

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3310 OF 2022

**Shri Dnyaneshwar Maharaj Sansthan Alandi
Dewachi,**

A public charitable trust having its address at:

1360, Bharat Bhawan, Shukrawar Peth,

Pune 411 002

PAN:AADTS4631E

...Petitioner

Versus

**1. The Income Tax Officer Exemption Ward
1(1), Pune,**

Income Tax Office, PMT Building,

Shankar Sheth Road, Pune 411 037

Email: pune.ito.exmpl@incometax.gov.in

**2. The Additional/Joint/Deputy/Assistant
Commissioner of Income Tax/Income-Tax
Officer,**

National Faceless Assessment Centre,

Through the Principal Chief Commissioner

of Income Tax (National Faceless

Assessment Centre), Delhi

Room No.401, 2nd Floor,

E-Ramp, Jawaharlal Nehru Stadium,

New Delhi-110 003

Email: delhi.pccit.neac@incometax@gov.in

3. The Union of India,

Through the Principal Secretary,

Department of Revenue, Ministry of

Finance, Room No.128-B, North Block,

New Delhi-110001

Email: rsecy@nic.in and judicial-dla@nic.in ...Respondents

Mr. Mihir Naniwadekar, with Mr. Rohan Deshpande, i/by

Ms. Farzeen Khambatta, for Petitioner.

Mr. Suresh Kumar, for Respondent-Revenue.

CORAM : K. R. SHRIRAM &
DR. NEELA GOKHALE, JJ.
DATED : 12th March 2024

JUDGMENT: (*Per Dr. Neela Gokhale, J.*)

1. **Rule.** Rule made returnable forthwith with consent of parties.
2. Petitioner challenges notice dated 25th March 2021 issued by the Income Tax Officer, Exemption Ward 1(1), Pune under Section 148 of the Income Tax Act, 1961 (“**the Act**”) and the order dated 3rd March 2022 rejecting the objections raised by Petitioner to the notice of reopening the assessment proceedings.
3. Petitioner is a public charitable trust registered under the Bombay Public Trusts Act, 1950. It is also registered under Section 12A of the Act and is thus, eligible to claim exemption under Section 11 of the Act.
4. Petitioner filed its return of income (“**ROI**”) on 30th September 2016 for Assessment Year (“**AY**”) 2016-17 disclosing ‘Nil’ income claiming exemption under Section 11 of the Act. Petitioner’s case was selected for scrutiny and notice under Section 143(2) of the Act dated 27th July 2017 was issued by Respondent No. 1. Scrutiny questionnaires under Section 142(1) of the Act were issued on 5th February 2018 to furnish details in respect of the source of FDs/deposits with the banks and cash deposited in various bank accounts during AY 2015-2016. Petitioner, vide letters dated 27th November 2018 and 17th December 2018 furnished replies to the scrutiny questionnaires and provided explanations and documents with respect to cash deposit of an amount of Rs.2,61,37,708/-. Vide

order dated 18th December 2018, Assessing Officer (“**AO**”) recorded his satisfaction with the explanation supplied to him by Petitioner and accepted the total returned income for AY 2016-17.

5. Petitioner received notice dated 25th March 2021 from the Department conveying that the AO had reasons to believe that Petitioner’s income chargeable to tax for AY 2016-17 had escaped assessment. Petitioner complied and filed its ROI on 30th May 2021.

6. Petitioner requested the AO by its letter dated 16th July 2021 to provide reasons for reopening of the assessment and also sought a copy of the sanction order by the appropriate Authority under Section 151 of the Act. Petitioner received reasons to believe escapement of income by letter dated 16th February 2022 along with a copy of the sanction. The only reason averred by the Department was in respect of alleged cash deposits of Rs.2,65,91,646/- during the year. Petitioner filed objections vide letter dated 22nd February 2022 raising several grounds to suggest that the reopening of the assessment was untenable. The Department, however, proceeded to pass the impugned order dated 3rd March 2022 rejecting the objections of Petitioner. It is this order and the notice dated 25th March 2021, which are challenged in the present Petition.

