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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10510 OF 2019

Bajaj Allianz Life Insurance Company Ltd. … Petitioner

V/s.

Deputy Commissioner of Income-tax
Circle 1(1) and Ors. ... Respondents.

Mr. Percy Pardiwala, Senior Advocate a/w. Ms. Vasanti B. Patel for the Petitioner

Mr. Sham Walve a/w. Mr. Pritish Chetterjee for Respondents 1 & 2.

CORAM : M.S. SANKLECHA &
NITIN JAMDAR, JJ.

DATE : 19 NOVEMBER 2019.

***P.C.* :-**

This Petition under Article 226 of the Constitution of India challenges a notice dated 29 March 2019 issued by the Assessing Officer, Respondent No.1 under Section 148 of the Income Tax Act, 1961 (Act). The impugned notice dated 29 March 2019 seeks to reopen the assessment for the Assessment Year 2012-13.

2. The Petitioner is a company engaged in business of Life Insurance. The Petitioner filed return of income on 21 September 2012 for Assessment Year 2012-13 declaring total income of Rs.12,25,29,85,630/- in accordance with Section 44 of the Income Tax Act, 1961. On 8 August 2013 the Assessing Officer issued notice under Section 143(2) of the Act to the Petitioner to file documents and evidence. The Petitioner submitted documents as called for. Further notice was issued under Section 142(1) of the Act by the Assessing Officer on 13 November 2015. On 7 December 2015 Transfer Pricing Officer passed an order accepting the Arm's Length price reported by the Petitioner. Therefore, on 8 March 2016 an assessment order was passed under Section 143(3) r/w. Section 92CA(4) of the Act. On 29 March 2019 the Assessing Officer issued a notice under Section 148 of the Act. The Petitioner filed its return of income pursuant to the notice and sought reasons for the notice under Section 148 of the Act seeking to reopen the assessment. The reasons were supplied to the Petitioner. The Petitioner submitted its objections for initiation of reassessment which were rejected by order dated 9 June 2019 by the Assessing Officer. Hence this Petition.

3. We have heard Mr. Pardiwala, Senior Advocate appearing for the Petitioner and Mr. Walve, learned Counsel appearing for the Respondents.

4. As a narration of above facts would show the reassessment is sought to be opened after period of four years. The period of four years is of significance as under the scheme of Sections 147 and 148 of the Act, if the assessment is sought to be reopened after period of four years, there is an additional requirement i.e. there must be a failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment. This requirement is a jurisdictional requirement for the Assessing Officer to proceed to reopen the assessment.

5. The reasons which were supplied to the Petitioner read as under :-

> *"1. The assessee is a domestic company in which public is not substantially interested and engaged in the business of of life insurance business. The assessee has filed its original return of income for A.Y. 2012-13 on 21/09/2012 declaring total income of Rs.1225,29,85,630/-. The return was processed under section 143(1) of the Income-tax Act, 1961, accepting the returned income. Subsequently, the case was selected for scrutiny and assessment order u/s. 143(3) of the Act was passed on 08/03/2016.*
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> *02. As per provisions contained in Section 44 of the Income Tax Act, the income of the life insurance business is computed in accordance with Rule 2 of the First Schedule. Prior to the enactment of the Insurance (Amendment) Act, 2002, a life insurance company was required to maintain a consolidated*

revenue account including surplus from both shareholder's and policyholders' accounts.

The Insurance Act, 1938 was amended vide the Insurance (Amendment) Act, 2000 to give full effect to the IRDA Act, 1999. Section 11(1B) of the Insurance Act, 1938, inserted vide the said amendment provides that every insurer shall keep separate accounts relating to funds of shareholders and policyholders as opposed to the earlier requirement of maintaining a consolidated revenue account. The formats for presentation of insurance accounts have been prescribed by the IRDA (Preparation of Financial Statements and Auditors' Report of Insurance Companies) Regulations, 2002. Part V deals with the provisions of financial statements. Every insurer is required to prepare-
(i) a revenue account/technical account which is also described as a policyholder's account; and (ii) a profit and loss account, which is also described as a shareholder's account in form A-PL, apart from a balance-sheet. The statutory forms are prescribed by the Regulations. Form A-RA is prescribed for the preparation of the revenue account or the policyholder's account. Form A-RA reflects the surplus or, as the case may be, the deficit generated in the revenue account for the year ending 31st March. In the case of revenue account, provision for tax has to be made before arriving surplus or deficit in revenue account. However, in the case of shareholders account, there is no such column for provision for tax that has to be made before arriving profit or surplus. In case of tax liability for shareholders account, the same has to be computed after profit, which is quite opposite to the case of policyholder's account, where provision for tax comes before arriving surplus.

