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

WRIT PETITION NO. 2897 OF 2014

Rockstar Real Estate Pvt. Ltd. ....Petitioner

V/s.

Income Tax Officer – 10(1)(4), Mumbai ...Respondent

Mr. S.C. Tiwari a/w Ms. Rutuja N. Pawar for Petitioner.
Mr. Arvind Pinto for Respondent.

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

P.C. :

1. Petitioner is impugning the notice dated 29th March, 2014 issued under Section 148 of the Income Tax Act, 1961 (the Act) on the grounds, interalia, that the notice has been issued without application of mind and based on unconfirmed, unverified and incorrect information. Petitioner had files its return for assessment year 2009-10 on 31st August, 2009 declaring total income of Rs.6,26,208/-. The return was processed under Section 143(1) of the Act. Thereafter, petitioner received the impugned notice dated 29th March, 2014 stating that respondent had reason to believe that petitioner's income chargeable to tax for A.Y. 2009-10 has escaped assessment within the meaning of Section 147 of the Act.

2. Petitioner was also provided the reasons for re-opening which reads as under :

> *The assessee Company M/s. Rockstar Real Estate Pvt. Ltd. having PAN AADCR59641 is assessed in this charge. The*

return of income for A.Y. 2009-10 has been filed u/s. 139(1) on 31.08.2009, declaring total income at Rs.6,26,208/-

The information is received that, during the year assessee Company has issued 24,00,000 Equity Shares of face value of Rs.1 per share at Rs.14.76 premium per share and received share premium of Rs.14,76,00,000/- on cash, on 10.05.2008 and the same was reflected in the Reserves and Surplus. The paid up capital of the company is of Rs.50.00 lacs. The Company was incorporated on 29.01.2007. The company has not carried out any business activity incidental to its business during the year and only received dividend and interest income. On perusal of the records it is seen that, there is no any material on record to substantiate such unreasonable premium charge by the assessee company for issue of Equity Shares.

In view of the aforesaid facts, the share application and share premium received by the assessee needs to be verified as per provisions of the I.T. Act, 1961. Hence, taking into consideration the provisions of the I.T. Act, 1961, the undersigned has reason to believe that the income has escaped the assessment within the meaning of Section 147 along with Explanation 2(b) of the I.T. Act, 1961.

On the basis of the above mentioned reasons recorded, I am satisfied that this is a fit case for issue of notice u/s. 148 of the I.T. Act, 1961.

3. Mr. Pinto submitted that the re-opening has been proposed within four years from the end of the relevant assessment year and therefore proviso to Section 147 of the Act would not apply. Mr. Pinto submitted that only tangible material has to be shown by the Revenue to re-open the assessment.

4. Though there can be no dispute on the proposition submitted by Mr. Pinto, we have to see whether the reasons disclose any tangible material. In our view, it does not and it has been proposed to re-open on incorrect facts.

5. The entire basis to re-open is that the Revenue has received information that during the assessment year 2009-10 petitioner had issued 24,00,000 Equiry Shares of face value of Rs.1 per share at a premium of Rs.14.76 per share and has received share premium of Rs.14,76,00,000/- in cash on 10th May, 2008 whereas the paid up capital of the company is only Rs.50,00,000/-. According to Revenue the company was incorporated only on 29th January, 2007 and its only source of income was dividend and interest income. Therefore, since there was nothing to substantiate valuation of such huge premium on the company's equity shares, there has to be escapement of income.

6. In the petitioner's reply objecting to the re-opening, petitioner has made categorical statement that during the assessment year 2009-10 no share of the company was issued to any party let alone at a premium and moreover the payment that was received was through banking channels and not in cash. In the order rejecting objections, the Assessing Officer has not considered or dealt with this factual aspect.

7. Even in the petition there is averment to this effect. Though the petition came to be admitted on 24th November, 2014, no reply has been filed even denying these averments.

8. Therefore, in our view there is no reason to believe that income chargeable to tax has escaped assessment. Moreover, even for a moment we

assume that the share premium charged was unjustifiable still on receipt of share premium and share application money no income arises as the receipt is on capital account.

9. In the circumstances, we hereby hold that the notice issued under Section 148 of the Act dated 29th March, 2014 is unsustainable and accordingly quashed and set aside. Subsequently, the order on objections also has to go and is hereby quashed and set aside.

10. Petition disposed.

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