IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD

WRIT PETITION NO. 10196 OF 2015

Suresh S/o. Fulchand Bumb,
Age : 71 years, Occu. Business,
R/o. 2, “Sukiran”, Radhakishan Wadi,
Jilla Peth, Jalgaon. Petitioner..

VERSUS

1. The Additional Commissioner of Income Tax,
Range 1, BJ Market, Jalgaon.

2. The Dy. Commissioner of Income Tax,
Circle-I, Old BJ Market, Jalgaon.

3. The Income Tax Officer,
Ward 1(1), Old BJ Market,
Jalgaon. Respondents..

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Mr B. R. Waramaa, Advocate for the petitioner
Mr Alok S. Sharma, Advocate for respondents no.1 to 3.

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CORAM : **S. S. SHINDE & V. L. ACHLIYA, JJ.**

RESERVED ON : 15TH MARCH, 2016.
PRONOUNCED ON : 18TH MARCH, 2016.

ORDER [PER V.L.ACHLIYA,J.]:

. The petitioner herein has preferred this writ petition under Articles 226 and 227 of the Constitution of India, seeking reliefs as under:

A) By issuing Writ of Certiorari or appropriate writ or directions or orders in like nature, impugned notice dt. 25.3.2015 (Exh-"D") issued by respondent no. 3 and sanction dt. 25.3.2015 granted by the learned Additional Commissioner thereon, notice dt. 14.8.2015 (Exh-"I") issued by respondent no.2 and impugned order dt. 16.9.2015 (Exh-"J") passed by respondent no.2 recording reasons to believe u/s 147 and 148 of the Income Tax Act may please be quashed and set aside.

B) To hold and declare that, impugned notice dt. 25.3.2015 (Exh-"D") issued by respondent no. 3 and sanction dt. 25.3.2015 granted by the learned additional Commissioner thereon, notice dt. 14.8.2015 (Exh- "I") issued by respondent No. 2 and impugned order dt. 16.9.2015 (Exh.- "J") passed by respondent no. 2 recording reasons to believe u/s 147 and 148 of the Income Tax Act are without jurisdiction, competence and barred by limitation.

2. We have heard learned counsel for respective parties at length and further perused the copies of the impugned notices and orders as well as other documents referred during the course of submissions.

3. Brief facts leading to filing of petition are as under :

(a). The petitioner herein claims to be shares sub broker. He had filed return of income tax for the assessment year 2010-11 on 27.09.2010 disclosing taxable income of Rs. 1,81,41,820/-. The said assessment was not accepted by the Income Tax Department and selected for manual scrutiny. Since the assessment amount was within the competence of Deputy Commissioner of Income Tax, file was assigned to Deputy Commissioner of Income Tax i.e. respondent No. 2. Notice under Section 143(2) of the Income Tax Act, 1961 (hereinafter shall be referred to as "the said Act") was issued by respondent No. 2. Subsequently, by order dated 09.02.2012 passed by the Commissioner of Income Tax-2, Nashik, in exercise of powers under Section 127 of the said Act, the file of petitioner was transferred to Joint Commissioner of Income Tax, Jalgaon. The said order was given effect from 09.02.2012 and to be remain in force till 31.03.2013 for the assessment year 2010-11. The said officer passed an order under Section 143(3) of the said Act on 17.12.2012, holding the taxable income of the petitioner as 1,87,87,940/-. The petitioner carried said order in appeal to the Commissioner of Income Tax, Nashik, who in turn, partly accepted the claim of the petitioner and held that the taxable income to be assessed as Rs. 1,84,59,228/- and accordingly, the petitioner had paid the tax. For the subsequent assessment year, the income of the petitioner was assessed and finalized by the Income Tax Officer, Ward No. I(I), Jalgaon.

