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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1221 OF 2000

M/s. Anubhav Market Research &
Development Pvt. Ltd. ..Petitioner
Versus
Dy. Commissioner of Income Tax & Ors. ..Respondents

....
Mr. Mihir Naniwadekar for the petitioner.
None for the respondents.
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CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.

DATE : 28th JULY, 2016

P.C. (PER A. K. MENON, J.):

1. By this petition, the petitioner seeks to challenge the impugned notice dated 31st March, 2000 issued under Section 148 of the Income Tax Act, 1961 (the Act) copy of which appears at Exhibit E. Upon receipt of the notice the petitioner vide letter dated 10th April, 2000 sought reasons for issuance of a notice proposing reopening of the assessment for A.Y.1998-99. On 12th April, 2004 the Assessing Officer informed the petitioner-assessee that it is not obligatory for him to furnish copies of the reasons to the petitioner-assessee. After receipt of this letter, assessee vide a rejoinder dated 25th April, 2000 complied with the requirement of the

impugned notice and filed its return of income within 30 days stipulated therein. Thereafter once more a copy of reasons recorded for reopening was sought. However, as the reasons were not forthcoming, the assessee filed the present petition.

2. Rule was issued on 4th July, 2000. An interim order in terms of prayer clause (c) was granted after hearing the respondents. Prayer clause (c) restrained the respondent from proceeding with the reassessment pending the hearing of the petition. Today the petition is listed for hearing and final disposal. None appears for the respondent. Thus record shows that the respondent waived service on 4th July, 2000. This petition had also appeared on board on 14th July, 2016 when none appeared for the respondent and that is why it came to be adjourned and has been taken up today for hearing.

3. The respondents had filed an affidavit-in-reply dated 4th July, 2000 to oppose the admission of the writ petition reserving the right to file a detailed affidavit in this case if the petition is admitted. No further affidavit has been filed. In paragraph 3 of the affidavit-in-reply to oppose the admission, the deponent has stated that after the return of income for A.Y. 1998-99 was filed on 27th November, 1998, the Assessing Officer

processed it under Section 143(1) of the Act. However during the scrutiny assessment for A.Y. 1997-98 Assessing Officer found that the petitioner had claimed bogus losses. This led the Assessing Officer to a reasonable belief that income chargeable to tax had escaped assessment in the Assessment year 1998-99. It is stated that the requisite reasons had been recorded and the Assessing Officer was ready and willing to provide the reasons to the petitioner if he was so directed.

4. We have heard Mr. Naniwadekar, the learned counsel appearing on behalf of the petitioner in support of the petition. He has relied upon the decision of the Hon'ble Supreme Court in the case of ***GKN Driveshafts (India) Ltd. v/s. Income Tax Officer & Ors. 259 ITR 19*** which clearly sets out the procedure to be followed in the event of a notice being issued under Section 148. It is now obligatory for the Assessing Officer to provide the reasons recorded within a reasonable time to the assessee. Upon receipt of these reasons the assessee would be entitled to file its objections to the same. The Assessing Officer is bound to dispose of the objections to the reasons by a reasoned order. However, in the instant case, in view of the fact that the Revenue has confirmed that reasons have been recorded and the Assessing Officer has also expressed his willingness to provide the reasons if so directed, we are of the view that this petition can be

conveniently disposed of by directing the Assessing Officer to provide a copy of the reasons to the assessee. Upon doing so the petitioner will be entitled to raise its objections to recorded reasons and thereafter the Asessing Officer will be bound to follow the directions of the Supreme Court in GKN Driveshafts (supra). In the circumstances, respondent no.1 is directed to provide the petitioner with a copy of the reasons said to have been recorded as stated in the affidavit dated 4th July, 2000. Upon providing such reasons, the petitioner will be entitled to file its objections forthwith and thereafter the Assessing Officer would pass an order on the objections and pass an Assessment Order in accordance with the procedure as set out in GKN Driveshafts (supra) and ***Asian Paints Ltd. v/s. DCIT 296 ITR 90.***

5. Needless to state the period for which the impugned notice has been stayed will be excluded for the purposes of computing the period of limitation under Section 153 of the Act to pass an order of Assessment under Section 143(3) r/w Section 147 of the Act.

6. Petition is disposed of in above terms. No order as to costs.

(A. K. MENON, J.) **(M. S. SANKLECHA, J.)**

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