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PRANESH
NANDIWADEKAR

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

WRIT PETITION NO.1894 OF 2022

Oxford University Press

.. Petitioner

Versus

DCIT, Int. Tax Circle 3 (2)(2) & Ors.

.. Respondents

Mr. J. D. Mistri, Senior Advocate a/w Mr. Madhur Agrawal, Mr. Arnab Roy, Mr. Ankit Triwedi and Mr. Fenil Bhatt i/by Mr. Vaish Associate for the petitioner.

Mr. Akhileshwar Sharma for the respondents.

**CORAM : M. S. Sonak &
Jitendra Jain, JJ.**

DATE : 11 February 2025

Oral Judgment (Per M. S. Sonak, J.) :-

1. Heard learned counsel for the parties.
2. Rule. The rule is made returnable immediately at the request and with the consent of the learned counsel for the parties.
3. The petitioner challenges the impugned notice dated 25 March 2021 under Section 148 of the Income Tax Act, 1961 and the impugned order dated 31 January 2022, rejecting the petitioner's objection to reopening of the assessment made by the first respondent for the assessment year 2014-15.
4. Admittedly, the impugned notice dated 25 March 2021 was issued more than four years after the end of the relevant assessment year. Therefore, in terms of the proviso to Section 147 of the Income Tax Act, the Assessing Officer could have reopened the assessment only upon recording satisfaction that the petitioner failed to fully and truly disclose all material facts necessary for the assessment.

5. Upon receipt of the impugned notice dated 25 March 2021, the petitioner sought and was furnished the reasons for reopening via communication dated 11 January 2022. The reasons are contained in the annexure to this communication and are transcribed below for the convenience of reference: -

ANNEXURE

1. *The assessee company is engaged in the business of publishing and trading of books. Oxford University Press is a department of the University of Oxford and has a branch PE (Oxford University Press India) with several other offices in India.*

2. *In this case the assessee has filed return of income for AY 2014-15 on 16.07.2015 declaring total income of Rs. 31,39,16,580/- in the status of a domestic company i.e. resident' company, taxable @ 30% and applicable surcharge and cess. The case was selected for scrutiny and the assessment was completed on 30.12.2016 with assessed total income of Rs. 32,77,68,610/- in the status of a domestic company i.e. 'resident' company, taxable @ 30% and applicable surcharge and cess.*

3. *In the Income tax return filed by the assessee for AY 2014-15, the assessee has mentioned the status as Domestic Company and the income was assessed to tax at 30% i.e., domestic company tax rate. However, in the scrutiny proceedings of AY 2016-17, based on the Tax residency certificate submitted, the assessee was assessed as Non-resident and the income was taxed at 40% i.e., foreign company rate. It is also to be noted that the assessee was assessed as 'non-resident' in the Order passed u/s. 144C(1) dated 31.12.2019 for AY 2016-17.*

4. *In view of the above facts and as per the TRC, the status of the assessee is a 'non- resident' and it has to be assessed as such. The assessee company should have been taxed at the rate applicable to foreign company. The assessment of the A.Y. 2014-15 was completed in the status of 'resident', which attracts the tax of Rs. 11,14,08,550/- @ 30% + applicable surcharge and cess, as applicable in case of a 'resident' assessee. However, since the assessee is a non resident entity it has to be taxed @ 40% +surcharge and education cess. Hence, the income has not been correctly taxed and therefore the short levy of tax of Rs. 3,54,48,175/- should be charged to the assessee.*

5. *In view of the above I have reasons to believe that the assessed income of Rs. 32,77,68,610/- has not been taxed at the correct rate applicable to the non resident companies and it has escaped assessment to the extent of short levy of tax of Rs. 3,54,48,175/- for the A. Y. 2014-15 within the meaning of*

Explanation 2(c)(ii) of Sec. 147 of the Income Tax Act, 1961. Hence, it is a fit case for issuance of notice u/s 148 of the I.T Act, 1961 for the A. Y. 2014-15. The assessment being sought to be reopened falls within the period of six years from the end of the assessment year. Therefore the administrative approval of the CIT is requested to be granted as per section 151(1) of the I. T. Act.”

6. On perusing the reasons, we find no allegation regarding any failure on the petitioner's part to fully and truly disclose any material facts necessary for the assessment. Without such an allegation, let alone some material to support such allegation, one of the jurisdictional parameters for reopening of the assessment beyond 4 years could not be said to have been fulfilled.

