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

WRIT PETITION NO.391 OF 2022

Naroli Resorts Private Limited ….Petitioner

V/s.

Assistant Commissioner of Income
Tax, Central Circle 3(1) and Anr. ….Respondents

Mr. Ruchesh Sinha a/w. Mr. Neel Kothari and Mr. Chaitanya Sharma i/b. Mr. Rahul Agarwal for petitioner.
Mr. Suresh Kumar a/w. Ms. Krunali Satra and Ms. Mohinee Choughule for respondents.

CORAM : K.R. SHRIRAM &
N.R. BORKAR, JJ.
DATED : 2nd MAY 2022

P.C.:

1 Petitioner is impugning a notice dated 30th March 2021 issued under Section 148 of the Income Tax Act, 1961 (the Act) for Assessment Year 2014-2015 and order on objections dated 18th November 2021.

2 We have considered the reasons recorded for reopening and it is the case of respondent no.1 that while going through the case record, it was revealed that the assessee had paid up share capital of 1,27,380 shares of Rs.10/- each as on 31st March 2013. The assessee has issued 62,380 shares to M/s. Kesar Motels Pvt. Ltd. (a related party) and others in F.Y. 2013-2014 at a premium of Rs.1,005/- per share. The assessee has followed Discounted Cash Flow method (DCF) and valued the shares at Rs.1,015/- per share as per valuation report relied upon to justify the share premium. The Assessing Officer feels that the assessee could have charged premium of only

Rs.249.70 per share and, therefore, has charged excess premium of Rs.765.30. Accordingly, a sum of Rs.4,77,39,414/- has escaped assessment.

3 Admittedly notice has been issued after the expiry of four years from the end of relevant assessment year. The proviso to Section 147 of the Act will, therefore, apply and it is for respondents to show that there has been escapement of income due to failure on the part of the assessee to truly and fully disclose material fact required for assessment during the assessment year. Though in the reasons recorded, there is a bald allegation made that assessee had not fully and truly disclosed necessary facts, in our view, this allegation is made only to get around the restriction imposed by the proviso to Section 147 of the Act.

4 In our view, the reason for reopening is nothing but a change of opinion. Admittedly scrutiny assessment under Section 143(3) of the Act was completed on 26th November 2016 after accepting loss shown in the returns. During the assessment proceedings, by a notice dated 3rd November 2016 issued under Section 142(1) of the Act, petitioner was called upon by respondent no.1 to provide valuation report, bank statements and ITR of M/s. Kesar Motels Pvt. Ltd. for share premium received. This was provided by petitioner vide its Chartered Accountant's letter dated 8th November 2016. Petitioner had also provided copy of ITR, valuation certificate and other details. After considering all these points, an assessment order dated 29th November 2016 came to be passed.

5 Mr. Suresh Kumar submitted that the fact that the share premium issue was discussed during the assessment proceedings is not reflected in the assessment order. Mr. Suresh Kumar also submitted that the share premium calculation was not on the basis of fair market value considering Rule 11UA of the Income Tax Rules.

6 Admittedly, as stated earlier, this is a case of reopening after expiry of four years from the end of the relevant assessment year. Respondent had to show that there was failure to truly and fully disclose material facts. Not only petitioner has disclosed but respondent has also raised queries during the course of assessment proceedings and has passed an assessment order under Section 143(3) of the Act.

7 On the issue of the assessment order being silent, it is settled law that once a query is raised during the assessment proceedings and the assessee has replied to it, it follows that the query raised was a subject of consideration of the Assessing Officer while completing the assessment. It is not necessary that an assessment order should contain reference and/or discussion to disclose its satisfaction in respect of the query raised [***Aroni Commercials Ltd. V/s. Deputy Commissioner of Income Tax 2 (1)***[1]].

8 Since respondent no.1 has not crossed the fetter imposed under the proviso to Section 147 of the Act, we do not consider it necessary to see the applicability of Rule 11UA of the Income Tax Rules. It would suffice to

1. (2014) 44 taxmann.com 304 (Bombay)

say that during the assessment proceedings valuation report was sought and valuation by the Chartered Accountant has been submitted which has not been disputed or denied.

9 In the circumstances, petition is allowed in terms of prayer clause – (a), which reads as under :

> *(a) a writ of and/or order and or directions in the nature of certiorari, prohibition, mandamus or any other appropriate writ, order or direction quashing impugned notice dated 30.3.2021 for the A.Y. 2014-15, issued by Respondent No.1 under section 148 of the Income Tax Act 1961 and proceedings initiated pursuant thereto.*

10 Petition accordingly disposed.

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