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

WRIT PETITION NO.3174 OF 2019

Ravi Kanaiyalal Sheth ....Petitioner

V/s.

Assistant Commissioner of Income Tax
Circle 5(3)(1) & Ors. ....Respondents

Mr. Atul K. Jasani for petitioner.
Mr. Suresh Kumar for respondents.

CORAM : K.R. SHRIRAM &
AMIT B. BORKAR, JJ.
DATED : 20th DECEMBER 2021

P.C. :

1 Petitioner is impugning the notice dated 30th March 2019 issued under Section 148 of the Income Tax Act, 1961 (the said Act) seeking to reopen the assessment for Assessment Year 2012-2013 and the order rejecting the objections passed on 23rd October 2019.

2 The reasons for reopening read as under :

> *The assessee has filed return of income declaring income of Rs.5,00,93,727/- and long term capital loss of Rs.2,28,79,325/- on 31.07.2012. Further proceedings u/s. 143(3) were completed on 23.03.2015 determining income at Rs.5,22,05,840/-. As as per information received, Mr. Avi Sheth has invested Rs.95.33 Crores, it is not proportional to the return of income filed by the assessee. In view of the facts and documents on record coupled with the information from DDIT (Inv)-Unit-6(1), Mumbai, I have reasons to believe that income as mentioned above, chargeable to tax has escaped assessment within the meaning of Section 147 of the IT Act as the assessee has failed to disclose fully and truly all material facts necessary for its assessment in its case. The approval under proviso of sec 151(1) is hereby required before issuance of notice u/s. 148 of the I.T. Act.*

3 The Assessing Officer has formed a view that there are reasons to believe escapement of income within the meaning of Section 147 of the said Act because "the assessee has filed return of income declaring income of Rs.5,00,93,727/- and capital loss of Rs.2,28,79,325/- and proceedings under Section 143(3) of the said Act was completed on 23rd March 2015 determining income at Rs.5,22,05,840/-. But as per information received, petitioner has invested Rs.95.33 Crores which is not proportional to the return of income filed by petitioner".

4 As the notice has been issued after the expiry of four years from the end of the relevant assessment year, the onus is on respondents to show that income chargeable to tax has escaped assessment by reason of failure on the part of petitioner to disclose fully and truly all material facts necessary for his assessment, for that assessment year.

5 Mr. Suresh Kumar relied upon a judgment of this Court in ***Crompton Greaves Ltd. V/s. Assistant Commissioner of Income Tax, Circle 6 (2) 4*** [1] to submit that even if the reason for reopening does not specifically state that there was any failure on the part of petitioner to disclose fully and truly all material facts necessary for its assessment for the relevant assessment year, it will not be fatal to the assumption of jurisdiction under Sections 147 and 148 of the Act. We would certainly agree with Mr. Suresh Kumar but as held in *Crompton Greaves Ltd.*

1 . (2015) 55 taxmann.com 59 (Bombay)

(Supra), this is subject to the rider that there must be cogent and clear indication in the reasons supplied, that in fact there was failure on the part of the assessee to disclose fully and truly all the material facts necessary for its assessment. If the factum of failure to disclose can be culled down from the reasons in support of the notice seeking to reopen assessment, that will certainly not be fatal to the assumption of jurisdiction under Sections 147 and 148 of the said Act. The Court held "*However, if from the reasons, no case of failure to disclose is made out, then certainly the assumption of jurisdiction under Sections 147 and 148 of the Act would be ultra vires, being in excess of the jurisdictional restraints imposed by the first proviso to Section 147 of the Act*".

6 Having considered the reasons, the factum of failure to disclose cannot be culled down from the reasons in support of the notice seeking to reopen the assessment. The entire basis is that the Assessing Officer is unable to understand how a person, whose income is determined at Rs.5,22,05,840/-, could have invested Rs.95.33 Crores. The fact is petitioner has invested much more than Rs.95.33 Crores during the year. The details of all investments made have been filed by petitioner through his Advocate's letter dated 20th January 2015 full two months before the assessment proceedings were completed under Section 143(3) of the said Act. Copies of these documents have also been provided to respondent in response to the

notice to reopen. Mr. Jasani submitted that the documents itself indicate that the investments were far in excess of Rs.95.33 Crores and the Assessing Officer, before the original assessment, has considered all the details provided and has thereafter passed the assessment order dated 23rd March 2015.

7 The Assessing Officer had all materials facts before him when he made the original assessment. When the primary facts necessary for assessment are fully and truly disclosed, the Assessing Officer is not entitled on change of opinion to commence proceedings for reassessment. Even if the Assessing Officer, who passed the assessment order, may have raised too many legal inferences from the facts disclosed, on that account the Assessing Officer, who has decided to reopen assessment, is not competent to reopen assessment proceedings. Where on consideration of material on record, one view is conclusively taken by the Assessing Officer, it would not be open to reopen the assessment based on the very same material with a view to take another view.

8 But from the reasons, it appears that the Assessing Officer is proceeding purely on the basis of suspicion because he is unable to comprehend how a person, whose income has been assessed at Rs.5,22,05,840/-, would have invested Rs.95.33 Crores. An Assessing Officer is not permitted to make a roving inquiry. We are, therefore, not

satisfied that the reasons given by the Assessing Officer make out any case of failure on the part of petitioner to fully and truly disclosed material facts. Once all the material were placed before the Assessing Officer and he chose not to mention about all the investments in the assessment order, it could not be contended that the Assessing Officer has not applied his mind while passing the assessment order.

9 In the circumstances, petition is allowed in terms of prayer clause - (a), which reads as under :

> *(a) this Hon'ble Court may be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of Indian calling for the records of the petitioner's case and after examining the legality and validity thereof quash and set aside the notice dated 30th March 2019 (Exhibit A) issued by respondents under Section 148 of the Act seeking to reopen the assessment for the assessment year 2012-13; and order rejecting objections (Exhibit S) dated 23rd October 2019.*

10 Petition disposed.

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