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

WRIT PETITION NO. 546 OF 2022

Tata Capital Financial Services Limited ....Petitioner

V/s.

Assistant Commissioner of Income Tax
Circle 1(3)(1) and Ors. ...Respondents

Mr. J.D. Mistri, Senior Advocate a/w Mr. Niraj Sheth i/b Mr. Atul K. Jasani for Petitioner.
Mr. Suresh Kumar for Respondents.

CORAM : K.R. SHRIRAM &
N. J. JAMADAR, JJ.
DATED : 15th FEBRUARY, 2022

P.C. :

1. Petitioner is a wholly owned subsidiary of Tata Capital Limited and a Systematically Important Non-Deposit Accepting Non-Banking Finance Company (NBFC) registered with Reserve Bank of India (RBI). Petitioner is required to comply with the directions issued by RBI from time to time to all NBFCs. It is petitioner's case that RBI had, by Notification No.DNBS 193/DG(VL) – 2007 dated 22nd February, 2007, issued directions relating to prudential norms to NBFC in exercise of its powers conferred under Reserve Bank of India Act, 1934 (RBI Act). Clause 3(2) of the said directions require that income including interest/discount or any other charges of NPA (Non-Performing Assets) shall be recognised only when it is actually realised. In compliance with said requirement petitioner recognised income of NPA only when it is actually realised. The said income

accordingly was not offered to tax in the return of income on accrual basis but is offered to tax on actual receipt basis. Petitioner stated that in its Annual Report of previous year ending 31st March, 2013 relevant to the Assessment Year 2013-14, this fact was specifically disclosed in the significant account policies. Petitioner also states that in the tax audit report it is also stated that interest and other charges due Rs.25,66,54,010/- on Non-Performing Assets are not credited to statement of Profit and Loss Account pursuant to RBI directions.

2. Petitioner's case was selected for scrutiny and during the course of assessment proceedings, petitioner received a notice dated 7th August, 2015 under Section 142(1) of the Income Tax Act, 1961 (the Act) calling upon petitioner to furnish various details. In reply, petitioner, by a letter dated 20th August, 2015, submitted copies of return of income, computation of income, annual report, financial statements including schedules and notes to accounts and tax audit report in Form 3CD along with exhibits. After this was filed, the assessment order dated 8th March, 2016 came to be passed under Section 143(3) of the Act making a disallowance only under Section 14A of the Act. Petitioner challenged the disallowance which is still pending but that is not relevant to the petition at hand.

3. Thereafter, petitioner received a notice dated 30th March, 2021 under Section 148 of the Act stating that there are reasons to believe that

petitioner's income chargeable to tax for A.Y. 2013-14 has escaped assessment within the meaning of Section 147 of the Act. By a letter dated 18th May, 2021 petitioner filed its objections to the said notice. Thereafter, by a letter dated 6th August, 2021 from respondent petitioner received reasons for re-opening. In the objections to the re-opening, petitioner raised various points including the fact that interest and other charges on NPA ought to be taxed on actual realisation basis and not on accrual basis and placed reliance on judgment of the Delhi High Court in the matter of ***Commissioner of Income Tax vs. Vasisth Chay Vyapar Ltd.***[1] It was also brought to the notice of respondent that the Delhi High Court has held that where the assessee was NBFC it was governed by the provisions of RBI Act. In such a case, interest income could not be said to have accrued to the assessee having regard to the provisions of Section 45Q of the RBI Act and prudential norms issued by RBI in exercise of its statutory powers. As per these norms, the ICD has become NPA and on such NPA where the interest was not received and possibility of recovery was almost NIL, interest could not be treated to have been accrued in favour of the assessee. It was also brought to the notice of the Assessing Officer that the Delhi High Court in the said judgment of ***Vasisth Chay Vyapar Ltd.*** *(supra)* had considered the Hon'ble Apex Court's decision in ***Southern Technologies Ltd. vs. Joint Commissioner of Income Tax***[2] (relied upon by the Assessing Officer to re-open the assessment) and held its applicability is dependent on facts. It was

1 [2011] 330 ITR 440 (Delhi)
2 [2010] 320 ITR 577 (SC)

also brought to the notice of the Assessing Officer that the decision of the Delhi High Court in ***Vasisth Chay Vyapar Ltd.*** *(supra)* has been confirmed by the Hon'ble Supreme Court of India in ***Commissioner of Income Tax vs. Vasisth Chay Vyapar Ltd.***[3]

Apart from these, various other judgments have also been cited in support of petitioner's case that notice under Section 148 of the Act should not have been issued.

