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

WRIT PETITION NO. 3029 OF 2016

Devi Electronics Pvt. Ltd. .. Petitioner

v/s.

Income-Tax Officer 5(1)(3) & Anr. .. Respondents

Mr. K. Gopal i/b Jitendra Singh for the petitioner
Mr. Suresh Kumar for the respondent

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

DATED : 23rd DECEMBER, 2016.

P.C.

1. This petition challenges Notice dated 5th October, 2015 under Section 148 of the Income Tax Act, 1961 seeking to reopen the assessment for Assessment Year 2010-11.

2. The petitioner filed its Return of Income on 24th March, 2012 declaring a total income of Rs.2.21 lakhs. The Return of Income was processed under Section 143(1) of the Act and was communicated to the petitioner.

3. On 5th October, 2015, the impugned notice was issued and the

reasons in support of the impugned notice seeking to reopen the assessment were two fold as under :-

> *(a) That the assessee has not carried out any business activity during the subject assessment year and, therefore, the business loss of Rs.14.47 lakhs claimed is not correct; and*
>
> *(b) The business loss as claimed cannot be adjusted against the income from house property.*

4. The petitioner filed its objection to the reasons and the same was rejected by order dated 13th December, 2016 passed by the Assessing Officer.

5. This led to the filing of this petition on the ground of absence of reasonable belief that income chargeable to tax has escaped assessment.

6. We find that the Return of Income filed for the subject assessment year was not a subject matter of examination earlier as the same was processed under Section 143(1) of the Act. The reasons indicate two independent basis for reasonable belief that the income chargeable to tax has escaped assessment. The first is the petitioner did not carry out any business activity during the subject assessment year and, therefore, no loss could be claimed on account of business.

While the second is set off of the business loss could not be allowed against the other heads of income. Both the reasons for belief are independent and even if one of them is satisfied, no occasion would arise for us to interfere.

7. So far as the first issue is concerned, we find that the Assessing Officer had come to a reasonable belief that no business loss could be claimed as the petitioner had not carried out any business activity during the year. This is also supported by notes to the account filed along with the Return of Income which indicates that the petitioner did not carry on any business activity during the year. This fact would form the basis for reasonable belief that income chargeable to tax has escaped assessment. In as much as expenditure which has nothing to do with the business is being claimed as business expenditure. At the stage of issuing a notice all that the Assessing Officer has to reach is a *prima facie* view that the income chargeable to tax has escaped assessment and there must be reasons for that belief. It is not expected of the Assessing Officer to have a cast-iron case before exercising jurisdiction to issue reopening notice. All that is required is reasonable belief. It is likely that on a fuller consideration, the Assessing Officer may reach a different conclusion. But the likelihood of a different view

when material exist of forming a belief will not justify our stopping the Assessing Officer for exercising jurisdiction to assess the petitioner on the reopening notice.

8. Needless to state that the petitioner would be entitled to urge before the Assessing Officer all contentions on merits including the fact that the petitioner is entitled to a business loss for the subject assessment year.

9. In view of the above, according to us, it is not a fit case to exercise our extra-ordinary jurisdiction under Article 226 of the Constitution of India and restrain the Assessing Officer from proceeding further with assessment pursuant to the impugned notice dated 5th October, 2015.

10. In the above view, the petition is dismissed. No order as to costs.

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