respect of withholding taxes for which credit is not available due to losses. The same has been considered as a disallowance in computing the loss for the year in view of Sec.40(a)(ii) of the Act (Refer Clause 17(f) of Form No.3CD). The amount of taxes withheld by Canon Inc. Japan under the Japanese laws, amounting to Rs.203,937,900 does not constitute income of the assessee as no amount has been received/receivable by the assessee from Canon Inc., Japan. In support of its claim, the assessee is relying on the following judicial precedents on this issue.
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> - CIT (Central) v. Oriental Co. Ltd. 137 ITR 777 (Calcutta);

- CIT V Yawar Rashid & Others (218 ITR 619) (MP);
- Ballarpur Industries Ltd. 80 ITJ 975 (Nagupur); and
- CIT v. Hobbs (Y.N.S) 116 ITR 20 (Kerela)

In view of the above withholding taxes deducted by Cannon Inc., Japan and deposited with Japanese authorities amounting to Rs.203,937,900 has been excluded from the computation of income of the current year."

15. The aforesaid note is not disputed or denied. It is not contended or submitted that such note was not filed with the return originally filed or the revised return. The petitioner in the said note has disclosed the following material facts:-

A. From payments made to the petitioners for software development, Canon Inc. Japan had deducted and deposited tax on different dates amounting to Rs.20,39,37,900/- with the revenue authorities in Japan.

B. The petitioner and Canon Inc. Japan had agreed on retrospective revision of consideration paid for software development with effect from 01.05.1998 for an amount equivalent to the TDS or withholding tax which was deducted by Canon Inc. Japan.

C. In the profit and loss account for the Assessment Year 2003-04, Rs.20,39,37,900/- had been included in the "Sales – such contracted projects/self developed projects".

D. The petitioner had written off Rs.20,39,37,900/- in the profit and loss account i.e. the TDS deposit with the Japanese Taxation Authorities.

E. In the computation made for the taxation purposes, Rs.20,39,37,900/- was disallowed or reduced in view of

Section 40(a)(ii) of the Act.

F. Further, an amount of Rs.20,39,37,900/- i.e. the withholding tax deposited by the Canon Inc. Japan under the Japanese taxation laws, was not being treated as income as no amount was received/receivable. The petitioner relied upon three judgments of different High Courts and one judgment of the Tribunal in support of their computation.

16. The first proviso and Explanation have to be read together and harmoniously to understand the legislative intent behind the two provisions. The first proviso applies where the original return has been subjected to scrutiny or regular assessment under Section 143(3) and the reassessment notice is issued after lapse of four years from the end of the assessment year. In such cases, for reassessment proceedings to be valid and legal, an additional condition has to be satisfied, viz there was failure of the assessee to disclose fully and truly all material facts necessary for the assessment. However, this condition need not be satisfied where a reassessment notice is issued prior to expiry of four years from the end of the relevant assessment year. Explanation 1 comes to the aid of the Revenue in cases where an assessee claims that he had produced Books of Accounts or documents/evidence and if the Assessing Officer had examined the said Books of Accounts or other evidence with due diligence, or care and caution, he could have discovered the primary/material facts, subject matter of the re-assessment notice. Thus, Explanation 1 refers to failure on the part of the Assessing Officer to discover or uncover material facts even when books of accounts or other evidence were produced before the Assessing Officer at the time of original assessment. The Supreme

Court in ***Malegaon Electricity Co. P. Ltd. vs. CIT*** [1970] 78 ITR 466 (SC) has observed:-

> "It is true that if the Income-tax Officer had made some investigation, particularly if he had looked into the previous assessment records, he would have been able to find out what the written down value of the assets sold was and consequently he would have been able to find out the price in excess of their written down value realised by the assessee. It can be said that the Income tax Officer if he had been diligent could have got all the necessary information from his records. But that is not the same thing as saying that the assessee had placed before the Income-tax Officer truly and fully all material facts necessary for the purpose of assessment. The law casts a duty on the assessee to disclose fully and truly all material facts necessary for his assessment for that year."

The proviso casts an obligation and duty on every assessee to disclose fully and truly all material facts relevant for the assessment but do not require an assessee to go beyond disclosure of full and true material facts. It is for the Assessing Officer to decipher and decide whether or not, on disclosure of full and true material facts, the assessee is entitled to a claim, deduction, accept, reject or modify any computation etc. Thus, when the first proviso applies, i.e. there was disclosure of true and full material facts, then further enquiry into whether or not Assessing Officer had applied his mind is not mandated. The underlying principle is that if there was no omission or failure on assessee's part to disclose true and full material facts; he is not to be faulted and reassessment proceedings against him would be barred after four years under first proviso to Section 147 of the Act.

17. Explanation 1 to Section 147 is introduced in a way to provide contours to the expression 'full and true disclosure of material

facts' and restricts, moderates and clarifies the expression. Me production of books of account or other evidence is not sufficient, when material lies embedded or buried in the books of account or documents produced, which the Assessing Officer would have uncovered and discovered through inference or otherwise on deeper scrutiny. This cannot be a ground to strike down the reassessment notice to bring to tax the escaped income. This is the only method and manner in which the first proviso and Explanation 1 can be harmoniously read without emasculating either one of them. Thus, one has to examine the disclosure of the facts stated in the document/return/accounts and once the disclosure is transparent and distinct and does not require deeper scrutiny/unearthing of material facts by due diligence the first proviso protects and Explanation1 is not attracted. In essence, the first proviso stipulates that the assesse must transparently put forth necessary factual matrix by simply and clearly disclosing true and full material facts and nothing more. The Explanation stipulates that those facts which could have been deciphered or encrypted and remained concealed because of lack of transparency and clarity do not amount to full and true disclosure of material facts. In this manner, the two provisions can be reconciled and read together.

