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

**WRIT PETITION NO.3540 OF 2019**

Halite Personal Care India Pvt. Ltd. ....Petitioner

V/s.

The Deputy Commissioner of Income Tax 14 (2)(1) & Ors. ....Respondents

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Mr. Nitesh Joshi i/b. Mr. Mandar Manohar Vaidya for petitioner.
Mr. Suresh Kumar for respondents.

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

**P.C. :**

1 Petitioner is impugning a notice dated 30th March 2019 issued under Section 148 of the Income Tax Act, 1961 (the said Act) and also an order dated 16th November 2019 rejecting petitioner's objections.

2 Petitioner had filed return of income for Assessment Year 2012-2013 on 6th February 2013. The return was processed under Section 143(1) of the said Act and after the case was selected for scrutiny under CASS, an assessment was made under Section 143(3) of the said Act on 23rd March 2015 accepting the returned income as such.

3 In April 2011, one Reckitt Benckister Investments India Private Limited (RBIIPL) acquired 100% stake in a company Paras Pharmaceuticals Limited (Paras) for a consideration of Rs.3272.8 Crores. Petitioner was incorporated on 15th June 2011 to carry on business of trading in personal care products. Petitioner entered into negotiations with RBIIPL and Paras for

acquiring their personal care business. RBIIPL, Paras and petitioner came to an understanding by which RBIIPL would merge with Paras and after the merger, the personal care division of the merged entity to be demerged into petitioner. Parties approached the Hon'ble Punjab and Haryana High Court and the Court vide its order dated 18th April 2012 approved the scheme by which the entire business including all assets, liabilities and reserves relating to the personal care division of merged entity of RBIIPL and Paras was vested in petitioner with effect from the appointed date being 1st March 2012.

4 Petitioner filed its return of income on 6th February 2013 for Assessment Year 2012-2013 as mentioned earlier declaring total income of Rs.3,54,98,523/-. Petitioner also filed audit report in Form 3CA and its particulars in Form 3CD, as mandated by Section 44AB of the said Act alongwith the return of income.

5 During the course of original assessment proceedings, the Assessing Officer issued notice dated 2nd December 2014 under Section 142(1) of the said Act calling for various details mentioned therein. By its letter dated 23rd February 2015, petitioner provided all details called for including breakup of various expenses like provisions for sales return and other operating expenses which are subject matter of present reopening proceedings. Petitioner also submitted a detailed note on the Scheme of Amalgamation and Demerger alongwith copy of the said Scheme filed before the Hon'ble Punjab and Haryana High Court and the order of the

Court approving the said Scheme. List of assets transferred under the Scheme of Demerger, relevant extracts of financial statements etc. were also filed. After considering the documents and the submissions made by petitioner, the assessment proceedings, as noted earlier, were completed under Section 143(3) of the said Act and an assessment order dated 23rd March 2015 accepting the income offered in the return of income was passed.

6 Subsequent to completion of assessment proceedings, respondent, vide letter dated 18th July 2017 raised a query regarding provision for sales return of Rs.4,42,64,416/- and other operating expenses of Rs.85,58,620/-. Petitioner responded vide a detailed letter dated 9th October 2017. Nothing happened thereafter.

7 One fine day, petitioner received a notice dated 30th March 2019 under Section 148 of the said Act, which is impugned in this petition. Later, petitioner also received reasons recorded for reopening the assessment. We have, with the assistance of Mr. Joshi and Mr. Suresh Kumar, considered the reasons for reopening. In our view, first of all, the reasons recorded only indicate a change of opinion by the Jurisdictional Assessing Officer (JAO) based on the same set of facts and documents. Moreover, the JAO has proceeded on the incorrect premise that the amount of provision for sales return as the expenditure incurred was not incurred during the relevant year but the following year. Infact this has been accepted in the order dated 16th November 2019 rejecting petitioner's objections, which

order is also impugned in this petition. The JAO, though he admits that he has erred, states that that issue of difference is not of prime relevance or contention is not of relevance at this stage. In the order dated 16th November 2019 impugned in this petition, it is stated as under :

