Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.15/2022

FARMACIA MOLIO,
a Partnership Firm duly registered
under the Indian Partnership Act, 1932,
having its office at Jose Inacio Loyala Road,
Near Municipality Margao Salcete,
Goa 403601, represented by
its Partner, Mr. Mukund Molio,
Indian National, aged about 55 years,
S/o. Mr. Somnath Molio,
r/o. H No. 4694/2, Triveni
Green Hill Estate, Near St Annes School,
Agali, Margao Goa 403602,
duly authorized vide Resolution
dated 21.01.2022. ...PETITIONER

Versus

1. INCOME-TAX OFFICER,
WARD 4, MARGAO,
having office at Blessing Pioneer
Complex, Old Market,
Opposite District Court,
Margao - Goa 403601.

2. PRINCIPAL COMMISSIONER
OF INCOME TAX, having its office
at Aayakar Bhavan, EDC Complex,
Patto Panaji Goa 403001. ...RESPONDENTS

Mr. Gaurang Panandikar, Advocate *for the Petitioner.*
Ms. Susan Linhares, Standing Counsel *for the Respondents.*

CORAM: M. S. SONAK &
R. N. LADDHA, JJ.

DATED: 31st January 2022

ORAL ORDER: (Per M. S. Sonak, J.)

1. Heard Mr. Gaurang Panandikar for the petitioner and Ms. Susan Linhares learned Standing Counsel for the respondents.

2. The petitioner challenges notice dated 30.03.2021 and Order dated 16.08.2021 seeking to reopen assessment and disposing of objections to the notice seeking to reopen the assessment for the Assessment year 2017-18.

3. Mr. Panandikar, learned counsel for the petitioner submits that there is no material whatsoever on record to sustain the alleged subjective satisfaction that any income of the petitioner/assessee has escaped assessment for the Assessment Year 2017-18. He points out that during the relevant assessment year, the assessee did not even have a bank account with the Goa Urban Cooperative Bank and this aspect has been clarified by the bank in its communication dated 27.08.2021 which was placed before the respondents, though after the impugned notice/order was made. He submits that even otherwise a categorical objection was taken based on this factual circumstance and this objection has not been considered in the impugned order dated 16.08.2021. Mr. Panandikar submits that the respondents have confused between the petitioner-partnership firm and a proprietary concern of one of the partners. Mr. Panandikar submits that for Income Tax Act, 1961 (said Act) the firm and its partner are distinct legal entities. He relies on ***Mohanlal Champalal Jain v/s. ITO – 2019 (102) Taxman.com 293 (Bombay)*** to submit that non-consideration of a vital objection raised by the assessee vitiates the order disposing of objections. He points out that this decision was confirmed by the Hon'ble Supreme Court in the matter reported in 2019 (111) taxmann.com 67 (SC). For all these reasons he submits that the impugned notice and order are liable to be set aside.

4. Ms. Linhares learned Standing Counsel for the respondents submits that the alleged letter addressed by the bank to the petitioner on 27.08.2021 was not even before the respondents to warrant its consideration by the respondents. She submits that in any case, based on such a unilateral letter, there is no question of interfering with the impugned notice and order. She submits that the statement of the bank as also several other circumstances that arise from the deposit of a huge amount of

₹4,38,91,900/- will have to be examined and assessed. She, therefore, submits that no case is made out to interfere with the impugned notice and impugned order at this stage. She submits that if the petitioner's grievance subsists after the assessment proceedings are complete, the petitioner will have remedies to challenge the assessment order.

5. Ms. Linhares submits that in this case, the respondents discovered that a cash deposit in a huge amount of ₹4.39 crores was made in the Goa Urban Cooperative Bank. She points out that the PAN number used to make such a huge deposit was that of the petitioner firm. She points out that for the relevant assessment year, however, no income tax returns were filed by the petitioner firm. She submits that the facts in *Mohanlal Champalal Jain (supra)* are totally different and based thereon, the present petition is not liable to succeed. For all these reasons Ms. Linhares submits that this petition may be dismissed.

6. The rival contentions now fall for our determination.

7. In this case, admittedly, no returns were filed by the petitioner firm for the Assessment Year 2017-18. Therefore, when the respondents discovered that a cash deposit of almost ₹4.39 crores was made as against the petitioner's PAN number in the Goa Urban Cooperative Bank, the respondents, issued the impugned notice within the prescribed period of limitation seeking to reopen the assessment for the Assessment Year 2017-18.

8. The petitioner, consistent with the practice followed, was granted an opportunity to file objections. Such objections were indeed filed by the petitioner and the same was disposed of vide order dated 16.08.2021.

9. The reasoning reflected in the impugned order dated 16.08.2021 is to be found in paragraphs 4, 5, and 6 thereof which read as follows:-

> "*4. As far as, the issue involved based on which the case is re-opened and communicated to the assessee by providing reason recorded on 16.04.2021 pertains to the only reason i.e. Cash deposits in an account other than a current account.*
>
> *5. The assessee has not filed its return of income (ROI) u/s 139 of I.T. Act for the year under consideration. The contention of the assessee is that no cash has been deposited in current account as well as other than current account as its all Bank Accounts were opened after 31.03.2017, is not acceptable as the transaction amount of Rs. 4,38,91,900/- in the statement in Part E-Details of SFT Transaction in Form 26AS of the assessee for F.Y. 2016-17 relevant to A.Y. 2017-18 reflecting under the assessee's PAN: AAFFF1205P is itself self-explanatory. The assessee is*

supposed to disclose truly and fully material facts in his return. In the instant case, the assessee has not filed its return of income u/s 139 of I.T. Act for the year under consideration. The failure on the part of the assessee has been ascertained as a result of verification carried out in afresh which constitutes the reason to believe that the income chargeable to tax has escaped assessment. Thus, no possibility of being change of opinion is involved and the verification on the basis of which the assessment has been re-opened is not only information received from AIMS (Actionable Information Monitoring System) in Departmental ITBA but also SFT Transaction uploaded in its Form 26AS mentioned as above.

6. The case has been re-opened within the permissible time limit i.e. before the expiry of 06 years from the end of the relevant assessment year as the failure in disclosing correct income chargeable to tax is attributable to the assessee. In the instant case, the assessee has not filed its return of income (ROI) us/139 of I.T. Act for the year under consideration. In this regard, reliance is placed on the decision held by the Hon'ble Apex Court in the case of ACIT Vs. Rajesh Jhaveri Stock Brokers (P.) Ltd. (2007)161."

10. The letter dated 27.08.2021 addressed by the Goa Urban Cooperative Bank to the petitioner was not before the respondents and therefore, Mr. Panandikar is not justified in contending that such letter was not taken into account by the respondents. The contention about the bank account in the name of the firm not being in existence on the date of the alleged cash deposit has been duly considered by the respondents. The respondents have reasoned that the cash deposit of ₹4.39 crores was made against the petitioner firm's PAN number. The order also reasons that for the relevant assessment year, the petitioner despite having *prima facie* made such a large cash deposit of ