$~101 & 102

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

% *Date of Decision : 06.11.2025*

\+ **W.P.(C) 13418/2019**
\+ **W.P.(C) 13495/2019**

MATRIX CLOTHING PVT LTD .....Petitioner

Through: Mr. Salil Aggarwal, Sr. Adv. with Mr. Madhur Aggarwal, Mr. Uma Shankar and Mr. Mahir Aggarwal, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE - 16(2) NEW DELHI

.....Respondent

Through: Mr. Sunil Agarwal, SSC, Mr. Viplav Acharya, JSC, Ms. Priya Sarkar, JSC with Mr. Anugrah Dwivedi and Mr. Utkarsh Tiwari, Advs.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE VINOD KUMAR

V. KAMESWAR RAO , J. (ORAL)

1. The above captioned petitions are filed by the petitioner - Matrix Clothing Private Limited with the following prayers:-

W.P.(C) 13418/2019

"a. Issue a writ in the nature of Certiorari or an order, quashing the impugned notice u/s 148 of the Income Tax Act, 1961 dated 31.03.2019 and the impugned order dated 20.11.2019, disposing of the objections to the initiation of the reassessment proceedings of the respondent;
b. Issue a writ in the nature of Certiorari or an order quashing the reassessment proceedings initiated by the

respondent in pursuance to the impugned notice dated 31.03.2019 u/s 148 of the Income Tax Act,1961 for the assessment year 2014-15;
c. Issue a writ in the nature of mandamus or an order prohibiting the respondent to frame reassessment under the relevant provisions of the Act;
d. Issue a writ in the nature of Mandamus prohibiting the respondent from making fishing and roving inquiries;
e. Pass any other order(s) as this Hon'ble Court may deem to be fit and more appropriate in order to grant interim relief to the petitioner;"

W.P.(C) 13495/2019

"a. Issue a writ in the nature of Certiorari or an order, quashing the impugned notice u/s 148 of the Income Tax Act, 1961 dated 31.03.2019 and the impugned order dated 20.11.2019, disposing of the objections to the initiation of the reassessment proceedings of the respondent;
b. Issue a writ in the nature of Certiorari or an order quashing the reassessment proceedings initiated by the respondent in pursuance to the impugned notice dated 31.03.2019 u/s 148 of the Income Tax Act,1961 for the assessment year 2015-16;
c. Issue a writ in the nature of mandamus or an order prohibiting the respondent to frame reassessment under the relevant provisions of the Act;
d. Issue a writ in the nature of Mandamus prohibiting the respondent from making fishing and roving inquiries;
e. Pass any other order(s) as this Hon'ble Court may deem to be fit and more appropriate in order to grant interim relief to the petitioner;"

2. The petitioner is a private limited company engaged in the business of manufacturing of garments and has also installed wind mills in Gujarat and is selling electricity to the Gujarat State Electricity Board. It has regularly filed its Return of Income (ITR) and is assessed to tax.

3. Both the present petitions entail common facts except for that

W.P.(C) 13418/2019 pertains to AY 2014-15 whilst W.P.(C) 13495/2019 pertains to AY 2015-16. It is the case of the petitioner that notice under Section 148 of the Income Tax Act, 1961 (the Act) was issued to it on 31.03.2019, and thereafter, an order dated 20.11.2019 was passed in respect of both the AYs.

4. Firstly, we take up the case as set out in W.P(C) 13418/2019. For the AY 2014-15, the assessee filed its ITR to the tune of Rs.16,58,88,120/- on 25.11.2014 (after claiming deduction of Rs.65,58,482/-under Section 80JJAA of the Act). As per the learned counsel for the petitioner, this ITR was supported by the audited balance sheet, profit and loss account, and tax audit report. Thereafter, this return was picked up for scrutiny assessment by issuing notice under Section 143(2) of the Act. The assessment proceedings followed and an order was passed.

5. Mr. Salil Aggarwal, learned counsel appearing for the petitioner states that various details were sought from time to time by issuing notices/ questionnaires/ order sheet entries which were duly provided by the petitioner from time to time by way of replies and filing of documents before the Assessing Office (AO) during the course of the original assessment proceedings.

6. He states that the assessee provided the break-up of manufacturing expenses which was part of audited financial statements in Schedule – 25, Claim under Section 80JJAA was duly verified by Auditor in Tax Audit Report and Form 10DA was also duly signed by Tax Auditor. Further, he states, on 13.04.2016, to a notice under Section 142(1), the assessee provided its financial statements and Form 10DA. On 09.09.2016, the assessee furnished a note on claim under Section 80JJAA and also the

details of all expenses including manufacturing expenses. He states that the AO framed the assessment on 04.11.2016, under section 143(3), assessing the income at Rs.17,47,55,280/- for the AY 2014-15.

