Sequeira

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8046 OF 2019

M/s. S.S.Landmarks .. Petitioner
Vs
The Income Tax Officer, Ward-2(2),
Pune and another .. Respondents

Mr.Mihir Naniwadekar a/w Mr.Rohan Deshpande i/b Ms.Alisha Pinto, for the Petitioner.

Mr.Sham V. Walve a/w Mr.Pritish Chatterjee, for Respondents.

CORAM : M.S.SANKLECHA &
NITIN JAMDAR, JJ.
Date : 17 October 2019.

P.C. :

At the request of the parties the Petition is being taken up for final disposal at admission stage.

2. This Petition under Article 226 of the Constitution of India seeks to challenge a notice dated 29 March 2019, issued under Section 148 of the Income Tax Act 1961 (Act). The impugned notice dated 29 March 2019 seeks to reopen assessment for the Assessment Year 2013-14.

3. The Petitioner is engaged in the business of building and developing housing projects. For the subject Assessment Year the Petitioner filed its return of income claiming benefit of section 80IB(10) of the Income Tax Act, 1961, (the Act) on the ground that the housing project called "Shagun Phase 1" was completed within the stipulated period on or before 31 March 2012 as the project was sanctioned on 20 March 2007.

4. During the course of the assessment proceedings the Assessing Officer made detailed inquiries by notice under section 143(2) of the Act with regard to the Petitioner's claim for deduction under section 80IB(10) of the Act in respect of the said project. In its reply dated 21 January 2016 the Petitioner pointed out that the project had been completed before 30 March 2012 and annexed documents in support. The application for completion certificate was made to the local Authority on 20 February 2012 and 27 March 2012 as the project had already been completed. However the completion certificate was received in September 2012 and the same would be effective from the date of application for completion certificate. The Assessing Officer in his Assessment Order dated 18 March 2016 accepted the stand of the Respondent by recording in its order that the Petitioner had submitted documentary evidence in support of its claim for deduction. The same was verified and found to satisfy the conditions under section 80IB(10) of the Act. It also records the fact that for the Assessment Year 2012-13 this benefit has already been extended to

the Petitioner.

5. On 29 March 2019, the impugned notice was issued. The reasons in support of the show cause notice read as under :

> ***'Reasons for forming belief to escapement of income:***
>
> *An information has been received from Asst. CIT Cir-2, Pune, Wherein as per ITR filed by assessee it is seen that the assessee has claimed deduction u/s 80IB(10) for an amount of Rs.6,08,30,545/- for A.Y. 2013-14. The assessee has claimed deduction u/s.80IB(10) in respect of its projects "Shagun Phase I". As per records number of buildings in shagun phase-I are A,B,C,D,E,F, Row houses and Bungalows G1 and G2. The first sanction for the project was received on 20.03.2007 i.e. F.Y.2006-07. After that, the assessee had received completion certificate for building A,B,E,F, Row House 1,2,3,4,17 and 18 on 25.03.2011 whereas completion certificate for building C & D, Row House 5 to 11, 11A, 12, 13, 14, 15 & 16 and Bungalows G1 and G2 was received on 25.09.2012. As per section 80IB(10), the project as a whole should be completed within 5 years after the end of F.Y. in which the first sanction was received. As the project got sanction on 20.03.2007, the project should have been completed by 31st March, 2012.*
>
> *As per the provisions of Section 147 of the I.T.Act, 1961, the undersigned has reason to believe that the income chargeable to tax amounting to Rs.6,08,30,545/- has escaped assessment as assessee has wrongly claimed deduction u/s 80IB(10) in respect of Profit earned in these buildings and filed ITR for NIL income. Thus there is failure on the*

> *part of the assessee to disclose truly and fully all material facts. The case is required to be re-opened u/s 147 to bring the above mentioned quantum of income to taxation.*
>
> *As the period of 4 years have lapsed from the end of the relevant Assessment Year and escaped income is more than 1 lakh, the necessary permission of the Pr.CIT-2, Pune for issue of notice u/s 148 may be accorded'.*

6. The Petitioner objected to the reasons on the ground that there was no failure on its part to disclose truly and fully all material necessary for assessment. Thus, the impugned notice is hit by proviso to section 147 of the Act. Besides the Assessing Officer while passing the regular assessment order under section 143(3) of the Act had considered this very claim and accepted the same. Thus, this has led to a change of opinion. However the objection filed by the Petitioner to the impugned notice was rejected by order dated 6 June 2019. This has led to the filing of the present Petition.

7. The Petitioner had filed another petition bearing Writ Petition No.8046 of 2019 relating to re-opening of Assessment Year 2012-13. The reasons indicated herein-above are identical (except the figures) to the reasons which were recorded by the Assessing Officer at the time of issuing notice to reopen the assessment for Assessment Year 2012-13 which was a subject matter of Income Tax Appeal No.8045 of 2019. We have today by a separate order allowed

the Income Tax Appeal No.8045 of 2019 challenging a reopening notice dated 29 March 2019 for Assessment Year 2012-13. It is an agreed position between the parties that the reasons indicated therein (Income Tax Appeal No.8045 of 2019) to allow the Petition would equally apply to the facts of the present case. Therefore for the reasons indicated in the order passed today in Writ Petition No.8045 of 2019, the impugned notice dated 29 March 2019 in this Petition is also set aside.

8. The Petition is allowed.

(NITIN JAMDAR, J.) ***(M.S.SANKLECHA, J.)***