

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

WRIT PETITION No.393 of 2022

Between:

M/s. CCI Products (India) Limited

...PETITIONER

AND

The Assistant Commissioner of Income Tax and Others

...RESPONDENT(S)

DATE OF ORDER PRONOUNCED : 29.01.2025.

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE B KRISHNA MOHAN
AND
THE HON'BLE SRI JUSTICE NYAPATHY VIJAY**

1. Whether Reporters of Local newspapers may be allowed to see the Order? : Yes/No
2. Whether the copies of order may be marked to Law Reporters/Journals? : Yes/No
3. Whether Your Lordships wish to see the fair Copy of the Order? : Yes/No

JUSTICE B KRISHNA MOHAN

JUSTICE NYAPATHY VIJAY

*** THE HON'BLE SRI JUSTICE B KRISHNA MOHAN
AND
* THE HON'BLE SRI JUSTICE NYAPATHY VIJAY**

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! Counsel for the petitioner : KARAN TALWAR

^ Counsel for the respondents:

1. DEPUTY SOLICITOR GENERAL OF INDIA

2. Y N VIVEKANANDA

<Gist:

>Head Note:

? Cases referred:

1. [2012] 24 taxmann.com 310 (SC)

2. [2010] 187 taxman 312 (SC)

3. 2020 SCC Online AP 752

APHC010000602022



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**



[3516]

WEDNESDAY ,THE TWENTY NINETH DAY OF JANUARY
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE B KRISHNA MOHAN

THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY

WRIT PETITION NO: 393/2022

Between:

1.M/S. CCL PRODUCTS (INDIA) LIMITED, REPRESENTED BY ITS
AUTHORIZED SIGNATORY C.SRISHANT, MANAGING DIRECTOR,
HAVING ITS REGISTERED OFFICE AT DUGGIRALA, GUNTUR
DISTRICT, ANDHRA PRADESH - 522330

...PETITIONER

AND

- 1.THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 1(1),
GUNTUR
- 2.THE PRINCIPAL COMMISSIONER OF INCOME TAX SVR PLAZA, VP
SIDDHARDHA PUBLIC SCHOOL ROAD MOGHALIRAJPURAM
VIJAYAWADA - 520001
- 3.NATIONAL FACELESS ASSESSMENT CENTRE DELHI, 2ND FLOOR,
JAWAHARLAL NEHRU STADIUM, DELHI - 110003
- 4.UNION OF INDIA, REPRESENTED BY ITS SECRETARY TO THE
GOVERNMENT DEPARTMENT OF REVENUE, MINISTRY OF
FINANCE NEW DELHI - 110001

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to

IA NO: 1 OF 2022

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to grant stay of all further proceedings pursuant to the Impugned Notice-1 with DIN & Notice No. ITBA/AST/S/148/2020- 21/1031908437(1) dated 30.03.2021 issued by the Assistant Commissioner of Income Tax, Circle 1(1), Guntur (1st Respondent), the Impugned Notice-2 with DIN-ITBA/AST/F/142(1)/2021-22/1037352472(1) dated 29.11.2021 issued by the National Faceless Assessment Centre, Delhi (3rd Respondent) and the Impugned Order with DIN & Letter No. - ITBA/AST/F/17/2021-22/1038028742(1) dated 22.12.2021 issued by the National Faceless Assessment Centre, Delhi (3rd Respondent), pending disposal of the main Writ Petition, and to pass

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to vacate the interim directions granted in IA.No. 1 of 2022 in W.P.No. 393 of 2022 dated 07-01-2022, in the interests of justice, and to pass

Counsel for the Petitioner:

1.KARAN TALWAR

Counsel for the Respondent(S):

1.DEPUTY SOLICITOR GENERAL OF INDIA

2.Y N VIVEKANANDA

The Court made the following:

ORDER (per Hon'ble Sri Justice B.Krishna Mohan):

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondent Nos.1 to 3.

