

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

WRIT PETITION NO. 3574 OF 2019

STCI Finance Ltd.

.... Petitioner

v/s.

Assistant Commissioner of Income Tax
1(3)(1), Mumbai and anr.

.... Respondents

Ms. Arati Vissanji for Petitioner.

Mr. Suresh Kumar for Respondents.

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

P. C. :-

1. Petitioner is a non banking finance company in the business of lending money dealing in securities and other related activities. Petitioner filed its e-return of income on 28/09/2012 declaring total income at Rs.64,38,46,480/-. The case was selected for scrutiny and order u/s. 143(3) was passed on 21.01.2015 after making disallowance u/s. 14A of the Act of Rs.1,02,39,472/- (under Rule 8D(2)(ii) Rs.91,50,000/- and under Rule 8D(2)(iii) Rs.10,89,472/-) and total income was determined at Rs.65,40,85,950/- under the normal provisions of the Act. Thereafter, order u/s. 143(3) r.w.s. 254 of the Act, was also passed on 29.11.2018 confirming the disallowance made by the A.O. u/s. 14A under Rule 8D(2)(iii) amounting to Rs.10,89,472/-.

2. Petitioner thereafter received notice dated 28/03/2019 under section

148 of the Act. Petitioner also received reasons for re-opening of assessment by a communication dated 11/09/2019. Since the re-opening was proposed more than 4 years after the expiry of relevant assessment year and as assessment had been made under section 143(3) of the Act, proviso to Section 147 squarely applies to this case. The onus is on the Respondent to show that there was failure on the part of petitioner to disclose truly and fully material facts required for assessment.

3. Mr. Suresh Kumar relied upon a judgment of this Court in ***Crompton Greaves Ltd. v/s. Assistant Commissioner of Income Tax, Circle 6(2)***¹ 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 jurisdiction under Section 147 and 148 of the Act. The Court held “*However, if from the*

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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.”

4. We have considered the reasons for re-opening and in our view, respondents have miserably failed to even disclose what was the material fact that petitioner had failed to disclose. In the reasons, in paragraph 2, it is stated that “*on perusal of the annual accounts it is seen that the average value of investment was Rs.239.29 crores (248.18 + 230.41/2) as against Rs.21.79 crores as adopted by the department while calculating deduction u/s. 14A*”. Therefore, it is clear that the re-opening of assessment is based on the very same material which has been considered before the original Assessing Order was passed, with a view to take another view. We have to also note that petitioner by its letter dated 05/01/2015, had informed the Assessing Officer that the average value of equity investment was Rs.239.29 crores against the average net worth of the Company of Rs.795 crores. Therefore, the Assessing Officer who passed the original Assessment Order, had all primary facts necessary for assessment and he is supposed to have considered all these points when he passed the Assessment Order. It is also settled law that on change of opinion, assessment cannot be re-opened and in any event, even if we, for a moment, agree with the contents of the reason

that the average value of investment was adopted at Rs.21.79 crores as against Rs.239.29 crores, still there is a bar under section 147 of the Act as then prevailing to re-open assessment after a period of 4 years where the assessment order has been passed under sub-section 3 of section 143 unless any income chargeable to tax, has escaped assessment by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment. As in this case, it is not even *prima facie* the case of the Assessing Officer that there was failure on part of petitioner to fully and truly disclose all material facts, this Court has to interfere by exercising its jurisdiction under Article 226 of the Constitution of India.

5. Petition therefore allowed in terms of prayer clause (a) which reads as under :-

“ a) This Hon’ble Court may be pleased to issue under Article 226 of the Constitution of India an appropriate direction, order or writ including a writ in the nature of Certiorari calling for the records of the case and after satisfying itself as to the legality thereof, quash and set aside the notice dated 28.03.2019 (Exhibit ‘G’) issued by the Respondent No.1 under Section 148 and order dated 05.11.2019 (Exhibit ‘J’) passed by the Respondent no.1 for the relevant Assessment Year. ”

6. Petition disposed.

(R.N. LADDHA, J.)

(K.R. SHRIRAM, J.)