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

WRIT PETITION NO. 3573 OF 2019

Maharashtra State Electricity Distribution
Co. Ltd. …. Petitioner
v/s.
Deputy Commissioner of Income Tax,
Circle 14(2)(1), Mumbai and ors. …. Respondents

Mr. J.D. Mistri, Sr. Advocate a/w. Mr. Niraj Sheth i/b.
Mr. Atul K. Jasani for Petitioner.
Mr. Suresh Kumar for Respondents.

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

P. C. :-

. Petitioner is impugning a notice dated 30/03/2019 received under section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'the said Act') for AY 2012-13 and the order dated 22/11/2019 disposing petitioner's objections to re-assessment proceedings.

2. Petitioner was formed as a result of demerger of the erstwhile Maharashtra State Electricity Board with effect from 5^{th} June, 2006. On 28/09/2012, petitioner filed its return of income for AY 2012-13 declaring loss of Rs.1179,96,17,308/-. Thereafter, petitioner filed a Revised Return of Income on 01/11/2013 declaring a loss of Rs.2909,14,51,735/-. Assessment

Order under section 143(3) was passed on 29/03/2015 determining total income to Rs.323,64,17,918/-.

3. Petitioner received the impugned notice dated 30/03/2019 under section 148 of the said Act by which the Jurisdictional Assessing Officer (JAO) informed petitioner that he had reasons to believe that income chargeable to tax for AY 2012-2013 has escaped assessment within the meaning of Section 147 of the Act. By a communication dated 02/09/2019, petitioner was also provided the reasons recorded for re-opening of assessment. Mr. Mistri attacked the notice and the reasons straight away on the point that the pre condition for issuing the notice under section 148 after expiry of 4 years from the relevant assessment year, when Assessment Order under section 143(3) has been passed, that there has been failure on the part of petitioner to truly and fully disclose material facts required for the assessment has not been complied with. Mr. Mistri submitted, and rightly so, that there is nothing in the reasons to indicate which was the material fact that was required to be disclosed, which has not been disclosed. Mr. Mistri submitted that this is nothing but change of opinion based on the same set of material which is not permissible in law.

4. Mr. Suresh Kumar, learned counsel for respondents of course contended that the reasons given for re-opening the assessment may be

silent that there was any failure to disclose the material fact. But he relied upon a judgment of this Court in ***Crompton Greaves Ltd. v/s. Assistant Commissioner of Income Tax, Circle 6(2)***[1] and submitted 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 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."*

5. According to the JAO, the annual prior period expenses amounting to Rs.364,30,86,293/- are not allowable expenses during the

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assessment year whereas disallowance has been made only of Rs.100,67,84,653/- during the original assessment proceedings. This itself shows that the re-opening is based on change of opinion based on the same set of material which is not permissible.

6. Having considered the reasons, it is quite obvious that the Assessing Officer who passed the original Assessment Order had all material facts before him when he made the original assessment. When the primary facts necessary for assessment are truly and fully disclosed, the Assessing Officer is not entitled on change of opinion to commence proceedings for re-assessment. This Court in ***Ananta Landmark Pvt. Ltd. v/s. Deputy Commissioner of Income Tax and ors.***[2] has held that " *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.* In paragraph 5 of the reasons recorded for re-opening, the JAO himself admits that the re-opening of assessment by him is based on the very same material which was considered by the original Assessing Officer, to take another view. Paragraph 5 read as under :-

> " **5. Findings of the AO :**
> *The actual prior period expenses amounting to Rs.364,30,86,293/- are not allowable expenses during the AY., whereas the disallowance of Rs.100,67,84,653/- was only made*

2 Writ Petition No.2814 of 2019 dated 14/09/2021

> *during the original assessment proceedings. The issue of allowability of prior period income as a reduction from prior period expenses in order to determine the quantim of disallowance/addition on the issue of claim of prior period expenses was not specifically discussed in the original assessment order or assessment proceedings. It is noted that as per the assessment order u/s. 143(3) (Para 3.2 thereof), no specific reply was furnished by the assessee in respect of the claim of prior period expenses. "*

7. In the circumstances, it is a fit case for us to held that the notice issued for re-opening the assessment has been issued without jurisdiction. Accordingly, the notice dated 30/03/2019 issued under section 148 of the Act for AY 2012-13 and the order dated 22/11/2019 disposing petitioner's objections to re-assessment proceedings, are quashed and set aside.

8. Petition disposed accordingly. No order as to costs.

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

PREETI H JAYANI Digitally signed by PREETI H JAYANI Date: 2022.01.10 12:35:02 +0530