



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

WRIT PETITION NO.1790 OF 2022

Astec LifeSciences Ltd.,)
 3rd Floor, Godrej One Eastern Express Highway,)
 Pirojshanagar, Vikhroli (East), Mumbai – 400 079.)
 PAN : AAACA4832D)Petitioner

V/s.

1. The Assistant Commissioner of Income Tax,)
 Circle 2(1)(1), Mumbai, Room No.561,)
 5th Floor, Aayakar Bhavan, Maharishi Karve Road,)
 Mumbai – 400 020.)
 Email : MUMBAI.DCIT2.1.1@ INCOMETAX. GOV. IN)

2. Principal Commissioner of Income Tax, Mumbai)
 – 2, Room No.344, 3rd Floor, Aayakar Bhavan,)
 Maharishi Karve Road, Mumbai – 400 020)

3. National Faceless Assessment Centre, National)
 e-Assessment Centre, New Delhi)

4. Union of India, Through Joint Secretary &)
 Legal Adviser, Branch Secretariat, Department of)
 Legal Affairs, Ministry of Law and Justice,)
 2nd Floor, Aayakar Bhavan, M.K. Road, New)
 Marine Lines, Mumbai – 400 020)Respondents

Mr. P.J. Pardiwalla, Senior Advocate a/w. Mr. Jeet Kamdar i/b. Mr. Atul K. Jasani for petitioner.
 Mr. N.C. Mohanty for respondents.

**CORAM : K. R. SHRIRAM AND
 FIRDOSH P POONIWALLA, JJ.
 DATED : 7th AUGUST 2023**

ORAL JUDGMENT : (PER K.R. SHRIRAM, J.) :

1 Petitioner is engaged in the business of manufacturing and trading of agrochemicals and pharmaceutical intermediates. With effect from 6th November 2015 petitioner was acquired by Godrej Group. The

matter pertains to Assessment Year 2013-2014.

2 Petitioner is challenging the notice dated 23rd March 2021 issued by respondent no.1 under Section 148 of the Income Tax Act, 1961 (the Act) for reopening the assessment for Assessment Year 2013-2014 and the order dated 18th January 2022 disposing petitioner's objections.

3 Petitioner had filed its return of income on 30th September 2013 declaring "nil" income under regular provisions of the Act on account of losses. Petitioner paid tax on book profit under Section 115JB of the Act. In the computation of income filed alongwith return of income, petitioner claimed deduction under Section 35 of the Act amounting to Rs.2,26,96,494/-. In the ITR Form 6 (the said form), petitioner, in Part A-P & L, Item 38 "Other expenses (specify nature and amount)" disclosed R&D expenses of Rs.47,11,129/- and loss on sale of asset Rs.8,73,445/- and in Item 40 disclosed provision for bad and doubtful debts for Rs.15,64,902/-. In Part B, Schedule BP, in Item 26 of the said Form, petitioner claimed a sum of Rs.2,26,96,494/- being deduction under Section 35 of the Act in excess of the amount debited to P&L account. In Schedule ESR, relating to deduction under Section 35 of the Act, petitioner disclosed its claim of deduction under Section 35 of the Act amounting to Rs.2,74,07,623/- and disclosed that out of the said expenses, expenses amounting to Rs.47,11,129/- were debited to the P&L account. In Schedule MAT, petitioner disclosed computation of Minimum Alternate Tax payable under

Section 115JB of the Act.

4 Petitioner's income was selected for scrutiny and notice dated 4th September 2014 under Section 143(2) of the Act was issued. On 1st December 2015, respondent no.1 issued another notice under Section 142(1) of the Act calling upon petitioner to produce various details mentioned in Annexure 'A' thereto. One of the items mentioned therein was details of deduction claimed under Section 35 of the Act and allowability thereof and also details of expenses above Rs.10 lakhs with ledger account. By its Chartered Accountant's letter dated 17th December 2015, petitioner complied with the notice and filed various details called for. Petitioner, *inter alia*, filed computation of total income, address of the R&D centre and details of deduction claimed under Section 35 of the Act and also the details of expenses above Rs.10 lakhs. In the details of expenses above Rs.10 lakhs, petitioner filed and disclosed R&D and laboratory expenses Rs.47,11,129/- and provision for bad and doubtful debts Rs.15,64,902/-.

