



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
O. O. C. J.

WRIT PETITION (L) NO.2784 OF 2011

Sitara Diamond Pvt. Ltd.

...Petitioner.

Vs.

Dy. Commissioner of Income Tax,  
Circle 8(3) & Ors.

...Respondents.

....

Mr.Percy J.Pardiwala, Senior Advocate with Mr.Pankaj Toprani for  
the Petitioner.

Mr.Arvind Pinto for the Respondents.

.....

**CORAM : DR.D.Y.CHANDRACHUD AND  
M.S.SANKLECHA, JJ.**

**January 24, 2012.**

**ORAL JUDGMENT (PER DR.D.Y.CHANDRACHUD, J.) :**

Rule; with the consent of Counsel for the parties  
returnable forthwith. With the consent of Counsel and at their  
request the Petition is taken up for hearing and final disposal.

2. In these proceedings under Article 226 of the  
Constitution, the Petitioner has challenged the validity of a notice  
issued on 20 June 2011, under Section 148 of the Income Tax Act,  
1961, by which an assessment for Assessment Year 2005-06 is  
sought to be reopened.

3. The Petitioner filed its return of income on 26 October 2005 for Assessment Year 2005-06 and claimed a deduction under Section 10A in the amount of Rs.1.04 crores. The Assessing Officer passed an order of assessment under Section 143(3) on 10 December 2008. The Assessing Officer in the course of the order noted that the contention of the assessee “has been examined along with the facts of the case”. The order noted that “the business activity of the assessee is manufacturing of jewellery in a Special Economic Zone.” However, the Assessing Officer came to the conclusion that the Petitioner would not be entitled to the entire deduction as claimed, having regard to the words “derived from” used in Section 10A. The order of the Assessing Officer, the Court has been informed by the Counsel appearing on behalf of the Assessee, was carried in appeal to the CIT (Appeals) and the quantification of the deduction was modified in the appeal. The assessment for Assessment Year 2005-06 is now sought to be reopened on the basis of an assessment order that was passed for Assessment Year 2007-08. The reasons which have been furnished to the assessee record that during the course of the scrutiny proceedings for Assessment Year 2007-08, the claim of the assessee

for exemption under Section 10A was examined and it was held that the assessee merely acts as a facilitator for its parent company and is not a manufacturer or exporter. The assessment proceedings for Assessment Year 2005-06 are sought to be reopened purely on the basis of the findings contained in the assessment order for Assessment Year 2007-08.

4. Counsel appearing on behalf of the Petitioner submitted that the reopening of the assessment is beyond a period of four years from the end of the relevant assessment year. Consequently, the jurisdictional condition which must be fulfilled is that there must be a failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment for that assessment year. The sole basis for reopening the assessment is the order of assessment passed in Assessment Year 2007-08. The reasons do not ex-facie contain any elaboration of how the assessee is alleged to have failed to disclose fully and truly all material facts necessary for the assessment for Assessment Year 2005-06. As a matter of fact, during the course of the assessment proceedings for Assessment Year 2005-06, the Assessing Officer considered the

facts of the case and entered a finding that the assessee carried on a business activity of manufacturing jewellery in a Special Economic Zone. Moreover, it was submitted that against the order passed by the Assessing Officer for Assessment Year 2007-08, an appeal was filed by the assessee before the CIT (Appeals), who allowed the appeal by his order dated 5 July 2011. Counsel, however, fairly drew the attention of the Court to the fact that the order of the CIT (Appeals) allowing the appeal of the assessee for Assessment Year 2007-08 and granting a deduction under Section 10A was passed after the assessment for Assessment Year 2005-06 was sought to be reopened.

5, On the other hand, it has been submitted on behalf of the Revenue that the assessee had failed to disclose all material facts for Assessment Year 2005-06, particularly in regard to the relationship between the assessee and its parent company with whom, according to the Revenue, the assessee has only a facilitation agreement.

6. We have considered the rival submissions. By the

impugned notice dated 20 June 2011, the assessment for Assessment Year 2005-06 is sought to be reopened beyond a period of four years of the end of the relevant assessment year. The condition precedent to the exercise of the jurisdiction to reopen an assessment beyond a period of four years as spelt out in the proviso to Section 147 is that there ought to be a failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment for that assessment year. In the present case, the sole basis on which the assessment proceedings were sought to be reopened is the order which has been passed on 5 July 2011 for Assessment Year 2007-08. In that order, according to the Revenue, it has been held that the assessee acts as a mere facilitator and is not a manufacturer so as to entitle it to the deduction under Section 10A. The issue, however, before the Court, is as to whether that can form the basis of the reopening of the assessment beyond a period of four years. The reasons which have been disclosed by the Assessing Officer do not set out as to what facts the assessee had failed to fully and truly disclose. Even a prima facie reference to the basis on which it is sought to be inferred that there was a failure to disclose all material facts has

not been set out in the reasons. In that view of the matter, we are of the view that the primary jurisdictional requirement for reopening the assessment beyond a period of four years has not been fulfilled in this case. Since the order passed by the CIT (Appeals) for Assessment Year 2007-08 has been passed after the assessment for Assessment Year 2005-06 has been sought to be reopened by the notice dated 29 June 2011, we have, for the purposes of this discussion, kept that circumstance out of consideration. We have come to the conclusion that the Assessing Officer having failed to establish that there was a failure on the part of the assessee to disclose fully and truly all material facts for Assessment Year 2005-06, the reopening beyond a period of four years is clearly not valid. There was a finding of fact by the Assessing Officer in the assessment order for Assessment Year 2005-06 that the business activity of the assessee is manufacturing of jewellery in a Special Economic Zone. That finding, as the assessment order notes, was based upon a consideration of the facts of the case and upon examining the contentions of the assessee.

7. For these reasons, the Petition has to be allowed. Rule is

accordingly made absolute by quashing and setting aside the impugned notice dated 20 June 2011. There shall be no order as to costs.

( Dr.D.Y.Chandrachud, J.)

( M.S.Sanklecha, J. )