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

INCOME TAX APPEAL NO. 879 OF 2016

The Pr. Commissioner of Income Tax,
City-13, Mumbai .. Appellant

v/s.

M/s. Popley Diamond & Gold Plaza Pvt. Ltd. .. Respondent

Mr. Ashok Kotangle a/w Ms. Padma Divakar for the appellant
Mr. Niraj Sheth I/b Atul Jasani for the respondent

CORAM : AKIL KURESHI &
M.S. SANKLECHA, J.J.

DATED : 11th DECEMBER, 2018.

P.C.

1. The Revenue is in appeal against the judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short), dated 12.8.2015.

2. For the assessment year 2005-06, the Revenue has pressed following question for our consideration :-

> *"Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in cancelling the assessment u/s 143(3) r.w.s. 147 of the I.T. Act for the year under consideration, holding that notice u/s 148 was bad in law without appreciating the fact that in this case no scrutiny*

assessment was done u/s 143(3) and that the reopening of the case by way of issuance of notice u/s 148 of the Act was very much within the purview of law.”

3. The issue pertains to the validity of re-assessment proceedings. We notice that under similar circumstances the Revenue's appeal concerning the same assessee for earlier assessment year being Income Tax Appeal No. 666 of 2016 came to be dismissed by this Court by an order dated 04.12.2018. Following observations were made :-

“3. The issue pertains to the Assessment Year 2002-2003 and concerns the validity of notice of re-assessment issued by the Assessing Officer against the Respondent-Assessee. The Tribunal held that the re-opening of assessment was invalid. In the impugned judgment, the Tribunal observed inter-alia that the assessee had entered into a Lease Agreement with its sister concern for letting out premises for business purpose alongwith furnitures, fixtures and equipments for the compensation of Rs.3,00,000/- per annum. The receipt was shown as business income since the Assessment Year 2000-2001. In the said year, the assessment had taken place and the assessee's claim was accepted by the Department. Once again in the Assessment Year 2001-2002 the assessee had offered the receipt as business income, which was also accepted under scrutiny assessment. Notice for re-opening this assessment was issued which was declared invalid by the Tribunal on the ground that there was no failure on the part of assessee to disclose fully and truly all material facts and that no new material or information had come into possession of the Assessing Officer after completion of the assessment.

4. Learned counsel for the Revenue may be correct in pointing out that in the present case the Tribunal ought not to have invalidated the re-assessment on the ground of no failure *of disclosure or that no new material was available with the Assessing Officer since the assessment was framed under Section 143(1) of the Income Tax Act, 1961 ("the Tribunal" for short).*

5. However, as noted the particular claim which the Assessing Officer wants to revisit through the re-assessment proceedings, is not a new one. It was started by the assessee for the first time in the Assessment Year 2000-2001 and was accepted by the Department. Without there being any other change, such issue could not have been re-issued in the present assessment year, particularly when the claim was also accepted after scrutiny in the Assessment Year 2001-2002.

6. In the circumstances, it can be seen that the reason for re-opening the assessment lacks validity or in other words, the Assessing Officer did not have reason to believe that income chargeable tax had escaped assessment."

4. Learned Counsel for the assessee however, fairly pointed out that in the present case, the reasons recorded by the Assessing Officer contending an additional element namely the assessee's claim of depreciation for which, according to the Assessing Officer, no supporting documents were enclosed with the return, which required verification. The Courts have consistently held that re-assessment cannot be resorted for a fishing inquiry.

5. In the result, the tax appeal is dismissed.

(M.S. SANKLECHA, J.) **(AKIL KURESHI, J.)**