IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2545 OF 2016

Macrotech Developers Limited
(Successor to Suryakrupa Construction Private Limited)
A Company registered under the
Companies Act, 1956 having its
registered office at 412, Floor-4, 17G,
Vardhaman Chamber, Cawasji Patel Road,
Horniman Circle, Fort, Mumbai,
Maharashtra – 400 001. ...**Petitioner**

Versus

1. Deputy Commissioner of Income Tax,
Central Circle-7(3) Room No.655,
6th Floor, Aayakar Bhavan,
M. K. Road, Mumbai – 400 020.

2. The Commissioner of Income Tax
Central (IV), 6th Floor,
Aayakar Bhavan, M. K. Road,
Mumbai – 400 020.

3. Union of India
through the Secretary,
Department of Revenue,
Govt. of India, North Block,
New Delhi – 110 001. ...**Respondents**

Mr. Prakash Shah, Senior Advocate (through V.C.) a/w Mr. Jas Sanghavi for the Petitioner.
Mr. Suresh Kumar for the Respondents.

CORAM : M. S. Sonak & Jitendra Jain, JJ.
RESERVED ON : 21 April 2025
PRONOUNCED ON : 25 April 2025

JUDGMENT (Per Jitendra Jain J):-

1. Rule was granted in this matter on 30 November 2016 and the impugned proceedings were stayed.

2. This petition challenges the re-assessment notice under Section 148 of the Income Tax Act, 1961 (the Act), dated 30 March 2016, seeking to reopen the assessment for the assessment year (AY) 2009-2010, and the order dated 28 September 2016 rejecting the objection.

Brief Facts:-

3. The Petitioner is engaged in the business of real estate development in and around the Mumbai Metropolitan Region.

Proceedings under Section 143(3):-

4. For the AY 2009-2010, the Petitioner filed its return of income under Section 139 of the Act. The said return of income was selected for scrutiny assessment vide notice under Section 142(1) of the Act. In the said notice dated 5 October 2011, confirmation for the unsecured loan was called for. The Petitioner vide letter dated 10 October 2011, responded to the said requisition regarding the query relating to loan confirmation. The Petitioner filed a copy of a letter dated 24 August 2011 issued by the Reserve Bank of India (RBI). Vide letter dated 17 October 2011, the Petitioner, with respect to fully convertible debenture (unsecured loan) amounting to Rs.403,67,44,471/- enclosed copy of Foreign Inward Remittance Certificate (FIRC) issued by the HDFC Bank and confirmation letter from the RBI. The Petitioner further filed, vide letter dated 8 November 2011, copy of the agreement with Flirasca Holding Company Limited towards the aforesaid debenture issue. Based on these documents filed during the assessment proceedings, an assessment order under Section 143 (3) of the Act was passed accepting the return income of the Petitioner.

5. In the assessment order under Section 143(3) dated 23 November 2011, the Assessing Officer (AO) has noted that he has examined the unsecured loan taken as Foreign Direct Investment (FDI) after scrutinising and has accepted the transaction of unsecured loan.

Reassessment Proceedings:-

6. On 30 March 2016, the impugned notice under Section 148 of the Act called upon the Petitioner to file its return of income since the AO had reasons to believe that income for the AY 2009-2010 had escaped assessment. The Petitioner was served with the reasons for reopening via letter dated 19 May 2016. Briefly, the reason states that the unsecured loan amounting to Rs . 4,03,45,97,439/- received by the Petitioner is unexplained money of the Petitioner which has been routed through layering via various offshore entities located in tax haven countries, and these entities have an intimate connection with the Petitioner and its directors. The Petitioner, vide letter dated 29 June 2016 filed its objections. On 28 September 2016, the AO rejected the objections raised by the Petitioner. On this backdrop, the present petition is filed challenging the impugned proceedings.

Submissions of the Petitioner:-

7. Mr. Sanghavi filed a compilation comprising 11 case laws; he relied only on the decision in the case of ***New Delhi Television Ltd. vs. Deputy Commissioner of Income Tax*[1] *(NDTV)*** and ***Samson Maritime Limited vs. Deputy Commissioner of Income Tax & Ors*.**[2] The learned counsel submitted that allegation of failure of disclose as required in the proviso is not alleged/stated in the reasons as recorded. He further submitted that, in any case, there was full disclosure of all facts and same is evident from the assessment order. He also relied on objections filed wherein there is a reference to the proceedings before Settlement Commission. He, therefore, submitted that jurisdictional conditions are

1 (2020) 116 taxmann.com 151 (SC)
2 2019 (1) TMI 544 (Bombay)

not satisfied and proceedings be quashed. No other submissions have been made other than what is recorded herein.

Submissions of the Respondents:-

8. Mr. Suresh Kumar, learned counsel for the Respondents, submitted that subsequent to the assessment order, information was received that the loan transaction is not genuine and, therefore, the reopening proceedings were initiated. He submitted that in the course of the assessment proceedings the information on the basis of which the reopening is sought was not available and the said information *prima facie* indicates that the transaction is not genuine. He, therefore, submitted that the condition of first proviso to Section 147 of the Act, namely failure to disclose truly and fully all material facts necessary for the assessment is not satisfied in the present case. He further submitted that although the reasons recorded may not allege any failure on the part of the Petitioner to disclose fully and truly all material facts necessary for the assessment, the same can be culled out on a reading of the reasons recorded. He, therefore, submitted that the proceedings have been validly initiated. He relied upon the decision in the case of ***Crompton Greaves Ltd. vs. Assistant Commissioner of Income-tax, Circle 6(2)***[3] and the decision of the Supreme Court in the case of ***Phool Chand Bajrang Lal vs. Income-tax Officer***[4].

