

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1779 OF 2006

Coca-Cola India Private Limited,
a Company incorporated under the
Companies Act, 1956 and having its
registered Office at Plot No.1109-1110,
Pirangut, Taluka Mulshi, Pune 412 108

...Petitioner

vs.

1. The Deputy Commissioner of Income-Tax,
Circle 1 (1), Pune.

2. The Commissioner of Income- Tax-I, Pune

3. The Union of India

...Respondents

Mr. Nitesh Joshi with Mr. Arun Siwach and Ms. Prachi Vasudeo i/b Cyril
Amarchand Mangaldas for Petitioner.

Mr. Suresh Kumar for Respondent.

**CORAM : K. R. SHRIRAM AND
AMIT B. BORKAR, JJ.**

DATE : 26 NOVEMBER 2021

JUDGMENT: (Per K. R. Shriram, J.)

Petitioner is impugning notice dated 28/3/2005 received by
respondent No.1 under Section 148 of the Income Tax Act seeking
reopening of the assessment for the Assessment Year 1998-1999 and the

consequential order dated 10/11/2005 received by respondent No.1 under section 143(2) of the Act and the order dated 28/2/2006.

2. Petitioner is a Company engaged in the business of manufacture and sale of non-alcoholic beverage bases and beverages made out of such bases. With a view to reorganize its business so as to achieve certain commercial advantages, petitioner filed in this Court an application under Sections 391 to 394 of the Companies Act, 1956 whereby it had sought sanction for the transfer of its bottling manufacturing undertaking in Pune and Goa to a company Hindustan Coco-Cola Beverages Private Limited (HCCBPL). HCCBPL also filed an application in Delhi High Court for the same purpose. On 3/5/1999 the scheme of arrangement was sanctioned by Bombay High Court and on 13/8/1999 Delhi High Court also sanctioned the scheme of arrangement filed in that Court by HCCBPL.

3. In the meanwhile, on 30/11/1998, petitioner filed the return of income which disclosed total loss of Rs.100,80,48,931/-. On 31/3/1999 petitioner filed revised return declaring loss of Rs.73,83,98,203/-. On 31/12/1999 petitioner filed second revised return declaring loss of Rs.23,23,42,821/- for the Assessment Year 1998-1999 as a result of demerger of petitioner's bottling division. Respondent issued a notice

dated 10/12/2000 to petitioner under Section 143(2) of the Act and another notice on the same date under section 142(1) of the Act together with a questionnaire. Petitioner replied vide its letter dated 24/10/2000 and furnished reasons for filing a revised return of income. On 24/11/2000 petitioner provided further clarification to respondent No.1 in response to various queries raised by respondent No.1 and on 22/2/2001 respondent No.1 issued a questionnaire in which it is noted that petitioner's bottling division had been demerged with effect from 30/11/1997. On 8/3/2001 petitioner provided to respondent No.1 Balance Sheet and the Profit and Loss Account as on 30/11/1997.

4. Respondent No.1 passed assessment order dated 30/3/2001 under section 143 (3) of the Act in which respondent No.1 computed total income of petitioner as "Nil" after setting off earlier year's losses to the extent of Rs.22,42,75,013/- Aggrieved by the disallowances made by respondent No.1, petitioner filed an appeal before the Commissioner of Income Tax (Appeals), Pune. By an order dated 14/8/2003, respondent No.2 had issued a show cause notice under Section 263 of the Act and on 28/3/2003 set aside the assessment order passed on 30/3/2001 and directed respondent No.1 to pass a fresh assessment order after considering the issues which respondent No.2 had identified in the first order. On

22/3/2004 respondent No.1 passed the assessment order under Section 143(3) of the Act read with Section 263 of the Act.

5. On 28/3/2005, after expiry of 4 years from the relevant Assessment Year, respondent No.1 issued a notice under Section 148 of the said Act. In response to request made by petitioner, respondent No.1, by its communication dated 27/12/2005 provided the reasons for reopening the assessment for the Assessment Year 1998-1999. As per proviso to Section 147 of the Act, if assessment is being reopened after expiry of 4 years from the relevant assessment year, it will be time barred unless the assessee had failed to disclose material facts that were necessary for the assessment for that Assessment Year.

6. We have considered the reasons for reopening and there is not even a whisper that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of that year. Failure to disclose would render the notice issued under Section 148 being held as without jurisdiction.

