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

WRIT PETITION NO.3379 OF 2018

Giriraj Enterprise … Petitioner

V/s.

Assistant Commissioner of Income
Tax, Circle 33(1) and anr. … Respondent

Mr.K. Gopal with Mr.Tanmay Phadke i/by Mr.Satendra Pandey for the Petitioner.
Mr.Arvind Pinto for the Respondents.

CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.
DATE : JANUARY 10, 2019.

P.C.:-

1. With the consent of learned Advocates for the parties, petition is taken up for final disposal. Petitioner has challenged a notice of reopening of assessment issued by the respondent No.1 and Assessing Officer on 26th March, 2018.

2. Petitioner is a partnership firm engaged in the business of construction and development of land. For the assessment year 2011-12, the petitioner had filed return of income declaring

income of Rs.7.16 crores (rounded off). The petitioner filed a revised return on 21st February, 2013 revising to total income to Rs.5.60 crores (rounded off). The return of the petitioner was taken in scrutiny. The Assessing Officer passed order under Section 143(3) of the Income Tax Act, 1961 ("the Act" for short) on 31st January, 2014 accepting the petitioner's returned income. To reopen such completed assessment, the Assessing Officer issued the impugned notice. In order to do so, he had recorded following reasons:-

> “The assessee M/s Giriraj Enterprises having PAN AAAFG5294L, Address:Govardhan Nagar, Boraspada Road, Poisar, Kandivali (West), Mumbai-400067 pertains to the charge of ACIT-33(1), Mumbai. The assessee M/s. Giriraj Enterprises has filed the return of income for A.Y.2011-12 declaring total income of Rs.5,60,99,611/-. The nature of business activity of the assessee is Builder & Developer.
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> An Information has been received from the Deputy Director of Income Tax, (I&CI), Mumbai vide letter No.DDIT (I&CI), Unit-2(1)/SRA/2016-17 dated 05.05.2017 received in this office on 17/05/2017.
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> To analyze and verify taxation of redevelopment Projects, Joint Venture arrangement and transfer of development rights the project was taken up with the prior approval of DGIT(I &CI). After assignment of the case, the notice u/s 133(6) of

the I.T.Act, was issued to assessee. In response thereto the assessee has submitted details. On perusal of details as well as affidavit, it is noticed that the assessee vide affidavit dated 23.08.2016 filed with this office that in SRA Slum Redevelopment projects in the name of Ganesh Krupa CHSL in which LOI SRA/ENG/765/RS/PL/LOI dated 24.06.2003 was issued by SRA, there is no agreement or MOU or JV or SPV agreement entered into at any stage of redevelopment with another developer/entity pertaining to A.Y. 2010-11 to A.Y. 2016-17.

Letter to M/s Giriraj Enterprises was sent by the office of DCIT (I&CI) Unit-1(2), Mumbai for furnishing some details. In response to above mentioned letter assessee M/s Giriraj Enterprises denied any type of their indulgence in any type of SRA.

Office of the DCIT (I & CI) Unit -1(2), Mumbai then transferred the entire correspondence to this office for necessary action.

Record of the assessee was checked and it is found that assessee is a builder. So to verify the intelligence report gathered by the Intelligence and Criminal Investigation, it is necessary to through enquired the details.

In the light of above mentioned facts, I have reason to believe that assessee has escaped assessment within the meaning of section of 147 of the Income Tax Act, 1961 as assessee has taken up a Redevelopment Projects for which purpose assessee has obtained a LOI (Letter of intent from SRA (Slum Rehabilitation Authority).

In view of the above sanction u/s 151(1) of the

> Income Tax Act, 1961, is solicited for issuance of notice u/s 148 of the I.T.Act, from the Pr. CIT-33, Mumbai as period of more than four years have lapsed from the end of the relevant assessment year."

3. Upon being supplied the reasons, the petitioner raised objections to the reopening of assessment on 17th July, 2018. Such objections, however, were rejected by Assessing Officer by order dated 14th August, 2018 upon which the present petition has been filed.

4. Appearing for the petitioner learned counsel submitted that the notice of reopening has been issued beyond the period of four years and there was no failure on the part of the assessee to disclose truly and fully all material facts. The notice has been issued for carrying out fishing inquiries. The reasons proceed on completely erroneous ground. He pointed out that in response to the notice issued by the Assessing Officer under Section 133(6) of the Act, the petitioner had pointed out on affidavit that the petitioner-firm had not undertaken development of Ganesh Krupa Co-operative Housing Society during the period relevant to the

assessment year nor therefore claimed any income arising out of such project despite which the Assessing Officer issued the impugned notice and rejected the objections to such notice in which also such contention was raised.

5. On the other hand, learned counsel for the revenue opposed the petition contending that the Assessing Officer had recorded proper reasons. Information was received from the Investigation Wing pursuant to which he has also raised queries with the assessee. Full facts can be brought on record only during assessment proceedings which the Assessing Officer should be permitted to carry out.

6. For multiple reasons, we do not find that the Assessing Officer is justified in reopening the assessment. Firstly, as noted the notice of reopening of assessment has been issued beyond the period of four years from the end of relevant assessment year. The additional requirement as per the proviso of Section 147 of the Act that escapement of income should be on account of failure on part of the assessee to disclose truly

and fully all material facts, would be applicable. In the present case, from the reasons recorded, we do not find that such requirement was fulfilled. Further, in the reasons itself the Assessing Officer has stated that the record of the assessee was checked and it was found that it is a builder and therefore, to verify the intelligence gathered by Intelligence Wing, it is necessary to carry out thorough and detailed inquiry. Very clearly thus by his own account the Assessing Officer wishes to carry out a fishing inquiry. It is well settled through series of judgments of this Court and other Courts that reopening of assessment can be done only if the Assessing Officer has reason to believe that income chargeable to tax has escaped assessment. Reopening of assessment cannot be permitted for carrying out fishing inquiries.

7. Additionally, we also find that the Assessing Officer is proceeding on completely wrong premise. Perusal of the reasons recorded by him would show that he has some prima facie objections to the assessee having developed Ganesh Krupa Housing Society land which according to information received

by him did not contain any agreement. When the assessee repeatedly pointed out to the Assessing Officer before and even after issuing of notice for reopening that he had neither developed any such project during the year of the consideration nor claimed exempt income arising out of such project, it was duty of the Assessing Officer atleast to prima facie show how such assertion of the assessee was incorrect. He simply cannot claim that full assessment must be permitted even in absence of any prima facie evidence of income chargeable to tax having escaped assessment. For all these reasons, impugned notice is set aside. Petition allowed and disposed of.

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

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