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

WRIT PETITION NO.3405 OF 2019

Rustomjee Evershine Joint Venture ….Petitioner

V/s.

Assistant Commissioner of Income Tax
Central Circle - 2(4) & Ors. ….Respondents

Mr. Harsh M. Kapadia 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 27th March 2019 issued under Section 148 of the Income Tax Act, 1961 (the said Act) for Assessment Year 2012-2013 and the order dated 5th October 2019 rejecting the objections.

2 We have considered the reasons annexed to the petition. The notice under Section 148 of the said Act being issued after the expiry of four years and and the assessment having been completed under Section 143(3) of the said Act, the proviso to Section 147 of the said Act applies. Respondents have to show there was failure to truly and fully disclose material facts. We have considered the reasons and there is nothing to indicate there was failure to disclose any material fact. The entire reasons is based on change of opinion which is not permissible. According to the

Assessing Officer, the interest expense, which had been allowed earlier as revenue expenditure, should be allowed as business expenditure in ratio of the revenue offered from the project and work in progress at the end of the year. The entire basis starts with "on perusal of the records". Infact when the case was picked up for scrutiny and the assessment was completed under Section 143(3) of the said Act, vide order dated 17th March 2015, the Assessing Officer had accepted petitioner's assessment of total income at a loss of Rs.19,05,42,694/-.

3 In the circumstances, petition 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 a Writ in the nature of Certiorari or any other appropriate Writ, Order or direction, calling for the records of the Petitioner's case and after going into the legality and propriety thereof, to quash and set aside the said notice dated 27th March 2019 (Exhibit I) and the subsequent Order dated 5th October 2019 (Exhibit L).*

4 Petition disposed.

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