(b) Thereafter, on 23.3.2015, respondent No. 3 decided to reopen the assessment for the year 2010-11 pursuant to the information received from DIT (Intell & Cr.Inv), Mumbai, wherein it is mentioned that, on analysis of the client code modification (CCM) data obtained from NSE for financial year 2009-10, it was established that the brokers had misused the CCM facility and created non-genuine losses and profits by showing fictitious losses to set off against their profits with a view to reduce their tax liability. The name of the petitioner was disclosed as one of such beneficiary of the manipulation and claimed losses of Rs. 36,60,755/-. As per return of income for assessment year 2010-11, losses of Rs. 62,82,394/- from the derivatives (F&O segments) shown to be debited to P&L account and same appears to be loss of Rs. 36,60,755/- claimed by petitioner in said assessment. In view of this, respondent No. 2 arrived at the conclusion that, there is reason to believe that income to the extent of Rs. 62,82,394/- has been escaped in the assessment as per third proviso to explanation 2(c)(i) to Section 147 of the said Act. After recording satisfaction that there is reason to believe that the said income has been escaped during assessment year 2010-11, the authority submitted the file to Additional Commissioner for Income Tax for seeking necessary approval under Section 151(1) of the said Act to issue notice under Section 148 of the Income Tax Act, 1961. The proposal for granting necessary approval was submitted on 23.03.2015 by respondent No. 3 to Additional Commissioner of Income Tax, Range-I, Jalgaon. Vide order dated 25.03.2015, the Additional Commissioner of Income Tax, Range-I, Jalgaon, pleased to grant sanction to reopen the assessment of the petitioner for the assessment year 2010-11 and issuance of notice under Section 148 of the Income Tax Act, 1961, after recording the reasons. After receiving the sanction from the Additional Commissioner of Income Tax, the respondent No. 3 issued notice under Section 148 of the Income Tax Act, 1961 to petitioner on 25.03.2015 and called upon the petitioner to submit a return in the prescribed proforma of his income for the assessment year 2010-11. The petitioner has complied with the requisition vide letter dated 22.04.2015 and further requested to provide certified copy of the reasons recorded for issuance of notice under Section 148 of the Income Tax, 1961 so as to enable him to raise objections. On 26.06.2015, respondent No. 3 issued notices under Section 142(1) and Section 143(2) of the Income Tax Act, 1961. Subsequently, the copy of the reasons recorded by respondent No. 3 to reopen the assessment was furnished to the petitioner and later on, at the request of the petitioner, the copy of the reasons together with the order passed by the sanctioning authority was furnished to the petitioner. On 14/8/2015, the respondent No. 2 issued notice under Section 142(1) of the Income Tax Act. The petitioner thereafter filed response on 7/9/2015 raising preliminary objection to reopening of assessment of the assessment year 2010-2011. On 16.09.2015, the Deputy Commissioner of Income Tax, Circle-I, Jalgaon i.e. respondent No. 2 passed detailed order and disposed of the preliminary objection raised against re-opening of assessment. The respondent No. 2 rejected the preliminary objection raised by the petitioner. Being aggrieved by the impugned notices and order passed, the petitioner has filed this petition on various grounds as set out in the petition.

4. Mr Waramaa, learned counsel appearing for the petitioner has strenuously contended that, the impugned notices are illegal, invalid and without jurisdiction. It is contended that, as the assessment for the year 2010-11 was finalized at the level of the Joint Commissioner of Income Tax, respondent No. 3 had no authority to reopen the assessment and issue notice u/s 148 of said Act. In this context, the learned counsel has invited our

attention to Sections 147 and 148 of the Income Tax Act, 1961 and by placing emphasis on the word 'assessing officer' used in said provision and defined u/s 2(7A) of the Income Tax Act contended that, in the facts and circumstances of the case, the Jt. Commissioner of Income Tax alone competent to make reassessment and issue notice under section 148 of the said Act and respondent No. 3 had no jurisdiction to reopen assessment and issue impugned notice. In this context, the learned counsel has placed reliance on the decision of the Delhi High Court in the case of ***Dushyant Kumar Jain V. Deputy Commissioner of Income-Tax And Another*** reported in ***[2016] 381 ITR 428 (Delhi)***.

