

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).4735/2008

M/S GIRILAL & COMPANY

APPELLANT (S)

VERSUS

INCOME TAX OFFICER, MUMBAI & ORS.

RESPONDENT (S)

ORDER

Heard learned counsel for the parties.

The appellant, a partnership firm, is engaged in the business of construction of buildings and development of real estate. In the year 2000, the appellant/firm was engaged in developing two housing projects on a plot bearing CTS No. 329 B(Part) of village Kondiwita in Andheri (East) Mumbai (hereinafter referred to as 'the said plot'). The said plot was acquired by the appellant originally as a capital asset but portion thereof was converted at different points of time into stock-in-trade. The appellant on 29.10.2001 filed its return of income for the Assessment Year 2001-02. After scrutiny of the said return of income, a notice dated 15.03.2007 was served on the appellant under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') inter alia alleging that the appellant's income chargeable to tax for the Assessment Year 2001-02 has escaped assessment within the meaning of Section 147 of the Act. On 1st May, 2003, an assessment order was passed under Section 143(3) of the Act determining the total income at Rs. 12,36,393/- after allowing deduction under Section 80-1B(10) of the

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Act. Vide communication dated 11.04.2007 the appellant sought the reason recorded for re-opening the assessment which were made available to the appellant on 12.04.2007. It was found that the appellant had not correctly disclosed the actual assets of the said plot and hence the appellant was not entitled for deduction under Section 80(1B) (10) of the Act. It was noted that the information regarding the actual size of the plot used for the construction was only available in the valuation report and hence the case is covered under Explanation 2(c)(iv) of Section 147 of the Act. The appellant objected assumption of jurisdiction under Section 148 for the reason that the appellant had disclosed all the facts fully and truly and respondent no. 1 was fully aware of the FSI. Respondent no. 2 rejected the objections. Being aggrieved, the appellant preferred a writ petition before the High Court challenging the notice dated 15.03.2007 issued under Section 147 of the Act. The High Court vide impugned judgment dated 12.12.2007 dismissed the writ petition. Hence, the present appeal.

Mr. S. Ganesh, learned senior counsel appearing on behalf of the appellant/firm submits that there was no reason to open the assessment when in the return filed by the appellant full disclosure of all the relevant facts was made. On this basis, it is further argued that it was merely a case of change of opinion which is not a valid ground for reopening of the assessment. In order to buttress his submission he has drawn our attention to the communication dated 10.02.2003 addressed by the appellant to the Assessing Officer. In para 11 thereof, there is a mention about the

land in question. After going through the same, we are constrained to reject the aforesaid submission of the learned senior counsel for the appellant. In para 11, only the value of the land is stated and in support, a certificate from the registered Architect & Engineer is filed.

It is clear from the above that this information was supplied as there was some query about the value of the land. Obviously, while going to this document the Assessing Officer would examine the value of the land. However, the reason for issuing notice under Section 148 of the Income Tax Act was that the appellant had not correctly disclosed the actual assets of the plot and hence, it was not entitled for deduction under Section 80(1B) (10) of the Act. The Income Tax Authority itself has mentioned in the notice under Section 148 of the Act that such information was available only in the valuation report. Giving the information in this manner shall be of no help to the appellant as the Assessing Officer was not expected to go through the said information available in the valuation report for the purpose of ascertaining the actual construction of the plot.

On the facts of this case, therefore, we find that the Revenue was right in reopening the assessment and the High Court has rightly dismissed the writ petition of the appellant challenging the validity of the notice under Section 148 of the Act with the following observations:

"6. Considering the tests laid down by the Supreme Court in Raymond Woolen Mills Ltd. (supra) the question is whether the Assessing Officer had prima facie reason to believe that the income had escaped assessment. We have earlier noted explanation 2(c)(iv) of Section 147. In our opinion as there was no true disclosure of the exact size of the plot when the new construction commenced it prima facie cannot be said that there were no reasons to believe. The information was in the annexures and consequently the explanation 2(c)(iv) of Section 147 of the Act will apply. The various judgment relied upon on behalf of the petitioner assessee are distinguishable in as much as either there was no failure to disclose the full and true relevant information and/or it was merely a change of opinion. The question is whether the petitioners considering the size of the plot and part of it having already been developed could claim the benefit under Section 10-1B(10) of the Income-tax Act. The issue as to whether the size of the plot of land has to be considered at the time the new construction is being put up or whether the building already constructed including various deductions like R.G. Area, set back had to be considered in computing the size of the plot is an issue which we do not propose to answer at this stage in the exercise of our extra ordinary jurisdiction. The petitioner to invoke the extra ordinary jurisdiction of this Court must also make out a case that no part of the relevant material had been kept out from the Assessing Officer and/or that it would not be unreasonable for the Assessing Officer to draw inference from the annexures produced."

We, thus, do not find any merit in this appeal. The appeal is dismissed accordingly.

.....J.
[A.K. SIKRI]

.....J.
[ROHINTON FALI NARIMAN]

NEW DELHI;
AUGUST 08, 2016.

ITEM NO.305

COURT NO.11

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 4735/2008

M/S GIRILAL & COMPANY

Appellant(s)

VERSUS

INCOME TAX OFFICER, MUMBAI & ORS.

Respondent(s)

(With Appln. For permission to file rejoinder affidavit)

Date : 08/08/2016 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s) Mr. S. Ganesh, Sr. Adv.
Mr. Satyen Sethi, Adv.
Mr. Arta Trana Panda, Adv.
Mr. Rameshwar Prasad Goyal, Adv.

For Respondent(s) Mr. Tushar Mehta, ASG
Mr. Yashank Adhyaru, Sr. Adv.
Mr. Rupesh Kumar, Adv.
Ms. Purnima Bhatt, Adv.
Ms. Gargi Khanna, Adv.
Ms. Anil Katiyar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The civil appeal is dismissed in terms of the signed order.

Application(s) pending, if any, shall stand disposed of accordingly.

(Ashwani Thakur)
COURT MASTER

(Tapan Kr. Chakraborty)
COURT MASTER

(Signed order is placed on the file)