2. This writ petition is filed questioning the Notice with DIN & Notice No.ITBA/AST/S/148/2020-21/1031908437(1) dated 30.03.2021 issued by the 1st respondent (Impugned Notice-1), Notice with DIN-ITBA/AST/F/142(1)/2021-22/1037352472(1) dated 29.11.2021 issued by the 3rd respondent (Impugned Notice-2) and the Order with Din & Letter No.ITBA/AST/F/17/2021-22/1038028742(1) dated 22.12.2021 issued by the 3rd respondent (Impugned Order) as being in violation of the principles of natural justice, without jurisdiction, patently illegal, arbitrary, violative of Article 14 and Article 19(1)(g) of the Constitution of India.

3. The learned counsel for the petitioner submits that the petitioner is *interalia*, engaged in the manufacture and supply of soluble instant coffee powder, agglomerated/granule coffee, roast & ground coffee and concentrated liquid coffee and other related products. The petitioner filed its Return of Income for the Assessment Year 2015-2016 and all the audited financials including Form 3CA under Section 44AB of the Income Tax Act, 1961, balance sheets and statement of profit and loss on 28.09.2015 declaring a total income of Rs.112,58,64,910/-.

Then the petitioner received a notice under section 142(1) of the Income Tax Act, 1961 dated 11.12.2018 from the 1st respondent requesting the petitioner to furnish accounts for the conduct of income tax assessment. The petitioner had complied with the notice received and furnished the required information and accounts including the tax audit report under Form 3CA, Balance sheets and statement of profit and loss. In particular, the petitioner also furnished information regarding interest expenses and the purchased shares of Ngon Coffee Company as requested by the 1st respondent. The 1st respondent completed the assessment under section 143(3) of the Act and passed an assessment order dated 28.12.2018.

The petitioner again was issued a notice under Section 148 of the Act by the 1st respondent dated 30.03.2021 (Impugned Notice-1) stating that the assessing officer has reasons to believe that the petitioner's income chargeable to tax for the AY 2015-2016 has escaped assessment within the meaning of section 147 of the Act and hence, proposing to reassess the income and requiring the petitioner to furnish a return for the same. In response to the Impugned Notice-1, the petitioner submitted its Return of Income to the 1st respondent again on 16.04.2021. The 1st respondent issued a notice dated 15.06.2021 to the petitioner under section 143(2) read with section 147 of the Act stating issues as per recorded for reopening and that

income chargeable to tax of Rs.2,15,35,000/- has escaped assessment under Section 147 of the Act for the AY 2015-2016.

The petitioner was also issued with a notice dated 17.11.2021 stating that as per the information available on record, it is noticed from the balance sheets as on 31.03.2014 and 31.03.2015 that the total investments made by assessee in shares were to the tune of Rs.132.62 Crs. and Rs.150.96 Crs. respectively as furnished by the petitioner and thereby the investments in shares during the previous year corresponding to the AY 2015-2016 have increased by an amount of Rs.18.34 Crs. from the previous year corresponding to the AY 2015-2016. This notice also states that the assessee has debited the P&L Account for the year ended 31.03.2015 an amount of Rs.5.64 Crs. towards finance costs and in view of these facts, given that expenses were incurred by the petitioner relatable to earning of exempt income and section 14-A read with rule 8D are applicable whereby such expenses incurred be disallowed.

The notice further states that a total disallowance of Rs.2,15,35,000/- was never made by the petitioner while filing its income tax return and hence such income of Rs.2,15,35,000/- has escaped assessment within the meaning of section 147 of the Act for the AY 2015-2016. Then the petitioner filed reply dated 29.11.2021 to the notice dated 17.11.2021 stating its objections against

the reopening of assessment for the AY 2015-2016. The petitioner in their reply also furnished such information sought by the 1st respondent detailing its investments for an amount of Rs.150.88 Crs. made as on 31.03.2015, its purposes, the sources of such investments and additional details sought.

Again, the petitioner was issued with a notice dated 29.11.2021 (Impugned Notice-2) under section 142(1) of the Act requesting the petitioner to furnish such information relevant to the AY 2015-2016 such as balance sheets, statements of profit and loss as well as the computation under Rule 8D read with section 14A of the Act for an amount of Rs.5.6 Cr. that was debited towards finance costs.

The petitioner was further issued with an order dated 22.12.2021 (Impugned Order) disposing the objections to the reopening of assessment under section 147 of the Act for the AY 2015-2016.