9. He submitted that the facts in the case of *NDTV (supra)* is distinguishable and, therefore, the said decision is not applicable to the facts of the present case. He further submitted that the Petitioner could establish the genuineness of the transaction in the reassessment proceedings, and if the officer is satisfied with the same, he will accept the transaction as genuine. However, the Petitioner cannot stop the

3 (2015) 55 taxmann.com 59 (Bombay)
4 (1993) 69 Taxman 627 (SC)

Respondents from initiating the present proceedings and enquiring, which is based on the subsequent information brought to the notice of the AO. He, therefore, prayed for dismissal of the petition.

Directions of the Bench:-

10. On a direction issued by the Bench, Mr. Suresh Kumar, learned counsel for the Respondent produced a letter dated 28 March 2016 on the basis of which the reopening was initiated. The said direction was issued by the Bench to ascertain whether the information on the basis of which reopening was sought was available at the time of the original assessment proceedings or whether it came to the AO's attention after the assessment order under Section 143(3) of the Act.

Analysis and Conclusions:-

11. We have heard learned counsel for the Petitioner and the Respondent and with their assistance have perused the documents and the case laws, which are relied upon and brought to our notice. The Petitioner has in the course of the hearing filed compilation consisting of 11 case laws but only relied upon two decisions. In the course of the argument, the Bench brought to the notice of both the parties certain decisions of various Courts including that of the Coordinate Benches of this Court on the similar issue but none of the parties prayed for addressing the Court on these decisions.

12. At the outset, the reasons recorded for reopening the case, which were furnished to the Petitioner vide letter dated 19 May 2016, read as under:-

> *"The reasons recorded for reopening of the assessment ion the case of M/s Suryakrupa Farms & Construction Pvt. Ltd. for A.Y. 2009-10 is as follows:*

Information is available that M/s Suryakrupa Farms & Construction Pvt. Ltd. has received funds amounting to Rs 403,45,97,439/- in F.Y. 2008-09 from an entity named 'Flirasca Holding P. Ltd.' located in Cyprus, a known tax haven.

Information was received through FT&TR reference from Cyprus & Mauritius. On analysis of the bank statement of M/s. Flirasca Holding P. Ltd received from Cyprus, it is observed that funds were transferred during the period 2008-09 from M/s. Flora Enterprises, Mauritius to M/s. Flirasca Holding P. Ltd., which in turn were transferred to M/s Suryakrupa Farms & Construction Pvt. Ltd. by the way of Compulsory Convertible Debentures (CCD) of Rs 403.45 Cr. in FY 2008-09. M/s Flora Enterprises received the funds from Ace Mauritius Ltd.

The facts indicate that the money received by M/s Suryakrupa Farms & Construction Pvt. Ltd. in F.Ys. 2008-09 at Rs 403,45,97,439/ is through layering through various offshore entities. ***Intelligence available suggests that the offshore entities through which the funds are received by M/s Suryakrupa Farms & Construction Pvt. Ltd. are located in tax havens and have intimate connection with the assessee company through its Director. Information suggests that the undisclosed funds have been routed by M/s Suryakrupa Farms & Construction Pvt. Ltd. through layering via offshore entities in tax havens as discussed.***

In view of the above, I have reasons to believe that Rs. 403,45,97,439/- being unexplained cash credit which was income chargeable to tax has escaped assessment for AY 2009-10 within the meaning of Section 147 r.w.s. 148 of the IT Act, 1961.

[Emphasis supplied]

13. Section 147, as it stood at the relevant time, read as under :

"147. Income escaping assessment. - If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year):

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:*

14. There is no dispute between the parties that the impugned proceedings were initiated after the expiry of four years from the end of the relevant assessment year, and the original assessment was completed under Section 143(3) of the Act. First proviso to Section 147 of the Act provides that an assessment can be reopened after the expiry of four years from the end of the relevant assessment years in cases where the original assessment is done under Section 143(3) of the Act only if there is a failure on the part of assessee to disclose fully and truly all material facts necessary for the assessment. Therefore, it is necessary to ascertain whether based on the reasons as recorded and furnished this pre-condition of failure to disclose fully and truly material facts necessary for the assessment is satisfied in the present case.

15. Admittedly, in the reasons recorded and reproduced above, there is no statement alleging failure on the part of the Petitioner to disclose fully and truly all material facts necessary for the assessment. However, merely because this statement is not there in the reasons recorded, it does not mean that this condition is not satisfied if on a perusal of the reasons recorded it can be culled out that there is a failure on the part of the Petitioner to disclose fully and truly all material facts necessary for the assessment.

16. Mr. Suresh Kumar, learned counsel for the Respondent, is justified in relying upon paragraph 10 of the decision in the case of *Crompton Greaves Ltd. (supra)* of the Coordinate Bench of this Court to which one of us (M. S. Sonak, J.) was a party. The relevant paragraph 10 reads as under: -

> *"10. It is significant to note that neither the impugned notice dated 29 March 2006 nor the reasons supplied in support thereof specifically state that there was any failure on the part of the petitioner to disclose fully and truly all the material facts necessary for its assessment for the relevant assessment year. No doubt, Mr. Suresh Kumar is right in his submission that the mere failure to incant the words or phrases employed in the statute with regard to failure to disclose fully and truly all material facts, is not necessarily fatal to the assumption of jurisdiction under Sections 147 and 148 of the Act. However, this is subject to the rider that there must be cogent and clear indication in the reasons supplied, that in fact there was failure on the part of the Assessee to disclose fully and truly all the material facts necessary for its assessment. If the factum of failure to disclose can be culled down from the reasons in support of the notice seeking to reopen assessment, then the mere failure to repeat words_or phrases of the statute is certainly not fatal to the assumption of jurisdiction.* *However, if from the reasons, no case of failure to disclose is made out, then certainly the assumption of jurisdiction under Sections 147 and 148 of the Act would be ultra vires, being in excess of the jurisdictional restraints imposed by the first proviso to Section 147 of the Act."*
>
> *[Emphasis supplied]*

17. In our view, on a perusal of the reasons recorded and reproduced above, the failure on the part of the Petitioner to disclose fully and truly all material facts necessary for the assessment can be culled out even in the absence of any statement to that effect in the reasons recorded.

