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

WRIT PETITION NO. 3309 OF 2019

Hiren Harakhchand Rambhia ….Petitioner

V/s.

The Income Tax Officer – 27 (1) (3)
and Ors. …Respondents

Mr. Devendra H. Jain for Petitioner.
Mr. N.C. Mohanty for Respondents-Revenue.

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

P.C. :

1. Petitioner is challenging the notice issued by respondent under Section 148 of the Income Tax Act, 1961 (the Act) for reopening all issues under Section 147 of the Act.

2. Mr. Jain at the outset submitted that there has to be in approval under Section 151 of the Act for reopening of issue under Section 147 of the Act, prior to issuance of notice. Mr. Jain submitted that notice, copy whereof is at Exhibit B to the petition is dated 30th March, 2019 whereas the sanction which has been endorsed in the reasons for reopening annexed to the affidavit in reply does not mention the date on which such sanction was made. But the forwarding letter addressed to the concerned ward forwarding the sanction is dated 31st March, 2019. According to Mr. Jain

therefore court should proceed on the basis that the sanction was granted on 31st March, 2019 and on the date notice under Section 148 of the Act was issued there was no sanction in place. Therefore, issuance of notice itself was illegal. These are questions of fact which we are unable to consider in our jurisdiction under Article 226 of the Constitution of India. Moreover, Mr. Jain submitted that the reasons with the endorsement on sanction was not received by petitioner before the petition was filed. There is not even an averment to this fact in the petition.

3. In the circumstances, we are not inclined to entertain the petition. Petition dismissed.

4. However, we clarify that petitioner may raise all grounds before the concerned authority.

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