In the light of the above said set of facts, the learned counsel for the petitioner contends that the reopening of assessment based on mere change of opinion is not permissible under law, reopening of assessment after the expiry of four years from the end of relevant assessment year is not permissible under law, impugned order is a non speaking order and it is violative of principles of natural justice and as such it is liable to be set aside. He further contended that no exempt income has been received by the

petitioner for the relevant assessment year. There is no fresh material or tangible material available on record. The first proviso of section 147 of the Income Tax Act was not dealt with by the department. The proviso to section 147 and the proviso to section 149 of the Act shall be read together.

4. On the other hand, the learned standing counsel relying upon the counter affidavit of the respondent Nos.1 to 3 refers to the assessment order dated 28.12.2018, impugned notice dated 30.03.2021, returns furnished by the petitioner dated 16.04.2021, notice dated 29.11.2021 and the rejection of the objections dated 22.12.2021. He further submits that there are reasons for reopening of the assessment though there is no fresh material available on record. Basing upon the Return of Income filed by the petitioner, the respondent authorities have to take a decision whether there was any income chargeable to tax for the AY 2015-2016 which has escaped assessment within the meaning of section 147 of the Act and ultimately pleaded for sustaining the above said impugned notices and the impugned order.

5. In view of the above said facts and circumstances and basing upon the rival submissions made, it is to be seen that the 1st respondent issued the impugned notice under section 148 of the Income Tax Act, 1961 (Impugned Notice-1) for the AY 2015-2016 dated 30.03.2021 stating that they have reasons to believe that the income chargeable to tax for the said assessment

year has escaped assessment within the meaning of section 147 of the Income Tax Act, 1961 and proposed to reassess the income for the said assessment year for which the petitioner was asked to submit their return in the prescribed form within 30 days from the date of receipt of the said notice.

6. The 3rd respondent vide DIN & letter No.ITBA/AST/F/17/2021-22/1037021192(1) for the AY 2015-2016 dated 17.11.2021 addressed to the petitioner mentioning the reasons for reopening the assessment as under:

REASONS FOR THE REOPENING OF THE ASSESSMENT IN CASE OF M/S. CCL PRODUCTS (INDIA) LIMITED, DUGGIRALA.

As per information available on record, it is noticed from the balance sheets as on 31.03.2014 and 31.03.2015 that the total investments made by assessee in shares were to the tune of Rs. 132.62 Crs and Rs. 150.96 Crs respectively. Thereby the investments in shares during the previous year corresponding to A.Y. 2014-15 have increased by an amount of Rs. 18.34 Crs from the previous year corresponding to A.Y. 2015-16. It is further noticed that assessee has debited the P&L a/c, for the year ended 31.03.2015 an amount of Rs. 5.64 Crs towards finance costs. In view of the above stated facts, given that there are expenses incurred by assessee which are relatable to earning of exempt income, provisions of sec. 14A rwr 8D are squarely applicable to assessee's case, whereby expenses incurred be disallowed as per the provisions of sec. 14A rwr 8D detailed out as under:

Investments in shares as on 31-03-2014:	Rs.138.62 Crs.
Investments in shares as on 31-03-2015:	Rs.150.96Crs.
Total:	Rs.289.58 Crs.,
Average total	Rs.144.79 Crs.
0.5% of the above	Rs.72,35,000/-
Total assets as on 31-03-2014	Rs.545.55 Crs.
Total assets as on 31-03-2015	Rs.596.29 Crs.
Total	Rs.1141.85 Crs.
Average total	Rs.570.92 Crs.
Total interest debited	Rs.5.64 Crs.
Proportionate interest to be disallowed	Rs.144.79/570.92X5.64=1.43Crs.
The total disallowance	Rs 72,35,000+1,43,00,000=2,15,35,000/-

However, no such disallowance as detailed out above has been made by the assessee while filing his ROI. In view of the above, I have reason to believe that income chargeable to tax of Rs. 2,15,35,000/- has escaped assessment within the meaning of provisions of Sec. 147 of the Income Tax Act, 1961 for the Asst Year 2015-16.

Yours faithfully.

Additional/Joint/Deputy/Assistant Commissioner of Income Tax/ Income-tax Officer,
National Faceless Assessment Centre,
Delhi

For which the petitioner also raised objections dated 29.11.2021 informing the department that the assessment has been completed under section 143(3) and the petitioner disclosed fully and truly all the material facts necessary for the said assessment and the four years time specified under the first proviso of section 147 has expired on 31.03.2020 and the reassessment proceedings are not initiated validly.