18. In the objections filed by the Petitioner to the reasons recorded and which are annexed at Page 102-105 of the Petitioner, no grievance is raised therein that because there is no allegations in the reasons recorded of any failure to disclose fully and truly all material facts necessary for the assessment and, therefore, the impugned proceedings are bad in law. On the contrary, the Petitioner submitted they have disclosed all particulars and there is no failure to disclose truly and fully all material facts necessary for the assessment. Therefore, today Petitioner cannot raise any plea that because there is no allegation in the reasons recorded of any failure, the proceedings are bad in law. Petitioner was conscious that there is no allegation in the reasons recorded but inspite of the same submitted that they have disclosed fully and truly all material facts necessary for the assessment. Therefore, the plea raised today on the ground of no allegations in the reasons recorded is required to be rejected.

19. In the reasons recorded it is stated that information is received through FT & TR that the loan received from Flirasca Holding Private Limited is located in Cyprus and Mauritius, tax havens countries and on an analysis of the bank statement of these entities it is observed that funds have been transferred through circuitous route to the Petitioner-Company by way of loan. The money is received by the Petitioner through the layering of various offshore entities, and based on the intelligence available, these tax haven entities have an intimate connection with the Petitioner and its Director, and undisclosed funds have been routed by the Petitioner itself through layering via various offshore entities in tax haven countries.

20. In our view, based on these reasons, which are recorded, it can very well be culled out that there is a failure on the part of the Petitioner to disclose fully and truly all material facts necessary for the assessment. The circuitous movement of funds through various companies located in tax havens have not been disclosed in the course of the original assessment proceedings Therefore, in our view, even though there is no statement of any allegation of failure to disclose fully and truly all material facts necessary for the assessment, same can be culled out on a reading of the reasons recorded. Therefore, the contention raised by the Petitioner that in the absence of any statement in the reasons recorded that there is any failure to disclose fully and truly all material facts necessary for the assessment the impugned proceedings are bad is to be rejected.

21. In the extraordinary jurisdiction under Article 226 of the Constitution of India, the Court is not required to examine the sufficiency of the reasons but whether the reasons *prima facie* indicate that any income has escaped assessment. In our view, based on the reasons as recorded, which in turn, is based on information received post conclusion of the original assessment proceedings as reproduced above, it cannot be said that no prudent person could have formed a belief that any income has escaped assessment by failure on the part of the Assessee to disclose fully and truly material facts necessary for the assessment.

22. It is important to note that the reopening is based on the information received, which is referred to in the reasons recorded, and the said information was received on 28 March 2016, via a letter produced by the Respondent on the directions of this Court. This information was not available at the time of the original assessment proceedings, and, therefore, this information constitutes tangible material after the conclusion of the original assessment proceedings, based on which the reopening is sought. This information was crucial and during the reassessment proceedings, the petitioner would have ample opportunity to deal with the allegations. But, given the information post the initial assessment proceedings, no case is made out to stall the reassessment at the threshold.

23. The learned counsel for the Petitioner states that the letter dated 28 March 2016 finds no reference in the reasons recorded. This is not fatal. The letter may not have been referred to, but the contents are reflected. Since the petitioner had questioned the compliance with the jurisdictional parameters for reopening, we directed the Respondents to place on record the precise information based on which the reopening was proposed. Therefore, in our view, no prejudice was caused to the Petitioner by our directions. In any case, this direction was limited to ascertain whether the same was available at the time of the original assessment proceedings or was it post-conclusion of the original assessment proceedings. Merely because the date of receipt of information is not noted in the reasons recorded, the assumption of jurisdiction cannot be faulted.

24. The reopening as evident from the reasons recorded is initiated after conclusion of the assessment proceedings wherein the revenue has the information about unexplained money of the petitioner being routed through various companies located in tax haven countries. This information was not available at the time of the assessment proceedings and, therefore, was not examined during the original assessment proceedings. In the original assessment proceedings, what was perhaps examined was only receipt of money from Flirasca Holding Company Limited and not the routing of the said money through various layered companies which, according to the information received, is the unexplained money of the Petitioner. Further, it is important to note that this information was received post conclusion of the assessment proceedings, as evident from the letter dated 28 March 2016.

25. We now propose to address the submission of the learned counsel for the Petitioner that the Petitioner has disclosed all primary facts with respect to the transactions during the course of the original assessment proceedings, and therefore, there cannot be any allegation of any failure to disclose fully and truly all material facts necessary for assessment. In our view, this submission based on the facts of the present case must be rejected. There is no dispute that in the course of the original assessment proceedings, the Petitioner had filed FIRC certificate, subscription agreement and the RBI letter with respect to this transaction. However, subsequent to the conclusion of the original assessment proceedings, information was received that the undisclosed funds of the Petitioner have been routed through various companies located in tax havens, and the same is brought into the Petitioner's company by way of a loan. In our view, this information was not available at the time of the original assessment proceedings and, therefore, if based on subsequent information, there is a *prima-facie* material suggesting that the transaction of loan is nothing but the undisclosed funds of the Petitioner routed through various tax havens companies in the form of loan then the disclosure made in the course of the original assessment proceedings cannot be treated as full and true material disclosure for the purpose of the assessment.

