IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.33 OF 2018

The Goa State Coop.Bank Ltd.
through its Managing Director,
Shri A.M.Chodankar,
Having Head office at Sahakar Sakul,
Patto Plaza, EDC Complex, Panaji, Goa. … Petitioner

Versus

1. The Asst. Commissioner of Income Tax,
   Circle 1(1), having office at Ayakar Bhavan,
   Patto Plaza, EDC Complex,
   Panaji.

2. The Principal Commissioner of Income Tax
   Having office at Aayakar Bhavan,
   EDC Complex, Panaji Goa. …. Respondents

Mr. S.R.Rivankar, Advocate for the Petitioner.

Ms. Susan Linhares, Standing Counsel for the Respondents.

Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.

Date : 25 June 2018.

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

Rule. Rule made returnable forthwith. The Respondents waive service. Taken up for disposal.

2. Heard Mr. S.R.Rivankar, learned counsel for the Petitioner and Ms. Susan Linhares, learned Standing Counsel for the Respondents.

3. The Petitioner has filed this petition challenging a notice dated 8 November 2016 and the order dated 15 December 2017 passed by the Respondent no.1 – The Assistant Commissioner of Income Tax. The Petitioner is a Cooperative Bank. For the assessment year 2010-11, the Petitioner filed its e-return on 25 September 2011 declaring its total income of Rs.92,73,140/-. The return was processed under Section 143 (1) of Income Tax Act. On 5 May 2011 the Petitioner case was selected for scrutiny. A Notice under Section 143 (2) dated 25 August 2011 was issued. The Chartered Accountant of the Petitioner supplied the necessary information and clarified the position of accounts etc. The requisite documents were produced. The Assessing Officer took into consideration the debits of a sum of Rs. 6,12,701/- pertaining to Agricultural credit slab fund, a sum of Rs. 5,42,83,808 pertaining to Bad and Doubtful Reserve and Rs.20,00,000/- on account of Loss on Assets and Non-Banking. The Assessing Officer disallowed certain claims such as claim of Provision on Investment Depreciation Reserve, however, allowed the claim

regarding the Agriculture Credit Stab fund, Bad and doubtful reserve and loss on assets, by Assessment order dated 28 January 2013.

4. A notice came to be issued to the Petitioner by the Assistant Commissioner of Income Tax on 8 November 2016 in respect of the Assessment Year 2010-11. The Petitioner sought for the reasons from the Assistant Commissioner which were supplied by the Assistant Commissioner on 2 November 2017. The Petitioner replied to the reasons by addressing communication on 28 November 2017. The Petitioner pointed out that the reassessment was sought to be done after a period of four years and it can proceed, provided there is a failure on the part of the assessee to disclose fully and truly material facts. The Petitioner pointed out that all facts and records were placed before the Assessing Officer and on mere change of opinion the assessment cannot be reopened. The Assistant Commissioner rejected the objections by order dated 28 November 2017. By order dated 13 December 2017 proceedings were remanded by this Court and thereafter the Assistant Commissioner passed the impugned order on 15 December 2017.

5. Heard Mr. S.R.Rivankar, learned counsel for the Petitioner and Ms.Susan Linhares, learned Standing Counsel for the Respondents

6. In the present case the assessment is sought to be reopened after a period of four years. It is settled law that under Sections 147 and 148 of the Income Tax Act, if the assessment is sought to be reopened after the period of four years from the end of relevant assessment year, it showed that there has been a failure on the part of the assessee to disclose the material facts. This requirement has been held in catena of the judicial pronouncement, as a jurisdictional requirement for the Assessing Officer to proceed for reassessment. If the jurisdictional requirement is not present, it is open to the assessee to challenge the action of the reopening by invoking Article 226 of the Constitution of India.

7. Foundation of the jurisdiction under Sections 147 and 148 of the Income Tax Act are the reasons supplied. Reasons read thus:

> "2. *Now it is noticed from the P&L account of the assessee that it had debited an amount of Rs.6,12,701/-, Rs.5,42,83,808/- and 20,00,000/- on account of `Agricultural credit stab fund, `Bad & doubtful reserve' and `loss on assets/non-banking' respectively. Since these are not allowable deductions, the same should have been added back. Failure to do so has resulted into escapement of income to the extent of Rs.5,68,96,509/-.*
>
> 3. *The assessee has also debited Rs.2,37,08,430/- on account of depreciation*

in the P&L account. However, this deprecation is as per books of accounts. The allowable depreciation as per the income tax act has not been worked out as recorded in 3CD report. Hence, the absence of any information regarding the written down value of the assets, the allowable deprecation cannot be workout, resulting into excess claim of depreciation made by the assessee, which is to be restricted by the I.T.Act.

4. In view of the above facts, it is clear that there is failure on the part of the assessee to disclose fully and truly all material facts. I have reason to believe that income amounting to Rs. 5,68,96,509/- chargeable to tax has escaped assessment, within meaning of provision of section 147 of the Income Tax Act, 1961 warranting reopening of assessment of A.Y.2010-11. Accordingly, assessment for A.Y. 2010-11 is reopened and notice u/s 148 of Income Tax Act 1961 is issued after obtaining approval of higher authority-Pr. Commissioner of Income Tax, Panaji".

8. The Petitioner had produced all the necessary documents before the Assessing Officer. The fresh exercise is only a change of opinion. Just by stating `absence of information', the Respondent cannot get over the jurisdiction bar. The Petitioner in their reply had pointed out that all the necessary documents were produced, but that explanation was not considered. Such course of action is not

permitted, in view of the language of Sections 147 and 148 of the Income Tax Act. The Respondent Commissioner thus has no jurisdiction to proceed. While passing the impugned order, the Assistant Commissioner of Income Tax has made some observations for which we have already commented upon the other decisions and copy of the decision is sent to the Principal Chief Commissioner of Income Tax.

9. In the circumstances, the action of the Respondents are completely without jurisdiction. The petitioner is entitled to succeed. Accordingly, Rule is made absolute in terms of Prayer clause (a), no order as to costs.

Prithviraj K. Chavan, J. ***N.M. Jamdar, J.***