7. The relevant portion of Section 147 of the Income Tax Act, 1961 read as under:

147. 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 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 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:

Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year:

8. In the case of ***Assistant Commissioner of Income Tax v. ICICI Securities Primary Dealership Ltd.***¹, in Civil Appeal No.5960 of 2012 dated 22.08.2012, the Hon'ble Apex Court held as under:

Leave granted.

We have heard learned counsel on both sides.

The assessee had disclosed full details, in the Return of Income in the matter of its dealing in stocks and shares. According to the assessee, the loss incurred was a business loss, whereas, according to Revenue, the loss incurred was a speculative loss. Rejection of the objections of the assessee to the re-opening of the assessment by the Assessing Officer vide his Order dated 23rd June, 2006, is clearly a change of opinion. In the circumstances, we are of the view that the order reopening the assessment was not maintainable.

The civil appeal is, accordingly, dismissed.

No order as to costs.

9. In the case of ***Commissioner of Income Tax, Delhi v. Kelvinator of India Ltd.***², in Civil Appeal Nos.2009-2011 of 2003 and 2520 of 2008, dated 18.01.2010, the Hon'ble Apex Court went into the issue whether the concept of "change of opinion" stands obliterated with effect from 01.04.1989 i.e., after substitution of section 147 of the Income Tax Act, 1961 by Direct Tax Laws (Amendment) Act, 1987? Ultimately held that where the Assessing Officer has reason to believe that income has escaped assessment, section 147 of the Act with effect from 01.04.1989 confers jurisdiction to reopen the assessment. It was also observed that "mere change of opinion" cannot be *per se* reason to

¹ [2012] 24 taxmann.com 310 (SC)

² [2010] 187 taxman 312 (SC)

reopen drawing the conceptual difference between power to review and power to reassess. It was held that the Assessing Officer has no power to review but he has the power to reassess. The Assessing Officer has the power to reopen, provided there is “tangible material” to come to the conclusion that there is escapement of income from assessment. The reasons must have a live link with the formation of the belief.

10. In the case of ***Madurai Power Corporation Private Limited v. Deputy Commissioner of Income Tax Circle-1***³, in W.P.No.15201 of 2019, dated 30.01.2020, the then Division Bench of the High Court observed at Para No.12 of the said judgment that Section 147 of the Act further states that the Assessing Officer should have reason to believe that certain income has escaped the assessment on the basis of new facts/information which has come to his knowledge subsequently. Section does not confer any right to review when there is no new material or facts drawing a different conclusion is noticed.

11. Coming to the facts of this case again, the balance sheet of the petitioner as on 31.03.2015 furnishes the details under the relevant head (apart from the other information furnished in detail in the said balance sheet) as under:

³ 2020 SCC Online AP 752

	Note	2015	2014
(Rs. in Lakhs)			
<u>ASSETS</u>			
(b) Non-current Investments	2.10	15,096.29	13,862.29

Similarly, the statement of Profit & Loss for the year ended 31.03.2015 for the petitioner, the relevant information is as under:

	Note	2015	2014
(Rs. in Lakhs)			
<u>Expenses</u>			
Finance Cost	2.22	564.08	728.18

Cash flow statement for the year ended 31.03.2015 under the head of 'Notes on financial statements for the year ended 31.03.2015 at 2.10 Non-current Investments shows as under:

2.10 Non-current Investments	2015	2014
Ngon Coffee Company	3,814.96	2,580.93

12. As stated supra, the 1st respondent issued notice under sub-section (1) of Section 142 of the Income Tax Act, 1961 for the AY 2015-2016 dated 11.12.2018 to the petitioner to furnish the accounts and documents specified as per the Annexure to the said notice which includes interest expenses, number of shares of Ngon Coffee Company purchased by the petitioner and what is the actual cost paid per share in VND and in INR at the time of purchase and what is the face value of each share at the time of purchase

etc., apart from the other information to be furnished as detailed. Accordingly, the details of interest expenses were submitted. On furnishing the entire information by way of Return of Income by the petitioner, the 1st respondent completed the assessment under section 143(3) of the Act by passing the assessment order dated 28.12.2018 which reads as under:

