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

WRIT PETITION NO. 969 OF 2022

Solarfield Energy Two Private Limited ….Petitioner

V/s.

Deputy Commissioner of Income Tax
2(3)(1), Mumbai & Ors. …Respondents

Mr. Ruturaj H. Gurjar for Petitioner.
Mr. Suresh Kumar for Respondents.

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

P.C. :

1. Petitioner has approached this court being aggrieved by notice dated 24th March, 2021 issued under Section 148 of the Income Tax Act, 1961 (the Act) for A.Y. 2017-18 and the order dated 17th January, 2022 rejecting petitioner's objections to re-opening.

2. Paragraph nos. 1, 2 and 3 of the reasons for re-opening reads as under :

> *1. Brief details of the assessee :*
> *The assessee filed its return of income for A.Y. 2017-18 on 01.11.2017 declaring loss of Rs.3,66,52,669 which was selected for scrutiny under CASS and assessed income was determined at (Rs.3,66,52,669) on 20.12.2019.*
>
> *2. Analysis of information collected/received :*
> *On verification of records it is observed that the assessee had debited Rs.4,75,70,885 from P&L A/c on account of premium paid on INR/USD option contracts.*

In submission of reply dated 19th Nov 2019, the assessee stated that the company had taken a loan of USD 2,34,95,259 during F.Y. 2013-14 from the Export-Import bank of the Unites States for acquiring fixed assets for expansion if its business. The company entered into an option contract with Indusind Bank Ltd. in order to hedge the foreign exchange fluctuation risk. Since the loan was taken for acquiring fixed asset for expansion of the assessee business, the payment made for hedging of such loan is also of a capital nature. Therefore, the expenditure of Rs.4,75,70,885 should have been disallowed.

The incorrect allowance of capital expenditure resulted in under assessment of income by Rs.4,75,70,885.

3. Reason to believe and details of escapement of income.

Considering all these facts as explained in above Paras, it is evident that the amount debited to P&L account is not allowable as business expenditure since it is incurred for expansion of business and its capital in nature. On similar issue, in the case of assessee for A.Y. 2014-15, the department had made addition.

Hence, I have reasons to believe that the assessee claimed and allowed the business expenses to the tune of Rs.47570885/- being capital in nature has resulted under assessment of income in the hand of Solarfiled Energy Two Pvt. Ltd.

XXXXX

3. Admittedly, in this case assessment proceedings under Section 143(3) of the Act has been completed. Though the proposed re-opening is within the expiry of four years from the end of the relevant assessment year, still re-opening based on change of opinion is not permissible because the assessment order under Section 143(3) of the Act has already been passed where the then Assessing Officer has taken a particular view.

4. If we consider paragraph no.2 of the reasons for re-opening quoted above, it is quite clear that this proposed re-opening is based on change of opinion which is not permissible in law. In the reasons by stating that assessee *"In submission of reply dated 19th November, 2019 ...."* the Assessing Officer has admitted that this has been the subject matter of consideration during the earlier assessment proceedings. Moreover, in paragraph no.3 of the reasons the Assessing Officer states *"On similar issue, in the case of assessee for A.Y. 2014-15, the department had made addition.........."*

5. Therefore, this cannot be even considered tangible material for re-opening the assessment.

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

> *(b) 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, quashing the Impugned Notice u/s. 148 of the Act dated 24 March 2021 (Exhibit I) and the Impugned Order on objections dated 17 January 2022 (Exhibit M) and the impugned reassessment proceedings for A.Y. 2017-18 as being wholly without jurisdiction, illegal and arbitrary.*

7. Petition disposed.

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

Purti Parab