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

WRIT PETITION NO. 1787 OF 2014

HDFC BANK LTD.,
HDFC Bank House,
Senapati Bapat Marg,
Lower Parel (West), Mumbai -400 013 ....Petitioner

Versus

1. Assistant Commissioner of Income-tax-2(3),
Room No. 552, 5th Floor, Ayakar Bhavan,
M.K. Road, Mumbai-400 020.

3. Commissioner of Income-tax-2,
Room No. 344, 3rd floor, Ayakar Bhavan,
M.K. Road, Mumbai-400 020.

4. Union of India,
through the Secretary, Department of
Revenue, Ministry of Finance, North Block,
New Delhi-110001 ...Respondents

Mr.J.D. Mistri, Senior Advocate a/w. Mr.Madhur Agrawal i/b Mr. Atul K. Jasani for petitioner.

Mr.Suresh Kumar for respondents-revenue.

CORAM : K.R. SHRIRAM &
N. J. JAMADAR, JJ.

JUDGMENT RESERVED ON : 11th FEBRUARY, 2022
PRONOUNCED ON : 1st MARCH, 2022

JUDGMENT (PER N.J. JAMADAR, J.) :

1. Rule. Rule made returnable forthwith. With the consent of learned counsel for the parties, heard finally.

2. This petition, under Article 226 of the Constitution of India,

assails the notice dated 26th March 2013 under section 148 of the Income Tax Act, 1961 ('the Act, 1961') proposing to reopen the assessment for the assessment year 2006-07, and the order, dated 19th August 2013 disposing the objections of the petitioner to the said notice of reopening.

3. The background facts leading to this petition can be stated, in brief, as under :

(a) The petitioner is registered as a banking company with the Reserve Bank of India ('RBI') and is engaged in the business of banking. The petitioner has numerous branches across India. The petitioner, being a scheduled bank and having branches in rural areas, is entitled to deduction under section 36(1)(viia) of the Act, 1961 for bad and doubtful debts equivalent to 7½ % of the total income and 10% of the aggregate average advances made by the rural branches of the petitioner.

(b) The petitioner is also entitled to deduction under section 36(1)(vii) of bad debts which is written off as irrecoverable in the accounts of the

petitioner for the previous year. However, in computing the deduction under section 36(1)(vii), the bad debts which are written off as irrecoverable are required to be reduced to the extent of the provision of bad and doubtful debt which was allowed to the petitioner under clause (viia), in earlier assessment year.

(c) In the light of the aforesaid tax regime, on 27th November 2006, the petitioner filed return of income declaring a total income of Rs.10,69,47,48,495/-, *inter-alia,* after claiming deduction under section 36(1)(viia) of Rs.96,87,97,764/- being 7½ % of the total income and 10% of the average rural advances. The petitioner also claimed deduction of bad debts under section 36(1)(vii) of the Act aggregating to Rs.418.60 Crores. The said amount of Rs.418.60 Crores was arrived at after reducing the provision allowed under section 36(1)(viia) of the Act in the earlier assessment years which had not been adjusted by then.

(d) During the course of the assessment, the Assessing Officer ('AO') issued a notice on 12th September 2007 and sought clarification/ information. The petitioner gave a detailed point-wise reply, on 16th November 2007. Thereupon, the AO passed an assessment order on 19th December 2008 under section 143(3) of the Act, 1961 determining the total taxable income of Rs.138,080 Lakhs.

(e) On 18th February 2011, the jurisdictional Assessing Officer issued a notice under section 148 of the Act, 1961 proposing to reopen the assessment. The Assessing Officer was of the view that there was failure to take into account the enhanced deduction under section 36(1)(viia) while allowing the deduction towards bad debts in assessment year 2006-07, and, thus, he had reason to believe that income of Rs.25,73,25,815/- had escaped assessment for assessment year 2006-07. Eventually, an assessment order was passed on 9th November 2011 under section 143(3)

read with section 147 of the Act, 1961 revising the total income at Rs.1,22,632 Lakhs.

(f) For assessment year 2010-11, pursuant to the decision of the Supreme Court in ***Catholic Syrian Bank Ltd. Vs. CIT*** [1]**,** the petitioner, as advised, withdrew the claim for deduction under section 36(1)(viia) and instead claimed higher deduction under section 36(1)(vii) of the Act, 1961. In respect of the said assessment year 2010-11, a notice was issued to the petitioner on 28th December 2012 seeking explanation and justification, so as to assist the AO to decide whether notices under section 148 were required to be issued for the last six assessment years.

