

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1179 OF 2022**

Harsh Kaushal Corporation ... Petitioner.

V/s.

Income Tax Officer, Ward 22(1)(1),
Mumbai and ors. ... Respondents.

Mr. Rahul K Hakani i/b Ms Niyati Mankad for the Petitioner.
Mr. Akhileshwar Sharma for the Respondent – Revenue.

**CORAM : K.R. SHRIRAM &
 : N.R. BORKAR, JJ.
DATE : APRIL 26, 2022.**

PC

1] This petition takes exception to the notice dated 30.03.2021 issued by respondent No.1 under section 148 of the Income Tax Act, 1961 (for short “the Act”) seeking to reopen the assessment for Assessment Year (A.Y.) 2014 -15 and the order on objections dated 28.01.2022 passed by the respondent No.2.

2] The petitioner is a registered partnership firm registered under the Indian Partnership Act, 1932 and is engaged in the business of construction.

3] The petitioner filed its original return of income in terms of section 139 of the Act for A.Y. 2014-2015 on 30.09.2014 declaring total income of Rs.3,69,780/- .

4] The petitioner's return was selected for scrutiny assessment. Notice under section 142(1) of the Act calling upon the petitioner to furnish return of income, computation of income etc. to complete assessment was issued and the same was complied with vide submission dated 02.06.2016.

5] It is stated that vide submission dated 13.12.2016 the petitioner pointed out to the Assessing Officer that they have completed the project under the name and style "*Crystal Point*" in the year 2009 and revenue would be offered as and when sale takes place. The petitioner has also pointed out that they have a closing stock-in-trade of Rs.33,49,89,003/-.

6] According to the petitioner, show cause notice was thereafter issued calling upon the petitioner to explain whether the petitioner was receiving rental income and if the rental income was being received out of stock-in-trade, then why the closing stock was not shown in

investment. Petitioner by letter dated 26.12.2016 submitted the documents/details in that respect as sought by the Assessing Officer.

7] According to the petitioner, respondent No.1 after scrutinizing all the details furnished by the petitioner, examining all the issues and the explanation given by the petitioner passed an assessment order dated 30.12.2016 under section 143(3) of the Act.

8] According to the petitioner, inspite of above facts and circumstances and though there is no failure on the part of the petitioner to disclose fully and truly all material facts, the respondent No.1, after expiry of four years from the end of relevant assessment year, had issued impugned notice dated 30.03.2021 under section 148 of the Act stating therein that in view of the decision of Delhi High Court in *CIT vs. Ansal Housing Finance and Leasing Company Ltd.*¹ it was obligatory on the part of petitioner to offer to tax notional rental income on closing stock-in-trade of Rs.33,49,89,033. According to the respondent No.1, he has thus reason to believe that the petitioner's income chargeable to tax for A.Y. 2014-15 has escaped assessment within the meaning of section 147 of the Act.

1 (2013) 354 ITR 180

9] The petitioner on 13.11.2021 filed objections to reopening. Respondent No.2 rejected the objections by impugned order dated 28.01.2022.

10] We have heard Mr. Rahul Hakani, learned Counsel for the petitioner and Mr. Akhileshwar Sharma, the learned counsel for the respondents- Revenue.

11] Mr. Hakani submits that the existence of a valid reason to believe is a *sine qua non* for the exercise of jurisdiction under section 147 of the Act. It is submitted that the reasons for reopening assessment must be based on new information or material, however, in the present case, the Assessing Officer is seeking to reopen the reassessment proceedings based on the same material facts which were before him when he concluded the original assessment proceedings. It is submitted that reassessment without any additional information amounts to change of opinion and the same is not permissible.

12] It is further submitted that the proviso to section 147 of the Act provides that where an assessment under section 143(3) of the Act has been made for relevant assessment year and four years from the end of

the relevant assessment year has expired, then no reassessment proceedings can be initiated under section 147 of the Act unless any income chargeable to tax has escaped assessment for such assessment year by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment for that assessment year. It is submitted that the petitioner's case is covered by the said proviso as there is no failure on the part of the petitioner of the kind envisaged in the proviso.

13] On the other hand, Mr.Sharma submits that in view of the decision of the Delhi High Court in *Ansal Housing Finance and Leasing Company Ltd. (supra)*, the petitioner was under an obligation to offer to tax notional rental income on closing stock-in-trade. It is submitted that during the course of original assessment proceeding, the Assessment Officer has not examined this aspect nor any query was raised at that time in respect of notional rental income from closing stock-in-trade. It is thus submitted that the reopening is based on tangible material and this is not a case of mere change of opinion.