7. Mr. Naniwadekar, learned counsel appearing for Petitioner submitted that the reasons recorded for the reopening do not at all indicate any tangible reasons to believe that the income chargeable to

tax had escaped assessment for the relevant AY. He further submitted that the reopening has been initiated on a mere change of opinion as in the original scrutiny assessment, Respondent No. 1 had already scrutinized the issue of cash deposits and Petitioner had specifically submitted that the cash had been received as donations and offerings from the public at large through donation boxes. Having considered these submissions, Respondent No. 1 had accepted the ROI and passed Assessment Order dated 18th December 2018.

8. On merits, Mr. Naniwadekar contends that Petitioner/Trust is a religious institution and devotees make offerings to their deity of faith by way of cash or otherwise. He further asserted that the AO has sought to reopen the assessment solely on the basis of the information received from the Investigation Officer, Kolhapur that Petitioner had deposited cash amounting to Rs.2,65,91,646/-. He submitted that no independent enquiry was made by the AO and no live link or nexus was drawn between this information and the conclusion by the AO that income has escaped assessment. It was also submitted that the Investigation Officer, Kolhapur had already sought for relevant details under Section 133(6) of the Act which Petitioner had duly provided.

9. Mr. Suresh Kumar for the Revenue counters the arguments of Petitioner by stating that as per information received by the Income Tax Authority viz., ITO(I&CI), Kolhapur, Petitioner had deposited

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cash amounting to Rs.2,56,91,646/- with State Bank of India, Alandi Dewachi Branch in FY 2015-16 relevant to A.Y 2016-17 but had declared its Gross Receipts only at Rs.1,28,94,692/- and has claimed expenditure of Rs.2,39,80,608/- in its ROI whereas in the Audit Report, Petitioner has declared application to charitable or religious purpose at Rs.2,93,36,695/-. There is thus a difference of Rs.53,56,087/- on application of fund. He argued that as per instructions of Central Board of Director of Taxes (“**CBDT**”) received under F.No. 225/40/2021/ITA.II dated 4th March 2021, the AO has to consider categories of cases listed therein as ‘potential cases’ for taking action under Section 148 of the Act, which include reports made by the Directorate of Intelligence & Criminal Investigation (I&CI). As in Petitioner’s case, the Jurisdictional Assessing Officer (“**JAO**”) proceeded on the basis of information received from the ITO(I&CI), Kolhapur that income chargeable to tax has escaped assessment. Thereupon requisite sanction was obtained and the notice was issued.

10. The reasons recorded clearly indicate that notice has been issued and the reopening has been initiated on a mere change of opinion. In the earlier scrutiny assessment, Respondent No. 1 had the opportunity to specifically scrutinize the cash deposits made by Petitioner. A specific query was also raised by the IO, Kolhapur regarding the cash deposits under Section 133(6) of the Act, to which

Petitioner had replied stating that the said issue was being examined in the scrutiny assessment. The reason recorded and the impugned order are based on issues which have already been examined and verified during the original scrutiny assessment and the same cannot, in law, be a valid ground to reopen Petitioner's assessment for AY 2016-17 as the same would amount to a 'review'. Once the AO accepted Petitioner's explanation to the queries put forth in the scrutiny assessment and passed an assessment order, he is deemed to have applied his mind to the issues and queries put forth by him. The same facts and materials on record cannot be re-examined for change of opinion under the garb or reassessment proceedings. It has been held in a catena of judgments that reassessment proceedings cannot be initiated by the AO when he has accepted the matter in an original assessment and the same would amount to a mere change of opinion and would not give rise to 'reasons to believe'.

11. Mr. Naniwadekar has placed reliance on the decision of this Court in the matter of *Commissioner of Income Tax v. ICICI Bank Ltd.*¹ The relevant portion of the decision reads as thus:

"7. Therefore, the sine qua non to issue a notice for reopening of assessments even within a period of less than four years from the end of the assessment year, is reason to believe that income has escaped assessment and this reason to believe should be on the basis of tangible material, otherwise the exercise of power to reopen would be a review of the assessment order. As held by this court in the matter of Siemens Information Systems Ltd. v. Asst. CIT (2012) 343 ITR 188 (Bom) such tangible material could be even on the basis

¹ 349 ITR 482 (Bombay).
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of fresh material obtained during subsequent assessment proceedings. However, the test is that the reason to believe that income has escaped assessment should emanate from tangible material.