7. Mr. Sharma, however, pointed out that for the assessment year 2016-17, the petitioner was assessed as “non-resident.” He submitted that for the assessment year in question, i.e. 2014-15, the petitioner was assessed as “resident”, relying almost entirely on the petitioner's communication dated 19 July 2006, in which the petitioner agreed to be assessed as a “resident” from assessment year 1995-96 onwards. Mr. Sharma also pointed out that if the petitioner was to be taxed as non-resident, then the tax rate was 40%, as opposed to the tax rate of 30%, to which the petitioner was assessed based upon resident status. Mr. Sharma submitted that these are reasonable grounds for reopening the assessment for the assessment year 2014-15. Mr. Sharma also submitted that the petitioner submitted the Tax Residency Certificate for the assessment year 2016-17.

8. We have considered Mr. Sharma's contention, but we find no merit in the same. Firstly, the above contentions do not answer Mr. Mistri's contention based upon non-compliance with the jurisdictional parameter that the assessee should have failed to fully and truly disclose the material facts necessary for assessment since the reassessment was proposed beyond four years. Besides, in this case, it is only because the

respondents were insisting that the petitioner should be taxed as resident, the petitioner, through communication dated 19 July 2006 agreed with the department's position to avoid litigation.

9. Paragraph 4 of the communication dated 19 July 2006 addressed on behalf of the petitioner is transcribed below for the convenience of the reference:-

"4. With a view to avoid litigation and to accommodate the Department while reiterating the factual position stated above including that our clients are a branch of Oxford University Press, U.K., a Department of Oxford University and its control and management is situated in U.K., our clients are agreeable to being assessed as a "Resident" from Assessment Years 1995-96 onwards as desired by the Department upon the condition that such accommodation will not invite any other proceedings on the part of the Department in any assessment year."

10. Upon the petitioner, without prejudice, agreeing with the department's position, the Assessing Officer made an assessment order dated 16 December 2017 for assessment year 2014-15 assessing the petitioner as a "resident". This assessment order refers to the communication on behalf of the petitioner. Besides, the records show that along with the return of income filed by the petitioner for the assessment year 2014-15, the petitioner had once again submitted a letter dated 16 July 2015 regarding its status as a "resident" company. The records also show that from 1995-96 onwards, the petitioner has been assessed as a "resident" company. In these circumstances, the department could not reasonably allege any failure on the petitioner's part to disclose the material facts regarding the petitioner's status. Therefore, the reasons do not even contain any allegation of failure to disclose material facts.

11. The assessment order for 2016-17 was made on 31 December 2019. Accordingly, there is no question of the petitioner referring to this

assessment order or even imagining that such an order would be made in the future. Thus, based on the reasons furnished to the petitioner as also the other material on record, we are satisfied that the jurisdictional parameter about failure to disclose fully and truly all material facts necessary for assessment are missing. Without compliance with these jurisdictional parameters, the respondents had no jurisdiction to issue impugned notice and proceed with the reopening of the assessment. Merely because there is some change in the tax rate for the future assessment years, the provisions of Section 148 cannot be invoked without the jurisdictional parameters of these Sections being fulfilled.

12. In the case of *DIL Ltd. Vs. Assistant Commissioner of Income-tax, Circle 6(2)*¹, the Co-ordinate Division Bench of this Court was concerned with assessment year 2004-05 for which the Assessing Officer has completed the assessment on 30 August 2006 and computed book profit under Section 115JB at certain amounts. Subsequently, the Assessing Officer reopened the assessment on 8 March 2011 on specific grounds, including the ground that Explanation(1)(i) was inserted into the provisions of Section 115JB by the Finance (No.2) Act, 2009 with retrospective effect from 1 April 2001. This Explanation was introduced to include the amount or amounts set aside as provision for diminution in the investment value.

13. The Co-ordinate Bench held that given Parliament's retrospective amendment of law, the Assessing Officer may have reason to believe that income has escaped assessment but that in itself is insufficient for reopening an assessment beyond the period of 4 years. When an assessment is sought to be reopened beyond the period of four years, there must be a failure on the part of the assessee to fully and truly disclose all material facts necessary for assessment. The retrospective

1 (2012) 18 taxmann.com 290 (Bom.)

amendment of law by Parliament would negate the inference that is sought to be drawn from the failure to disclose material facts.

14. The facts in the present case are even stronger than those in *DIL Ltd. (supra)*. Although the reasons do not allege a failure to disclose material facts, the other material on record shows that, in fact, there was no failure to disclose material facts.

15. On the above grounds, we quash and set aside the impugned notice dated 25 March 2021 and the consequent order dated 31 January 2022.

16. At Mr. Sharma's request, we clarify that we have not expressed any opinion on the merits of the case or the petitioner's residence status.

17. The rule is made absolute in the above terms without any cost order.

(Jitendra Jain, J.)

(M. S. Sonak, J.)