5 Respondent no.1 issued another notice dated 28th December 2015 under Section 142(1) of the Act calling for further details relating to deduction amounting to Rs.226.96 lakhs under Section 35 of the Act. The said notice further called upon petitioner to give details of other expenses mentioned in Note 24 of the P&L account. On 11th February 2016, under cover of a letter petitioner once again filed the details of deduction claimed under Section 35 of the Act in respect of the R&D expenditure and also filed

ledger account of R&D expenses, salary details of employees engaged in R&D and a statement giving details of R&D capital expenditure. During the course of the assessment proceedings, petitioner also filed annual accounts with respondent no.1. In the said accounts in Note 24 under the head “Other Expenses” loss on sale of asset of Rs.8,73,445/-, R&D and laboratory expenses Rs.47,11,129/- and provision for bad and doubtful debts amounting to Rs.15,64,902/- were disclosed. In Note No.14, under the head “Trade Receivables”, petitioner disclosed that sum of Rs.15,64,902/- being allowance for bad and doubtful debts is reduced from the trade receivables. In the statement of P&L account under the head “Other Expenses”, petitioner claimed Rs.18,86,81,482/- and the breakup of that was to be found in Note No.24. Similarly, in balance sheet as of 31st March 2013, under the head “Current Assets”, trade receivable was disclosed at Rs.60,13,54,109/- and the breakup of that was disclosed in Note 14.

6 Thereafter, respondent no.1 passed an assessment order dated 25th February 2016 under Section 143(3) of the Act assessing petitioner’s income at Rs.8,74,57,101/- under Section 115JB of the Act. On 23rd March 2021, petitioner was served with a notice under Section 148 of the Act alleging that there are reasons to believe that income for Assessment Year 2013-2014 has escaped assessment within the meaning of Section 147 of the Act. Petitioner was also provided with reasons for such belief. Briefly the alleged reasons state that while computing book profit under section 115JB

of the Act, provision for bad doubtful debts of Rs.15,64,902/- accounted under Note 24 “Other Expenses” of audited accounts has not been added back, which needs to be added. The reasons further state that claim of deduction under Section 35(2AB) of the Act amounting to Rs.94,22,258/- is not supported by Form 3CL and, therefore, there is excess deduction of 100% of actual expenditure of Rs.47,11,129/-. The reasons further state that loss on sale of assets Rs.8,73,445/- has not been added back in computing business income under the regular provisions of the Act. Therefore, respondent no.1 states that he has reasons to believe that income of Rs.15,64,902/- in respect of book profit under section 115JB of the Act and Rs.71,49,476/- in respect of computation of total income under regular provisions has escaped assessment for Assessment Year 2013-14.

7 On 16th July 2021, petitioner filed its objections to the reasons as recorded. The objections were disposed. While disposing the objections, respondent no.3 stated that with respect to the provision for doubtful debts, respondents have relied upon a Tribunal decision and observed that provision for doubtful debts is an unascertained liability and, therefore, has to be added back while computing book profit under Section 115JB of the Act. With respect to loss on sale of asset, respondent no.3 stated that same has not been disallowed while computing business income under regular provisions of the Act resulting in under assessment of business income. Lastly, with respect to research and development expenditure, respondent

no.3 stated that petitioner has not furnished Form 3CL in support of its claim of deduction under Section 35(2AB) of the Act. With respect to change of opinion, respondent no.3 stated that since the order of assessment does not address the aspect which is the basis for reopening the assessment, it does not amount to change of opinion. Respondent no.3 further called upon petitioner to participate in assessment proceedings on 25th January 2022. Thereafter, this petition was filed and petitioner was granted ad-interim reliefs whereby respondents were restrained from taking any further steps in view of the impugned order having been passed.

8 Mr. Pardiwalla submitted that :

(a) the assessment made under Section 143(3) of the Act can be reopened after four years from the end of the assessment year only if there is failure to disclose primary facts which are necessary for the assessment. This jurisdictional condition is not satisfied as the present re-assessment proceedings are based on details furnished during the course of the regular assessment proceedings and this fact has not been rebutted in the order rejecting the objections;

(b) the issues for which the impugned re-assessment proceedings are initiated were subject matter of inquiry and investigation in the course of the regular assessment proceedings and, therefore, the impugned notice is based on change of opinion which is not authorised by the Act;

(c) the issues sought to be agitated in the impugned proceedings are covered by binding decisions and, therefore, the pre-condition of “reason to believe” for initiating reassessment proceedings is not satisfied;

