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

WRIT PETITION NO.3617 OF 2018

Raychem RPG Private Limited … Petitioner

V/s.

Assistant Commissioner of
Income-tax, Circle – 8(1)(1) and ors. … Respondents

Mr.Madhur Agrawal with Mr. Atul Jasani for the Petitioner.
Mr.N.C.Mohanty for the Respondent.

CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.
DATE : JANUARY 24, 2019.

P.C.:-

1. We heard the parties finally at the stage of admission. This petition under Article 226 challenges a notice dated 27th March, 2018 issued under Section 148 of the Income Tax Act, 1961 (the Act). The impugned notice seeks reopening of assessment for Assessment Year 2011-12.

2. The facts giving rise to this petition are as under :-

(a) On 30th November, 2011, the petitioner filed its return of income declaring a total income of Rs.1.76 crores. Alongwith its above return of income the petitioner also filed Form 29-B for the purpose of computation of book profit under Section 115-JB of the Act.

(b) During the course of assessment proceedings, the Assessing Officer made inquiries with regard to the provision for doubtful debts. This on examination of detailed note given by the petitioner in Form No.29-B accompanying the return of income. The Assessing Officer being satisfied did not make any addition for the provision of doubtful debt while computing the profits under Section 115-JB of the Act and finally made an assessment on 17th March, 2015 under Section 143(3) Act.

(c) Thereafter, the impugned notice dated 27th March, 2018 was issued seeking to reopen the assessment for Assessment Year 2011-12. The reasons in support of the impugned notice read as under :-

> **“Reason for reopening of the assessment in the case of M/s Raychem RPG Private Ltd.**

1. Brief details of the Assesse: In the instant case, the assessee has filed return of income for the A.Y. 2011-12 on 30.11.2011 declaring total income of Rs.1,76,28,270/-. The same was processed u/s. 143(1) of the Act. Further, assessment u/s 143(3) of the Act was completed on 17.03.2015 assessing total income at Rs.2,76,13,880/-. The assessee company is engaged in the business of telecommunication and power cables accessories.

2. Brief details of information collected/ received by the AO:

In the year under consideration, the assessee has offered income u/s 115JB but not added Rs.8,69,58,000/- as provision for doubtful debts debited in P/L a/c . in computation of book profit. Citing supreme court judgment 323 ITR 166 wherein the amount held that, where the provisions for doubtful debt is reduced from the debtors balance, the debts can properly be regarded as being written off, without their written off in the individual debtors account. Omission to add Rs.8,69,58,000/- in computation of Book profit u/w 115JB resulted in under assessment to the extent of Rs.8,69,58,000/-.

In view of the totality of the facts and documents on record, in computation I have reason to believe that to the extent of Rs.8,69,58,000/- chargeable to tax for F.Y. 2010-11 relevant to A.Y. 2011-12 has escaped assessment. Therefore, it is proposed to reopen the assessment by issuing notice u/s. 148 of the Act in the aforesaid assessee company's case for A.Y. 2011-12.

3. Analysis of information collected/received:

On the basis of information collected as mentioned in para 2 above, it can be concluded that the assessee has offered income u/s 115JB but not added Rs.8,69,58,000/- chargeable to tax for F.Y. 2010-11 relevant to A.Y. 2011-12 has escaped assessment.

4. Enquiries made by the AO as sequel to information collect/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 Findings of the AO:
As mentioned in the paragraph 2 & 3 above.

6. Basis of forming reason to believe and details of escapement of Income:
As mentioned in the paragraph 2 & 3 above.

7. Seventh paragraph will include escapement of income chargeable to tax in relation to any assets (including financial interest in any entity) located outside India:N.A.

8. Finding of AO on true and full disclosure of the material facts necessary for assessment under Proviso to section 147:

In view of the reason for reopening as mentioned above and totality of the facts and documents on record coupled with the information gathered, I have reason to believe that Rs.8,69,58,000/- chargeable to tax for F.Y. 2010-11 relevant to A.Y. 2011-12 has escaped assessment, as assessee has failed to disclose fully and truly all material facts (the facts disclosed by the assessee are in such a manner to suite its convenience) necessary for its correct assessment therefore it is proposed to reopen the assessment by issuing notice u/s 148 of the Act in the aforesaid assessee company's case for A.Y. 2011-12.

