

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

WRIT PETITION NO. 2969 OF 2019

Acron Developers Pvt. Ltd., .. Petitioner.  
v/s.  
Dy. Commissioner of Income Tax  
Circle 1 (1)(1) & Another .. Respondents.

Ms. Arati Vissanji i/b. Mr. S. J. Mehta, for the Petitioner.  
Mr. Suresh Kumar, for the Respondents.

**CORAM: K. R. SHRIRAM &  
AMIT B. BORKAR, JJ.  
DATED : 6<sup>th</sup> DECEMBER, 2021.**

**P. C:-**

The challenge in this proceedings is to a notice under Section 148 of the Income Tax Act, 1961 (the said 'Act') dated 30<sup>th</sup> March, 2019 issued by Respondent No.1 for reopening the assessment and the order dated 3<sup>rd</sup> October, 2019, rejecting the objections raised by Petitioner to the proposed action of reopening.

2 Petitioner is a private limited company engaged in property development and undertaking construction contracts. The petition relates to Assessment Year 2012-13. Petitioner from

Assessment Year 2003-04 has been following the Percentage Completion Method for all its projects. In this method, the profit margin is added as a percentage of total costs incurred during the year and work-in-progress are valued accordingly. The final profit from each project is recorded on completion of that project by deducting from the sale proceeds of the total work-in-progress.

3           Petitioner filed its return of income for Assessment Year 2012-13 on 30<sup>th</sup> September, 2012, declaring total income of Rs.2,14,65,350/-. The tax was paid under Section 115JB of the said Act on the book profit of Rs.4,17,99,442/-. Petitioner offered 10% profit on construction cost, non-construction cost, less cost, and various closing work-in-progress following the percentage completion method.

4           Petitioner's case for relevant Assessment Year was selected for scrutiny, and Assessment Order was passed under Section 143(3) of the Act on 4<sup>th</sup> February, 2015. Accordingly, save, and except dis-allowance under Section 14A of the Act, the income returned by Petitioner was accepted.

5           On 30<sup>th</sup> March, 2019, Respondent No.1 issued a notice under Section 148 of the said Act to reopen the assessment. Petitioner filed its return of income in response to the said notice on 27<sup>th</sup> April, 2019. At the request of Petitioner, reasons for reopening of

assessment was supplied on 21<sup>st</sup> August, 2019. Petitioner objected to the proposed action by pointing out that all material facts were fully and truly disclosed in the original assessment. The reopening beyond four years was based on no tangible material.

6 Respondent No.1 on 3<sup>rd</sup> October, 2019 passed an order, rejecting objections raised by Petitioner. Respondent No.1, along with an order of rejection of Petitioner's objection, issued notice to Petitioner under Section 142 (1) of the Act, calling for details set out in the annexure. Petitioner submitted its reply on 17<sup>th</sup> October, 2019, requesting not to proceed with the assessment and provide a copy of the Commissioner's sanction to the proposed action.

7 Petitioner has, therefore, filed the present petition, challenging impugned notice dated 30<sup>th</sup> March, 2019 and impugned order dated 3<sup>rd</sup> October 2019, issued by Respondent No.1. On 13<sup>th</sup> November 2019, this Court issued notice to Respondent and granted ad-interim stay to the impugned notice dated 30<sup>th</sup> March, 2019.

8 Respondent No.1 has contested Petitioner by filing a reply. It is stated in the reply that Petitioner has failed to fully and truly disclose material facts in the original assessment. It is also stated that Petitioner has the alternate statutory remedy to challenge the final order of assessment by way of Appeal.

9           We have heard Ms. A. Vissanji and Mr. Suresh Kumar. With the assistance of learned Advocates for the parties, we have scrutinized the record, and we find that the impugned notice has been issued after four years from the end of the relevant Assessment Year. Section 147 of the Act permits Respondent No.1 to reopen an assessment, provided he has reasons to believe that income has escaped assessment. However, the exercise of such power is circumscribed by the first proviso. It is now well settled that unless any income has escaped assessment by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment, the Assessing Officer has no jurisdiction for re-assessment.

10           The criteria for reopening of assessment after a period of four years are no longer *res Integra* in view of the judgment of this Court in the case of ***Ananta landmark (P) Ltd. v/s. Dy. Commissioner of Income Tax (2021) 131 taxmann.com 52 (Bombay)*** wherein this Court held that where assessment was not sought to be reopened on the reasonable belief that income had escaped assessment on account of failure of assessee to disclose truly and fully all material facts that were necessary for computation of income but was a case wherein assessment was sought to be reopened on account of change of opinion of Assessing Officer, the reopening was not justified. It is also held that where primary facts necessary for assessment are fully and truly disclosed, the Assessing Officer is not entitled to reopen the

assessment on a change of opinion. It is held that while considering the material on a record, one view is conclusively taken by Assessing Officer, it would not be open for the Assessing Officer to reopen the assessment based on the very same material and take another view.

11 Perusal of the reasons recorded by Respondent No.1 indicates that Respondent No.1 has relied upon facts and figures available from the audited account and undisputed TAR filed along with the return of income in the original assessment. Since the impugned notice was issued four years from the end of the relevant Assessment year, there has to be tangible material to conclude that income had escaped assessment. From the reasons recorded by Respondent No.1 in the reassessment notice, it appears that there was no tangible material available on record to conclude that income had escaped assessment.

12 For the aforesaid reasons, the Assessing Officer has acted in excess of the limit of his jurisdiction to reopen the assessment in the exercise of powers under Section 147 read with Section 148 of the Act. Accordingly, Petitioner would be entitled to succeed in this proceeding.

13 We, therefore, pass the following order:-

(i) The impugned notice dated 30<sup>th</sup> March, 2019 (Ex. E), the order dated 3<sup>rd</sup> October, 2019 (Ex. H) and notice dated 3<sup>rd</sup> October, 2019

(Ex. I) issued by Respondent No.1 for Assessment Year 2012-13 are quashed and set aside;

(ii) Rule made absolute in the above terms.

(AMIT B. BORKAR,J.)

(K. R. SHRIRAM,J.)