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

WRIT PETITION NO.3267 OF 2019

Novelty Properties & Investment Pvt. Ltd. ....Petitioner

V/s.

Assistant Commissioner of Income
Tax, Circle – 2 (2) (2), Mumbai & Ors. ....Respondents

Mr. Madhur Agrawal i/b. Mr. Atul K. Jasani for petitioner.
Mr. P.C. Chhotaray for respondents – Revenue.

CORAM : K.R. SHRIRAM &
AMIT B. BORKAR, JJ.
DATED : 29th OCTOBER 2021

P.C. :

1 Petitioner is impugning notice dated 31st March 2019 and order dated 30th October 2019 on various grounds and one of the primary ground being that there is no reason to believe that income chargeable to tax has escaped assessment.

Since the header in the annexure to the approval under Section 151 of the said Act annexed to the petition is not legible, Mr. Agrawal tenders a fresh print out of the same, which is taken on record and marked "X" for identification. Petitioner to annex this document alongwith the document annexed to the petition during the course of today. Re-verification dispensed with.

2 According to petitioner, the notice issued is bad in law and invalid because the requirements under Section 147 of the Income Tax Act, 1961 (the said Act), have not been satisfied before issuing the impugned

notice. According to petitioner, the reasons, which were given alongwith the impugned notice clearly pertains to some other assessee and not petitioner. Mr. Agrawal submitted that subsequently also two further reasons have been given to petitioner, one being signed by officer who has issued the original notice and the second being signed by succeeding officer but the approval, which has been issued under Section 151 of the said Act, is based on reasons pertaining to some other assessee and not petitioner. There is no fresh approval for two further reasons which have been given to petitioner. Mr. Agrawal submitted that on this ground alone, the petition should be allowed.

3 No reply has been filed by respondents. On 6th December 2019, almost two years ago, Mr. Chhotaray appearing for respondents had sought time to take instructions and file affidavit in reply and at his instance, the petition was stood over to 7th February 2020. Mr. Chhotaray stated that reply could not be filed earlier due to COVID pandemic. The COVID pandemic and lock down was declared on or about 25th March 2020 whereas time was granted to file reply on 6th December 2019 and the reply was to be filed by 7th February 2020. Therefore, the excuse of COVID pandemic is not acceptable and cannot be correct. There are so many other matters where respondents have filed reply and in many matters they are continuing to file reply. Therefore, this is not a valid excuse and request for further time was rejected. Almost two years according to us is sufficient time for respondents to file an affidavit in reply. We have also to note with regret

that respondents in almost every matter are giving not more than one to three working days for assessee to respond to their notices and in some cases, the assessee is directed to, within two or three days file documents running into thousand of pages or many third party documents which has to be collected from third parties. Such unreasonable notices have been issued even during lock down period, assessment orders are passed rejecting the request for adjournment without considering the submissions made or documents filed and without even granting personal hearing. Since we did not grant further time, Mr. Chhotaray agreed to argue on the basis of documents filed with the petition.

4 We have heard the counsels and perused the petition and the documents annexed thereto. Petitioner has been served an approval dated 30th March 2019 issued under Section 151 of the said Act on which document number is given as ITBA/AST/S/118/2018-19/1015577887(1). The approval, as it appears from the document, has been given by one Dinesh Chander Patwari, Principal Commissioner of Income Tax – 2, Mumbai on 30th March 2019. The proposal was submitted by one Abhay Siddharth Deware. The proposal was recommended by Ashutosh Rajhans, who has noted "Yes, I am satisfied that this is a fit case to issue notice under Section 148" and Dinesh Chander Patwari has endorsed a remark "after considering the reason recorded by AO the approval is granted". The reasons annexed to the said approval pertains to another assessee being M/s. Glance Investment (I) Pvt. Ltd. Mr. Chhotaray submitted that

inadvertently wrong annexure was sent alongwith the approval under Section 151. We do not find that statement even in the impugned order rejecting the objections. Infact on the annexure, there is a printed header, which reads as under :

AAACN2635D – NOVELTY PROPERTIES AND INVESTMENT PRIVATE LTD.
A.Y. 2012-13
ITBA/AST/S/118/2018-19/1015577887(1)

In our view, there has been total non application of mind while granting the approval.

5 Therefore, certainly it cannot be a case where a wrong annexure has been stapled with the approval under Section 151 of the said Act. Mr. Chhotaray thereafter, submitted that reasons for reopening were given second time on 20th August 2019 and 12th September 2019. We do not find any fresh approval based on second or third reasons. The only approval is dated 30th March 2019 which has been granted relying upon the reasons annexed thereto. Section 151 of the said Act in force at the relevant time, in sub-section (1) provides that no notice shall be issued under Section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice. The only approval on file is one dated 30th March 2019 to which the reasons pertaining to another assessee is relied upon. For the

subsequent reasons dated 20th August 2019 and 12th September 2019, no satisfaction has been recorded by a Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner on those reasons recorded by the Assessing Officer that it is a fit case for the issue of such notice.

6 In the circumstances, we have to lean in favour of petitioner, which we hereby do and the impugned notice dated 31st March 2019 and impugned order dated 30th October 2019 are quashed and set aside.

7 Since the petition has been allowed on this ground alone, we have not expressed our views on the other grounds raised by petitioner.

8 Petition disposed.

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