IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.13 OF 2008
WITH
WRIT PETITION NO.16 OF 2008
WITH
WRIT PETITION NO.14 OF 2008
WITH
WRIT PETITION NO.15 OF 2008

M/s Rahul Associates ....Petitioner

V/s.

The Income Tax Officer-17(2)(1) & Anr ...Respondents

Ms Dinkle Hariya a/w Ms Namrata Kasale i/b Mr. Atul Jasani for Petitioner
Mr. Sham V. Walve for Respondent-Revenue

CORAM : K.R. SHRIRAM &
AMIT B. BORKAR, JJ
DATED : 17th DECEMBER 2021

P.C. :

1 In all the four petitions listed today, petitioners are impugning a notice under Section 148 of the Income Tax Act 1961 (the Act) all dated 7th November 2006, seeking to reopen assessment of the trust. The reasons can be found in a communication dated 11th February 2006 in all the four petitions and the reasons are also identical and it reads as under:

> *"After the amendment, AOP with determination of share of beneficiaries is taxable entity as per section u/s 167B(2) which is as under:*
>
> *Where in the case of an AOP or BOI as aforesaid.*
>
> *(i) the total income of any member thereof for the previous year exceeds the maximum amount which is not chargeable to tax in the case of that member under the Finance Act of the relevant year, tax shall be charged in the total income of the AOP or BOI at the maximum rate."*

2 We do not wish to discuss whether there is any tangible material to reopen because the same issue raised in the reasons quoted above came up in the subsequent years, i.e, A.Y.-2004-2005, 2005-2006, 2006-2007, 2009-2010 and the CIT (Appeals) and for A.Y.-2006-2007 the ITAT have held that the beneficiaries of the trust are mere recipients of the income earned by the trust and they have not come together for a common purpose. They cannot, therefore, be considered as association of persons or body of individuals. The decision of this court in ***CIT Vs. Marsons Beneficiary Trust***[1] and ***L. R. Family Trust Vs. Income Tax Officer & Ors***[2]. has been followed. Moreover, the beneficiaries, whose shares were specific have been taxed in their individual capacity in respect of the income of the trust.

3 In the circumstances, we are inclined to allow the petitions in terms of prayer clause (a) of the petitions.

4 Petitions disposed.

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

1 188 ITR 224 (BOM)
2 262 ITR 520 (BOM)