

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

WRIT PETITION NO.3497 OF 2019

Infinity.com Financial Securities Limited

....Petitioner

V/s.

Assistant Commissioner of Income Tax – 4(1)(1) & Ors.Respondents

Mr. Jeet Kamdar i/b. Mr. Sameer G. Dalal 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 30th March 2019 issued under Section 148 of the Income Tax Act, 1961 (the said Act) for Assessment Year 2012-2013 and order dated 15th October 2019 rejecting the objections.

2 The notice having been issued after expiry of four years, proviso to Section 147 of the said Act is applicable. There is nothing in the reasons to indicate that there has been failure on the part of petitioner to truly and fully disclose any material fact. No reply has been filed though time to file reply was granted on 18th December 2019.

3 In the reasons, it is stated that office of respondent no.1 received beneficiaries information in the case of one M/s. Divine Multimedia (India) Ltd., a Penny Stock Company from DDIT (Inv) Unit 7 (3), Mumbai

through email dated 28th March 2019. On persual of the same, it is seen that the assessee has indulged in creating fictitious Long Term Capital Gain/Loss/Short Term Capital Gain on purchase and sale of penny stocks during the year and the company on which petitioner has illegitimate activity of booking of bogus profit/loss was M/s. Divine Multimedia (India) Ltd. The amount of profit is Rs.1,53,56,887/-.

4 During the course of original assessment proceedings, the Assessing Officer had, by a letter dated 6th January 2014, called upon petitioner to furnish in the format prescribed therein details of investments alongwith detail pertaining to the method adopted by petitioner for the valuation of the closing balance of investment, details of share trading (own account) for delivery based and non-delivery based transactions separately and also submit the detail pertaining to the method adopted by petitioner for the valuation of the closing stock, short term capital gains and long term capital gains. In reply, petitioner provided these details including the date on which it purchased the shares of M/s. Divine Multimedia (India) Ltd., the date on which the shares were sold and the capital gain/loss made. Infact petitioner has shown a capital gain of Rs.70,33,024/- and the value of the shares sold of M/s. Divine Multimedia (India) Ltd. was Rs.1,53,56,886/-. M/s. Divine Multimedia (India) Ltd. was earlier called as Kalidoscope Films Ltd. Petitioner had made available these information before the Assessing

Officer, who after considering the same has passed the assessment order.

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

The Assessing Officer had all materials facts before him when he made the original assessment. When the primary facts necessary for

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

assessment are fully and truly disclosed, the Assessing Officer is not entitled on change of opinion to commence proceedings for reassessment. Even if the Assessing Officer, who passed the assessment order, may have raised too many legal inferences from the facts disclosed, on that account the Assessing Officer, who has decided to reopen assessment, is not competent to reopen assessment proceedings. Where on consideration of material on record, one view is conclusively taken by the Assessing Officer, it would not be open to reopen the assessment based on the very same material with a view to take another view.

6 Therefore, all material facts had been disclosed by petitioner in the course of the regular assessment proceedings and the reasons recorded for initiation of reassessment too give reference only to the details already submitted by petitioner in the course of the original assessment proceedings and nothing more. It is a well settled judicial principle that the true test of income chargeable to tax escaping assessment is whether there exists fresh “tangible material” on the basis of which an appropriate conclusion can be reached. In the absence of such fresh material, the reassessment proceedings would be invalid. This principle has been upheld by the Hon’ble Supreme Court and the jurisdictional High Court in various rulings. This Court has held that reassessment based on a reconsideration of material already available on record at the time of the original assessment proceedings

tantamounts to a change of opinion and would be invalid. Further, since the relevant facts, which were already on record at the time of the original assessment proceedings, also form the basis for the initiation of the subject reassessment proceedings, it is amply clear that there was no fresh material that could have come to the notice of respondent no.1 to warrant reopening of assessment. Information received from DDIT (Inv.) regarding petitioner indulging in illegitimate activity of booking bogus profit/loss on scrip of M/s. Divine Multimedia (India) Ltd. would not by itself constitute any fresh material for reopening assessment. Information received from DDIT (Inv.) has already been examined and inquired into by respondent no.1 in the original assessment proceedings where after submitting various details with regard to details of investments, details of short term capital gains and long term capital gains the same had been satisfactorily explained and accepted by respondent no.1.

7 In our view, the notice dated 30th March 2019 issued under Section 148 of the said Act is issued without jurisdiction and requires to be set aside. The consequential order dated 15th October 2019 also requires to be set aside.

8 Therefore, the notice dated 30th March 2019 and order dated 15th October 2019 are quashed and set aside.

9 Petition disposed.

(AMIT B. BORKAR, J.)

(K.R. SHRIRAM, J.)