14] We have perused the reasons recorded for reopening the assessment. For ease of reference, they are scanned and reproduced herein below.

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ANNEXURE

Reasons :

" 1. The scrutiny assessment was completed u/s.143(3) of the I.T. Act, 1961 on 29.12.2016, determining the total income at Rs.7,35,000/-. On verification of records, it is observed that the assessee is engaged in the business of builders and developers and offered net loss under the head business and profession by sale of flats for Rs.5,42,516/-. On perusal of the Profit and Loss account as well as Balance sheet, it was revealed that there is closing stock-in-trade of Rs.33,49,89,003/-. As per the Delhi High Court judgement in the case of **Ansal Housing Finance Vs. CIT**, the assessee is liable to offer deemed rental income at the rate of eight and half percent of the closing stock-in-trade of Rs.33,49,89,033/-. However, the assessee has not offered deemed rental income in the return of income filed for A.Y.2014-15. The deemed rental income is computed as under :-

Deemed Rental Income =Rs.2,84,74,065/-(8.5% of Rs.33,49,89,003/-)

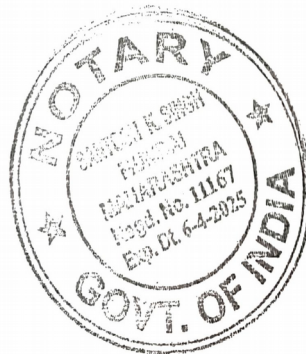
Less: Standard deduction = Rs.85,42,220/-(30% of Rs.2,84,74,065/-)

Net deemed rental Income = 1,99,31,845/-

In view of the above facts, I have reason to believe that the amount of Rs.1,99,31,845/- has escaped assessment for A.Y. 2014-15 within the meaning of section 147 of Income-tax Act, 1961.

2. It is pertinent to mention here that in this case an assessment was made as stipulated u/s.2(40) of the Act. However, as discussed in reasons to believe in this case that income chargeable to tax has been under assessed.

In view of the above, provisions of Clause (c) of Explanation 2 to 147 are applicable to facts of this case and the Assessment Year under consideration is deemed to be a case where income chargeable to tax has escaped assessment. Therefore, it is a fit case for initiation of proceedings u/s.147 of the I.T. Act, 1961 by issuing notice u/s.148 of the Income Tax Act, 1961. "



Yours faithfully,
PRAMOD DINKAR GANGASAGAR
WARD 22(1)(1), MUMBAI

15] In the present case, it is evident from the reasons recorded for reopening that the petitioner had truly and fully disclosed all material facts necessary for the purpose of assessment. In fact, in the reasons for reopening, there is not even a whisper as to what was not disclosed. The Assessing Officer has relied upon the records filed by petitioner including the profit and loss account and balancesheet and says from those records it is revealed that there is closing stock in trade of Rs.33,49,89,003/-. Therefore, the respondent No.1 is relying upon the same primary facts which were before the Assessing Officer who concluded the assessment proceedings to take a different view. In our view, this is not a case where the assessment is 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 this is a case wherein the assessment sought to be reopened on account of change of opinion of the Assessing Officer about the manner of computation. In view of proviso to section 147 of the Act, the same is not permissible.

16] This Court in ***Ananta Landmark Pvt. Ltd. vs. Deputy Commissioner of Income Tax Central Circle 5(3) and ors.***² has held:

“The Assessing Officer has no power to review an assessment which has been concluded. If a period of four years has lapsed from the end of relevant year, the Assessing Officer has to mention what was the tangible material to come to the conclusion that there is an escapement of income from assessment and that there has been failure to fully and truly disclose material fact. After a period of four years even if the Assessing Officer has some tangible material to come to the conclusion that there is an escapement of income from assessment, he cannot exercise the power to reopen unless he discloses what was the material fact which was not truly and fully disclosed by the assessee.”

17] Consequently, Petition is allowed. The notice dated 30.03.2021 issued by respondent No.1 under section 148 of the Act seeking to reopen the assessment for the A.Y. 2014-15 and the order on objections dated 28.01.2022 are quashed and set aside.

18] Petition is disposed of with no order as to costs.

(N.R. BORKAR, J.)

(K.R. SHRIRAM, J.)

² (2021) 439 ITR 168