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

WRIT PETITION NO.3555 OF 2019

Godrej and Boyce Manufacturing Co. Ltd. ....Petitioner

V/s.

Assistant Commissioner of Income Tax, Circle 14 (1)(2) & Ors. ....Respondents

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Mr. Percy Pardiwalla, Senior Advocate a/w. Mr. Atul K. Jasani for petitioner.
Mr. Suresh Kumar for respondents.

CORAM : K.R. SHRIRAM &
N.R. BORKAR, JJ.
DATED : 13th JANUARY 2022

P.C. :

1 Petitioner had filed its return of income for Assessment Year 2012-2013 on 26th November 2012 declaring total income at Rs.5,23,81,63,452/- and book profit under Section 115JB of the Income Tax Act, 1961 (the said Act) of Rs.9,85,40,05,783/-. The assessment was completed under Section 143(3) of the said Act dated 20th March 2015 determining the total income at Rs.5,37,56,77,667/- and the tax is calculated on the book profit under Section 115JB of the said Act of Rs.10,07,45,28,003/-.

2 After the assessment was completed and the assessment order was passed, the Principal Commissioner of Income Tax - 14 issued a notice dated 29th June 2016 under Section 263 of the said Act for Assessment Year 2012-2013 and it reads as under :

....

> *2. In the instant case, return of income for A.Y. 2012-13 was filed on 26.11.2012 declaring Total Income of Rs.5,23,81,63,542/- and book profit of Rs.9,85,40,05,783/-. Further, order u/s 143(3) of the Act, was passed on 23.03.2015 determining the total income of Rs.5,37,56,77, 667/- under the normal provisions of the Act.*
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> *3. On perusal of the records it is observed that the assessee has debited an amount of Rs.43,02,00,000/- on account of Diminution in the value of investment in a subsidiary. The diminution in the value of investment is adjusted where the loss (the difference between the purchase price and the value as on the valuation date) is booked in accounts and this loss is a notional loss as no sale has taken place and the asset continues to be owned by the company.*
>
> *4. As per Income tax Act-1961, there is no provision to recognize a decline in the value of investments. Only if the investment is disposed of, the profit/loss on account of the same is recognized. In the instant case, the assessee company has added back this deduction under normal provisions of the Act but the same was not added while computing income under MAT provisions u/s 115JB of the Act. Hence, the Assessing Officer has erred while making addition in the assessment order.*
>
> *………..*

3 Petitioner responded by a letter dated 21st July 2016 through its Chartered Accountants and explained to the Principal Commissioner of Income Tax - 14 as to why his opinion that there was an error in the assessment order passed under Section 143(3) of the said Act was erroneous. After considering the reply and also a personal hearing, the Principal Commissioner of Income Tax - 14 passed an order dated 18th August 2016, which reads as under :

> *…………*
>
> *In connection with the above, I am directed to inform that the proceedings initiated u/s 263 of the I.T. Act in the above case for the A.Y. 2012-13 are dropped.*
>
> *Further, I am directed to request that Revenue Audit may accordingly be informed that the objection raised is not accepted and may be requested to withdraw the objection on the basis of facts of the case which is different than that of*

the judicial pronouncement relied upon by the audit party.

....

4 Subsequently, petitioner received a notice under Section 148 of the said Act stating that the Jurisdictional Assessing Officer has reasons to believe that petitioner's income for Assessment Year 2012-2013 has escaped assessment. On petitioner's request, reasons were provided as also the approval granted under Section 151 of the said Act by the Principal Commissioner of Income Tax - 14. Two grounds have been raised in the reasons. One is regarding fair value of land/transferable development rights relating to 24,872.83 sq. mtrs. of land and the second one is the diminution in the value of investment in a subsidiary and debit by petitioner from the profit and loss account an amount of Rs.43,02,22,000/-.

5 As could be seen from what is noted by us earlier, the second point in the reasons for reopening has already been considered by the Principal Commissioner of Income Tax - 14 when he wished to review the assessment order under Section 263 of the said Act and the Principal Commissioner of Income Tax - 14 has also passed an order directing the proceedings initiated under Section 263 of the said Act to be dropped and the Revenue Audit to be accordingly informed that the objection raised was not accepted. Notwithstanding this order passed by the Principal Commissioner of Income Tax - 14, a notice is issued under Section 148 of the said Act and one of the ground is the same point which was directed to be dropped by the Principal Commissioner of Income Tax - 14 and the same

Principal Commissioner of Income Tax - 14 has accorded the approval under Section 151 of the said Act on 30th March 2019. Therefore, this only shows that there has been total non application of mind by the Principal Commissioner of Income Tax - 14 while according the approval. If the Principal Commissioner of Income Tax - 14 had only applied his mind and considered all documents including his own order passed on 18th August 2016, he would not have granted the approval for the reasons as recorded. Mr. Suresh Kumar submitted that there are two reasons for reopening which are distinct. One is regarding the fair market value of land/transferable development rights and the other regarding diminution in the value of investment in a subsidiary and both can be segregated. It is true that both are totally different points but the fact, which is indisputable, is how could the Principal Commissioner of Income Tax - 14 grant approval for reopening relying on the reasons one of which is on an issue which the Principal Commissioner of Income Tax - 14 himself has passed an order saying that the objection raised was not correct.

6 Mr. Pardiwalla relied on judgment of this Court in ***German Remedies Ltd. V/s. Deputy Commissioner of Income-Tax***[1] to submit that to grant or not to grant approval under Section 151 of the said Act to re-open an assessment is coupled with a duty and the commissioner was duty bound to apply his mind to the proposal put up to him for approval in the light of the material relied upon by the Assessing Officer. Mr. Pardiwalla submitted

1. [2006] 287 ITR 494 (Bom)

that such power cannot be exercised casually, in a routine and perfunctory manner.

7 We have to note that in the affidavit in reply also respondents admit that the PCIT is required to accord approval on reasons recorded by the Assessing Officer after having satisfied himself that such reasons were on the basis of the technical information in possession. As held in *German Remedies Ltd.* (Supra) to grant or not to grant approval under Section 151 of the said Act to re-open an assessment is coupled with a duty and the Commissioner was duty bound to apply his mind to the proposal put up to him for approval in the light of the material relied upon by the Assessing Officer. Such power cannot be exercised casually, in a routine and perfunctory manner.

We have to observe that if only the PCIT had read the file, he would not have been satisfied with the reasons.

8 In the circumstances, on this ground alone, without going into the other grounds, which Mr. Pardiwalla raised for quashing the notice as well as the order on objections, the petition 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 30th March 2019 (Exhibit A) issued by respondents under Section 148 of the Act seeking to reopen the assessment for the assessment year 2012-13; and order rejecting objections (Exhibit X) dated 1st November 2019.*

9 Petition disposed.

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