

## **If there was no failure on part of assessee to disclose material facts reassessment after 4 years is not valid: HC**

**Summary – The High Court of Madras in a recent case of Visvas Promoters (P.) Ltd., (the Assessee) held that if there was no failure on part of assessee to disclose material facts reassessment after 4 years is not valid**

### **Facts**

- The assessee was engaged in the business of construction and sale of flats of sizes both more than 1500 sq. ft. and less than 1500 sq. ft. The assessee claimed deduction under section 80-IB(10) proportionately to the sale of flats less than 1500 sq. ft.
- The claim was allowed during original assessment.
- During scrutiny, the assessing authority issued re-assessment notice under section 148 stating that the assessee had claimed excess deduction and there was failure on part of the assessee to disclose fully and truly all material facts.
- In his writ petition, the assessee submitted that during original assessment all primary facts were truly disclosed in the original return. The re-assessment notice was quashed as it was issued beyond the prescribed limitation of 4 years and 1st proviso of section 147 prohibited such re-assessment proceedings unless there was a failure on the part of the assessee to fully and truly disclose all material facts necessary for assessment.
- On the revenue's writ appeal before the High Court:

### **Held**

- As per 1st Proviso to section 147 notice issued under sections 147/148 can be issued after the expiry of 4 years from the end of relevant assessment year only if there is a failure on the part of the assessee to disclose full facts.
- In the present case, there is no failure on the part of the assessee as he disclosed fully and truly all the relevant facts before the assessing authority in the return filed by him or at the time of original assessment proceedings under section 143(3).
- On a mere change of opinion, the re-assessment proceedings are not permitted under the Act.
- In the present case, the proportionate claim under section 80-IB(10) was rightly allowed by the assessing authority at the time of original assessment proceedings under section 143(3) and, therefore, after the expiry of 4 years the notice under section 147/148 for the assessment year was not valid