

Niti

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.1061 OF 2019

Tumkur Minerals Pvt. Ltd.
a Company incorporated under
the Companies Act, 1956, having its
registered office at Ramanashree
Chambers, 102, 1st Floor, 37, Lady
Curzon Road, Bengaluru 560 001, and
Administrative Office at Salgaocar
House, Off Dr. F. L, Gomes Road,
Vasco-Da-Gama Goa 403 802
PAN : AACCT2057P
Through its Director,
Mr. Ashwyn Kumar R. Nayak,
major of age,

....Petitioner

Versus

1. Joint Commissioner of Income Tax,
Special Range, Panaji, Goa,
having his Office at Aayakar Bhawan,
EDC Complex, Patto Plaza,
Panaji, Goa 403 001.

2. Principal Commissioner of Income
Tax, having his Office at Aayakar
Bhawan, EDC Complex, Patto Plaza,
Panaji, Goa 403 001.

3. Union of India.
T-1, 3rd Floor,
Shindesh Apartment,
Panjim Goa 403001.
(Above ICICI Bank,
Near old passport office).

....Respondents

Corrections carried out as per order dated 13.12.2022. **Mr Jitendra Jain, Senior Advocate with Mr Ryan Menezes, Advocate for the Petitioner.**
Ms Amira Razaq, Standing Counsel for the Respondents.

CORAM: M. S. SONAK & BHARAT P. DESHPANDE, JJ.

Reserved on : 5th DECEMBER 2022
Pronounced on: 7th DECEMBER 2022

JUDGMENT : (*Per M.S. Sonak, J.*)

1. Heard learned Counsel for the parties.
2. Rule. The rule is made returnable immediately with the consent of and at the request of the learned Counsel for the parties.
3. The Petitioner challenges the re-opening of the assessment for the Assessment Year (AY) 2012-13, *inter alia*, on the ground that there was no failure on the part of the Petitioner to disclose fully and truly all material facts necessary for its assessment for that Assessment Year, and, therefore, no notice for re-opening the assessment could have been issued after the expiry of four years from the end of the relevant Assessment Year.
4. The Assessing Officer (AO) issued the impugned notice dated 29.03.2019 under Section 148 of the Income Tax Act,

1961 (IT Act), seeking to re-open the assessment for AY 2012-13. Thus, admittedly, the impugned notice was issued after the expiry of four years from the end of the relevant AY.

5. Upon receipt of the impugned notice, the Petitioner sought reasons and filed objections after obtaining the reasons. However, the objections were rejected by the AO by Order dated 02.11.2019. Hence, the present petition.

Corrections
carried out
as per order
dated
13.12.2022.

6. Mr Jain, the learned ~~Senior~~ Advocate for the Petitioner, submitted that the impugned notice and the reasons do not disclose the material facts which the Petitioner allegedly failed to disclose for assessment during the relevant year. He submitted that the Petitioner had disclosed fully and truly all facts necessary for assessment. Such material facts were *inter alia* disclosed in the audit report, annual accounts and tax audit report that were required to be and were, in fact, filed along with the return of income. Additionally, he pointed out that the Petitioner had expressly disclosed information about the Supreme Court proceedings and the effect of such proceedings on the Petitioner's iron ore that was being E-auctioned by the Monitoring Committee established by the Hon'ble Supreme Court. Therefore, he submitted that since there was no failure on the Petitioner's part to disclose all material facts fully and the

Explanation (1) to Section 147 of the IT Act did not apply, the issue of the impugned notice was without jurisdiction, null and void.

7. Mr. Jain relied on several decisions including *Hindustan Lever Ltd. V/s. R.B. Wadkar*¹, *3i Infotech Ltd. V/s. Assistant Commissioner of Income Tax*², *Bombay Stock Exchange Ltd. V/s. DDIT (Exemp.) (No.2)*³, *Godrej Industries Ltd. V/s. Assistant Commissioner of Income Tax*⁴, *Bharti Infratel Ltd. V/s. Deputy Commissioner of Income Tax*⁵, *Delhi Farming & Construction (P.) Ltd. V/s. Assistant Commissioner of Income Tax*⁶, *India Steamship Co. Ltd. V/s. Jt. Commissioner of Income Tax*⁷, *Arthur Anderson & Co. V/s. Asst. Commissioner of Income Tax*⁸ in support of his contentions.

