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

WRIT PETITION NO. 1910 OF 2022

The Saraswat Co-operative Bank Ltd.

Eknath Thakur Bhawan
953, Appasaheb Marathe Marg,
Prabhadevi, Mumbai-400025
PAN No. AABAT4497Q ...**Petitioner**

Versus

1. Assistant Commissioner of Income-tax Circle-1(3)(1)

   Room No.540, 5th Floor, Aaykar Bhavan, M.K. Road, New Marinelines, Mumbai-400 020

2. Principal Commissioner of Income-tax Circle-1

   Room No. 330, 3rd Floor, Aaykar Bhavan, M.K. Road, Mumbai-400 020

3. National Faceless Assessment Centre

   Through the Principal Chief Commissioner of Income-tax, Room No. 401, 2nd Floor, E-Ramp, Jawaharlal Nehru Stadium, New Delhi-110 003

4. The Union of India

   Through the Secretary, Government of India, Ministry of Finance, New Delhi-110 001 ...**Respondents**

Mr. Percy Pardiwala, Senior Advocate, *a/w Hiten Thakkar, i/b Lumiere Law Partners, Advocates for the Petitioner.*

Mr. Suresh Kumar, *Advocate for Respondents.*

CORAM : G. S. KULKARNI &
SOMASEKHAR SUNDARESAN, JJ.

RESERVED ON: JULY 22, 2024
PRONOUNCED ON: AUGUST 26, 2024

JUDGEMENT: (*Per, Somasekhar Sundaresan J.*)

1. Rule. With the consent of the parties, rule is made returnable forthwith and the Writ Petition is taken up for final disposal.

2. This Writ Petition challenges the reassessment proposed to be undertaken by the Revenue, of the income tax return filed by the Petitioner-Bank for the Assessment Year 2015-16. The notice dated 30th March, 2021 initiating reassessment ("***Impugned Notice***") issued under Section 147 read with Section 148 of the Income Tax Act, 1961 ("***the Act***") has been approved under Section 151 of the Act on the premise that income had escaped assessment owing to absence of full and true disclosures by the Petitioner at the time of the original assessment.

Factual Background and Context:

3. The original assessment was made pursuant to an order dated 22nd December, 2017 ("***Assessment Order***") after scrutiny of the

returns filed by the Petitioner. The Petitioner had originally declared a total income of Rs. 95.14 Crores. Pursuant to a notice for scrutiny under Section 143(2) dated 29th July, 2016. Another notice dated 27th November, 2017 was issued under Section 142(1), along with a questionnaire. Eventually, an Assessment Order was passed computing total income of Rs. 105.14 Crores, after disallowance of a deduction in the sum of Rs. 10 Crores.

4. Five years after the end of the Assessment Year, the Impugned Notice was issued. On the Petitioner seeking reasons underlying the Impugned Notice, reasons were communicated to the Petitioner vide letter dated 6th August, 2021. The relevant contents are extracted below:-

> *2. On perusal of records, it is seen that* ***the assessee in its computation of income has claimed deduction with a narration Leasehold improvement cost of Rs.49,78,007****/-. Explanation-1, to section 32(1), which required that the capital expenditure incurred on leasehold building not owned by assessee qualifies for depreciation @10% prescribed I.T. Rules, 1962. Taking into consideration this statutory mandate* ***the claim of deduction of Leasehold improvement cost bears the characters of capital expenditure and therefore cannot be considered for the deduction u/s. 37(1) of the I.T. Act.*** *Accordingly non disallowance of the same under assessment to the extent of Rs.44,80,203/- after considering depreciation.*
>
> *2.1 Further,* ***on perusal of Profit & Loss a/c****., it is seen that the* ***assessee has debited Rs. 44,13,500/- on account of donation****. However, in computation of total income,* ***the donation has not been disallowed***

while calculating the total taxable income.

2.2 Further, on perusal of P&L A/c., it is seen that the other expenses debited to P&L A/c. also include amortization of investment amounting to Rs.23,63,82,651/-. The nature of expenditure/loss claimed on this account is capital in nature which is inadmissible by virtue of Sec.37(1) of the I.T. Act, 1961.

