IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.3496 OF 2019

CMI FPE Limited ...Petitioner
Vs.
The Union of India through the
Secretary Ministry of Finance and Ors. ...Respondents

Mr. Prakash Shah a/w. Mr. Durgaprasad Poojari i/b Prompt Legal for Petitioner.
Mr. Suresh Kumar for Respondents.

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

DATED : 23 DECEMBER 2021.

P. C. :

Petitioner is challenging the notice of reassessment dated 13/3/2019 for Assessment Year 2012-2013 and order dated 25/11/2019 rejecting its objections.

2. Mr. Shah submits that the reasons consists of two issues based on change of opinion and those are difference between total bills raised by the assessee and sales booked in the books of account and according to the Assessing Officer when the bills are already raised, amount is accrued to the assessee and therefore it had to be offered to tax, which the assessee

has not done and the same which was claimed by way of warranty provision was not allowable looking to the past history of actual expenses in relation to such warranty. Mr. Shah submits that these two issues along with one more issue was the subject matter of consideration for Assessment Year 2011-2012 and notice for reopening had been issued for that Assessment Year as well. Mr. Shah submits that said notice for Assessment Year 2011-2012 was also quashed by order dated 8/3/2019 in Writ Petition No. 294/2019.

3. Moreover we have considered the reasons recorded for reopening and we are of the view that it is nothing but change of opinion.

4. Even the order of objection is based on erroneous understanding of legal provision in as much as here is a case where reopening is proposed beyond 4 years and therefore reasons should indicate that there was failure on the part of assessee to fully and truly disclose material facts. This is one of the principal conditions before the Assessing Officer could assume jurisdiction and if this condition is not met the notice issued would be without jurisdiction and will require to be quashed.

5. In the order rejecting objections, the Assessing Officer says

that it is not required to satisfy that for issuance of notice beyond period of 4 years there must be failure on the part of assessee to disclose material fact. According to the Assessing Officer he should only have a reason to believe that there is escapement of income and it would confer jurisdiction to reopen the assessment. In our view on this ground alone petition has to be allowed. Notice as well as order impugned in the petition are hereby quashed and set aside.

6. Petition disposed.

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

RAJESHWARI SUBODH KARVE

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