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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.1089 OF 2019

CHOWGULE AND COMPANY PVT. LTD.
Chowgule House, Mormugao Harbour,
Goa 403803 (PAN : AAACC5479J)
Through its Constituted Attorney
Mr. Chandrakant T. Gadkari ....PETITIONER

Versus

1. THE JOINT COMMISSIONER OF INCOME TAX, SPECIAL RANGE, PANAJI
Aayakar Bhavan, Plot No.5, EDC Complex, Patto Plaza, Panaji,
Goa – 403 001.

2. THE UNION OF INDIA
Through the Principal Secretary,
Department of Revenue, Ministry of Finance, Room No.128-B, North Block,
New Delhi - 110001 ....RESPONDENTS

Mr Firoze Andhyarujina, Senior Advocate with Mr Manek Adhjyarujina, Ms. Shreya Arur ad Ms. S. Kenny, Advocates *for the Petitioner.*

Ms Amira Razaq, Standing Counsel *for the Respondents.*

CORAM: M. S. SONAK &
BHARAT P. DESHPANDE, JJ.

Reserved on : 5th DECEMBER 2022
Pronounced on: 6th DECEMBER 2022

JUDGMENT : (*Per M.S. Sonak, J.*)

1. Heard learned Counsel for the parties.

2. Rule. The rule is made returnable immediately with the consent of and at the request of the learned Counsel for the parties.

3. The Petitioner challenges the reopening of the assessment for the Assessment Year (AY) 2012-13, *inter alia*, on the ground that there was no failure on the part of the Petitioner to disclose fully and truly all material facts necessary for its assessment for that Assessment Year, and, therefore, no notice for reopening the assessment could have been issued after the expiry of four years from the end of the relevant Assessment Year.

4. The Assessing Officer (AO) issued the impugned notice dated 29.03.2019 under Section 148 of the Income Tax Act, 1961 (IT Act), seeking to reopen the assessment for AY 2012-13. Thus, the impugned notice was issued after the expiry of four years from the end of the relevant AY. Even Ms Razaq did not dispute that for the impugned notice to be sustained, the respondents would have to establish failure on the part of the Petitioner to disclose fully and truly all material facts necessary for

its assessment for the relevant AY. Therefore, the main question in this petition is whether there was any such failure.

5. Upon receipt of the impugned notice, the Petitioner sought reasons recorded and such reasons came to be furnished by respondent no.1 to the Petitioner on 23.11.2019. In response, the Petitioner filed detailed objections on 05.12.2019 to reopening the assessment. However, respondent no.1, by order dated 07.12.2019, rejected the objections. Hence, the present petition.

6. As noted earlier, the reasons for reopening the assessment were furnished to the Petitioner on 23.11.2019, and the same read as follows:

"GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX
AO AS SPL RANGE PANAJI

To, *CHOWGULE AND COMPANY PRIVATE LIMITED* *CHOWGULE HOUSE CHOWGULE HOUSE, MORMUGAO HARBOUR MORMUGAO HARBOUR MORMUGAO HARBOUR 403803,Goa India*	

PAN: AAACC5479J	*Assessment Year : 2012-13*	*Dated: 23/11/2019*	*Letter No: ITBA/AST/F/17/2019-20/1020982375(1)*

Sir/Madam/M/s,

Subject: Reasons for re-opening of assessment proceedings for A.Y. 2012-13 — Reg

With reference to your letter dated 05.11.2019 submitted through e-portal, the reasons for re-opening of assessment proceedings for the A.Y. 2012-13 in your own case is as under:

"1. The assessee is a company carrying on Mining business, manufacture and sale of Iron Ore Pellets, Export of Ore, operation of tippers, transhipper and machinery hire, trading in cranes and shipbuilding.