5] Mr. Alok Sharma, learned counsel appearing for respondents No. 1 to 3 has countered the submissions advanced with contention that, in the matter of petitioner the respondent No. 3 is an 'Assessing Officer' for all purposes under the provisions of Income Tax Act as the case in question falls under his jurisdiction. It is submitted that, the assessment of the subsequent period i.e. 2011-12 and onwards wherein the petitioner had disclosed the income below Rs. 10.00 lakhs, finalized by respondent No. 3 – as Assessing Officer of concerned ward. For the assessment year 2010-11, petitioner disclosed taxable income of Rs. 1,81,41,820/-

which was more than the pecuniary jurisdiction vested with respondent No. 3 – Assessing Officer. Therefore, the case of petitioner was assigned to Deputy Commissioner of Income Tax, Jalgaon as an Assessing Officer. The Commissioner of Income Tax-2, Nashik, in exercise of powers under Section 127 of said Act, transferred the case of the petitioner to the file of Joint Commissioner of Income Tax, Range-I, Jalgaon vide order dated 09.02.2012 for administrative convenience. The Commissioner of Income Tax has specifically mentioned in the order dated 09.02.2012 that trasnfer order shall remain in force with effect from 09.02.2012 to 31.03.2013 for the assessment year 2010-11. In this background, it is submitted that there is no substance in the submissions of the learned counsel for the petitioner that the jurisdiction to reopen the case and issue notice under Section 148 of the said Act vest only with the Joint Commissioner of Income Tax. It is further submitted that, as per word "Assessing Officer" defined under sub-section (7A) of Section 2 of the Income Tax Act, the Income Tax Officer, who is vested with the relevant jurisdiction by virtue of directions or orders issued under sub-section (1) or sub-section (2) of section 120 or any other provision of Income Tax Act included in said definition. Since the respondent No. 3 is the Assessing Officer in the matter of petitioner, no illegality is committed on his part in issuing the impugned notices. He has further submitted that, as respondent No. 3 being “Assessing Officer” for the assessment year 2014-15 for the petitioner, and the information from DIT (Intell & Cr.Inv), Mumbai received to the effect that he has escaped income during the assessment year 2010-12, he acted upon that information. After due application of mind to the information received, respondent No. 3 was satisfied that there are reasons to believe that the income to the extent of Rs. 36,60,755/- has been escaped by petitioner during assessment year 2010-11, therefore, submitted the file to Additional Commissioner of Income Tax for seeking necessary approval under Section 151 of said Act and to issue notice under Section 148 of the Income Tax Act, 1961, for reassessment of assessment made for the year 2010-11. Additional Commissioner of Income Tax has considered the same and on due satisfaction that the case is fit for reassessment, pleased to accord sanction for re-opening of case under Section 147 of the Income Tax Act as well as issuance of notice u/s 148 of the Income Tax Act. It is therefore submitted tat, the entire action on the part of respondent No. 3 was within the bounds of law and in accordance with the procedure prescribed under the said Act. It is further submitted that, after the petitioner filed his response to the notice issued under Section 148 of said Act and submitted the copy of return, it was found that original assessment under Section 143(3) for assessment year

2010-11 was done by Jt. Commissioner of Income Tax, Range-I, Jalgaon and return income and assessed income is above Rs. 1.00 crore, the respondent no.3 transferred the proceedings to the file of Dy. Commissioner of Income Tax, Circle-I, Jalgaon as contemplated under Section 127 of Income Tax Act, 1961 and now the same is dealt by the Dy. Commissioner of Income Tax, Circle-I, Jalgaon. The preliminary objection raised by the petitioner was also dealt and decided by the Dy. Commissioner of Income Tax. It is therefore submitted that there is no illegality in issuing the notice under Section 148 of the Income Tax Act, by respondent No. 3 as well as impugned order passed by respondent No. 2.