2.3 Further, on perusal of report u/s. 44AB especially clause 34C of the same it is observed that auditors have quantified interest u/s. 201(1A) total of which works to Rs.46,446/. On perusal of computation of income it observed that no disallowance has been made. These facts were not discussed by the assessing officer while finalising the assessment. The same has not been brought to the notice of the assessing officer by the assessee with a view to conceal the above facts from the assessing officer.

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.

4. Even if tax rate of 30 percent is considered (ignoring surcharge and cess), the tax sought to be evaded amounts to Rs. 7,35,96,840/- 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.

[Emphasis Supplied]

5. By a letter dated 4th September, 2021 the Petitioner raised objections to the reasons offered. The Petitioner argued that the reasons point out to a mere change in opinion and that no new tangible material has been brought to bear. The Petitioner submitted that there was nothing to show that material facts had not been fully and truly

disclosed by the Petitioner during the original assessment. The Petitioner asserted that under Section 147, when reassessment is sought to be initiated after the expiry of four years from the end of the relevant assessment year, without a demonstration of such failure to disclose material facts, reassessment would not be permissible.

6. The Revenue, by an order dated 25th February, 2022 ("***Impugned Order***") rejected the objections. In a nutshell, the decision to conduct reassessment was stoutly defended. The Petitioner was told that all its objections could well be raised in the course of the reassessment proceedings. Consequently, this Writ Petition was filed seeking to quash the Impugned Notice, the Impugned Order, and a notice dated 11th November, 2021 under Section 143(2) read with Section 147 of the Act, calling upon the Petitioner to participate in the reassessment proceedings.

7. A Division Bench of this Court, by an order dated 14th March, 2022, granted *ad-interim* relief, directing the Respondent-Revenue to furnish a copy of the sanction for reassessment accorded under Section 151 of the Act, and also restraining all further proceedings in the matter. The *ad-interim* restraint on conduct of the reassessment has continued

till date.

8. The primary ground of challenge to the Impugned Notice is that the foundational ingredients of Section 147, including jurisdictional facts, are absent. Therefore, the very issuance of the Impugned Notice purported to be without jurisdiction, the Petitioner has sought intervention of this Court under Article 226 of the Constitution of India to quash and set aside the Impugned Notice and all consequential actions by the Revenue.

Section 147 and its import:

9. Section 147, as applicable at the time of issuance of the Impugned Notice, sets out certain essential ingredients for initiating reassessment after the expiry of four years from the end of the relevant assessment year. Failure on the part of the assessee to fully and truly disclose all material facts necessary for the assessment is a vital ingredient for initiating reassessment. The relevant extracts of Section 147 are set out below:-

> *"**147. Income escaping assessment**.- If the Assessing Officer has **reason to believe** that any **income chargeable to tax has escaped assessment** for any assessment year, **he may**, subject to the provisions of sections 148 to 153, assess or **reassess such income** and also **any other income chargeable to tax***

*which has escaped assessment and **which comes to his notice subsequently** in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year):*

***Provided** that **where an assessment** under sub-section (3) of Section 143 or this Section **has been made** for the relevant assessment year, **no action shall be taken under this section after the expiry of four years** from the end of the relevant assessment year, **unless any income chargeable to tax has escaped assessment** for such assessment year **by reason of the failure on the part of the assessee** to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or **to disclose fully and truly all material facts necessary for his assessment**, for that assessment year:*

*Provided further ******

*Provided also ******

*Explanation 1 to Explanation 4 ******

*[**Emphasis Supplied**]*

10. Even a plain reading of the foregoing would show that a vital precondition for invoking Section 147 of the Act after the expiry of four years from the end of the relevant assessment year, is that during the original assessment, the assessee ought to have failed to fully and truly disclose all material facts necessary for the assessment. It is evident from the face of the record that the reassessment was initiated in March 2021, which is five years after the end of the Assessment Year 2015-16.