7. Mr. Suresh Kumar relied upon a judgment of this Court in *Crompton Greaves Ltd. V/s. Assistant Commissioner of Income Tax, Circle*

6 (2) 4¹ to submit that even if the reason for reopening does not specifically state that there was any failure on the part of petitioner to disclose fully and truly all material facts necessary for its assessment for the relevant assessment year, it will not be fatal to the assumption of jurisdiction under Sections 147 and 148 of the Act. We would certainly agree with Mr. Suresh Kumar but as held in *Crompton Greaves Ltd.* (Supra), this is subject to the rider that there must be cogent and clear indication in the reasons supplied, that in fact there was failure on the part of the assessee to disclose fully and truly all the material facts necessary for its assessment. If the factum of failure to disclose can be culled down from the reasons in support of the notice seeking to reopen assessment, that will certainly not be fatal to the assumption of jurisdiction under Sections 147 and 148 of the Act. The Court held “However, if from the reasons, no case of failure to disclose is made out, then certainly the assumption of jurisdiction under Sections 147 and 148 of the Act would be ultra vires, being in excess of the jurisdictional restraints imposed by the first proviso to Section 147 of the Act” .

8. Paragraph 17 to 21 of another judgment of this Court in *Hindustan Lever Ltd. vs. R. B. Wadkar*² reads as under:

1 (2015) 55 taxmann.com 59 (Bombay)

2 2004(3) Mh.L.J. 517

17. *Having heard the parties at length, we are of the opinion that the petition can be disposed of on the first contention raised by the petitioner, wherein the petitioner has contended that the notice issued under section 148 is without jurisdiction being hit by the proviso to section 147 of the Act as such not within the prescribed period provided under proviso to section 147 of the Act. In the circumstances, it would be necessary to turn to section 147 of the Act, which reads as under :*

Income escaping assessment.

147. *If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereinafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :*

"Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment for that assessment year."

18. *Reading of proviso to section 147 makes it clear that if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which*

comes to his notice subsequently in the course of the proceedings under section 147, or recompute the loss or the depreciation allowance or any other allowance, as the case may be for the concerned assessment year. However, where an assessment under sub-section (3) of section 143 has been made for relevant assessment year, no action can be taken under section 147 after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reasons of the failure on the part of the assessee to disclose all material facts necessary for his assessment for that assessment year. (Emphasis supplied)

19. In the case in hand it is not in dispute that the assessment year involved is 1996-97. The last date of the said assessment year was 31-3-1997 and from that date if four years are counted, the period of four years expired on 1-3-2001. The notice issued is dated 5-11-2002 and received by the assessee on 7-11-2002. Under these circumstances, the notice is clearly beyond the period of four years.

20. The reasons recorded by the assessing officer nowhere state that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of that assessment year. It is needless to mention that the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons. It is for the Assessing Officer to reach to the conclusion as to whether there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the concerned assessment year. It is for the Assessing Officer to form his opinion. It is for him to put his opinion on record in black and white. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. Reasons are the manifestation of mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing

Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment. The reasons recorded by the Assessing Officer cannot be supplemented by filing affidavit or making oral submission, otherwise, the reasons which were lacking in the material particulars would get supplemented, by the time the matter reaches to the Court, on the strength of affidavit or oral submissions advanced.

21. Having recorded our finding that the impugned notice itself is beyond the period of four years from the end of the assessment year 1996-97 and does not comply with the requirements of proviso to section 147 of the Act, the Assessing Officer had no jurisdiction to reopen the assessment proceedings which were concluded on the basis of assessment under section 143(3) of the Act. On this short count alone the impugned notice is liable to be quashed and set aside."

9. In the circumstances, the impugned notice dated 28/3/2005 is quashed and set aside and consequential order dated 20/2/2006 is also set aside. Rule is made absolute in terms of prayer clause (a) which reads as under:

(a) this Hon'ble Court may be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India calling for the records of the Petitioner's case and after examining the legality and validity thereof quash and set aside the notice dated 28th March, 2005 (Exhibit "O") issued by Respondent No.1 under Section 148 of the Act seeking to reopen the assessment for the assessment year 1998-99 and the consequential notice dated 10th November, 2005 issued by Respondent No.1 under Section 143(2) (Exhibit "Q") of the Act

and the order dated 20th February, 2006 (Exhibit "U").

10. Petition disposed.

(AMIT B. BORKAR, J)

(K. R. SHRIRAM , J.)

RAJESHWARI
SUBODH
KARVE

Digitally signed
by RAJESHWARI
SUBODH
KARVE
Date:
2021.12.01
14:55:26 +0530