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

WRIT PETITION (L) NO. 573 OF 2016

Hubtown Ltd., Mumbai .. Petitioner

v/s.

Dy. Commissioner of Income Tax
Central Circle 5(1), Mumbai & Anr. .. Respondents

Mr. J.D. Mistri, Senior Counsel a/w Niraj Seth i/b Atul Jasani for the petitioner
Mr. N.C. Mohanty for the respondent

CORAM : M.S. SANKLECHA &
A.K. MENON, J.J.

DATED : 6th APRIL, 2016.

P.C.

1. At the request of the parties, the petition is disposed of finally at the stage of admission.

2. This petition under Article 226 of the Constitution of India challenges the Notice dated 27th March, 2015 issued under Section 148 of the Income Tax Act, 1961 (the Act). The impugned notice dated 27th March, 2015 seeking to reopen the assessment for A.Y. 2008-09.

3. The petitioner's grievance is that the impugned notice dated

27th March, 2015 is completely without jurisdiction particularly on the ground that the impugned notice is issued beyond the period of 4 years from the end of the relevant Assessment Year 2008-09 and in the present facts, it is not open to the Assessing Officer to allege that there has been any failure on the part of the petitioner to fully and truly disclose all the material facts necessary for assessment. It is further submitted that the issues raised in the reasons in support of the impugned notice were either a subject matter of enquiry during the regular assessment proceedings or it is an attempt to examine issues which ought to have been a subject matter of examination during the regular assessment proceedings leading to an order dated 24th December, 2010 under Section 143(3) of the Act. The reasons in support of the notice refer to various issues which fall in the aforesaid two classes. The petitioner also filed an exhaustive objection to the reasons recorded on 15th March, 2015 pointing out that the reasons in support of the impugned notice do not indicate that the Assessing Officer has jurisdiction to issue the impugned notice under Section 148 of the Act. However, the Assessing Officer by the order dated 8th February, 2016 disposed of the exhaustive objections of the petitioner by proceeding on the basis that once a belief has been formed by the Assessing Officer that the income chargeable to tax has escaped assessment then such opinion cannot be challenged. It is on the above premise that the Assessing Officer has not considered and / or dealt with the detailed objections filed by the petitioner to the reasons recorded in support of the impugned notice dated 27th March, 2015.

4. The Assessing Officer has proceeded on a fundamentally erroneous assumption that the notice under Section 148 of the Act cannot be a subject matter of challenge disregarding the binding decision of the Apex Court in ***G.K.N. Driveshaft Ltd. Vs. Income Tax Officer, 259 ITR 90***. In fact, the entire procedure of an assessee objecting to the reasons in support of the impugned notice recorded by the Assessing Officer is to ensure that the Assessing Officer has second look at the reasons recorded by him on consideration of the objections. This procedure has been evolved so that if the Assessing Officer is satisfied with the objections put forth by the assessee, then he would withdraw the notice seeking to reopen the assessment. All this with the purpose that once an assessment has been done, it has finality and therefore should not be lightly reopened. The order disposing of the objections is not an empty formality. It requires that the Assessing Officer is to apply his mind to the objections raised by the assessee to recorded reasons and briefly deal with objections before sustaining the

impugned notice or coming to the conclusion that the impugned notice is not sustainable.

5. In view of the fact that the Assessing Officer has completely misunderstood the scope of an order disposing of the objections to the reopening notice, we set aside the order dated 8th February, 2015. However, we restore the petitioner's objections to the impugned notice dated 27th March, 2015 for fresh disposal to the Assessing Officer to pass a final order after due consideration of the objections filed by the petitioner in accordance with law. Mr. Mohanty, learned Counsel for the Revenue states that the objections would be disposed of within a period of 4 weeks from today. However, the assessment proceedings are stayed for a further period of 10 weeks from today by staying the notice dated 27th March, 2015. This would enable the Assessing Officer to dispose of the objections within four weeks from today and also give time to the petitioner to challenge the same, if the order is adverse to the petitioner.

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

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