26. At this stage, we are only concerned with assumption of jurisdiction based on the reasons as recorded which *prima-facie* indicates and based on which the reopening is initiated that the transaction of loan is nothing but routing of undisclosed funds of the Petitioner through various tax havens companies. If the contention of the Petitioner is accepted, then in a case where subsequent to the expiry of four years, information is received that the transaction which was examined during the course of the original assessment proceedings is not genuine or bogus then in such a scenario the assessee cannot take the benefit by relying upon first proviso to Section 147 of the Act and deny the Revenue its right to examine and inquire on the basis of subsequent information, the genuineness of the transaction.

27. In our view, first proviso to Section 147 of the Act cannot be construed in the facts of the present case to mean that subsequently information is received as recorded in the reasons then even though the transaction was examined in the course of the original assessment proceedings, when such information was not available, the proceedings under Section 147 would be barred by first proviso to Section 147 of the Act. In our view, the condition specified in first proviso to Section 147 of the Act would not be applicable in a case where subsequently it is found that the transaction which was examined is non-genuine or bogus. For the purpose of assumption of jurisdiction, certainly the submission made by the Petitioner cannot be accepted. This is more so, looking at the purport and objective of the reassessment proceedings to bring to tax income which has escaped assessment and any interpretation which would be contrary to such an objective is required to be rejected in the facts of the present case.

28. First proviso to Section 147 of the Act provides that reassessment cannot be initiated after a period of 4 years if an assessee disclosed fully and truly all necessary facts for the assessment. The proviso protects an assessee only in those cases where the fact of disclosure is in question but, where the disclosed fact itself is questionable, the same is not protected by first proviso to Section 147 of the Act.

29. Based on the objection raised by the Petitioner, a feeble attempt was also made before this Court that in the proceedings before the Income-tax Settlement Commission (ITSC), the said authority had observed that no further enquiry is needed on the loan transaction of Rs.403 crore from Flirasca Holding Company Limited. In the objection, the Petitioner had admitted that the application before the ITSC was not for AY 2009-2010. The present proceedings impugned in the petition relate to AY 2009-2010. Therefore, the objection raised by the Petitioner on the basis of the ITSC order cannot prevent the revenue from initiating reassessment proceedings for AY 2009-2010. In any case, we have not been shown any such order of ITSC and in what context the observations were made. Therefore, based on such argument we cannot nip the proceedings at the threshold.

Decision relied upon by the Petitioner:-

30. It is settled that decisions relied upon by the parties must be examined based on the facts of that decision, and any reliance on such a decision dehors the context and facts is inappropriate. A decision is only an authority for what it actually decides. What is of essence in a judgment is its ratio and not every observation found therein or even what may logically follow from such observations. Every judgment must be read as applicable to the particular facts proved, since the generality of the expressions which may be found therein, is not intended to be the exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and therefrom the judgment and build upon it because the essence of the judgment is the ratio and not every observation therein. [***see UOI v. Dhanwanti Devi***[5] ***]***

31. Keeping the above legal principle in mind, we now propose to deal with the case laws relied upon by the learned counsel for the Petitioner. We may observe that although in the compilation 11 case laws have been annexed, the Petitioner's counsel has brought to our notice only two decisions in the case of ***NDTV (supra)*** and ***Samson Maritime Limited (supra)***. However, in spite of not referring to the other

5 (1996) 6 SCC 44

decisions, we feel it appropriate to deal with all the case laws in the interest of justice.

32. The learned counsel for the Petitioner placed heavy reliance on the decision of the Hon'ble Supreme Court in the case of ***NDTV (supra)*** and submitted that there has been full and true disclosure of the material facts and, therefore, the impugned proceedings are barred by first proviso to Section 147 of the Act. In our view, the facts in the case of ***NDTV (supra)*** were different from the facts of the present case and therefore the reliance placed is misconceived. In the case of ***NDTV (supra)*** the reassessment proceedings were initiated for AY 2008-2009 with respect to transaction of issue of step-up coupon bonds amounting to US dollar 100 Million. These step-up coupon bonds were issued by NNPLC and the assessee agreed to furnish corporate guarantee for this transaction. However, these bonds were redeemed in advance at a discounted price in November 2009. However, during the proceedings for subsequent assessment year i.e. AY 2009-2010, DRP proposed addition of Rs.642 crores on account of funds raised by the assessee through its subsidiaries which included NNPLC. The addition in AY 2009-2010 was proposed on the ground that money raised during the said assessment year from its subsidiaries were sham and bogus transactions and these transactions were done with a view to get the undisclosed income by round tripping. Based on these findings for the AY 2009-2010, assessment for AY 2008-2009 was reopened proposing to treat the transaction of issue of step-up coupon bonds as undisclosed income. The Hon'ble Supreme Court held that based on the findings of the AY 2009-2010, reassessment proceedings can be initiated for AY 2008-2009. However, with respect to the applicability of first proviso to Section 147 for AY 2008-2009 is concerned, the Supreme Court observed that there was no fresh material before the assessing officer for forming belief for AY 2008-2009 with respect to issuance of step up coupons. This was so because the transaction for AY 2008-2009 was not the subject matter of proceedings for AY 2009-2010. It was on these facts that the Supreme Court observed that since the transaction of step-up coupon bonds for AY 2008-2009 was examined in the course of the original assessment proceedings and the assessed therein had filed all the details there cannot be any failure to disclose fully and truly all material facts necessary for the assessment.

