IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.3928 OF 2021

Diamond Forever International … Petitioner
Vs.
Deputy Commissioner of Income Tax and others … Respondents

Mr. Percy Pardiwalla, Senior Advocate a/w. Mr. Madhur Agarwal i/b. Saldanha Ryan Rudolp for Petitioner.
Mr. Sham V. Walve for Respondents.

CORAM : K. R. SHRIRAM &
R. N. LADDHA, JJ.

DATE : JANUARY 18, 2022

P.C. :-

1. Heard Shri. Pardiwalla and Shri. Walve.

2. Though Shri. Walve made a valiant effort to support the reasons recorded for re-opening, when the Court confronted Shri. Walve with facts from the documents annexed to the petition, he in fairness agreed that it was a clear case of change of opinion. In the reasons recorded for re-opening, the Jurisdictional Assessing Officer has issues regarding exemption granted under Sections 10A and 10AA of the Income Tax Act, 1961. In the reasons, the Assessing Officer states as under:-

> *"Statutory notices u/s.143(2) & 142(1) were issued and assessment was finalised by the then AO accepting the returned income of Rs.Nil after allowing deduction u/s.10AA in toto.*
>
> *On perusal of the assessment record, it is observed that the P&L account of the assessee firm does not show any activity like manufacturing or production or rendition of services, though the unit is in SEZ. Thus, the assessee firm is not satisfying the mandatory conditions as specified in section 10AA(1) of the Act of its engagement in the activity of manufacturing or production of articles for rendition of services. For the sake of convenience, section 10AA(1) of the Act is reproduced hereunder:"*

3. In the reasons itself he admits that the Assessing Officer has taken a conclusive view on allowing deduction under Section 10AA of the Act

in *toto*. In fact, the assessment order dated 6th July 2015 also provides,

> *"The assessee has claimed exemption u/s.10AA of the IT Act, 1961. The eligibility conditions are verified and after verification the same is allowed."*

4. In the circumstances, it is nothing but change of opinion, which is not permissible. The petition is accordingly 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 E) dated 31st March, 2021 and impugned order (Exhibit J) dated 21st October, 2021.*

5. Petition disposed.

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

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