(d) there is no tangible material, having come into existence post regular assessment proceedings, so as to confer jurisdiction on respondents for initiating the reassessment proceedings;

(e) the approval obtained is without due application of mind and, therefore, violative of Section 151 of the Act;

(f) there is no escapement of income nor is there an iota of material suggesting the same and hence, the jurisdictional conditions are not satisfied for issuing the notice under Section 148 of the Act;

(g) as regards provision for doubtful debts, in ITR Form 6 filed under Section 139(1) of the Act in clause 40 of Part A - P&L account sum of Rs.15,64,902/- was disclosed as provision for doubtful debts and in Schedule relating to MAT, petitioner disclosed the working of book profit of Rs.8,74,57,101/-. Petitioner, in Note No.24 to the accounts, disclosed the provision for bad and doubtful debts amounting to Rs.15,64,902/-. Provision for bad and doubtful debts is in Note No.14 “Trade Receivables” of the Audited Accounts as a reduction from trade receivables and also in Note No.24 “Other Expenses”. Audited accounts were filed during the course of assessment proceedings vide letter dated 17th December, 2015.

Further, vide letter dated 17th December, 2015, petitioner filed details of expenses above Rs.10 lakhs with respondent no.1 which included details of provision for doubtful debts. In the assessment order, respondent no.1 records that the details called for have been filed and discussed with petitioner and the book profit is calculated by respondent no.1 at Rs.8,74,57,101/- and is brought to tax under Section 115JB of the Act. Based on these facts, there is no failure to disclose any material facts necessary for the assessment so as to invoke provision of Section 147 of the Act after a period of four years from the end of the relevant assessment year. The details have been filed in the course of the assessment proceedings and respondent no.1, after examining the details, has computed the income under regular provisions of the Act and profit under Section 115JB of the Act. The amount of Rs.15,64,902/- is reduced from the trade receivable thereby amounting to write-off of the debts;

(h) as regards deduction under Section 35(2AB) of the Act, petitioner has made a claim under Section 35(2AB) of the Act. In the computation of income, there is a specific claim made under Section 35 of the Act amounting to Rs.2,26,96,494/-. In Form ITR-6 in Schedule ESR, the details of claim under Section 35 of the Act amounting to Rs.2,26,96,494/- has been disclosed. Respondent no.1, vide notices dated 1st December 2015 and 28th December 2015, has called for the details of deduction under Section 35 of the Act and same were filed under cover of letter dated

17th December 2015 and 11th February 2016. There is no failure to disclose any facts necessary for the assessment, but on the contrary the claim of deduction under Section 35 of the Act was examined by raising a specific query and after going through the details filed in the course of the assessment proceedings, the same was allowed in the assessment order. The impugned proceedings would amount to review of the earlier order without any fresh tangible material on record. Under Rule 6(7A), the Department of Scientific and Industrial Research is required to submit its report to the Income Tax Authorities in Form 3CL. There is no requirement of the assessee to file the said form, but Form No.3CL is required to be submitted by the Department of Scientific and Industrial Research to the Income Tax Authorities. Therefore, the allegation of failure to file the said form cannot be attributed to petitioner. Therefore, the impugned proceedings are wholly without jurisdiction, illegal and bad in law;

(i) as regards loss on sale of asset of Rs.8,73,445/-, the loss on sale of asset has been disclosed in Note No.24 of the P&L account. The Audited Accounts were filed by petitioner vide letter dated 17th December 2015. The said amount is also disclosed in ITR-6 form at Item 38 of Part A. Respondent no.1 had called for details of depreciation claimed on the assets vide letter dated 1st December 2015. Respondent no.1 vide letter dated 28th December 2015 called for details of other expenses which contained loss on sale of asset. Respondent no.1, after perusing the details filed, made

an assessment under Section 143(3) of the Act which was made computing the assessed income under the regular provisions of the Income Tax and book profit under Section 115JB of the Act. There is no failure to disclose material facts necessary for the assessment.

9 On the contrary the assessment has been made after calling for the details and, therefore, the impugned proceedings would amount to review of the earlier order without there being any fresh tangible material on record.