33. In the present case before us, the reopening is not initiated based on findings made in the subsequent Assessment Year. The reopening is initiated based on the information received, for this very assessment year, subsequent to the conclusion of the original assessment proceedings wherein it is *prima facie* indicated that the Petitioner's undisclosed funds have been routed in the form of loan for AY 2009-2010 amounting to Rs.4,03,45,97,439/- by routing the funds through various offshore entities in tax heavens. In reasons recorded in the case of ***NDTV (supra)***, the reopening was sought based on the findings of the subsequent assessment year with respect to transaction other than the transaction for AY 2008-2009. In the present case before us the reopening is done based on subsequent information for this very year i.e. AY 2009-2010 of the transaction being routing of undisclosed funds of the Petitioner. Furthermore, in the case of ***NDTV (supra)*** there was an exemption under the Companies Act from not disclosing the details of the subsidiaries in its final accounts and, therefore, there could not have been any failure to disclose truly and fully all material facts necessary for the assessment. In the present case before us, no such exemption was brought to our notice. In the case of ***NDTV (supra),*** it is recorded that the assessing officer knew who the entities were that had subscribed to the bonds. In contrast, in the present case, the fact of routing undisclosed funds of the Petitioner to various offshore entities was not within the knowledge of the assessing officer at the time of the original assessment proceedings.

34. The Supreme Court, based on the facts of the ***NDTV (supra),*** which are different from the present facts, concluded that the assessee disclosed all primary facts necessary for the assessment. It is also important to note that the Supreme Court also records that in the case of ***NDTV (supra)***, the Revenue was not relying upon non-disclosure of facts to initiate reassessment proceedings. In contrast, in the present case, the Revenue is relying upon the same as can be culled out from the reasons as recorded. The facts in the case of ***NDTV (supra)*** being different from the facts of the present case on the above-referred crucial aspects, the reliance ruling cannot assist the petitioner's cause. There is no dispute regarding the ratio or the principle but applying such ratio to the facts of the present case, the reopening cannot be stalled at the very threshold. There are several distinguishing features, and they cannot be simply overlooked before applying the ratio.

35. The next decision in the compilation of the Petitioner is of the Coordinate Bench of this Court in the case of ***Teofilo Fernando Antonio Pinto vs. Union of India***[6]. In this case, in the reasons recorded, it could not be culled out whether there was any failure to disclose fully and truly all material facts necessary for the assessment. Furthermore, the decision of this Court in the case of ***Crompton Greaves Ltd. (supra)*** was not brought to the notice of the Bench which states that, if the allegation of failure can be culled out on the reading of the reasons, then merely because there is no statement to that effect would not make the jurisdiction fatal. Thirdly, in the present case, on a reading of the reasons recorded and reproduced above, it is evident that, *prima facie,*

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there is material to initiate reopening since the transaction itself has been recorded in the reasons and is non-genuine. Therefore, on these facts, the decision cannot assist the Petitioner's cause.

36. In the case of ***Oxford University Press vs. Deputy Commissioner of Income-tax***[7], the reason does not seem to suggest any failure on the part of the Assessee to disclose fully and truly all material facts necessary for the assessment. Furthermore, in that case, the Petitioner had disclosed all the facts and those facts were not found subsequently to be incorrect. In the present case, the transaction of loan, on the basis of subsequent information is alleged to have been non-genuine. Therefore, on these facts the Petitioner is not justified in relying upon the decision in the case of ***Oxford University Press (supra)***.

37. The decision in the case of ***Samson Maritime Limited (supra)*** also states that there was no information subsequent to the conclusion of the assessment proceedings that the issues examined during the course of the original assessment proceedings were bogus. The Coordinate Bench gave a finding of fact that there was no failure to disclose material facts. In the present case, there is subsequent information on the basis of which the reopening is initiated on the ground that the loan transaction is were not genuine and this information of non-genuineness was not available at the time of the original assessment proceedings. Therefore, this decision cannot be of any assistance to the Petitioner.

38. Similarly, the decision in the case of ***Bombay Stock Exchange Ltd. vs. Deputy Director of Income-tax (Exemption)***[8] also is based on the facts peculiar to that case. In the case of ***Bombay Stock Exchange Ltd. (supra)*** there was no information subsequent to the conclusion of the

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8 (2014) 52 taxmann.com 29 (Bombay)

assessment proceedings which would suggest that the transaction was bogus. Furthermore, the decision in the case of ***Crompton Greaves Ltd. (supra)*** was also not brought to the notice of the Court. Therefore, on these grounds the reliance placed in the case of ***Bombay Stock Exchange Ltd. (supra)*** is distinguishable on facts and in law.

39. In the case of ***S. S. Landmarks vs. Income-tax Officer, Ward-2(2) Pune***[9] the issue whether completion certificate was not obtained on or before 31 March 2012 was a subject matter of consideration while passing the assessment order and there were no new reasons prior to the issue of notice under Section 148 of the Act. In the instant case before us, the information which is recorded in the reasons for opening was not the subject matter of investigation in the course of the original assessment proceedings, but same constitutes fresh tangible material and, therefore, the said decision cannot be made applicable to the facts of the present case.

