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

WRIT PETITION NO. 3054 OF 2021

All India Rubber Industries Association ….Petitioner

V/s.

Asst. Commissioner of Income Tax
Exemption Circle 1 and Anr. …Respondents

Ms. Arati Vissanji for Petitioner.
Mr. Sham V. Walve a/w Mr. Pritish Chatterjee for Respondents-Revenue.

CORAM : K.R. SHRIRAM &
AMIT B. BORKAR, JJ.
DATED : 8th DECEMBER 2021

P.C. :

1. Petitioner is impugning notice dated 31st March, 2021 issued by respondent under Section 148 of the Income Tax Act, 1961 (the Act) stating that respondents have reasons to believe that petitioner's income chargeable to tax for the A.Y. 2013-14 has escaped assessment within the meaning of Section 147 of the Act. The reasons for such a belief is contained in letter dated 30th June, 2021. Respondents have not filed reply affidavit though petition has been served.

2. Mr. Walve stated that the notice as well as impugned order speaks for itself and submitted that there was no error in the notice and the order impugned in this petition.

3. We have considered the reasons recorded for re-opening the assessment and we are satisfied that it is nothing but change of opinion which is not permissible in law and there was no failure on the part of petitioner to fully and truly disclosed any material fact. It is settled law that where a notice under Section 143 of the Act is issued after expiry of four years after relevant assessment year, such a notice can be issued only if respondents are able to effectively demonstrate that there was failure on the part of assessee to fully and truly disclosed material facts before the original Assessment Order was passed. Respondent in the case at hand has failed to demonstrate the same. The basis, as could be culled out of the reasons for re-opening, is only accounts or the returns filed by petitioner. It is stated in the reasons that giving amount received towards corpus fund has to be treated as income of the current year and brought to tax but it remained to be added to the income. It then says "after perusal of the case reference" revealed that the assessee is having income from holding of exhibition and other related activity from members and non-members; the assessee has received Rs.3,50,00,000/- on account of education fund, Trade & Industry Development Fund, Research Fund, RSDC Skill Development Fund; these funds were not routed through Income and Expenditure Account and directly credited to corpus fund. As per the details available on record, the assessee has been denied the benefits of trust etc.

4. Therefore, there is nothing in the reasons recorded to show that

petitioner had failed to disclose all material facts. Moreover, petitioner has annexed to the petition a copy of the audit query or revenue audit, DCIT (Exemption) which indicates that decision to re-open the assessment is purely based on this audit query. The Income Tax Officer must determine for himself what is the effect and consequence of the law mentioned in the audit note and whether in consequence of the law which has come to his notice he can reasonably believe that income had escaped assessment. The basis of his belief must be the law of which he has now become aware. The opinion rendered by the audit party in regard to the law cannot, for the purpose of such belief, add to or colour the significance of such law. The true evaluation of the law in its bearing on the assessment must be made directly and solely by the Income Tax Officer. This is not the case with the matter at hand. We found support for this view in ***Ananta Landmark (P) Ltd. vs. Deputy Commissioner of Income-tax, Central Circle 5 (3), Mumbai*** [1]

5. When the primary facts necessary for assessment are fully and truly disclosed, the Assessing Officer is not entitled on change of opinion to commence proceedings for reassessment. Where on consideration of material on record, one view is conclusively taken by the Assessing Officer, it would not be open to re-open the assessment based on the very same material with a view to take another view.

1 [2021] 131 taxmann.com 52 (Bombay)

6. Consequently, petition is allowed in terms of prayer clause (a) which reads as under :

> *(a) This Hon'ble Court may be pleased to issue under Article 226 of the Constitution of India an appropriate direction, order or writ including a writ in the nature of Certiorari calling for the records of the case and after satisfying itself as to the legality thereof, quash and set aside the notice dated 31.03.2021 (Exhibit 'D') issued by the Respondent No.1 under Section 148 and order dated 21.09.2021 (Exhibit 'G') passed by the Respondent No. for the relevant assessment Year.*

7. Petition disposed.

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