IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.3399 OF 2019

Valji Manji Gothi ....Petitioner

V/s.

The Assistant Commissioner of Income Tax Central Circle 7(3) & Ors. ...Respondents

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Mr. Dharan Gandhi for Petitioner
Mr. Shal V. Walve and Mr. Pritesh Chatterjee for Respondents -Revenue

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CORAM : K.R. SHRIRAM &
AMIT B. BORKAR, JJ
DATED : 30th NOVEMBER 2021

P.C. :

1 Mr. Gandhi tenders affidavit in rejoinder of petitioner affirmed on 22nd November 2021. The same is taken on record. Mr. Walve states that he has received a copy thereof.

2 Petitioner is impugning a notice dated 28th March 2019 issued under Section 148 of the Income Tax Act, 1961 (the said Act) for Assessment Year 2012-2013 whereby Revenue has informed petitioner that it has reasons to believe that petitioner's income chargeable to tax for Assessment year 2012-2013 has escaped assessment within the meaning of Section 147 of the said Act.

3 Petitioner filed objections and subsequently, an order dated 14th November 2019 rejecting the objections have been passed and this order also has been impugned in this petition.

4 Respondent has sought to reopen petitioner's assessment after expiry of more than four years from the relevant assessment year and therefore, the proviso to Section 147 of the Act shall apply. Respondent has to make out a case while reopening, in the reasons for reopening, that petitioner had failed to fully and truly disclose material facts. We have considered the reasons annexed to the petition and we are satisfied that it is nothing but a change of opinion which is not permissible in law.

5 The entire basis of reopening is based on a search action that was carried out under Section 132 of the said Act on 9th October 2014 at the Kamdhenu Group offices, their associates and residences of their Directors. Petitioner is one of the Director. Mr. Walve strongly opposed the petition saying that it is open to petitioner to take all steps available in law while respondent will be passing the assessment order after rejection of objections.

6 Having heard both the counsels, in our view, the matter goes to the root in as much as the exercise of jurisdiction by respondent is per se illegal. We say this because there is no tangible material which has been placed in the reasons for reopening the assessment. The basis is the search action carried out on 9th October 2014. Even the original assessment order dated 19th December 2016 in paragraph 2 provides for same search action and based on the search action various amounts were added.

7 Moreover, in the reasons for re-opening, there is not even an attempt made to mention what material facts have not been disclosed. Re-opening is

based on the records which petitioner had filed and as a result of the search action of the investigation wings of the Income Tax Department. As noted earlier, the search action was on 9th October 2014 which is before the earlier assessment order was passed and even in the earlier assessment order there is a reference to the search action carried out. We have to note that the earlier assessment order itself was in pursuance to the search action carried out under Section 132 of the Act. Therefore, there is no tangible material which has been mentioned in the reasons that has come to light after the last assessment order was passed.

8 In the circumstances, 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 a Writ in the nature of Certiorari or any other appropriate Writ, Order or direction, calling for the records of the petitioner's case and after going into the legality and property thereof, to quash and set aside the said notice dated 28th March 2019 (Exhibit "D") and the subsequent order dated 14th November 2019 (Exhibit "I").*

9 Petition disposed.

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