BEFORE
THE HON'BLE MR.JUSTICE I.A. ANSARI
THE HON'BLE MRS JUSTICE ANIMA HAZARIKA

This is an appeal, preferred under Section 260A of the Income Tax Act, 1961, (hereinafter referred to as, 'the IT Act') against the order, dated 03.06.2011, passed, in ITA No.138(Gau) of 2007, by the learned Income Tax (Appellate) Tribunal, Guwahati Bench, whereby the learned Tribunal has allowed the appeal of the assesse-respondent and quashed the re-assessment order, dated 10.03.2005, made under Section 147 read with Section 148 of the IT Act, the ground for setting aside and quashing the re-assessment order being that the re-assessment was not in accordance with law, the same having been barred by the proviso to Section 147 of the IT Act.

2. This appeal has been admitted and heard on the following substantial questions of law:

“1. Whether on the facts and in the circumstances of the case, the Tribunal was justified and correct in law in quashing the reassessment order passed by the Assessing Officer U/s. 143(3)/147 of the Income Tax Act, 1961 on the ground that the reassessment proceeding initiated was barred by limitation?

2. Whether on the facts and in the circumstances of the case, the Tribunal was justified and correct in law in quashing the reassessment order passed under section 147 of the Income Tax Act, 1961?”

3. We have heard Mr. A. Hazarika, learned Standing Counsel, Income Tax Department, for the appellant, and Mr. R. Goenka, learned counsel, for the respondent.

4. Considering the fact that both the substantial questions of law, formulated in this appeal, are inter-woven and insevereably connected with each other, we take up both these questions for decision together.

5. Presenting the case on behalf of the appellant, Mr. A. Hazarika, learned Standing counsel, submits that in the case at hand, though a period of four years had elapsed from the date of making of the assessment, the power of re-assessment was correctly exercised by the Assessing Officer inasmuch as the assessee had not included, in the total income of the assessee, the amount of transport subsidy, which had been received during the assessment year and thereby the assessee had been granted greater reliefs than what the assessee was entitled to and, hence, Sub-Clause (iii) of Clause (c) of Explanation 2 was attracted to the facts of the present case and the contention of the assessee that the materials, placed by him before the Assessing Officer, contained the information that the assessee had received transport subsidy during

the assessment year was not sufficient to deny to the Assessing Officer the jurisdiction to re-open the assessment inasmuch as Explanation 1, according to Mr. Hazarika, makes it clear that production before the Assessing Officer of account books or other evidence from which material evidence could, with due diligence, have discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of Section 147, would not be attracted to the facts of the present case.

6. In support of his above submissions, Mr. Hazarika places reliance on Honda Siel Power Products Ltd. Vs. Deputy Commissioner of Income Tax and another, reported in (2012) 340 ITR 53 (Delhi).

7. Resisting the appeal, Mr. R. Goenka, learned counsel, has submitted that unless there is an omission or failure, on the part of an assessee, to disclose 'fully and truly' all material facts necessary for his assessment, for that assessment year, an Assessing Officer does not acquire jurisdiction to re-open an assessment already made if a period of four years has elapsed since the date of making of the assessment and merely because of the fact that by omission to make correct assessment, an assessee has received greater reliefs than what the assessee was entitled to, it would not give jurisdiction to the Assessing Officer to re-open an assessment inasmuch as Sub-Clause (iii) of Clause (c) of Explanation 2 and/or Explanation 1 does not enlarge the scope of the proviso to Section 147. In other words, according to Mr. Goenka, re-opening of the assessment, which stands barred, because of the expiry of the prescribed period of limitation of four years from the date of making of the assessment is impermissible unless it can be held that there was an omission or failure, on the part of the assessee, to disclose 'fully and truly' all material facts necessary for his assessment, for that assessment year. In support of his submissions, Mr. Goenka places reliance on Associated Stone Industries Ltd. Vs. CIT, Rajasthan, reported in (1997) 224 ITR 560 (SC), Calcutta Discount Company Ltd. Vs. ITO, Companies District, I, and another, reported in (1961) 411 ITR 191 (SC), Parashuram Pottery Works Vs. ITO, reported in 106 ITR 1(SC), Assam Co. Ltd Vs. Union of India, reported in 275 ITR 609 (Gau), and Dulichand Singhania Vs. ACIT, 269 ITR 192 (P & H).