40. In the case of ***Aroni Commercials Ltd. vs. Deputy Commissioner of Income-tax-2(1)***[10] the issue of taxability of sale of shares was examined during the course of the original assessment proceedings and the subsequent reassessment proceedings were based on change of opinion. In the present case, the issue pertaining to the Petitioner's own fund being routed through various tax haven countries by way of loan was not the issue during the course of the original assessment proceedings and this information was received after the conclusion of the assessment proceedings and, therefore, the reliance placed on the said decision is also misplaced.

41. In the case of ***NuPower Renewables (P.) Ltd. vs. Assistant Commissioner of Income-tax***[11], the only thing recorded in the reasons

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10 (2014) 44 taxmann.com 304 (Bombay)
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was that the Assessee therein have received share application money from M/s. Firstland and nothing more and it was on these facts that the reassessment proceedings were quashed. In the present case, it is evident from the reasons recorded and reproduced above that there is not only mention of the fact that the Petitioner has received the loan amount, but also it is mentioned that based on the information it is the Petitioner's undisclosed funds which has been routed to various tax havens companies by way of loan. Therefore on these facts, the decision in the case of ***NuPower Renewables (P.) Ltd. (supra)*** cannot be relied upon.

42. Similarly, the decision in the case of ***First Source Solution Ltd. vs. Assistant Commissioner of Income-tax 12(2)(1)***[12] and ***Jainam Investments vs. Assistant Commissioner of Income-tax, Central Circle-8(1), Mumbai***[13] is not applicable to the facts of the present case. Since in the present case, the information was received subsequent to the original assessment proceedings and the transaction which was examined during the original assessment proceedings is *prima-facie* found to be undisclosed funds of the Petitioner routed through various tax havens companies. Furthermore, the decision in the case of ***Crompton Greaves Ltd. (supra)*** was also not brought to the notice of the Coordinate Benches of this Court.

43. In our view, therefore, the above decisions would not apply or assist the petitioner's case. Based on the decisions cited, no case is made to interfere with the reopening or stalling the proceedings at the threshold. As it is, the petitioner would have the full opportunity during the reassessment proceedings to present its version or to establish how the allegation of layering, etc, is incorrect. But to say that no case is made out, even to examine such matters, despite the revenue securing

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prima facie credible information post the initial assessment proceedings, may not be proper.

Decision relied upon by the Respondents:-

44. Mr. Suresh Kumar, learned counsel for the Respondents, is justified in relying on the Supreme Court's decision in the case of ***Phool Chand Bajrang Lal (supra)***. In this case, before the Supreme Court, the AO, during the course of the assessment proceedings for AY 1963-1964, after perusing the documents filed on the loan transaction, accepted the same and allowed the claim of interest made by the Assessee. However, subsequent thereto on enquiry, it was found that the lender advanced no such loan to any party and he was only a name lender. Based on this information, case of the assessee was reopened on the ground of non-disclosure of the primary facts. The issue of challenge to the jurisdiction to reopen the case reached the Supreme Court and the Supreme Court held that, where the transaction itself based on subsequent information is found to be a bogus transaction, mere disclosure of that transaction and examination thereof at the time of original assessment proceedings cannot be said to be disclosure of true and complete facts and therefore, initiation of reassessment proceedings of concluded assessment was upheld. The relevant paragraphs of the said judgment read as under:-

> *"20. From a combined review of the judgments of this Court, it follows that an ITO acquires jurisdiction to reopen assessment under section 147(a) read with section 148 only if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons which he must record, to believe that by reason of omission or failure on the part of the Assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profit or gains chargeable to income-tax has escaped assessment. He may start reassessment proceedings either because some fresh facts come to light which were not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the untruthfulness of those*

> *facts. In such situations, it is not a case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available but acting on fresh information. Since, the belief is that of the ITO, the sufficiency of reasons for forming the belief, is not for the Court to judge but it is open to an Assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non specific information. To that limited extent, the Court may look into the conclusion arrived at by the ITO and examine whether there was any material available on the record from which the requisite belief could be formed by the ITO and further whether that material had any rational connection or a live link for the formation of the requisite belief. It would be immaterial whether the ITO at the time of making the original assessment could or, could not have found by further enquiry or investigation, whether the transaction was genuine or not, if on the basis of subsequent Information, the ITO arrives at a conclusion, after satisfying the twin conditions prescribed in section 147(a) , that the Assessee had not made a full and true disclosure of the material facts at the time of original assessment and therefore income chargeable to tax had escaped assessment. The High Courts which have interpreted Burlap Dealers Ltd. 's case (supra)as laying down law to the contrary fell in error and did not appreciate the import of that judgment correctly.*
>
> *21. We are not persuaded to accept the argument of Mr. Sharma that the question regarding truthfulness or falsehood of the transactions reflected in the return can only be examined during the original assessment proceedings and not at any stage subsequent thereto. The argument is too broad and general in nature and does violence to the plain phraseology of sections 147(a) and 148 and is against he settled law by this Court. We have to look to the purpose and intent of the provisions. One of the purposes of section 147, appears to us to be, to ensure that a party cannot get away by willfully making a false or untrue statement at the time of original assessment and when that falsity comes to notice, to turn around and say 'you accepted my lie, now your hands are tied and you can do nothing'. It would be travesty of justice to allow the Assessee that latitude."*

45. In our view, the facts of the present case before us is similar to the facts before the Supreme Court in the case of ***Phool Chand Bajrang Lal (supra)***. In the present case also, although the loan transaction of debentures was examined during the course of the original assessment proceedings but subsequent to the conclusion of the assessment proceedings, information was received that these funds were unexplained funds of the Petitioner which were routed through various companies located in tax havens and, therefore, reopening was initiated. In our view, there is sufficient material on the basis of which reopening was justified and decision of the Supreme Court in the case of ***Phool Chand Bajrang Lal (supra)*** squarely applies to the present case.