2. As per the verification report received from O/o JDIT(I&Cl), Bangalore during the year an e-auction of Iron Ore (mining) has been conducted by the monitoring committee appointed by the Hon'ble Supreme Court of India by the assessee and the total e-auctioned amount for the F. Y.2011-12 was determined as under :

S.N.	*Name of the assessee*	*Category*	*Auction No.*	*E-Auctioned Amount for F.Y. 2011-12*
1	*M/s Chowgule and Company Pvt. Ltd.*	*Category B*	*AUCTION -15/7327-IRON*	*77,60,000/-*
			AUCTION-15/7327-IRON	*64,14,40,000/-*
			TOTAL	*64,92,00,000/-*

3. To verify the above said transactions and whether the same has been accounted or not a letter u/s 133(6) of the I.T. Act was issued to the assessee on 13/12/2018 by the ITO(l&Cl), Panaji calling for various details in respect of the FY 2011-12 (AY 2012-13). The assessee had furnished information vide letter dated 02.01.2019.

4. As per the verification report, the assessee had filed its return of income for the AY 2012-13 on 05.09.2012 declaring an income of Rs.5.83 crore. The details of income declared by the assessee was examined and it is found that the e-auctioned amount of iron ore for the year 2011-12 was of Rs. 64.92 crore has not been offered to tax. In reply to the show cause notice issued by the ITO (I&CI), Panaji dated 10.01.2019, the assessee replied that "the iron ore of the company was e-auctioned on 03.12.2011 as stated in Annexure 3. During the FY 2011-12, 20,961 tons were e-auctioned by the MC. However no portion of the sale proceeds were received by the Company during the FY 2011-12. The same were received during FY 2013-14 and accounted in that year. The extract of account of Monitoring Committee for these transaction accounted in FY 2013-14 is enclosed herewith as Annexure-B"

5. Further, as per report in respect of e-auction of iron ore by the monitoring committee appointed the Supreme Court of India that the said e-auction took place in the financial year 2011-12 and the same has to be accounted in the same financial year. As the company maintain its account as per Mercantile system and hence revenue/sales determined (e-auctioned amount) in the FY 2011-12 (A.Y. 2012-13) has to be accounted in the same year. Hence, the assessee's comments as, "amount were received by us in the year 2013-14 and hence we accounted in AY 2014-15" ***is not acceptable.***

6. *Hence, the e-auctioned amount of* ***Rs.64,92,00,000/-*** *determined by the monitoring committee appointed by the Hon'ble Supreme Court of India is taxable in the year of e-auctioned took place and amount determined i.e. FY 2011-12 (AY 2013-13)."*

HIREMATH BASAVARAJ MALLAYA
AO AS SPL RANGE PANAJI"

7. Significantly, the reasons furnished do not even allege that there was a failure to disclose fully and truly all material facts necessary for the Petitioner's assessment for AY 2012-13. Such

failure is an essential jurisdictional parameter that must be fulfilled before any notice can be issued for reopening the assessment proceedings after the expiry of four years from the end of the relevant AY. In the absence of any such allegation or a plain statement about compliance with this jurisdictional parameter, the impugned notice cannot be ordinarily sustained.

8. Ms Razaq, however, contended that even though the reasons may not have alleged failure to disclose fully and truly all material facts in so many words, if, factually, such failure is established, then the impugned notice should not be interfered with.

9. A contention similar to the one now raised by Ms Razaq was rejected in ***Hindustan Lever Ltd. V/s. R.B. Wadkar***[1]. The relevant discussion in paragraph 20 reads as follows :

> *"20. The reasons recorded by the Assessing Officer nowhere state that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of that assessment year. It is needless to mention that the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. No*

1 (2004) 137 Taxman 479 (Bom.)

inference can be allowed to be drawn based on reasons not recorded. it is for the Assessing Officer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons. It is for the Assessing Officer to reach to the conclusion as to whether there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the concerned assessment year. It is for the Assessing Officer to form his opinion. It is for him to put his opinion on record in black and white. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. Reasons are the manifestation of mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment. The reasons recorded by the Assessing Officer cannot be supplemented by filing affidavit or making oral submission, otherwise, the reasons which were lacking in the material particulars would get

> *supplemented, by the time the matter reaches to the Court, on the strength of affidavit or oral submissions advanced."*

10. Similarly, in ***Bajaj Allianz Life Insurance Company Ltd. V/s. Deputy Commissioner of Income Tax, Circle1(1)***[2], another Division Bench quashed the notice issued after the expiry of four years from the end of the relevant AY, *inter alia*, on the ground that in the reasons furnished, there was not even an allegation of failure on the part of the Assessee to truly and finally disclose all material facts necessary for assessment. Moreover, the Division Bench held that mentioning this requirement in the reasons is not an empty formality because it shows that the Assessing Officer is aware of the jurisdictional requirement.