6] We have carefully considered the submissions advanced in the light of the relevant provisions of the Income Tax Act and copies of the relevant documents placed on the record by the respective parties as well as affidavit-in-reply filed by respondents. On due appreciation of submissions advanced, we are of the view that there is no merit in the submissions advanced that the impugned notices are illegal and bad in law. There is no dispute as to the fact that the basic jurisdiction i.e. territorial and pecuniary jurisdiction to entertain case of the petitioner vests with respondent No. 3 as an "Assessing Officer" of concerned ward.

7] The challenge to the impugned notices and the order passed is based upon the contention that as the assessment for the year 2010-11 was made at the level of Jt. Commissioner of Income Tax, respondent No. 3 was not competent to act under Section 147 and issue notice under Section 148 of the said Act. In this context, it is useful to refer sub-section (7A) to Section 2 of the said Act which defines the meaning of the word “Assessing Officer” as referred in Section 147 and 148 of the said Act as well as for all other purposes under the said Act. As per the definition of Assessing Officer provided under Sub-section (7A) to Section 2 of the said Act, the Income Tax Officer is included in the definition of word “Assessing Officer” to be read & construed for the purpose of provisions contained in Income Tax Act, 1961. Section 120 of the said Act specify the jurisdiction of the Income Tax authorities. Sub-clause 1 of Section 120 provides that, Income-tax authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or, as the case may be, assigned to such authorities by or under the Act in accordance with such directions as the Board may issue for the exercise of the powers and performance of the functions by all or any of those authorities. Sub-section 3 of the Section 120 of the said Act provides that, in issuing the directions or orders referred to in sub-sections (1) and

(2), the Board or other income-tax authority authorised by it may have regard to any one or more of the following criteria, namely :—

(*a*) territorial area;
(*b*) persons or classes of persons;
(*c*) incomes or classes of income; and
(*d*) cases or classes of cases.

8] As discussed in the foregoing paras that there is no dispute as to the fact that the basic jurisdiction i.e. territorial and pecuniary jurisdiction to assess income upto 10.00 lakhs to entertain the case of the petitioner for assessment lies with respondent No. 3 and the assessment of the period 2011-12 onwards. As the information was received from DIT (Intell & Cr.Inv), Mumbai and it was found that the petitioner had escaped certain income during assessment year 201011, respondent No. 3 proceeded with the matter. After recording satisfaction that there is reason to believe that the income has been escaped during assessment year 2010-11, the respondent no.3 submitted the file for seeking necessary approval under Section 151 of the said Act to issue notice under Section 148 of the Income Tax Act, 1961. On due consideration of the reasons recorded by the Assessing Officer and material placed for consideration the Additional Commissioner of Income Tax, Range-I, Jalgaon, passed order under Section

151(2) of the Income Tax Act and pleased to grant sanction to reopen the assessment of the petitioner for the assessment year 2010-11 as well as to issue notice under Section 148 of the Income Tax Act, 1961. Pursuant to notice dated 25.03.2015, issued under Section 148 of the said Act, the petitioner appeared on 22.04.2015 and filed the copy of return of income for the assessment year 2010-11. In response to the notice dated 25.03.2015, the petitioner has not raised any objection as to the jurisdiction of respondent no. 3 to issue such notice. The petitioner requested for providing the copy of reasons recorded for issuance of notice under Section 148 of the Income Tax, 1961 and the copy of order passed u/s 151 of the said Act so as to enable him to raise objections. The petitioner has first time raised preliminary objection as to reopening of assessment and issuance of notice under Section 148 of the Income Tax Act by respondent No. 3 vide representation dated 07.09.2015. Preliminary objection raised by the petitioner dealt and decided by the Dy. Commissioner of Income Tax vide order dated 16.09.2015 passed in the matter.