7. It is his submission that the petitioner received the notice (impugned notice) dated 31.03.2019 by the respondent/ Revenue under section 148 of the Act. In response to this notice, the assessee filed a letter on 30.04.2019, requesting a copy of reasons for this said notice. The respondent thereafter provided a copy of the recorded reasons on 31.03.2019, mentioning that a survey was conducted at the petitioner's premises and fresh material was found, suggesting excessive claim of expenses under the head of manufacturing expenses. Additionally, the reasons also mentioned that the petitioner/assessee did not furnish form 10DA electronically. Pursuant thereto, the petitioner filed its objections to the validity of the initiation of proceedings under section 147 of the Act by issuance of notice u/s 148 of the Act dated 28.06.2019, for A.Y. 2014-2015. However, the respondent *vide* the impugned order dated 20.11.2019 disposed of the objections raised by the petitioner to the initiation of proceedings u/s 147 of the Act. It is his submission that the respondent is continuing with the reassessment proceedings and is likely to frame the assessment under section 147 of the Act.

8. Secondly, for W.P.(C) 13495/2019, concerning the AY 2015-16, the assessee filed ITR on 28.09.2015, to the tune of Rs.21,23,20,010/-, (after claiming deduction of Rs.65,58,482/- under Section 80JJAA of the Act). This too, as per the learned counsel for the petitioner was supported by the audited balance sheet, profit and loss account, and tax audit report. Thereafter, this return was picked up for scrutiny assessment by issuing

notice under Section 143(2) of the Act. The assessment proceedings followed and an assessment order was passed. He states that the AO framed an assessment on 27.11.2017, under section 143(3), assessing the income at Rs.22,06,27,070/-.

9. It is his submission that the petitioner received the notice (impugned notice) dated 31.03.2019 by the respondent/Revenue under section 148 of the Act. In response to this notice, the assessee filed a letter on 30.04.2019, requesting for a copy of reasons for this said notice, which the respondent provided on 31.03.2019, mentioning that a survey was conducted at the petitioner's premises and fresh material was found, suggesting excessive claim of expenses under the head of manufacturing expenses. Additionally, the reasons also mentioned that the petitioner/assessee did not furnish form 10DA electronically. Thereafter, he states that the petitioner filed its objections to the validity of the initiation of proceedings under section 147 of the Act by issuance of notice u/s 148 of the Act dated 28.06.2019, for AY 2015-16, however, the respondent *vide* the impugned order dated 20.11.2019 disposed of the objections raised by the petitioner to the initiation of proceedings u/s 147 of the Act. He reiterated with respect to this notice also that the respondent is continuing with the reassessment proceedings and is likely to frame the assessment under section 147 of the Act.

10. He states that the assessee provided the break-up of manufacturing expenses which was part of audited financial statements in Schedule – 25, Claim under Section 80JJAA was duly verified by Auditor in Tax Audit Report and Form 10DA was also duly signed by Tax Auditor. Further, he states, on 19.04.2017, to a notice under Section 142(1), the assessee provided its financial statements and Form 10DA. On 25.09.2017, the

assessee furnished a note on claim under Section 80JJAA and also furnished the details of all expenses including manufacturing expenses.

11. Mr. Aggarwal has challenged the impugned notice and the impugned order on the ground that the same are arbitrary, unreasonable, and contrary to the provisions of the Act. He states that the respondent has disposed of the objections of the petitioner in a prejudicial manner, in the absence of any new material having rational nexus with the purported impugned reasons for reopening of assessment. He states the notice and order are in contravention of judicial principles, and various decisions of High Courts and the Supreme Court.

12. He states that once the primary facts are disclosed before the AO, he must require no further assistance from the assessee and after a disclosure of the facts by the assessee, the AO must not issue a notice under Section 148 of the Act. He states that the impugned notice and impugned order are passed in excess of jurisdiction.

13. It is his submission that the issue of deduction under section 80 JJAA was duly examined, as Form 10DA was duly filed and examined during the course of assessment proceedings and no discrepancy was found in the same during the course of assessment proceedings and as such, the said deduction was so accepted by the AO after due examination of the ITR and said computation in Form 10DA. He further states that the issue with regards to manufacturing expenses was also examined by the AO during the course of assessment proceedings, as complete set of books of accounts were furnished along with necessary documentary evidences in support of the manufacturing expenses and these books of accounts were accepted by the AO after due examination and verification. Thus, he states that on both the

issues, as mentioned in the reasons recorded, all the facts being disclosed by the assessee, and also being accepted by the AO upon his application of mind, the impugned order and notice must be set aside.