03. In the instant case, it is seen from the financial statement submitted by the assessee that the Revenue Account (Policyholders Account -Technical Account)(PHA) was prepared in Form Form A-RA and Profit and Loss Account (Shareholders account – Non Technical account) (SHA) in Form Form A-PL. The assessee has treated the entire profit generated from the business is profit from business of life insurance only. Further, the income of life insurance is accounted in Form A-RA i.e. Technical account or Revenue Account of policyholders and the actuarial report in the case of the assessee is prepared on the basis of assets in Policyholders Account only. Whereas income earned from the activities other than life insurance business is accounted for in Form A-PL i.e. Non Technical account or Profit and Loss Account of Shareholders. It is the income of the assessee from investment of funds available to it in the shareholders account. It is also seen from the Balance sheet that the funds in shareholders account are maintained separately and distinctly from the funds in Policyholders account. In view of this, the income of life insurance business alone is taxable on the basis of actuarial surplus under the provisions of section 44. Since the income of the assessee company in shareholders account is different and distinct from the income of the Policyholders account, the same has to be taxed separately under normal provisions of the Act, Since the assessee was not permitted to do any business activity other than life insurance, the income in shareholders account is required to be taxed as "Income from Other Sources".

04. It is seen from the records that assessee had offered an amount of Rs.244,92,48,380/- after deducting provision for taxation of Rs.38,37,57,000/- and tax was paid under special provisions of the Act of

Rs.31,78,63,454/-. However, it was seen from Shareholders Account that the assessee had Profit before tax of Rs.1349,57,76,000/- which included transfer or surplus from Policy holders Account of Rs.1069,12,60,000/- and contribution to Policyholders account from Shareholders Account at Rs.2,84,89,000/-. Thus, the net income of the assessee in Shareholders Account was Rs.283,30,05,000/- and required to be taxed as "Income from Other Sources" under normal provisions of the Act.

04. On verification of the record, it is seen that the case was selected for scrutiny for A.Y. 2012-13 and the order u/s.143(3) r.w.s.92CA(4) of the IT Act was passed on 08/03/2016 assessing total income of Rs.1316,81,70,193/- as against the income returned at Rs.1225,29,85,630/-. Since the income of the assessee company in shareholders account is different and distinct from the income of the Policyholders account, the same has to be taxed separately under normal provisions of the Act. This resulted in under assessment of income amounting to Rs.283,30,05,000/- with consequent short levy of tax of Rs.60,13,05,018/-.

05. In view of the above facts of the case, the undersigned is satisfied that income of Rs.283,30,05,000/- chargeable to tax has escaped assessment for the assessment year under consideration within the meaning of provisions of section 147 of the Act. In this case more than four years have lapsed from the end of the assessment year under consideration. Hence, necessary sanction to issue notice u/s 148 has been obtained separately from the Pr. Commissioner of Income Tax as per the provisions of section 151 of the Act."

In the reasons there is not even an averment that there is a failure on the part of the Petitioner – assessee to truly and fully disclose all material facts necessary for the assessment. Mentioning this requirement in the reasons is not an empty formality, it shows that the Assessing Officer is aware of the jurisdictional requirement.

6. In the reasons supplied by the Assessing Officer it has been emphasized that the tax which is stated to have escaped assessment was in respect of the Shareholders' account of the Petitioner. In the reasons the Assessing Officer refers to the provisions of Section 44 of the Act and Section 11(1B) of the Insurance Act regarding separate accounts relating to funds of Shareholders and Policyholders. It is then stated that in case of tax liability of Shareholders account, the same has to be computed after profit, which is different in the case of Policyholders account. The Assessing Officer thereafter refers to the financial statement submitted by the Petitioner and holds that the Shareholders' account being distinct and different will have to be taxed separately and therefore there is a short levy of tax of Rs. 60,13,05,018/-.

7. The Petitioner has drawn our attention to the reply to the notice dated 15 February 2015 issued to the Petitioner under Section 142(1) of the Act during the regular assessment proceedings. In this reply the Petitioner has submitted on taxability of

Shareholders' profit and loss account as a part of life insurance. A detailed explanation therefore was given by the Petitioner as to how the Shareholders account also constitutes part of life insurance business. Case has been put up before the Assessing Officer by the Petitioner squarely that the entire income earned whether on Shareholders account or Policy holders account should be recorded as income arising from life insurance business. Upon this submission of the Petitioner and the documents furnished by the Petitioner that an assessment order under Section 143(3) of the Act came to be passed.

8. It is clear from the Reasons that there is no reference to any new tangible material, but the reference is only to the financial statement of the Petitioner itself. Therefore, there is not only no failure to disclose any material facts, there is no mention in the reasons that there has been a failure to disclose. A specific query was raised regarding the implications of Shareholders account, which dealt with by the Assessing Officer in the assessment order and what is sought to be done by the Assessing Officer in the impugned notice and order is a mere change of opinion, which is not permissible. These grounds, which constitute jurisdictional requirements, by series of judicial pronouncements, are held to be grounds for setting aside the initiation of reassessment proceedings.

9. In these circumstances, the impugned notice and impugned order passed by the Assessing Officer being beyond this jurisdiction are required to be quashed and set aside. Accordingly, the impugned notice dated 29 March 2019 and the impugned order dated 8 March 2016 passed by the Respondent No.1 – Assessing Officer are quashed and set aside.

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