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

WRIT PETITION NO.3336 OF 2018

Samson Maritime Limited … Petitioner

V/s.

Deputy Commissioner of Income-tax and ors. … Respondents

Mr.V.Sridharan, Senior counsel with Mr.B.V.Jhaveri with Mr. Mayank Thosar for the Petitioner.
Mr.Sigmund Gracias with Ms.Pallavi Supekar i/by Mr.Charanjeet Chanderpal for the Respondents.

CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.
DATE : JANUARY 03, 2019.

P.C.:-

1. With the consent of learned Advocates for the parties, the petition is taken up for final disposal at this stage.

2. Petitioner has challenged a notice of reopening of assessment dated 27th March, 2018.

3. Brief facts are as under:

Petitioner is a limited company and is engaged in providing offshore support services. For the assessment year 2011-12, the petitioner had filed a return of income on 29th September, 2011 declaring total income of Rs.8,67,55,710/- . The Assessing Officer passed a scrutiny assessment order under section 143(3) of the Income Tax Act ("the Act" for short) on 7th October, 2013 accepting the petitioner's declared income.

4. To reopen such assessment the Assessing Officer issued the impugned notice. In order to do so he had recorded reasons. The relevant portion of which reads as under:

> "**1. Brief details of the Assessee**: In the instant case, the assessee has filed return of income for the A.Y.2011-12 on 29.09.2011 declaring total income of Rs.8,67,55,710/-. The same was processed u/s.143(1) of the Act. Further, assessment u/s 143(3) of the Act was completed on 07.10.2013 assessing total income at Rs.8,67,55,710/-. The assessee company is engaged in the business of shipping operations.
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> **2. Brief details of information collected/received by the AO:**
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> This office has received information from the DDIT (Investigation), Unit-3(3), Mumbai vide letter No.DDIT (Inv.)/Unit 3(3)/Information-SML/2017-18 dated 20.03.2017 that the search action was conducted on the assessee on 23.11.2017. It has been informed that the assessee company M/s Samson Maritime Ltd. is claiming benefit of Tonnage Tax Scheme without being

eligible for it. It was further mentioned that the company is not handling the cargo shipping business or movement of cargo. So, it can be seen that all the activities carried out by the company is incidental activities in the absence of core business activity.

3. Analysis of information collected/received:

On the basis of information received as mentioned in para 2 above, it can be seen that as all the activities carried out by the company is incidental activities in the absence of core business activity so it disentitles the company from their claim of Tonnage Tax Scheme and the company should be taxed as per normal provisions of the Act and Chapter XIIG will not be applicable to the case of the company. If the benefits of Tonnage Tax Scheme is denied to the assessee than the book profit for MAT calculation will be Rs.45,31,89,258/- against the MAT profit of Rs.8,75,59,796/- declared by the assessee for the year under consideration.

In view of the totality of the facts and documents on record coupled with the information gathered, I have reason to believe that the amount of Rs.36,56,29,462/- (as per MAT provisions) chargeable to tax for F.Y. 2010-11 relevant to A.Y. 2011-12 has escaped assessment, as the assessee has failed to disclose truly all material facts necessary for its correct assessment, the facts disclosed by the assessee are distorted and as per its convenience.

4. Enquiries made by the AO as sequel to information collected/ received:

From perusal of paragraph 2 & 3 above, the material evidence gathered and discussed gives enough insights that income has escaped assessment. It is only during the course of proceedings u/s. 148 of the Act that the assessee's explanation will be examined vis-a-vis the findings enumerated in paragraph 2 & 3 above.

5. The petitioner raised detailed objection to the notice of reopening under a communication dated 15th October, 2018. Such objections were however, rejected by the Assessing Officer by order dated 31st October, 2018. Hence, this petition.

