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

WRIT PETITION NO.3232 OF 2019

Kismati Ghanshyam Yadav ….Petitioner

V/s.

The Income Tax Officer – 16 (2) (4) & Ors. ….Respondents

Mr. Mandar Vaidya for petitioner.
Mr. Suresh Kumar for respondents.

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

P.C. :

1 This petition is impugning a notice dated 30th March 2019 issued under Section 148 of the Income Tax Act, 1961 (the said Act) for Assessment Year 2012-2013 and the order rejecting petitioner's objections passed on 28th October 2019.

2 Since the reopening is proposed after the expiry of four years from the end of relevant assessment year and the original assessment order has been passed under Section 143(3) read with Section 147 of the said Act, the proviso to Section 147 of the said Act shall apply in as much as respondents have to show that there was a failure on the part of assessee to disclose truly and fully all material facts necessary for assessment.

3 The reasons recorded read as under :

Reasons recorded for reopening the assessment u/s. 147 of the Income Tax Act, 1961 :-

> *"On verification of the case records it was found that during the F.Y. 2011-12 relevant to the A.Y. 2012-13 the assessee has shown agricultural income of Rs.15,25,850/- in its return of income. The cash from the agricultural income has been deposited by the assessee in its bank account. The assessee has shown an opening cash balance of Rs.10,60,062/- for A.Y. 2012-13. However, on verification of the records it is found that the assessee has not filed its return of income for A.Y. 2011-12 u/s 139(1) of the I.T. Act. The assessment for A.Y. 2011-12 was reopened u/s 148 of the I.T. Act and the opening cash balance and the agricultural income shown by the assessee along with other cash deposits was added back to the total income.*
>
> *The assessee could not furnish a valid explanation for the agricultural income and the opening cash balance for A.Y. 2012-13 was uncertain in view of the assessment proceeding in the assessee's case for A.Y. 2011-12, the entire agricultural income shown by the assessee of Rs.15,25,850/- and the opening cash balance of Rs.10,60,062/- for A.Y. 2012-13 remains unexplained.*
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> *Therefore, I have reason to believe that the income arising out of the income shown as agricultural income of Rs.15,25,850/- and the opening cash balance of Rs.10,60,062/-, totalling to the extent of Rs.25,85,912/- has escaped assessment for the A.Y. 2012-13.*
>
> *.........."*

4 From the reasons, it is obvious that respondent has come to a conclusion that there has been escapement of income chargeable to tax on the basis that entire agricultural income shown by the assessee of Rs.15,25,850/- and the opening cash balance of Rs.10,60,062/- remains unexplained.

5 First of all, one cannot cull out from the reasons that there has been really any failure to fully and truly disclose. Moreover, the agricultural income of Rs.15,25,850/- has been considered in the assessment order dated 27th March 2015 by the Assessing Officer while computing the total

income of the assessee. Therefore, it cannot be alleged that there was any non disclosure by assessee.

As regards the opening cash balance of Rs.10,60,062/- for Assessment Year 2012-2013, for Assessment Year 2011-2012 the Assessing Officer has already added Rs.10,19,238/- as unexplained cash credit under Section 68 of the said Act. Moreover, the opening balance cannot be the income for that particular year. At the most it can be considered as income for the previous year. On these two grounds itself we will hold that the notice dated 30th March 2019 issued under Section 148 of the said Act is not valid and is without jurisdiction.

6 Petition is allowed in terms of prayer clause - (a), which reads as under :

> *(a) that this Hon'ble Court may be pleased to issue a writ of certiorari or writ in the nature of certiorari or any other appropriate writ, direction or order under Article 226 of the Constitution of India calling for the records of the case leading to the issuance of the notice under Section 148 of the Income Tax Act, 1961 dated 30th March 2019, being Ex-K hereto and after going through the same and examining the question of legality thereof to quash, cancel and set aside the impugned notice dated 30th March 2019 being Ex-K hereto and the order rejecting the petitioner's objections dated 28th October 2019, being Ex-O hereto.*

7 Petition disposed.

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

Gauri Gaekwad