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

WRIT PETITION NO. 651 OF 2015

Quikr India Private Limited ....Petitioner

V/s.

Beena Menon,
Deputy Commissioner of Income Tax
8(3), Mumbai and Anr. ...Respondents

Mr. Atul K. Jasani for Petitioner.
Mr. Suresh Kumar for Respondents.

CORAM : K.R. SHRIRAM &
N. J. JAMADAR, JJ.
DATED : 11th MARCH, 2022

P.C. :

1. When the petition came to be admitted on 27th February, 2015, the court observed as under in paragraph no. 2.

> *2. This petition challenges the reopening Notice dated 28.3.2014 issued under Section 148 of the Income Tax Act,1961 ('the Act') seeking to reopen the assessment for the Assessment year 2009-10. The reasons recorded for issuing the impugned notice are that the premium of Rs.140/- per share received on issue of shares to its non-resident holding company was disproportionately high taking into consideration the face value per share was only Rs.10/- and earning per share was only Rs.1.28. Besides, Section 68 of the Act was also invoked on the ground that the petitioner had failed to explain the nature and source of credit entry. The petitioner had in their balance sheet filed alongwith the return of income did indicate the receipt of share premium of Rs.140/- per share from its Mauritius based holding company. During the course of assessment proceedings specific queries were raised by the Assessing Officer with regard to the receipt of share application and share premium money. This was responded to by the petitioner and accordingly, thereafter, an Assessment Order for the Assessment Year 2009-10 was passed. Due application of mind is indicated by the fact that the Assessing Officer disallowed the stamp duty*

> *expenditure on issue of shares at a premium to its holding company in Mauritius as it was on capital account. Although the reasons in support of the impugned notice does record an information was received subsequent to the Assessment Order, no particulars are forthcoming. However, we find that this information was available during the course of assessment proceedings and specific queries were raised by the Assessing Officer with regard to the share premium being received by the petitioner from its holding company. In the above prima facie view, it appears that this is a case of notice being issued on change of opinion. Besides the other ground viz. Section 68 of the Act being at all applicable in the present facts leading to a reason to believe is also prima facie not sustainable for the reason that even under the unamended Section 68 of the Act, all primary information was available with the Assessing Officer and he was free to have proceeded against the alleged bogus share holders and/ or call for information from them.*

2. We have also considered the petition and the documents annexed thereto and we are in agreement with the observations made by this court as quoted above.

3. It is settled law that it is not necessary that the assessment order should contain reference and/or discussion to disclose its satisfaction in respect of the query raised. Once a query is raised during the assessment proceedings and the assessee has replied to it, it follows that a query raised was a subject of consideration of the Assessing Officer while completing the assessment. This court in paragraph no.14 of ***Aroni Commercials Ltd. vs. Deputy Commissioner of Income Tax 2(1)***[1] held as under :

> *14) We find that during the assessment proceedings the petitioner had by a letter dated 9 July 2010 pointed out that they were engaged in the business of financing trading and investment in shares and securities. Further, by a letter dated 8 September 2010 during the course of assessment*

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

proceedings on a specific query made by the Assessing Officer, the petitioner has disclosed in detail as to why its profit on sale of investments should not be taxed as business profits but charged to tax under the head capital gain. In support of its contention the petitioner had also relied upon CBDT Circular No.4/2007 dated 15 June 2007. (The reasons for reopening furnished by the Assessing Officer also places reliance upon CBDT Circular dated 15 June 2007). It would therefore, be noticed that the very ground on which the notice dated 28 March 2013 seeks to reopen the assessment for assessment year 2008-09 was considered by the Assessing Officer while originally passing assessment order dated 12 October 2010. This by itself demonstrates the fact that notice dated 28 March 2013 under Section 148 of the Act seeking to reopen assessment for A.Y. 2008-09 is based on mere change of opinion. However, according to Mr. Chhotaray, learned Counsel for the revenue the aforesaid issue now raised has not been considered earlier as the same is not referred to in the assessment order dated 12 October 2010 passed for A.Y. 2008-09. We are of the view 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. If an Assessing Officer has to record the consideration bestowed by him on all issues raised by him during the assessment proceeding even where he is satisfied then it would be impossible for the Assessing Officer to complete all the assessments which are required to be scrutinized by him under Section 143(3) of the Act. Moreover, one must not forget that the manner in which an assessment order is to be drafted is the sole domain of the Assessing Officer and it is not open to an assessee to insist that the assessment order must record all the questions raised and the satisfaction in respect thereof of the Assessing Officer. The only requirement is that the Assessing Officer ought to have considered the objection now raised in the grounds for issuing notice under Section 148 of the Act, during the original assessment proceedings. There can be no doubt in the present facts as evidenced by a letter dated 8 September 2012 the very issue of taxability of sale of shares under the head capital gain or the head profits and gains from business was a subject matter of consideration by the Assessing Officer during the original assessment proceedings leading to an order dated 12 October 2010. It would therefore, follow that the reopening of the assessment by impugned notice dated 28 March 2013 is merely on the basis of change of opinion of the Assessing Officer from that held earlier during the course of *assessment proceeding leading to the order dated 12 October 2010. This change of opinion does not constitute justification and/or reasons to believe that income chargeable to tax has escaped assessment.*

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

(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 28th March 2014 (Exhibit "J") issued by Respondent No.1 purportedly under Section 148 of the Act seeking to reopen the assessment for the assessment year 2009-10.

5. Petition disposed.

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