(g) By communication dated 17th January 2013, the petitioner requested the AO to ignore the said letter dated 13th August 2012 for the assessment year 2010-11 as it had been advised that it was entitled to claim deduction under section 36(1)(viia), the claim for which was sought

1 343 ITR 270

to be withdrawn by the letter dated 13th August 2012. Eventually, the assessment order was passed for assessment year 2011-12 on 13th January 2013 under section 143(3) rejecting the claim of the petitioner for deduction under section 36(1)(viia) on the ground that some of the branches claimed by the petitioner to be rural branches did not satisfy the description of the rural branches under the Act, 1961.

(h) By the impugned notice dated 26th March 2013, the AO proposed to reopen the assessment for the assessment year 2006-07, on the premise that he had reason to believe that income had escaped assessment within the meaning of section 147 of the Act, 1961. Upon being requested, the AO furnished the reasons in the nature of the order-sheet, dated 26th March 2013, for the proposed reopening.

(i) The AO premised the justification for reassessment on the ground that during the assessment proceedings for assessment year 2010-

11, when the assessee was called upon to submit details of rural branches and advances in justification of its claim for deduction under section 36(1)(viia), the assessee had withdrawn/given up the claim of deduction under section 36(1)(viia) and the assessee revised its return for assessment year 2011-12 also giving up its claim for deduction under section 36(1)(viia). Nonetheless, during the assessment proceeding for the year 2011-12, it was found that many branches projected as rural by the assessee were not, in fact, rural branches, within the meaning of section 36(1)(viia) of the Act, 1961. The AO, thus, concluded that since the assessee had claimed incorrect deduction under section 36(1)(viia), the assessee was likely to have claimed incorrect deduction under the said section for assessment year 2006-07, as well by mis-classifying the 'non-rural' branches as 'rural' branches and, therefore, he had reason to believe that the deduction under section 36(1)(viia) had been incorrectly allowed for

assessment year 2006-07 and, resultantly, there was escapement of income within the meaning of section 147 of the Act, 1961.

(j) The petitioner filed objections to the proposed reopening of the reassessment. It was, *inter-alia,* pointed out that the petitioner had revived the claim for deduction under section 36(1)(viia), which was initially sought to be withdrawn and, thus, the very basis of reopening was non-est. The AO, by the impugned order, dated 19th August 2012 rejected the objections and issued notice under section 142(1) of the Act, 1961.

(k) The petitioner has, thus, invoked the writ jurisdiction of this Court. The impugned action is assailed primarily on the count of non-satisfaction of the jurisdictional conditions to invoke the provisions contained in section 147 of the Act, 1961.

4. The petitioner avers, since the notice came to be issued beyond four years of the end of the assessment year 2006-07, and assessment under section 143(3) of the Act, 1961 had been

effected, not once but twice, the resort to the provisions contained in section 147 of the Act was impermissible unless there was failure on the part of the petitioner to disclose fully and truly all the material facts for the purpose of the assessment. The aspect of alleged mis-classification of 'non-rural' branches as 'rural' branches was specifically raised and enquired into by the AO. Thus, there was no reason for forming the belief that the income escaped assessment on account of failure to disclose fully and truly all material facts necessary for assessment, even remotely. At any rate, the said belief was solely rested on the change of the opinion by the jurisdictional AO, who issued the impugned notice, on the same set of facts.

5. An affidavit-in-reply is filed on behalf of the respondents controverting the assertions in the petition. The respondents have made an endeavour to support the impugned action. The respondents have contended, *inter-alia,* that pursuant to the withdrawal of claim of deduction under section 36(1)(viia) of the Act, 1961, notices for reopening were issued in respect of assessment years 2007-08, 2008-09 and 2009-10 on the same ground on which the impugned notice was issued, in respect of assessment year 2006-07. However, the petitioner had not assailed

those notices for reopening. The respondents have further contended that the deduction claimed by the petitioner by projecting its 'non-rural' branches as 'rural' branches can, by no stretch of imagination, be construed as a true disclosure of material facts relevant for the assessment. As the subsequent enquiry revealed such mis-classification of branches, the AO was justified in reopening the assessment.

6. An affidavit-in-rejoinder was filed on behalf of the petitioner to meet the grounds raised by the respondents in the affidavit-in-reply.

7. We have heard Mr.J.D. Mistri, the learned Senior Counsel for the petitioner, and Mr. Suresh Kumar, the learned counsel for the respondents-revenue. With the assistance of the learned counsel for the parties, we have carefully perused the material on record including the previous assessment orders for the assessment year 2006-07, notices issued during the course of those assessment proceedings and response thereto on behalf of the petitioner.

