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

WRIT PETITION NO.3290 OF 2019

Pfizer Limited ….Petitioner

V/s.

Assistant Commissioner of Income Tax – 14 (2) (2) and Ors. ….Respondents

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Mr. P.J. Pardiwalla, Senior Advocate a/w. Mr. Jeet Kamdar i/b. Mr. Atul K. Jasani for petitioner.
Mr. Suresh Kumar for respondents.

CORAM : K.R. SHRIRAM &
AMIT B. BORKAR, JJ.
DATED : 29th OCTOBER 2021

P.C. :

1 Petitioner has filed this petition to challenge the notice dated 25th March 2019 under Section 148 of the Income Tax Act, 1961 (the said Act) together with consequential notices and orders. According to petitioner, the notice is issued without jurisdiction as the required jurisdictional conditions have not been satisfied before proceedings for reassessment can be initiated.

2 Petitioner is a company engaged in manufacturing, trading and distribution of drugs (medicines). For Assessment Year 2012-2013, petitioner filed its return of income on 30th November 2012. The same was accepted under Section 143 (1) of the said Act and an assessment order under Section 143 (3) of the said Act was passed on 6th May 2016.

3 Petitioner had received notices from the Assessing Officer before passing the assessment order and during the course of hearing, the

Assessing Officer had raised a query as to why the margins earned by the stockists of petitioner should not be disallowed under Section 40 (a) (ia) of the said Act considering the fact the margins earned by the stockists were treated to be commission and petitioner was treated as an assessee in default on account of non-deduction of tax at source under Section 194H of the said Act and an order dated 26th March 2014 was passed under Section 201 (1)/(1A) of the said Act. Petitioner had submitted its detailed reply dated 30th March 2016. The assessment order came to be passed on 6th May 2016 in which this issue has not been dealt with. It is settled law as held in ***Aroni Commercials Limited V/s. The Dy. Commissioner of Income Tax – 2 (1) and Anr.***[1] relied upon by Mr. Pardiwalla that once a query is raised during the assessment proceedings and the assessee has replied to it, it follows that the query raised was a subject of consideration of the Assessing Officer while completing the assessment. It is not necessary that an assessment order should contain reference and/or discussion to disclose its satisfaction in respect of the query raised. If the Assessing Officer has considered the objection raised in the grounds for issuing notice under Section 148 of the said Act during the original assessment proceedings but has not rejected those objections, the Assessing Officer is deemed to have accepted the objections.

If one considers the reasons for reopening, the basis on which reopening has been done is that *the original assessment records, assessment*

1. 2014 (44) taxmann.com 304 (Bom.)

order or office note do not bring forth any material substance to suggest that this aspect was considered in the original assessment proceedings. Therefore, this aspect needs fresh consideration and examination. The assessee has not disclosed fully and truly material facts during the original assessment proceedings. From what has been noted by us above, this assumption of the Assessing Officer in the reasons for reopening is incorrect. Therefore, on this ground alone, the notice dated 25th March 2019 issued for reopening has to be struck down.

4 Moreover, the tangible material on the basis of which the Assessing Officer claims to have reasons to believe that income chargeable for tax for Assessment Year 2012-2013 has escaped assessment is because information has been received from the office of the Deputy Commissioner of Income Tax, TDS -2 (1), Mumbai vide letter dated 27th March 2017 regarding applicability of Section 40 (a) (ia) of the said Act for non deduction of TDS on amount of Rs.20,34,60,120/- paid to stockists for Assessment Year 2012-2013. According to the Assessing Officer, on the basis of the said information, an order under Section 201 (1)/201 (1A) of the said Act has been passed on 26th March 2014 by the Deputy Commissioner of Income Tax, TDS – 2 (1), Mumbai, deeming petitioner in default within the provisions of Section 201 for not deducting TDS under Section 194H. This itself cannot be accepted because he says on the basis of information dated 27th March 2017 an order has been passed on 26th March 2014. Moreover, this order has been discussed when the original assessment

proceedings were held and as noted earlier, during the course of hearing a query was raised by the Assessing Officer and petitioner has given detailed explanation vide its letter dated 30th March 2016. Therefore, there is nothing on record to even indicate that there was any tangible material for reopening the assessment.

5 In the case at hand, the assessment is sought to be reopened after the expiry of a period of four years from the end of relevant year and hence, the proviso to Section 147 applies which stipulates a requirement that there is an escapement of income by reasons of either omission or failure on the part of the assessee to disclose fully or truly all material facts necessary for assessment of that year. This condition required for reopening has not been satisfied.

6 In the circumstances, the petition has to be allowed. The notice dated 25th March 2019 and order dated 2nd November 2019 together with consequential notices and orders are hereby quashed and set aside.

7 Petition disposed with no order as to costs.

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