Decisions relied upon by the Court:-

46. Now we propose to deal with the case laws which the Court in the course of hearing had brought to the notice of both the parties and which none of the parties prayed to address the Court on the said decisions.

47. The issue posed before us today also came up for consideration before the Co-ordinate Bench of this Court in the case of ***Kalsha Builders Private Limited Vs. ACIT and Ors.***[14] In this case, there was a challenge to the reopening notice for AY 2011-2012. An assessment order under Section 143(3) was passed in which the transaction of share capital was examined minutely and accepted. Subsequently, after a period of 4 years on the basis of the information received that these transactions were bogus transactions, case was reopened and in the reasons recorded, allegation of failure to disclose was not stated. The arguments advanced before us today were also advanced by the assessee therein. The Co-ordinate Bench of this Court upheld the reassessment proceedings and relevant observations are reproduced herein :-

> *"6. It is true that during the scrutiny assessment, this issue had come up for consideration before the Assessing Officer. He had raised multiple queries under a letter dated 17.7.2013 asking inter alia for furnishing details of assessee's share capital, increase in the assessee's share capital and share premium account. The Assessee had replied to such*

14 Writ Petition No.3656 of 2018 dated 8 February 2019

queries. After which further queries came to be raised by the Assessing Officer on 20.8.2013 in which there was specific mention of the details of a sum of Rs. 3 crore having been paid by M/s. Prabahv Industries for purchase of 1500 shares. The Assessee was asked to provide the identity of such investor, its creditworthiness and genuineness of the transaction. The Assessee having replied to such queries raised in the order of assessment, the Assessee made no additions.

7. *It is because of this, the Assessee contended that the Assessing Officer is precluded from raising same question all over again by way of reassessment. The impugned notice having been issued beyond the period of four years from the end of relevant assessment year, the question of true and full disclosure by the Assessee would also be an additional factor. However, when the Revenue suggests that the Assessee had indulged in the bogus accommodation entries and therefore, said amount of Rs. 3 crore was nothing but the assessee's unexplained cash credit, the issue of change of opinion and true and full disclosure would merge almost to the extent of overlapping. In other words, if the Revenue can prima facie show on the basis of additional material available with the Assessing Officer after completing the scrutiny assessment that the Assessee had made a bogus claim, merely because the issue was examined by the Assessing Officer, would not preclude him from reopening the assessment. Reference in this context can be made to the decision of the Supreme Court in the case of M/s. Phool Chand Bajrang Lal & Anr. Vs. I.T.O.1 . It is a case in which during the original scrutiny assessment, the question of transaction of loan given by the Assessee was examined. Later on, however, the Assessing Officer received information suggesting that the entire transaction was bogus. When the question of validity of reopening of assessment came up for consideration before the Supreme Court, it was observed as under:-*

"25. From a combined review of the judgments of this Court, it follows that an Income-tax Officer acquires jurisdiction to reopen assessment under Section 147(a) read with Section 148 of the Income Tax Act, 1961 only if on the basis of specific, reliable and relevant information coming to his possession subsequently, he has reasons which he must record, to believe that by reason of omission or failure on the part of the Assessee to make a true and full disclosure of all material facts necessary for his assessment during the concluded assessment proceedings, any part of his income, profit or gains chargeable to income tax has escaped assessment. He may start reassessment proceedings either because some fresh facts come to light which where not previously disclosed or some information with regard to the facts previously disclosed comes into his possession which tends to expose the

untruthfulness of those facts. In such situations, it is not a case of mere change of opinion or the drawing of a different inference from the same facts as were earlier available but acting on fresh information. Since, the belief is that of the Income-tax Officer, the sufficiency of reasons for forming the belief, is not for the Court to judge but it is open to an Assessee to establish that there in fact existed no belief or that the belief was not at all a bona fide one or was based on vague, irrelevant and non-specific information. To that limited extent, the Court may look into the conclusion arrived at by the Income Tax Officer and examine whether there was any material available on the record from which the requisite belief could be formed by the Income Tax Officer and further whether that material had any rational connection or a live link for the formation of the requisite belief. It would be immaterial whether the Income-tax Officer at the time of making the original assessment could or, could not have found by further enquiry or investigation, whether the transaction was genuine or not, if one the basis of subsequent information, the Income-tax Officer arrives at a conclusion, after satisfying the twin conditions prescribed in Section 147(a) of the Act, that the Assessee had not made a full and true disclosure of the material facts at the time of original assessment and therefore income chargeable to tax had escaped assessment. The High Courts which have interpreted Burlop Dealer's case (Supra) as laying down law to the contrary fell in error and did not appreciate the import of that judgment correctly.

26. We are not persuaded to accept the argument of Mr. Sharma that the question regarding truthfulness or falsehood of the transactions reflected in the return can only be examined during the original assessment proceedings and not at any stage subsequent thereto. The argument is too broad and general in nature and does violence to the plain phraseology of Sections 147(a) and 148 of the Act and is against the settled law by this Court. We have to look to the purpose and intent of the provisions. One of the purposes of Section 147, appears to us to be, to ensure that a party cannot get away by wilfully making a false or untrue statement at the time of original assessment and when that falsity comes to notice, to turn around and say "you accepted my lie, now your hands are tied and you can do nothing". It would be travesty of justice to allow the Assessee that latitude.

