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

WRIT PETITION NO. 3363 OF 2019

CEAT Ltd. ….Petitioner

V/s.

Assistatn Commissioner of Income
Tax Circle 6(2) (1) and Ors. …Respondents

Mr. Madhur Agrawal i/b Mr. Atul K. Jasani for Petitioner.
Mr. Suresh Kumar for Respondents.

CORAM : K.R. SHRIRAM &
AMIT B. BORKAR, JJ.
DATED : 22nd DECEMBER, 2021

P.C. :

1. Petitioner is impugning notice dated 27th March, 2019 issued under Section 148 of the Income Tax Act, 1961 (the Act) for A.Y. 2012-13 and the order dated 31st October, 2019 rejecting petitioner's objections. Since the notice issued is after expiry of four years from the end of the relevant assessment year and assessment under Section 143(3) of the Act was completed, proviso to Section 147 of the Act shall apply. Respondent has to first show that there was failure on the part of petitioner to fulfill and there are non-disclosure of material facts required for assessment.

2. We have considered the reasons annexed at Exhibit 'F' to the petition. In our view, respondent has miserably failed to disclose any facts, material or otherwise which has not been disclosed. In our view, first of all

the reasons indicated change of opinion which is impermissible in law and secondly, the entire basis for re-opening is due to mistake of the Assessing Officer that resulted in under assessment.

3. The Hon'ble Apex Court in ***Indian & Eastern Newspaper Society vs. Commissioner of Income-tax***[1] has held that an error discovered on a reconsideration of the same material (and no more) does not give power to the Assessing Officer to re-open the assessment. Paragraph no. 14 of the said judgment read as under :

> *14. Now, in the case before us, the Income-tax Officer had, when he made the original assessment, considered the provisions of Sections 9 and 10. Any different view taken by him afterwards on application of those provisions would amount to a change of opinion on material already considered by him. The Revenue contends that it is open to him to do so, and on that basis to reopen the assessment under Section 147 (b). Reliance is placed on Kalyanji Mavji and Co. v. CIT, (1976) 102 ITR 287, where a Bench of learned Judges of this Court observed that a case where income had escaped assessment due to the "oversight, inadvertence or mistake" of the Income-tax Officer must fall within Section 34 (1) (b) of the Indian Income Tax Act, 1922. It appears to us, with respect, that the proposition is stated too widely and travels further than the statute warrants insofar as it can be said to lay down that if, on reappraising the material considered by him during the original assessment, the ITO discovers that he has committed an error in consequence of which income has escaped assessment, it is open to him to reopen the assessment. In our opinion, an error discovered on a reconsideration of the same material (and no more) does not give him that power. That was the view taken by this Court in Maharaj Kamal Kumar Singh's case (supra), A. Raman and Co.'s case (supra) and Bankipur Club Ltd. v. CIT, (1971) 82 ITR 831, and we do not believe that the law has since taken a different course. Any observations in Kalyanji Mavji's case (supra) suggesting the contrary do not, we say with respect, lay down the correct law.*

1 [1979] 119 ITR 996

4. This view has been followed by a Full Bench of the Karnataka High Court in ***Dell India (P.) Ltd. vs. Joint Commissioner of Income Tax, LTU, Bangalore[2].***

5. Petition therefore is allowed in terms of prayer clause – (A) which reads as under :

> *(A) that this Hon'ble Court may be pleased to issue a writ of certiorari or any other writ, order or direction under Article 226 of the Constitution of India calling for the records of the case leading to the issue of the impugned notice and passing of the impugned order and after going through the same, and examining the question of legality thereof, quash, cancel and set aside the impugned notice (Exhibit – C) dated 27th March, 2019 and the impugned order (Exhibit – H) dated 31st October, 2019.*

6. Petition disposed.

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

2 [2021] 432 ITR 212 (Karnataka)