IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1157 OF 2015

Solvay Specialties India Pvt Ltd. ….Petitioner

V/s.

The Deputy Commissioner of Income Tax, Circle 7(2) Mumbai & Ors. ….Respondents

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Mr. Madhur Agarwal a/w Mr. Upendra Lokegaonkar i/b Mint & Confreres for Petitioner
Mr. Suresh Kumar for Respondents

CORAM : K.R. SHRIRAM &
N.R. BORKAR, JJ
DATED : 8th APRIL 2022

P.C. :

1 Petitioner is impugning a notice dated 24th March 2014 issued under Section 148 of the Income Tax Act 1961 (the said Act). The reasons recorded for reopening the assessment for A.Y.-2009-2010 in this case are identical to the reasons as recorded in Writ Petition No.765 of 2015 for A.Y.-2007-2008 and Writ Petition No.710 of 2015 for A.Y.-2008-2009. The reasons record that the assessee company had written of assets worth Rs.1.81 crores in A.Y.-2010-2011 and claimed depreciation for those assets during the previous years and as those assets were not found on physical verification during A.Y. 2010-2011, it would indicate that these assets were not existing in even A.Y. 2009-2010. Therefore, the assessee could not have claimed depreciation and that has resulted in incorrect assessment being made for A.Y. 2009-2010.

2 We cannot accept these reasons just because the assets were not found on physical verification during A.Y. 2010-2011 and only in A.Y. 2010-2011 the assessee has written off those assets would not mean that the assets were not in existence in the previous year, i.e., 2009-2010. That is purely speculative and certainly cannot be a tangible material to form an opinion that there has been escapement of income.

3 Moreover, in A.Y. 2010-2011, the Assessing Officer while adding the amount of Rs.1.80 crores to petitioner's income, has not disturbed the depreciation on the block of assets which included Rs.1.80 crores. In fact this has been recorded in the common order dated 17th December 2014 passed in Writ Petition Nos.765 of 2015 and 710 of 2015.

4 In the circumstances, it is a fit case for us to interfere. Petition is allowed in terms of prayer clause (a) which reads as under:

> *"(a) That this Hon'ble Court be pleased to issue a writ of certiorari or any other writ order or direction under Article 226 of the Constitution of India calling for the records of the case leading to the issue of the impugned notice and passing of the impugned order and after going through the same and examining the question of legality thereof quash, cancel and set aside the impugned notice (Exhibit E) and impugned order (Exhibit K)."*

By way of clarification, impugned notice is dated 24th March 2014 and the impugned order rejecting objections is dated 23rd January 2015.

5 Petition accordingly disposed with no order as to costs.

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

Meera Jadhav