11. In ***M/s. Anand Developers V/s. Assistant Commissioner of Income Tax Circle 2(1), Goa, Commissioner of Income Tax***[3], the Division Bench held that in the reasons furnished to the Assessee if there is no reference to the alleged failure to disclose material facts, the impugned notice issued beyond four years or after the expiry or from the end of the four years of the relevant AY will not sustain.

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2 (2020) 113 taxmann.com 238 (Bombay)

3 2020 (2) TMI 995 (Bombay)

12. Thus, in the present case, the impugned notice would ordinarily have to be set aside because the reasons furnished to the Assessee do not even allege any failure to disclose truly and fully the material facts necessary for assessing AY 2012-2013.

13. Besides, given Ms Razak's contention, even if some latitude is extended to the Revenue by overlooking the absence of allegation about failure to disclose material facts, the record bears out that the Petitioner made complete disclosures in the present case. Consequently, even on facts, the Revenue failed to establish any failure to disclose truly and fully all material facts necessary for its assessment for AY 2012-13.

14. After the Petitioner filed its return, by communication dated 13.12.2018, the Petitioner was informed that the Revenue was in possession of information regarding the E-auction of iron ore conducted by the Monitoring Committee appointed by the Hon'ble Supreme Court of India. The communication referred to the information available with the Revenue about the Petitioner's iron ore that was E-auctioned during AY 2012-13. In this context, the Petitioner was required to furnish information/documents, which included a brief note about business activities carried out by the Petitioner, details of mining leases held by the Petitioner and the details of iron ore E-

auctioned by the Monitoring Committee for AY 2012-13 in the format which was prescribed.

15. The Petitioner filed a response on 31.12.2018, in which complete disclosures were made. In particular, the Petitioner disclosed that its iron ore was E-auctioned on 03.12.2011 as detailed in Annexure 3 to the communication. The Petitioner further informed the Revenue that during AY 2012-13, 209,961 tons of ore was E-auctioned by the Monitoring Committee. The Petitioner pointed out that the Petitioner received no portion of the sale proceeds during AY 2012-13. The sale proceeds were ultimately received during AY 2013-14, which was duly accounted for during the said year. Even the extract of the account of the Monitoring Committee for such transactions accounted during AY 2013-14 was enclosed as Annexure 8.

16. The Petitioner also pointed out that the E-auctioned amount of iron ore for AY 2012-13 was of ₹64.92 crores, but the same was not offered to tax because the Petitioner never received this amount during AY 2012-13. Further, there was uncertainty about the status of this amount, given the orders made by the Hon'ble Supreme Court on this subject from time to time. Finally, the Petitioner pointed out that no sooner than this amount of ₹64.92 crores was received in the following AY, the

same was offered for tax. The Revenue assessed this offer and taxed the Petitioner at a higher rate of 34% when the tax rate for AY 2012-13 would have been only 32%.

17. Based upon the above disclosures, the Petitioner's return was duly assessed, and no additions were ordered. Therefore, the fact that the assessment order makes no explicit reference to the disclosures is hardly relevant.

18. From the above-undisputed material on record, it is apparent that the Petitioner did not fail to disclose fully and truly all material facts necessary for its assessment for the relevant AY 2012-13. The impugned notice, therefore, cannot sustain.

