

IN THE HIGH COURT OF BOMBAY AT GOA***WRIT PETITION NO.929 OF 2017***

Cedric De Souza Faria,
r/o. House No.1, Alvaro Tolsanzor
Aquem, Alto Margao, Goa.

..... Petitioner.

Versus

1. Deputy Commissioner of Income Tax,
having his Office at Ward No.4,
2nd Floor, Blessings Pioneer
Commercial Complex,
Margao, Goa.

2. Commissioner of Income Tax,
Having his Office at Aaykar Bhavan,
Patto, Panaji, Goa.

3. Union of India, through
the Ministry of Finance, New Delhi,

4. Deputy Commissioner of Income Tax
(Central Circle), Pundalik Niwas,
Rua De Ourem, Panaji, Goa.

5. Commissioner of Income Tax,
Karnataka (Central),
Having his Office at Central
Revenue Building, Queens Road,
Bangalore 560 001.

..... Respondents.

Mr. Nitin Sardesai, Senior Advocate with Ms. Gautami Kamat,
Advocate for the Petitioner.

Ms. Amira Razaq, Junior Central Government Standing Counsel for Respondents No.1, 2 & 3.

***Coram : N.M. Jamdar &
Nutan D. Sardesai, JJ.***

Date : 21 November 2017.

ORAL JUDGMENT: (Per N.M. Jamdar, J.)

Rule, returnable forthwith. Learned Standing Counsel waives service for the Respondents. Taken up for final disposal.

2. This Petition is filed by the Assessee challenging the order dated 16 August 2017 passed by the Income Tax Officer, Ward-4, Margao, Goa reopening the assessment under Section 147 of the Income Tax Act, 1961,.

3. The Petitioner is an individual. The Petitioner had filed Income Tax Returns for the Assessment Year 2010-11 on 30 March 2011. The Petitioner declared his income as ₹ 1.70 Crore as on 30 March 2017. He had shown Capital Receipt of ₹ 1.30 Crore. Respondent No.1-Deputy Commissioner of Income Tax issued a Notice under Section 148 of the Act, seeking to reopen the assessment for the Assessment Year 2010-11. On 7 April 2017, the Petitioner replied to the Notice and sought reasons for reopening the

assessment. The reasons were supplied to the Petitioner by Respondent No.1 on 24 July 2017. The Petitioner submitted his objections on 7 August 2017 to the Respondent No.1. The Respondent No.1 passed an order on 16 August 2017, disposing of the objections raised by the Petitioner. The Petitioner has approached this Court seeking to quash the Notice dated 30 March 2017, issued by the Respondent under Section 148 of the Act.

4. By an order dated 7 November 2017, the Petition was directed to be disposed of finally at the admission stage and an ad interim relief was granted.

5. We have heard Mr. Nitin Sardesai, learned Senior Advocate for the Petitioner and Ms. Amira Razaq, learned Standing Counsel for the Respondents No.1 to 3.

6. Section 147 of the Income Tax Act deals with the concept of Income Escaping Assessment. As per Section 147, if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment which comes to his notice subsequently in the course of the proceeding, he can take necessary steps in respect of the income escaping assessment. Proviso to Section 147 lays down 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. As per the proviso, if the assessment is sought to be reopened after the period of four years, then one of the ingredients to be fulfilled is that the Assessee should have failed to disclose fully and truly all material facts necessary for the assessment of that particular year for which the assessment is sought to be reopened.

7. Since the assessment in question is of the year 2010-11 and the notice has been issued by the Respondent No.1 on 30 March 2017, it is beyond period of four years. Thus the proviso to Section 147 comes into play. Though the time limit for notice for an amount of one lakh rupees and more for that year as specified in Section 149(1(b) is indicated as six years, the rider provided in the proviso to Section 147, is applicable.

8. On the aspect of reopening of assessment, through

various judicial pronouncements, certain basic parameters stand firmly established. Section 147 of the Act empowers the Assessing Officer, if he has a reason to believe that any income chargeable to tax has escaped assessment, to reassess the income. Section 147 however contains a proviso that no action under Section 147 will be taken after a period of expiry of four years of the end of relevant assessment year, unless the assessee had failed to disclose fully and truly all material facts necessary for his assessment for that assessment year. The conditions specified in Section 147 are jurisdictional requirements and unless they are fulfilled no proceeding under these sections can be taken. It is open for the assessee to challenge the initiation of the reassessment proceedings, if the assessee is able to show that the jurisdictional requirements are not met. The Assessing Officer must disclose reasons why reassessment proceedings are being taken out. Further, the Assessing Officer is not permitted to improve upon the reasons so furnished to the assessee. Thus, the validity of the initiation of the assessment proceedings will be determined only by the reasons furnished by the Assessing Officer to the assessee. If the assessment proceedings are to be initiated after a period of four years on the ground that the assessee failed to make full and true disclosure of all necessary facts, then, the Assessing Officer must state so in the reasons and the action must be founded on such reason.

