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

WRIT PETITION NO. 3134 OF 2019

Triumph Hospitals Private Limited ….Petitioner

V/s.

The Income Tax Officer Ward
8(3)(2) and Ors. …Respondents

Mr. Shreehari Iyer a/w Mr. Upendra Lokegaonkar i/b Mint and Confreres for Petitioner.
Mr. Suresh Kumar for Respondents.

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

P.C. :

1. Petitioner is impugning the notice dated 31st March, 2019 issued under Section 148 of the Income Tax Act, 1961 (the Act) for the Assessment Year 2012-13 and order dated 18th October, 2019 rejecting the objections raised by petitioner against the re-assessment proceedings.

2. Petitioner had filed return of income on 28th September, 2012 declaring total income of Rs.5,21,560/-. The case was selected for scrutiny and the assessment order was passed under Section 143(3) of the Act on 23rd March, 2015 assessing total income of Rs.6,22,430/-

3. It is recorded that petitioner had claimed total interest expenditure of Rs.83,73,815/-. The same has been noted even in the

assessment order dated 23rd March, 2015 (not 23rd March, 2013) while discussing the disallowance under Section 14A of the Act. The Assessing Officer after considering all documents and legal provisions, in paragraph no.11 of the assessment order has concluded as under :

> *11. However, as the assessee has incurred total expenses of Rs.83,73,815/- in the Profit & Loss a/c. for this year, following the above well settled judicial Decisions referred above, this expenditure of Rs.98,753/-, is held as reasonable expenses for the purpose of section 14A and the working under Rule 8D at Rs.98,753/- is restricted to that amount of total expenses claimed in the P & L A/c.*

4. If one consider the reasons for re-opening, the entire basis of alleged escapement of income are the Record and Proceedings available with the Assessment Officer that were filed and considered by the Assessing Officer who passed the original assessment order. According to Jurisdictional Assessing Officer (JAO) from the amount of Rs.83,73,815/- claimed by the assessee as interest expenditure, a sum of Rs.40,78,048/- was made by petitioner under Section 36(1)(iii) of the Act which was not permissible and since that claim has not been disallowed at the time of original assessment, there is escapement of assessment of said income. Therefore, one thing is very clear is that this claim was made by the assessee, i.e., petitioner, which has been considered by the original Assessing Officer but the JAO on change of opinion feels that interest expenditure amounting to Rs.40,78,048/- under Section 36(1)(iii) of the Act should have been disallowed at the time of original assessment. There are many judgments of this court and the Hon'ble Apex Court and many other High

Courts which bars re-opening of assessment on the basis of change of opinion.

5. This is a case where proposed re-opening is after the expiry of four years from the relevant assessment year and the assessment under Section 143(3) of the Act has also been completed. Therefore, proviso to Section 147 of the Act would apply. As per proviso to Section 147 of the Act, as it was then in force, there is bar on re-opening of assessment after a period of four years where assessment under Section 143(3) of the Act has been completed unless the respondents are able to show that the escapement of income was due to failure on the part of the assessee to truly and fully disclose material facts required for assessment. Having considered the reasons, we do not find that there was any material fact which was not disclosed while the assessment proceedings were on. As noted earlier, this point has been discussed in the assessment order and the Assessing Officer had allowed petitioner's claim for interest expenditure except a sum of Rs.98,753/-.

6. Simply using the expression "because of failure on the part of the assessee to fully and truly disclosed all material fact etc., would not help respondents because it is quite obvious that these expressions have been used only to overcome the restrictions in the proviso to Section 147 of the Act.

7. In our view, petition has to be allowed and the same 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 31st March, 2019 Ex. 'G' issued under section 148 of the Act to reopen the assessment for the assessment year 2012-2013 together with the order dated 18th October, 2019 Exh. 'K' dealing with the Petitioner's objections;*

8. Petition disposed with no order as to costs.

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