9] In our view the order passed by the Dy. Commissioner of Income Tax is a speaking and well reasoned order. As soon as the respondent No. 3 noted from the copy of income tax return, the return for income filed for the year 2010-11 are more than one crore and the assessment was made by the Joint Commissioner, he transferred the file to Dy. Commissioner of Income Tax as per the procedure laid down in Section 127 of the said Act as same was falling within pecuniary jurisdiction of respondent No. 2. We therefore found no illegality or irregularity on the part of respondent No. 3 in issuing notice under Section 148 of the said Act as well as order dt. 16.09.2015 passed by respondent No. 2. Since the Joint Commissioner of the Income Tax has dealt the case of the petitioner for the assessment year 2010-11 pursuant to transfer order passed by the Commissioner of Income Tax to be operative for the period 09.02.2012 to 31.03.2013, there is no force in the submission of learned counsel for petitioner that officer not below the rank of Joint Commissioner of Income Tax can only make reassessment. Dy. Commissioner of Income Tax, who is now dealing with the case is duly competent and possess the pecuniary & territorial jurisdiction to deal with the case of the petitioner for reassessment. For this reason alone, we are not inclined to accept the contention of learned counsel that Joint Commissioner of Income Tax alone competent to make reassessment for the year 2010-11.

10] The impugned notice under Section 148 of the said Act was issued to the petitioner on 25.03.2015. By the notice issued the petitioner was called upon to submit the return of the

Assessment Year 2010-11 in the prescribed proforma. It is mentioned in the notice that the notice has been issued after due satisfaction of the assessing officer that there is reason to believe that in the income chargeable for the assessment year 2010-11, the petitioner has escaped certain amount from assessment within the meaning of third proviso to explanation 2(c)(i) to Section 147 of the said Act. In the notice it is also mentioned that necessary approval has been granted by the Additional Commissioner of Income Tax for issuing such notice. The petitioner has responded to the said notice dated 25.03.2015 on 22.04.2014. However, no objection as to jurisdiction is raised. The objection as to the jurisdiction has been raised first time by representation dated 07.09.2015. Thus, it is amply clear that within the period of 30 days of issuance of notice under Section 148 of said Act, no objection as to the jurisdiction was raised by the petitioner. By the notice dated 26.06.2015 issued by the respondent No. 3 under Section 142(1), respondent No. 3 called upon the petitioner to submit his return on 11.07.2015. The objection as to the jurisdiction was first time raised on 07.09.2015. As provided under sub Section 3 of Section 124 of the said Act, no person is entitled to call in question the jurisdiction of an Assessing Officer after the expiry of the time allowed by the notice issued under section 148. Section 124 of the Income Tax reads as under:

124. (1) Where by virtue of any direction or order issued under sub-section (1) or sub-section (2) of section 120, the Assessing Officer has been vested with jurisdiction over any area, within the limits of such area, he shall have jurisdiction—

(a) in respect of any person carrying on a business or profession, if the place at which he carries on his business or profession is situate within the area, or where his business or profession is carried on in more places than one, if the principal place of his business or profession is situate within the area, and

(b) in respect of any other person residing within the area.

(3) No person shall be entitled to call in question the jurisdiction of an Assessing Officer—

(a) where he has made a return 81[under sub-section (1) of section 115WD or] under sub-section (1) of section 139, after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 142 or 81[sub-section (2) of section 115WE or] subsection (2) of section 143 or after the completion of the assessment, whichever is earlier;

(b) where he has made no such return, after the expiry of the time allowed by the notice under 82[sub-section (2) of section 115WD or sub-section (1) of section 142 or under sub-section (1) of section 115WH or under section 148 for the making of the return or by the notice under the first proviso to section 115WF or under the first proviso to section 144] to show cause why the assessment should not be completed to the best of the judgment of the Assessing Officer, whichever is earlier.