6. Having heard learned counsel for the parties and having perused the documents on record what emerges is that the impugned notice is issued beyond the period of four years from the end of relevant assessment year. The requirement of section 147 of the Act, therefore, that the income chargeable to tax had escaped assessment due to the failure on part of the assessee to disclose truly and fully all material facts, must be satisfied. Additionally, as is well settled law, in case of the scrutiny assessment, the Assessing Officer would not be permitted re-open assessment which is based on mere change of opinion. Both these aspects we may examine from the documents on record.

7. The reasons recorded by the Assessing Officer for reopening

the asssessment would show that according to the information received by the Assessing Officer from the Investigation Wing of the Department it was found that the assessee was not handling the cargo shipping business or movement of cargo and that the activities carried out by the company were merely incidental activities and in absence of the core business activities, the assessee was not entitled to the benefits under chapter XIIG of the Act and the company should be treated as a normal company and all applicable provisions of the Act should be applied.

8. From the record we notice that the Assessing Officer had during the assessment proceedings raised multiple queries one of which was with respect to the business activities carried out by the assessee in response to which, the assessee had filed a comprehensive note on business activities carried out during the year of consideration. This note read as under:-

> "**ANNEXURE "A" :- NOTE OF NATURE OF BUSINSESS**
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> The company is owning and operating various types of offshore supply vessels, Tugs and Anchor Handling vessels.

The vessels owned by the company are given on charter for offshore activities of the clients. The charter period for short duration of 5-10 days are termed as spot Charter. The vessels are also given on short term charter ranging from 1 month to 3 months and long term charter ranging from 3 months and above.

Most of the company's vessels chartered out to clients (Public sector & Limited Companies) are of long term in nature. The said vessels are deployed by client for movement of man & material from shore to its offshore marine related activities. The vessels are also deployed by the client for towing its barges and equipments to offshore fields. Our vessels are also chartered by clients at time for assisting vessels in distress in the high seas and also for salvage of vessels.

In addition to the above, company is in the business of operating and maintenance of third party SPM (Single Point Mooring) buoy and vessels.

The business of operating and maintenance of SPM involves the following activities.

1. Maintenance of third party vessels.
2. Maintenance of the underwater pipeline.
3. Maintenance and operation of SPM i.e. a floating equipment which is around 8 to 10 nautical mile away from the port and the same is connected to underwater pipeline for transportation of crude and finished oil products which are discharged by oil tankers at the SPM location.”

9. From this note one can gather that the assessee-company had given full details of its activities pointing out that the company owns and operates various types of offshore supply vessels, Tugs and Anchor Handling vessels. These vessels are given on charter for offshore activities to the client on long term basis. Such vessels are deployed by the client for movement of man and material from shore to its offshore marine related activities. The vessels are also deployed for towing its barges and equipments to offshore fields. In the final order of assessment the Assessing Officer did not make any disallowance, but accepted the assessee's declared income.

10. Two things emerge from the discussion recorded so far. Firstly, that the assessee's nature of activities was fully disclosed during the assessment proceedings. There was no failure on the part of the assessee to disclose any of the material facts. Infact from the note on assessee's nature of business one could gather the precise nature of the activities carried on by the company.

There was these clear disclosure on the part of the assessee and the reopening of assessment beyond the period of four years from the end of relevant assessment year could not have been done.

11. There is yet another additional and independent reason why we must strike down the notice of reopening. The assessee's claim of benefits under the chapter XIIG of the Act as is clear from the material on record came up for pointed attention of the Assessing Officer during the original assessment proceedings. It was in this context that the Assessing Officer had raised certain queries including asking the assessee to give full details of its business activities. Thus, the question of the assessee being qualified for the benefits under Chapter XIIG of the Act was scrutinized issue. Without there being any additional material, any attempt on the part of the Assessing Officer to reopen the assessment would be based on mere change of opinion.

12. On both grounds, therefore, the petition succeeds. Impugned notice dated 27th March, 2018 is set aside. Petition

allowed and disposed of accordingly.

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

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