Contentions of the Parties:

11. Mr. Percy Pardiwala, learned Senior Counsel representing the Petitioner, pointed out that on the face of it, the Impugned Notice and the reasons in support of it, do not make out a case for the reassessment being valid. Since the reassessment is proposed after the four-year period referred to in Section 147, it was vital for the Revenue to show at least on a *prima facie* basis, that the Petitioner had failed to disclose fully and truly, all material facts necessary for the original assessment.

12. Apart from a bald statement claiming that the Petitioner has not disclosed all material facts fully and truly, there is nothing in the Impugned Notice and in its supporting reasons to even suggest such failure, learned Senior Counsel would submit. On the contrary, each of elements based on which it was suggested that income had escaped assessment, would inherently demonstrate that the reassessment was based on a perusal of same facts as had been disclosed by the Petitioner during the original assessment. The reassessment is motivated merely by a change in the Revenue's opinion on the same facts as had been disclosed during the assessment. Mr. Pardiwala would submit that:-

A) The substantial head under which the Revenue is now seeking to conduct reassessment is that on a perusal of

the profit and loss account, the Revenue believes that amortisation of investments to the tune of Rs. 23.63 Crores ought to have been treated as capital expenditure. The annual report for the financial year 2014-15 had been filed by the Petitioner with the Assessing Officer under cover of a letter dated 26th July, 2017, which showed the debit to the profit and loss account. A reply dated 11th December, 2017 also explained the amortisation in detail. Therefore, the facts had indeed been fully and truly disclosed to the Assessing Officer;

B) The Revenue's reading of the facts disclosed too is *ex facie* erroneous. For example, in Paragraph 2.1 of the reasons provided, the Respondent has stated that the Petitioner had debited Rs. 43,13,500/- towards donations, which ought to have been disallowed. The computation of income statement and the profit and loss account clearly show that donations of Rs.43,13,500/- had been made, but a deduction under Section 80G claimed and allowed, was Rs.6,15,250/-;

C) Another reason offered for reassessment, also based "on perusal of records", is that improvement of leasehold property in the sum of Rs. 49.78 Lakhs ought to have been treated as capital expenditure with depreciation at the rate of 10%. The Assessing Officer had allowed the same as revenue expenditure. Evidently, no failure to disclose facts during the original assessment has been shown in this regard; and

D) Likewise, the Revenue has asserted that perusal of the Auditor's Report under Section 44AB of the Act would show that interest to the tune of Rs. 46,446/- ought to have been disallowed. The audit report indeed lists out in full detail, each and every element of interest that adds up to the aforesaid sum of Rs. 46,446/-, which means that there had been no failure to disclose the same.

13. Consequently, he would argue, the very jurisdictional fact necessary for initiating proceedings under Section 147 read with Section 148 i.e. failure to disclose material facts, was missing. In relation to

none of the aforesaid facts, has the Revenue sought to introduce any new evidence it has unravelled or chanced upon.

14. Instead, Mr. Pardiwala would submit that the Revenue, having conducted an informed assessment in 2017, is now seeking to change its opinion on well-disclosed facts, and yet, purporting to invoke Section 147 of the Act. In the absence of a failure by the Petitioner to fully and truly disclose material facts, four years having passed since the end of the Assessment Year, the returns simply cannot be reassessed. Therefore, he submitted, the proposed reassessment is blatantly illegal, arbitrary and constitutionally invalid, rendering the proceedings liable to be quashed, necessitating intervention by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

15. Mr. Suresh Kumar, Learned Counsel on behalf of Revenue, submitted that the affidavit-in-reply dated 7th July, 2023 ("***Reply Affidavit***") and the material already forming part of the record, would show that the reassessment was considered necessary on the basis of an audit memo received internally, containing observations and remarks about the original assessment. He would submit that the reassessment was evidently necessary because of the self-explanatory gaps set out in

the reasons for the reassessment.

