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

INCOME TAX APPEAL NO. 431 OF 2018

Pr. Commissioner of Income Tax-10 ….. Appellant
Vs.
Jord Engineers (India) Ltd. ….. Respondent

Mr. Akhileshwar Sharma a/w Ms. Shilpa Goel, for Appellant.
None for Respondent.

CORAM: K.R.SHRIRAM, J &
FIRDOSH P. POONIWALLA, J.

DATED : JUNE 28, 2023

P.C.

1. The following three questions of law are proposed :

> a) Whether on the facts and in the circumstances of the case and in Law, the Hon'ble ITAT erred in holding that the reopening of the assessment is bad in law for the reason that the Assessing Officer has not stated that there was failure on the part of the assessee to disclose fully and truly all the material facts, without going into the merits of reasons recorded for reopening the assessment ?
>
> b) Whether on the facts and in the circumstances of the case and in Law, is it the primary requirement of mentioning failure on the part of the assessee to disclose fully and truly all the material facts in the reasons to be recorded by the Assessing Officer, when the basic requirement of forming reason to believe that income has escaped assessment has been fulfilled?

> c) Whether on the facts and in the circumstances of the case and in law, merely the absence of words namely 'failure on the part of the assessee to disclose fully and truly all the material facts' will render the reasons for reopening invalid?"

2. Admittedly, the notice issued under Section 148 of the Income Tax Act, 1961 ('the Act') to reopen the assessment of respondent was dated 19/03/2010. This related to the Assessment Year 2003-04. Therefore, notice was issued after the expiry of 4 years from the end of the relevant assessment year. Admittedly, the assessment order under Section 143 of the Act had been passed on 24/03/2006. Therefore, proviso to Section 147 of the Act would apply inasmuch as reopening is permissible only when there was failure to truly and fully disclose all material facts by assessee. The reason to believe tax has escaped assessment is reproduced in paragraph 2 of the assessment order that was passed on 12/11/2010 under Section 144 of the Act. The reason also clearly indicates that there was no failure on the part of respondent to truly and fully disclose all material facts because the Assessing Officer ('AO') in his reason to believe has also relied upon the documents filed by respondent before the original assessment order was passed. The AO states "on perusal of P &L A/c (Schedule X), it was revealed that semi finished goods opening stock was valued at Rs. 3126.53 lakhs and closing stock was valued at Rs. 354.97 lakhs and Rs. 2871.56 lakhs being decrease in stock was debited to cost of

material. From the quantitative details, it was seen that there is no change in opening stock and closing stock which consist 4 no. of filter and 1 no. of cane harvester." He further states "due to change in method of valuation of inventory the loss to the extent of Rs. 2871.56 lakhs overstated which should have been disallowed" which indicates change of opinion. Therefore, the ITAT was correct in coming to the conclusion that the AO nowhere states that there was failure on the part of respondent to disclose fully and truly all facts material to the computation of income which is primary condition to be satisfied for reopening of the assessment after expiry of 4 years from end of the assessment year.

3. No substantial question of law arises.

4. Appeal dismissed.

(FIRDOSH P. POONIWALLA, J) **(K.R.SHRIRAM, J)**