14. He states the petitioner had duly disclosed all the facts which had a liability on the income earned by it and the department could not later, upon merely forming an opinion, arrive at a finding that the assessee company had erred in computing the taxable income and reopen the assessment by resorting to section 147 of the Act. To substantiate this, reliance was placed by him on the judgment in the cases of ***Calcutta Discount Co. Ltd. v. Income-tax Officer, (1961) 41 ITR 191 (SC), CIT, Calcutta v. Burlop Dealers Ltd. (1971) 79 1TR 609 (SC), Atlas Copco (India) Limited (Writ Petition No.10044 of 2010) (HC), Naginbhai G. Patel v. ITO, Surat (1997) 224 ITR 459 (Guj), Pala Marketing Co-operative Society Ltd. v. State of Kerala & Ors. (1999) 236 ITR 604 (Ker), Banswara Syntex Ltd. v. Asstt. CIT (2004) 138 Taxman 275 (Raj) & Jashan Textile Mills Private Limited v. DCIT and Ors. [(2007) 164 Taxman 243 (Bom)].***

15. It is submitted that both the issues in respect of which the proceedings have been reopened were duly examined during the course of the original assessment proceedings. He also submits that reopening of assessment for making a disallowance of deduction under section 80 JJAA of the Act is unjust and unsustainable in law as here, the attempt of the respondent is to rectify the purported error or mistake that remained in the order of assessment, which is not permissible in law. Reliance is placed on the judgment of this Court in ***CIT v. Star Finvest (P) Ltd. (Delhi HC) in ITA No. 468/2014***.

16. He also states that the only grievance of the respondent in the reasons

recorded is that Form 10DA has not been filed electronically by the petitioner, whereas, there is no whisper or allegation as to whether or not the petitioner is eligible to deduction under section 80JJAA on merits nor is there any allegation as to the wrong claim by the assessee. He states that it is trite law that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred. Reliance has been placed on the case of ***PCIT v. E Smart Systems (P) Ltd., (2019) 263 Taxman 373 (SC)***.

17. With respect to the second paragraph of recorded reasons, Mr. Aggarwal states that the petitioner had duly furnished complete set of books of accounts containing complete list of all expenses including manufacturing expenses vide reply dated 09.09.2016, which were also duly supported with documentary evidences. He states the AO had minutely examined the details with regards to manufacturing expenses, accepted the audited books of accounts and also accepted the manufacturing expenses so claimed by the petitioner.

18. It is further his submission that the respondent in the reasons recorded has mentioned about the survey conducted on 27.03.2019 and the trial balance so found on 27.03.2019 and further compared the unaudited figures for AY 2019-20 with the audited figures of AY 2014-15. To this, he states that such comparison is not permissible in law, as all the facts pertaining to the instant assessment year with regards to manufacturing expenses were on the record of the respondent and the assessment was framed after due application of mind, after examining and accepting the audited books of accounts. Hence, as per him reliance placed on unaudited trial balance of AY 2019-20 was uncalled for and unjustified in law as there was no tangible

material with regards to the impugned assessment year before the respondent. Reliance is placed on the judgment in the cases of ***CIT v. Mesco Laboratories Ltd. (Delhi HC), (2007) 288 ITR 219, CIT v. Kanodia & Sons (Allahabad HC), (2013) 212 Taxman 55 (Allahabad)*** & ***Maruti Suzuki India Ltd. v. ADIT WP(C) No. 8990/2011*** dated ***06.09.2012.***

19. He further states there is no allegation or whisper with regards to manufacturing expenses so claimed in the impugned assessee being bogus or unverifiable, rather the respondent had merely relied on unreliable unaudited figures of AY 20I9-20 to frame reasons recorded for the impugned assessment year, which is not permissible in law and as such, the reasons recorded in respect of this issue his highly misconceived.

20. He submitted that the petitioner has been in this line of business for many years and in all these years its book of accounts were never rejected, neither any dispute was leveled on the nature or quantum of manufacturing expenses. The proportion of manufacturing expense almost remained identical in the preceding assessment years. To substantiate this, he has provided the following data:-

Assessment Years	Total Receipts (in Rs)	Manufacturing Expenses (in Rs)	Proportion of Manufacturing Expenses to Total Receipts (in %)	Status of Assessments u/s 143(3) or 143(1)
2010-11	17,130.70	2,736.15	15.97	143(3)
2011-12	21,112.17	3,295.15	15.61	143(3)
2012-13	27,076.58	4,958.18	18.31	143(3)
2013-14	28,794.13	5,257.67	18.26	143(3)
2014-15	34,020.81	6,208.38	18.25	143(3)

2015-16	35,511.93	5,679.51	15.99	143(3)
2016-17	27,556.15	4,740.65	17.20	143(3)
2017-18	31,409.20	5,429.83	17.29	143(3) is under process
2018-19	28,652.31	4,881.16	17.04	-
2019-20	38,219.46	6,886.01	18.02	-

21. He states that the AO has wrongly compared only the manufacturing expenses as on 27.03.2019 with the manufacturing and other expenses, even the figures so adopted by the AO in the reasons recorded on the basis of survey dated 27.03.2019 is based on misappreciation of facts. He states that if the complete set of manufacturing and other expenses is compared, then the quantum of expenditure so incurred (as mentioned in the reasons recorded), is almost identical to the expenditure incurred in the impugned AY.

