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

WRIT PETITION NO. 861 OF 2015

Slum Rehabilitation Authority ....Petitioner

V/s.

The Deputy Director of Income Tax
(Exemption – I(2), Mumbai And Ors. ...Respondents

Mr. Bharat Raichandani a/w Mr. Mahesh Raichandani and Mr. Rishabh Jain i/b UBR Legal Advocates for Petitioner.
Mr. Suresh Kumar for Respondents.

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

P.C. :

1. Mr. Suresh Kumar tenders affidavit in reply of one Mr. Aswini Prasad, JCIT (OSD), Mumbai affirmed on 9th March, 2022 which is taken on record.

2. Petitioner is impugning a notice dated 29th March, 2014 issued under Section 148 of the Income Tax Act, 1961 (the Act) and order dated 16th February, 2015 passed by respondent rejecting petitioner's objections to re-opening.

3. Petitioner filed return for assessment year 2008-09 and assessment under Section 143(3) of the Act was completed on 27th December, 2010 assessing petitioner's total income at Rs.82,53,57,000/-.

Petitioner was disallowed deduction under Section 11 of the Act in the assessment order. Petitioner challenged disallowance from denial of deduction before the Commissioner of Income Tax (Appeals) (CIT (A)) who allowed the appeal. Aggrieved by the order of CIT (A) respondent filed appeal before the Income Tax Appellate Tribunal (ITAT). The ITAT dismiss Revenue's appeal and Revenue carried the matter to this court. This court upheld the order of the ITAT and consequently petitioner was granted deduction under Section 11 of the Act.

4. Thereafter, petitioner received a notice dated 29th March, 2014 under Section 148 of the Act which is impugned in this petition. Petitioner was provided the reasons to re-open the assessment under Section 147 of the Act. The reasons for re-opening is on the basis that the DIT (E), Mumbai passed order dated 27th March, 2014 cancelling petitioner's registration under Section 12AA of the Act with effect from 1st April, 2002 and in view thereof petitioner did not become eligible for any exemption under Section 11 of the Act and therefore the claim of petitioner in respect of exemption under Section 11 of the Act amounting to Rs.138,90,74,595/- has to be rejected and income to that extent has to be assessed accordingly.

5. In this case, indisputably the notice to re-open has been issued after the expiry of four years from the end of the relevant assessment year and assessment proceedings under Section 143(3) of the Act has also been

completed. Therefore, the proviso to Section 147 of the Act shall apply which bars re-opening of assessment unless there has been failure on the part of assessee to disclose truly and fully all material facts required for assessment. The onus is on the Revenue to show that there has been such failure to truly and fully disclose.

6. Having considered the reasons recorded for re-opening the assessment, we are not satisfied that the Revenue has been able to show that there was failure on the part of petitioner to disclose truly and fully any material fact. Usage of the expression in the reasons that assessee has failed to disclose fully and truly material facts is only to escape the restrictions provided under Section 147 of the Act. In effect there has been no failure to disclose. We say this because the reasons for re-opening expressly provides that income to the extent of Rs.138,90,74,595/- has to be assessed because petitioner by virtue of an order dated 27th March, 2014 has become ineligible for exemption under Section 11 of the Act with effect from 1st April, 2002. It is not alleged that petitioner had actually failed to disclose any material fact.

7. Mr. Suresh Kumar made an attempt to justify re-opening but submitted that on the basis of new and additional facts like cancellation of registration under Section 12A and 12AA of the Act belief can be formed that some income has escaped assessment and the same can be provided to

taxation making disallowance under Section 11 of the Act during the course of re-assessment proceedings under Section 147 of the Act. Mr. Suresh Kumar also submitted that this order dated 27th March, 2014 cancelling the registration under Section 12AA of the Act was not available to the Assessing Officer at the time of completing the assessment under Section 143(3) of the Act and therefore this court should not interfere with the notice issued for re-opening.

8. We are afraid we cannot agree with the submissions of the Revenue in as much as proviso to Section 147 of the Act expressly makes it clear that there is bar in re-opening the assessment after expiry of four years from the end of the relevant assessment year. The proviso states *"......... no action shall be taken under this section after expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, for that assessment year".*

9. In the circumstances as Revenue has failed to make out a case of failure to disclose on the part of petitioner the material facts, the impugned notice dated 29th March, 2014 is not sustainable. Consequently, the order rejecting objections also have to be set aside.

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

> *(a) that this Hon'ble Court 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 and/or Article 227 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 Impugned Notice dated 29 March 2014 issued by Respondent No.1 under Section 148 of the Act (Exhibit A), the Impugned Order dated 16 February 2015 (Exhibit B) issued by Respondent No.2 and the Impugned Assessment Notices.*

11. Petition disposed.

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