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

WRIT PETITION NO. 923 OF 2022

Giraffe Developers Pvt. Ltd. ….Petitioner

V/s.

The Assistant Commissioner of Income Tax Central Circle 7(3), Mumbai & Ors. …Respondents

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Mr. Fenil Bhatt i/b Mint & Confreres for Petitioner.
Mr. Suresh Kumar for Respondents

CORAM : K.R. SHRIRAM &
N. J. JAMADAR, JJ.
DATED : 3rd MARCH, 2022

P.C. :

1. Petitioner is impugning the notice dated 27th January, 2021 issued under Section 148 of the Income Tax Act, 1961 (the Act) and the order dated 31st December, 2021 rejecting petitioner's objections to re-opening. Here is the case where notice has been issued after expiry of four years from end of the relevant assessment year and the assessment under Section 143(3) of the Act has also been completed. Therefore, proviso to Section 147 of the Act being applicable to the case, respondent has to show that there has been failure on the part of petitioner to make true and full disclosure of material fact, otherwise re-opening is barred.

2. We have perused the reasons for re-opening dated 4th February, 2021 with the assistance of Mr. Bhatt and Mr. Suresh Kumar. In our view, the reasons for re-opening first of all does not disclose any where or even any allegation can be culled out that there has been failure on the part of

petitioner to fully and truly disclose material fact. Moreover, the re-opening is based purely on the basis of change of opinion which is not permissible and thirdly has been issued without application of mind.

3. The reasons for re-opening reads as under :

> *1. The original return of income was filed on 30.09.2013 declaring total income at Rs. Nil/- for A.Y. 2013-14. The income was assessed at Rs. Nil/- dated 31.03.2016 u/s 143(3) of the I.T. Act after adjusting brought forward loss of Rs.22,43,00,000/- of A.Y. 2012-13.*
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> *2. Subsequently from the perusal of assessment records, it is seen that in computation of income Rs.4,20,31,597/- received from bank interest and addition of Rs.19,00,000/- as interest received as per 26AS has been included in Business income and brought forward business loss of previous year has been adjusted against it.*
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> *3. The income of Rs.4,39,31,597/- (Rs.4,20,31,597 + Rs.19,00,000) should be treated as income from other source and should not be adjusted with the brought forward business losses as per section 71 of the I.T. Act.*
> *Therefore, it is seen that income chargeable to tax has escaped assessment which amounts of Rs.4,39,31,597/-. This had resulted in under-assessment of Rs.4,39,31,597/- for A.Y. 2013-14.*
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> *4. Based on the discussion held above, it is seen that there is under assessment, therefore, the income chargeable to tax has escaped assessment during the scrutiny proceedings u/s 143(3) of the I.T. Act, which is beyond four years from the end of relevant assessment year, which requires approval of Pr. CIT u/s 151(2) of the I.T. Act.*
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> *5. In view of the above, I have reason to believe that an amount of Rs.8,45,74,750/- has escaped assessment for A.Y. 2014-15 within the meaning of explanation 2 to Sec. 147 of the I.T. Act and this is the fit case for reopening the assessment under section 147 of the I.T. Act.*

4. As could be seen there is no allegation any where that there has been failure to fully and truly disclose material fact.

5. As could be seen from paragraph no.3 of the reasons it is the opinion of the officer who proposes to re-open that the income of Rs.4,39,31,597/- should be treated as income from other sources and should not be adjusted with the brought forward business losses as per Section 71 of the Act. This has also been considered during the assessment proceedings and in fact in paragraph no.8 of the assessment order there is even discussion about addition of Rs. 19,00,000/- as interest received as per 26 AS.

6. On the point of non application of mind, paragraph no.5 of the reasons, it is stated that amount of Rs.8,45,74,750/- has escaped assessment whereas in paragraph no.3 it says amount of Rs.4,39,31,597/- has escaped assessment. Moreover, in paragraph no.5 it is mentioned that amount has escaped assessment for A.Y. 2014-15 whereas the assessment year under consideration is A.Y. 2013-14.

7. On all these grounds mentioned above, petition is allowed and the impugned notice dated 27th January, 2021 and the impugned order dated 31st December, 2021 are hereby quashed and set aside.

8. Petition disposed.

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

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