IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3543 OF 2019

Patel Engineering Limited ...Petitioner

Versus

Deputy Commissioner of Income Tax,
Central Circle 3(4) and ors. ...Respondents

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

SANTOSH SUBHASH KULKARNI
Digitally signed by SANTOSH SUBHASH KULKARNI
Date: 2022.01.29 16:33:48 +0530

CORAM: K. R. SHRIRAM &
N. J. JAMADAR, JJ

DATED: 25th JANUARY, 2022
(Video Conferencing)

Oral Order:-

1. Petition is impugning notice dated 31st March, 2019, issued under Section 148 of the Income Tax Act, 1961 ("the Act") and order dated 16th October, 2019, disposing off petitioner's objections. No reply has been filed though time was granted on 18th December, 2019.

2. As could be seen from the impugned notice dated 31st March, 2019, reopening is proposed after expiry of four years from the relevant assessment year. Since assessment under Section 143(3) has been completed, the proviso to Section 147 of the Act shall apply. The onus is on respondents to disclose what was the material fact that petitioner failed to disclose truly and fully.

3. We have considered the reasons recorded for reopening and in our view, it does not disclose anywhere that there was failure on the part of petitioner to disclose fully and truly all material facts. Simply using the words, ".... by reason of failure on the part of assessee to disclose fully and truly all material facts necessary for his assessment," would be of no use to respondents since it is rather obvious that it is made only as an attempt to take the case out of the restrictions imposed by proviso to Section 147 of the Act.

4. Mr. Suresh Kumar relied upon a judgment of this Court in ***Crompton Greaves Ltd. V/s. Assistant Commissioner of Income Tax,Circle 6 (2) 4***[1] to submit that even if the reason for reopening does not specifically state that there was any failure on the part of petitioner to disclose fully and truly all material facts necessary for its assessment for the relevant assessment year, it will not be fatal to the assumption of jurisdiction under Sections 147 and 148 of the Act. We would certainly agree with Mr. Suresh Kumar but as held in ***Crompton Greaves Ltd.*** (Supra), this is subject to the rider that there must be cogent and clear indication in the reasons supplied, that in fact there was failure

1 (2015) 55 taxmann.com59 (Bombay)

on the part of assessee to disclose fully and truly all the material facts necessary for its assessment. If the factum of failure to disclose can be culled down from the reasons in support of the notice seeking to reopen assessment, that will certainly not be fatal to the assumption of jurisdiction under Sections 147 and 148 of the Act. The Court held *"However, if from the reasons, no case of failure to disclose is made out,then certainly the assumption of jurisdiction under Sections 147 and 148of the Act would be ultra vires, being in excess of the jurisdictionalrestraints imposed by the first proviso to Section 147 of the Act"*.

5. We are actually having difficulty to make out any sense in the reasons recorded. The entire basis, as we have understood, is certain companies were accepting contracts and were sub-contracting those contracts to other entities and respondents came to know about this based on a survey under Section 133-A of the Act of one Singla Engineers and Contractors Private Limited ("SECPL") on 31st October, 2014. First of all, this survey has been conducted before the assessment order dated 31st March, 2015 for Assessment Year 2012-2013 was passed in the case of petitioner and, therefore, the Assessing Officer should have been aware of any such information but still chose not to raise it during the assessment process. Moreover, according to the Jurisdictional Assessing Officer ("JAO"), who has recorded the reasons, a contract was received by petitioner from one SECPL during the relevant assessment year for Rs.24,22,57,252/-. That can not be a reason to re-open because JAO does not even state, whether petitioner executed the contract and received any income.