22. Mr. Aggarwal heavily presses the argument that the notice has been issued by the respondent/Revenue on the basis of a mere change of the opinion, by applying second thought on the same material. He reiterated that this fresh application of mind to the same facts is unfair and contrary to the settled legal position that the AO cannot assume jurisdiction under section 147 of the Act merely on a change of opinion. Reliance has been placed on the judgment in the cases of ***CIT v. Usha International Ltd., (2012) 348 ITR 485 (Delhi HC), Ritu Investment (P) Ltd. v. DCIT, (2012) 210 Taxman 70 (Delhi), 51 DTR 162, KLM Royal Dutch Airlines v ADIT, (2007) 292 ITR 49 (Del), Satnam Overseas Ltd. v. Addl. CIT, (2010) 329 ITR 237, CIT v. Foramer France, (2003) 264 ITR 566(SC), CIT v. Goetz***

India Ltd, (2010) 321 ITR 431 (Del), CIT v. Mittal Castings, (2002) 124 Taxman 11 (Del), Sheth Bros. v. JCIT, (2001) 251 ITR 270 (Guj), Delhi Farming & Const. v. ACIT, (1999) 240 ITR 127 (Del) and Andhra Bank Ltd. v. CIT, (1997) 225 ITR 447 (SC).

23. Reliance has also been placed by the Mr Aggarwal on the case of ***CIT v. Kelvinator of India Limited Civil Appeal No. 2009-11 of 2003***, whereby the Supreme Court has dismissed the civil appeal filed by the Department against the Full Bench judgment of this Court in the case of ***CIT v. Kelvinator of India Ltd. 256 ITR I (Del)***, by observing and holding as under:

> *"Therefore, post 1st April, 1989 power to reopen is much wider. However, one needs to give schematic interpretation to the words 'reason to believe' failing which, we are afraid, s. 147 would give arbitrary powers to the AO to reopen assessments on the basis of 'mere change of opinion', which cannot be per se reason to reopen. We must also keep in mind the conceptual difference between power to review and power to reassess. The AO has got power to reassess. But reassessment has to be based on fulfillment of certain precondition and if the concept of 'change of opinion' is removed, as contended on behalf of the Department, then, in the garb of reopening the assessment, review would take place. One must treat the concept of 'change of opinion' as an inbuilt test to check abuse of power by the AO. Hence, after I" April, 1989, AO has power to reopen, 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 s. 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 s. 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 AO. We quote hereinbelow the relevant portion of Circular No. 549 dated 31st Oct., 1989 [(1990) 82 CTR (St) 1], which reads as follow: 7.2 Amendment made by the Amending Act, 1989, to reintroduce the expression 'reason to believe' in s. 147.-A number of representations were received against the omission of the words 'reason to believe' from s. 147 and their substitution by the 'opinion' of the AO. 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 s. 147 would give arbitrary powers to the AO to reopen past assessments on mere change of opinion. To allay these fears, the Amending Act, 1989, has again amended s.147 to reintroduce the expression 'has reason to believe' in place of words 'for reasons to be recorded by him in writing, is of the opinion'. Other provisions of the new s.147, however, remain the same. For the aforesaid reasons, we see no merit in these civil appeals filed by the Department, hence, dismissed with no order as to costs."

24. He reiterated that in the absence of fresh material, the framing of assessment under Section 143(3) of the Act, the initiation of proceedings under Section 147 of the Act is without jurisdiction. As per him such initiation is based on the facts which were already on record at the time of the original assessment proceedings and any inferences drawn on the same do not constitute fresh information/ material. To substantiate this, he placed reliance on the judgment in the cases of ***M/s. Orient Craft Limited v. DCIT, (2024) 158 taxmann.com 1124 (Del-Trib.), Shipra Srivastava v. ACIT., (2009) 184 taxmann 210 (Delhi), Bapalal and Company Exports v. JCIT (OSD), (2007) 289 ITR 37 (Madras), CIT v. Batra Bhatta Company,***

(2008) 174 taxmann 444 (Delhi), SLP dismissed in the case of CIT v. Batra Bhatta Co., 220 CTR 369 (Raj), CIT v Bigbass Maheshwari Sewa Samiti (2008) 220 CTR 369 (Rajasthan).

25. It is also his submission that these re-assessment proceedings are nothing but an attempt on the part of the respondent to assume jurisdiction to make an investigation/ verification into the facts which is not permissible in law. Reliance is placed on the judgment in the cases of ***Madhya Pradesh Industries v. ITO, (1965) 57 ITR 637(SC)*** and ***Madnani Engineering v. Income Tax Officer, (1979) 118 ITR 1(SC)***. Hence, this being a fishing and roving enquiry in the absence of any escapement of income, is unsustainable.

