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

WRIT PETITION NO. 3546 OF 2019

Preethi Kitchen Appliances Private Ltd.. ...Petitioner.

Vs.

The Assistant Commissioner of Income Tax,
Circle 10 (3)(2), Mumbai -400 020. ...Respondent.

Mr. Paras S. Savla, Advocate i/by Mr. Harsh R. Shah for Petitioner.
Mr. Akhileshwar Sharma, Advocate for Respondent.

CORAM : K.R. SHRIRAM & R.N. LADDHA, JJ.
DATED : JANUARY 04, 2022

(Through Video Conferencing)

P.C. :

1. Petitioner had filed return of Income on 30th November, 2012 for the Assessment Year 2012-13, declaring a total loss of Rs. 1,79,43,98,171/-. The return was processed under section 143 (1) of the Income Tax Act, 1961 ["the said Act"]. The case was selected for scrutiny and assessment proceedings were completed under section 143 (3) read with section 92CA(4) of the said Act. On 23rd March, 2016 assessment order was passed by which income was assessed at a loss of Rs.1,79,43,98,171/-. Copy of the assessment order dated 23rd

March, 2016 is annexed to the Petition. The order of Transfer Pricing Officer (TPO) passed on 25th January, 2016, accepting the suggestions of Petitioner regarding arm's length price of transactions declared has also been accepted and referred to in the assessment order. The order of the TPO is also annexed to the Petition.

2. Petitioner received a notice dated 28th March, 2019 under section 148 of the Act for Assessment Year 2012-13. The Petitioner filed returns and, also was provided with reasons for re-opening. The copy of the reasons recorded for issuing notice under section 148 is also annexed to the Petition.

3. Shri Savla submitted that as the assessment proceedings were completed under section 143 (3) of the Act and the notice under section 148 had been issued after expiry of four years from the relevant assessment year, the proviso to section 147 of the Act applies. Shri Savla submitted that Respondents have to prove that there was failure by Petitioner to truly and fully disclose material facts. Shri Savla submitted that if one considers the reasons recorded, it is quite clear that on the same set of material which was considered by an Assessing

Officer and one view is conclusively taken in the assessment order, re-opening of assessment on the same set of facts is proposed and that was not permissible in law.

4. Shri Sharma submitted that if on reading of the reasons as a whole it is found that it does indicate that there has been failure on the part of Petitioner to disclose truly and fully all material facts necessary for the assessment then it cannot be said that the notice is without jurisdiction. According to Mr. Sharma on reading of the reasons in support of the impugned notice as a whole, it does bring out failure on the part of Petitioner to disclose truly and fully material facts necessary for assessment.

5. We have considered the reasons supplied and we do not agree with Shri Sharma. The factum of failure to disclose cannot be culled from the reasons in support of the notice seeking reopening of the assessment. No case of failure to disclose is made out. In our view, on consideration of material, the Assessing Officer has conclusively taken one view and hence based on the same material, it will not be open to reopen the assessment with a view to take another view.

6. In the reasons for proposed re-opening of assessment it is recorded that after the assessment order was passed on 23rd March, 2016, the Department received certain information from the Directorate of Income Tax, Intelligence & Criminal Investigation, Chennai, from where it was found that the acquisition of Brands of Rs. 2,91,30,00,000/- and Goodwill of Rs.2,85,30,94,220/- as claimed by Petitioner was incorrect and the said transfer has not been established. Thus, Petitioner has claimed incorrect depreciation of Rs. 144,15,23,555/- [Rs.72,82,50,000/- on Brands and Rs.71,32,73,555/- on Goodwill].

7. The facts pertaining to acquisition of Goodwill, trade marks and Patents and Brands were not only available before the original assessment by the Assessing Officer but were also analysed by him during the course of the assessment proceedings. Petitioner's financial statements were submitted to the Assessing Officer vide letter dated 22nd October, 2014. Annexure-A to the said letter categorically explained the manner in which the business was acquired by Petitioner and how the purchase consideration was treated in the books of accounts. After considering the information, the Assessing

