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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1788 OF 2002

Caprihans India Ltd. ..Petitioner
Versus
Jitendra Yadav & Anr. ..Respondents

....
Mr. Atul Jasani for the petitioner.
Mr. Ashok Kotangle for the respondents.
....

CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.

DATE : 4TH AUGUST, 2016

P.C.:

This petition under Article 226 of the Constitution of India challenges the notice dated 20th May, 2002 issued by the Assessing Officer under Section 148 of the Income Tax Act, 1961 (the Act). By the impugned notice, the Assessing Officer seeks to reopen the assessment for A.Y. 1998-99.

2. This petition was admitted on 28th August, 2002. At that time this Court also stayed the operation of the impugned notice dated 20th May, 2002 pending the disposal of the petition.

3. We have heard the learned counsel for the parties. It is an undisputed position between the parties as is evident from the record that regular assessment under Section 143(3) was completed on 15th February, 2001 and that the impugned notice for reopening is issued beyond a period of four years from the end the assessment year 1998-99. Therefore the proviso to Section 147 of the Act, would apply. Consequently, the condition precedent to exercise jurisdiction in such a case is failure to disclose truly and fully all material facts necessary for assessment.

4. The reasons in support of the impugned notice reads as under:-

> *"REASONS FOR REOPENING THE ASSESSMENT U/S.147*
>
> *On going through the assessment records for the above mentioned case, the following points are observed :-*
>
> *1. The assessee company filed the return of income for A.Y. 1998-99 on 30.11.98 declaring a total business loss of Rs.12,23,90,006/-. The return of income was processed u/s. 143(1) on 27.12.2000 wherein the return of income was accepted. Simultaneously the return was picked for scrutiny by issue of notice u/s. 143(2) on 23.8.99 which was served on 27.8.99. The assessment u/s. 143(3) was completed on 15.2.2001.*
>
> *2. On going through the assessment records for A.Y. 1998-99, it is seen that an amount of Rs.577.55 lakhs has been shown as*

capital work in progress. It is also seen that the assessee Company has total borrowings as under :-

a)	*secured loans*	*Rs.2,002.58 lakhs*
b)	*unsecured loans*	*Rs.84.60 lakhs*
c)	*deferred liabilities*	*Rs.194.46 lakhs*
	Total borrowings	*Rs.2281.64 lakhs*

It is also seen that the assessee Company has incurred an interest payment amounting to Rs.483.08 lakhs on the account of borrowed funds mentioned above. Proportionate interest expenditure relating to the capital work in progress should have been disallowed and the same should have been capitalised to the cost of asset. Assuming the reasonable rate of interest at 18%, the interest burden that should have been disallowed works out to Rs.1,03,95,900/-. I, therefore have reason to believe that income amounting to Rs.1,03,95,900/- has escaped assessment.

3. I, therefore, have reasons to believe that this is a fit case to be reopened u/s. 147. Therefore, notice u/s. 148 is issued."

It is self-evident that the impugned notice has been issued beyond a period of four years from the end of the relevant assessment year. The regular assessment in this case was completed under Section 143(3) of the Act on 15th February, 2001. In the above view, the first proviso to Section 147 of the Act is attracted. Consequently, the Assessing Officer cannot reopen an assessment beyond the period of four years from the end of the assessment year in the absence of any failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment.

6. In this case, the reasons as set out herein above do not allege or even remotely indicate any failure on the part of the petitioner to truly and fully disclose all material facts necessary for assessment. In fact, the reasons itself proceed on the basis of the assessment records. Further the figures set out in the reasons which formed the basis for denying the proportionate interest paid on borrowed funds for capital work in progress were figures which were filed along with return of income as a part of the petitioner's balance sheet and profit and loss account.

7. In the above view, as the impugned notice fails to satisfy the requirement of proviso to Section 147 of the Act, the impugned notice is without jurisdiction and cannot be sustained.

8. It may be pointed out that on merits the issue on which the Assessing Officer seeks to reopen the assessment to disallow on interest paid on borrowed funds to the extent it were made on capital account is

no longer res-integra. This issue stands concluded by the decision of the Apex Court in ***Deputy Commissioner of Income Tax v/s. Core Health Care Ltd. 298 ITR 194*** (we are concerned in this case with the period prior to the amendment to Section 36(1)(iii) of the Act which came into force with effect from 1.4.2004). Thus on merits also there would be no reason to conclude that income chargeable to tax has escaped assessment.

9. In the above view, the Rule is made absolute. No order as to costs.

(A. K. MENON, J.) **(M. S. SANKLECHA, J.)**

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