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

INCOME TAX APPEAL NO. 227 OF 2018

Pr. Commissioner of Income Tax 12,
Mumbai ….Appellant

V/s.
Keki Hormusji Gharda …Respondent

Mr. Sham V. Walve for Appellant.
Ms. Vasanti B. Patel for Respondent.

CORAM : K.R. SHRIRAM &
N. R. BORKAR, JJ.
DATED : 30th MARCH, 2022

P.C. :

1. Heard counsel and considered the appeal memo. The proposed substantial questions of law are as under :

QUESTIONS OF LAW

A. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT has erred in quashing the order of re-assessment proceedings initiated u/s. 147/148 on the ground of "change of opinion" without appreciating the fact that in the original assessment the A O accepted the claim of capital gain without considering the fact that the assessee never possessed any tenancy right and compensation received of Rs.3,91,80,750/- on account of transfer of tenancy right clearly attract the provisions of section 2(22)(e) of the Act as the assessee is substantial shareholder of the company?

B. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT has erred in quashing the order of re-assessment proceedings initiated u/s 147/148 without appreciating the fact that the entire issue of tenancy rights and compensations is a collusive arrangement to enable the assessee to claim that the compensation was Long Term Capital Gain rather than *regular income and thereby offer the income at lower tax rate without appreciating that the situation is specifically covered by clause (c) of Explanation 2 of Section 147?*

C. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT has erred in quashing the order of re-assessment proceedings without appreciating the fact that in the original order of assessment, a blatantly incorrect position of Law claimed by the assessee was accepted by the A.O. without application of mind and without making any discussion on the issue in the body of assessment order?

D. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT has erred in deleting the penalty treating it as infructuous?

2. The subject matter of the appeal is re-opening of assessment by the Assessing Officer under Section 147/148 of the Income Tax Act, 1961 (the Act). It is alleged that *"On examining records it is observed that the assessee was not the tenant for which it disclosed long term capital gain of Rs.3,91,80,750/- as relinquishment of tenancy right as he does not possesses any tenancy rights. Therefore, substantial revenue has escaped assessment. Therefore, the income chargeable to tax has escaped assessment for A.Y. 04-05 within the meaning of section 147 of the I.T. Act, 1961."* The Tribunal has come to a conclusion on facts that this issue was in the consideration of the Assessing Officer during the original assessment proceedings under Section 143(3) of the Act. The Tribunal has explained why it says that this issue was under consideration during the assessment proceedings.

3. This court has time and again held 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 even necessary that an assessment order should contain reference and/or discussion to disclose its satisfaction in respect of the query raised. [***Aroni Commercials Ltd. vs. Deputy Commissioner of Income-tax 2(1)***[1]].

It is also settled law that change of opinion does not constitute justification and/or reasons to believe that income chargeable to tax has escaped assessment.

4. In our view, the Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law.

The appeal is devoid of merits and it is dismissed with no order as to costs.

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

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