8. Mr. Mistri, the learned Senior Counsel for the petitioner, urged with a degree of vehemence, that the impugned action

manifests arbitrariness of highest order. Apart from the fact that the jurisdictional conditions to reopen the assessment are not at all made out, what, according to Mr. Mistri, impairs the impugned action is the utter disregard to the statutory provisions and safeguards. Assailing the claim of the AO that on 25th March 2013, the AO had obtained the prior approval of the Competent Authority under section 151(1) of the Act, 1961, as reflected in the Order-Sheet (Exh. 1), Mr. Mistri would urge that the material on record belies the authenticity of the said version. Inviting the attention of the Court to the variance in the reasons recorded in the Order Sheet (Exh.1 to the affidavit in reply) and the reasons purportedly placed before the Commissioner of Income Tax, dated 15th March 2013 for obtaining approval (Exh.2), Mr. Mistri strenuously submitted that an inference becomes inescapable that the AO had not recorded the reasons before obtaining the approval of the Competent Authority or, at any rate, the very reasons which were furnished to the petitioner were not placed before the Competent Authority and, thus, the impugned action is wholly vitiated.

9. Mr. Suresh Kumar, the learned counsel for the revenue joined the issue by canvassing a submission that the substance of

the reasons recorded in the Order Sheet (Exh.1) and those placed for approval before the Commissioner (Exh.2) is substantially same. The fact that a sentence or two does not find place in the Order Sheet does not detract materially from the authenticity and veracity of the reasons recorded by the AO. In any event, since the assessment was proposed to be reopened on the ground that the petitioner had claimed deduction by projecting its 'non-rural' branches as 'rural' branches, the petitioner can satisfy the AO by placing cogent material in justification of its claim and, thus, this Court may not exercise its writ jurisdiction, submitted Mr. Suresh Kumar.

10. Mr. Mistri stoutly submitted that the pivotal question is whether the jurisdictional conditions to reopen the assessment were fulfilled? If the petitioner succeeds in demonstrating that the requisite conditions to invoke the provisions contained in section 147 of the Act, 1961 were not made out, the revenue cannot be heard to urge that the petitioner be relegated to the AO to suffer another round of arbitrary assessment, especially when the issues, on which the assessment is sought to be reopened, were fully considered and a conclusive view was recorded thereon.

11. The legal position as regards the assessment or reassessment under section 147 of the Act, 1961 as it stood before it suffered the amendment under the Finance Act, 2021, is well crystallized. Section 147 enables the AO to assess or reassess any income chargeable to tax, which he had reason to believe, has escaped assessment in an assessment year. The existence of the reason to believe that income chargeable to tax has escaped assessment is a jurisdictional condition for invoking the power under section 147 of the Act, 1961, both within and beyond the period of four years from the end of the relevant assessment year. The AO is, therefore, statutorily enjoined to record reasons and obtain the approval of the Competent Authority, before a notice to reopen the assessment under section 148 of the Act, 1961 is issued. Additionally, where the assessment is proposed to be reopened beyond the period of four years, and there has been an assessment under section 143(3) of the Act, 1961, the AO is further enjoined to satisfy himself that the escapement of income was on account of the failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. Such reasonable belief as to the escapement of the income ought to be based on tangible material. This requirement

of existence of tangible material for formation of the reason to believe escapement of income saves the said exercise from the vice of arbitrariness. Lastly, the reason to believe the escapement of income should not partake the character of a mere change of opinion on the same facts and material. A mere change of opinion does not furnish a justifiable ground for reopening the assessment.

12. In the light of the aforesaid propositions which govern the justifiability of the exercise of the power under section 147 of the Act, 1961, the submissions canvassed on behalf of the parties now fall for consideration in the context of the facts of the case, which we have narrated above.

13. The controversy lies in a very narrow compass. Whether the assessee had incorrectly claimed the deduction under section 36(1)(viia) of the Act, 1961? Under clause (vii) of section 36(1), an assessee is entitled to allowance of the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year. Clause (viia) provides a further allowance to an assessee which is a Scheduled Bank in respect of any provision for bad debt and doubtful debts, an amount not exceeding 7½ % of the total income and an amount

not exceeding ten per cent of the aggregate average advances made by the rural branches of such bank computed in the prescribed manner. For the purpose of the said clause, a rural branch means a branch of a scheduled bank situated in a place which has a population of not more than ten thousand according to the last preceding census of which the relevant figures have been published before the first day of the previous year. The first proviso to clause (vii) further provides that in the case of an assessee to which clause (viia) applies, the amount of the deduction relating to any such debt or part thereof shall be limited to the amount by which such debt or part thereof exceeds the credit balance in the provision for bad and doubtful debts account made under that clause.

