

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

WRIT PETITION NO. 3224 OF 2019

Dhiren Anantrai Modi

....Petitioner

V/s.

Income Tax Officer

...Respondent

Mr. Nishit M. Gandhi a/w Ms. Akshita Bhandari for Petitioner.

Mr. Arvind Pinto for Respondent.

CORAM : K.R. SHRIRAM &
AMIT B. BORKAR, JJ.

DATED : 15th DECEMBER 2021

P.C. :

1. Petitioner is impugning notice dated 26th March, 2019 issued under Section 148 of the Income Tax Act, 1961 (the Act) and the order dated 22nd October, 2019 disposing petitioner's objections to the re-opening.

2. Petitioner has challenged notice dated 26th March, 2019 on various grounds including non application of mind by the Assessing Officer while issuing notice.

3. We have considered the petition with documents annexed thereto, reply filed by respondent and also heard Mr. Gandhi and Mr. Pinto.

4. On bare perusal of the reasons it is quite evident that the reasons are based on totally erroneous and incorrect facts and without non

application of mind. In the reasons it is stated *“The assessee is an individual and the Return of Income for A.Y. 2012-13 was filed on 24th September, 2012 declaring total loss of Rs.4,21,11,382/- and the same was processed by the C.P.C.It is pertinent to mention here that in this case the assessee had filed return of income for the year under consideration but no assessment as stipulated under Section 2(40) of the Act was made and the return of income was only processed under Section 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”*.

5. The fact is the return of income for A.Y. 2012-13 filed by petitioner on 24th September, 2012 has been assessed under Section 143(3) of the Act and the Assessment Order dated 31st March, 2015 has been passed. Therefore, the Assessing Officer has proceeded on erroneous factual basis that the return of income was only processed under Section 143(1) of the Act. That displays total non application of mind. In fact, petitioner's allegations that Respondent No.1 has sought to re-open the assessment on incorrect factual position that the return of income was only processed under Section 143(1) of the Act has not even been denied in the affidavit in reply which is filed by the same Assessing Officer. In paragraph no.2 of the affidavit in reply which is in response to paragraph no.1 and 2 of the

petition, Respondent No.1 simply says that these are factual in nature and the notice under Section 148 dated 26th March, 2019 and the order disposing the objections and the notice dated 22nd October, 2019 are issued in pursuance of the objective of completing reassessment in accordance with the procedures laid down.

On this ground alone, the notice dated 26th March, 2019 has to be set aside.

6. Moreover, Mr. Gandhi submitted that despite repeated requests for copy of the sanction under Section 151 of the Act, the same has not been provided. The averment to that effect in the petition has not even been denied in the affidavit in reply and respondent, in the affidavit in reply has not even bothered to annex the sanction obtained which gives us a feeling that the said Mr. Ramesh C. Meena who issued notice under Section 148 of the Act containing errors of facts and who has filed affidavit in reply does not wish to produce the same. We have to, therefore draw adverse inference against respondent that if it is disclosed it may be prejudicial to the interest of Revenue.

7. One wonders whether the sanctioning authority under Section 151 of the Act also would have even applied his mind because the reasons recorded as noted above itself displays non application of mind by the Assessing Officer. Therefore, either no sanction as contemplated under

Section 151 of the Act has been obtained or the same was granted mechanically without application of mind to the facts because if only the Assessing Officer had placed the entire file before the sanctioning authority he would have pointed out the error in the reasons for re-opening.

8. In the circumstances, petition is allowed in terms of prayer clause (a) which read as under :

(a) That this Hon'ble Court may be pleased to issue under Article 226 of the Constitution of India an appropriate direction, order or a writ, including a writ in the nature of 'Certiorari', calling for the records of the case and, after satisfying itself as to the legality thereof, quash and set aside the Notice u/s 148 dated 26.03.2019, Ex. "H" herein, the order disposing objections dated 22.10.2019, Ex. "K" herein passed by the Respondent and also the Notice/summons dated 22.10.2019, Ex. "L" herein issued by the Respondent.

9. Petition disposed.

(AMIT B. BORKAR, J.)

(K.R. SHRIRAM, J.)