

**2017 (9) TMI 851 - DELHI HIGH COURT****IFS Solutions India Private Limited Versus Assistant Commissioner of Income Tax, Circle 12 (1)**

W.P. (C) No. 11262/2016

**Dated: - 11 September 2017**

Reopening of assessment - proof of failure on the part of the Assessee 'to disclose fully and truly all material facts necessary for the assessment' - Held that:- Nothing prevented the AO from undertaking a detailed inquiry into the list of creditors provided by the Assessee in response to the questionnaire. It is not for the Assessee to suggest to the AO how he should conduct the inquiry.

There was no failure by the Assessee to fully and truly disclose all material facts necessary for the assessment.

Since the pre-requisites for assumption of jurisdiction under Section 147 of the Act were not fulfilled, the Court has no hesitation in quashing the impugned notice dated 30th March 2016 issued to the Petitioner by the AO under Section 148 (1) of the Act and all proceedings consequent thereto. - Decided in favour of assessee.

**Judgment / Order****S. MURALIDHAR & PRATHIBA M. SINGH JJ.**

**Petitioner Through: Mr. Gagan Kumar, Mr. Amit Kaushik, Advocates.**

**Respondent Through: Mr. Asheesh Jain, Senior Standing Counsel for Income Tax Department with Mr. Vikrant A. Maheshwari, Advocate.**

**ORDER**

1. This is a writ petition seeking quashing of the notice dated 30th March 2016 issued to the Petitioner under Section 148 of the Income Tax Act, 1961 ('Act') by the Deputy Commissioner of Income Tax, Circle 12 (1), New Delhi (hereafter Assessing Officer - 'AO') for the Assessment Year ('AY') 2009-10.

2. The facts, which are not in dispute, are that the original assessment was completed after scrutiny of the return under Section 143 (3) of the Act on 23rd December, 2011. Further, the reopening of the assessment is sought to be made after the expiry of four years from the end of the relevant AY.

Consequently, the first proviso to Section 147 of the Act applied. In other words, in order to justify the reopening of the assessment, the AO had to show that there was a failure on the part of the Assessee 'to disclose fully and truly all material facts necessary for the assessment, for that assessment year'.

3. The reasons recorded by the AO for reopening of the assessment have been perused. The AO has noted therein that on examining the records it was found that the Assessee had debited an amount of ₹ 1,08,67,187/- in its P&L account towards interest as against ₹ 11,582/- claimed in the immediately preceding AY i.e. AY 2008-09. The AO noted that neither had the Assessee furnished any details nor had the AO any occasion to verify the said amount of interest debited in the P&L account. The AO further noted that information had been received from the Investigation Wing of the Income Tax Department, New Delhi on the basis of a Tax Evasion Petition ('TEP') received against the Assessee. The report of the Investigation Wing stated that a huge amount of interest was paid to various foreign companies in the FY 2008-09. The AO extracted a portion of the report of the Investigation Wing which doubted the genuineness of the interest

payments made by the Assessee. The exact words in the report reads, "Hence, the claim of interest expense of ₹ 1,08,67,187/- in the FY 2008-09 appears to be suspicious and correlates with the facts of the complaint."

4. The Court is unable to find any reference in the reasons to any tangible material which, was failed to be disclosed by the Assessee, and which could form the basis of the AO's 'reasons to believe' that income had escaped assessment. There is no mention of which material facts were failed to be disclosed by the Assessee.

5. Although there is an assertion in the reasons that the Assessee had not furnished the relevant details regarding the payment of interest, the Court finds that the said assertion is factually incorrect. In the course of the original assessment proceedings, a questionnaire was issued by the AO to the Assessee, in which a specific question was raised as regards the payment of interest. In reply thereto, the Assessee, by a letter dated 12th October 2011, addressed to the AO furnished details of the creditors and their addresses.

6. Mr. Asheesh Jain, learned Senior Standing Counsel for the Revenue, submitted that the break-up of the payments made to the creditors was not furnished by the Assessee and therefore could not be verified by the AO.

7. The Court is unable to agree with the above submission. Nothing prevented the AO from undertaking a detailed inquiry into the list of creditors provided by the Assessee in response to the questionnaire. It is not for the Assessee to suggest to the AO how he should conduct the inquiry.

There was no failure by the Assessee to fully and truly disclose all material facts necessary for the assessment.

8. In that view of the matter, since the pre-requisites for assumption of jurisdiction under Section 147 of the Act were not fulfilled, the Court has no hesitation in quashing the impugned notice dated 30th March 2016 issued to the Petitioner by the AO under Section 148 (1) of the Act and all proceedings consequent thereto.

9. The writ petition is allowed in the above terms with no order as to costs.