14. In the light of these provisions, it has to be seen as to what was the nature of the deduction claimed by the assessee for the assessment year 2006-07. Under the initial return of income filed by the assessee for assessment year 2006-07, the petitioner had claimed deduction under section 36(1)(viia) to the tune of Rs. 96,87,97,764/-. On 12th September 2007, the AO sought information/clarification under section 143(3) of the Act, 1961. As regards the deduction claimed under section 36(1)(viia), the AO

had solicited, *inter-alia,* information under query No.13. In response thereto, the assessee, by letter dated 16th November 2007, had furnished following particulars :

(i) Details of deduction claimed under section 36(1) (viia);

(ii) List of rural branches with copies of licenses;

(iii) Copy of the relevant extract of RBI master circular on branch authorization.

15. At this juncture, we must note that the assessee had furnished copies of the orders/communication issued by the RBI authorising the assessee to open the rural branches of which the list was furnished as annexure-1 to the said reply dated 16th November 2007. It is imperative to note that on 19th December 2008, the AO passed the assessment order under section 143(3) of the Act, 1961, and allowed the deduction under section 36(1)(viia), of Rs.939 Crores, as claimed by the assessee in the annexure-A to the said reply dated 16th November 2007. We have noted that the assessment for assessment year 2006-07 was reopened on 14th February 2011 and an assessment order was passed on 9th November 2011 under section 143(3) read with section 147 of the Act, 1961; wherein also, the deduction under section 36(1)(viia) of Rs. 939 Crores was retained.

16. In the backdrop of the aforesaid material, it would be

inconceivable to assert that the assessee had not made a full disclosure of all the material facts, so far as the claim for deduction under section 36(1)(viia) of the Act, 1961. Through this prism, the reasonability of the belief formed by the AO is required to be appreciated. The trigger for entertaining the belief about the escapement of income is apparently withdrawal by the assessee of the claim for deduction under section 36(1)(viia) for the assessment year 2010-11. This stand of the assessee, it seems, made the revenue to entertain doubt as regards the classification of the branches by the assessee as "rural branches" for the purpose of deduction under section 36(1)(viia) for the preceding years as well. When the revenue voiced its concern, the petitioner, as the record indicates, revived the claim for deduction under section 36(1)(viia).

17. It was submitted on behalf of the assessee that at that point of time, the assessee was advised not to claim deduction under section 36(1)(viia) in view of the exposition of law in the case of ***Catholic Syrian Bank Ltd.*** (Supra). We do not deem it necessary to delve into this aspect of the matter as it does not bear upon the existence or otherwise of the jurisdictional condition for reopening

the assessment, with which we are essentially and primarily concerned.

18. The thrust of the submission on behalf of the revenue was that though there was disclosure of material facts by the assessee, the disclosure was not true in the sense that the assessee had claimed deduction by projecting non-rural branches as rural branches.

19. Keeping in view the object of the deduction allowed under section 36(1)(viia) qua rural branches, we gave our anxious consideration to the aforesaid submission and minutely scrutinized the material on record so that the assessee does not derive an unjust benefit on the strength of unjustified claims as regards the nature of the branch.

20. The revenue assailed the disclosure as incomplete by pressing into service a submission that the mere classification of the branches as rural by RBI was not enough. In view of the Explanation (ia) to clause (viia), to claim benefit thereunder, it was necessary to demonstrate that the branch was situated in a place which had a population of not more than ten thousand, according to the last preceding census.

21. This submission raises the issue of the nature of the disclosure expected of an assessee. In the facts of the case, the question would be, whether the assessee was under an obligation to place on the record further material as regards the population of the particular place where the rural branch was opened pursuant to a license issued by the RBI ?

22. There can be no duality of opinion that it is the assessee's duty to disclose all primary facts. Once the assessee discloses all the primary facts, the inferences to be drawn thereon is a matter within the exclusive province of authority of the AO. This duty of assessee does not extend beyond disclosure of primary facts. The assessee is not expected to suggest an inference on those facts, correct or otherwise. In a given case, the fact that the assessee had suggested a particular inference, which upon reconsideration, does not find favour with the Assessing Officer subsequently, may not furnish a justifiable ground to hold that there was non-disclosure of primary facts.