4. In the order passed on 17th December, 2021, rejecting the objections the Assessing Officer has not dealt with all these points. The Assessing Officer was duty bound to deal with all the submissions made by petitioner in its objections and not just brush aside uncomfortable objections under the carpet. We have to note that petitioner had, with the objections, also requested the Assessing Officer to provide photocopies of documents evidencing request sent by the Assessing Officer to the Principal Chief Commissioner of Income Tax/Chief Commissioner/Principal Commissioner/ Commissioner in terms of Section 151(1) of the Act for obtaining an approval for re-opening of the assessment for the year under consideration and documents evidencing the approval received from the Principal Chief Commissioner of Income Tax/Chief Commissioner/Principal Commissioner/ Commissioner.

The Assessing Officer instead of providing these documents

3 [2019] 410 ITR 244 (SC)

simply dismissed petitioner's request by saying it is purely an administrative matter and all correspondence have been made through system. The Assessing Officer was duty bound to provide all the documents called for by petitioner and his reluctance to provide these documents only would make the court draw adverse inference against respondent. It will be apposite to quote the following from the judgment of the Delhi High Court in case of ***Sabh Infrastructure Ltd. vs. Assistant Commission of Income Tax***[4] which reads as under :

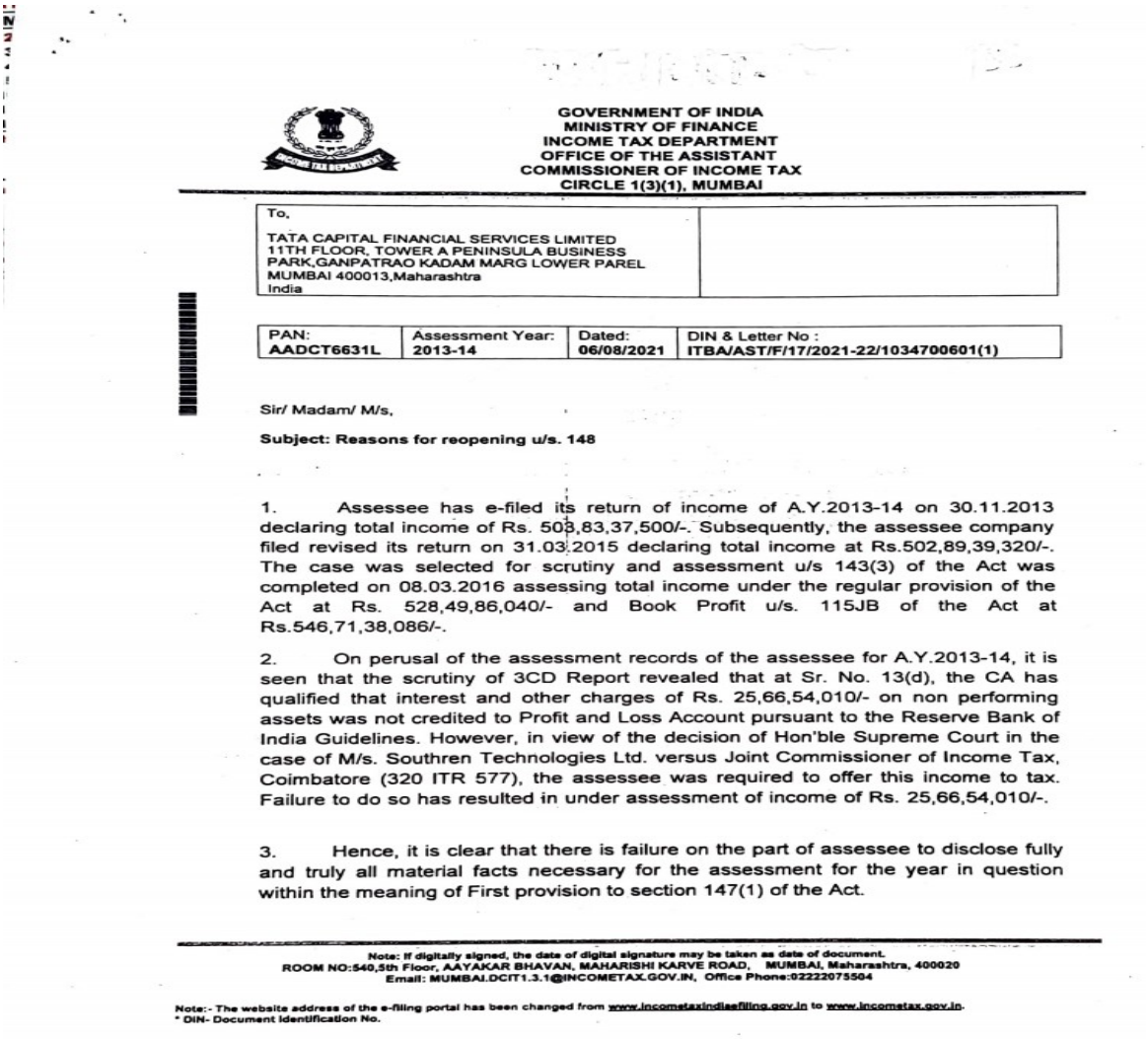
> *Before parting with the case, the Court would like to observe that on a routine basis, a large number of writ petitions are filed challenging the reopening of assessments by the Revenue under Sections 147 and 148 of the Act and despite numerous judgments on this issue, the same errors are repeated by the concerned Revenue authorities. In this background, the Court would like the Revenue to adhere to the following guidelines in matters of reopening of assessments:*
>
> > *(i) while communicating the reasons for reopening the assessment, the copy of the standard form used by the Assessing Officer for obtaining the approval of the Superior Officer should itself be provided to the assessee. This would contain the comment or endorsement of the Superior Officer with his name, designation and date. In other words, merely stating the reasons in a letter addressed by the Assessing Officer to the assessee is to be avoided;*
