IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3474 OF 2014

Kirloskar Ferrous Industries Ltd.)
13, Kirloskar Oil Engines Compound,)
Laxmanrao Kirloskar Road, Khadki,)
Pune – 411003) ….Petitioner

V/s.

1. Deputy Commissioner of Income)
Tax Circle 9, Pune)
Pratyakshakar Bhavan, Dr. Ambedkar)
Marg, Near Akurdi Railway Station,)
Pradhikaran, Pune 411044)

2. Union of India, through the)
Secretary, Ministry of Finance,)
North Block, New Delhi 110 001) ….Respondents

Mr. Mihir Naniwadekar i/b Mr. Ruturaj H. Gujar for Petitioner.
Mr. Ajeet Manwani a/w Ms Samiksha Kanani for Respondents-Revenue.

CORAM : K. R. SHRIRAM &
Dr. NEELA GOKHALE, JJ.
DATED : 25th JANUARY 2024

ORAL JUDGMENT (PER K. R. SHRIRAM J.):

1 Petitioner is engaged in the business of manufacture and trading of gray iron castings etc. For AY-2008-09, petitioner filed its return of income on 29th September 2008. The return was accompanied by petitioner's computation of income, tax audit report alongwith annextures, etc. Petitioner had debited prior period expenses in its profit and loss account amounting to Rs.1,25,06,591/-

2 The assessment order under Section 143(3) of the Income Tax Act

1961 (the Act) came to be passed on 20th December 2010. Subsequently, petitioner received a notice dated 28th March 2013 under Section 148 of the Act, proposing to reopen petitioner's assessment because there was reason to believe escapement of income. At petitioner's requests, the reasons to believe was made available and it reads as under:

> *"It has been come to my notice that, on going through the Tax Audit Report (TAR) submitted with return of income, as per para NO.22(b) of the said report, assessee company stated that sum of Rs.1,25,06,591/- has been debited in P & L account as prior period expenses. Since the assessee is following mercantile system of accounting and prior period expenses claimed in P & L account as not allowable.*
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> *Therefore, I am of the opinion that, income chargeable to tax to the extent of Rs.1,25,06,591/- has escaped assessment within meaning of section 147 of the Income Tax Act, 1961."*

3 Petitioner filed its objections vide letter dated 23rd November 2013 alleging that reopening is based entirely on information contained in the return itself and not on any fresh tangible material and, therefore, it was change of opinion. It was also submitted that when petitioner's case was selected for scrutiny, the notice alongwith questionnaire was issued to petitioner on 27th August 2010 and in the questionnaire, petitioner was asked to submit copies of return of income, computation of income and also details of prior period income and expenses. In response, petitioner supplied those details during the assessment proceedings, which has been acknowledged by the Assessing Officer (AO) in the assessment order. According to petitioner, as the fact of prior period expenses had clearly come on record during the course of assessment, it would be a mere change

of opinion by the AO and hence, the reopening would be invalid. Petitioner's objections were rejected by an order dated 27th February 2014 on the ground that petitioner's contentions are not acceptable since in petitioner's own case for AY-2010-2011, the AO had made additions of prior period expenses of Rs.7,97,780/- and passed the assessment order under Section 143(3) of the Act on 21st March 2013. Hence, the fresh tangible material has come on record to reopen.

4 Mr. Naniwadekar submitted, at the outset, that the reliance of the officer to reject petitioner's objections on the basis of assessment order for AY-2010-2011 should not be accepted, in as much as, the said assessment order for AY-2010-2011 came to be challenged by petitioner before the Commissioner of Income Tax (Appeals) [CIT(A)]. The CIT(A) allowed the prior period expenses and the AO was directed to delete the addition made. Paragraph 4 to 4.2 of the order of the CIT(A) passed on 18th February 2015 for AY-2010-2011 reads as under:

> *"4. In ground of appeal no.2 raised the appellant has contested the disallowance of prior period expenses of Rs.7,97,780/-. The Assessing Officer has discussed this issue in para 5 of the assessment order. The Assessing Officer held that since the assessee was following mercantile system of accounts the claim of prior period expenditure debited to the profit and loss account was not allowable in the year under consideration and was added back to the total income.*
>
> *4.1 ………………*
>
> *4.2 In view of the above facts following the ratio of aforesaid decisions of the Hon'ble Bombay High Court and jurisdictional ITAT Bench in appellant's own case the Assessing Officer is directed to delete the addition made on account of prior period expenses and the ground of appeal no.2 raised by the appellant is allowed."*

5 Mr. Naniwadekar submitted that the said order of CIT(A) was carried in appeal by the Revenue to the Income Tax Appellate Tribunal (ITAT). But this finding of the CIT(A) has not been challenged. Mr. Manwani agrees.

6 Mr. Manwani submitted that when petitioner is following the mercantile system of accounting, prior period expenses claimed in profit and loss account is not allowable and that issue has been taken by the AO for a later year and that would be a fresh tangible material.

7 We would agree with Mr. Naniwadekar that if the basis for reopening to disallow prior period of expenses was the assessment order for AY-2010-2011, that assessment order for AY-2010-2011 having been set aside by CIT(A) in his order dated 18th February 2015 and Revenue having accepted the order, it cannot be said that there was any tangible material to reopen the assessment for AY 2008-2009. Moreover, in ITXA No.622 of 2010 that was decided by this court on 4th July 2011 (copy of the order at Exhibit C-4 of the petition), one of the question of law raised was whether the ITAT was justified in deleting the disallowance of Rs. 40,47,074/- on account of prior period expenses which did not pertain to the year under consideration when the assessee was following mercantile system of accounting. The court was pleased to hold that the expenditure would be allowable. In the affidavit in reply, none of the averments in the petition has been specifically denied, save and except, it states that the notice has been issued after obtaining prior permission of the concerned authority.

8 In view of the above, we are satisfied that the reopening cannot be sustained. Therefore, Rule issued on 16th July 2014 is made absolute in terms of prayer clause (a), which reads as under:

> *"(a) That this Hon'ble Court may be pleased to call for the papers and proceedings and records and to declare the impugned reassessment proceedings in the petitioner's case for AY-2008-09, based on the notice u/s 148 u/s 147-148 of the Income Tax Act dated 28.3.2013 (Exhibit F) and the impugned order dated 27.2.2014 (Exhibit L), to be wholly without jurisdiction, illegal and liable to be quashed and set aside."*

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