

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

WRIT PETITION NO.12914 OF 2018

The Ugar Sugar Works Ltd.,	..	Petitioner.
v/s.		
The Asst. Commissioner of Income Tax		
Cricle-2, Sangli & Others	..	Respondents.

Mr. Riyaz Padvekar with Mr. Tanzil Padvekar i/b. Dave & Padvekar Associates, for the Petitioner.
Mr. Sham Walve, for the Respondents.

**CORAM: AKIL KURESHI &
M.S.SANKLECHA, JJ.**
DATE : 18th JANUARY, 2019.

P.C:-

Petitioner has challenged a notice of re-opening of an Assessment dated 26th March, 2018, is annexure 'A' to the Petition. This challenge, arising in the following back-ground:-

- (a) Petitioner is a company registered under the Companies Act. For the Assessment Year 2011-12, Petitioner had filed return of income, which was taken in scrutiny by the Assessing Officer who passed an order of Assessing under Section 143(3) of the Act on 28th March, 2018;
- (b) To re-open such Assessment, Assessing Officer has issued impugned notice. In order to do so, he recorded following reasons:-

“ On perusal of the case records for the A.Y. 2011-12, it is seen that as per financial statement of the assessee (72nd annual report of F.Y. 2010-11 relevant to A. Y. 2011-12) profit before tax of assessee is Rs.385.45 lakhs and net profit is Rs.401.57 lakhs. However, in assessment order u/s. 143(3) of the I.T. Act dated 28.03.2014 for the A.Y. 2011-12, book profit has been assessed as (-) Rs.41,58,410/-, it is also seen that additions have been done on similar issue in A.Y. 2012-13 in which assessee's appeal has been dismissed by Ld. CIT(A).

I, therefore, have reason to believe that book profit of Rs.385.45 lakhs under the MAT provisions of the section 115JB of assessee in F. Y. 2010-11 has escaped assessment within the meaning of section 147. Based on the above reasons, I consider that this is a fit case for reopening of the assessment u/s. 147. Therefore, approval of the Pr. Commissioner of Income Tax-1, Kolhapur is sought in this case as per the provisions of Section 151(1), for issue of notice u/s. 148.”

- (c) Upon being supplied reasons, Petitioner received objections to the notice for the re-opening under communication dated 18th September, 2018. Such objections were rejected by the Assessing Officer by an order dated 21st September, 2018. Hence, this Petition.

2 Having heard the learned Counsel for the parties for final disposal of the Petition and having perused the documents on record, what emerges is that, the impugned notice has been issued beyond a period of four years from the end of the relevant Assessment Year. The requirement flowing from the first proviso to Section 147 of the Act, that income chargeable to tax has escaped Assessment due to failure of the Assessee to disclose fully and truly all material facts, therefore, would have to be satisfied. In the present case, the reasons recorded by the Assessing Officer would clearly establish that, these requirement is not

satisfied. In the reasons itself, the Assessing Officer has referred to perusal of the case recorded for the Assessment Year in question from which, he could see that certain error in the assessment has crept in. He refers to the similar additions made in the assessment for the Assessment Year 2012-13 which were confirmed by the Commissioner of Income Tax (Appeals).

3 In the absence of the failure of the Assessee to disclose fully and truly all material facts, the impugned notice issued beyond a period of four years of the relevant Assessment Year, cannot be sustained. The Assessing Officer has not referred to any material outside of the Assessment records to form the belief that, income chargeable to tax has escaped assessment. In fact, he proceeds essentially on the basis of the case records. Under the circumstances, impugned notice is set aside.

4 **Petition disposed of.**

(M.S.SANKLECHA,J.)

(AKIL KURESHI,J.)