Consideration and Findings:

16. We have examined the record in detail with the assistance of the Learned Counsel for the parties. We have also examined the sanction granted under Section 151 for the reassessment, along with reasons put up for securing the sanction. These reasons are near-identical to what was eventually provided to the Petitioner on 6th August, 2021, with one paragraph of comments missing. We find that the jurisdictional fact necessary to invoke Section 147 for reassessment is absent. Considering that the reassessment is admittedly being undertaken after the four-year period, it is necessary to show that during the original assessment, there had been a failure on the part of the Petitioner to disclose fully and truly, the material facts necessary for the assessment.

17. The original assessment had been conducted pursuant to scrutiny proceedings. It entailed active examination and thorough engagement between the Petitioner and the Assessing Officer. The scrutiny proceedings led to the Assessment Order, which increased the

total income from the level computed in the returns (Rs. 95.14 Crores) by Rs. 10 crores (to Rs. 105.14 Crores). Each of the four aspects set out in the reasons for reassessment, related to facts fully disclosed by the Petitioner in the course of the original assessment.

18. During the original assessment, a notice dated 29th July, 2016, under Section 143(2) of the Act had been served on the Petitioner. A notice dated 27th November, 2017 under Section 142(1) had also been served. These notices were responded to. Detailed written replies dated 7th December, 2017 and 11th December, 2017 had been provided. Personal hearings had also been held on 29th November, 2017 and 8th December, 2017. On each of the four counts for which reassessment is being proposed, the facts had indeed been disclosed, as is seen from the very reasons provided by the Revenue in support of initiating reassessment.

19. Therefore, it is evident that the Revenue is now seeking to express a different opinion based on the very same facts fully disclosed during the original assessment. The following analysis would make this clear:-

A) The treatment of revenue expenditure given in the tax returns

to the amount of Rs. 49.78 lakhs incurred towards improvement to leasehold property is writ large in the statement of computation of income and in the financial statements provided by the Petitioner to the Assessing Officer;

B) The amortisation of investments to the tune of Rs. 23.63 crores, being taken to the profit and loss account is admittedly a facet now being commented upon by the Revenue from a "perusal of the profit and loss account". While this is the most sizable element in the proposed reassessment, the fact of treating this as revenue expenditure was clearly disclosed by the Petitioner and examined by the Assessing Officer. The Petitioner's reply dated 11th December, 2017 in the scrutiny proceedings, clearly disclosed and explained the workings of the amortisation;

C) The total donation amount of Rs. 44.13 lakhs, and the mere Rs. 6.15 lakhs claimed and allowed as a deduction under Section 80G, was also evidently disclosed in more than one place in the financial statements and computation of income statement. Not only was this fact fully disclosed, but also the Revenue's reading of what was disclosed is blatantly

erroneous; and

D) The interest amount of Rs. 44,446/- that purportedly ought to have been disallowed was admittedly set out in the Auditor's Report filed by the Petitioner. Therefore, the Petitioner cannot be accused of a failure to disclose this fact too – leaving aside the issue of whether such a low amount could be regarded as a "material fact".

20. It is evident from the Reply Affidavit that the change of opinion by the Revenue is based on an internal audit of the Revenue's functioning. Therefore, judgement calls taken by the Assessing Officer during the scrutiny assessment conducted in 2017, are being re-visited in 2021. An internal audit may be the basis for improving internal processes in conduct of assessments. However, if the findings of such internal audit are to translate into reassessment proceedings on the premise that income has escaped assessment, it would be imperative to comply with the rule of law legislated by Parliament. Section 147 explicitly stipulates the grounds on which, and the framework within which, such reassessment may be initiated. The Revenue has invoked the first *proviso* to Section 147(1) in order to initiate the reassessment.

An essential ingredient of the first *proviso* is that no action for reassessment can be taken after the expiry four years from the end of the relevant assessment year, unless the income escaping assessment has been caused by the failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment. That vital element is sorely missing in the instant case.

Sanction Mechanism under Section 151:

21. Evidently, the reassessment was first proposed internally on 24th March, 2021 by the Jurisdictional Assessing Officer, and was recommended by a Range Officer on 25th March, 2021, and approved by the Principal Commissioner of Income-tax on the same day – all under Section 151 of the Act. Therefore, the reassessment has been contemplated and initiated one year after the expiry of four years from the end of the relevant assessment year (2015-16). Therefore, failure by the Petitioner to disclose material facts was a jurisdictional imperative, which was simply incapable of being discerned from the material on record. Therefore, we have no hesitation in holding that the Revenue's bid to initiate reassessment is unfounded and in direct conflict with Section 147 of the Act. Therefore, the sanction for reassessment under

Section 151 could simply not have been given.