8. Mr Jain referred to the reasons recorded and furnished to the Petitioner for the issue of the impugned notice. Based upon the same, he submitted that such reasons did contain a statement

1 (2004) 137 Taxman 479 (Bom.)

2 (2010) 329 ITR 257

3 365 ITR 181 (Bom.)

4 WP No.50 of 2007

5 (2019) 411 ITR 403 (Del)

6 (1999) 240 ITR 127

7 (2005) 275 ITR 155 (Cal)

8 (2010) 324 ITR 240 (Bom)

about the alleged failure on the Petitioner's part to fully and truly disclose "*the following material facts*" necessary for the assessment for the year under consideration. However, he pointed out that no such material facts were referred to or listed after this statement. He submits that from this, it is clear that there was no failure on the Petitioner's part to disclose truly and fully any of the material facts necessary for its assessment during the relevant AY. In the absence of failure to disclose, the AO lacked jurisdiction to re-open the assessment after the expiry of four years from the end of the relevant AY.

9. Ms Razaq, the learned Standing Counsel for the respondents, defended the impugned action by submitting that too much emphasis should not be laid on the omission in paragraph 4 of the reasons furnished to the Petitioner on 01.05.2019. Instead, she proposes that the reasons have to be considered holistically. From the same, it is apparent that the Petitioner failed to disclose primarily that during the AY 2012-13, the Monitoring Committee had already auctioned Petitioner's ore and recovered an amount of ₹129.716 crores. She submits that neither was this material fact disclosed in the returns filed for the relevant AY but further, even though this amount was accrued to the Petitioner, the same was not brought to tax. Therefore, she submitted that this was an apparent failure to disclose all material

facts necessary for assessment during the relevant AY. She relied on *Calcutta Discount Co. Ltd. V/s. Income Tax Officer*⁹ in support of her contention that the merits of the matter cannot be gone into at this stage because the Assessee will have a full opportunity to raise issues on merits during the reassessment proceedings.

10. Mr Jain, by way of rejoinder, pointed out that complete disclosures were made, and the amount of ₹129.716 crores neither accrued nor was received during the relevant AY. He submitted that the Monitoring Committee disbursed this amount only in the ~~next~~ ^{AY 2014-2015} AY. Upon receipt, this amount was promptly offered to tax in the ~~following~~ ^{AY 2014-2015} AY, and the same was taxed at a higher rate of 34% compared to the tax rate of 32% for ~~AY 2013-~~ ^{AY 2014-2015} 14. He, therefore, submitted that since only the issue of the year of taxability/deductibility is involved and the tax rate is the same or lower, the Revenue ought not to agitate such matters and that too by seeking to re-open the assessment after four years. He relied on *Nagiri Mills Co. Ltd.*¹⁰, *Excel Industries Ltd.*¹¹, *Cable Corporation of India Ltd.*¹², *Millennium Estates (P.)*

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⁹ (1961) 41 ITR 191

¹⁰ (1958) 33 ITR 681 (Bom.)

¹¹ (2013) 358 ITR 295 (SC)

¹² (2016) 75 taxmann.com 117 (Bom.)

*Ltd.*¹³, *Aditya Builders, Rajesh Prakash Timblo*¹⁴, *Rajesh Prakash Timblo*¹⁵ in support of his contentions.

11. The rival contentions now fall for our determination.

12. After the impugned notice was served upon the Petitioner, reasons were sought, and the same were furnished to the Petitioner on 01.05.2019.