8. Before we proceed to determine the correctness and/or validity of the learned Tribunal's order, which stands impugned in the present appeal, it is appropriate to take note of the material facts, which have given rise to the present appeal. The material facts may, in brief, be set out as under:

(i) The respondent-assessee submitted its return of income, for the assessment year 1997-1998, declaring total taxable income as NIL. The respondent-assessee was accordingly assessed by the Assessing Officer by his order, dated 05.05.99, in exercise of power under Section 143(3) of the IT Act. The period of four years from the date of the original

assessment, as stipulated by Section 147 of the IT Act, expired on 31.03.2002. Thereafter, a notice, dated 28.11.2003, under Section 148 of the IT Act, was issued by the Revenue to the assessee for initiation of a re-assessment proceeding. Responding to the notice, dated 28.11.2003, the assessee submitted its reply, on 31.12.2003, contending therein to the effect, inter alia, that the assessee's return, already filed on 27.11.1997, for the assessment year 1997-1998, be treated as the return filed pursuant to the notice under Section 148 of the IT Act.

(ii) The assessee was, however, re-assessed, on 10.03.2005, under Section 147 of the IT Act, adding thereby an amount of Rs.24,70,559/-, which the assessee had received as transport subsidy, for the assessment year 1997, holding the said sum of transport subsidy as taxable income of the assessee.

(iii) Aggrieved by the re-opening of the assessment and imposition of the tax, the assessee preferred an appeal, which the Commissioner of Income Tax (Appeal) dismissed, on 26.03.2007, upholding the order of the Assessing Officer by taking the view that there were valid reasons for the Assessing Officer to re-open the assessment and that his action was justified.

(iv) Dissatisfied with the dismissal of its appeal, the assessee carried the matter, in appeal, to the Income Tax (Appellate) Tribunal, Guwahati Bench. By its order, dated 03.06.2011, as the learned Tribunal has quashed the re-assessment order holding that the re-opening of the assessment beyond the period of four years was, in the facts and circumstances, not in accordance with law, the Revenue has preferred this appeal contending to the effect that in the facts and attending circumstances of the present case, the re-opening of the assessment ought not to have been treated as untenable in law.

9. Considering the fact that correct interpretation of Explanations 1 and 2 to the proviso to Section 147 of the IT Act lies at the root of controversy in the present appeal, as can be clearly discerned from the substantial questions of law framed in the present appeal, we reproduce hereinbelow Section 147, which, we notice, reads as under:

“INCOME ESCAPING ASSESSMENT

If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of section 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceeding under this section, or recomputed the loss or the depreciation allowance or any other allowance, as the case amy be,

for the assessment year concerned (herein after in this section and in section 148 to 153 referred to as the relevant assessment year)

Provided that where an assessment under sub section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub- section (1) of section 142 or section 148 or to disclose 'fully and truly' all material facts necessary for his assessment, for that assessment year

Explanation 1.- 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 forgoing proviso.

Explanation 2.- For the purpose of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:-

(c) where an assessment has been made, but:-

(i) Income chargeable to tax has been underassessed;or

(ii) Such income has been assessed at too low a rate; or

(iii) Such income has been made the subject of excessive relief under this Act; or

(iv) Excessive loss or depreciation allowance or any other allowance under this Act has been computed."

(Emphasis is added)

10. A careful reading of Section 147, as a whole, shows that if the Assessing Officer has reason to believe that any income, chargeable to tax, has escaped assessment in any assessment year, he may, subject to the provisions of Section 147, assess or re-assess such income and also any other income chargeable to tax, which has escaped assessment and which comes to his notice subsequently in the course of the proceeding under Section 147, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned.

