IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 710 OF 2015
WITH
WRIT PETITION NO.765 OF 2015

Solvay Specialties India Pvt Ltd. ….Petitioner

V/s.

The Deputy Commissioner of Income Tax, Circle 7(2) Mumbai & Ors. …Respondents

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Mr. Madhur Agarwal a/w Mr. Upendra Lokegaonkar i/b Mint & Confreres for Petitioner
Mr. Suresh Kumar for Respondents

CORAM : K.R. SHRIRAM &
N.R. BORKAR, JJ
DATED : 8th APRIL 2022

P.C. :

1 On 17th December 2014 when the petition was heard for admission, the court has passed a detailed order. The said order reads as under:

> *"1] These petitions challenge two separate notices dated 25 March 2014 issued under Section 148 of the Income Tax Act, 1961 ("the Act") seeking to reopen assessment for the Assessment Years 200708 and 2008 09 respectively. Thus both the impugned notices are beyond a period of four years from the end of the relevant Assessment Year and the additional requirement of failure to disclose truly and fully all material facts necessary for assessment must be satisfied before jurisdiction can be invoked.*
>
> *2] Rule.*
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> *3] The reasons in support of the impugned notices are identical and also the order disposing of the objections passed by the Assessing Officer are identical. Therefore, the interim relief is being granted on identical grounds.*
>
> *4] The reasons indicate that from perusal of Income Tax record for the A. Y. 201011 the petitioners have written off assets worth Rs.1.81 crores as on physical verification the same were not found. However it is relevant to note that for the A. Y. 201011 while adding the amount of Rs.1.80 crores to the petitioner's income, the depreciation on the block of assets which included Rs.1.81 crores was not disturbed by the Assessing Officer. It is the petitioners contention that all facts were*

disclosed at the time of regular assessment under Section 143(3) of the Act leading to the order dated 10 December 2010 for the A.Y. 200708 and for the subsequent year i.e. A.Y. 200809 it would be considered as the written down value of the block of assets in case the Revenue is correct in its contentions for A.Y. 200708.

5] The petitioner had purchased the polymer business of M/s. Garda Chemicals Limited in its entirety including its plant, machinery, equipments, implements, tools etc. the same was subjected to valuation of a Valuation Expert. The plants and machinery subjected to valuation included elbows, nuts, bolts, brackets etc. Prima facie it appears that in terms of Section 32 of the Act the depreciation is allowed on a block of assets and unless the same is sold it continues to be reflected in the block of assets as the items are not individualised. The depreciation is continued to be claimed by the Assessee on the block of assets unless the same is sold. Be that as it may, the petitioners have specifically in their objections to the reasons in support of the notice taken up a stand that there was no failure on the part of the petitioners to make true and complete disclosure. This is evidenced by the fact during the assessment proceedings for A.Y. 2007-08, at the instance of the Assessing Officer, the Purchase Agreement entered into between M/s. Garda Chemicals Limited and the petitioners were made available to the Assessing Officer. The objections of the petitioners have been disposed of by the Assessing Officer by the order dated 13 October 2014 and this particularobjection that there was no failure to disclose true and complete facts has not even been adverted in the order disposing off the objections.

6] Mr. Mohanty, learned Counsel appearing for the Revenue submits that at this point of time the only requirement is that the Assessee should have material to reach a prima facie view that income has escaped assessment warranting its reopening. At this point of time, the Assessing Officer is not required to examine the stand of the petitioners in detail. The above proposition is undisputable. However, the entire purpose of the Assessing Officer dealing with the objections and passing a reasoned order thereon is for the Assessing Officer to give some reasons to meet the objections of the Assessee and not merely dispose of objections by being silent and then proceed with reassessment proceedings. Similarly, the Revenue has also placed reliance on the decision of the Apex Court in Commissioner of Income Tax & Ors. vs. Chhabil Dass Agarwal reported in (2014) 1 SCC 603 and submitted that the petitioners have an alternate remedy under the Act and this Court should not interfere. We are conscious of the fact that where an efficacious alternate remedy is available, we would not normally as a matter of self restraint exercise our extra ordinary jurisdiction under Article 226 of the Constitution of India. However as held by the Apex Court in Chhabil Dass Agarwal (supra), where in issuing the notice the Authority has acted contrary to the statutory provision or in defiance of the judicial procedure, the Court would interdict such a proceeding notwithstanding an alternate remedy. We prima facie find that the impugned reopening notices have been issued in breach of the first Proviso to Section 147 of the Act which inter alia provides that in the absence of a failure to make and disclose true, full

and complete disclosure, the Assessing Officer has no jurisdiction to issue notice for reopening after the end of four years from the end of the relevant Assessment Year. Besides, the order disposing of the objections does not deal with the petitioner's above primary objections.
7] Thus, prima facie it appears that there has been no failure to disclose truly and fully all material information at the time of original assessment proceedings. In the above view, interim relief granted in terms of prayer clause (d)."

2 We have considered the pleadings and the documents annexed with the assistance of Mr. Agarawal and Mr. Suresh Kumar. We are also satisfied that since the reopening notice has been issued more than 4 years after the end of the relevant assessment year, proviso to Section 147 of the Income Tax Act 1961 would apply and the reasons do not indicate that there has been any failure on the part of petitioner to disclose truly or fully all material information at the time of original assessment proceedings. We are in agreement with the observations of the court as quoted above.

3 Accordingly, impugned notice dated 25th March 2014 and the assessment order dated 10th December 2010 in both the petitions are quashed and set aside.

4 Petitions disposed.

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