IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.3560 OF 2019

Vodafone Idea Ltd.)
(Successor in interest of M/s Idea)
Cellular Ltd.) 10th Floor, Birla)
Centurion, Centurion Mills Compound)
Pandurang Budkar Marg, Worli,)
Mumbai 400 030) ..Petitioner

V/s.

1.The Assistant Commissioner of)
Income Tax Circle (5)(2)(2) Mumbai)
Room No.571, 5th floor, Aayakar)
Bhavan, M. K. Road, Mumbai-400020)

2. Principal Commissioner of Income)
Tax-5, Mumbai, Room No.515, 5th flr)
Aayakar Bhavan, M. K. Road,)
Mumbai 400 020)

3. Union of India)
Through the Secretary, Ministry of)
Finance, Department of Revenue,)
North Block, New Delhi 110 001) ..Respondents

Mr. Nitesh Joshi i/b Mr. Atul Jasani for Petitioner
Mr. Sham V Walve for Respondents-Revenue

CORAM : K.R. SHRIRAM &
R. N. LADDHA, JJ
DATED : 3rd JANUARY 2022

ORAL JUDGMENT (PER K. R. SHRIRAM J.)

1 Petitioner is impugning a notice dated 2nd August 2019 issued under Section 148 of the Income Tax Act 1961 (the Act) for A.Y.-2013-2014 and for quashing an order dated 5th December 2019 passed by respondent no.1

disposing of the objections filed by petitioner against initiation of reassessment proceedings for A.Y.-2013-2014.

2 For A.Y. 2013-2014 petitioner filed return of income on 30th November 2013 declaring total income at loss of Rs.4,60,12,34,048/- under normal provisions and Rs.273 crores under Section 115JB of the Act. Revised return of income was also filed declaring income as shown in original return of income. The assessment was completed on 30th December 2016 under Section 143(3) of the Act determining total income at Rs.24,76,63,28,847/- under normal provisions and Rs.13,96,21,60,821/- under Section 115Jb of the Act.

3 Thereafter, petitioner received notice dated 2nd August 2019 under Section 148 of the Act saying that there are reasons to believe that petitioner's income chargeable to tax for A.Y.-2013-2014 has escaped assessment within the meaning of Section 147 of the Act. Since the notice has been issued after the expiry of 4 years from the relevant assessment year and petitioner has been assessed under Section 143(3) of the Act, the proviso to Section 147 as it was then previously would apply. As per the proviso, the onus is on respondents to show that there was failure on the part of petitioner to fully and truly disclose all material facts required for assessment. Simply stating that as per explanation (1) to Section 147 of the Act, production of books of accounts or other documents from which the Assessing Officer could have, with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the

provisio of Section 147 is not enough. This is because as held by the Apex Court in ***Calcutta Discount Co. Ltd. Vs. Income Tax Officer***[1] the duty of disclosing all the primary facts relevant to the decision of the question before the assessing authority lies on the assessee. To meet a possible contention that when some account books or other evidence has been produced, there is no duty on the assessee to disclose further facts, which on due diligence, the Income Tax Officer might have discovered, the Legislature has put in Explanation to Section 147. The duty, however, does not extend beyond the full and truthful disclosure of all primary facts. Once all the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inferences of facts can be reasonably drawn and what legal inferences have ultimately to be drawn. It is not for somebody else-far less the assessee to tell the assessing authority what inferences, whether of facts or law, should be drawn. Indeed, when it is remembered that people often differ as regards what inferences should be drawn from given facts, it will be meaningless to demand that the assessee must disclose what inferences - whether of facts or law - he would draw from the primary facts. If from primary facts more inferences than one could be drawn, it would not be possible to say that the assessee should have drawn any particular inference and communicated it to the assessing authority. How could an assessee be charged with failure to communicate an inference, which he might or might not have drawn? It

1 (1961) 41 ITR 191 (SC)

may be pointed out that the Explanation to the sub- section has nothing to do with "inferences" and deals only with the question whether primary material facts not disclosed could still be said to be constructively disclosed on the ground that with due diligence the Income-tax Officer could have discovered them from the facts actually disclosed. The Explanation cannot enlarge the scope of the section by casting a duty on the assessee to disclose "inferences", to draw the proper inferences being the duty imposed on the Income Tax Officer. Therefore, it can be concluded that while the duty of the assessee is to disclose fully and truly all primary relevant facts, it does not extend beyond this.

