IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 1350 OF 2014

Commissioner of Income Tax-2 .. Appellant
v/s.
Central Bank of India .. Respondent

Mr. Suresh Kumar for the appellant
Mr. Madhur Agarwal i/b Mr. Tejas Shah for the respondent

CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.
DATED : 5th JANUARY, 2017

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 12th February, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 1997-98.

2. The Revenue urges the following question of law for our consideration :-

Whether on the facts and circumstances of the case, the Tribunal was correct in law in holding that reopening of the case to be bad in view without appreciating the fact that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment and the income of assessee has escaped assessment?

3. The impugned order records the fact that the respondent assessee had originally filed its Return of Income on 28th November, 1997. Thereafter, on 30th March, 1999 the respondent assessee filed a revised Return of Income. On 25th February, 2000, the Assessing Officer passed an assessment order under Section 143(3) of the Act for the subject assessment year determining the total income at Nil and book profit at Rs. 39.10 crores under Section 115JA of the Act.

4. On 24th September, 2003, the Assessing Officer issued a notice under Section 148 of the Act seeking to reopen the assessment for the subject assessment year . The reasons in support of the reopening notice as reproduced in the impugned order read as under :-

> *"1. While computing business loss, the same was wrongly taken at Rs.15,374.16 lakhs as against the correct amount of Rs.12,587.79 lakhs as per the revised return.*
>
> *2. Provision for pension liability has been wrongly allowed at Rs.11,00,50,635/-.*
>
> *3. Chapter VIA deduction has been wrongly allowed of Rs.74.51 lakhs. The aforesaid resulted in escapement of income by reasons of the failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment of income."*

5. Thereafter, by an assessment order dated 30th December, 2003 passed under Section 143(3) r/w Section 147 of the Act rejected the assessee's challenge to the reopening and confirmed the issues raised in the reopening notice. On appeal, the Commissioner of Income Tax (Appeals) [CIT(A)] allowed the respondent assessee's appeal by holding that reopening notice dated 24th September, 2003 is without jurisdiction being beyond a period of four years from the end of the relevant assessment year, without anything being on record to indicate any failure on the part of the respondent assessee to fully and truly disclose all material facts. This particularly in the context of the regular assessment having been done under Section 143(3) of the Act.

6. Being aggrieved, the Revenue filed an appeal to the Tribunal. The impugned order finds that the regular assessment was completed under Section 143(3) of the Act. Further, the reasons do not allege or even remotely indicate that there is any failure on the part of the respondent assessee to truly and fully disclose all material facts necessary for the assessment. It further records that that all the facts necessary for assessment were fully and truly disclosed by the respondent assessee in its revised return of income filed on 30th March, 1999 in respect of all the three issues. Thus, the appeal of the Revenue

was dismissed by the impugned order of the Tribunal.

7. We find that both the CIT(A) as well as the Tribunal have on facts held that all facts necessary for assessment were truly and fully disclosed by the respondent assessee for the subject assessment year during the assessment proceedings. In fact, even the basis of the present proceedings i.e. the reasons recorded in support of the notice does not support, even remotely, any submission to allege failure on the part of the respondent assessee to truly and fully disclose all necessary facts for assessment. Therefore, as correctly held by the CIT(A) and the Tribunal, the reopening notice dated 24th September, 2003 would be hit by the proviso to Section 147 of the Act.

8. In view of the above, the question as raised does not give rise to any substantial question of law. Thus, not entertained.

9. The appeal is dismissed. No order as to costs.

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