13. The reasons furnished to the Petitioner are at Exhibit AAJ (pages 813 to 815 of the paper book). Such reasons are transcribed below for the convenience of reference:

*"OFFICE OF THE ASST. COMMISSIONER OF INCOME
TAX-Circle-2(1),
AAYAKAR BHAVAN, EDC COMPLEX, PATTO PLAZA,
PANAJI-GOA 403 001. Tel. 0832-2438464*

ENo.ACIT/C-2(1)/PNJ/19-20

Date: 01.05.2019

*To
The Director
M/s. Tumkur Minerals Pvt. Ltd.
Salgaocar House, Off. Dr. F.L.Gomes Road
Vasco-Da-Gama, Goa 403 802 _*

Sir/Madam,

13 (2018) 93 taxmann.com 41 (Bom)

14 (2015) 378 ITR 75 (Bom)

15 (2019) 415 ITR 334 (Bom)

*Sub.: Reasons of re-opening of assessment proceedings for
A.Y. 2012-13 - reg.*

Ref.: Yours letter dt. 26.04.2019

Please refer to the above.

2. The reason for re-open of assessment proceedings for A.Y. 2012-13 in your Own case is as under: -

1. Brief details of the Assessee: The Assessee is a company carrying on Mining business, and sale and export of Iron Ore.

2. Brief details of information collected/received by the AO: As per the verification report received from O/o JDIT (I & CI), Bangalore during the year an e-auction of Iron Ore(mining) has been conducted by the monitoring committee appointed by the Hon'ble Supreme Court of India by the Assessee and the total e-auctioned amount for the F.Y. 2011-12 was determined as under:

<i>Sl. No.</i>	<i>Name of the Assessee</i>	<i>Category</i>	<i>Auction No.</i>	<i>E-Auctioned Amount for F.Y. 2011-12</i>
<i>1</i>	<i>M/s. Tumkar Minerals Pvt. Ltd.</i>	<i>Category B</i>	<i>AUCTION-18/8444-IRON</i>	<i>1,10,72,80,000/-</i>
			<i>AUCTION-20/8953-IRON</i>	<i>18,98,80,000/-</i>
			<i>TOTAL</i>	<i>1,29,71,60,000/-</i>

3. Analysis of information collected/ received: As per the verification report, the Assessee had filed its return of income for the AY 2012-13 on 30.09.2012 declaring an income of Rs.2,61,81,690/-. The Assessee has shown sales of Rs.24,69,335/in the Income-tax return as against the e-auction receipts of Rs.1,29,71,60,000/-. Thus, the Assessee has accounted for less receipt to the extent of Rs.1,29,46,90,665/ (Rs. 1,29,71, 60,000/- - Rs.24,69,335/-). Therefore, it is clear that the Assessee has not accounted for the receipts fully in the books of account. As the company maintain its account as per Mercantile system and hence revenue/sales determined (e-

auctioned amount) in the FY 2011-12 (A.Y. 2012-13) has to be accounted in the same year.

Hence, the e-auctioned amount of **Rs.1,29,46,90,665/-** determined by the monitoring committee appointed by the Hon'ble Supreme Court of India is taxable in the year of e-auctioned took place and amount determined ie. FY 2011-12 (A.Y. 2012-13).

4. In view of the above, to examine the e-auction of iron ore took place in the various years and amount determined were offered for tax by the Assessee or not, in addition to regular income in respective years, it is proposed to re-open the case by issue of notice u/s 147 of the I.T. Act. I have reason to believe that income chargeable to tax has escaped the assessment to the extent of **Rs.1,29,46,90,665/-** for the **AY 2012-13**, within the meaning provision of section 147 of the Income Tax Act, 1961. Accordingly, assessment for A.Y. 2012-13 is proposed to be re-opened by issuing notice u/s 148 of the I.T. Act. 1961.

