IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3699 OF 2022

Nitinkumar S/o Rishiram Agrawal,
Age : 48 Years, Occu. : Business,
R/o 343/F-17, Near Jindal House,
Sambhaji Nagar, Bus Stand Road,
Jalna, Tq. and Dist. Jalna. .. Petitioner

Versus

1. Joint Commissioner of Income Tax,
Range – 1, Aurangabad.

2. Income Tax Officer,
Ward – 1, Jalna,
Tq. and Dist. Jalna.

3. Income Tax Officer,
National Faceless Assessment
Centre, Delhi. .. Respondents

Shri Raviraj R. Chandak, Advocate for the Petitioner.
Shri Alok Sharma, Advocate for Respondent Nos. 1 to 3.

**CORAM : R. D. DHANUKA AND
S. G. MEHARE, JJ.
DATE : 22ND MARCH, 2022.**

ORAL JUDGMENT (***Per R. D. Dhanuka, J.***) **:-**

. Rule. Mr. Alok Sharma, the learned counsel waives service for respondent Nos. 1 to 3. Rule is made returnable forthwith.

2. By this petition filed under Article 226 of the Constitution

of India, the petitioner has impugned the notice dated 31.03.2021 issued by the respondent No. 2 U/Sec. 148 of the Income Tax Act, 1961 (for short “I. T. Act”) and also order dated 01.03.2022 passed by the respondent No. 3 thereby rejecting the objection filed by the petitioner.

3. On 28th March, 2018, the petitioner filed his return of income tax for the assessment year 2016-2017. On 31.03.2021, the respondent No. 2 issued notice U/Sec. 148 of the I. T. Act to the petitioner for reassessment of the assessment year 2016-2017. On 01.04.2021 Finance Act, 2021 came into force and entire mechanism of reopening of assessment U/Sec. 147 to 151 of the Income Tax Act has been changed.

4. The respondent No. 2 supplied the copy of the reasons recorded before issuance of the impugned notice to the petitioner. On 24.02.2022 the petitioner filed objection to the reasons recorded and specifically raised objection regarding tenability of the proceedings. On 01.03.2022, the respondent No. 3 rejected the objection filed by the petitioner. On 05th March, 2022, the petitioner filed the present petition.

5. The learned counsel for the petitioner invited our attention to the reasons recorded by the respondent No. 2. In the said reasons the respondent No. 2 relied upon the communication from ACIT, Central Circle – 4(4), Mumbai. The assessing officer of Shri Renukamata Multistate Co-op. Urban Bank Credit

Society Ltd. based on the said information, the respondent No. 2 issued notice U/Sec. 148 of the I. T. Act upon the petitioner.

6. The learned counsel for the petitioner also invited our attention to Section 153A/153C of the I. T. Act and would submit that, case of the petitioner would fall U/Sec. 153-C of the I. T. Act and not U/Sec. 147 of the I. T. Act. He submits that, the entire proceeding initiated by the respondents is thus without jurisdiction.

7. The learned counsel for the petitioner invited our attention to the impugned order passed by the respondent No. 3 on 01st March, 2022 and would submit that, though various objections were raised by the petitioner to the reasons supplied to the petitioner, the respondent No. 3 did not consider any of the objections raised by the petitioner. The learned counsel for the petitioner placed reliance on the judgment dated **15th February, 2022** of this Court in a case of **Tata Capital Financial Services Limited Vs. Assistant Commissioner of Income Tax Circle 1(3)(1) and others** in ***Writ Petition No. 546 of 2022*** and more particularly paragraph No. 8. This Court in the said judgment has formulated various guidelines to be followed by the assessing officer while dealing with the objections raised by the assessee. It is held that while communicating the reason for re-opening the assessment, a copy of the standard form/request sent by the Assessing Officer for obtaining approval of the Superior Officer should itself be provided to the assessee. He submits that, this

Court has categorically held that the order disposing the objections should deal with each objections and give proper reasons for the conclusion.

8. Mr. Alok Sharma, the learned counsel for respondents on the other hand would submit that, in the impugned order the respondent No. 3 has recorded reasons and has rightly rejected the objections raised by the petitioner after adverting to Section 147 and 153 of the I. T. Act. Thus no interference is warranted in the impugned order passed by the respondent No. 3.

9. We have perused the reasons annexed by the respondent No. 2 to the petition.

REASONS AND CONCLUSION

10. The petitioner has raised specific objection to the reasons supplied by the respondent in respect of maintainability of the notice issued by the respondent No. 2 U/Sec. 148 of the I. T. Act and has specifically contended that, the case of the petitioner would fall under Section 153C of the I. T. Act and not U/Sec. 147 of the I. T. Act.

11. A perusal of the impugned order clearly indicates that, in para No. 5 of the impugned order, the respondent No. 3 has simplicitor quoted Section 153C of the I. T. Act and has held that in view of the said section, it was clear that, assessing officer had reopened case of the petitioner correctly as per the provisions of

Section 147 of the I. T. Act. In our view, there are no reasons recorded by the respondent No. 3 in the impugned order. Various objections raised by the petitioner are required to be answered by sufficient and cogent reasons. The respondent No. 3 has not given any reasons while dealing with the objection and passing the impugned order.

12. This Court in a case of **Tata Capital Financial Services Limited Vs. Assistant Commissioner of Income Tax Circle 1(3)(1) and others** (supra) after adverting to various judgments of various Courts including the judgment of the Hon'ble Supreme Court in a case of **Commissioner of Income Tax Vs. Vasisth Chay Vyapar Ltd.** reported in *[2019] 410 ITR 244 (SC)* has formulated guidelines to be followed by the revenue while dealing with the objection raised by the assessee to the reasons furnished by the Assessing Officer. It is held by this Court that, if the reasons make reference to any other document or a letter or a report, such document or letter or report should be enclosed to the reasons. The order disposing the objections should deal with each objections and give proper reasons for the conclusion. In our view, the impugned order is in total violation of the principles laid down by this Court in a case of **Tata Capital Financial Services Limited Vs. Assistant Commissioner of Income Tax Circle 1(3)(1) and others** (supra). The Assessing Officer has to deal with each and every objection raised by the petitioner by recording reasons. The respondent No. 3, however, in this case has passed the impugned order in a very casual way.

13. In view of the above, we pass the following order.

O R D E R

A. The impugned order dated 01.03.2022 passed by the respondent No. 3 annexed at Exhibit – E of the writ petition is quashed and set aside.

B. The proceedings are restored before the respondent No. 3 for deciding objections raised by the petitioner to the reasons supplied by the respondent No. 2 while deciding the matter afresh and in accordance with law and after complying with the principles laid down by this Court in a case of **Tata Capital Financial Services Limited Vs. Assistant Commissioner of Income Tax Circle 1(3)(1) and others** (supra) without being influenced by the observations made and conclusions drawn in the impugned order dated 01.03.2022.

C. The respondent No. 3 shall decide the matter within a period of three (03) weeks from the date of publication of this order and shall communicate the order that would be passed to the petitioner within a period of one (01) week from the date of order.

D. If the order that would be passed by the respondent No. 3 is adverse to the interest of the petitioner, the petitioner may file appropriate proceedings as permissible under law.

E. The writ petition is allowed in terms of prayer clause "D". Rule is made partly absolute in aforesaid terms. No order as to costs.

F. If the objection raised by the petitioner is rejected by the respondent No. 3, no adverse order shall be passed by the respondent No. 3 for a period of four (04) weeks from the date of communication of the order.

[S. G. MEHARE, J.] **[R. D. DHANUKA, J.]**

bsb/March 22