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

WRIT PETITION NO. 2984 OF 2019

Bennett Property Holdings Company Ltd.. ...Petitioner.

Vs.

The Deputy Commissioner of Income Tax-1(1)(1)
and two Ors. ...Respondents.

Mr. Porus Kaka, Senior Advocate a/w. Mr. Nitesh Joshi, Mr. Prakash Shah, Mr. Manish Kant and Mr. Jas Sanghavi i/by PDS Legal for Petitioner.
Mr. Suresh Kumar, Advocate for Respondents.

CORAM : K.R. SHRIRAM & R.N. LADDHA, JJ.
DATED : JANUARY 04, 2022

(Through Video Conferencing)

P.C. :

1. Petitioner is impugning a notice dated 30th March, 2019 issued under section 148 of the Income Tax Act, 1961 and an order dated 15th October, 2019, rejecting Petitioner's objections to the reopening of the assessment.

2. Mr. Porus Kaka submitted that the impugned notice is without jurisdiction and without authority of law for want of satisfaction of condition precedent under section 148 of the Act and there was no failure on the part of Petitioner to disclose fully and truly any material fact and, therefore, there can be no

reason to believe there was escapement of income from assessment as well. Mr. Kaka also submitted that if one considers the reasons, it is quite clear that it is nothing but change of he opinion, which is not permissible in law.

3. Admittedly, Petitioner had filed the return of income for Assessment Year 2012-13, declaring a total income of Rs.33,93,73,990/- on 29th September, 2012. The return was revised on 25th March, 2014. The Assessment was completed on 12th March, 2015, by assessing the total income at Rs. 36,50,47,700/-.

4. Petitioner received the impugned notice dated 30th March, 2019, informing Petitioner that the Jurisdictional Assessing Officer (JAO) had reasons to believe that Petitioner's income chargeable to the tax for Assessment Year 2012-13 has escaped assessment within the meaning of section 147 of the Act. Therefore, the notice to reopen has been issued after expiry of four years from the end of the relevant assessment year and as assessment under sub-section (3) of Section 143 of the Act has been made for the relevant assessment year, the onus is on Respondents to show by reason of the failure on

the part of Petitioner to disclose fully and truly all material facts necessary for that assessment year, the income chargeable to tax has escaped assessment for such assessment year.

5. We have considered reasons for reopening given on 21st August, 2019 to Petitioner and it is quite obvious that it is nothing but change of opinion. Prior to passing of the assessment order, on 31st March, 2012 the Assessing Officer had called upon Petitioner to furnish various details and copy of the notice issued under section 142(1) of the Act which is annexed to the Petition. Petitioner provided all the details as required and in the assessment order, the Assessing Officer has accepted the fact that pursuant to the orders passed by the Honourable High Court in the scheme of arrangement between the Bennett, Coleman & Co. Ltd., (BCCL) and Petitioner under sections 391 & 394 of the Companies Act, 1956, the Real Estate Division of the BCCL was demerged and vested with the assessee company with effect from 1st April, 2011. According to the JAO because the properties which were de-merged from BCCL and vested in the Petitioner Company, have not been mutated to the ownership of Petitioner, the

transactions cannot be regarded as demerger but transfer of various assets and liabilities undertaken, which attract capital gain. According to the JAO rental income was treated by Petitioner as income from house property and Petitioner claimed deduction on account of municipal taxes paid of Rs. 95.59 lakhs and deduction under section 24 at Rs. 964.53 lakhs. Since the properties were not transferred from the BCCL to Petitioner, the income was assesseble under the head "business income" or "other sources" and as such Petitioner was not entitled to the deduction under section 24 of the Act.

6. In the revised computation of total income filed on 24th March, 2014, Petitioner has disclosed municipal taxes paid at Rs.95,59,448/- and repair & collection charges at Rs. 9,64,53,360/- and claimed deduction of these amounts from the income of the house properties. The Assessing Officer had these details before him and also has accepted that there was a scheme of arrangement between BCCL and Petitioner and the Real Estate Division of the BCCL was demerged and vested with Petitioner with effect from 1st April, 2011. Therefore, Petitioner had explained all the details and after considering all that, the assessment order dated 12th March, 2015 was

passed, accepting the return of income filed by Petitioner with same set of reasons. The Assessing Officer had in his possession all the primary facts and it was for him to make necessary enquiries and draw proper inference as to whether the amount was to be allowed as deduction under section 24 of the Act. As noted earlier, the Assessing Officer had all material facts before him when he made original assessment. When the primary facts necessary for assessment are fully and truly disclosed, the Assessing Officer is not entitled on change of opinion to commence proceedings for re-assessment. Even if the Assessing Officer, who passed the assessment order, may have raised too many legal inferences from the facts disclosed, on that count the Assessing Officer, who has decided to re-open the assessment, is not competent to reopen assessment proceedings. Where on consideration of the material on record, one view is conclusively taken by the Assessing Officer, it would not be open to re-open the assessment based on the very same material with a view to take another view.

7. Mr. Suresh Kumar submitted that in the reasons for re-opening, the Assessing Officer has stated that there was failure to disclose fully and truly material facts and has also relied

upon the Explanation- 1 to section 147 of the Act. The duty, however, does not extend beyond the full and truthful disclosure of all primary facts. Once all the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else-far less the assessee to tell the assessing authority what inferences, whether of facts or law, should be drawn. Indeed, when it is remembered that people often differ as regards what inferences should be drawn from given facts, it will be meaningless to demand that the assessee must disclose what inferences – whether of facts or law – he would draw from the primary facts. If from primary facts more inferences than one could be drawn, it would not be possible to say that the assessee should have drawn any particular inference and communicated it to the assessing authority. How could an assessee be charged with failure to communicate an inference, which he might or might not have drawn?. It may be pointed out that the Explanation to the sub-section has nothing to do with “inferences” and deals only with the question whether primary material facts not disclosed could still be said to be constructively disclosed on the ground that with due diligence the Income-tax Officer could have discovered them from the facts actually disclosed. The Explanation has not the effect of enlarging the section, by casting a duty on the assessee to disclose "inferences" to draw the proper inferences being the duty imposed on the Income Tax Officer. Therefore, it can be concluded that while the duty of the assessee is to disclose fully and truly all primary relevant facts, it does not extend beyond this.

8. In our view, using the words "failure to disclose fully and truly all material facts", is clearly made only as an attempt to take the case out of the restrictions imposed by the proviso (1) to section 147 of the Act.

9. Consequently, the Notice dated 30th March, 2019 issued under section 148 of the Act and the order dated 15th October, 2019 impugned in the Petition, are hereby quashed and set aside.

10. Petition disposed with no order as to costs.

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

spb/