PURTI
PRASAD
PARAB

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

WRIT PETITION NO. 3501 OF 2019

Lintas India Private Limited ....Petitioner

V/s.

Union of India and Anr. ...Respondents

Mr. Kamal Sawhney a/w Mr. Prashant Meharchandani and Ms. Dhruvi Shah i/b PDS Legal for Petitioner.
Mr. Suresh Kumar for Respondents.

CORAM : K.R. SHRIRAM &
R.N. LADDHA, JJ.
DATED : 19th JANUARY, 2022

P.C. :

1. Petitioner has approached this court aggrieved by a notice dated 31st March, 2019 issued under Section 148 of the Income Tax Act, 1961 (the Act) for A.Y. 2012-13. Since notice has been issued more than four years of the expiry of the relevant assessment year, proviso to Section 147 of the Act shall apply. The onus is on respondent to show that there was failure on the part of petitioner to fully and truly disclose all material facts that was required for assessment.

2. In the affidavit in reply, paragraph no.4.3 (c), respondent admits that the notice under Section 148 of the Act was issued in this case on the basis of details available on record. This is a clear give away that there was no failure on the part of petitioner to fully and truly disclose material facts. Moreover, in the reasons for re-opening, it is stated "......*It is*

seen from the records kept in scrutiny assessment folder that in the Profit and Loss A/c the assessee has shown total sell of service charges of Rs.188,09,25,428/- and other income of Rs.17,16,10,657/- which also includes Bank interest income of Rs.3,03,10,456/-. Even if rate of TDS is assumed to be @2% the total matching income of the assessee corresponding to TDS credit excluding TDS on interest income (TDS rate on other income of Rs.4.42 crores has been assumed @10% Rs.44,20,372/-) should have been approximately Rs.1275,09,05,250/-. It is seen from the statement of 26AS reconciliation for FY 2011-12 submitted by the assessee as Annexure 6 to the its submission that it has shown reconciliation of total billing to the tune of Rs.1167,43,09,406/- for A.Y. 2012-13. In view of the above, TDS credit on the difference of Rs.107,65,95,844/- (1275,09,05,250 – 1167,43,09,406/-) to the extent of Rs.2,15,31,917/- (2% of Rs.107, 65,95,844/- on which the assessee company has not offered its income) should not have been allowed to the assessee. Omission has resulted in excess TDS credit to that extent." This also indicates that there has been no failure on the part of petitioner to disclose and the entire re-opening is on the basis of details available on record and change of opinion.

3. Moreover, according to the Jurisdictional Assessing Officer (JAO) TDS Credit to the extent of Rs.2,15,31,917/- should not have been allowed to the assessee and omission has resulted in excess TDS credit to that extent. The Hon'ble Apex Court in the case of ***Indian and Eastern***

Newspaper Society vs. Commissioner of Income Tax, New Delhi[1] held that even if it is an error that the Assessing Officer discovered, still an error discovered on a re-consideration of the same material does not give him power to re-open. When the primary facts necessary for assessment are fully and truly disclosed, the Assessing Officer is not entitled on change of opinion to commence proceedings for reassessment. Even if the Assessing Officer, who passed the assessment order, may have raised too many legal inferences from the facts disclosed, on that account the Assessing Officer, who has decided to reopen assessment, is not competent to reopen assessment proceedings. Where on consideration of 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.

4. We also find from the records filed with the petition that a specific query had been raised by the Assessing Officer and he had sought from petitioner pending details of reconciliation of ITS Information regarding AIR/CIB/26AS and petitioner had also replied to the same. Copies of these communications dated 4th March, 2016 and 10th March, 2016 are annexed to the petition at Exhibit "B" and Exhibit "C" respectively. It is settled law that once a query is raised during the assessment proceedings and the assessee has replied to it, it follows that the query raised was a subject of consideration of the Assessing Officer while

1 119 ITR 996 (SC)

completing the assessment. It is not even necessary that an assessment order should contain reference and/or discussion to disclose its satisfaction in respect of the query raised. It is also settled law that change of opinion does not constitute justification and/or reasons to believe that income chargeable to tax has escaped assessment. [***Aroni Commercials Ltd. vs. Deputy Commissioner of Income-tax 2(1)***[2]].

5. In the circumstances, petition is allowed in terms of prayer clause – (a) which reads as under :

> *(a) that 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, calling for the records of the Petitioner's case and after going into the legality and propriety thereof, to quash and set aside the said notice dated 31st March, 2019 bearing Letter No.ITBA/AST/S/148/2018-19/1015606537(1) (Exhibit "E") and the subsequent order disposing objections dated 6th December 2019, bearing Letter No.ITBA/AST/F/17/2019-20/1021829335(1) (Exhibit "N").*

6. Petition disposed with no order as to costs.

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

2 [2014] 44 taxmann.com 304 (Bombay)