IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2022 OF 2021

R. S. Infra-Transmission Ltd. ….Petitioner

V/s.

Income Tax Officer, Ward 4(3)(1) & Ors. …Respondents

Mr. Ativ Patel i/b AVP Partners for Petitioner
Mr. Sham V. Walve a/w Mr. Pritish Chatterjee for Respondents-Revenue

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CORAM : K.R. SHRIRAM &
AMIT B. BORKAR, JJ
DATED : 30th NOVEMBER 2021

P.C. :

1 Petitioner has impugned a notice dated 31st March 2021 issued under Section 148 of the Income Tax Act 1961, by which respondents seeking to reopen the assessment for A.Y.-2014-2015. Since notice to reopen has been issued after expiry of 4 years of completion of assessment, the proviso to Section 147 of the Act squarely applies to the case. The proviso to Section 147 that was applicable at the relevant time provides where an assessment under Sub-Section (3) of Section 143 of the Act has been made for the relevant assessment year, no action shall be taken after the expiry of 4 years from the end of relevant assessment year. There is a bar. The exception to this bar is whether income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of assessee, to disclose fully and truly all material facts necessary for his assessment, for that assessment year. Therefore, only if there is a failure on the part of

assessee to disclose fully and truly all material facts necessary for his assessment, can an action be taken under Section 147 after expiry of 4 years from the end of the relevant assessment year.

2 We have perused the reasons given in the communication dated 25th May 2021. It is nothing but change of opinion which is not permissible in law. There is nothing indicated as to what has not been disclosed by petitioner before the original assessment order was passed.

3 In the circumstances, as the reasons do not disclose any material that has not been fully and truly disclosed by petitioner, in our view, respondents could not have validly reopened petitioner's case for A.Y.-2014-2015.

4 In the circumstances, petition is allowed in terms of prayer clause (a) which read as under:

> *"(a) that 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 case leading to the issue of the impugned notice and after going through the same and examining the question of legality thereof to quash, set aside the impugned notice dated 31st March 2021 issued under Section 148 of the Act as unconstitutional being violative of Article 14 and 226 of the Constitution of India"*

5 Petition disposed with no order as to cost.

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