IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3234 of 2019

Kapstone Constructions Private Limited, having its office at 702 Natraj, M.V. Road Junction, Western Express Highway, Mumbai – 400 069	]]]]]	...Petitioner
Versus		
1. Assistant Commissioner of Income Tax – Central Circle 2(4), Pratishtha Bhavan, Old CGO Annex, M K. Road, Mumbai – 400 020	]]]]	
2. Principal Commissioner of Income- Tax (Central) 1, Mumbai – 400 020	]]	
3. Union of India, Through the Secretary, Ministry of Finance, Government of India, North Block, New Delhi – 100 001	]]]]	...Respondents

...

Mr. Harsh M. Kapadia for the petitioner.

Mr. Suresh Kumar for the respondents.

...

CORAM : DHIRAJ SINGH THAKUR AND KAMAL KHATA, JJ.

PRONOUNCED ON : 27TH JUNE 2023

J U D G M E N T

[PER: KAMAL KHATA, J.]

1. This Petition under Article 226 of the Constitution impugns notice dated 27th March 2019 issued under section (u/s) 148 of the Income Tax Act, 1961 (Act) for Assessment Year (AY) 2012-13 and the order dated 5th October 2019 rejecting the objections.

2. The record indicates that the Assessment Order u/s 143(3) was passed on 26th March 2015 after the case was selected for scrutiny. Evidently, the notice u/s 148 of the Act is issued after expiry of four years and the proviso to section 147 of the Act applies. Respondents have to show there was failure to truly and fully disclose material facts as held by this Court in ***Ananta Landmark (P) Ltd. v DCIT CC 5(3) Mumbai.***[1]

3. We have examined the reasons recorded annexed to the Petition that are evidently premised on '*perusal of the case records'*. The Assessment Officer (AO) records that the assessee had paid interest on borrowed funds for projects which are project funds and consequently the interest expense ought to have been disallowed and added to the Work in Progress (WIP) of the

[1] [2021] 131 taxmann.com 52

assessee. We find nothing to indicate failure to disclose any material fact. Upon examining the order u/s 143(3) we find that the AO has considered all documents and accepted the Business Loss at ₹ 12,14,41,599/- and allowed Unabsorbed Depreciation at ₹ 2,15,94,618/- to be carried forward to the subsequent years as per the Act.

4. We, therefore pass the following order-

i. The impugned notice dated 27th March 2019 and the order dated 5th October 2019, issued by Respondent No.1 for AY 2012-13 are quashed and set aside and all further action in respect thereof is prohibited;

ii. Rule made absolute in above terms. No costs.

(KAMAL KHATA, J.) **(DHIRAJ SINGH THAKUR, J.)**