18. Both; the first proviso and Explanation 1 refer to material facts and not "Law".

19. When we examine the facts of the present case, we believe that the assessee had made full and true disclosure of material facts at the time of the original assessment regarding the first issue. Undisputed factual position, as noticed above, is that the

petitioner-assessee had in fact disclosed material facts in Nc No.5 to the computation of income. Ironically, this note itself has been quoted in part, in the "reasons to believe". This firmly re-enforces that full and true material facts were disclosed, as required under the proviso, and nothing was to be deciphered, inferred or encrypted. Whether or not the assessee is entitled to any deduction, claim, computation etc. under the Act was for the Assessing Officer to examine. Explanation1 is not attracted.

20. On the second issue i.e. deduction under Section 10A of the Act, it is recorded in the reasons to believe that the said deduction/exemption "had been calculated before setting off brought forward losses and unabsorbed depreciation amounting to Rs.34,01,39,124/-." The assessee had claimed deduction/ "exemption" of Rs.3,04,82,745/-.

21. During the course of the assessment proceedings the Assessing Officer, vide letter dated 25.08.2005, had asked the petitioner to furnish details of various exemptions and deductions claimed and why the same should be accepted. The petitioner was also asked, vide query No.7, to furnish details of losses carried forward from the beginning and assessed loss, which was allowed by the Assessing Officer to be carried forward. The petitioner in response wrote letter dated 06.09.2005, giving details of various exemptions and deductions including deduction claimed under Section 10A and the computation thereof. In the reply, it was stated that the petitioner had complied with all the conditions specified in Section 10A of the Act, which falls under Chapter III i.e incomes which do not form part of the total income. The petitioner had set up an export unit for computer software in a

STP and had also furnished certificate from a Charter Accountant in Form No.56F giving details of export turn over, profits derived from the STP unit and the amount of exemption claimed under Section 10A. It was stated that the deduction of Rs.3,05,13,171/-,as claimed, was in accordance with the provisions of the Act and the same method of computation was followed in other assessment years i.e. Assessment Years 2000-01, 2001-02 and 2002-03. The issue was examined by the predecessor and the computation/claim under Section 10A of the Act was accepted. Details of unabsorbed losses and assessed losses, which was allowed to be carried forward was enclosed in the form of Annexure – 7. Annexure – 5 to the said letter was the computation of deduction claimed under Section 10A. Annexure – B was the computation made by the assessee for claiming and computing deduction under Section 10A. It is clear from the above that at the time of the original assessment, computation or the manner in which deduction under section 10A was made, the details of brought forward losses which were allowed to be carried forward and unabsorbed depreciation were placed before the Assessing Officer and were examined. Thus, there was full and true disclosure of the material facts.

22. In view of the aforesaid factual position, it is apparent that the Assessing Officer was aware and conscious of the fact that the assessee had brought forward losses and unabsorbed depreciation which were allowed to be carried forward. The assessee had specifically claimed that the deduction under Section 10A was under Chapter III and not under Chapter VIA. The Assessing Officer accepted the computation made by the assessee under

section 10A.

23. At this stage, we would like to record and notice that disputes and debate had arisen between the assessees and the Revenue on the question of computation of deduction "under Section 10A" and whether the unabsorbed depreciation or losses should be set off before the deduction is computed or not. As far as the Delhi High Court is concerned, it has been held that brought forward losses or depreciation cannot be set off while computing deduction under Section 10A in *CIT vs. TEI Technologies Pvt. Ltd.* (2012) 210 TAXMAN 237. However, this judgment was pronounced after the date of the recording of the reasons and may not, therefore, be entirely relevant.

24. The Assessing Officer in the order dated 11.04.2012 has observed that the questions were of general nature and exemptions and deductions were not only confined to Section 10A but other sections of the Act. No inquiry was made with regard to setting off brought forward losses or unabsorbed depreciation before calculating deduction under Section 10A. As no specific query or question was raised whether unabsorbed depreciation and brought forward losses should be set off/reduced while computing deduction under Section 10A of the Act, it is debatable whether there was any application of mind on the said aspect by the Assessing Officer, but there cannot be any debate that the petitioner had made true and full disclosure of material facts. The method and manner in which deduction under Section 10A was computed was clearly indicated and in the knowledge of the Assessing Officer. Full and true material facts were stated and even brought to the notice of the assessing officer in the original

proceedings. He was conscious and aware of the manner a mode of computation of deduction u/s 10A of the Act adopted by the petitioner. The petitioner therefore gets protection of the first proviso and is entitled to succeed.

25. In the light of the aforesaid discussion, we allow the present writ petition and quash the reassessment proceedings/notice dated 1.2.2010 as well as order dated 11.04.2012. No order as to costs.

SANJIV KHANNA, J.

SANJEEV SACHDEVA, J.

JULY 31, 2013
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