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

WRIT PETITION NO. 158 OF 2020

Upal Developers Pvt. Ltd., … Petitioner.
Vs.
Deputy Commissioner of Income-Tax,
Ranje-6, Lucknow & 3 Ors. …Respondents.

Mr. P. J. Pardiwalla, Senior Advocate a/w. Mr. Madhur Agrawal i/b. Mr. Atul K. Jasani for the Petitioner
Mr. Suresh Kumar, Advocate for the Respondents.

CORAM : K.R. SHRIRAM & R.N. LADDHA, JJ.
DATED : JANUARY 20, 2022

(Through Video Conferencing)

P.C. :

1. Heard Shri Pardiwalla and Shri Suresh Kumar.

2. This Court by Judgment dated 6 December, 2021 in Writ Petition No. 2959 of 2019 filed by the same Petitioner, challenging notice of reopening for A.Y. 2012-13, held that notice was not valid and the Court set aside the notice. Reason for reopening, as recorded in the present Petition, Shri Pardiwalla states is almost identical to the reason for reopening that was recorded for A.Y.2012-13, the difference being in the figures, primarily. Shri Pardiwalla also states that another minor difference was, for A.Y. 2012-13, the notice was received after four years; whereas in the present Petition it is within four years from the end of the assessment year. Tangible material relied upon the notice are almost identical. Shri Suresh Kumar, in fairness, agrees with Shri Pardiwalla.

3. We have also considered the Judgment dated 6 December, 2021 in Writ Petition No. 2959 of 2019 and we would also agree with the Counsels -

the basis for proposed reopening is that other service charges was for service inseparably connected with the letting out of the building by the assessee and the assessee was not running any separate business to account for these receipts as business receipts and, therefore, these receipts should be part of income from house property only.

4. Moreover, even in this case, queries were raised by the Assessing Officer and answers with documents have been provided to the Assessing Officer before the assessment order dated 9 December 2016 was passed under section 143 (3). It is also obvious from the reasons for reopening that it is nothing but change of opinion. Therefore, the Petition is allowed in terms of prayer clause (a), which reads as under :

> *"a. that this Hon'ble Court be pleased to issue a Writ of Certiorari or any other writ order or direction under Article 226 of the Constitution of India calling for the records of the case leading to the issue of the impugned notice and passing of the impugned order and after going through the same and examining the question of legality thereof quash, cancel and set aside the impugned notice (Exhibit P) dated 28th March, 2019 and impugned order (Exhibit T) dated 7th November, 2019."*

5. Petition disposed accordingly with no order as to costs.

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

.....

borey/