9. Applicability of the provisions of section 147/151 to the facts of the case:

In this case a return of income was filed for the year under consideration and regular assessment u/s 143(3) and reassessment u/s 1 47 was also made. Since, 4 years from the end of the relevant year has expired int his case, the requirements to initiate proceedings u/s 147 of the Act are reason to believe that income for the year under consideration has escaped assessment because of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the assessment year under consideration. It is pertinent to mention here that reasons to believe that income has escaped assessment for the year under consideration have been recorded above (refer paragraph1). I have carefully considered the assessment records containing the submissions made by the assessee in response to various notices issued during the assessment /re-assessment proceedings and have noted that the assessee has not fully and truly disclosed the following material facts necessary for his assessment for the year under consideration:

It is evident from the above facts that the assessee had not truly and fully disclosed material facts necessary for his assessment for the year under consideration thereby necessitating reopening u/s 147 of the Act.

It is true that the assessee has filed a copy of annual report an audited P & L account and balance sheet along with return of income where

> various information/material were disclosed. However, the requisite full and true disclosure of all material facts necessary for assessment has not been made as noted above. It is pertinent to mention here that even though the assessee has produced books of accounts, annual report, audited P & L account and balance sheet or other evidence as mentioned above, the requisite material facts as noted above in the reasons for reopening were embedded in such a manner that material evidence could not be discovered by the AO and could have been discovered with due diligence, accordingly attracting provisions of Explanation 1 of section 147 of the Act.
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> It is evident from the above discussion that in this case, the issue under consideration were never examined by the AO during the course of regular assessment /reassessment. This fact is corroborated from the contents of notices issued by the AO u/s 143(2) / 142(1) and order sheet entries recorded during the 143(3)/147 proceedings. It is important to highlight here that material facts relevant for the assessment proceedings and the same may be embedded in annual report, audited P & L account, balance sheet and books of account in such a manner that it would required due diligence by the AO to extract these information. For afforested reasons, it is not a case of change of opinion by the AO.
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> In this case more than four years have lapsed from the end of assessment year under consideration. Hence, necessary sanction to issue notice u/s 148 has been obtained separately from Principal Commissioner of Income tax as per the provisions of section 151 of the Act."

(d) On receipt of the above reasons in support of the impugned notice, the petitioner filed its objection dated 15^{th} November, 2018 to its validity. On 3rd December, 2018 the Assessing Officer rejected the petitioner's objection to the impugned reopening notice on the basis of the reasons recorded.

(e) This resulted in filing of the present petition, challenging the jurisdiction of the Assessing Officer to issue the impugned notice dated 27th March, 2018, seeking to reopen the assessment for Assessment Year 2011-12.

3. We have heard the parties at length. We note from the record it is evident that the impugned notice has been issued on 27th March, 2018 i.e. beyond the period of 4 years from the end of the relevant assessment year i.e. 2011-12. This coupled with the fact that the regular assessment proceedings for the subject assessment year were completed on 17th March, 2015 under Section 143(3) of the Act. The reasons in support the impugned notice do not indicate that there was any failure on the part of the petitioner to truly and fully disclose all material and primary facts necessary for assessment truly and fully, during the regular proceedings under Section 143(3) of the Act. Thus, on this short

ground itself the impugned notice is hit by the proviso to Section 147 of the Act and is without jurisdiction. Besides, we notice infact that during the assessment proceeding queries were raised by the Assessing Officer with regard to the petitioner's claim for provision for doubtful debts and petitioner had responded to same in detail by its letter dated 12th January, 2015. It was after Assessing Officer satisfying himself with the petitioner's reply that the petitioner's book profit were determined under section 115-JB of the Act. This would indicate that the impugned notice is an attempt to review the order dated 17th March, 2015 under Section 143(3) of the Act, which is clearly not permissible.

4. In the above view, the impugned notice is without jurisdiction as it is hit by the first proviso to Section 147 of the Act. This in the absence of there being any failure to disclose truly and fully all material facts. Besides during the regular proceedings the Assessing Officer has occasion to examine the issue of provision for doubtful debts in the context of arriving of book profit of the petitioners. These reasons amounted to change of opinion and an attempt to review its order dated 17th March, 2015.

Therefore, the impugned notice dated 27th March, 2018 is without jurisdiction. Hence, quashed and set aside.

5. Petition is disposed of accordingly.

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

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