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

**WRIT PETITION NO. 88 OF 2020**

Godrej Consumer Products Ltd. ….Petitioner

V/s.

Assistant Commissioner of Income
Tax, Circle 14(1)(2), Mumbai and Ors. …Respondents

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Mr. Jitendra Jain i/b Mr. Atul K. Jasani for Petitioner.
Mr. Suresh Kumar for Respondents.

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**CORAM : K.R. SHRIRAM &**
**N. J. JAMADAR, JJ.**
**DATED : 11th JANUARY, 2022**

**P.C. :**

1. Petitioner is impugning the notice dated 30th March, 2019 issued under Section 148 of the Income Tax Act, 1961 (the Act) for the Assessment Year 2012-13 and the order dated 14th October, 2019 rejecting petitioner's objections.

2. The notice under Section 148 of the Act has been issued more than four years after relevant Assessment Year where assessment has been completed under Section 143(3) of the Act. Therefore, proviso to Section 147 of the Act shall apply and the onus is on respondents to show that there was failure on the part of petitioner to truly and fully disclose material facts at the time of assessment. Having considered the reasons recorded for re-opening, in our view respondent has not made out any case of failure to disclose on the part of petitioner. The entire basis for re-opening is change of opinion. The Jurisdictional Assessing Officer (JAO) is relying on the same

set of documents based on which the assessment order has already been passed. According to JAO in Note 30 (Exceptional Items) of the Profit and Loss Account an amount of Rs.180.95 Crores was credited on account of License Agreement Termination Compensation. While computing income for tax purpose petitioner considered this income under the head Long Term Capital Gains which was taxable at the rate of 20%. But according to JAO termination of contract was normal incident in business and hence the receipt was revenue in nature. According to JAO, the entire receipt was required to be assessed under the head Business Income instead of Capital Gains. This itself clearly indicates that the proposed assessment is based on change of opinion which is held in various judgments of various courts including this court as well as the Hon'ble Apex Court is not permissible.

3. In the circumstances, 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 "V") dated 14th October, 2019.*

4. Petition disposed with no order as to costs.

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

Purti Parab