IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2554 OF 2019

Uttam M Jain (HUF) ….Petitioner

V/s.

Income Tax Officer, Ward-33(3)(3) & Anr …Respondents

Mr. K. Gopal a/w Mr. Om Kandalkar i/b Mr. Satendra Pandey for Petitioner
Mr. Arvind Pinto for Respondents

CORAM : K.R. SHRIRAM &
AMIT B. BORKAR, JJ
DATED : 6th DECEMBER 2021

P.C. :

1 The petition was filed originally impugning notice dated 26th March 2019 issued under Section 148 of the Income Tax Act 1961 (the Act), wherein the Revenue has stated that it has reasons to believe that the income chargeable to tax for A.Y.-2012-2013 has escaped assessment within the meaning of Section 147 of the Act. Petitioner was provided reasons on 11th June 2019. Before we go into the reasons, this is a case where the return of income was processed under Section 143(1) of the Act and not under Section 143(3) of the Act and, therefore, the proviso of Section 147 of the Act will not applicable. The Assessing Officer has to only make out a case for reasons to believe and if the court is satisfied that there is some tangible material, the court should not interfere. A Division Bench of this Court in ***Export Credit Guarantee Corporation India Ltd. vs Addl. CIT & Ors.***[1] has held that what is tangible is something which is not illusory,

1 (2013) 350 ITR 651 (Bom)

hypothetical or a matter of conjecture. The Court also held that something which is tangible need not be something which is new.

2 The reasons state that petitioner had filed a return of income for A.Y.-2012-2013 on 14th September 2012 declaring a total income of Rs.15,53,430/-. Revenue received information in respect of two penny stock companies sometime in February 2019 and petitioner was one of the beneficiary who had traded in the scrip of those two penny stock companies. It is also mentioned that the assessee was one of the beneficiary of transaction classified as non genuine shares sale / purchase transactions and assessee had traded to the tune of Rs.33,68,750/- in one scrip and Rs.1,42,42, 303/- in another scrip for A.Y.-2012-2013. According to the reasons petitioner is one such person who has availed accommodation entries of bogus sale of two penny stock companies and, therefore, the transactions are not genuine and are merely accommodation entries executed solely to accommodate unaccounted income of assessee. We do not find in these reasons anything which can be termed illusory, hypothetical or a matter of conjecture. There is nothing wrong in the notice for us to set it aside exercising our jurisdiction under Article 226 of the Constitution of India.

3 Mr. Gopal states that factually reasons are incorrect because the assessee never traded in those two alleged penny stock companies. Mr. Gopal states that it was brought to the notice of the Assessing Officer in the objections to the notice issued under Section 148 of the Act that petitioner

had never traded in those scrips and, therefore, question of petitioner availing of accommodation entries of bogus sale would not arise. Mr. Gopal states notwithstanding the objections, the order rejecting those objections came to be passed which is also impugned in this petition as originally filed.

4 Mr. Gopal raised a further grievance that even though this court granted stay of the proceedings vide order dated 26th September 2019 and it being brought to the notice of the Assessing Officer, a specific query raised and copy of order provided, still the Assessing Officer has proceeded to pass the assessment order dated 13th May 2021 disregarding the stay granted by this court. Mr. Gopal submitted that not only has the Assessing Officer disregarded the order of this court but has also passed order by disregarding the procedure prescribed under Section 144B of the Act and hence as provided under Section 144B the order is *nonest*.

5 Mr. Gopal also relied upon an order of this court in ***South Yarra Holdings Vs. Income Tax Officer, 16(1)(1)(4), Mumbai***[2] to submit that Nivyah Infrastructure & Telecom Services Ltd., which is alleged to be one of the penny stock companies, in which petitioner is alleged to have traded to avail accommodation entries did not even exist at the relevant time.

We have considered the said order but that order has been passed on the facts and circumstances of that case. Moreover, in that case the assessment order was completed under Section 143(3) of the Act and hence the court held that the Assessing Officer would have to examine the

2 (2019) 104 Taxmann.com 216(Bombay)

information received in the context of the facts on record and if only it had been done, the Assessing Officer would not have come to the conclusion that there was a failure to disclose truly and fully all material facts. In this case, there is no assessment order under Section 143(3) but return of income has been processed under Section 143(1) of the Act. Therefore, the order in *South Yarra Holdings (Supra)* would not be of assistance to petitioner.