23. A profitable reference, in this context, can be made to the pronouncement of the Supreme Court in the case of ***Calcutta Discount Co. Ltd. Vs. Income Tax Officer*** [2], wherein the aforesaid

2 (1961) 41 ITR 191 (SC)

aspect was illuminatingly postulated :

> *(10) Does the duty however extend beyond the full and truthful disclosure of all primary facts ? In our opinion, the answer to this question must be in the negative. Once all the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else-far less the assessee--to tell the assessing authority what inferences-whether of facts or law should be drawn. Indeed, when it is remembered that people often differ as regards what inferences should be drawn from given facts, it will be meaningless to demand that the assessee must disclose what inferences-whether of facts or law-he would draw from the primary facts.*
>
> *(11) If from primary facts more inferences than one could be drawn, it would not be possible to say that the assessee should have drawn any particular inference and communicated it to the assessing authority. How could an assessee be charged with failure to communicate an inference, which he might or might not have drawn ?*
>
> *(12) It may be pointed out that the Explanation to the sub- section has nothing to do with " inferences " and deals only with the question whether primary material facts not disclosed could still be said to be constructively disclosed on the ground that with due diligence the Income-tax Officer could have discovered them from the facts actually disclosed. The Explanation has not the effect of enlarging the section, by casting a duty on the assessee to disclose " inferences "-to draw the proper inferences being the duty imposed on the Income-fax Officer.*
>
> *(13-14) We have therefore come to the Conclusion that while the duty of the assessee is to disclose fully and truly all primary relevant facts, it does not extend beyond this."*
>
> (emphasis supplied)

24. On the aforesaid touchstone, reverting to the facts of the case, first and foremost, the assessee cannot be said to have made a selective disclosure. Since the list of the rural branches, as claimed by the assessee, along with the supporting documents

was placed before the AO, it was the duty of the AO to examine whether the places where the branches were opened by the assessee, had population below the threshold prescribed under clause (ia) of the Explanation to clause (viia) of section 36(1). The assessee was not expected to place even census data and collate the information. It was for the AO to examine the matter, collate the information and thereafter draw necessary inference. Secondly, the AO had the opportunity to examine the issue as to whether the branches projected as 'rural' satisfied the description prescribed under clause (ia) of the Explanation, not once but twice. What accentuates the situation is the fact that the specific queries were raised, information solicited and, thereafter, the deduction, as claimed, was allowed, not once but twice.

25. At this juncture, the potency of the reasons recorded by the AO assumes critical significance. An action of reopening the assessment under section 147 of the Act, 1961 must stand or fall by the weight of the reasons recorded by the AO and nothing else. The justifiability of the reassessment thus hinges upon the sustainability of the reasons, recorded by the AO preceding the issue of notice under section 148 of the Act, 1961. Those reasons cannot be improved upon and/or supplemented, much less

substituted, by affidavit and/or oral submissions, while meeting the challenge to the proposed reassessment (***Aroni Commercials Ltd. Vs. Deputy Commissioner of Income-tax 2(1)*** [3].

26. In the case at hand, the reasons recorded by the AO, as manifested in the Order-Sheet dated 26th March 2013 indicate that the action to reopen the assessment was driven by the stand of the assessee to withdraw the claim for deduction under section 36(1)(viia) for the assessment year 2010-11, and submission of the revised return for the assessment year 2011-12, giving up the claim for such deduction. The AO further recorded that many branches of the assessee claimed as 'rural', for the purpose of assessment for the assessment year 2010-11, were not found to be rural branches as defined in Explanation (ia) to clause (viia). With this preface, the AO proceeded to reopen the assessment for assessment year 2006-07, observing that it was 'likely' that the assessee might have claimed incorrect deduction under the said section for assessment year 2006-07 by mis-classifying the 'non-rural' branches as 'rural' branches.

27. In the aforesaid reasons, two factors are conspicuous by their absence. First, there is no assertion that the income escaped

3 [2014] 44 taxmann.com 304 (Bombay)

assessment on account of the failure to disclose truly and fully all material facts relevant for the assessment for assessment year 2006-07. Second, the mis-classification of branches was not premised on the population of the place, where those branches were operating, having exceeded the threshold prescribed in Explanation (ia) to clause (viia), as per census 2001.

