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

WRIT PETITION NO.3595 OF 2018

Bhanumati Malraj Kabali … Petitioner

V/s.

Income Tax Officer, Ward 19(1)(3) and anr. … Respondents

Mr.K.Gopal with Ms.Neha Paranjpe i/by Mr.Satendra Kumar Pandey for the Petitioner.
Mr.Sham Walve for the Respondents.

CORAM : AKIL KURESHI AND
M.S.SANKLECHA, JJ.
DATE : JANUARY 24, 2019.

P.C.:-

1. Petitioner has challenged a notice of reopening of assessment dated 28th March, 2018 in following background.

2. Petitioner is an individual. For the assessment year 2011-12 the petitioner had filed the return of income on 26th July, 2011 declaring total income of Rs.27.96 lakhs (rounded off). Such a return was processed under Section 143(1) of the Income Tax Act, 1961 ("the Act" for short) and accepted without scrutiny. To reopen such assessment the respondent No.1-Assessing Officer

issued the impugned notice. In order to do so, he had recorded following reasons:-

"1. The assessee, has filed Return of income for A.Y. 2011-12 on 26/07/2011 declaring total income at Rs.27,96,412/- . Return of income was processed u/s 143(1) of the Act at Rs.27,96,412/-. The assessee has declared income from other sources.

2. Information was received in this office from DDIT (Inv) Unit 4(1), Kolkata vide their letter No.DDIT(Inv.)/Unit-4(1)/Kol/Trust/2015-16/2291 dated 02.12.2015 that a survey action watch conducted by the Kolkata investigation wing on three institution in the matter of facilitating bogus donation u/s 35(1)(ii) of the IT Act. It was found that the donors/beneficiaries in connivance with these institute with the active help of brokers, entry operator/billers were engaged in bogus donation syndicate and the donation were returned back to the donors in lieu of commission.

3. After investigation, the DDIT (Inv) Unit 4(1), Kolkata has forwarded the list of beneficiaries who had made bogus donation during the F.Y. 2010-11 (A.Y. 2011-12) from the trusts. The name of the above assessee appears in the list of bogus donations beneficiaries as mentioned below:-

Sr.No.	Name of the assessee	Name of the trust whom donation given	Total donation given during AY 2011-12
1	BHNUMATI MULRAJ KABALI	SCHOOL OF HUMAN GENETICS AND POPULATION HEALTH	15,00,000/-
	Total		

4. In view of the above facts narrated in aforesaid paragraph, the above profit is nothing but accommodation entry to introduce the unaccounted money of the assessee through above means. Thus, after applying my mind I have reason to believe that the

income of the assessee chargeable to tax for the A.Y. 2011-12 amounting to Rs.15,00,000/- has escaped assessment due to failure on the part of the assessee to disclose fully and truly all material facts in the return of income, in terms of provisions of section 147 of the Income Tax Act.

5. On verification of the ITS details on ITD system & ITBA/ 360 degree, it is found that the Transactions carried out by the assessee during the year are not commensurate with the assessee's profile and the source and nature of the transactions remain unverifiable and unexplained.

6. In this case, return of income was filed for the year under consideration but no scrutiny assessment u/s 143(3) of the Act was made. Accordingly, in this case, the only requirement to initiate proceedings u/s 147 is reason to believe which has been recorded in above paras. It is pertinent to mention here that in this case the assessee has filed return of income for the year under consideration but no assessment as stipulated u/s 2(40) of the Act was made and the return of income was only processed u/s 143(1) of the Act. In view of the above, provisions of clause (b) of explanation 2 to section 147 are applicable to facts of this case and the assessment year under consideration is deemed to be a case where income chargeable to tax has escaped assessment."

3. Upon being supplied the reasons, the petitioner raised objections to the notice of reopening of assessment on 17th August, 2018. Such objections were rejected by the Assessing Officer by an order dated 8th October, 2018. Hence, the petition.

4. Having heard learned counsel for the parties for final disposal of the petition, we notice that in the reasons recorded

by the Assessing Officer has cited one ground namely of having prima facie information at his command supplied by the Investigation Wing that the petitioner had made a donation of Rs.15 lakhs to one "School of Human Genetics and Population Health", a Trust (hereinafter to be referred to as "the said Trust") which was not a case of genuine donation. The information goes on to state that bogus donation was made and the amount would be reverted back to the donor after deduction of commission. The Assessing Officer added that the verification of the records of the assessee would show that his income during the year under consideration did not justify such sizable donation being made. In short, the Assessing Officer doubts the genuineness of so-called donation by the petitioner of a sum of Rs.15 lakhs to the said Trust. Being a case where the return has been accepted without scrutiny, the Assessing Officer would have much wider latitude in reopening the assessment. Nevertheless as held by the Supreme Court in case of **Assistant Commissioner of Income Tax vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd.**[1], even in such a case the requirement that the

1 (2007) 291 ITR 500 (SC)

Assessing Officer must have reason to believe that income chargeable to tax has escaped assessment, must be satisfied. Such a view is consistently followed by this Court. In case of **Inductotherm (India)(P) Ltd. Vs. M. Gopalan, Deputy Commissioner of Income Tax**[1]. Gujarat High Court has also expressed the same view. Within this narrow scrutiny we have examined the reasons recorded by the Assessing Officer and other materials on record. The assessee points out that the reasons lack validity because during the period relevant to the assessment year in question, the assessee had not made any donation of Rs.15 lakhs or for that matter of any amount at all to the said Trust. This is a fact which can be easily verified from the return filed by the petitioner. The counsel for the department was unable to dispute this aspect. We have also perused return of the assessee and find that in such return there was no claim of donation of Rs.15 lakhs to the said Trust. In plain terms, therefore, the information supplied to the Assessing Officer by the Investigation Wing and on which he acted for issuing the impugned notice, was a wrong information. We had also called

1 (2013) 356 ITR 481(Guj)

for the original files of the department to guard against any possible typographical or clerical error in recording reasons. Such files also would not reveal anything that could save the impugned notice. The files contain the communication from the Investigation Wing providing information to the Assessing Officer of beneficiaries of bogus donations, which also contain the Trust to which such donations were made and the amount of donation so given. This information in case of the petitioner, refers to sum of Rs.15 lakhs, allegedly donated by the petitioner to the said Trust. Thus, on the basis of such information supplied by the Investigation Wing is falsified upon perusal of the return filed by the assessee. We also notice that in the return the assessee had claimed to have paid the donation of Rs.20 lakhs to one Scientific Research of Rural Development. However, the information supplied to the Assessing Officer by the Investigation Wing does not even suggest that this Trust namely Scientific Research of Rural Development was a dubious Trust and the Investigation Wing had material to believe that the donors of this Trust were beneficiaries of the bogus entries.

5. In the result, impugned notice is set aside. Petition is disposed of accordingly.

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