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

WRIT PETITION NO. 1427 OF 2022

Ponds Exports Limited ….Petitioner

V/s.

Principal Chief Commissioner of
Income Tax (NFAC) and Ors. …Respondents

Ms. Sofiya Shanmugam i/b Lumiere Law Partners for Petitioner.
Mr. Suresh Kumar for Respondents.

CORAM : K.R. SHRIRAM &
DR. NEELA GOKHALE, JJ.
DATED : 7th NOVEMBER 2023

P.C. :

1. Since the pleadings are completed, with the consent of counsel we decided to take up the petition for final hearing at the this stage itself.

2. Rule. Rule made returnable forthwith.

3. Petitioner has impugned a notice dated 30th March 2021 issued under Section 148 of the Income Tax Act, 1961 (the Act) and the order dated 15th December 2021 rejecting petitioner's objections.

4. According to petitioner, the reopening is bad in law in as much as there is nothing in the reasons recorded to believe there is escapement of income that indicates failure to truly and fully disclose material facts by petitioner.

5. This was a case where petitioner had filed its return of income for Assessment Year 2014-15 on 28th November 2014 admitting NIL income. The case was selected for scrutiny under CASS and the assessment was completed under Section 143(3) of the Act on 28th December 2016 after accepting the returned income. Almost six years later the notice under Section 148 of the Act has been issued and the reasons for reopening reads as under :

> *1. As seen from the Profit and Loss A/c. (Notes 26 - Movement Employees Benefits Expenses), the assessee had debited provision for employee related disputes to the extent of Rs.3,10,00,000. However, in the statement of computation of income, while arriving at the income as per normal provisions, only an amount of Rs.2,80,00,000 was added as VRS employee court cases. As the above amount of Rs.3,10,00,000 is a provisional liability, the remaining provision debited in the profit and loss account of Rs.30,00,000 needs to be brought to tax.*
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> *As per section 115JB, any provision created for unascertained liabilities has to be added back to the book profit. Hence, the provision for employee related disputed i.e. provision for non-VRS employees court cases has to be added back to the net profit for computing book profit. Hence, an amount of Rs.2,80,00,000/- needs to be brought to tax.*
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> *Hence, I have reason to believe that income has escaped assessment.*

6. The proviso to Section 147 of the Act provides that notice to reopen can be issued only if there is failure to truly and fully disclosed if the notice is being issued after the expiry of four years from the end of relevant assessment year. The assessment year is A.Y. 2014-15 and the notice is dated 30th March 2021. Hence the proviso will apply.

7. From the reasons as quoted above, it is quite clear that the

material on which the Assessing Officer (A.O.) has relied upon are those available from the documents filed by petitioner. The reasons state *"As seen from the Profit & Loss Account (Notes 26 – Movement Employee Benefits Expenses), assessee had debited provision for employee related disputes to the extent of Rs.3,10,00,000. However, in the statement of computation of income, while arriving at the income as per normal provisions …….. the remaining provision debited in the Profit & Loss Account of Rs. 30,00,000 needs to be brought to tax. ………"*

8. In the affidavit in reply filed through one Ms. R.P. Anuradha affirmed on 30th October 2023 it is admitted that assessee has furnished complete details, information, documentary evidences and explanation as required by the learned A.O. during the assessment proceedings but strangely it is stated that the requisite material fact as noted in the reasons for reopening were embedded in such a manner that material evidence could not be discovered by the A.O. This is nothing but a bald statement because the reasons itself indicates that the material fact was picked up from the Profit & Loss Account Notes 26 and the statement of computation of income while arriving at the income as per normal provisions. The reasons does not also state that the material fact was embedded in such a manner that material evidence could not be discovered. It is settled law that what is not there in the reasons cannot be improved upon in the affidavit or during the course of argument.

9. In the circumstances, we are satisfied that there is nothing to indicate failure on the part of assessee to truly and fully disclose material fact.

10. Therefore, Rule is made absolute in terms of prayer clause – (a) which reads as under :

> *(a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or any other writ order or direction under Article 226/227 of the Constitution of India calling for the records of the case leading to the issue of the Impugned Notice dated March 30, 2021 (Exhibit E), issuance of Impugned Scrutiny Notice dated November 15, 2021 (Exhibit J) and passing of the Impugned Order dated December 15, 2021 (Exhibit L) and after going through the same and examining the question of legality thereof quash, cancel and set aside the Impugned Notice dated March 30, 2021 (Exhibit E), Impugned Scrutiny Notice dated November 15, 2021 (Exhibit J) and Impugned Order dated December 15, 2021 (Exhibit L);*

11. Petition disposed.

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