Applicability of the provision of section 147/151 to the facts of the case:

*In this case, a return of income was filed for the year under consideration and regular assessment u/s 143(3) was made on 28.03.2015. **Since 4 years from the end of the relevant year has expired in this case**, the requirements to initiate proceeding u/s 147 of the Act are reason to believe that income for the year under consideration has escaped assessment because of failure on the part of the Assessee to disclose fully and truly all material facts necessary for his assessment for the assessment year under consideration. It is pertinent to mention here that reasons to believe that income has escaped assessment for the year under consideration have been recorded above (refer paragraphs 2&3). **I have carefully considered the assessment records containing the submissions made by the Assessee in response to various notices issued during the assessment/reassessment proceedings and have noted that the Assessee has not fully and truly disclosed the following material facts necessary for his assessment for the year under consideration:***

It is evident from the above facts that the Assessee had not truly and fully disclosed material facts necessary for his assessment for the year under consideration thereby necessitating re-opening u/s 147 of the Act.

*It is true that the Assessee has filed a copy of annual report and audited P&L A/c and balance sheet along with return of income where various information/material were disclosed. However, the requisite full and true disclosure of all material facts necessary for assessment has not been made **as noted above**. It is pertinent to mention here that even though the Assessee has produced books of accounts, annual report, audited P&L A/c and balance sheet or other evidence as mentioned above, the requisite material facts as **noted above** in the reasons for re-opening were embedded in such a manner that material evidence could not be discovered by the AO and could have been discovered with due diligence, accordingly attracting provisions of Explanation 1 of section 147 of the Act.*

It is important to highlight here that material facts relevant for the assessment on the issue(s) under consideration were not filed during the course of assessment proceeding and the same may be embedded in annual report, audited P&L A/c and balance sheet and books of account in such a manner that it would require due diligence by the AO to extract these information. For aforesaid reasons, it is not a case of change of opinion by the AO."

Yours faithfully,

Sd/-

(Harshini Gopal G. R.)

Asst. Commissioner of Income Tax

Circle-2(1), Panaji."

14. From the reasons furnished to the Petitioner, it is evident that the AO, based on the brief details of the Assessee, brief details of the information received and collected by the AO and

the analysis of the information collected/received purported to record satisfaction that the Assessee had failed to fully and truly disclose "*the following material facts*" *necessary for his assessment for the year under consideration* :

15. However, after recording the above-emboldened portion in paragraph 4 of the reasons transcribed above, the AO omitted to disclose what were the material facts, which according to him, the Assessee failed to disclose for the relevant AY. Instead, after the above quoted emboldened wordings or phrases, the AO simply proceeded to state that "*it is evident from the above facts that the Assessee had not truly and fully disclosed material facts necessary for his assessment for the year under consideration thereby necessitating re-opening u/s 147 of the Act*". There is a reference to the phrase '*the above facts*' at further two places in the reasons.

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dated
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16. However, what was actually "*the above facts*" was never stated in the reasons dated 01.05.2019. Thus, in the reasons furnished to the Petitioner, the AO ^{has not} disclosed which material facts, according to him, were not fully or truly disclosed by the Petitioner. Such non-disclosure suggests that there was no failure on the Petitioner's part to fully and truly disclose all material facts. In any case, such non-disclosure by the AO denies the Petitioner an adequate opportunity to lodge its objections to such

reasons consistent with the procedure in *GKN Driveshafts (India) Ltd. V/s. Income Tax Officer And Ors.*¹⁶.

17. Since the Petitioner was not informed what the material facts that the Petitioner allegedly failed to fully and truly disclose during the relevant AY were, the Petitioner could not effectively object to the re-opening by pointing out that the material facts that the Petitioner already disclosed during the relevant AY constituted a full and a true disclosure necessary to complete the assessment. This, according to us, is a serious infirmity which goes to the root of the jurisdiction to issue the impugned notice seeking to re-open the assessment after four years from the end of the relevant AY.

