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

WRIT PETITION NO.3440 OF 2019

The Shipping Corporation of India Ltd. ….Petitioner

V/s.

Assistant Commissioner of Income Tax
LTU Circle -2 & Ors. ….Respondents

Mr. Srihari Iyer for petitioner.
Mr. Suresh Kumar for respondents.

CORAM : K.R. SHRIRAM &
AMIT B. BORKAR, JJ.
DATED : 20th DECEMBER 2021

P.C. :

1 Petitioner is impugning a notice dated 11th March 2019 issued under Section 148 of the Income Tax Act, 1961 (the said Act) and order dated 28th October 2019 rejecting the objections of petitioner.

2 Notice under Section 148 of the said Act dated 11th March 2019 for Assessment Year 2012-2013 has been issued after the expiry of four years from the relevant assessment year and as scrutiny assessment under Section 143(3) of the said Act had been completed, proviso to Section 147 of the said Act applies. Respondents have to show failure on the part of petitioner to truly and fully disclose all material facts.

3 We have considered the reasons and there is no indication that there was any failure on the part of petitioner to truly and fully disclose any material fact. Simply using the words "as there is a failure on part of

assessee to disclose fully and truly all material facts necessary for its assessment during the year under consideration" would not help. These are nothing but bald averments. A failure has to be spelt out in the reasons recorded. Respondents have failed in that. The entire basis for reopening is that provisions of Section 14A and Rule 8D with regard to dividend income was attracted but while completing the scrutiny assessment no mention is made for the same. During the assessment proceedings, after petitioner filed its revised return of income on 29th March 2014, respondent no.1 issued notice under Section 142(1) of the said Act on 17th September 2014. Among other queries, respondent no.1 specifically inquired about the details of dividend income earned and computation of expenses incurred on earning this income as per the provisions of Rule 8D. Petitioner, in its reply dated 24th September 2014 to the notice issued under Section 142(1) of the said Act, has specifically addressed the query with regard to dividend income. Petitioner has stated that the amount of dividend income is exempt so it is not included in computation as taxable income. As far as Rule 8D was concerned, petitioner has submitted that the company is taxable as per the tonnage tax scheme and thereby, it is not claiming any expenditure, viz.-a-viz., the exempt income and hence, Rule 8D was not applicable.

4 After considering these submissions of petitioner, the original assessment order under Section 143(3) of the said Act was passed on

28th January 2015. Respondent no.1 has, therefore, applied his mind with regard to petitioner's dividend income while passing the assessment order under Section 143(3) for Assessment Year 2012-2013. We find that the notice has been issued without proper jurisdiction.

5 Mr. Suresh Kumar relied upon a judgment of this Court in ***Crompton Greaves Ltd. V/s. Assistant Commissioner of Income Tax, Circle 6 (2)*** [1] 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*

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

restraints imposed by the first proviso to Section 147 of the Act".

6 It is not permissible for respondents to change its opinion based on the same set of facts. In our view, this petition has to be allowed and is hereby allowed in terms of prayer clause - (a), which reads as under :

> *(a) For a writ of certiorari or a writ, direction or order in the nature of certiorari or any other appropriate writ, direction or order under Article 226 of the Constitution of India calling for the records of the case after examining the legality and validity thereof quashed and set aside the impugned notice dated 11.03.2019 issued by the Respondent No.1 u/s. 148 of the Act to reopen the assessment for the assessment year 2012-13 and rejecting the objections of the Petitioner to the issuance of the notice u/s. 148 of the Act.*

7 Petition disposed.

8 We clarify that we have only considered the jurisdictional aspect in issuing the notice under Section 148 of the said Act and have not gone into the merits of the case.

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