10 Mr. Mohanty for Revenue submitted that Explanation 1 below Section 147 of the Act provides production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso. Mr. Mohantray also submitted, relying on a judgment of the Bombay High Court in *Dr. Amin's Pathology Laboratory V/s. P.N. Prasad, Joint Commissioner of Income Tax and Ors. (No.1)*¹, that one of the purposes of Section 147 of the Act is 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 lies, now your hands are tied and you can do nothing". It would be a travesty of justice to allow the assessee that latitude. Of course,

1. 252 (ITR) 673

Mr. Mohanty did not elaborate what was the falsity that petitioner could be accused of. Mr. Mohanty also relied upon a judgment of this Court in *Zohar Siraj Lokhandwala V/s. M.G. Kamat and Ors.*² Relying on *Indian Hume Pipe Co. Ltd. V/s. Assistant Commissioner of Income Tax and Ors.*³, Mr. Mohanty submitted that the full and true disclosure which the statute contemplates must be judged in the context of Explanation 1 to Section 147 of the Act. The assessee cannot merely rely upon the fact that if the Assessing Officer had followed an enquiry with due diligence on the basis of the account books or other evidence produced by the assessee, he could have discovered material evidence. The mere production of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer does not necessarily amount to a disclosure within the meaning of the first proviso to Section 147 of the Act. The nature of the material produced and the circumstances in which it was produced assumes some significance.

11 In our view, the law as laid down in *Indian Hume Pipe* (Supra) is there for everyone to see. In that case, the Court came to the conclusion that the assessee had not made true and full disclosure because the assessee, in that case, in the return of income that was originally filed, submitted a computation of taxable long term capital gains. After computing the long term capital gains at Rs.23.19 Crores, the assessee

2. 1994 (210) ITR 956

3. (2012) 348 ITR 439 (Bom)

sought to deduct therefrom an amount of Rs.23.24 Crores invested under Section 54EC of the Act. The statement, however, was silent about the date on which the amounts were invested. During the course of assessment proceedings, the Assessing Officer raised a query calling upon the assessee to give various details including detailed working of capital gains arising out of the sale of the property. The assessee did not, in the return of income or in the disclosure that were made in response to the query of the Assessing Officer, make any reference to the dates on which the amounts were invested in bonds of the National Highway Authority of India, Rural Electrification Corporation of India and National Housing Bank. The assessee did enclose copies of the certificates which do bear the date of allotment. The Court came to a conclusion that the assessee was required to make a full and true disclosure of material facts which did not appear either from the computation of taxable long term capital gains in the original return of income or in the computation that was submitted in response to the query of the Assessing Officer. In both the sets of computation, there was complete silence in regard to the dates on which the amounts were invested. The assessment order did not deal with this aspect and in those circumstances, the Court came to a conclusion that there was no full and proper disclosure by the assessee of all the material facts necessary for the assessment. In the case at hand, whatever is mentioned in the reasons are all from what the assessee had disclosed.

12 In the affidavit in reply, on the provision for bad and doubtful debts of Rs.15,64,902/-, it is the case of respondents that post assessment, the Revenue audit raised an objection based on which the reasons were recorded for reopening. Similarly, for the deduction under Section 35(2AB) of the Act and for the loss on sale of asset.

13 As regards the deduction under Section 35(2AB) of the Act, admittedly Form 3CL duly filled in and certified by the Secretary of Department of Scientific and Industrial Research to Director General (Income Tax Exemptions) under Section 35(2AB) of the Act has to be submitted by the Department of Scientific and Industrial Research directly to the Income Tax Authorities. The allegation of failure to file the said Form cannot be attributed to petitioner.

14 It is settled law that where the assessment is sought to be reopened after the expiry of a period of four years from the end of the relevant year, the proviso to Section 147 of the Act stipulates a requirement that there must be a failure on the part of the assessee to disclose fully and truly all material facts necessary. Since in the case at hand, the assessment is sought to be reopened after a period of four years, the proviso to Section 147 of the Act is applicable. It is also settled law that the Assessing Officer has no power to review an assessment which has been concluded. If a period of four years has lapsed from the end of the relevant year, the Assessing Officer has to mention what was the tangible material to come to

