**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**ORDINARY ORIGINAL CIVIL JURISDICTION**
**WRIT PETITION NO.1897 OF 2022**

Maharashtra State Textile Corporation Ltd. ….Petitioner

V/s.

Dy. Commissioner of Income Tax,
Circle 1(2)(2), Mumbai & Ors. …Respondents

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Mr. Tanzil Padvekar a/w Ms Tejal Kharkar for Petitioner.
Mr. Suresh Kumar for Respondents.

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**CORAM : K.R. SHRIRAM &**
**M.M. SATHAYE JJ**
**DATED : 13th JUNE 2023**

**P.C. :**

1 Petitioner is impugning the notice dated 30th March 2021 issued under Section 148 of the Income Tax Act 1961 (the Act), stating that there are reasons to believe that income chargeable to tax for A.Y.-2013-2014 has escaped assessment within the meaning of Section 147 of the Act. Since the proposed re-opening is after expiry of 4 years from the end of the relevant assessment year, the proviso to Section 147(1) would apply. The re-opening is permissible only if, there is failure to disclose fully and truly all material facts necessary for assessment.

2 We have considered the reasons to believe and there is nothing to indicate that there was any failure on the part of petitioner to truly and fully disclose all material facts.

3 Petitioner is a company wholly owned by Government of Maharashtra

undertaking, who at the relevant time was engaged in setting up and running textile mills in State of Maharashtra. Paragraphs 3, 4 and 5 of the reasons read as under:

> *"3. During the course of regular observation, it is found that the Govt of Maharashtra has decided to transfer the ownership of mill chawls of six MSTC managed mills including that of four unit mills to the existing residents. Accordingly the unit mills chawl have been handed over to the residents/co-operative Society formed by them except execution of conveyance which is pending for want of Govt. permission. However, even though the possession has been handed over to the residents/co-operative Society formed by them the amount of deposit of Rs. 1,61,37,000/- has not been credited to the profit and loss account and taken as deposit from others. Since the decision to transfer the ownership was taken by the Govt. and the possession has already been handed over the income arising out of this transaction also needs to be credited. Failure to do so has resulted into under assessment of Rs. 1,61,37,000/- and short levy of tax of Rs. 52,35,650.*
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> *4. Again it is seen that the assessee has claimed Rs. 37,18,71,000/- as finance cost which includes interest on Government loans of Rs. 37,18,33,000/- (Normal Interest Rs. 26,08,62,000/- and penal interest Rs. 11,09,71,000/-). In the note 4.1 furnished alongwith accounts it was certified by the auditor that out of the loan of Rs. 2801,92,22,000/- received from Govt. of Maharashtra an amount of Rs. 173,91,01,000/- is still outstanding and repayment period of which is over. The entire outstanding loan is overdue and the interest and penal interest is calculated on the basis of old due dates. The principal amount of Govt. loan equity and interest is subject to reconciliation. The difference in equity is of Rs. 1,37,00,000/- and in loan Rs. 15,01,00,000/-for which reconciliation is in process. From the above it is clear that the assessee is not making any payment of interest and penal interest and merely provided an amount towards the above payment for which the loan and equity is under conciliation. As such these amount needs to be added back to the total income of the assessee. Failure to do so has resulted into under assessment of Rs. 37,18,33,000/- and short levy of tax of Rs. 12,06,41,217/-.*
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> *5. It is also seen from the P&L account that the assessee made a provision for reduction in value of investment of Rs.2,53,000/-which remains to be added back while computing the total income of the assessee. This has resulted into under assessment of Rs. 2,53,000/- and short levy of tax of Rs.78,177/-"*

4 Apart from there being not even any mention that there has been a failure to truly and fully disclose, the reasons itself indicate that it has been

picked up from what has been disclosed by petitioner. Paragraph 3 starts with the following words “During the course of regular observation, it is found that ……………………….. Paragraph 4 states, “……………….. in the note 4.1 furnished alongwith accounts……………..”. Paragraph 5 says “ it is also seen from P & L account that the assessee made provision for……………..”. In fact what is stated in paragraphs 3 and 4 can be found in note 4.1 and 4.2 of the financial statement annexed to the statement of profit and loss for the year ended 31st March 2013. The Assessing Officer has simply picked up the same from note 4.1 and 4.2 of the financial statement and put it in the reasons to believe.

5 In the circumstances, since no case has been made out that there was failure on the part of petitioner to truly and fully disclose, on this ground alone the petition has to succeed.

6 Petition accordingly stands allowed and disposed in terms of prayer clause (b) which reads as under:

> *“(b) 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 quashing and setting aside impugned Notice dated 30/03/2021 for A.Y. 2013-2014 (Exhibit -A) and also order disposing objections dated 14/02/2022 (Exhibit D) and quashing, if any, re-assessment order is passed, if any, during pendency of this writ petition may also be set aside & quashed.”*

7 We have to also note our great disappointment that on 22nd March 2022 three weeks time to file reply was granted. On 2nd May 2022 time to file reply was extended to 15th June 2022. On 25th July 2022 further four weeks time was granted to file reply. On 6th September 2022 further six

weeks was granted to file reply. On 30th January 2023 further four weeks time to file reply was granted. On 27th March 2023 further six weeks time was granted to file reply. Till date there is no reply on record. Copy of this order to be sent to Learned Additional Solicitor General of India for Maharashtra to take it up with all Principal Commissioners so that the interest of revenue is not prejudiced by the revenue's officers in not filing their reply. More so, when an injunction has been in force against acting on the impugned notice or proceeding with assessment. Perhaps a method to take disciplinary action against the concerned officers has to be worked out, otherwise it will be a loss to the nation.

**(M. M. SATHAYE, J.)** **(K.R. SHRIRAM, J.)**