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

WRIT PETITION NO.3451 OF 2019

Knight Riders Sports Private Limited ....Petitioner

V/s.

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

Mr. J.D. Mistri, Senior Advocate a/w. Mr. Hiten Chande i/b. PDS Legal for petitioner.
Mr. Suresh Kumar for respondents.

CORAM : K.R. SHRIRAM &
AMIT B. BORKAR, JJ.
DATED : 20th DECEMBER 2021

P.C. :

1 Petitioner, unhappy with the notice dated 31st March 2019 and order dated 22nd November 2019, has approached this Court by way of this writ petition. As the notice dated 31st March 2019 under Section 148 of the Income Tax Act, 1961 (the said Act) has been issued after the expiry of four years from the end of the assessment year 2012-2013 and the assessment under Section 143(3) of the said Act has been completed, proviso to Section 147 of the said Act shall apply in as much as respondents will have to show that there is failure to truly and fully disclose material facts by the assessee.

2 With the assistance of Mr. Mistri and Mr. Suresh Kumar we have considered the petition and the documents annexed thereto alongwith the reasons for reopening, copy whereof is at Exhibit "M" to the petition. The reasons only indicate the proposal to reopen is only because of change of

opinion which is not permissible in law. The reasons do not indicate anywhere what was the material fact that petitioner had failed to disclose. In the reasons for reopening, the Assessing Officer infact states "on going through the case records of the assessee, it is found....". In the reasons for reopening, there is not even a whisper as to what was not disclosed. Even in the order rejecting the objections, respondent states that the assessee filed its return of income declaring at Rs.Nil and subsequently, the return of income was selected for scrutiny and assessment under Section 143(3) of the said Act and on going through the case record of the assessee, he found the details which have been mentioned in the reasons. The basis, as contained in the reasons for reopening, is that assessee, being an Indian company, is paying equal annual installments of franchisee fee of Rs.30,03,60,000/- to BCCI every year using the same exchange rate of 1 USD = INR 40. However, as per the requirements of the invitation to tender, the payment of franchisee fee is required to be made in Indian rupees by using the TT selling exchange rate and as such non consideration of exchange rate had benefited the assessee to the extent of Rs.33,80,77,707/- which has not been offered by the assessee to tax. Hence, there is an escapement of income.

3 Admittedly, assessee and BCCI are both Indian entities and payments have to be made only in rupees and not in dollars. BCCI has also

accepted this and has raised invoice on the basis that the amount of Rs.3,00,36,00,000/- has to be paid over a period of ten years and raised invoice as such. If we have to go on the basis of what the Assessing Officer thinks, the amount payable would be almost double, which is not the term which parties have agreed upon. Moreover, when the return of income for Assessment Year 2012-2013 was selected for scrutiny assessment under Section 143(2) of the said Act, respondent no.1 raised a query as to why the franchisee fee of Rs.30,03,60,000/- should not be disallowed as it is capital in nature. Petitioner responded and explained why it should not be and why the franchisee fee payable to BCCI is revenue in nature and allowable as deduction under Section 37(1) of the said Act.

4 To a specific query raised by respondent no.1, petitioner by its said letter dated 17th November 2014 also submitted a statement received from the BCCI for sharing of the central rights income which was to be shared with petitioner, wherein BCCI adjusted the amount that was payable by petitioner to BCCI on account of IPL played during the year and thereafter, paid the balance amount to petitioner. Ofcourse on 26th March 2015 respondent no.1 passed the assessment order holding that franchisee fee was not allowable as revenue expenditure, which was challenged by petitioner before Commissioner of Income Tax (Appeals) [CIT (A)]. Impugning the order passed by CIT (A) dismissing petitioner's appeal,

petitioner has filed an appeal before the Income Tax Appellate Tribunal (ITAT), which was pending on the date petition was filed. That appeal has been disposed by ITAT vide its order pronounced on 10th November 2020 holding that the franchisee fee paid by petitioner to BCCI was revenue expenditure and directed the Assessing Officer to delete the addition.

5 What we are driving at is that these figures were all available before the Assessing Officer, who has considered the same and after applying his mind, passed the original assessment order dated 26th March 2015. Therefore, in our considered view, the reason to reopen on change of opinion, which as held by this Court, the Apex Court and many other Courts, is not permissible. We will have to hold that the Assessing Officer had in his possession all primary facts and it was for him to make necessary enquiries and draw proper inference, which he did. The Assessing Officer had all materials facts before him when he made the original assessment. When the primary facts necessary for 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, the notice dated 31st March 2019 under Section 148 of the said Act and the order dated 22nd November 2019 are quashed and set aside.

7 Petition disposed.

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