IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 504 OF 2014

Pfizer Limited ….Petitioner

V/s.

The Union of India and Ors. …Respondents

Mr. Percy Pardiwalla, Senior Advocate a/w Mr. Paras Savla and Mr.Rajnandini Shukla for Petitioner.
Ms. Shilpa Goel for Respondents.

CORAM : K.R. SHRIRAM &
DR. N.K. GOKHALE, JJ.
DATED : 8th SEPTEMBER 2023

P.C. :

1. Petitioner is impugning a notice dated 4th January 2013 issued by Respondent No.2 under Section 148 of the Income Tax Act, 1961 (the Act) and order dated 17th December 2013 passed by Respondent No.2 rejecting petitioner's objections to reopen.

2. Rule came to be issued on 29th September 2014 when the court was pleased to pass the following order :

> *Heard learned Counsel for the parties.*
>
> *2) Rule.*
>
> *3) In this petition the challenge is to notice u/s.148 of the Income Tax Act, 1961 ("the Act") dated 4 January 2013 seeking to reopen the assessment for A.Y. 200607 i.e. beyond the period of 4 years from the end of the assessment year. The petitioner had sold its land at Hyderabad for a consideration of Rs.12.21 crores. The stamp duty authorities in Andhara Pradesh valued the property for stamp duty purpose at Rs.31.73 crores. During the original assessment proceedings leading to an order dated 5 Feb. 2010*

under Section 143(3) of the Act, the agreement of sale which evidenced the sale consideration as well as stamp duty valuation was considered by the Assessing Officer and on application of Section 50C of the Act, long term capital gain was computed, taking the sale consideration at Rs.31.73 crores. The grounds given in support of the impugned notice dated 4 January 2013 is that during subsequent assessment proceedings for A.Y. 2008-09, information provided by the Sub Registrar in the Registration and Stamps Department, Andhra Pradesh indicated that the market value of the subject land sold by the petitioner at Hyderabad during the A.Y. was Rs.179.84 crores. The annexure to the aforesaid information clearly states that chargeable value for the purpose of stamp duty is Rs.31.73 crores. In view of the above, Section 50C of the Act appears to prima facie covers the petitioner's case. This is so as Section 50C of the Act mandates that the valuation adopted for assessment by the State Govt. for stamp duty purposes would be deemed to be the full value of the consideration in cases where the consideration received is less than the value taken by the State Govt. for the stamp duty purpose. In this case, the actual consideration received as indicated in the agreement of sale is Rs.12.21 crores while the stamp duty valuation is Rs.31.73 crores. Thus the stamp duty valuation has been taken as the deemed consideration for the purposes of determining the capital gains. Thus the issue whether there could be any reason for the Assessing Officer to believe that income chargeable to tax has escaped assessment and whether there was any failure to disclose facts material to assessment on the part of the petitioner, prima facie appear to be in favour of the petitioner subject to detailed examination at final hearing.

4) Thus, interim relief in terms of prayer clause (c).

5) Mr. Pinto, learned Counsel on behalf of the respondents waives service.

3. No reply affidavit opposing the petition has been filed. The petition came to be listed on 23rd June 2023, 30th June 2023, 7th July 2023, 14th July 2023, 21st July 2023, 28th July 2023 and 4th August 2023 but still no reply has been filed.

4. Petitioner, during the year 2005-2006, had sold a property (Land and Building) at Ranga Reddy District in Andhra Pradesh (the said property) to one Top Notch Infrastructure Private Limited (Top Notch) vide

Sale Deed dated 31st March 2006. The consideration was Rs.12,21,00,000/-. Top Notch lodged the Sale Deed for registration after paying stamp duty of Rs.2,85,65,010/-. The Sub Registrar of Ranga Reddy District disagreed with the valuation done by Top Notch and referred the matter to the District Registrar and Collector under Section 47(A) of the Indian Stamp Act, (A.P. Amendment) Act, 1971 in order to determine the market value of the property sold. By an order dated 29th September 2006 the District Registrar and Collector, Ranga Reddy District determined the market value of the property at Rs.179,84,29,000/-. This was challenged by the Top Notch before the Revenue Department, Government of Andhra Pradesh. The Government of Andhra Pradesh by a Notification dated 20th April 2007 determined the market value of the property sold to Rs.31,73,87,000/- for the purpose of payment of stamp duty.

5. For the year under consideration namely Assessment Year 2006-2007, petitioner filed its return of income on 29th November 2006 declaring a total income of Rs.151,53,91,778/- which was subsequently enhanced to Rs.162,76,07,723/- by filing revised returns and offering to tax the capital gain on the sale of the said property.

6. Pursuant to the initiation of scrutiny proceedings and notice received from the Assessing Officer (A.O.), petitioner submitted various documents vide its letter dated 6th November 2009 which included copy of

the Sale Deed. Subsequently, petitioner also filed details of expenses reduced from the capital gain working for the said property. Petitioner also filed a copy of the Notification dated 20th April 2007 that was issued by the Government of Andhra Pradesh pursuant to the application that the Top Notch has filed before the Revenue Department, Government of Andhra Pradesh challenging the order of the District Registrar and Collector, Ranga Reddy District, Andhra Pradesh.