22. The requirement for sanction by a high-ranking official under Section 151, is an inherent check and balance in the statutory scheme of the Act. Such officers are expected to apply their mind to the facts and the applicable law and then accord sanction. In the instant case, the proposed reassessment was sanctioned by the Principal Commissioner of Income-tax, with the following remarks:-

> *"**Yes**, **I am satisfied with the reasons** recorded by the A.O. **for issuance of Notice u/s 148** of the I.T.Act, 1961."*
>
> ***[Emphasis Supplied]***

23. The power to sanction reassessment under Section 151, is coupled with a duty to exercise such power reasonably, and not arbitrarily. It is trite law that absence of valid reasons constitutes arbitrariness. In the instant case, the entire process of according sanction demonstrates non-application of mind to the ingredients of Section 147, rendering the sanction to be arbitrary, calling for intervention by a writ court. Evidently, the proposal, the recommendation and the approval in the instant case was mechanical, without either application of mind to the law and the facts or even a

modicum of how the ingredients of the law had been met. In short, the machinery under Section 151 completely failed.

24. The imperative requirement of compliance with the ingredients of Section 147 and Section 148 is underlined in innumerable judgments. However, we note with respect and approval, a judgment of a Division Bench of this Court cited on behalf of the Petitioner, in case of *Hindustan Lever Ltd. v. R.B. Wadkar*[1] (*per V.C. Daga and J.P. Devadhar JJ.*), and profitably extract the following:

> *18. Reading of proviso to section 147 makes it clear that if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceeding under section 147, or recompute the loss or the depreciation allowance or any other allowance, as the case may be for the concerned assessment year. However,* ***where an assessment under sub-section (3) of section 143 has been made for relevant assessment year, no action can be taken under section 147 after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reasons of the failure on the part of the assessee to disclose all material facts necessary for his assessment for that assessment year****.*
>
> *19. In the case in hand* ***it is not in dispute that the assessment year involved is 1996-97. The last date of the said assessment year was 31st March, 1997 and from that date if four years are counted, the period of four years expired on 1st March, 2001****. The* ***notice issued is dated 5th November, 2002***

[1] *[2004] 268 ITR 332 (Bombay)*

and received by the assessee on 7th November, 2002. Under these circumstances, the notice is clearly beyond the period of four years.

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 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.

21. Having recorded our finding that the impugned notice itself is beyond the period of four years from the end of the assessment year 1996-97 and does not comply with the requirements of proviso to section 147 of the Act, the Assessing Officer had no jurisdiction to reopen the assessment

proceedings which were concluded on the basis of assessment under section 143(3) of the Act. On this short count alone the impugned notice is liable to be quashed and set aside.

[Emphasis supplied]

25. Having regard to the foregoing and in view of the findings returned by us, the Writ Petition deserves to be allowed in the following terms: -

A) The order dated 25th March, 2021 sanctioning the reassessment under Section 151 of the Act; the Impugned Notice dated 30th March, 2021 issued under Section 148 of the Act; the Impugned Order dated 25th February, 2022 rejecting the objections raised by the Petitioner are declared to be arbitrary and devoid of valid reasons and therefore illegal;

B) Consequently, the order dated 25th March, 2021 sanctioning the reassessment under Section 151 of the Act; the Impugned Notice dated 30th March, 2021 issued under Section 148 of the Act; the Impugned Order dated 25th February, 2022 and all consequential proceedings in respect of reassessment are hereby quashed and set aside.

26. Rule is made absolute in the aforesaid terms, and the Writ Petition is disposed of accordingly. There shall be no order as to costs.

[SOMASEKHAR SUNDARESAN, J.] [G. S. KULKARNI, J.]

Ashwini Vallakati