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

WRIT PETITION NO. 1998 OF 2014

S.M.B. Associates ....Petitioner

V/s.

Deputy Commissioner of Income Tax
15(2), Mumbai And Ors. ...Respondents

Mr. B.V. Jhaveri a/w Mr. S. Sriram for Petitioner.
Mr. Akhileshwar Sharma for Respondents-Revenue.

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

P.C. :

1. When the petition came to be admitted on 3rd November, 2014, the court observed as under in paragraph no.2.

> *2) The petitioners have challenged the impugned notice dated 25 March 2013 under Section 148 of the Income Tax Act, 1961 ("the Act") seeking to reopen the assessment for A.Y. 2008-09. The reasons in support of the impugned notice indicate that the assessee had claimed as expenditure an amount of Rs.3.77 crores to its joint venture partner as Finance Charges during the regular assessment proceedings is sought to be classified as interest and in the absence of tax being deducted at source the entire expenditure is disallowable under Section 40(a)(ia) of the Act. We find that during the assessment proceedings the petitioner was specifically asked to show cause the nature of expenditure relating to finance charges. The petitioner had by its letter dated 20 December 2010 responded to the same by furnishing the joint venture agreement and the nature of expenditure. It is only thereafter the Assessing Officer on 24 December 2010 passed as assessment order under Section 143(3) of the Act for A.Y. 2008-09 in regular assessment proceedings. Thus, prima facie impugned notice stems from a mere change of opinion. In the above view of the matter, interim relief in terms of prayer clause (d).*

2. We having perused the petition and the documents annexed thereto, and the affidavit in reply and having heard the counsel we are also satisfied and agree with the view expressed at the time of admission that the re-opening proposed is purely based on change of opinion.

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.*

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

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 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) 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 March, 2013 and the order dated 1st August, 2014 rejecting the objections of the Petitioner firm being Ex. "J" hereto and after going through the same and examining the question of legality

thereof to quash, cancel and set aside the impugned notice u/sec. 148 of the Act and the notice dated 25th March, 2013 and the order dated 1st August, 2014 rejecting the objections of the Petitioner firm being Ex. "J" hereto.

5. Petition disposed.

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