> >
> > *(ii) the reasons to believe ought to spell out all the reasons and grounds available with the Assessing Officer for re-opening the assessment - especially in those cases where the first proviso to Section 147 is attracted. The reasons to believe ought to also paraphrase any investigation report which may form the basis of the reasons and any enquiry conducted by the Assessing Officer on the same and if so, the conclusions thereof;*
> >
> > *(iii) where the reasons make a reference to another document, whether as a letter or report, such document*

4 [2017] 398 ITR 198 (Delhi)

> *and/or relevant portions of such report should be enclosed along with the reasons;*
>
> *(iv) the exercise of considering the assessee's objections to the reopening of assessment is not a mechanical ritual. It is a quasi- judicial function. The order disposing of the objections should deal with each objection and give proper reasons for the conclusion. No attempt should be made to add to the reasons for reopening of the assessment beyond what has already been disclosed.*

5. Therefore, the order dated 17th December, 2021 impugned in this petition is quashed and set aside. The matter is remanded for *denovo* consideration. The concerned officer shall keep in mind that the exercise of considering the assessee's objections to the re-opening of assessment is not a mechanical ritual but a quasi judicial function. The order disposing of the objections should deal with each objection and give proper reasons for the conclusion. He shall also grant a personal hearing to petitioner and the notice of personal hearing shall be communicated atleast seven working days in advance. If the said officer is relying on any judgment or order of any Court or Tribunal, a list thereof shall be provided to petitioner alongwith notice of personal hearing so that petitioner will be able to deal with or distinguish these judgments/orders in the personal hearing. The Assessing Officer shall deal with all previous submissions while considering the assessee's objections, deal with each objections and give proper reasons for its conclusion.