26. He states that where an assessment is made under section 143(3) of the Act, the presumption is that every issue, arising in assessment proceedings has been considered. Reliance is placed on the judgment in the case of ***M/s Techspan India Pvt. Ltd. v. ITO, (2006) 283 ITR 212(Del)***, whereby this Court quashed the reopening of an assessment made u/s 143(3) on the ground that an Assessing Officer could not re-consider a matter of an allowance of deduction, in respect of which an assessment was made u/s 143(3) unless some fresh material surfaces. Reliance is also placed on the judgment in the case of ***CIT v. Harig Crank Shafts Ltd., (2009) 177 taxmann 31 (Delhi).***

27. He states that under Section 151 of the Act, an AO is required to obtain the sanction of the PCIT/CIT before issuing a notice under Section 148 of the Act. He states in the present case it was incumbent upon authorities as authorised under Section 151 of the Act to independently examine the material on record and come to a conclusion rather than a

crypticone-lined statement that "it is a fit case for issue of notice u/s 148". Reliance is placed on the judgment in the case of ***Mohinder Singh Malik v. CCIT, (2004) 267 lTR 716 (P&H), Signature Hotels (P) Ltd. v. ITO, (2011) 338 ITR 51 (Del), Maruti Clean Coal & Power Ltd. v. ACIT, (2018) 400 ITR 397 (Chattisgarh), United Electrical Co. P. Ltd. v. CIT, (2002) 258 ITR 317 (Del).*** According to him this sanction by the authority is mechanical and invalid.

28. It is also his submission that the reasons to believe which are stated are pretentious and based on incomprehensible allegations. The law is settled on the point that the reasons recorded must be valid and relevant, providing the foundation for assumption of jurisdiction to the AO, and this is the view that has been taken in the cases of ***CIT v. Agarwalla Bros., (1991) 189 ITR 786 (Patna); Equitable Investment Co. (P.) Ltd. v. ITO, [1988] 174 ITR 714 (Cal)*** and ***Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. Raghavan, (1984) 150 ITR 12 (Bombay)*** wherein it has been held that where reasons recorded for reassessment proceedings are improper and vague, reopening of the case is not permissible.

29. He submitted that a close scrutiny of the recorded reasons will show that the alleged reasons are wholly far-fetched, indefinite, remote and are unsupported by any material whatsoever to form a belief that the income of the petitioner had escaped assessment. However, the same have been initiated for collateral purposes. He states that reason to believe is not the same as reason to suspect and placed reliance on the judgment in the case of ***Indian Oil Corporation v. Income Tax Officer, (1986)159 ITR 956 (SC)***. He states that no regard has been given to the objections furnished by the petitioner and the whole exercise of rejecting them has been done in a

mechanical manner to dispose of the objections vaguely, which is an empty formality. Reliance has been placed on the judgment in the case of ***GKN Drive Shaft (India) Limited v. ITO, (2003) 259 ITR 19 (SC)*** whereby the Supreme Court has held as under:

> *"However, we clarify that when a notice under section 148 of the Income Tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the Assessing Officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the Assessing Officer has to dispose of the objections, if filed by passing a speaking order, before proceeding with the assessment in respect of the above said five assessment years."*

30. Contesting the submissions, Mr. Sunil Agarwal, learned Senior Standing Counsel appearing for the respondent/Revenue states that in the present case, a survey under Section 133A of the Act was conducted at the premises of the petitioner on 27.03.2019 and during the survey, a trial balance for the FY 2018-19 (upto 27.03.2019) was found wherein the manufacturing expenses were shown as Rs. 3.84 crore as against the total receipt of Rs. 370.79 crore. He states that upon calculation, the manufacturing expenses came around 8.86 % of the total receipts, however, in the ITR for the AY 2014-15 relating to FY 2013-14, the manufacturing expenses were claimed at Rs. 82.45 crore, which is 24.25% of the total receipts of Rs. 340.25 crore. As per him, the assessee has claimed excessive expenses under the head of manufacturing expenses to the tune of 15.39 % of the total receipt which is Rs. 52.37 crore.

31. It is his submission that the power of survey under Section 133A of the Act is an extraordinary power meant for inspection and discovery of facts and material. It was also found on 27.03.2019 that the manufacturing expenses of the assessee are lower in comparison to the claim in the ITR. He submits that since the documents were found during the course of survey proceedings at a later stage, they are fresh material and were not in the knowledge of the AO while completing the original assessment under Section 143(3) of the Act on 04.11.2011. He states that this fresh material was duly considered and examined by the AO whereafter, based on the belief formed by him, a notice under Section 148 of the Act was issued following due process. In light of the same, he states that there is no infirmity in the order passed by the AO.

32. It is also his submission that another reason for reopening the case is that as per the provisions of Section 80JJAA of the Act, the assessee company was required to furnish Form 10DA along with its ITR for claiming deduction of Rs. 65,58,482/-. As per Rule 12(2) of the Income Tax Rules, 1962, the said Form 10DA was required to be furnished electronically, which the petitioner failed to do. Hence, he states that the petitioner was not entitled to get the benefit of deduction under Section 80JJAA of the Act, even though the same was allowed during the original assessment proceedings. He states this failure to file the Form 10DA electronically, leading to denial of deduction under Section 80JJAA, has not been challenged by the petitioner. He states, this issue was not even decided at the stage of passing of the assessment order and hence, it cannot be said that there has been any change of opinion by the AO, as alleged by the petitioner herein.