the conclusion that there is an escapement of income from assessment and that there has been a failure to fully and truly disclose material fact. After a period of four years even if the Assessing Officer has some tangible material to come to the conclusion that there is an escapement of income from assessment, he cannot exercise the power to reopen unless he discloses what was the material fact which was not truly and fully disclosed by the assessee. If we consider the reasons for reopening, as regards provision for doubtful debts, we would first of all observe that the Assessing Officer records "Since the provision is made on account of bad and doubtful debts which is not an ascertained liability as per section 115JB of the Act, the same need to be added which the assessee has failed to do so." This indicates non application of mind by the Assessing Officer while recording the reasons and also by the approving authority which granted approval under Section 151 of the Act. Further, in ITR Form 6 filed under Section 139(1) of the Act in clause 40 of Part A - P&L account sum of Rs.15,64,902/- was disclosed as provision for doubtful debts and in Schedule relating to MAT, petitioner disclosed the working of book profit of Rs.8,74,57,101/-. Petitioner in Note No.24 to the accounts disclosed the provision for bad and doubtful debts amounting to Rs.15,64,902/-. Provision for bad and doubtful debts is in Note No.14 "Trade Receivables" of the Audited Accounts as a reduction from trade receivables and also in Note No.24 "Other Expenses". Audited accounts were filed during the

course of assessment proceedings vide letter dated 17th December, 2015. Further, vide letter dated 17th December, 2015, petitioner filed details of expenses above Rs.10 lakhs with respondent no.1 which included details of provision for doubtful debts. In the assessment order, respondent no.1 records that the details called for have been filed and discussed with petitioner and the book profit is calculated by respondent no.1 at Rs.8,74,57,101/- and is brought to tax under Section 115JB of the Act. Based on these facts, there is no failure to disclose any material facts necessary for the assessment so as to invoke provision of Section 147 of the Act after a period of four years from the end of the relevant assessment year. The details have been filed in the course of the assessment proceedings and respondent no.1, after examining the details, has computed the income under regular provisions of the Act and profit under Section 115JB of the Act. The amount of Rs.15,64,902/- is reduced from the trade receivable thereby amounting to write-off of the debts.

15 As regards deduction under Section 35(2AB) of the Act, petitioner has made a claim under Section 35(2AB) of the Act. In the computation of income, there is a specific claim made under Section 35 of the Act amounting to Rs.2,26,96,494/-. In Form ITR-6 in Schedule ESR, the details of claim under Section 35 of the Act amounting to Rs.2,26,96,494/- has been disclosed. Respondent no.1, vide notices dated 1st December 2015 and 28th December 2015, has called for the details of

deduction under Section 35 of the Act and same were filed under cover of letter dated 17th December 2015 and 11th February 2016. There is no failure to disclose any facts necessary for the assessment, but on the contrary the claim of deduction under Section 35 of the Act was examined by raising a specific query and after going through the details filed in the course of the assessment proceedings, the same was allowed in the assessment order. The impugned proceedings would amount to review of the earlier order without any fresh tangible material on record and, therefore, the impugned proceedings are wholly without jurisdiction, illegal and bad in law. Under Rule 6(7A), the Department of Scientific and Industrial Research is required to submit its report to the Income Tax Authorities in Form 3CL. There is no requirement of the assessee to file the said form, but Form No.3CL is required to be submitted by the Department of Scientific and Industrial Research to the Income Tax Authorities. Therefore, the allegation of failure to file the said form cannot be attributed to petitioner.

16 Dealing with similar situation, the Gujarat High Court in ***Commissioner of Income Tax, Vadodara – 2 V/s. Sun Pharmaceutical Industries Ltd.***⁴ held that one of the main grounds which appealed to the Commissioner was that the prescribed authority had not sent the intimation in Form 3CL to the Revenue, in absence of which, according to the Commissioner, claim could not have been accepted. The Gujarat High Court

4. (2017) 85 taxmann.com 80 (Gujarat)

in paragraph 5 held that the communication in Form 3CM was between the prescribed authority and the department. The assessee cannot be made to suffer and the Commissioner was not correct in observing that in absence of such certification, claim of deduction under Section 35(2AB) of the Act was not allowable. The Court further held that merely because the prescribed authority failed to send intimation in Form 3CL, would not be reason enough to deprive the assessee's claim of deduction under Section 35(2AB) of the Act.

17 As regards loss on sale of asset Rs.8,73,445/-, the loss on sale of asset has been disclosed in Note No.24 of the P&L account. The Audited Accounts were filed by petitioner vide letter dated 17th December 2015. The said amount is also disclosed in ITR-6 form at Item 38 of Part A. Respondent no.1 had called for details of depreciation claimed on the assets vide letter dated 1st December 2015. Respondent no.1 vide letter dated 28th December 2015 called for details of other expenses which contained loss on sale of asset. Respondent no.1, after perusing the details filed, made an assessment under Section 143(3) of the Act computing the assessed income under the regular provisions of the Income Tax and book profit under Section 115JB of the Act. There is no failure to disclose material facts necessary for the assessment but on the contrary the assessment has been made after calling for the details. Therefore, the impugned proceedings would amount to review of the earlier order without there being any fresh

tangible material on record.

