*JPP*

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

***WRIT PETITION NO. 1805 OF 2019***

Hindustan Aegis LPG Limited … Petitioner

V/s.

Assistant Commissioner of
Income Tax 1(1)(2) and Ors. ... Respondents.

Mr. Percy Pardiwala, Senior Advocate a/w. Madhur Agarwal i/b. Jitendra Singh for the Petitioner.

Mr. Suresh Kumar for the Respondents.

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

***DATE : 19 NOVEMBER 2019.***

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

Heard.

2. ***Rule.***

3. This Petition challenges a notice dated 31 March 2019 seeking to reopen the assessment for Assessment Year 2013-14. The regular assessment proceedings were completed under Section

143(3) of the Income Tax Act, 1961 (Act). The impugned notice is clearly beyond the period of four years from the end of the relevant assessment year. Thus, the jurisdiction to issue such a notice would only arise if there is failure on the part of the Petitioner to truly and fully disclose all material facts necessary for assessment. The reasons recorded in support of the impugned notice make no reference to any fresh tangible evidence but is based on examination of the record by the Assessing Officer. Thus *prima-facie* the impugned notice is hit by the proviso to Sections 147 of the Act. Besides, the reason to believe that income chargeable to tax has escaped assessment is two fold i.e. one the interest income ought to have been taxed as income from other sources and not as business income and second that the expenses debited under the head other expenses were disproportionate. Both these issues were not only disclosed by the Petitioner in its profit and loss account but were examined by the Assessing Officer during the regular assessment proceedings. The same is evidenced according to the Petitioner by letter dated 3 August 2016 submitted during the regular assessment proceedings. However, the same is disputed by the Revenue. It may be pointed out that the Assessing Officer has not disputed by affidavit the affidavit, of the Chartered Accountant who attended the hearing before the then Assessing Officer stating that he had submitted the letter giving these details to the Assessing Officer during the course of the hearing.

4. Thus, *prima-facie*, the impugned notice appears to be without jurisdiction as there was no failure on the part of the Assessee to disclose the truly and fully all facts necessary for assessment and on account of change of opinion.

5. In view of the above, there shall be an interim stay in terms of prayer clause (d).

6. Mr. Suresh Kumer, learned Counsel waives service for the Respondents.

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