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

WRIT PETITION NO. 2967 OF 2014

Crimsons Interactive Pvt. Ltd. and Anr. ....Petitioners

V/s.

Income Tax Officer 9(1)(2) and Ors. ...Respondents

Mr. Jitnendra Jain i/b Mr. Manoj G. Agre for Petitioners.
Mr. Arvind Pinto 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 11th November, 2014, the court observed as under in paragraph no.3 and 4.

3. The challenge is to a notice dated 28 March 2014, issued under Section 148 of the Income Tax Act, 1961 (for short "Act") seeking to reopen the assessment for the assessment year 2009-10. The impugned notice is admittedly issued within a period of four years. The Petitioners have challenged the jurisdiction on the ground that the impugned notice has been issued only on account of change of opinion, seeking to deny the Petitioners the benefit of deduction under Section 10A of the Act to the extent of activity carried out by the freelance translators. We prima facie find that during the assessment proceedings leading to the order under Section 143(3) of the Act, the Assessing Officer has specifically inquired of the Petitioners how the Petitioners are eligible to deduction under Section 10A of the Act along with the working of the claim for deduction of Rs.4.19 crores claimed by the Petitioners. Besides the copies of the bill of freelancing expenses were also asked for. The Petitioners had responded to the same, giving complete details and thereafter the assessment order under Section 143(3) of the Act came to be passed. Mr Pinto, learned Counsel appearing for the Respondent Revenue opposes the grant of any interim reliefs on the ground that the activity of freelance translators for the purpose of claiming deduction under Section 10A of

> *the Act had not been inquired into by the Assessing Officer, during the original proceedings. It is his contention that the inquiry in respect of the benefit of Section 10A of the Act was only at macro level and not micro level. Therefore, no opinion was formed.*
>
> *4. Prima facie we find that once a query has been raised with reference to the claim under Section 10A of the Act and the Petitioners had responded to the same with complete details, as asked for, there has been an application of mind on the part of the Assessing Officer and extent of examination cannot give jurisdiction to issue the impugned notice. Prima facie we find substance in the contention of the Petitioner. In view of the above, there shall be an interim relief in terms of prayer clause (d).*

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. Mr. Pinto submitted that in the assessment order there is no discussion on these points with regard to activity of freelance translator.

4. 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*

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

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 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.*

5. 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 28th March 2014 (Exhibit "A" hereto) issued by Respondents under Section 148 of the Act seeking to reopen the assessment for the assessment year 2009-10 and the re-assessment proceedings proposed for assessment year 2009-10 and the order rejecting the objections dated 18th September 2014 (Exhibit "Q").

6. Petition disposed.

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