28. The failure to record the formation of opinion that income escaped assessment on account of the failure to make a true and full disclosure was sought to be met by banking upon the reasons submitted to the Commissioner for obtaining prior approval. Whereas, the non-mention of the mis-classification of branches, in the backdrop of the population, was sought to be met by recording in the order on objection that though the branches were initially classified as 'rural' based on the license issued by RBI, yet, in the census 2001, the population of those places might have exceeded the threshold of ten thousand and those places would have ceased to be 'rural'. None of these explanations deserves countenance.

29. The first explanation does more harm than good to the interest of the revenue as it gives heft to the submission of Mr.Mistri that variance in the reasons recorded in the Order-Sheet

(furnished to the petitioner) and those submitted to the Commissioner erodes the credibility and sanctity of those reasons and the entire exercise of reopening the assessment. The second explanation falls foul of the fundamental principle that the notice for reopening the assessment is to be tested on the reasons which weighed with the AO. There is no room for supplementing or substituting those reasons.

30. The position which thus emerges is that the assessee had placed all the relevant facts before the AO. Specific queries were raised as regards the allowability of deduction under section 36(1)(viia). Upon consideration of the explanation furnished by the assessee, the claim for deduction was allowed. Even the relevant material in the nature of census 2001 data was available at the time of original assessment and the subsequent assessment under section 143(3) read with section 147 of the Act, 1961. In the face of these hard facts, the reopening on the premise that it was 'likely' that the assessee might have claimed incorrect deduction in the past assessment years is in the nature of a 'guess' hazarded by the AO without any tangible material. The expression 'reason to believe' is not equivalent to a 'hunch' or 'guess'. Nor does it imply a purely subjective satisfaction. The expression suggests

that the belief must be that of an honest and reasonable person based upon reasonable grounds, in contradistinction to mere suspicion.

31. It is trite law that once the AO on consideration of the material on record and the explanation offered, arrives at a final conclusion that the assessee is entitled to the deduction as claimed then, on the basis of the very same material, the AO cannot form a *prima facie* opinion that the deduction is not allowable and accordingly reopen the assessment on the ground that income chargeable to tax has escaped assessment. (***Cartini India Limited Vs. Additional Commissioner of Income-Tax and Others*** [4]**).** The case of the revenue at hand stands on an even weaker foundation as the conclusive views were recorded by the AO, twice.

32. As indicated above, we have delved into the matter in a greater detail to satisfy ourselves that the assessee has not had unjustified deduction. In the affidavit-in-reply, an endeavour was made to demonstrate that the random verification of the branches revealed that the assessee had incorrectly claimed as many as eight 'non-rural' branches as 'rural' branches (Paragraph No. 16 of

4 [2009] 314 ITR 275 (Bom.)

the affidavit-in-reply). We have compared the said information with the list of branches furnished by the assessee along with the letter dated 26th November 2007, during the course of the original assessment. Except the branch at Palakkad, District Palakkad, Kerala, none of the rest seven branches was claimed by the assessee as 'rural' branch for the assessment year 2006-07. We also notice that along with the annexure to the said letter, the assessee had furnished copies of the license issued by the RBI to open a branch at the rural centre, Chandranagar, in Palakkad District, Kerala. It seems that the respondents have considered the branch at the Palakkad District Headquarters in support of their claim that there was misclassification of the branch though, in fact, a rural branch was opened at Chandranagar in Palakkad District, Kerala.

33. The last submission on behalf of the revenue that the petitioner had not assailed the reopening of the assessment for the assessment years 2007-08, 2008-09 and 2009-10 on the same ground and, eventually, orders were by the ITAT in the context of the final assessment orders post reopening of the assessment in respect of those assessment years, though appears alluring at the first blush, yet does not advance the cause of the revenue. Once, it

is held that the jurisdictional condition for invoking the power under section 147 is not satisfied for a particular assessment year, the notice for reopening cannot be sustained. Then, it does not matter that the assessee did not assailed the notice for reopening in respect of preceding or succeeding years.

34. The conspectus of the aforesaid consideration is that the impugned notice of reopening and the order on objections deserve to be quashed and set aside.

35. Hence, the following order :

O R D E R

(i) The petition stands allowed in terms of prayer clause (a), which reads as under :

> (a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or any other writ order or direction under Article 226 of the Constitution of India calling for the records of the case leading to the issue of the Impugned Notice and passing of the Impugned Order and after going through the same examining the question of legality thereof, quash, cancel and set aside the Impugned Notice (Exhibit M) and Impugned Order (Exhibit Q).

Rule made absolute in the aforesaid terms.

No costs.

(N. J. JAMADAR, J.) **(K.R. SHRIRAM, J.)**