> *…….It is noted in this regard that the reasons to believe are formed, in the main, in respect of the amount of provision for sales return as the expenditure was not incurred during the previous year (as also the amortization of other operating expenses). To that extent, the issue of difference between two stages and the details of share issuance in two stages is not of prime relevance. Therefore, the contention of the assessee regarding factual correctness on this aspect is also not of relevance at this stage ……….*

8 Therefore, once he accepts that the reasons to believe are found mainly in respect of the amount of provision for sales return as the expenditure was not incurred during the previous year as also the amount of other operating expenses and once he accepts that he was wrong in assuming so, there can be no reason to believe that income has escaped assessment. What the JAO has stated in the reasons for reopening is that even if the effective date declared by the company was 1st March 2012 and the Hon'ble Punjab and Haryana High Court has endorsed it by approving the Scheme of Amalgamation in its order dated 18th April 2012 because the order was passed only on 18th April 2012, the effective date cannot be 1st March 2012. Infact the JAO has sat on appeal over the High Court's order and has gone to the extent of saying that the High Court's order on amalgamation was irregular. Mr. Suresh Kumar was visibly embarrassed by this statement and at his request and in view of the fact that the JAO has

accepted that there was an error in the order dated 16th November 2019 impugned in this petition, we will leave the matter to rest at this point.

9 Moreover, in any event, all the points, which have been raised in the reasons for reopening, were raised by the Assessing Officer during the original assessment proceedings and all documents and details were provided to the Assessing Officer, as could be seen from the notice dated 2nd December 2014 issued under Section 142(1) of the said Act, petitioner's letter dated 23rd February 2015 and petitioner's email dated 25th February 2015 apart from petitioner's financial annexed to the petition.

10 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. As held in ***3i Infotech Limited V/s. Assistant Commissioner of Income Tax*** [1], where on consideration of material on record, one view is conclusively taken by the Assessing Officer, it would not be open to the Assessing Officer to reopen the assessment based on the very same material with a view to take another view. In the reasons recorded also the JAO in effect says, as could be seen from paragraph 5 therein, that it was a change of opinion. Paragraph 5 reads as under :

> *5. Findings of the AO -*
>
> *Prima-facie it appears that the assessee has erred in claiming deduction as discussed above and this has resulted in allowance of excess deduction of Rs.5,11,10,711/- (44264416 + 6846295). Therefore, following the provisions of Section 2(1B), Section 37 and Section 35DD of the Income Tax Act, 1961, it is being inferred hereby that assessee has claimed irregular expenditure in its accounts after amalgamation process.*

1. (2010) 192 Taxman 137 (Bombay)

11 Since the notice under Section 148 of the said Act has been issued after the expiry of four years from the relevant assessment year and scrutiny assessment under Section 143(3) has been passed, the proviso to Section 147 of the said Act applies. The onus is on respondents to show that there was failure on the part of the assessee to fully and truly disclose material facts at the time of assessment. The reasons recorded does not even contain a whisper as to what were the facts which were material and that were not disclosed truly and fully.

12 Mr. Suresh Kumar relied upon a judgment of this Court in ***Crompton Greaves Ltd. V/s. Assistant Commissioner of Income Tax, Circle 6 (2)*** [2] 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 on the part of the assessee to disclose fully and truly all the material facts necessary for its assessment. If the factum of failure to disclose can be culled from the reasons in support of the notice seeking to reopen assessment, that will certainly not be fatal to the assumption of

2. (2015) 55 taxmann.com 59 (Bombay)

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 148 of the Act would be ultra vires, being in excess of the jurisdictional restraints imposed by the first proviso to Section 147 of the Act*".

13 Having considered the reasons, we are unable to cull out what were the material facts necessary for assessment that were not disclosed by petitioner truly and fully at the time of assessment.

14 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 writ in the nature of certiorari or any other appropriate writ, direction or order under Article 226 of the Constitution of India calling for the records of the case leading to the issuance of the notice under Section 148 of the Act dated 30th March 2019, being Ex.H hereto and after going through the same and examining the question of legality thereof to quash, cancel and set aside the impugned notice dated 30th March 2019 being Ex.H hereto and the order rejecting the petitioner's objections dated 16th November 2019, being Ex.K hereto.*

15 Petition disposed with no order as to costs.

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