11] Learned counsel for the petitioner has relied on the decision of the Delhi High Court in the case of ***Dushyant Kumar Jain V. Deputy Commissioner of Income-Tax And Another*** reported in ***[2016] 381 ITR 428 (Delhi)***. In our view the decision in the case of Dushyant Kumar has no bearing upon the facts of the present case. The facts of the case cited are altogether different than the present case. In the case cited the notice was issued and reasons for reopening assessment were recorded by the Income Tax Officer, who was not the assessing officer for the assessee for the concerned assessment year. So also the notice was found to be issued beyond the period of limitation prescribed under the provisions of Section 149(1)(b) of the said Act. In the present case, the notice has been issued within limitation, so also notice was issued by the assessing officer having territorial jurisdiction to deal with case of petitioner. It is nowhere the case of the petitioner that the respondent No. 3 is not the Assessing Officer for the petitioner. So also the assessment of the period 2011-12 onwards are dealt and finalized by Income Tax Officer, Ward No. 1, Jalgaon.

12] As discussed in the foregoing paras, respondent No. 3 had issued the notice under Section 148 of the said Act after seeking necessary approval under Section 151 of the said Act. The proceeding is already transferred by respondent No. 3 to Dy. Commissioner of Income Tax, who is vested with the jurisdiction to deal with the matters having valuation more than 10.00 lakhs. The objections raised by the petitioner also decided by the Dy. Commissioner of Income Tax, who holds the territorial and pecuniary jurisdiction to make the reassessment of the case of the petitioner. The case is still under consideration of Dy. Commissioner of Income Tax. The Joint Commissioner, who has assessed income for the assessment year 2010-11 and dealt the case, as the file was transferred to him from the file of Dy. Commissioner of Income Tax by the order of Commissioner of Income Tax in exercise of power under Section 127 of the Income Tax Act. In view of this, we find no merit in the submissions advanced that the impugned noticed issued by respondent No. 3 is illegal, bad in law and without jurisdiction. So also, we find no infirmity in the order dated 16.09.2015 passed by the Dy. Commissioner of Income Tax.

13] The learned counsel for the petitioner further submitted that reasons recorded by respondent No. 3 and the copy of the order of sanction were not furnished along with notice dated 25.03.2015 and same was furnished and therefore the entire proceedings is vitiated in law. We are not inclined to accept this contention for the reason that, furnishing such reasons and order granting permission to issue notice under Section 148 of the said Act along with notice issued under Section 148 of the said Act is not the mandatory requirement of law. In this context, the leaned counsel for the respondents has rightly placed reliance on the decision of the Apex Court in the case of ***GKN Driveshafts (india) Limited Vs. Income Tax Officer & others reported in (2003) 1 scc 72*** wherein the Hon'ble Apex Court has turned down similar contention. In para 5 of the judgment, the Apex Court has observed as under:

> "We see no justifiable reason to interfere with the order under challenge. However, we clarify that when a notice under section 148 of the Income Tax Act is issued, the proper course of action for the noticee is to file return and if he so desires, to seek reasons for issuing notices. The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the notice is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment in respect of the above said five assessment years. "

In the instant case, the fact is not in dispute that on the request of the petitioner the respondent has provided copy of the reasons recorded by respondent No. 3 as well as the copy of the order passed under Section 151 of the said Act. So no case of prejudice caused to petitioner has been made out.

14] In the light of the discussion made in the foregoing paras, we are of the view that there is no merit in the petition filed. The impugned notices cannot be said to be issued without jurisdiction or bad in law. So also we find no infirmity in the impugned order dated 16.09.2015 passed by Dy. Commissioner of Income Tax. In view of this, the petition filed by petitioner is devoid of merits and substance therein and therefore same is liable to be dismissed. Accordingly, the petition is dismissed. However, no order as to costs.

[V. L. ACHLIYA]
JUDGE

[S. S. SHINDE]
JUDGE

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