6. Moreover, petitioner has stated in the petition and it has not been denied by respondent, that petitioner did receive a contract from SECPL but the contract was for Rs.14,92,47,452/- and not for Rs.24,22,57,252/- as mentioned in the reasons for reopening. Petitioner had sub-contracted the contract to one Bramhaputra Infrastructure Limited for a consideration of Rs.14,62,95,999/- and the contracting charges were credited by petitioner to the profit and loss account and offered as income. Petitioner first filed its return of income for Assessment Year 2012-2013 on 30th November, 2012 and thereafter filed revised return of income on 28th February, 2014 along with annual accounts of petitioner. During the assessment proceedings, Assessing Officer had issued notice dated 17th December, 2014 under Section 142(1) read with Section 129 of the Act asking details of the sub-contract given by petitioner with details of the parties. Petitioner by its letter dated 5th January, 2015 submitted the details required by the Assessing Officer which included the receipt of Rs.14,92,47,452/- from SECPL, which was credited as income in the relevant year. Petitioner, thereafter, on 25th March, 2015 filed submissions giving the AIR Reconciliation that included reconciliation of income received from SECPL. Thereafter the assessment order dated 31st March, 2015 under Section 143(3) for Assessment Year 2012-2013 was passed. The assessment order dated 31st March, 2015, copy whereof is annexed to the petition, also records that the authorised representative of petitioner attended from time to time and furnished details called for.

7. Therefore, by no stretch of imagination, it can be held that there was non-disclosure on the part of petitioner. These facts have been brought to the notice of respondents by petitioner vide letter dated 10th October, 2019. Notwithstanding the same, the order on the objections dated 16th October, 2017 and impugned in the petition has been passed.

8. In our view, having heard the Counsels and considered the petition along with documents annexed thereto, the JAO has not verified the facts with the data available with him and simply on the basis of information received from DDIT, has issued the notice to petitioner. Therefore the condition precedent for taking action under Section 147 of the Act that mandates, it is exclusively the satisfaction of the assessing authority based on some direct, correct and relevant material has not been met. This Court in ***CTIT vs. Shodiman Investment P. Ltd.***[2] has held that reopening notice has to be issued by the Assessing Officer on his own satisfaction and not on borrowed satisfaction.

9. The Delhi High Court in ***Sabh Infrastructure Limited vs. Assistant Commissioner of Income-Tax***[3] had laid down certain guidelines in matters of reopening of assessment and one of the guideline, which the revenue was directed to adhere to was, where the reasons make a reference to another document, whether as a letter or report, such document and/or relevant portions of such report should be enclosed along with the reasons. We find that to the reasons recorded, revenue has not annexed the DDIT information received by them. To that extent, the revenue, therefore, is in breach of the orders of the Delhi High Court in ***Sabh Infrastructure Limited*** (supra).

10. We also notice in the order disposing petitioner's objections, Assessing Officer has relied upon various judgments of which copies have not been provided or were brought to the notice of assessee before the order on objection was passed so that assessee could have suitably dealt with those

2 (2018) 39 taxmann.com 153 (Bom).
3 (2017) 398 ITR 198 (Delhi).

judgments/orders. Therefore, we would add that there is also breach of principles of natural justice on the part of the Assessing Officer, who as a quasi judicial authority had an obligation to adhere strictly to the principles of natural justice.

11. We also notice that in the order disposing the objections, the JAO has gone beyond the reasons recorded for reopening inasmuch as according to him no bank statements or work contract receipts were inquired or submitted during the original assessment proceedings based on which the actual amount and the nature and genuineness of the work done by assessee for SECPL could have been verified. It is settled law that reasons cannot be improved upon and/or supplemented as held in ***First Source Solutions Limited vs. The Assistant Commissioner of Income Tax – 12(2)(1) and another.***[4] In any event, the Assessing Officer is not correct inasmuch as petitioner, as recorded earlier, has provided the details regarding contract with SECPL.

12. In the circumstances, 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-F) dated 31st March, 2019 and

4 2021(438) ITR 139 (Bom).

impugned order (Exhibit-J) dated 16th October, 2019."

13. Petition disposed.

[N. J. JAMADAR, J.] **[K. R. SHRIRAM, J.]**