19. Ms Razaq, however, contended that since the Petitioner was following the mercantile system of accounting, even the amounts that were accrued to the Petitioner ought to have been offered to tax irrespective of whether the Petitioner actually received the same or not. Since such an amount of ₹64.92 crores was not offered for assessment during AY 2012-13, even though according to her this amount was accrued to the Petitioner, there was failure to disclose fully and truly all material facts.

20. As noted earlier, the Petitioner had fully and fully disclosed all material facts regarding this amount of ₹64.92 crores. Based on the same, the Assessing Officer could have taken the view that even the amount of ₹64.92 crores warrants tax payment because the same was accrued to the Petitioner during the AY 2012-13. Further, perhaps the Revenue could have explored the possibility of reopening the assessment within four years from the end of the relevant AY. However, for any attempt to reopen the assessment after four years from the end of the relevant AY, the Revenue had to establish failure on the part of the Assessee to disclose fully and truly all material facts necessary for its assessment for that relevant AY. In the absence of this jurisdictional parameter, the impugned notice seeking to reopen the assessment four years after the end of the relevant AY would not sustain.

21. The question in such matters is not whether the amount had indeed accrued to the Petitioner during the AY 2012-13. At best, in the facts of the present case, that would be a debatable issue. However, the main issue is whether the Petitioner had fully disclosed all material facts concerning the transaction of E-auction by the Monitoring Committee, the sale of ore, and the sale of 209,961 tons of ore by the Monitoring Committee. Once it is established that all material facts were fully and truly

disclosed, the Revenue would not be entitled to reopen the assessment after four years from the end of the relevant AY.

22. In *Titanor Components Ltd. V/s. Assistant Commissioner of Income Tax*[4], the Division Bench of this Court pointed out that there is a well-known difference between a wrong claim by an Assessee after disclosing the true and material facts and the wrong claim made by the Assessee by withholding material facts fully and truly. Only in the latter case would the Assessing Officer be entitled to reopen the assessment after four years.

23. Therefore, the question is not whether the Petitioner was right in not offering the amount of ₹64.92 crores to tax during AY 2012-13, but the question is whether the Petitioner had disclosed, fully and truly all material facts concerning this amount of ₹64.92 crores, which, incidentally, was never received by the Petitioner during AY 2012-13. Moreover, the Petitioner disclosed this material fact and explained why this amount was not brought to tax during AY 2012-13. Apparently, this explanation found favour with the Assessing Officer; therefore, this amount was not added to the returned income for the relevant AY.

4 (2012) 20 taxmann.com 805 (Bombay)

24. As noted earlier, the record also bears out that the Petitioner duly accounted for the above amount for the following AY 2013-14, and appropriate tax was paid thereon. Moreover, the AO for AY 2013-2014 did not object to this amount of Rs.64.92 crores being offered to tax in AY 2013-2014 or not being offered to tax in AY 2012-2013.

25. Thus, for all the above reasons, we are satisfied that the impugned notice exceeds the prescribed jurisdictional parameters. The impugned notice is accordingly quashed and set aside.

26. The rule is made absolute in terms of prayer clauses (a),(b) and (c), which read as follows:

> *(a) Declare that the Impugned Notice issued under Section 148 of the Act dated 29 March 2019 (Exhibit A) and the Impugned Order on objections dated 07 December 2019 (Exhibit D) and the impugned reassessment proceedings for AY 2012-13 are wholly without jurisdiction, illegal, arbitrary and liable to be quashed;*
>
> *(b) Issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, order or direction under Article 226 of the Constitution of India, quashing the Impugned Notice issued under Section 148 of the Act dated 29 March 2019 (Exhibit A) and the Impugned Order on objections dated 07 December 2019*

(Exhibit D) and the impugned reassessment proceedings for AY 2012-13 as being wholly without jurisdiction, illegal and arbitrary;

(c) Issue a Writ of Mandamus or a Writ in the nature of Mandamus or any other appropriate Writ, order or direction, directing the Respondents to refrain from making any reassessment in the Petitioner's case for AY 2012-13.

27. There shall be no order for costs.

BHARAT P. DESHPANDE, J. **M. S. SONAK, J.**

NITI K HALDANKAR

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