18. The importance of recording and communicating reasons to an Assessee, particularly when reassessment is proposed after four years from the end of the relevant AY, is explained in paragraph 20 by the Division Bench in *Hindustan Lever Ltd.* (supra). The same reads as follows :

"20. The reasons recorded by the Assessing Officer nowhere state that there was failure on the part of the Assessee to disclose fully and truly all material facts necessary for the assessment of that assessment year. It is needless

16 (2003) 1 SCC 72

to mention that the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons. It is for the Assessing Officer to reach to the conclusion as to whether there was failure on the part of the Assessee to disclose fully and truly all material facts necessary for his assessment for the concerned assessment year. It is for the Assessing Officer to form his opinion. It is for him to put his opinion on record in black and white. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. Reasons are the manifestation of mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the Assessee guessing for the reasons. Reasons provide link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the Assessee fully and truly necessary for assessment of that assessment year, so as to establish vital link between the reasons and evidence. That vital link is the safeguard against arbitrary re-opening of the concluded

assessment. *The reasons recorded by the Assessing Officer cannot be supplemented by filing affidavit or making oral submission, otherwise, the reasons which were lacking in the material particulars would get supplemented, by the time the matter reaches to the Court, on the strength of affidavit or oral submissions advanced."*

Emphasis supplied

19. The Division Bench in terms has held that the AO, who seeks to re-open the assessment after four years from the end of the relevant AY, must disclose in the reasons as to which fact or material was not disclosed by the Assessee fully and truly necessary for the assessment of that AY, to establish a vital link between the reasons and the evidence.

20. However, in this case, as noted above, the AO, even after stating that there were some material facts which, according to him, were not truly and fully disclosed by the Petitioner, omitted to refer to or state such facts, if any, based on which he was subjectively satisfied that a case was made out to re-open the assessment. The reasons furnished state that it was based upon the alleged failure to disclose "*the above facts*" that the impugned notice was issued. But, again, what these material facts were, was not stated in the reasons furnished to the Petitioner.

21. Ms Razaq, by reference to paragraphs 1,2 & 3 of the reasons, tried to urge that the holistic reading of the said three paragraphs give some inkling of the material facts that the Assessee failed to truly and fully disclose during the relevant AY. In particular, she pointed out that the Assessee had not explicitly referred to the e-auctioned amount of ₹129.469 crores that the Monitoring Committee had recovered from the sale of the Petitioner's ore during the relevant AY.

22. Even the holistic reading of paragraphs 1,2 & 3 of the reasons furnished to the Petitioner does not suggest that the re-opening was due to the alleged failure to refer to this amount of ₹129.469 crores explicitly. However, that is the case set out in the returns/affidavit filed by the AO in this petition. Thus, the glaring omissions in the reasons furnished to the Petitioner are sought to be plugged by filing an affidavit before this Court.

23. Again, it is well settled that the reasons recorded by the AO cannot be supplemented by filing an affidavit or making oral submissions. Otherwise, the reasons lacking in material particulars would get augmented by the time the matter reached the Court on the strength of affidavit or oral submissions advanced. Further, the Division Bench has held that the AO must put his opinion on record in black and white. The reasons

recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. The reasons are the manifestation of the mind of the Assessing Officer./ The reasons recorded should be self-explanatory and should not keep the Assessee guessing about the reasons. The Division Bench explained that the reasons provide the link between the conclusion and the evidence; therefore, clear disclosure of the reasons was vital in such matters.

24. Therefore, following the law in *Hindustan Lever Ltd.* (supra) in the context of reasons furnished by the AO to the Petitioner on 01.05.2019, the impugned notice will have to be quashed because there is no disclosure in the reasons as to which fact or material was not disclosed by the Assessee fully and truly and which the AO thought, was necessary for assessment of the relevant AY. As noted earlier, such non-disclosure suggests that there was no failure on the Petitioner's part to fully and truly disclose all material facts. In any case, such non-disclosure by the AO denies the Petitioner an adequate opportunity to lodge its objections to such reasons consistent with the procedure in *GKN Driveshafts (India) Ltd. (Supra)*.

25. The AO, in this case, has invoked *Explanation* (1) to Section 147 of the IT Act. This provides that the production

before the AO of account books or other evidence from which material evidence could, with due diligence, have been discovered by the AO will not necessarily amount to disclosure within the meaning of the foregoing proviso that deals with re-opening of assessment after expiry of four years from the end of the relevant AY.

