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

WRIT PETITION NO.3398 OF 2019

Bhagwanji Manji Patel ….Petitioner

V/s.

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

Mr. Dharan V. Gandhi for petitioner.
Mr. Sham V. Walve for respondents-Revenue.

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

P.C. :

1 Mr. Gandhi tenders affidavit in rejoinder of petitioner affirmed on 27th 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 27th 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 23rd December 2016 in paragraph 2 provides for same search action and based on the search action various amounts were added. Mr. Gandhi states that against that assessment order, an appeal was filed and the matter

subsequently being settled and relies on a copy of the order dated 20th March 2019 passed by CIT (A).

7 Moreover, in the reasons for reopening, there is not even an attempt made to mention what material facts have not been disclosed. The reopening is based on the records which petitioner had filed. In paragraph 3 it is stated "*The above information has been examined and finds that the assessee has claimed excessive expenses on account of sale/purchases/loans advance from the above circular transaction and therefore, resulting into under-assessment and therefore ....*". Respondent states that assessee has claimed excessive expenses which resulted into under assessment. 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 27th 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.)**

Gauri Gaekwad