IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1414 OF 2022

Rajeshwar Land Developers Pvt. Ltd. … Petitioner.
V/s.
Income Tax Officer Ward 13(3)(1)
Mumbai and ors. … Respondents.

Mr. Tanmay M. Phadke for the Petitioner.
Mr. Akhileshwar Sharma a/w. Mr. Vikas T. Kanchandani for the Respondents.

CORAM : NITIN JAMDAR & N.R. BORKAR, JJ.
DATE : 13 JUNE 2022.

ORAL JUDGMENT (PER NITIN JAMDAR, J.)

. Rule. Rule is made returnable forthwith. The learned Counsel for the Respondents – Revenue waives service. By consent, the matter is taken up for disposal.

2. The Petitioner has challenged the notice dated 30 March 2021 issued by Respondent No.1 under Section 148 of the Income Tax Act, 1961 ('the Act') and the order dated 20 January 2022 disposing of the objections raised by the Petitioner to the impugned notice.

3. The Petitioner is a Private Limited Company registered under the Companies Act, 1956 and deals in the real estate business. The Petitioner filed its return of income under Section 139(1) of the Act on 21 November 2014, declaring total income at Rs.5003640/-, which was initially processed under Section 143(1) of the Act for the assessment year 2013-14. The Petitioner's return of income was selected for scrutiny assessment, and the Respondent – Revenue issued a statutory notice under Section 143(2) of the Act. During scrutiny assessment, the Petitioner received various notices raising queries and seeking documents which the Petitioner supplied. These notices and queries were also in respect of Other Expenses debited to Profit and Loss Account, which details the Petitioner furnished. The Assessing Officer passed the assessment order on 30 November 2016 under Section 143(3) of the Act assessing income at Rs.5003640 for the concerned year.

4. Respondent No.1 issued a notice under Section 148 of the Act on 30 March 2021 in respect of the assessment year 2014-2015 and asked the Petitioner to file a return of income. The Petitioner filed a return of income on 12 April 2021, declaring total income at Rs.5003640/- and sought reasons for issuing the notice by letter dated 27 May 2021. The reasons were furnished to the Petitioner on 26 November 2021. In the reasons, it was stated that the Petitioner had claimed an excess amount of deduction of Rs.74436332/-,

which were required to be disallowed as details of expenses in annexure amounted to only Rs.1271375/-. The Petitioner filed objections by letters dated 2 December 2021 and 8 December 2021. The Petitioner sought to point out that Respondent No.1 has overlooked the second page of Note 15 in the return of income wherein the details of the amount of Rs.74436332/- were mentioned and the break up given. By order dated 20 January 2022, Respondent No.2 rejected the objections of the Petitioner. Hence, the Petitioner is before us by filing this Petition under Article 226 of the Constitution of India.

5. We have heard Mr. Tanmay Phadke, the learned Counsel for the Petitioner and Mr. Akhileshwar Sharma, the learned Counsel for the Respondents – Revenue.

6. The reasons supplied to the Petitioner in support of the notice for reopening the assessment stated that the Petitioner had filed the return of income declaring at Rs.5003640/-. The reasons referred to the selection of the case for scrutiny assessment. Then it was stated that on perusal of the assessment record, it was revealed that the Petitioner had debited an amount of Rs.75707707/- on account of Other Expenses in the Profit and Loss account statement; however, the detail of Other Expenses as per Note-15 showed the expenses under various sub-heads totalled only to Rs.1271375/-. It was stated

that thus the Petitioner had booked an excess amount of Rs.74436332/- on account of Other Expenses in the Profit and Loss account statement. Based on this, it was stated that in view of Section 147 (2) (c) of the Act explanation thereto, there is a failure on the part of the Petitioner to disclose fully and truly all the material facts and reopening of assessment was warranted.

7. The learned Counsel for the Petitioner submitted that apart from other legal issues, the impugned notice and order proceed on an entirely erroneous factual position. The learned Counsel submitted that the second page to Note 15 of the financials was not looked at at all by the Respondents. According to the learned Counsel for the Petitioner, Note 15 had two pages; one page gave details about Rs.1271375/- and the second page was regarding Rs.74436332/-. The learned Counsel submitted that the second page is entirely omitted from consideration. The learned Counsel for the Respondent – Revenue sought to argue that the case is sought to be reopened on the audit objection and the Assessing Officer and the Audit Officer could not have made such an elementary mistake of not noticing the second page and therefore, it is apparent that this page was not part of the financial year. Based on the affidavit-in-reply, the learned Counsel for the Respondent – Revenue submitted, in this case, notice was issued correctly, and the objections raised by the Petitioner have been dealt with.

8. When the original assessment was carried out, the Assessing Officer looked at all the documents on record and stated so in the assessment order. When the notice under Section 142(1) of the Act was issued to the Petitioner in respect of scrutiny assessment, the Petitioner had submitted details of all expenses, a list of creditors and details of purchasers. The details such as steel purchase, electrical materials, plumbing, labour charges etc., were provided in detail. Even the queries in respect of Other Expenses, unsecured loans were also furnished. In the assessment order also, it is noted that the reply, details, clarifications and explanation filed by the representative of the Petitioner were considered. Therefore, in this backdrop, the Reasons given ought to have specified the failure on the part of the Petitioner to disclose fully and truly all material facts. It is settled that it is not enough to reproduce only the language of the statutory provision. The Reasons do not give any particulars as to what was the failure on the part of the Petitioner. On the contrary, the Reasons state that "it is on the perusal of the assessment record" that figure of only Rs.1271375/- could be seen. It is nowhere stated that, which is sought to be contended now, the second page of Note-15 was not part of the assessment record. Furthermore, what is sequator of this position is not explained as to how the second page came to be missed. Even when this fact was pointed out by the Petitioner, while disposing of the objections, the Respondent Officer did not state that the second page of the Note was not available.

9. According to us, in light of this factual position, the argument of the Petitioner that the impugned notice and the order proceeds on the erroneous factual ground, without looking at the relevant page, will have to be accepted. Since the foundation of the Reasons for reopening the assessment on facts, apart from various other legal challenges that arise, does not survive, the impugned notice and consequent order will have to be quashed and set aside.

10. Writ Petition is allowed. Accordingly, Rule is made absolute in terms of prayer clauses (a) and (b).

11. No order as to costs.

(N.R. BORKAR, J.) **(NITIN JAMDAR, J.)**