27. In our opinion, therefore, in the facts of the present case the Income-tax Officer Azamgarh rightly initiated the reassessment proceedings on the basis of subsequent information, which was specific, relevant and reliable, and after recording the reasons for formation of his own belief that in the original assessment proceedings, the Assessee had not disclosed the material facts truly *and fully and therefore income chargeable to tax had escaped assessment. He, therefore, correctly invoked the provisions of Sections 147(a) and 148 of the Act. The High Court was, thus, perfectly justified in dismissing the writ petition. There is no merit in this appeal which fails and is dismissed but with no order as to costs"*

8. *In this background, we may take stock of the reasons recorded by the Assessing Officer. After the assessment was completed, the Assessing Officer was supplied information collected through search action at the residence and other premises of Shirish C. Shah who was found to be the main person engaged in providing bogus accommodation entires. The material impounded during the search suggested that Prabhav Industries was entirely controlled by Shirish C. Shah which had made investment of Rs. 3 crore in Assessee company. The notice issued by the Assessing Officer to Prabhav Industries under Section 133(6) remained unanswered. It was on the basis of such material, the Assessing Officer formed a belief that the said sum of Rs. 3 crore was nothing but the re-rooting of Assessee's unexplained cash.*

9. *In facts of the present case, we do not find merits in any of the contentions of the Petitioner. Firstly, as noted, merely because the Assessing Officer had examined the transactions during the original assessment proceedings, would not preclude him from subsequent inquiry it is shown on the strength of additional material establishing prime facie that the disclosures made by the Assessee were not true. If the entire claim is bogus and so established to be, the Assessee would fail the test of true and full disclosure. Requirement of true and full disclosure runs through the entire assessment and it does not end on filing of return. The search action against Shirish C, Shah provided certain information which was also processed by the Assessing Officer before forming the belief that income chargeable to tax had escaped assessment.*

10. *Secondly, the entire reasons when read as a whole, more than sufficiently demonstrate the belief of the Assessing Officer that the entire assessment goes on bogus claim of share application money having been received by the Assessee company. Therefore, lack of true disclosures is writ large on the face of the reasons. Mere non recitation of such expression would not invalidate the reasons or the fact that the reasons are based on allegations of lack of true and full particulars.*

11. *Learned counsel for the Petitioner submitted that the Assessing Officer had issued notice to Prabhav Industries under Section 133(6) of the Act which was replied and had not remained unreplied as suggested in the reasons. Firstly, this aspect has emerged in the rejoinder. Secondly, at this stage, in a writ jurisdiction, we would not entertain such disputed question since it is well settled that sufficiency of the*

> *reasons at the end of the Assessing Officer to form a belief that the income chargeable to tax had escaped assessment would not be within the purview of examination of writ court at this stage."*

48. The Co-ordinate Bench of this Court in the case of ***Indo European Breweries Limited vs. Income Tax Officer***[15] also was posed with similar issue wherein there was a challenge to the reassessment proceedings after a period of 4 years on the basis of the transaction being found in later year as bogus. The Co-ordinate Bench of this Court [Justice Dr. D. Y. Chandrachud (as he then was) and Justice A. A. Sayed] upheld the reopening of the assessment beyond the period of 4 years on the basis of subsequent tangible material whereby the disclosure made in the course of the assessment proceedings was found to be incorrect. In our view, the ratio of this decision also supports the case of the revenue in defending the reassessment proceedings.

49. The Allahabad High Court in the case of ***Ambuj Foods (P.) Ltd. vs. Principal Commissioner of Income-tax***[16] also was posed with a similar situation wherein based on subsequent information, reopening proceedings were initiated of a concluded assessment. The Allahabad High Court upheld the reassessment proceedings which were initiated beyond the period of 4 years by following the decision of ***Phool Chand Bajrang Lal (supra)***.

50. The Gujarat High Court in the case of ***Mehrunnisa Mohamed Fazal Maniar vs. Income Tax Officer***[17]***,*** Delhi High Court in the case of ***Experion Developers (P.) Ltd. Vs. Assistant Commissioner of Income-tax***[18] and Allahabad High Court in **Distributors India C and F vs. Union of India**[19] also in similar fact situation upheld reassessment proceedings.

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15 (2013) 33 taxmann.com 546 (Bombay)
16 (2022) 139 taxmann.com 404 (Allahabad)
17 (2021) 127 taxmann.com 547 (Gujarat)
18 (2020) 115 taxmann.com 338 (Delhi)
19 (2022) 140 taxmann.com 338 (Allahabad)

51. Therefore, in our view, based on the above analysis and reasoning, the present petition, challenging the reassessment proceedings initiated by notice dated 30 March 2016, is required to be dismissed, and is hereby dismissed. The rule is discharged without any costs order.

52. We may clarify that the Petitioner in the reassessment proceedings should be given sufficient opportunity to prove the transaction which is the subject matter of the reopening and convince the Assessing Officer that the allegation made in the reasons recorded is incorrect. We make it clear that we have not made any comments on the transaction's merits since the only issue before us is challenge to the jurisdiction of the AO to reopen the case. Therefore, this order should not be considered as expression of our opinion on the transaction's merits. All contentions of both parties on merits are kept open to be adjudicated in the course of the reassessment proceedings.

53. In this case, there was an interim relief in favour of the Petitioner since October 2016. However, today we have dismissed the petition, but the interim relief granted since October 2016 is continued for a period of four weeks from today.

(Jitendra Jain, J.) **(M. S. Sonak, J.)**

Signed by: Sayyed Saeed Ali
Designation: PA To Honourable Judge
Date: 25/04/2025 14:44:07