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26. In the above regard, the reference would be necessary to the return filed by the Petitioner for AY 2012-13 on ~~08.08.2012~~ ^{30.09.2012}.

Along with the returns, as was statutorily required, the Petitioner filed annual accounts certified by the Chartered Accountant/Auditor. The Auditor qualified the accounts by referring to Note No.26 concerning the valuation of iron ore pending determination of amounts due and directions of the Hon'ble Supreme Court in SLP No.7366/2010 and connected matters. In the notes to the accounts, there is a clear reference to the litigation pending before the Hon'ble Supreme Court and the sale by the Central Empowered Committee (CEC) through the Monitoring Committee (MC).

27. Note no.26, referred to annual accounts, reads as follows:

"26. In accordance with the directions of the Supreme Court, vide its orders dated 26.08.2011 and 02.09.2011, in the Public Interest Litigation WP (C)

No.562/2009 and the Central Empowered Committee report of 01/09/2011 with respect to mining in Karnataka, a Monitoring Committee under the aegis of Central Empowered Committee, has taken over the modalities for sale of Iron Ore in that State and inter alia the Company's stocks of Iron Ore at Mines (excluding stocks lying at the loading points), through e-auction. The proceeds collected through e-auction are retained by the Monitoring Committee. The disbursements of the proceeds collected by them through e-auction payable to the Company, if any, will be done only on determination and under the directions of the Hon'ble Supreme Court. Pending such final determination by the Hon'ble Supreme Court of the amount due, if any, the Company has continued to show such ore stocks in its Books of Accounts at Cost.

28. Similarly, in the context of an Audit Report certified by the Chartered Accountant, there is again reference to the above Note no.26 while reporting on the closing stock valuation. Thus, the position about the Petitioner's iron ore being e-auctioned by the MC subject to further orders of the Hon'ble Supreme Court was disclosed along with the returns.

29. On 20.08.2013, the AO issued a notice under Section 143(2) of the IT Act to the Petitioner along with a questionnaire seeking annual accounts, tax audit reports, details of purchase/sale, etc. On 29.12.2014, the Petitioner filed a detailed

response together with the annual accounts and tax audit report. Further, details were also supplied by the Petitioner on 23.03.2015.

30. Finally, the AO, on 28.03.2015, assessed the Petitioner's return for AY 2012-13 by making an order under Section 143(3) of the IT Act.

31. Mr Jain submitted that since the Petitioner had disclosed fully and truly all the above material facts, in the reasons furnished to the Petitioner on 01.05.2019, the AO could not list a single material fact that was alleged to have been suppressed by the Petitioner for assessment during the relevant AY. As noted earlier, in the reasons furnished to the Petitioner, there is an omission to state the alleged material facts which the Petitioner is alleged to have failed to disclose. Therefore, the above disclosures, together with the absence of the material facts which the Petitioner has failed to reveal, leads to the legitimate inference that there was no failure on the part of the Petitioner to truly and fully disclose all material facts necessary for assessment for the relevant AY.

32. In the context of *Explanation* (1) to Section 147 of the Income Tax Act, the same refers to account books or other

evidence. In this case, the audit report, annual accounts and the tax audit report filed by the Petitioner along with its returns may not constitute "*account books*" or "*other evidence*". The documents in which the disclosures were made were statutorily required to be filed as a part of the return. Therefore, in respect of such documents as are statutorily required to be produced along with the returns or as a part of the returns, *Explanation* (1) to Section 147 would not apply.

33. In *3i Infotech Ltd.* (supra), the Division Bench of our Court comprising Dr D.Y. Chandrachud (as His Lordship then was) and J.P. Devdhar, JJ. was concerned with disclosures made in the Tax Audit Report as a part of its return of income. The Court held that this was not a case where the Assessee can be regarded as having merely produced its book of account or other evidence during assessment proceedings based on which the AO could have deduced material evidence with the exercise of due diligence. Under Section 139, the Assessee was under a mandatory obligation to furnish with its return of income the report of audit under Section 44AB. The Assessee fulfilled the obligation. Therefore, the disclosures made as a part of the report under Section 44 AB could not fall within the interdict of *Explanation* (1) to Section 147. To the same effect is the law laid down in *Bombay Stock Exchange Ltd.* (supra).

