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

INCOME TAX APPEAL NO. 829 OF 2016

Pr. Commissioner of Income Tax-32,
Mumbai .. Appellant

v/s.

Rajesh D. Nandu (HUF) .. Respondent

Mr. Arvind Pinto for the appellant
Mr. F.V. Irani a/w Mr. Atul Jasani for the respondent

CORAM : AKIL KURESHI &
M.S. SANKLECHA, J.J.

DATED : 18th DECEMBER, 2018.

P.C.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 17th April, 2015, passed by the Income Tax Appellate Tribunal (the Tribunal). This appeal relates to Assessment Year 2004-05.

2. The Revenue has urged the following questions of law for our consideration :-

> *(i) Whether in law and on the facts of the instant case, was the decision of the Tribunal not perverse holding that the AO had to make further enquiry and gather material to come to entertain a belief that income has escaped assessment; whereas Court have held that it is only necessary that there be a prima facie belief*

recored by the AO and the process of gathering further material is only at the stage of assessment.

(ii) Whether in law and on the facts of the instant case, was the Tribunal perverse in coming to the conclusion that since certain facts were brought to the notice of the AO for AY 2005-06, the reopening of AY 2004-05 is bad in law?

3. The respondent assessee is an HUF. It is a proprietor of M/s. Nandu Financial Services and has shown it brokerage income in the subject assessment year. The assessee filed its return of income o 5th October, 2005 declaring income of Rs.1.34 lakhs for Assessment Year 2004-05. The return of income was accepted and processed under Section 143(1) of the Act.

4. Thereafter, on 25.03.2008, a reopening notice under Section 148 of the Act was issued to the respondent seeking to reopen the assessment for A.Y. 2004-05. The reasons in support of the reopening notice as provided to the respondent reads as under :-

"Return of income was filed on 05.10.2004 with a total income of Rs.1,34,255/-. Return was processed only under section 143(1).

The balance sheet filed along with the return of income shows that a gift of Rs.22,73,313/- was received by the assessee from one Mr. Kunal Arvind Bhansali of Hong Kong, China. This donor is not related to the assessee. During assessment proceedings for A.Y. 2005-06, assessee produced only copy of passport and bank account of the donor. The genuineness of the

> *gift is to proved.*
>
> *Therefore, I have reasons to believe that income to the tune of Rs.22,73,313/- has escaped assessment u/s 148 for A.Y. 2004-05."*

5. The impugned order of the Tribunal on perusal of the reasons concluded that they were unable to appreciate as to how the Assessing Officer come to the conclusion that the gift received by the respondent assessee was not genuine. Admittedly, the balance sheet, bank statement as well as the passport were perused during the assessment proceedings for A.Y. 2005-06. The Tribunal observed that reopening notice issued under Section 148 of the Act, cannot be issued merely for fishing inquiry. The reasons to believe must have the rational connection to material facts on record. The impugned order of the Tribunal records that no material has come to the notice of the Assessing Officer for the formation of the belief that the assessee's income has escaped assessment on account of the gift not being genuine. The impugned order particularly records that in the assessment order for A.Y. 2005-06, there is no mention about the gift being received by the assessee not being genuine. Thus, on the above basis, the Tribunal concluded that the reasons as recorded do not indicate reasons to believe that income chargeable to tax has escaped

assessment. In fact, the impugned order while allowing the respondent's appeal in particular records as under :-

> *"Thus, we are of the opinion that the "reasons recorded" by the Assessing Officer for reopening the case is vague and farfetched and there is no rational and intelligible nexus between the reasons and the belief and therefore, the proceedings initiated for reopening the assessment u/s 147 vide notice dated 25.03.2008 u/s 148 is bad in law and without jurisdiction."*

6. Mr. Pinto, learned Counsel appearing in support of the appeal contends that gift has been received as indicated in the reasons, from a person who is not related to the respondent assessee. It is submitted that only the creditworthiness and the identity of the donor stands proved by virtue of the bank account and passport of the donor. The genuineness of the gift is yet not proved. It is submitted that the issue of genuineness would be examined during the reassessment proceedings. Thus, this appeal requires consideration.

7. There can be no dispute that in case where a return of income has been processed under Section 143(1) of the Act, the Revenue has a greater latitude in reopening an assessment. However, even in such cases, the reopening of an assessment can only be done if there is reason to believe that income chargeable to tax has escaped assessment. The reason recorded in support of the reopening notice must disclose

the basis of the reasons to believe that income chargeable to tax has escaped assessment. The reasons must provide a link between the material available and the formation of reasonable belief that income chargeable to tax has escaped assessment. The reason to believe must be based on some material available with the Assessing Officer and no reasonable belief can be formed without some material to support the same.

8. We find that the impugned order of the Tribunal has correctly held that the reopening of the assessment cannot be for the purpose of fishing inquiry. The reopening of the assessment has to be based on same material which is available with the Assessing Officer which would give rise to reason to believe that the income chargeable to tax has escaped assessment. The reasons as recorded in support of the impugned notice to doubt the genuineness of the gift is not based on any material. At the highest, it is only a suspicion subject to enquiry. In fact, this is a case of fishing enquiry. Thus, there is no material available with the Assessing Officer to have the reason to believe that income chargeable to tax has escaped assessment. The view taken by the impugned order of the Tribunal cannot be found fault with.

9. In the above view, the question as proposed does not give rise to any substantial question of law.

10. Thus, appeal is dismissed. No order as to costs.

(M.S. SANKLECHA, J.) **(AKIL KURESHI, J.)**