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

WRIT PETITION NO. 954 OF 2015

Hanwant Manbir Singh ....Petitioner

V/s.

Deputy Commissioner of Income Tax
10(1)(1), Mumbai and Ors. ...Respondents

Mr. V. Sridharan, Senior Advocate a/w Mr. B.V. Jhaveri, Mr. S. Sriram and Mr. Ravi Sawana for Petitioner.
Mr. Arvind Pinto for Respondents-Revenue.

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

P.C. :

1. Though petition was admitted on 27th March, 2015 and respondents had waived service, no reply has been filed opposing the petition.

2. Petitioner is an individual who had filed returns for A.Y. 2008-09 on 1st August, 2008 at Jaipur, Rajasthan declaring a total income of Rs.13,76,281/-. In the course of assessment proceedings petitioner had filed his balance sheet on 31st March, 2008 that reflected the investment made by petitioner in shares of M/s. Poona Galvanizers Pvt. Ltd., (PGPL) and shares of M/s. Karamtara Fasteners Pvt. Ltd. (KFPL).

3. Petitioner's case was taken up for scrutiny and assessment under Section 143(3) of the Income Tax Act, 1961 (the Act) was completed

on 27th October, 2010 accepting income returned by petitioner at Rs.13,76,281/-.

4. In PGPL petitioner held 5000 shares and filed return of income for A.Y. 2008-09 by declaring total income of Rs. NIL. The return of income was taken up for scrutiny by the Deputy CIT-8(2), Mumbai and the assessment order under Section 143(3) of the Act came to be passed on 24th December, 2010. The Deputy CIT-8(2), Mumbai after raising a query on the share holding pattern of PGPL and KFPL from whom PGPL had taken loan of Rs.1,22,80,000/-, pass the assessment order taxing from PGPL a sum of Rs.1,07,33,270/- as deemed dividend under Section 2(22)(e) of the Act. PGPL challenged this order before the Commissioner of Income Tax (Appeals) (CIT (A)). The (CIT (A)) by an order dated 13th September, 2011 allowed the appeal of PGPL and deleted the addition of Rs.1,07,33,270/- as deemed dividend. The (CIT (A)) opined that this amount of Rs.1,07,33,270/- should have been brought to tax as deemed dividend under Section 2(22)(e) of the Act in the hands of petitioner who is having substantial interest and not PGPL and KFPL. The (CIT (A)) directed the Assessing Officer to consider bringing to tax the deemed dividend in the hands of petitioner for A.Y. 2008-09. This order of (CIT (A)) passed on 13th September, 2011 was challenged before the Income Tax Appellate Tribunal (ITAT) where the stand of the Revenue was that this deemed dividend under Section 2(22)(e) of the Act should be taxed in the hands of company that

received loan, i.e., PGPL and not in the hands of shareholders. This appeal of Revenue came to be dismissed by the ITAT on 21st November, 2012 which confirmed the findings of the the (CIT (A)) that the amount was taxable in the hands of petitioner who had substantial interest in both PGPL and KFPL.

5. Aggrieved by the order of the ITAT, the Revenue filed appeal in this court being Income Tax Appeal No.1399 of 2013. This appeal came to be dismissed by a common order and judgment dated 4th July, 2014 passed by this court.

6. Therefore, Revenue's stand is that finding of the (CIT (A)) was incorrect to the extent that the amount of Rs.1,07,33,270/- being addition under Section 2(22)(e) of the Act was to be made in the hands of petitioner who had substantial interest in PGPL and KFPL and not in the hands of PGPL. But when we consider the reasons for re-opening which is dated 24th January, 2014, the stand of the Assistant Commissioner of Income Tax who is the Jurisdictional Assessing Officer (JAO) is that the findings of (CIT (A)) that the addition of Rs.1,07,33,270/- under Section 2(22)(e) of the Act for A.Y. 2008-09 should be made in the hands of petitioner who is substantial shareholder in PGPL and KFPL is correct and therefore the amount of Rs.1,07,33,270/- has escaped assessment for A.Y. 2008-09.

7. What is strange is that even before the reasons for re-opening were recorded and even after the reasons was recorded and notice was issued

to petitioner on 24th January, 2015, Revenue has argued in this court on 4th July, 2014 that the conclusion of (CIT (A)) was erroneous and addition should have been actually in the hands of PGPL. One of the substantial question of law proposed in the appeal filed in this court by Revenue was *"Whether on the facts and in the circumstances of the case and in law, the Hon'ble Tribunal was justified in holding that deemed dividend is taxable only in the hands of a shareholder and not in the hands of a non-shareholder, by relying on the decisions of the .... without appreciating that the ratio of the decisions in the above cited case has not been accepted by the Revenue"*.

8. Therefore, the reason to believe that income has escaped assessment is not sustainable. Moreover, since the proposed re-opening has been issued after expiry of four years of the end of the relevant assessment year, proviso to Section 147 of the Act would apply in as much as the Revenue has to show that there has been fault on the part of petitioner to truly and fully disclose material facts required for assessment. Not only as Revenue not made any such allegations in the reasons for re-opening, we cannot even cull out from the reasons recorded that Revenue has even suggested that there has been failure on the part of petitioner to disclose truly and fully material facts.

9. In the circumstances, we find merit in petitioner's case and allow the petition in terms of prayer clause – (a) which reads as under :

> *(a) that 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 case leading to the issue of the notice under section 148 of the Act dated 25th January, 2014 (Exh. 'C') and the order dated 16th March, 2015 rejecting the objections of the Petitioner being Ex. 'F' hereto and after going through the same and examining the question of legality thereof to quash, cancel and set aside the impugned notice u/s. 148 of the Act dated 25th January, 2014 (Ex. 'C') and the order dated 16th March, 2015 rejecting the objections of the Petitioner (Exh. 'F').*

10. Petition disposed.

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