Officer had issued a notice dated 12th February, 2015 under section 142 (1) of the Act in which the Assessing Officer sought copies of the master agreement and any other supplementary agreement entered into for acquiring business of the three concerns, sought clarification on how the sale consideration was paid by Petitioner to the parties and also called for valuation report in support of the intangible assets brought in Petitioner's book of accounts alongwith the breakup of the intangible assets. We have to note that in note 36 to the financial statement of Petitioner, Petitioner has explained acquisition of the assets and liabilities and also disclosed the value of Brands and Goodwill at Rs. 2,91,30,00,000/- and Rs. 2,85,30,94,220/-, respectively. In response to Respondents' notice under section 142 (1), Petitioner, vide its letter dated 20th January, 2015, provided copies of master agreement alongwith the amendment to the agreement; copy of the individual slump sale agreements; copy of deed of trademark assignment and copy of deed of assignment of patents. Petitioner also explained as to how the sale consideration was paid and how it was funded. Thereafter, the Assessing Officer vide letter dated 24th November, 2015, in connection with the on going assessment proceedings, called upon Petitioner to provide further details. Clause 4 thereof is relevant and it reads as under :

4. Note 36 to Financial Statement shows that the value of Goodwill Rs.285.31 crores is determined by subtracting purchase consideration from total value of assets determined by the Valuer, which is adopted in Annexure 3 to Report u/s 44AB of the Income Tax Act, 1961, determining depreciation u/s 32(1) of the Income Tax Act, 1961, on 'Goodwill' @ 25% amounting to Rs.71.33 crores. Kindly justify the same.

Further this note also reveals that the value of acquired assets is adopted on the basis of Valuation by the Valuer. Please state whether the same value has been considered for depreciation u/s 32(1) of the Income Tax Act, 1961. If so, please explain why the 5th proviso to Section 32(1) of the Income Tax Act, 1961 should not be invoked for quantifying depreciation allowable, after adopting WDV in the hands of the predecessor companies/firms. You are requested to provide the evidence regarding the WDV in the hands of the predecessor companies/firms on the day of transfer.

8. Petitioner responded vide its letter dated 4th February, 2016 and, after providing the justification for claiming depreciation on goodwill and brand, also provided the copies of the two reports relied upon by Petitioner for the purpose of capitalization of assets taken over viz., due diligence report dated 4th July, 2011 issued by Price Waterhouse Coopers Pvt. Ltd., and valuation report dated 5th July, 2011 issued by Deloitte Touche Tohmatsu India Pvt. Ltd.. Thereafter, as noted earlier, the order under section 92CA(3) of the Income Tax Act,

1961 was also passed by the Transfer Pricing Officer on 26th January, 2016.

9. The Assessing Officer after considering all these points passed the assessment order dated 23rd March, 2016, accepting the fact that transfer has been established and there was proper acquisition of the Brands and Goodwill, as claimed by Petitioner. It is true that there is no detail reference to the query raised by the Assessing Officer during the assessment proceedings and the reply provided by the Assessee alongwith documentary evidence. But, once the query raised was subject to the consideration of the Assessing Officer, while completing the assessment, it is not necessary that the assessment order should contain reference and/ or discussion to disclose his satisfaction in respect of each of the query raised. If the Assessing Officer has to record the consideration bestowed by him on all issues raised during the assessment proceedings even where he is satisfied, then it would be impossible for the Assessing Officer to complete all the assessments which are required to be scrutinized by him under section 143 (3) of the Act. We find support for this view in a Judgment of the Division Bench of this Court in the case of

Aroni Commercials Ltd., vs. Deputy Commissioner of Income Tax–2(1)[1]. The Assessing Officer had in his possession all material facts when he made original assessment. When the primary facts necessary for assessment are fully and truly disclosed, the Assessing Officer is not entitled on change of the opinion to commence proceedings for re-assessment. Where on consideration of the material on record, one view is conclusively taken by the Assessing Officer, it would not be open to reopen the assessment based on the very same material with a view to take another view. **(Ananta Landmark (P.) Ltd., vs. Deputy Commissioner of Income Tax)[2].**

10. In the circumstances, the notice dated 28th March, 2019 issued under section 148 of the Act to reopen the assessment for Assessment Year 2012-13 together with order dated 11th November, 2019, dealing with Petitioner's objections, are hereby quashed and set aside.

11. Petition disposed with no order as to costs.

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

1 2014 (44) taxmann.com 304 (Bombay).

2 2021 (131) taxmann.com 52 (Bombay).

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