33. According to him, the petitioner has only stressed upon the fact that during the original assessment proceedings, enquiries were made to the petitioner and requisite details were submitted by it so the issue whether on facts and material that the said deduction should have been allowed or not does not arise. He states that there was a patent mistake in the allowance of the said deduction and this position is not rebutted by the petitioner. In light of this, the corrective measure taken by the AO cannot be termed as an action beyond jurisdiction.

34. He submits that it is trite law that the facts and details related to deduction on merits including the quantum thereof can come only after fulfilling the basic condition for claiming deduction under the Act. Thus, when it is established that the assessee has not fulfilled the basic condition for claiming the deduction, consideration thereof by the AO becomes immaterial.

35. He denies the absence of any new material warranting the reopening of assessment because pursuant to the survey, there were enough reasons to believe on the basis of new material found therein, i.e., trial balance, to suggest that the income has escaped assessment on account of higher deduction. Thus, he states that the respondent/Revenue had neither acted arbitrarily nor contrary to the settled provisions of law.

36. Mr. Sunil Agarwal states that the reliance by the petitioner on the case of ***Calcutta Discount Co. Ltd. (Supra)*** is misplaced as the decision in that case also holds as under:-

> *" ... if there were infact some reasonable grounds for thinking that there had been any non-disclosure as regards any primary fact, which could have a material bearing on the question of "under-assessment", that would be sufficient to give jurisdiction*

to the Income-tax Officer to issue the notices under section 34. Whether these grounds were adequate or not jar arriving at the conclusion that there was a non-disclosure of material facts would not be open for the court's investigation. In other words, all that is necessary to give this special jurisdiction is that the Income-tax Officer had when he assumed jurisdiction some prima facie grounds for thinking that there had been some non-disclosure of material facts. Clearly it is the duty of the assessee who wants the court to hold that jurisdiction was lacking, to establish that the Income-tax Officer had no material at all before him for believing that there had been such non-disclosure .... "

37. He also states that the petitioner's reliance upon the case of ***Star Finvest (P) Ltd. (supra)*** is misplaced as the case is distinguishable on facts. To the argument that the figures found in the survey were unaudited, Mr. Agarwal states that the same is erroneous as the trial balance found during the survey was maintained by the petitioner itself. Moreover, this issue is not relevant at the moment as the respondent has only rejected the objections of the petitioner with respect to the trial balance and has not gone into the merits of the case. He states, the law is settled that once fresh material is found by the AO, he is well within his jurisdiction to initiate appropriate proceedings in accordance with law.

38. He states, even the argument that the manufacturing expenses of the past years were in the same ratio, ought not to be accepted as no such material was in the knowledge of the department at the time when the trial balance was found.

39. He states, from the table of various expenses given by the petitioner, it transpires that some figures were included and others excluded to arrive at manufacturing and other expenses in the trial balance as on 27.03.2019. the

petitioner has also referred to various arbitrary expense items and some un-entered bills in the books. It has also claimed for various adjustments to be made in manufacturing expenses worked out from Trial Balance found during survey. It has tried to show that working of manufacturing expenses @ 8.85% is wrong and after various adjustments, this ratio will also come around the ratio of manufacturing expenses shown in A.Y. 2014-15. It is submitted that the assessee's arguments hinge around such expenses as it wants to include various items in manufacturing expenses of Rs. 32.84 crore of Trial Balance of 27.03.2019 in the garb of other expenses according to its own interpretations so that the same is matched with manufacturing expenses of A.Y.2014-15. There is no reliable basis for doing this exercise.

40. He states that however, it is found that as per audited profit and loss account for A.Y.2014-15 the turn-over of the assessee is Rs. 341.56 crore and under the head expenses; assessee has shown "Manufacturing and Other expenses at Rs. 82.89 crore. As per note 25 of the financial statement, these expenses are bifurcated into manufacturing expenses at Rs. 62.08 crore and other expenses at Rs. 20.80 crore. Thus, in P&L, the amount of Rs. 82.89 crore, mentioned above, is not attributed to manufacturing expenses alone but the same also include other expenses as well, whereas the amount picked from Trial Balance or Provisional P&L account found during the survey denotes manufacturing expenses alone. Therefore, even if the manufacturing expenses of both the years are compared, there is a huge difference.

41. As per him, the AO is not under an obligation to prove that the amount of escapement worked out by him is entirely correct. Instead, to arrive at the correct figure, he needs to proceed with the assessment proceedings and draw his final conclusion. Reliance has been placed by him

on the judgment in the case of ***GKN Drive Shaft (India) Limited v. ITO, 259 ITR 19 (SC)*** wherein the decision does not envisage the procedure of raising objection by the assessee and disposal thereof by the AO as an alternative of assessment proceedings.

