

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.6861 OF 2022**

Hitech Corporation Ltd. (Formerly known as
Hitech Plast Ltd.)

....Petitioner

V/s.

Assistant Commissioner of Income Tax
Circle 15(1)(2) Mumbai & Ors.

...Respondents

Dr. K. Shivram, Sr. Advocate i/b Mr. Rahul Hakani for Petitioner
Mr. Suresh Kumar for Respondents

**CORAM : K.R. SHRIRAM &
N.J. JAMADAR, JJ
DATED : 9th MARCH 2022**

P.C. :

1 Petitioner is impugning a notice dated 31st March 2021 issued under Section 148 of the Income Tax Act 1961 (the said Act), for A.Y. 2015-2016 on the ground that the reopening proposed is purely based on change of opinion by the Assessing Officer. It is petitioner's case that there are two issues which have been raised in the reasons recorded for re-opening and both those issues have been discussed and analysed during the assessment proceedings before the original assessment order dated 29th December 2017.

2 Here is the case, where admittedly the notice under Section 148 has been issued after the expiry of 4 years from the end of relevant year and assessment having been completed under Section 143(3) of the Act, proviso to Section 147 applies. As provided in the proviso, there is a bar on reopening after 4 years unless there has been failure on the part of assessee

to disclose truly and fully material facts relating to the assessment. The onus is on respondents to show that there has been failure on the part of the assessee to truly and fully disclose material facts.

3 We have considered the reasons for reopening, copy whereof is annexed to the petition. There is nothing in the reasons to indicate that there was failure on the part of petitioner to truly and fully disclose material facts. A bald allegation in the reasons that the assessee had not disclosed fully and truly all material facts, would not assist respondents since it is quiet obvious that such an allegation has been made only to take the case out of the restrictions imposed by the provisio to Section 147 of the Act. The reasons for reopening has raised two issues namely subsidy received of Rs.61,50,969/- and the provision for expenses of Rs,59,04,000/-. Both these issues were subject matter of consideration during the original assessment proceedings.

4 The documents annexed to the petition indicate that during the assessment proceedings under Section 143(3), the Assessing Officer had asked for the details of the subsidy received of Rs.61,50,969/- and also called upon petitioner to justify its claim on its taxability on the date of hearing held on 27th December 2017. A questionnaire dated 15th September 2017 was also issued to petitioner. Petitioner replied to the questionnaire by a letter dated 28th December 2017 and explained that the said subsidy was a capital receipt and hence not taxable under the said Act. Based on the explanations, the Assessing Officer has accepted the justification of the

subsidy being capital receipt.

5 As regards the provision for expenses of Rs.59,04,000/-, the Assessing Officer had raised a specific query on the date of hearing held on 27th December 2017 and petitioner by letter dated 28th December 2017 submitted their explanation. Based on the same and after due verification, the Assessing Officer made disallowance of Rs.34,20,657/- in regard to provision for doubtful debts out of total provision for expenses claimed of Rs.59,04,000/-. Of course, petitioner has filed an appeal against the said disallowance, which appeal is still pending.

6 In view of the above, it is quiet clear that both the issues raised in the reasons for reopening were subject matter of consideration before the Assessing Officer. When primary facts necessary for assessment are fully and truly disclosed, the Assessing Officer is not entitled on change of opinion to commence the proceedings for reassessment. 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.

7 In the circumstances, we are satisfied that the proposed reopening is purely based on change of opinion which is not permissible in law. The notice, therefore, has to go.

8 At this stage, Mr. Suresh Kumar submits that the subsidy issue was not discussed in the assessment order and, therefore, there is nothing to indicate that it was subject matter of consideration during the assessment

proceedings.

9 It is settled law that once a query is raised during the assessment proceedings and the assessee has replied to it, it follows that the query raised was a subject of consideration of the Assessing Officer while completing the assessment. It is not necessary that an assessment order should contain reference and/or discussion to disclose its satisfaction in respect of the query raised. The change of opinion does not constitute justification and/or reasons to believe that income chargeable to tax has escaped assessment. In the circumstances, petition is allowed in terms of prayer clause (a), which reads as under:

“(a) that this Hon’ble Court may be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, order or direction, calling for the records of Petitioner’s case and after going into the legality and propriety thereof, to quash and set aside the said (i) Notice dated 31/3/2021 u/s 148 for A.Y.-2015-16 (Exh.A), (ii) the impugned order dated 8/2/2022 being (Exh.B) and (iii) Notice u/s 142(1) dated 2/3/2022 being (Exh.C) and after examining the legality and validity thereof to quash and set aside the same.”

10 Before we part, we have to observe that the order disposing the objections, though running into almost 21 pages, does not deal with any of the submissions made by petitioner on merits. The Faceless Assessing Officer, though has listed some 68 orders/judgments to justify why the notice was issued, has not made any effort to set out how those judgments / orders were applicable to the facts and circumstances of the case. He has also not even made an effort to deal with the submissions of petitioner on the facts that these two issues were subject matter of consideration during

earlier assessment proceedings. In our view, the Faceless Assessing Officer has only wasted his time in writing such unsustainable order on objections.

11 Petition disposed.

(N. J. JAMADAR, J.)

(K.R. SHRIRAM, J.)