11. To the power of re-opening of an assessment, under Section 147, on the ground that an income, chargeable to tax, had escaped assessment

for a given assessment year, the first proviso to Section 147 carves out an exception, the exception, in the simplest of words, being that no action shall be taken, that is to say, no assessment shall be re-opened by an Assessing Officer by taking resort to his power under Section 147 if a period of four years from the end of the relevant assessment year has elapsed unless any income, chargeable to tax, has, as the proviso to Section 147 stipulates, escaped assessment for such assessment year by reason of failure, on the part of the assessee, to disclose 'fully and truly' all material facts necessary for his assessment.

12. Explanation 1 to the proviso to Section 147 clarifies that the mere fact, that an Assessing Officer could have, with due diligence, discovered the escapement of assessment from the materials produced before him by the assessee, shall not 'necessarily' amount to disclosure within the meaning of Section 147.

13. The use of the expression 'necessarily', appearing in Explanation 1, implies that it would depend on the facts of a given case if Explanation 1 can be said to have been attracted. Conversely speaking, Explanation 1 will not condone lapse on the part of an Assessing Officer, who, due to his sheer recklessness or negligence, omits to take note of an income, which was, otherwise, chargeable and had been 'fully and truly' disclosed by the assessee.

14. Sub-Clause (iii) of Clause (c) of Explanation 2, which, in the present case, the Revenue relies upon, shows that where the income, which had escaped assessment, led to excessive granting of relief, which an assessee was not, otherwise, entitled to, then, such an income can be reopened for assessment. The question is: Does Sub-Clause (iii) of Clause (c) of Explanation 2 allow an assessment to be re-opened merely because excessive relief had been received by an assessee, because of escapement of assessment? Here, again, the mere fact that there was granting of excessive relief to the assessee would not allow an assessment to be re-opened unless granting of excessive relief can be attributed to the failure, on the part of the assessee, to disclose 'fully and truly' all material facts necessary for his assessment.

15. To put it a little differently, the conditions precedent for re-opening of an assessment, as contemplated by the proviso to Section 147, is that a taxable income had escaped assessment because of the failure, on the part of the assessee, to disclose 'fully and truly' all material facts necessary for his assessment.

16. The question, therefore, which, now, naturally arises is: whether the Explanation 1 and/or the Explanation 2 override the conditions precedent, embodied in the proviso to Section 147, for the purpose of re-opening of an assessment?

17. In Associated Stone Industries Ltd. Vs. CIT, Rajasthan, reported in (1997) 224 ITR 560 (SC), the Supreme Court has pointed out that the duty of an assessee is only to 'fully and truly' disclose all material facts and that the expression, 'material facts', appearing in Section 34(1)(a) of the IT Act, refers only to primary facts meaning thereby that the duty of the assessee is only to 'fully and truly' disclose all primary facts and that there is no duty, which the law casts on an assessee to indicate to the Assessing Officer or draw attention of the Assessing Officer what factual, legal or other interferences can be drawn from the already available primary facts disclosed by the assessee.

18. Having analysed the provisions contained in Section 34(1)(a) of the IT Act embodying scheme of opening of an assessment, the Supreme Court, in Associated Stone Industries Ltd. (supra), referring to the Income Tax Act, 1922, pointed out that Section 34(1)(a) requires two conditions to be satisfied, namely, (1) the Income Tax Officer should have reason to believe that income has escaped assessment; and (2) he must have reason to believe that such escapement is by reason of the omission or failure, on the part of the assessee, to disclose 'fully and truly' all material facts necessary for his assessment for the relevant year. Laying down, thus, the law on the scope of re-opening of assessment, the Supreme Court observed and held, in Associated Stone Industries Ltd. (supra), as under:

“It is now well settled by the decisions of this court that the duty of the assessee is only to fully and truly disclose all material facts. The expression “material facts” contained in section 34(1)(a) of the Act refers only to primary facts, and the duty of the assessee is to disclose such primary facts. There is no duty cast on the assessee to indicate or draw the attention of the Income-tax Officer what factual or legal, or other inferences can be drawn from the primary facts disclosed”.

