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

WRIT PETITION NO.3286 OF 2019

Monarch and Quershi Builders ...Petitioner

vs.

Union of India & Ors. ...Respondents

Mr. Naresh Jain a/w. Ms. Neha Anchlia i/b Ms. Rushita Jain for the Petitioner.
Mr. Arvind Pinto for the Respondents

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

DATE : 18 NOVEMBER 2021

P. C. :

Petitioner is challenging the notice dated 29/3/2019 issued under Section 148 of the Income Tax Act, 1961 (the Act) by which petitioner was informed by respondent that they have reasons to believe that petitioner's income chargeable to tax for Assessment year 2013-2014 has escaped assessment within the meaning of Section 141 of the Act Subsequently, reasons for reopening vide letter dated 14/6/2019 was provided to petitioner.

2. It is petitioner's case that reason for reopening is only change

of opinion and therefore the notice has to be set aside.

3. Respondent has sought to reopen more than 4 years after the relevant Assessment Year and therefore proviso to Section 147 of the Act will apply. With the assistance of the counsel we have considered the reasons for reopening. Reasons are as under:

> *"...............*
> *3. On perusal of ITS data for F.Y. 2012-13, it is seen that the assessee has sold flats amounting to Rs.59,37,51,564/-. However on perusal of Original Return of Income for A. Y. 2013-14, the assessee has declared sale turnover of only Rs. 15,21,62,314/- the year under consideration.*
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> *4. In view of the above, it is clear that the assessee has shown less turnover on sale of flats, the actual turnover is Rs.59.37,51,564/- however the assessee shown as Rs.15,21,62,314/-. Hence, it is a clear case of escapement of income to the tune of Rs.44,15,89,250/- as the assessee has sold flats and the assessee and it is not reflected in the turnover.*
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> *5. In view of the above, the provisions of clause (b) of Explanation 2 to section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment. In this case, four years have lapsed from the end of assessment year under consideration. Hence, necessary sanction to issue notice under Section.148 has been sought from Pr. Commissioner of Income Tax-33, Mumbai as per the provisions of section 151 of the Act.*
>
> *6. On the basis of the information made available and further enquiry done, I have reasons to believe that income chargeable to tax to the extent of Rs.44,15,89,250/- has escaped assessment by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for that assessment year i.e. for A.Y. 2013-14 within the*

meaning of section 147 of the Income-Tax Act, 1961."

4. Mr. Jain is correct in saying that before the assessment was completed and assessment order was passed on 12/3/2016 the Assessing Officer had raised queries regarding the sale of flats amounting to Rs.59,37,51,564/- and petitioner had provided explanation and documents. The Assessing Officer had considered the same and applied his mind and passed the assessment order. There is no material which has come in the hands of respondent after the assessment order was passed on 12/3/2016 which can be considered as material fact and the same was not truly and fairly disclosed.

5. By letter dated 9/11/2015 petitioner had received the letter from office of the Assistant Commissioner, Office of Income Tax calling upon to furnish the documents and details of about 27 transactions/flat sales. The transaction amount has also been mentioned and the total of these transactions is Rs.59,37,51,564/- which is the amount mentioned in the reasons for reopening. In reply petitioner vide its letter dated 17/11/2015 provided all details and documents to the Assessing Officer. Subsequently, the assessment order dated 29/2/2016 was passed. Date given as 12/3/2016 in the reasons, Shri Jain says appears to be erroneous.

6. In the circumstances, we are satisfied that this is nothing but change of opinion and using the words "I have reason to believe that income chargeable to tax…. By reason of the failure on the part of the assessee to disclose fully and truly all material facts…………" in the reason for reopening is clearly an attempt to take the case out of restrictions imposed by the proviso of Section 147 of the Act.

7. In the circumstances, the notice dated 29/3/2019 impugned in this petition is quashed and set aside. Notices/demand issued consequent to this notice which has been set aside, are also quashed and set aside. Petition disposed.

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