The assessee is a company engaged in the business of manufacturing of instant coffee / soluble coffee, filed their Return of Income for the Asst. Year 2015-16 on 28.09.2015, declaring a Total Income of Rs.112,58,64,910/-. The return was processed u/s 143(1) of the IT Act. Subsequently, the case was selected under CASS for complete scrutiny. Accordingly notices u/s.143(2) and 142(1) of the I.T. Act, 1961 were generated electronically through ITBA and sent to the assessee's email address. In response to the notices, the assessee submitted the information electronically as called for.

On the basis of the examination of the ROI, the information furnished in support of the claims made in the return and the books of account of the assessee, the assessment is completed as under:

13. Contrary to the above said Assessment Order dated 28.12.2018, the 3rd respondent ultimately issued the impugned order dated 22.12.2021 for the AY 2015-2016 by not accepting the objections of the petitioner, reopened the assessment by observing that reassessment proceedings will continue. Upon perusal of the material available on record and in view of the settled principles of law and the facts of the case as discussed above, it is clear that the petitioner filed its Return of Income for the AY 2015-2016 and all the audited financials including Form 3CA under section 44AB of the Income Tax Act, 1961, Balance Sheets and statement of Profit & Loss on 28.09.2015 itself, declaring the total income of Rs.112,58,64,910/-. Then the 1st respondent

completed the assessment under section 143(3) of the Act and passed an Assessment Order dated 28.12.2018. But contrary to the first proviso of section 147 of the Income Tax Act, 1961, the above said impugned notice of the 1st respondent dated 30.03.2021 (Impugned Notice-1), notice of the 3rd respondent dated 29.11.2021 (Impugned Notice-2) and the impugned order of the 3rd respondent dated 22.11.2021 were issued without there being any fresh information / material available on record and in the absence of any valid reasons / grounds to allege that certain income chargeable to tax has escaped from assessment, which came to the notice of the respondent department subsequently, for the purpose of reopening of reassessment proceedings by way of the impugned action which is not permissible under law. It is a case where the assessee disclosed the full details in the Return of Income as discussed above. The Assessing Officer has no power to review. Hence, the impugned action of the respondents is nothing but mere change of opinion on the assessment made already, which cannot be *per se* reason to reopen the earlier assessment order to reassess contrary to the law. There is no tangible material to come to the conclusion that there is escapement of income from the assessment. The above said impugned action of the respondent department thus does not establish that there was any failure to disclose fully and truly all the material facts necessary for the assessment. There has been no averment in the above said impugned notices and the order that the

amount of income tax involved is more than Rs.1 lakh to attract section 149(1)(b) of the Income Tax Act, 1961. Failure to mention in the above said impugned notices that there has been a failure to disclose fully and truly all the material facts and that the income involved is more than one lakh would vitiate the assessment sought to be reopened after four years. It is the assessing officer who needs to assess any disallowance under section 14A based on the information provided by the petitioner. Onus to make an appropriate determination of amount of expenditure in terms of section 14A of the Act lies on the assessing officer and when there is no failure on the part of the assessee in making available all the relevant account books, materials and documents, the assessing officer cannot assume jurisdiction under section 147 of the Act and more specifically cannot do so in an attempt to reopen the assessment after expiry of 4 years from the relevant assessment year when original assessment was made under Section 143(3) of the Act. In any event, the petitioner's duty is only to disclose primary facts and it was for the assessing officer to draw inferences there from. Failure on the part of the Assessing Officer to draw inferences cannot mean that the petitioner had not disclosed all the material facts. None of the impugned notices and the impugned order issued to the petitioner even mentioned as to what were the exempt income received by the petitioner for the relevant assessment year.

14. For the foregoing reasons, the above said impugned notices and the impugned order of the respondents are set aside by allowing the writ petition.

Accordingly, the writ petition is allowed. No costs.

As a sequel, Miscellaneous Petitions pending, if any, shall stand closed.

JUSTICE B KRISHNA MOHAN

JUSTICE NYAPATHY VIJAY

Date : 29-01-2025

Note : LR copy to be marked

(B/o)

PND