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

WRIT PETITION NO. 880 OF 2015

Masina Alloys Pvt. Ltd. ....Petitioner

V/s.

Deputy Commissioner of Income Tax
Range 7(2)(1) and Anr. ...Respondents

Ms. Neha Paranjpe 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 20th August, 2015, the court observed as under in paragraph no.3.

> *3. This petition challenges the Notice dated 25th March, 2014 issued under Section 148 of the Income Tax Act, 1961 seeking to reopen the assessment for the Assessment Year 2009-10. The reasons in support of the impugned notice states that information was received that share premium of Rs.10/- per share was received by the petitioner in the first year of its operation, when the intrinsic value of the share was of Rs.10/- per share. Prima facie we find that during the course of regular assessment proceedings a specific query was made with regard to the creditworthyness and identity of the persons from whom the share premium amount was received. This was responded to by the respondent-assessee. Thus, prima facie, the impugned notice appears to be based on change of opinion.*

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 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*

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

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 25th March 2014 (Exhibit "E") issued under section 148 of the Act and the order dated 16th February, 2015 rejecting the objections of the Petitioner (being Exhibit "J") passed by the Respondent No.1.*

5. Petition disposed.

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

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