(Emphasis is added)

19. In support of its above conclusions, the Supreme Court referred to, and relied upon, its decision, in Calcutta Discount Company Ltd. Vs. ITO, Companies District, I, and another, reported in (1961) 411 ITR 191 (SC), wherein the Constitution Bench had observed as under:

“The words used are “omission or failure to disclose 'fully and truly' all material facts necessary for his assessment for that year.” It postulates a duty on every assessee to disclose 'fully and truly' all material facts necessary for his assessment. What facts are material and necessary for assessment will differ from case to case”

(Emphasis is added)

20. Having posed to itself the question as to whether the duty of disclosure, on the part of an assessee, extends beyond the full and

truthful disclosure of all primary facts, the Supreme Court observed, in Calcutta Discount Company Ltd. (supra), that the answer to this question must be in the negative and so long as the primary facts are before the Assessing Authority, he requires no further assistance by way of disclosure from the end of the assessee inasmuch as it is for the Assessing Officer to decide what inference can be reasonably drawn and it is not for someone else - far less the assessee - to tell the Assessing Authority what inference, whether on facts or on law, should be drawn. The relevant observations, appearing in this regard, in Calcutta Discount Company Ltd. (supra), read as under:

"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.

If from primary facts more inferences that 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?

(Emphasis is added)

21. It was, therefore, pointed out by the Supreme Court, in Calcutta Discount Company Ltd. (supra), that the Explanation to Section 147 does not have the effect of enlarging the Section by casting a duty on the assessee to disclose inferences, which are really for the Assessing Officer to draw. Making this position of law clearer, the Supreme Court, in Calcutta Discount Company Ltd. (supra), laid down as follows:

"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-tax Officer.

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 is added)

22. In Parashuram Pottery Works Vs. ITO, reported in 106 ITR 1(SC), while interpreting the words, 'omission or failure to disclose 'fully and truly' all material facts necessary for his assessment for that year', the Supreme Court pointed out that these words postulate a duty on the assessee to disclose 'fully and truly' all material facts necessary for the purpose of his assessment and what facts are material and necessary for assessment would differ from case to case. The Supreme Court also pointed out, in Parashuram Pottery Works (supra), that in every assessment proceeding, the assessing authority is required to know all the facts, which would help him in coming to the correct conclusion and help him to draw correct inference. The relevant observations read:

"The words "omission or failure to disclose 'fully and truly' all material facts necessary for his assessment for that year" postulate a duty on the assessee to disclose 'fully and truly' all material facts necessary for his assessment. What facts are material and necessary for assessment will differ from case to case. In every assessment proceeding, the assessing authority will, for the purpose of computing or determining the proper tax due from an assessee, require to know all the facts which help him in coming to the correct conclusion. From the primary facts in his possession whether on disclosure by the assessee, or discovered by him on the basis of the facts disclosed, or otherwise, the assessing authority has to draw inference as regards certain other facts; and ultimately from the primary facts and the further facts inferred from them, the authority has to draw the proper legal inferences, and ascertain on a correct interpretation of the taxing enactment, the proper tax leviable: See Calcutta Discount Co. v. Income-tax Officer [1961] 41 ITR 191, 201 (SC)."

(Emphasis is added)

23. Relying, once again, on Calcutta Discount Co. Ltd. (supra), the Supreme Court pointed out, in Parashuram Pottery Works (supra), that law casts, on the assessee, an obligation to disclose facts; secondly, the facts must be material; thirdly, disclosure must be full; and; fourthly, disclosure shall be true. What facts shall be treated as material and necessary for an assessment will differ from case to case. Where an assessee makes full and true disclosure of all material facts or, in other words, when the assessee lays bare, before the Assessing Officer, the facts, which are necessary for assessment of his income, the lapse, on the part of an Assessing Officer to make a correct assessment, cannot, in such a case, be attributed to the assessee.