6 As noted earlier, we do not find anything wrong with the notice dated 26th March 2019 issued under Section 148 of the Act. Certainly, at the same time, the Assessing Officer could not have proceeded to pass the assessment order despite being aware that there was a stay pending against the Revenue. At Exhibit M to the petition is a copy of a Confirmatory Check List for Reassessment-148 cases dated 11th February 2021 issued by ITO-Mumbai. Petitioner's Pan number is referred therein. It is expressly mentioned that this writ petition has been filed and is pending and the reassessment in the proceedings in the case may be kept in abeyance. Notwithstanding this advise, petitioner thereafter received a communication dated 22nd March 2021, being notice under Section 142(1) of the Act calling upon petitioner to file various particulars and documents. Petitioner responded to the said communication on 25th March 2021 and informed the Assessing Officer about the pendency of this petition and that this court has also granted ad-interim relief. We also have to observe that respondents could have checked the High Court website to find the status of this writ petition and about the orders passed therein, particularly when in the

Confirmatory Check List the number of this petition has also been provided.

Thereafter, on 30th March 2021 petitioner received a letter calling upon petitioner to provide the Hon'ble High Court's speaking direction/order to the Income Tax Department. This was provided on 3rd April 2021, in which petitioner has informed the Assessing Officer *"As requested please find attached interim order of the Bombay High Court issued in the matter. Please note that the hearing in the matter is pending due to Covid-19 pandemic. However, as High Court has granted ad-interim relief, request to kindly keep the reassessment proceedings in abeyance until further directions from the High Court."* Despite this and the fact that all details were available on the High Court website, respondents addressed a letter dated 19th April 2021 to the Income Tax Officer Ward 33(1)(1), Mumbai, calling upon the Ward Officer to provide proof as to why he had, in the check list dated 11th February 2021, advised that petitioner's case be kept in abeyance. Thereafter, respondents proceeded to pass assessment order dated 13th May 2021 which has also been impugned in this petition by amending the petition.

We have to note that this assessment order has been passed in gross breach of the order passed by this court. We would add this order amounts to willful disobedience of the order passed by this court. In fact the Assessing Officer has recorded in the assessment order there is a stay granted but because limitation in this case will be barred on 30th March 2021, he has no option but to complete the case before the limitation and passes the order on 13th May 2021. In the assessment order, the Assessing Officer is referring to a letter stating that the assessee has furnished the Hon'ble High Court's letter and reproduce the letter. But it is not a letter but an order of the court, which also shows total non application of mind by the Assessing Officer and by referring to an order of this court as letter the Assessing Officer is undermining the authority of this court. At the request of Mr. Pinto we are not issuing notice for contempt against the Assessing Officer but at the same time such gross disobedience cannot be ignored. This order, therefore, has to be quashed and set aside.

7 Since we have found there was no error in the notice dated 26th March 2019 issued under Section 148 of the Act, we would remand the matter back to that stage. The Assessing Officer shall consider the submissions of petitioner and shall, within 6 weeks from the time this order is uploaded, pass fresh order after strictly complying with the provisions of Section 144B including giving a personal hearing to petitioner

8 As regards the Assessing Officer who has passed the assessment order in gross breach of order passed by this court and we would say in willful disobedience of the order of this court, the Assessing Officer shall pay a sum of Rs.25,000/- as donation from his / her personal account to P. M. Cares Fund. The account details are as under :

Name of the Account : PM CARES
Account Number : 60355358964
IFSC : MAHB0001160
Branch : UPSC - New Delhi

The said Assessing Officer shall thereafter file an affidavit of proof of payment within two weeks of this order getting uploaded and annex thereto a copy of the bank’s statement proving that it has been paid from the Assessing Officer’s personal account, under advise to petitioner's advocate. If petitioner’s advocate does not receive this affidavit within two weeks of this order getting uploaded, liberty is granted to petitioner’s advocate to mention this matter for compliance.

9 Petition disposed.

(AMIT B. BORKAR, J) **(K.R. SHRIRAM, J.)**