PURTI PRASAD PARAB
Digitally signed by PURTI PRASAD PARAB
Date: 2022.04.25 10:41:55 +0530

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

WRIT PETITION NO. 1631 OF 2022

ECGC Limited ….Petitioner

V/s.

Assistant Commissioner of Income Tax, Circle 3(1)(1), Mumbai and Ors. …Respondents

----

Mr. Sukhsagar Syal i/b Mr. Atul K. Jasani for Petitioner.
Mr. Akhileshwar Sharma for Respondents-Revenue.

CORAM : K.R. SHRIRAM &
N. R. BORKAR, JJ.
DATED : 18th APRIL, 2022

P.C. :

1. Petitioner is impugning a notice dated 31st March, 2021 issued by Respondent No.1 under Section 148 of the Income Tax Act, 1961 (the Act) for assessment year 2013-14 and order dated 10th February, 2022 rejecting petitioner’s objections.

2. Petitioner is a government owned company and engaged in the business of providing export credit risk insurance products to different exporters. For assessment year 2013-14 petitioner filed return of income on 19th September, 2013 declaring income of Rs.288,03,85,202/- and the assessment was completed under Section 143(3) of the Act on 18th February, 2016 determining total taxable income at Rs.803, 58,61,090/-.

3. Petitioner received impugned notice dated 31st March, 2021 from Respondent No.1 alleging that there are reasons to believe that petitioner's income chargeable to tax for A.Y. 2013-14 has escaped assessment within the meaning of Section 147 of the Act. At petitioner's request, reasons recorded for re-opening was also provided by communication dated 26th June, 2021. According to Respondent No.1 on verification of computation of total income filed by petitioner, it was noticed that petitioner had interest from tax savings bonds of Rs.3,06,75,000/-, dividend from mutual fund of Rs.4,87,03,370/- and dividend from equity shares of Rs.11,05,65,227/- which were not offered to tax claiming the same as exempt income. According to Respondent No.1 Section 44 of the Act does not apply to petitioner which is Insurance Company and therefore the exemption granted in the return of income should be treated as profits and gains of the business of insurance and therefore there has been escapement of income.

4. It is settled law that re-opening of income is not permissible on change of opinion. It is a clear case, in the matter at hand, that Respondent No.1 has proposed to re-open only because of change of opinion. In fact, we would say it is not even his change of opinion and he has not even formed his own reasons to believe that there has been escapement of income. We say this because in the affidavit in reply, Respondent No.1 states that the re-opening proceedings were initiated on the

objection/observation raised by the revenue audit and the audit objections has been considered to form an opinion on the basis of which the proceedings for re-assessment have been initiated. As held by this court in ***Jainam Investments vs. Assistant Commissioner of Income Tax & Ors.***[1], the reasons for re-opening an assessment should be that of the Assessing Officer alone who is issuing notice and he cannot act merely on the dictates of any other person in issuing notice. The opinion in our view referred by the audit party in regard to the law, for the purpose of such belief, cannot add to or colour the significance of law relating to escapement of income. The true valuation as to whether there is escapement of income or the consequence of law mentioned in the audit must be made directly and solely by the Income Tax Officer. That has not been done. On this ground itself the impugned notice should be quashed and set aside.

5. Moreover, during the assessment proceedings query regarding how the income from these bonus/dividend etc. was raised and petitioner gave detailed explanation as to the provisions of Section 44 of the Act and why those income are exempt even for petitioner. Thereafter, the assessment order dated 18th February, 2016 has been passed where this issue has been discussed but still no addition has been made. We have to note that in the assessment order dated 18th February, 2016 it is recorded that petitioner has also referred to the judgment of this court in ***General***

1 (2021) 131 taxmann.com 327 (Bombay)

Insurance Corporation of India vs. Deputy Commissioner of Income Tax and Another[2], in which this court had occasion to consider whether the exemption granted under Section 10 of the Act were available to insurance company engaged in the business of general insurance and the court had answered in the affirmative. In fact in the assessment order there is also reference to the portion of the judgment where the court has considered the circular issued by the CBDT to hold that the exemption granted under Section 10 of the Act were available to non life insurance business.

6. In the circumstances, we allow this petition 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 31st March, 2021 (Exhibit – F) issued by Respondent No.1 under section 148 of the Act (together with the consequential notices and orders) seeking to reopen the assessment for the assessment year 2013-14 and the order dated 10th February, 2022 (Exhibit – I) passed by Respondent No.3, disposing of the objections raised by the Petitioner.*

7. Petition disposed.

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

2 (2012) 342 ITR 27 (Bom)