24. In short, thus, an assessment, already made, cannot be reopened except for reasons as embodied in Section 147. This Court, in Assam Co. Ltd Vs. Union of India, reported in 275 ITR 609 (Gau), while dealing with Section 147 of the IT Act, has clarified this position of law in the following words:

"A plain reading of Section 147 of the Act demonstrate that the Assessing Officer acquires jurisdiction to act there-under only if he has reason to believe that any income chargeable to tax has escaped assessment for any assessment year. The proviso thereto places an embargo on the invocation of power under the above provision of the Act on the expiry of four years from the end of the relevant assessment year in which any income chargeable to tax has escaped assessment for such assessment year except for reasons of 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 the assessment for that assessment year."

(Emphasis is added)

25. Unless, therefore, there is an omission or failure, on the part of an assessee, to disclose, fully and truly, all material facts, which were necessary for his assessment for a given assessment year, the power to re-open assessment, under Section 147, cannot be taken resort to. Merely on the ground that the assessee has received greater reliefs, than what he was entitled to, cannot give jurisdiction to the Assessing Officer to make a re-assessment.

26. What becomes abundantly clear from the above discussion is that neither Explanation 1 nor Explanation 2 to Section 147 enlarges the scope of the proviso to Section 147. If, therefore, there is no omission or failure, on the part of an assessee, to disclose 'fully and truly' all material facts, which were necessary for his assessment for a given assessment year, the Assessing Officer cannot reopen an assessment by taking resort to either Explanation 1 or Explanation 2 to Section 147 inasmuch as these Explanations do not enlarge the scope of the proviso to Section 147. This position of law is rendered beyond dispute if one carefully reads the following observations made in Calcutta Discount Co. Ltd. (supra):

"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-tax officer.

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 is added)

27. The reason for re-opening of the assessment, in the present case, is that the assessee had not included the amount received as transport subsidy in the annual income of the assessee. An Assessing Officer's duty is not merely to look at the total annual income given by an assessee. What the assessee has to lay before the Assessing Officer is his annual income, that is, the income, which, according to the assessee, is taxable and deductions, if any, which, according to the assessee, he is entitled to receive. A sum, received by an assessee, may not be treated by the assessee as an income. An Assessing Officer cannot blindly accept the annual income, which an assessee furnishes to him, or the taxable income, which an assessee presents before him, or the deductions, which an assessee considers himself entitled to receive. It is the duty of an Assessing Officer to examine each of the material aspects of a return and, then, make his assessment. If the Assessing Officer is negligent or rash, he cannot blame the assessee for escapement of taxable income and, in this regard, neither Explanation 1 nor Explanation 2 would help such an assessment to be re-opened after the same is barred by limitation, because of a period of four years having elapsed since the date of making of the assessment.

28. In the case at hand, the transport subsidy, which had been received by the assessee, was duly disclosed by the assessee in the audited accounts and statements submitted by the assessee along with the assessee's return of income for the assessment year 1997-1998. In fact, the Paper Book, filed before the Tribunal, contains copies of the assessee's audited balance sheet and statement submitted along with the return. The balance sheet, admittedly, contains the details of receipt of transport subsidy.

29. To be more precise, it may be pointed out that the transport subsidy reserve, shown by the assessee as on 31.03.96, was Rs. 35,00,330/-. By 31.03.97, the transport subsidy reserve rose up to Rs.59,70,889/-. The difference of Rs.24,70,559/- has been added by the Assessing Officer in the total income of the assessee, while re-assessing the assessee's income by re-assessment order, dated 10.03.2005. When the assessee had already disclosed, very clearly and thoroughly, that his transport subsidy reserve was, as on 31.03.96, Rs. 35,00,330/- and that by 31.03.97, this amount had risen to Rs.59,70,889/-, the appellant cannot say that the assessee did not disclose all such material facts, which were necessary for making a valid and effective assessment of income for the purpose of realization of tax. In fact, in CIT Vs. Corporation Bank Ltd, reported in 254 ITR 791 (SC), it has been pointed out by the Supreme Court that disclosure, in the balance sheet,

amounts to full and true disclosure of material facts necessary for assessment. The observations, made in this regard, which are relevant for our purpose, read as under:

