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

WRIT PETITION NO.2801 OF 2019

Dentsu Aegis Network Marketing Solutions
Pvt. Ltd., (Formerly, Carat Media Services
India Pvt. Ltd.)
6th floor, Poonam Chambers,
Dr. Annie Besant Road,
Worli, Mumbai 400 018
PAN: AAACC6236F ...Petitioner

vs.

1. Assistant Commissioner of Income-Tax
Circle- 6(2)(1), Mumbai,
Room No.504, 5th Floor,
Aayakar Bhavan, M. K. Road,
Mumbai 400 020

2. Principal Commissioner of Income Tax- 6,
Mumbai, Room No.504, 5th Floor,
Aayakar Bhavan, M. K. Road,
Mumbai 400 020

3. Union of India
through the Secretary, Department of Revenue,
Ministry of Finance, Government of India,
North Block, New Delhi- 110 001 ...Respondents

Mr. Jitendra Jain i/b Mr. Atul K. Jasani for Petitioner.
Mr. Suresh Kumar for Respondents.

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

DATE : 13 DECEMBER 2021.

JUDGMENT : (Per Amit B. Borkar, J)

Petitioner by way of present petition is challenging the issuance of notice dated 27th March 2019 under section 148 of Income Tax Act, 1961 ("the said Act" for brevity) for reopening the concluded regular assessment for Assessment Year 2012-13 and the order dated 18th September 2019 rejecting objections.

2. Petitioner is a company engaged in the business of media consultancy and strategy through campaign organization, etc., by using data analysis.

3. On 30th November 2012, Petitioner filed its return of income for Assessment Year 2012-13 returning a loss of Rs. 3,11,13,560/-. In the said return Petitioner gave details of unabsorbed depreciation and unabsorbed business loss from Assessment Year 2004-05 till 2010-11 while arriving at the income. However, Petitioner was liable under Minimum Alternative Tax (MAT) for Rs. 28,98,428/- being tax payable under Section 115JB on book profit of Rs.1,44,86,526/-, the said book profit was arrived at by claiming set off of Rs.1,36,85,720/- being brought forward loss or unabsorbed depreciation, whichever is less. The amounts reduced to arrive at the book profit was duly disclosed in computing book profit. The income

was uploaded in the prescribed form ITR-6. In the said form, Petitioner gave the details assessment year-wise of brought forward business loss and unabsorbed depreciation in Schedule BFLA and CFL. Petitioner also disclosed the working of book profit including specific disclosure of Rs.1,36,85,720/- under the head "Loss brought forward or unabsorbed depreciation, whichever is less", in Schedule relating to MAT in the said form.

4. The aforesaid return of income was selected for scrutiny assessment vide notice under Section 143(2) dated 3rd September 2013. During original assessment, Respondent No.1 asked queries vide communications/notices dated 15th September 2014 and 13th February 2015, calling for details in support of the claims made by Petitioner. Petitioner vide letters dated 13th November 2014 and 27th February 2015 furnished all the details called for. Petitioner filed its computation of income, audited accounts, tax audit report and enclosed a chart giving details of brought forward losses and depreciation along with the relevant orders for all the Assessment Years, i.e., Assessment Year 2004-05 to 2011-12. Respondent No.1 after going through the details filed during the course of the original assessment proceedings passed an assessment order dated 28th March 2016 under Section 143(3) of the said Act assessing income of

Rs.1,39,41,070/-.

5. It needs to be noted that Respondent No.1 while passing the assessment order under Section 143(3) dated 28th March 2016 had not granted any set off of brought forward business losses or unabsorbed depreciation.

6. Almost 3 years later, Petitioner received a notice dated 27th March 2019 issued under Section 148 of the said Act for Assessment Year 2012-13, whereby, Respondents sought to reopen the completed scrutiny assessment for Assessment Year 2012-13. On 17th April 2019, Petitioner requested Respondent No.1 to furnish the reasons recorded for reopening the assessment. On 26th April 2019, Petitioner filed return of Income in response to notice under Section 148 of the said Act. On 10th May 2019, Petitioner was served with a letter dated 7th May 2019 giving extracts of the reasons recorded for reopening of the concluded assessment. Petitioner, vide its letter dated 23th July 2019, objected to the reopening of the concluded assessment. Petitioner's objections were rejected by an order dated 18th September 2019.

7. Petitioner has therefore filed present petition challenging

notice dated 27th March 2019 issued under Section 148 of the said Act and order dated 18th September 2019 rejecting objections

8. Respondent No.1 has filed reply stating that there is failure on the part of Petitioner to disclose truly and fairly all material facts. It is stated that in the original assessment, the Assessing Officer ignored appeal order for Assessment Year 2005-06 and had committed mistake while giving effect to computing of income under Section 115JB of the said Act. It is also stated that Petitioner has the alternate statutory remedy to challenge the final order of assessment by way of Appeal.

9. We have heard Mr. Jitendra Jain and Mr. Suresh Kumar. for the parties. With the assistance of learned Advocates for the parties, we have scrutinized the record, and we find that the impugned notice has been issued after four years from the end of the relevant Assessment Year. Section 147 of the said Act permits Respondent No.1 to reopen an assessment, provided he has reasons to believe that income has escaped assessment. However, the exercise of such power is circumscribed by the first proviso. It is now well settled that unless any income has escaped assessment by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment, the Assessing Officer

has no jurisdiction for re-assessment.

10. The criteria for reopening of assessment after a period of four years are no longer *res Integra* in view of the judgment of this Court in the case of ***Ananta landmark (P) Ltd. v/s. Dy. Commissioner of Income Tax***[1] wherein this Court held that where assessment was not sought to be reopened on the reasonable belief that income had escaped assessment on account of failure of assessee to disclose truly and fully all material facts that were necessary for computation of income but was a case wherein assessment was sought to be reopened on account of change of opinion of Assessing Officer, the reopening was not justified. It is also held that where primary facts necessary for assessment are fully and truly disclosed, the Assessing Officer is not entitled to reopen the assessment on a change of opinion. It is held that while considering the material on a record, one view is conclusively taken by Assessing Officer, it would not be open for the Assessing Officer to reopen the assessment based on the very same material and take another view.

11. Perusal of the reasons record by respondent No.1 indicates that the notice of reassessment proceeds on the basis of material which was available during original assessment and is not based on fresh tangible

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material received. The record indicates that a specific query was raised during original assessment and Petitioner had submitted details of unabsorbed depreciation and business loss. Petitioner had disclosed the figures of unabsorbed business loss and unabsorbed depreciation in ITR Form-6. Petitioner had also filed computation of income under provisions of the said Act. Petitioner had also disclosed in Schedule relating to MAT in the said Form giving details of working of book profit including specific disclosures of Rs.1,36,85,720/- under the head "Loss brought forward or unabsorbed depreciation, whichever is less". From the reasons recorded by Respondent No.1, it appears that there was no tangible material for Respondent No.1 to conclude that income had escaped assessment.

12. For the aforesaid reasons the Assessing Officer has acted in excess of the limit of his jurisdiction to reopen the assessment in the exercise of powers under Section 147 read with Section 148 of the said Act. Accordingly, Petitioner would be entitled to succeed in this proceeding.

13. We, therefore, pass the following order:-

(i) The impugned notice dated 27th March, 2019 (Exhibit "A") and the order dated 18th September, 2019 rejecting objections (Exhibit "AF") issued by Respondent No.1 for

Assessment Year 2012-13 are quashed and set aside;

(ii) Rule made absolute in the above terms.

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

RAJESHWARI SUBODH KARVE

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Date: 2021.12.18 14:32:40 +0530