42. He states that the contention of the petitioner that this is a fishing and roving enquiry, is without any merit as the AO has recorded specific reasons for rejecting the wrong claim of deduction under Section 80JJAA of the Act and excessive claim of manufacturing expenses based on the fresh material found during survey proceedings. He states that the cases relied upon by the petitioner are not applicable to the facts of the present case. It is also his submission that in the present case, no sanction was legally required to be taken by the AO under Section 151 of the Act, and accordingly, the same was not obtained. Even the notice under Section 148 of the Act was issued before the expiry of four years by the ACIT. Accordingly, no question of non-application of mind as mechanical sanction arises. He states that the assessee would have ample opportunity to explain its case and take all grounds at the time of final assessment of income. Reliance is placed on the judgment of the Court in the case of ***M/s Aditi Intra Build & Services Ltd. v. ACIT 1(2) & Anr***., ***(2022) 442 ITR 50 (Delhi)***, which reads as under-

> *" .. .In any event, if there is any infraction of law by the Assessing Officer in the matter of carrying out the re-assessment proceedings, and the petitioner is aggrieved by the re-assessment order that the Assessing Officer may pass, it shall be open to the petitioner to raise all its pleas in appeal, firstly, before the CIT (Appeals), and thereafter, before the ITAT, if necessary.*
>
> *... If such petitions are routinely entertained, not only would it lead to opening of flood-gates, but also it would be extremely*

difficult for the Assessing Officer to complete the assessment proceedings within the period of limitation prescribed under the Act.

13. We, therefore, do not find any merit in this petition and dismiss the same leaving it to the petitioner to raise its grievance before the Appellate Forum in case the petitioner feels that there has been infraction of the procedure, or the principles of natural justice in the matter of framing of the re-assessment order. "

43. Concluding his submission, he submits that the AO has considered and duly dealt with all the objections of the petitioner in detail in the order dated 20.11.2019 after due application of mind and the notice under Section 148 of the Act was issued based on sufficient material and proper application of mind.

44. Having heard the learned counsel for the parties, the short issue which arises for consideration in these writ petitions is whether the respondents are justified in issuing the impugned notice under Section 148 of the Act for two AYs 2014-15 and 2015-16 initiating the reassessment proceedings against the petitioner herein. The primary ground on which the reassessment has been decided is on two grounds, *viz* that the survey was conducted at the petitioner's premises wherein fresh material was found suggesting excessive claim of expenses under the head of manufacturing expenses. Additionally, the petitioner/ assessee did not furnish the Form 10DA electronically.

45. It is considered position that the assessment for AY 2014-15 has resulted in an assessment order dated 04.11.2016 under Section 143(3) of the Act assessing the income at Rs.17,47,55,280/-. Similarly, the income was assessed at Rs.22,06,27,070/- for the AY 2015-16 in terms of the order dated 27.11.2017. Primarily, the submission of Mr Salil Aggarwal, learned

Senior Counsel for the petitioner, is that at the time of initial assessment, the petitioner/assessee has provided the breakup of the manufacturing expenses, which was the part of the audited financial statement in Schedule – 25 and wherein the claim under Section 80JJAA of the Act was duly verified by the auditor in the tax audit report and Form 10DA was duly signed by the tax auditor. Further, a notice under Section 142(1) of the Act was issued to the petitioner/assessee wherein the petitioner had provided the financial statement and Form 10DA. The assessee furnished a note of claim under Section 80JJAA of the Act and also the details of all expenses including manufacturing expenses, which resulted in the aforesaid assessment orders.

46. The issue which now arises is whether in view of the material given by the petitioner/assessee at the time of assessment, the action of the respondent to initiate the reassessment proceedings would be justified. What is important to be noted here is that the survey was conducted on 27.03.2019. The case of the respondent is that a trial balance was found during the survey. The same as per petition pertains to unaudited tangible figures of AY 2019-20. In other words, it is the figures as were found in the trial balance relating to AY 2019-20, which was sought to be compared with AY 2014-15 and AY 2015-16. The plea of Mr Salil Aggarwal, that the reliance placed by the respondents on unaudited trial balance of the AY 2019-20 is uncalled for / unjustified in law, is appealing. In fact, it is his plea that there was no tangible material with regard to the impugned assessment orders before the respondents, which resulted in the initiation of the reassessment proceedings, is also appealing. It follows that any material subsequent to the relevant AY could not be the subject matter to reopen the

previous assessments. Even the other ground that the Form 10DA was not sent electronically, but was given in physical form, cannot be a ground for reopening the assessment, as no such objection was ever taken during the process of the assessment during the relevant AY. Even otherwise, the plea of Mr Salil Aggarwal that such a ground would amount to change of opinion, is also appealing.