6. Before we part with the case, we would like to observe that on a routine basis a large number of Writ Petitions are filed challenging the re-opening of assessments by the Revenue under Sections 147 and 148 of the Act and despite numerous judgments on this issue, the same errors are repeated by the Revenue authorities. In this case also the reasons for re-opening the assessment have been stated in letter dated 6th August, 2021 addressed by the Assessing Officer. For ease of reference, the same is scanned and reproduced herein below :-



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE ASSISTANT
COMMISSIONER OF INCOME TAX
CIRCLE 1(3)(1), MUMBAI

To,

TATA CAPITAL FINANCIAL SERVICES LIMITED
11TH FLOOR, TOWER A PENINSULA BUSINESS
PARK,GANPATRAO KADAM MARG LOWER PAREL
MUMBAI 400013,Maharashtra
India

PAN:	Assessment Year:	Dated:	DIN & Letter No :
AADCT6631L	2013-14	06/08/2021	ITBA/AST/F/17/2021-22/1034700601(1)

Sir/ Madam/ M/s,

Subject: Reasons for reopening u/s. 148

1. Assessee has e-filed its return of income of A.Y.2013-14 on 30.11.2013 declaring total income of Rs. 503,83,37,500/-. Subsequently, the assessee company filed revised its return on 31.03.2015 declaring total income at Rs.502,89,39,320/-. The case was selected for scrutiny and assessment u/s 143(3) of the Act was completed on 08.03.2016 assessing total income under the regular provision of the Act at Rs. 528,49,86,040/- and Book Profit u/s. 115JB of the Act at Rs.546,71,38,086/-.

2. On perusal of the assessment records of the assessee for A.Y.2013-14, it is seen that the scrutiny of 3CD Report revealed that at Sr. No. 13(d), the CA has qualified that interest and other charges of Rs. 25,66,54,010/- on non performing assets was not credited to Profit and Loss Account pursuant to the Reserve Bank of India Guidelines. However, in view of the decision of Hon'ble Supreme Court in the case of M/s. Southren Technologies Ltd. versus Joint Commissioner of Income Tax, Coimbatore (320 ITR 577), the assessee was required to offer this income to tax. Failure to do so has resulted in under assessment of income of Rs. 25,66,54,010/-.

3. Hence, it is clear that there is failure on the part of assessee to disclose fully and truly all material facts necessary for the assessment for the year in question within the meaning of First provision to section 147(1) of the Act.

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4. Even if tax rate of 30 percent is considered (ignoring surcharge and cess), the tax sought to be evaded amounts to Rs. 7,69,96,203/- which is above is Rs. 1,00,000/- As stated earlier, the assessee has not disclosed any of these facts at the time of original proceedings. Accordingly, the juristic requirements for reopening the assessment are satisfied.

5. In view of the above, I have reason to believe that income chargeable to tax to the tune of Rs. 25,66,54,010/- has escaped within the meaning of section 147 of the Act for the A.Y. 2013-14. It is therefore proposed to issue notice u/s. 148 of the Income Tax Act for A.Y. 2013-14 to reassess such income and also any other income chargeable to tax which has escaped assessment and which may come to notice subsequently in the course of proceedings under this section.

SAKSHI KALRA
CIRCLE 1(3)(1), MUMBAI

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

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Location: MUMBAI

Page 2 of 2

Before the objections were disposed, petitioner had received a notice dated 11th November, 2021 under Section 143(2) read with Section 147 of the Act, annexed to which was the actual reasons recorded. The annexure, i.e., the reasons for ease of reference is scanned and reproduced herein below :-

ANNEXURE

In the above mentioned case, the assessee e-filed its return of income of A.Y.2013-14 on 30.11.2013 declaring total income of Rs. 503,83,37,500/-. Subsequently, the assessee company filed revised its return on 31.03.2015 declaring total income at Rs.502,89,39,320/-. The case was selected for scrutiny and assessment u/s 143(3) of the Act was completed on 08.03.2016 assessing total income under the regular provision of the Act at Rs. 528,49,86,040/- and Book Profit u/s. 115JB of the Act at Rs.546,71,38,086/-.