18 Reasons do not disclose which facts were not disclosed. Under the first proviso to Section 147 of the Act, an assessment made under Section 143(3) of the Act can be reopened after a period of four years only if there is a failure to disclose fully and truly all material facts necessary for assessment. The assessee is obliged to disclose only the primary facts and not inferential facts during the course of the assessment. Petitioner has disclosed all necessary primary facts during the course of the assessment. The reasons as recorded do not disclose as to what are the primary facts which were not disclosed by petitioner during the course of the assessment proceedings and which came to the knowledge of respondents after regular assessment so as to invoke the power under Section 147 of the Act. The reasons recorded admit that reopening is sought based on materials filed in the course of regular assessment proceedings. Inasmuch as petitioner has disclosed all the primary facts necessary for the assessment and the reasons do not disclose what facts which petitioner was obliged to disclose have not been disclosed, the impugned notice dated 23rd March 2021 is barred by first proviso to Section 147 of the Act.

In an unreported judgment of this Court in ***First Source Solutions Ltd. V/s. Assistant Commissioner of Income Tax***⁵, the Court held that a general statement that the escapement of income is by reason of the

5. Writ Petition No.2762 of 2019 dated 31.8.2021

failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment is not enough. The Assessing Officer should indicate what was the material fact that was not truly and fully disclosed to him. In the affidavit in reply, it is stated that the reassessment proceedings was based on audit objections. In *Jainam Investments V/s. Assistant Commissioner of Income Tax*⁶ it is held that the reasons for reopening an assessment should be that of the Assessing Officer alone who is issuing the notice and he cannot act merely on the dictates of any another person in issuing the notice. In *Indian & Eastern Newspaper Society V/s. CIT*⁷ relied upon by Mr. Pardiwalla, the Court held that in every case, the Income Tax Officer must determine for himself what is the effect and consequence of the law mentioned in the audit note and whether in consequence of the law which has come to his notice he can reasonably believe that income had escaped assessment. The basis of his belief must be the law of which he has now become aware. The opinion rendered by the audit party in regard to the law cannot, for the purpose of such belief, add to or colour the significance of such law. Therefore, the true evaluation of the law in its bearing on the assessment must be made directly and solely by the Income Tax Officer.

19 As regards bad and doubtful debts of Rs.15,64,902/- and Rs.8,73,445/- being loss on sale of assets, it is also, in our view, nothing but

6. Writ Petition No.2760 of 2019 dated 24.8.2021

7. 119 ITR 996 (SC)

a change of opinion. We say this because in the reasons to believe itself it is recorded in paragraph 5 “*Though the said expenditures are not allowable as per the provisions of the Act, the same have not been disallowed by the assessee while computing its business income under normal provisions. This has resulted into under assessment of business income to that extent.*” This is a clear case of change of opinion of the Assessing Officer from that held earlier during the course of assessment proceeding. This change of opinion does not constitute justification and/or reasons to believe that income chargeable to tax has escaped assessment.

20 In *Titanor Components Ltd. V/s. Assistant Commissioner of Income Tax*⁸, the Division Bench held that where the assessee has fully disclosed all the material facts, it is not open for the Assessing Officer to reopen the assessment on the ground that there is a mistake in assessment. What is recorded is that petitioner has wrongly claimed certain deductions which he was not entitled to. There is a well known difference between a wrong claim made by an assessee after disclosing all the true and material facts and a wrong claim made by the assessee by withholding the material facts fully and truly. It is only in the latter case that the Assessing Officer would be entitled to proceed under Section 147 of the Act.

21 In the circumstances, the notice dated 23rd March 2021 issued under Section 148 of the Act seeking to reopen assessment for Assessment

8. (2012) 20 taxmann.com 805 (Bombay)

Year 2013-2014 and order dated 18th January 2022 rejecting objections are hereby quashed and set aside.

22 Petition disposed. No order as to costs.

(FIRDOSH P POONIWALLA, J.)

(K. R. SHRIRAM, J.)