7. The final assessment order came to be passed on 5th February 2010 under Section 143(3) read with Section 144 C(13) of the Act and petitioner's total income was assessed at Rs.333,14,55,620/-. Various adjustments were made but what is relevant to this petition is that in view of Section 50(C) of the Act full value of sale consideration for computing capital gain on the sale of the said property was taken at Rs.31,73,89,000/- being the market value for the purpose of payment of stamp duty as per Notification dated 20th April 2007. Petitioner independently challenged the assessment order and the appeal before the Commissioner of Income Tax (Appeals) (CIT[A]) at the time the petition was filed was still pending. During pendency of this petition, the CIT[A] has dismissed the appeal against which petitioner has filed an appeal on the other aspect before the Income Tax Appellate Tribunal (ITAT). The market value of the said property is not the subject matter of the appeal.

8. Later petitioner received a notice dated 4th January 2013 under Section 148 of the Act proposing to reassess the income of petitioner for the Assessment Year 2006-2007 on the alleged belief that income has escaped assessment within the meaning of Section 147 of the Act. Petitioner was also provided the reasons for reasons to believe. Petitioner filed its objections vide its letter dated 13th February 2013 which came to be rejected by an order dated 17th February 2013 which is also impugned in this petition.

9. The notice dated 4th January 2013 issued under Section 148 of the Act has been issued over four years after expiry of the relevant Assessment Year 2006-2007. Therefore, proviso to Section 147 of the Act would apply which provides that when an assessment under Sub Section 3 of Section 143 of the Act has been made for the relevant Assessment Year no action shall be taken under Section 147 of the Act after expiry of four years from the end of the relevant Assessment Year unless any income chargeable to tax has escaped assessment for such Assessment Year by reason of the failure on the part of assessee to disclose fully and truly all material facts necessary for assessment for that Assessment Year. In this case, admittedly the Assessment Order under Section 143(3) of the Act has been passed and therefore the only point for consideration is whether there has been failure to truly and fully disclose material facts.

10. The reasons to believe that income has escaped assessment reads as under :

2. In connection with the above, the reasons recorded for initiating the proceedings u/s. 147 of the Income Tax Act, 1961 are reproduced herein below, for your information and reference.

<u>"Reasons for initiation of action u/s. 147 of the Income Tax Act, 1961</u>

"..The assessee company filed its return of income for A.Y. 2006-07 on 29-11-2006 declaring total income at Rs.151,53,91,778/-. The return was processed under section 143(1) of the Act. The case was selected under scrutiny and the draft assessment was completed under section 143(3) r.w.s. 144C(1) on 29-12-2009 determining total income at Rs.333,14,55,620/- and final order under section 143(3) r.w.s. 144C(13) of the Act on 05-02-2010 determining the total income at Rs.333,14,55,620/-.

2. On perusal of the assessment record for A.Y. 2006-07, it was observed that the assessee had entered into a sale deed to sale the land at Survey No. 1 situated at Uppal Mandal, R.R. Dist. The said land along with the structure was purchased by M/s. Top Notch Infrastructure Pvt. Ltd. <u>The total sum of consideration paid by the purchaser was disclosed to Rs.12.21 Crores. However, by invoking the provisions of section 50C of the Act in respect of land at Hyderabad, the sale consideration was adopted to Rs.31,73,89,000/-.</u>

3. Subsequently, during the course of assessment proceedings for A.Y. 2008-09 in this case, it was reported by the Sub-Registrar Office, Uppal, R.R. District, uploaded through the AIR information, that the assessee had sold an immovable property as mentioned supra on 04-05-2007 at the market value of Rs.179,84,29,000/-. The Sub-Registrar, Uppal, R.R. District, after verifying their records, confirmed that sale deed was executed between the assessee and M/s. Top Notch Infrastructure Pvt. Ltd. at Hyderabad vide Regd. Document No.5824 of 2007 dated 04-05-2007 for the market value of Rs.179,84,29,000/-.

3.1 <u>While finalizing the assessment order for A.Y. 2006-07, the AO has computed the capital gains to the assessee considering the ready reckoner/Govt. Value of land to the tune of Rs.31,73,89,000/- instead of Rs.179,84,29,000/- as reported by the Sub-Registrar, Uppal, R.R. Dist.</u>

4. Therefore, I have reason to believe that the income of Rs.148,10,40,000/- has escaped assessment as per section 147 of the Act in A.Y. 2006-07 relevant to F.Y. 2005-06.

