

R.M. AMBERKAR
(Private Secretary)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

WRIT PETITION NO. 3629 OF 2018

Mohanlal Champalal Jain

.. Petitioner

Versus

The Income Tax Officer - Ward 1(2), Thane
& Ors.

.. Respondents

-
- Mr. Devendra H. Jain for the Petitioner
 - Mr. Sham Walve for Respondent Nos. 1 and 2
-

**CORAM : AKIL KURESHI &
M.S. SANKLECHA, JJ.**

DATE : JANUARY 31, 2019.

P.C.:

1. The petitioner has challenged a notice of reopening of assessment dated 28.3.2018 issued by respondent No. 1 - Income Tax Officer.

2. Brief facts are as under:-

(a). The petitioner is a senior citizen. During the period relevant to the assessment year 2011-12, the petitioner had traded in Commodity Exchange. On the premise that he had no taxable income, the petitioner had not filed return for the said assessment year 2011-12. The Assessing Officer,

however, was of the opinion that the petitioner had entered into franchises of Rs. 18.82 crore in Commodity Exchange. The Assessing Officer further noticed that the petitioner had not filed return of income for the said assessment year. He therefore, issued the impugned notice to re-assess the petitioner's income chargeable to tax. In order to do so, he had recorded the following reasons:-

**"REASONS FOR REOPENING OF ASSESSMENT U/S 147 OF THE
I.T. ACT, 1961**

1. Details of assessee

The assessee is an individual. It is seen from ITD system that the assessee has not filed the return of income for AY 2011-12.

2. Details of information received

In this case, information as per NMS data and ITS details has indicated that the assessee has made transactions of Rs. 18,82,26,100/- in National / Multi Commodity Exchange. Ongoing through the details, it is seen that the assessee has not filed his return of income for the A.Y. 2011-12.

3. Analysis of information received

From the analysis of information as per NMS date and ITS details, it is seen that during the F.Y. 2010-11, the assessee has entered into contract of Rs. 18,82,26,100/- in the Commodities exchange, however, no return of income has been filed for A.Y. 2011-12. As such, profit / gain on commodity exchange remains unexplained and also the source of investment in these transactions remains unexplained.

4. **Enquiries made as sequel to information received**

A letter for verification of above information was issued to assessee requesting to comply. However, there is no response received from the assessee. As per information received from the system, it is seen that the assessee has not filed his return of income. As such, from the above information, Profit / Loss earned from Commodity transactions of Rs. 18,82,26,100/- remains unexplained. As such, the income exceeding Rs. 1 Lakh or more has escaped assessment.

5. **Findings**

Analysis of information received and the enquiries made revealed that :-

- (i) The assessee has transacted in Commodities Market at Rs. 18,82,26,100/- during the A.Y. under consideration.
- (ii) No return of income has been filed by the assessee for AY 2011-12.
- (iii) The Profit/Loss earned from Commodity transactions remains unexplained and this income exceeding Rs. 1 Lakh or more has escaped assessment since it has not been disclosed by the assessee as no return is filed by him.

6. **Basis of forming reason to believe and details of escapement of income**

In view of the above, I have reason to believe that the income chargeable to tax of more than Rs. 1 Lakh for AY 2011-12 has escaped assessment within the meaning of provisions of Section 147 of the Income Tax Act, 1961 as no return of income has been filed by the assessee for AY 2011-12.

7. In this case, more than for years have escaped from the end of the assessment year under consideration. Hence, proposal for grant of necessary sanction to issue notice u/S. 148 of the Income Tax Act, 1961 in the above case for AY 2011-12 is submitted to the

Pr. Commissioner of Income Tax, Range - 1, Thane for kind approval."

(b). Upon being supplied the reasons, the petitioner raised objections under letter dated 26.10.2018. In such objections, the petitioner contented that he had earned no income out of trading in Commodity Exchange . He pointed out that the petitioner's sales turnover was Rs. 16.82 lacs (rounded off) and he actually suffered a loss of Rs. 1.61 lacs.

(c). The Assessing Officer, however, rejected the objections by order dated 28.11.2018. With respect to the petitioner's contention of no taxable income, he stated that the same would be subject to verification and further inquiry.

3. Appearing for the petitioner, the learned counsel submitted that the petitioner had not filed return of income since he had no chargeable income for the said year. The Assessing Officer has proceeded on wrong premise that the petitioner had not responded to his query. He pointed out that the petitioner was required to reply electronically, he had therefore, conveyed to the Assessing Officer that no return was filed since he had no taxable income. He further

submitted that the Assessing Officer has referred to an entirely incorrect figure of the transaction of 18.82 crore. The correct figures are that the petitioner had made purchases worth Rs. 16.84 crore and sold commodities worth Rs. 16.82 crore and thereby suffered a loss. The Assessing Officer did not examine this aspect though brought to his notice in the objections.

4. On the other hand, learned counsel Mr. Walve relied on the reasons recorded by the Assessing Officer and contended that despite the activity of purchase and sale of commodities of sizable value, the petitioner had not filed return of income. Whether he had earned substantial income or not from such activity can be examined only during the assessment.

5. Having heard the learned counsel for the parties and having perused the documents on record, firstly we may record that the Assessing Officer has proceeded on wrong premise that even when called upon to state why the petitioner had not filed return of income, he had not responded to the said query. The petitioner did

communicate to the Department that he had no taxable income and therefore, there was no requirement to file the return. The Assessing Officer did not carry out any further inquiry before issuing the impugned notice. In the reasons, one more error pointed out by the petitioner is that the Assessing Officer referred to the sum of Rs. 18.82 crore as total transaction in the commodities. In the petition as well as in the objections raised before the Assessing Officer, the petitioner pointed out that his sales were to the tune of Rs. 16.82 crore against purchases of 16.84 crore and thereby, he had actually suffered a loss. The Assessing Officer has not discarded these assertions. Importantly, if the Assessing Officer had access to the petitioner's sales in commodities, he could as well have gathered the information of his purchases. Either on his own or by calling upon the petitioner to provide such details, the Assessing Officer could and ought to have verified at least prima facie that the income in the hands of the petitioner chargeable to tax had escaped assessment. In the present case, what the Assessing Officer aiming to do so is to carry out fishing inquiry. In fact, even when the assessee brought such facts

and figures to his notice, the Assessing Officer refused to look into it.

6. We are conscious that the petitioner not having filed return of income and consequently there being no scrutiny assessment, the Assessing Officer would have much wider latitude to reopen the assessment. However, in such a case also, the primary requirement of the Assessing Officer having a reason to believe that the income chargeable to tax had escaped assessment would apply.

7. In the result, the impugned notice is quashed and set aside.

8. The petition is allowed in the above terms.

[M.S. SANKLECHA, J.]

[AKIL KURESHI, J]