47. Mr Salil Aggarwal is justified in submitting that when there was no tangible material with regard to the impugned assessment order before the respondent, the same cannot be the subject matter of the reassessment proceedings.

48. Even on the submission of change of opinion, Mr Aggarwal has relied upon the decision in the case of ***CIT v. Usha International Ltd (supra)***, wherein the Full Bench of this Court relying on ***Kelvinator of India Limited (Supra)*** has held as under:-

> *"13. It is, therefore, clear from the aforesaid position that:*
>
> *(1) Reassessment proceedings can be validly initiated in case return of income is processed under Section 143(1) and no scrutiny assessment is undertaken. In such cases there is no change of opinion;*
>
> *(2) Reassessment proceedings will be invalid in case the assessment order itself records that the issue was raised and is decided in favour of the assesse. Reassessment proceedings in the said cases will be hit by principle of ―change of opinion‖.*
>
> *(3) Reassessment proceedings will be invalid in case an issue or query is raised and answered by the assessee in original assessment proceedings but thereafter the Assessing Officer does not make any addition in the assessment order. In such situations it should be accepted that the issue was examined but the Assessing Officer did not find any ground or reason to make addition or reject*

the stand of the assessee. He forms an opinion. The reassessment will be invalid because the Assessing Officer had formed an opinion in the original assessment, though he had not recorded his reasons.

14. In the second and third situation, the Revenue is not without remedy. In case the assessment order is erroneous and prejudicial to the interest of the Revenue, they are entitled to and can invoke power under Section 263 of the Act. This aspect and position has been highlighted in CIT vs. DLF Powers Limited, ITA 973/2011 decided on 29th November, 2011 and BLB Limited vs. ACIT Writ Petition (Civil) No. 6884/2010 decided on 1st December, 2011. In the last decision it has been observed:

13. Revenue had the option, but did not take recourse to Section 263 of the Act, inspite of audit objection. Supervisory and revisionary power under Section 263 of the Act is available, if an order passed by the Assessing Officer is erroneous and prejudicial to the interest of the Revenue. An erroneous order contrary to law that has caused prejudiced can be correct, when jurisdiction under Section 263 is invoked.‖

15. Thus where an Assessing Officer incorrectly or erroneously applies law or comes to a wrong conclusion and income chargeable to tax has escaped assessment, resort to Section 263 of the Act is available and should be resorted to. But initiation of reassessment proceedings will be invalid on the ground of change of opinion.

16. Here we must draw a distinction between erroneous application/ interpretation/understanding of law and cases where fresh or new factual information comes to the knowledge of the Assessing Officer subsequent to the passing of the assessment order. If new facts, material or information comes to the knowledge of the Assessing Officer, which was not on record and available at the time of the assessment order, the principle of change of opinion will not apply. The reason is that opinion is formed on facts. Opinion formed or based on wrong and incorrect facts or which are belied and untrue do not get protection and cover under the principle of change of opinion‖.

Factual information or material which was incorrect or was not available with the Assessing Officer at the time of original assessment would justify initiation of reassessment proceedings. The requirement in such cases is that the information or material available should relate to material facts. The expression material facts' means those facts which if taken into account would have an adverse affect on the assessee by a higher assessment of income than the one actually made. They should be proximate and not have remote bearing on the assessment. The omission to disclose may be deliberate or inadvertent. The question of concealment is not relevant and is not a precondition which confers jurisdiction to reopen the assessment."

49. Even the Full Bench of this Court in ***CIT v. Kelvinator of India Ltd (supra)***, the relevant portion of which has already been reproduced by us in paragraph 23 above, supports the submissions made by Mr Salil Aggarwal.

50. That apart, the plea of Mr Salil Aggarwal that the respondents by initiating reassessment proceedings are attempting to correct a mistake that had occurred in the earlier AY, cannot be discounted.

51. In so far judgment relied upon by Mr Sunil Agarwal in the case of ***GKN Drive Shaft (India) Limited v. ITO (supra)*** is concerned, the case relates to where the appellant therein has challenged the validity of the notices issued under Section 148 and 143(2) of the Act relating to multiple AYs. The High Court dismissed the petition holding it as premature and the Supreme Court held the same view clarifying the proper course is to file the objections for seeking reasons of notice and only after a speaking order is passed, assessment can proceed. In the present case, though the reasons are provided by the respondent/Revenue, since the same do not amount to any fresh/tangible material but would be change of opinion, for the purpose of

initiating reassessment.

52. Though, Mr Salil Aggarwal, also refer to other judgments, but in view of the judgment of this Court as has been relied upon, the relevant portion of which, we have reproduced above, need is not felt to deal with the remaining judgments referred to by Mr Aggarwal, on the issue under consideration.

53. In view of the above reasons, the writ petitions are allowed and the impugned notices and orders are set aside.

V. KAMESWAR RAO, J

VINOD KUMAR, J

NOVEMBER 06, 2025
rt