“Turning attention to the first question as regards the provisions under Section 147(a) be it noted and as the facts depict, there is no failure on the part of the assessee in furnishing the particulars pertaining to the above noted sum as not recoverable for the relevant accounting year and the statements filed along with the original return disclosed the full details of the aforesaid account. There is, therefore, no failure on the part of the assessee to disclose 'fully and truly' the material facts necessary for the assessment years for the respective years and as such section 147(a) has no manner of application and is not attracted in the facts of the matter under consideration. The High Court on consideration of the facts came to the conclusion that the Tribunal was justified in coming to the said finding and we also record our concurrence therewith.”

(Emphasis is added)

30. The reason, assigned by the Assessing Officer, at the time of making re-assessment, in the present case, reads as under:

“On verification of the records it is seen that the assessee company has received subsidy Rs. 2470559/- from the Govt. of Assam which was not included in the total income of the assessee during year 1996-1997 relevant to the assessment year 1997-1998.”

31. The reason, so assigned by the Assessing Officer, shows that the information, regarding transport subsidy, was available in the audited accounts and statements furnished by the assessee to the Assessing Officer along with the assessee's return. These details being available before the Assessing Officer, the Assessing Officer cannot say that there was omission or failure on the part of the assessee to make return under Section 139 or in response to a notice issued under Sub-Section (1) of Section 142 or 148 or to disclose 'fully and truly' all material facts necessary for his assessment, for that assessment year.

32. In fact, there is not even a particle of accusation in the re-assessment order to show that the escapement of income, in the present case, was because of the omission or failure, on the part of the assessee, to make return under Section 139 or in response to a notice issued under Sub-Section (1) of Section 142 or 148 or to disclose 'fully and truly' all material facts necessary for his assessment, for that assessment year. A finding to the effect that there was omission or failure on the part of the assessee to make return under Section 139 or in response to a notice issued under Sub-Section (1) of Section 142 or 148 or to disclose 'fully and truly' all material facts necessary for his

assessment, for that assessment year, is sine qua non for assumption of jurisdiction by the Assessing Officer for re-assessment of income, which escaped disclosure. We are fortified in taking this view from the decision in Dulichand Singhania Vs. ACIT, reported in 269 ITR 192 (P&H).

33. In the present case, re-assessment proceeding was initiated beyond the period of limitation of four years as prescribed by Section 147. This could have been overridden had there been, on the part of the assessee, omission or failure to disclose 'fully and truly' all material facts necessary for his assessment for the given assessment year.

34. Since the present case did not suffer from non-disclosure or omission to disclose 'fully and truly' the facts by the assessee, the Assessing Officer could not have been held, and was rightly not held by the learned Tribunal, to have had the jurisdiction to re-open the assessment and make assessment as in the present case.

35. While considering the case of Honda Siel Power Products Ltd. (supra), which Mr. Hazarika has relied upon, it needs to be noted that Honda Siel Power Products Ltd. (supra) was a case, wherein there was an omission on the part of the petitioner to disclose the expenses incurred relatable to tax free/exempted income and since expenses were not disclosed, inference by way of re-assessment of income was upheld. The facts of Honda Siel Power Products Ltd. (supra) are, as already discussed above, quite different from the facts of the present case inasmuch as all the material facts, which were necessary for making a correct assessment, had been furnished, in the case at hand, to the Assessing Officer and when the Assessing Officer had failed to make correct assessment, the Revenue cannot blame the assessee and take recourse to the proviso to Section 147 for the purpose of re-opening the assessment.

36. What crystallizes from the above discussion is that in the facts and circumstances of the present case, re-opening of the assessment and making of the re-assessment were bad in law and the learned Tribunal committed no error, either in fact or in law, in allowing the assessee's appeal and in setting aside the order of re-assessment. We, thus, notice no infirmity, legal or factual, in the re-assessment order.

37. In the result and for the reasons discussed above, we find no merit in this appeal. The appeal, therefore, fails and the same shall accordingly stand dismissed.

38. No order as to costs.