34. Thus, this is a case where the Petitioner disclosed all material facts necessary for his assessment for AY 2012-13. In the reasons furnished to the Petitioner, the AO omitted to point out the material facts, which according to him, the Petitioner had failed to disclose fully and truly. Since the disclosures were made in the annual accounts and audit reports, *Explanation* (1) to Section 147 of IT Act was not attracted. Besides, there is no dispute that the amount which the AO claims has escaped assessment during AY 2012-13 was eventually received by the Petitioner in the subsequent year, and the same was offered to tax in ~~AY 2013-14~~ ^{AY 2014-2015}. Therefore, this income was duly assessed and taxed at a higher rate of 34%.

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35. Ms Razaq, however, contended that the income that the Petitioner may have actually received in the subsequent year was accrued to the Petitioner during AY 2012-13. Therefore, she contended that this amount should have been offered to tax in AY 2012-13 itself. Mr Jain advanced several contentions to support his contention that the amount had not accrued during AY 2012-13. However, we need not go into this issue as long as there was disclosure of the material facts necessary for the Petitioner's assessment during AY 2012-13. Additionally, even if Mr Jain's accrual contention was wrong, given the disclosures, the AO could have taxed the accrued income or re-opened the assessment

within four years. A mere incorrect claim based on full disclosures cannot be reassessed after four years by invoking sections 147 and 148 of the IT act.

36. In *Titanor Components Ltd. V/s. Assistant Commissioner of Income Tax*¹⁷, the Division Bench of this Court pointed out that there is a notable difference between a wrong claim by an Assessee after disclosing the true and material facts and the wrong claim made by the Assessee by withholding material facts fully and truly. Only in the latter case would the Assessing Officer be entitled to re-open the assessment after four years.

37. Mr Jain had also contended that since only the issue of the year of taxability/deductibility was involved and the tax rate was the same or lower, the Revenue ought not to agitate such an issue and that too by seeking to re-open the assessment after four years. He relied upon several decisions in support of this contention. However, in our judgment, this issue need not be decided because the impugned notice will have to be set aside for the other reasons discussed above. For all such reasons, we are satisfied that the impugned notice is liable to be quashed and set aside.

¹⁷ (2012) 20 taxmann.com 805 (Bombay)

38. The rule is accordingly made absolute without costs in terms of prayer causes (a),(b) and (c), which read as follows:

(a) 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 under Article 226 of the Constitution of India calling for the records of the Petitioner's case, and after examining the legality and validity thereof, quash and set aside the notice dated 29th March 2019 (EXHIBIT A) issued by the Respondent No. 1 under section 148 of the Act, seeking to re-open the assessment for the Assessment Year 2012-13; and the Order rejecting objections (EXHIBIT AAN) dated 2nd November 2019;

(b) This Hon'ble Court may be pleased to issue a Writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, Order or direction under Article 226 of the Constitution of India ordering and directing the Respondents to forthwith withdraw and cancel the notice dated 29th March 2019 (EXHIBIT A) issued by the Respondent No. 1 under section 148 of the Act;

(c) This Hon'ble Court may be pleased to issue a Writ of Prohibition or a writ in the nature of Prohibition or any other appropriate writ, Order or direction under Article 226 of the Constitution of India ordering and directing the Respondents to permanently refrain from giving effect to impugned notice dated 29th March

*2019 (EXHIBIT A) issued by the Respondent
No. 1.*

BHARAT P. DESHPANDE, J.

M. S. SONAK, J.

NITI K

HALDANKAR

Digitally signed by
NITI K HALDANKAR
Date: 2022.12.15
16:09:31 +05'30'