

ORDER SHEET

W.P.O. No. 554 of 2021

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

Magma HDI General Insurance Company Limited
Versus
Deputy Commissioner of Income Tax, Circle - 8(1) & Ors.

BEFORE:

The Hon'ble JUSTICE MD. NIZAMUDDIN
Date : 10th September, 2021.

Mr. Abhratosh Majumdar with Mr. Abhra Majumdar
& Mr. Puspall Chakraborty, Advs.
... for petitioner

Mr. S.N. Dutta with Mr. Soumen Bhattacharjee, Adv.
... for respondents

Heard both the parties.

In this matter the petitioner has challenged the impugned notice dated 17th March, 2020 issued under Section 148 of the Income Tax Act, 1961 relating to assessment year 2015-16 and impugned order dated 30th July, 2021 rejecting the objection of the petitioner against the recorded reason for reopening of assessment under Section 147 of the Act and subsequent notice under Section 142(1) of the Act. The petitioner submits that one of the criteria of reopening of assessment under Section 147 of the Act that is, omission or failure on the part of the assessee to disclose fully and truly his income in course of regular assessment has not been fulfilled and

secondly, that the reason recorded shows that the Assessing Officer concerned himself has recorded that it was true that the assessee had filed copy of accounts along with required materials with the return of income to complete the assessment where various information/materials were disclosed. Yet the Assessing Officer had recorded that the assessee company faulted in making the correct and true claim of his Book of Profit as per the provisions of Explanation (I) to Section 115 JB(2) of the Act which attracts the proviso to Section 147 of the Act, which according to the petitioner, is nothing but mere change of opinion by the successor of the the Assessing Officer who has allowed the aforesaid claim of the assessee/petitioner on the self-same material and documents in the original assessment under Section 143 (3) of the Act and no new material came to the knowledge or to the possession of the Assessing Officer after the original assessment under Section 143(3) of the Act for invoking the relevant provisions of Section 147 of the Act. The petitioner further challenges the impugned proceeding under Section 147 of the Act on the ground that the issue which is involved relates to minimum alternate tax (MAT) of assessee company which do not fall in the category of the provisions of Explanation (I) to Section 115JB(2) of the Act and contends that this issue has already been considered in the case of National Insurance Company Limited and in that case, CIT (Appeals) had held in

favour of the assessee and against the Revenue on the aforesaid issue and further the order of the CIT (Appeals) was upheld by the Tribunal by its judgement dated 29th March, 2019 in ITA No.1876/KOL/2017 by holding against the Revenue and in favour of the assessee and which has been further challenged by the Revenue before this Court by way of Appeal under Section 260A of the Income Tax Act, 1961 and the same has been admitted by the order dated 29th August, 2019 in ITA No.112/2019 G.A. No. 2044/2018 (Principal Commissioner of Income Tax-2, Kolkata vs. National Insurance Co. Ltd.) and the same is pending without any interim order. Petitioner has also contended that the aforesaid order of the Tribunal where the same issue has been held in favour of the assessee, was relied upon by the petitioner in his objection filed against the recorded reason but the Assessing Officer in his impugned order of rejection has neither considered nor referred it at all though under Section 119 of the Income Tax Act, 1961, the Assessing Officer being a subordinate authority in the hierarchy, the orders of the CIT Appeal and Tribunal were binding upon him.

Mr. Dutta, learned Counsel appearing for the respondent/Assessing Officer, could not deny the admitted position in paragraph 3 of the recorded reason which runs as follows –

“3. It is true that the assessee has filed copy of accounts along with required materials with return of income to complete the assessment where various information/materials were disclosed.

* * * *

Mr. Dutta could not satisfy this Court about what new material of documents came into the possession of the Assessing Officer after the order of assessment under Section 143(3) of the Act, which were not produced by the assessee before the Assessing Officer in course of regular assessment. Mr. Dutta in support of his contention also relies on Explanations (I) and (III) under Section 147 of the Act. In my considered opinion, the submission of Mr. Dutta is not convincing and acceptable and he has failed to meet the allegations of the petitioner as recorded above.

Considering the submission of the parties, I am inclined to set aside the impugned order dated July 30, 2021 of rejecting the objection of the petitioner to the recorded reason and subsequent notice under Section 142(1) of the Act and remand the case to the Assessing Officer for a limited purpose and only to the extent to reconsider the aforesaid judgment of the Tribunal on the issue in question in the case of Deputy Commissioner of Income-tax, Circle-6, Kolkata Vs. National Insurance Co. Ltd. reported in

(2016) 72 taxmann.com 116 (Kolkata-Trib.) and also the contention of the petitioner about the change of opinion and pass a fresh speaking order after giving opportunity of hearing to the petitioner or his authorised representative within four weeks from the date of communication of this order. The subsequent proceeding under Section 147 of the Act will depend upon the fresh order to be passed by the respondent-Assessing Officer concerned after considering the aforesaid judgment of the Tribunal.

Since this writ petition has been disposed of at the motion stage without calling for affidavit, allegations contained in the writ petition should be deemed to have denied by the respondents.

WPO No. 554 of 2021 is disposed of accordingly.

(MD. NIZAMUDDIN, J.)

sb.