4 We have considered the reasons and in our view, it is nothing but a change of opinion. Reasons to believe cannot be arbitrary or irrational. Apex Court in ***Commissioner of Income Tax Vs. Kelvinator of India Ltd***.[2] held that one needs to give a schematic interpretation to the words reason to believe failing which, Section 147 would give arbitrary powers to the Assessing Officer to reopen assessments on the basis of mere change of opinion which cannot be per se reason to reopen. Apex Court also held that the Assessing Officer has no power to review and he has power to reopen provided there is tangible material to come to the conclusions that there is escapement of income from assessment and there was failure on the part of assessee to truly and fully disclose material facts. The Assessing Officer cannot simply say that he has reasons to believe that income which was

2 (2010) 320 ITR 561

chargeable to tax has escaped reassessment by reasons of failure on the part of assessee to disclose fully and truly all material facts necessary to take the case out of the restrictions imposed by proviso to Section 147 of the Act as held in ***Sesa Goa Limited Vs. Joint Commissioner of Income Tax & Ors.***[3]

5 The entire basis for proposing to reopen, as can be seen from the reasons, is on the documents and submissions which were available before the Assessing Officer, before passing of the original assessment order. In fact, in the reasons, it is also recorded that the same issue was considered by the earlier Assessing Officer during the assessment proceedings. The Assessing Officer notes that the assessee had made submissions on these items earlier but still states that income chargeable to tax has escaped because in his opinion certain amounts are required to be added back in profit and loss account and certain amounts should not have been disallowed. Where on consideration of material on record, one view is conclusively taken by the Assessing Officer, it would not be open to reopen the assessment based on the very same material with a view to take another view. We are satisfied that petitioner had truly and fully disclosed all material facts necessary for the purpose of assessment. Not only material facts were disclosed by petitioner truly and fully but they were carefully scrutinized and figures of income as well as deduction were reworked carefully by the Assessing Officer. In the reasons for reopening, there is not even a whisper as to what was not disclosed. In our view, this is not a case

3 (2007) 294 ITR 101 (Bom)

where the assessment is sought to be reopened on the reasonable belief that income had escaped assessment on account of failure of the assessee to disclose truly and fully all material facts that were necessary for computation of income but this is a case wherein the assessment is sought to be reopened on account of change of opinion of the Assessing Officer. In a similar case where the notice to reopen the assessment was founded entirely on the assessment records and the entire basis for reopening the assessment was the disclosure which has been made by the assessee in the course of the assessment proceedings and where no material to which a reference was to be found, a Division Bench of this Court in ***3i Infotech Limited V/s. Assistant Commissioner of Income Tax***[4] in paragraph 12 held as under:

> *12. The record before the Court, to which a reference has been made earlier, is clearly reflective of the position that during the course of the assessment proceedings the assessee had made a full and true disclosure of all material facts in relation to the assessment. As a matter of fact, it would be necessary to note that the notice to reopen the assessment on the first issue is founded entirely on the assessment records. There is no new material to which a reference is to be found and the entire basis for reopening the assessment is the disclosure which has been made by the assessee in the course of the assessment proceedings. In Cartini India Limited V/s. Additional Commissioner of Income Tax [(2009) 314 ITR 275 (Bom.)], a Division Bench of this Court has observed that where on consideration of material on record, one view is conclusively taken by the Assessing Officer, it would not be open to the Assessing Officer to reopen the assessment based on the very same material with a view to take another view. The principal which has been enunciated in Cartini must apply to the facts of a case such as the present. The assessee had during the course of the assessment proceedings made a complete disclosure of material facts. The Assessing Officer had called for a disclosure on which a specific disclosure on the issue in question was made. In such a case, it cannot be postulated that the condition precedent to the reopening of an assessment beyond a period of four years has been fulfilled.*

4 (2010) 192 Taxman 137 (Bombay)

6 In the circumstances, petition is allowed. The notice dated 2nd August 2019 and the order on objections dated 5th December 2019 are quashed and set aside. Petition disposed with no order as to costs.

(R. N. LADDHA, J) **(K.R. SHRIRAM, J.)**