IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4562 OF 2007

M/s. Reuters India Pvt. Ltd. ...Petitioner

vs.

Deputy Commissioner of Income-Tax ...Respondent

Mr. Nitesh Joshi i/b Mr. Atul K. Jasani for Petitioner.
Mr. Suresh Kumar for Respondent.

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

DATE : 26 NOVEMBER 2021

P. C. :

This petition was originally filed in Delhi and got transferred to Mumbai by order of the Apex Court.

2. Petitioner is impugning a notice dated 27/3/2002 for Assessment Year 1996-1997 and dated 15/2/2002 for Assessment Year 1997-1998 issued under Section 148 of the Income Tax Act, 1961 (the said Act).

3. Petitioner is an Indian company and subsidiary of Reuters Limited, U.K. (Reuters UK). Since inception petitioner is engaged in

distribution of Reuters products sourced from Reuters UK to subscribers in India. Petitioner had entered into with Reuters UK distribution agreement, product distribution agreement, license agreement, data purchase agency agreement and development agreement.

4. In terms of agreement between petitioner and Reuters UK, petitioner was required to pay 65% of the subscription to Reuters UK and retain the balance. The issue was, whether petitioner should have deducted tax at source on 65% being remitted to Reuters UK.

5. Petitioner, by its application dated 20/5/1996 to the Income Tax Officer, Special Ward 30(1), Mayur Bhavan, New Delhi, requested for no objection certificate in regard to payment to Reuters UK for the period 1/7/1995 to 31/12/1995. No objection sought was to remit the amounts comprising 65 % without deduction of any tax at source. By a certificate dated 20/5/1996, petitioner was issued authorization for payment of sums to Reuters UK without deduction of tax at source. Paragraph No.2 of the said certificate reads as under:

> *"You are hereby authorised to make payment of the aforesaid sum to M/s. Reuters Limited, London U.K. being in the nature of purchase price for news & data after deducting income tax at source at the rate of Nil thereon under section 195(1) of the Income Tax Act, 1961."*

6. Relying on this certificate petitioner remitted 65% component to Reuters UK without deducting tax at source. Almost 6 years later respondent thought it fit to reopen petitioner's assessment on the ground that petitioner had evaded payment of tax by procuring "NIL" TDS certificate, had misrepresented the facts and therefore payment made by petitioner to Reuters UK was deductible at source and remittance by petitioner without deduction of tax amounted to petitioner forfeiting sum of Rs.17,12,64,005/- which was the amount so remitted to Reuters UK.

7. If one reads the reasons for reopening which is almost identical for both Assessment Year 1996-97 and 1997-1998, the entire allegation is petitioner had misrepresented facts while procuring "Nil" TDS certificate from ACIT (TDS) by misrepresentation of facts. Reasons list various clauses of the agreement between petitioner and Reuters UK and the Assessing Officer held that Reuters UK actually had permanent establishment in India through petitioner which fact was not disclosed to the original Assessing Officer. As noted earlier this conclusion of the Assessing Officer for reopening assessment is based on the agreements between petitioner as well as Reuters UK. We have to note that all these agreements were made available to the Assessing Officer by petitioner when it applied for no objection certificate as noted earlier. ACIT (TDS)

had all these documents before him to consider, before issuance of no objection certificate. Even if we interpret clauses in the agreement between petitioner and Reuters UK and for the sake of argument concur with the opinion of Assessing Officer in the reasons recorded for reopening, still the certificate issued by ACIT (TDS) cannot be invalidated when the certificate otherwise satisfy the requirement of Section 197 of the Act. Even if we agree with the views expressed and the reasons for reopening, still, determination of ACIT (TDS) is error in law, would not cease to be determination on which assessee could legitimately act and it is not open to the Revenue to hold the assessee liable for short deduction of tax made on the basis of such certificate and that by itself would not enable the Revenue to impose liability on the assessee, who had acted upon the certificate.

8. Moreover to the further affidavit of petitioner filed through one Ojas Chowkshi on 23/9/2021, order dated 28/8/2015 passed by ITAT, Mumbai Bench is annexed in which ITAT has concluded for Assessment Year 1997-1998 that petitioner cannot be regarded as being in default when it has made payment to Reuters UK based on the "Nil" certificate issued by Revenue under section 195 of the Act. It has also held that Reuters UK does not have permanent establishment in India and therefore the distribution fees received by Reuters UK cannot be held to be taxable in

India.

9. In the circumstances, even on merits, reasons recorded for reopening cannot be accepted. Accordingly, Rule made absolute in terms of prayer clause (a).

(AMIT B. BORKAR, J) **(K. R. SHRIRAM , J.)**

RAJESHWARI SUBODH KARVE Digitally signed by RAJESHWARI SUBODH KARVE Date: 2021.12.01 14:45:41 +0530