IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7342 OF 2021

Nelco Limited
(Earlier known as Tatanet Services
Limited) ....Petitioner

V/s.
Assistant Commissioner of Income Tax
11(3)(1), Mumbai and Ors. ...Respondents

Mr. Paras S. Savla a/w Mr. Harsh R. Shah for Petitioner.
Mr. Suresh Kumar for Respondents.

CORAM : K.R. SHRIRAM &
R.N. LADDHA, JJ.
DATED : 19th JANUARY, 2022

P.C. :

1. Petitioner's case was selected for scrutiny and the assessment order under Section 143(3) of the Act was passed on 22nd February, 2016. Petitioner received a notice dated 20th March, 2020 under Section 148 of the Income Tax Act, 1961 (the Act) for A.Y. 2013-14 stating that revenue has reasons to believe that petitioner's income chargeable to tax for A.Y. 2013-14 has escaped assessment. Petitioner was later given a notice under Section 143(2) read with Section 147 of the Act dated 22nd December, 2020 in which the reasons recorded for re-opening was reproduced. Therefore, as more than four years had passed after the relevant assessment year and the assessment order under Section 143(3) of the Act has been passed the proviso to Section 147 of the Act shall apply. Respondent will have to also

show apart from some tangible material, that there was failure on the part of petitioner to fully and truly disclose all material facts required for the assessment.

2. Petitioner filed its objections to the re-opening and order rejecting objections dated 24th September, 2021 was passed.

In fact, in complete breach of the directions given in ***Asian Paints Ltd. vs. Deputy Commissioner of Income Tax***[1] an assessment order came to be passed on 29th September, 2021 within five days. This court in ***Asian Paints Ltd.*** (supra) held that if the Assessing Officer does not accept the objections filed, he shall not proceed further in the matter within a period of four weeks from the date of service of the said order of the objections on the assessee. This court had also directed that all Income Tax Officers concerned shall follow the proceedings strictly in all such cased of re-opening of assessment. Therefore, respondent are in breach of the order of this court. The assessment order dated 29th September, 2021 is set aside on this ground alone.

Petitioner is impugning the notice dated 20th March, 2020 issued under Section 148 of the Act along with order on objections dated 24th September, 2021.

3. We have considered the reasons recorded for re-opening and there is nothing in the reasons to indicate that there was failure on the part

1 [2008] 296 ITR 90 (Bombay)

of petitioner to disclose fully and truly any material facts. The entire basis for re-opening is change of opinion of the concerned Assessing Officer. Mr.Savla has taken us through documents annexed to the petition and it is quite obvious that petitioner had made available all details and documents relating to the issue raised in the reasons for re-opening. As per the Jurisdictional Assessing Officer (JAO) petitioner had entered into a transaction with a related party being Nelco Limited. The Tax Auditor and Transfer Pricing Auditor reported the transaction with Nelco Limited of Rs.18,85,15,000/-. Perusal of creditors details submitted 'during the course of assessment proceeding' showed that the transaction entered into with Nelco Limited during the year were Rs.27,62,01,700/- and therefore there is escapement of income. It is therefore clear that relying on the same set of documents and facts already considered before the original assessment proceeding re-opening is proposed to take a view different from the view already taken earlier. Courts have repeatedly held that change of mind cannot be the basis for re-opening.

4. Mr. Suresh Kumar submitted that this issue under consideration was never examined by the Assessing Officer during the regular assessment as noted in the reasons. The fact is that query was raised by the Assessing Officer on this issue by a letter dated 14th August, 2015 and reply giving all the details were provided by petitioner by a letter dated 6th November, 2015, 27th January, 2016 etc. Courts have repeatedly held that once a query is

raised and that has been explained by the assessee, even if there is no discussion on that aspect in the assessment order still the Assessing Officer is deemed to have consider these points and applied his mind.

5. All these only indicate one thing that re-opening is proposed on the basis of change of opinion.

6. In the circumstances, the impugned notice dated 20th March, 2020 is quashed and set aside. Consequently, the order passed rejecting the objections dated 24th September, 2021 also is set aside.

7. Petition disposed.

(R.N. LADDHA, J.) **(K.R. SHRIRAM, J.)**