5. In view of the above, the assessment passed on 05-02-2010 was under assessed to the tune of Rs.148,10,40,000/- by reason of the failure on the part of the assessee to disclose fully and truly all the

> *material facts necessary for its assessment for the assessment year 2006-07.*
>
> *(emphasis supplied)*

11. Therefore, the reasons to believe is on the basis of AIR information that was received during the assessment proceedings for Assessment Year 2008-09 as reported by the Sub Registrar Office, Uppal, Ranga Reddy District that assessee had sold the said property at market value of Rs.179,84,29,000/- whereas the A.O. while finalizing the Assessment Order for Assessment Year 2006-2007 has computed capital gains to the assessee considering the Ready Reckoner/Government Value of land at Rs.31,73,89,000/- instead of Rs.179,84,29,000/-. Therefore, undisputedly there can be no failure to disclose.

12. During the course of assessment proceedings petitioner vide its letter dated 27th November 2009 submitted detailed working of capital gains in respect of the said property and also brought to the notice of the A.O. the order passed by the Government of Andhra Pradesh, Revenue Department. After considering the submissions and disclosure made by petitioner, the A.O. while making additions/disallowance regarding other items accepted the explanation given by petitioner as regards the said property. Paragraph No. 9.4 of the Assessment Order reads as under :

> *9.4 Coming to the sale consideration, <u>it is observed from the Registered Sale Deed submitted by the assessee that the value of the property sold has been determined by the stamp valuation authority at Rs.31,73,89,000/- on which the assessee has paid the stamp duty as against the sale consideration of Rs.12.21 crores mentioned in the sale agreement.</u> Therefore, this attracts the strict*

> *application of the provisions of Sec. 50C of the I.T. Act. When asked as to why the Long Term Capital Gain shall not be computed by adopting the value determined by the stamp valuation authority, the assessee has no tangible explanation to give. Under the circumstances, I have to adopt Rs.31,73,89,000/- as the full value of sale consideration instead of the agreement price by invoking the deeming provisions of Sec. 50C of the I.T. Act and accordingly the Long Term Capital Gain on the sale of factory land at Hyderabad is computed as below :*

	Particulars	*Amount (Rs.)*
	Sale Consideration	*31,73,89,000*
Less :	*Indexed value of land*	*1,63,055*
	Long Term Capital Gain	*31,72,25,945*

(emphasis supplied)

13. Therefore, the issue of capital gains as regards the said property and application of Section 50(C) of the Act was the subject of consideration of the A.O. while completing assessment. Therefore, there can never be failure to truly and fully disclose material facts.

14. Ms. Goel strongly opposed the petition and submitted that there was an order passed by the Collector on 29th September 2006 holding that the market value of the property was Rs.179,84,29,000/- and the capital gains should have been worked out on this figure and not on Rs.31,73,89,000/-. There is no doubt that there was an order passed by the Collector determining the market value at Rs.179,84,29,000/- for the purpose of stamp duty. But that order was modified by the Revenue Department, Government of Andhra Pradesh which also issued a Notification published in the Andhra Pradesh Gazette determining the value at Rs.31,73,87,000/-.

15. Ms. Goel wanted to make submissions on the provisions of the Indian Stamp Act, (A.P. Amendment) Act, 1971 etc., but in our view none of that is relevant because under Section 148 of the Act as the proposed reopening was beyond four years the only point which we need to consider is whether there was failure to truly and fully disclose material facts. When petitioner filed its return of income on 29th November 2006 and revised return of income on 15th February 2008 and during the assessment proceedings, the Notification of Andhra Pradesh Government was already published on 20th April 2007 which has been made available during the assessment proceedings to the A.O. Therefore, there is no failure to truly and fully disclose material facts. Moreover, the A.O. having accepted, and rightly so, the Government Notification determining the market value of the said property and pass the Assessment Order, the question of reopening the assessment for reasons as recorded would not arise.

16. We would also add that in the order passed by the CIT[A] on 28th March 2019 in the appeal filed by petitioner for the Assessment Year 2006-07 the capital gain on sale of property under Section 50(C) of the Act was under consideration. Before the appeal came to be heard there was an amendment in Section 50(C), inserted by the Finance Act, 2016, with effect from 1st April 2017, which provided that where the date of the agreement fixing the amount of consideration and the date of registration for the transfer of the capital asset are not the same, the value adopted or assessed

or assessable by the stamp valuation authority on the date of agreement may be taken for the purpose of computing full value of consideration for such transfer. Though not raised initially, later in view of the amendment to Section 50(C) appellant had challenged even this determination of capital gains on the grounds that the capital gains should be worked out on the basis of the date of the agreement fixing the amount of consideration and not the date of registration for the transfer of the capital asset and therefore capital gains should be determined on the basis of consideration of Rs.12,21,00,000/- and not Rs.31,73,89,000/-. The appellate authority accepted petitioners submissions that this amendment should be read to have been introduced with retrospective effect. The CIT[A] has given its decision accepting petitioner's contentions and directing the Assessing Officer to take the date of agreement for stamp duty value consideration. Therefore, in our view nothing would survive in the impugned notice itself.

17. In the circumstances, we make the Rule absolute in terms of prayer clause – (a).

18. Petition disposed.

(DR. N.K. GOKHALE, J.) **(K.R. SHRIRAM, J.)**