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

WRIT PETITION NO. 3158 OF 2019

Surendrakumar Balkishandas Agarwal ….Petitioner

V/s.

Union of India and Ors. …Respondents

Mr. Devendra H. Jian a/w Mr. Naresh Jain and Ms. Neha Anchlia i/b Agrud Partners for Petitioner.
Mr. Suresh Kumar for Respondents.

CORAM : K.R. SHRIRAM &
AMIT B. BORKAR, JJ.
DATED : 22nd DECEMBER, 2021

P.C. :

1. Petitioner is impugning re-opening notice dated 20th March, 2019 and an order dated 8th November, 2019 rejecting petitioner's objections to re-opening.

2. According to Mr. Jain the notice itself would not have been issued because as per 3rd Proviso to Section 147 of the Income Tax Act, 1961 (the Act) which was then in force, the Assessing Officer cannot assess or re-assess income which is the subject matter of any appeal, reference or revision. According to Mr. Jain the reasons for re-opening indicate that petitioner had traded in penny stock and the same was subject to revision under Section 263 of the Act and therefore notice under Section 148 of the Act as given could not have been issued.

3. We have to note that the proceedings under Section 263 of the Act which was commenced on 31st January, 2019 by issuing show cause notice to petitioner was dropped by the Commissioner by an order dated 18th March, 2019. In the affidavit in reply an internal Office Note is annexed which gives the reason for dropping under Section 263 of the Act which reads as under :

NOT FOR ASSESSEE

> *Office Note : Proceedings u/s 263 are dropped as the information that is trigger for proposed action came on 04.12.2017 i.e. after passing of order u/s 143(3) dated 30.11.2016. Therefore the then AO was not aware of information, so that he would use in the assessment. On the basis of prima facie details filed by assessee during the assessment proceedings, no one could ordinarily come to conclusion that further enquiry was required. As the information vide letter dated 04.12.2017 is the trigger for action in AY 2015-16, the same information is also trigger for AY 2014-15. It is settled law that if some information is received after passing of assessment order, the order passed previous to such receipt cannot be construed as erroneous & hence proceedings u/s 263 are hereby dropped.*

4. Therefore, we find nothing wrong in the notice issued under Section 148 of the Act.

5. Petition dismissed.

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