12. The Hon'ble Apex Court in ***Commissioner of Income Tax v. Kelvinator***² held as under:

"6. We must also keep in mind the conceptual difference between power to review and power to reassess. The assessing officer has no power to review; he has the power to reassess. But reassessment has to be based on fulfilment of certain precondition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of reopening the assessment, review would take place.

7. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the assessing officer. Hence, after 1-4-1989, the assessing officer has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief...."

13. It is further noticed from the documents on record that there was no reason nor any justification given in the notice to even arrive at prima facie finding that the cash deposits led to escapement of income. There was no response to Petitioner's requests for information regarding alleged undisclosed income pertaining to cash deposits over and above the deposits in the bank account. The impugned order does not even controvert the objection raised by Petitioner that the cash collected was not only deposited in its bank account but was also duly offered to tax.

14. It is settled law that a reason to suspect is not the same as reason to believe. There has to be a rational connection and the live

² 2010 (320) ITR 561 (SC).
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link between the material coming to the notice of the AO and the formation of belief regarding escapement of income. The Apex Court in the matter ***Sheo Nath Singh v. AACIT***³ has held as under:

“....There can be no manner of doubt that the words ‘reasons to believe’ suggests that the belief must be that of an honest and reasonable person based upon reasonable grounds that the Income Tax Officer may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The Income Tax Officer would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section. The Court can always examine this aspect though the declaration or sufficiency of reasons for the belief cannot be investigated by the Court.”

15. This Court in ***Neetu M Chandaliya v. Income Tax Officer-14(2) (3)*** has also held that while the Court cannot investigate into the adequacy or sufficiency of reasons, the Court can certainly examine whether the reasons are relevant and have a bearing on the matter in regard to which the AO is required to entertain the belief before he can issue notice under Section 148 of the Act. The reasons cannot be based on a suspicion subject to a case of fishing enquiry.

16. The reasons to believe in the present matter merely adverts to information from the Investigation Officer, Kolhapur that Petitioner made some cash deposits. But it is an admitted fact that Petitioner, a charitable trust registered under Section 12A of the Act, eligible to avail exemption under Section 11 of the Act has deposited the donations received in cash in its bank account and thereby disclosed ‘Nil’ total income for the relevant assessment year. Moreover, the

³ (1971) 82 ITR 147 (SC).
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accounts of Petitioner are recorded, accounted and audited and hence, undoubtedly, there is no undisclosed cash over and above the deposits in its regular bank accounts which were offered for taxation. Thus, there is no material or fact which has been stated in the reasons for reopening assessment in the present case on which any belief can be founded of the nature contemplated by law.

17. The Apex Court in the case of ***Income Tax Officer, I Ward, Distt.VI, Calcutta and Ors. v. Lakhmani Mewal Das***⁴ has held as follows:

“.....the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income-tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is not doubt true that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income-tax Officer on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and far-fetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment.....”

18. Thus, for the reasons discussed above and upon perusal of the letter providing the reasons to believe escapement of assessment as well as the order rejecting Petitioner’s objections impugned herein, we have no hesitation in holding that there is no live link, which is a *sine qua non* between the material before the AO in the present case and the belief which he has to form regarding escapement of income.

4 [1976] 103 ITR 437 (SC)
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The sanction under Section 151 of the Act granted by the prescribed authority as well as the notice dated 25th March 2021 is issued by the Department without any application of mind. In this view of the matter, the notice dated 25th March 2021 and the order dated 3rd March 2022 rejecting the objections of Petitioner are set aside. The Petition is thus, allowed.

19. Rule is made absolute. There will be no order as to costs.

(DR. NEELA GOKHALE, J.)

(K. R. SHRIRAM, J.)