9. In the present case, the reasons given by the Respondent-Officer are as under :

“ The assessee Shri Cedric De Souza Faria had filed his return of income for AY 2010-11 declaring total income of Rs.3,70,980.

During the assessment proceedings of M/s. Kala Mines and Minerals for AY 2010-11, it is seen by the AO that the above firm has advanced Rs.1.30 Cr. to Shri Cedric De Souza Faria for the purpose of purchase of land at Quepem vide agreement dated 27/07/2009. Subsequently the above party could not meet the condition implicit in the MOU within the time frame and the said amount is claimed to be forfeited by the assessee firm and claimed as bad debts accordingly. The AO, while passing order u/s 143(3) disallowed the bad debts claim of the assessee firm and Rs.1.30 Cr. was added to the returned income. The assessee firm got relief from the CIT(A), vide order in ITA No.104/MRG/2013-14 dated 22/11/2013 on the issue of bad debts. Therefore, the amount of Rs.1.30 Cr. received by Shri Cedric De Souza Faria, has escaped assessment without taxation.

Therefore, I have reason to believe that income chargeable to tax has escaped assessment within the meaning of section 147 of the Income Tax Act, 1961 due to failure on the part of the assessee to disclose fully and truthfully all material facts necessary for his assessment for the relevant Assessment Year, AY 2010-11.”

10. When the reply was filed by the Petitioner, the Petitioner had categorically stated that there was no failure on the part of the Petitioner to disclose fully and truly all material facts. It was stated that in respect of proceedings of M/s. Kala Mines certain orders came to be passed by CIT (A) on the issue of bad debts and that does not

mean that there was failure on the part of the Petitioner to disclose fully and truly all material facts which were necessary at the time of assessment.

11. Ms Razaq, the learned Standing Counsel for the Respondent Department sought to contend that it is only when the proceedings in respect of M/s. Kala Mines was decided in appeal and the issue of bad debts was resolved, the Respondent came to know about the income that has escaped assessment and the Petitioner ought to have placed these orders on record. We are not inclined to agree with these submissions. What the proviso to Section 147 postulates is material which was necessary for assessment, which the Assessee failed to fully and truly disclose. There is no clear statement in the reasons as to which material the Petitioner failed to disclose. On the Department's own showing in view of subsequent events that is the appeal of M/s. Kala Mines being allowed, that the reopening of the assessment was necessary. Even in the order, there is no reference to the argument of the Petitioner that he had not failed to disclose fully and truly all material facts. It is not enough that in the reasons supplied there is one line to the effect that 'due to failure on the part of the assessee to disclose fully and truthfully all material facts necessary for his assessment for the relevant Assessment Year, AY 2010-11'. This is just copying and incorporating the language of the

section to assume jurisdiction. Such mere lip service is not enough. When the Respondent No.1 dealt with this explanation, reference to this jurisdictional requirement is found only in paragraph 5, while narrating the facts. In the discussions, there is no reference at all to this aspect.

12. Even though the Petitioner can always pursue the remedy under the Income Tax Act against the assessment, as per law laid down by the Apex Court and this Court, the Petitioner is entitled to approach this Court under Article 226 of the Constitution of India, if the action of the Income Tax authorities in reopening the assessment is beyond their jurisdiction. The Courts have equated the condition under Sections 147 and 148 of the Act to a jurisdictional requirement. The jurisdictional requirement in the present case, namely, the failure of the assessee to fully and truly disclose all material facts, is not established. Furthermore, there are no particulars in the reasons supplied to the Petitioner which alone could be the foundation of the order passed under Section 148 of the Act.

13. In view of this position, the Petitioner is entitled to succeed. Accordingly, the Rule is made absolute in terms of prayer clause (a). No order as to costs.

Nutan D. Sardesai, J.

N.M. Jamdar, J.