2. On perusal of the assessment records of the assessee for A.Y.2013-14, it is seen that the scrutiny of 3CD Report revealed that at Sr. No. 13(d), the CA has qualified that interest and other charges of Rs. 25,66,54,010/- on non performing assets was not credited to Profit and Loss Account pursuant to the Reserve Bank of India Guidelines. However, in view of the decision of Hon'ble Supreme Court in the case of M/s. Southren Technologies Ltd. versus Joint Commissioner of Income Tax, Coimbatore (320 ITR 577), the assessee was required to offer this income to tax. Failure to do so has resulted in under assessment of income of Rs. 25,66,54,010/- with consequent short levy of tax of Rs. 8,32,71,394/-.

3. In view of the above, interest and other charges of Rs. 25,66,54,010/- on non performing assets has to be disallowed and added to the total income of the assessee. Therefore, the order of the AO is erroneous in so far as it is prejudicial to the interests of Revenue.

4. Hence, it is clear that there is failure on the part of assessee to disclose fully and truly all material facts necessary for the assessment for the year in question within the meaning of First provision to section 147(1) of the Act.

5. In view of the above, I have reason to believe that income chargeable to tax to the tune of Rs. 25,66,54,010/- has escaped assessment within the meaning of section 147 of the Act for the A.Y.2013-14. It is therefore proposed to issue notice u/s 148 of the Income-tax Act, 1961 for A.Y.2013-14 to reassess such income and also any other income chargeable to tax which has escaped assessment and which may come to notice subsequently in the course of proceedings under this section.

Yours faithfully,
ABHAY YASHWANT MARATHE
CIRCLE 1(3)(1), MUMBAI

We are surprised to notice that paragraph no.3 in the actual reasons is missing in the letter dated 6th August, 2021. Paragraph no. 4 in the letter dated 6th August, 2021 is missing in the reasons given for obtaining approval.

7. If one considers paragraph no.3 of the actual reasons submitted for obtaining approval, which is missing in the letter of 6th August, 2021, it clearly shows change of opinion. It also gives us an impression this omission was deliberate, being aware of the legal position. We are also surprised how the approval was also given after reading paragraph no.3 of the actual reasons.

8. In the circumstances, the Revenue is directed to adhere to the following:

(a) While communicating the reasons for re-opening the assessment, a copy of the standard form/request sent

by the Assessing Officer for obtaining approval of the Superior Officer should itself be provided to the assessee. This would contain comment or endorsement of the Superior Officer with his name, designation and date.

The Assessing Officer shall not merely state the reasons in the letter addressed to the assessee.

(b) If the reasons make reference to any other document or a letter or a report, such document or letter or report should be enclosed to the reasons. Such portion as it does not bear reference to the assessee concerned could be redacted.

(c) The order disposing the objections should deal with each objections and give proper reasons for the conclusion.

(d) A personal hearing shall be given and minimum seven working days advance notice of such personal hearing shall be granted.

(e) If the Assessing Officer is going to rely on any judgment/order of any Tribunal or Court reference/ citation of these judgment/orders shall be provided alongwith notice for personal hearing so that the assessee will be able to deal with/distinguish these judgments/ orders.

9. A copy of this order be placed before the members of the Central Board of Direct Taxes who shall issue guidelines to all its officers based on the directions given above with clear instructions that they shall be strictly followed. We only hope that, this will reduce the same errors being repeated by the concerned revenue authorities and will not drive the assessee to rush to the court. Thereby, the burden on the court will also get reduced.

10. Petition accordingly disposed with no order as to costs.

(N. J. JAMADAR, J.) (K.R. SHRIRAM, J.)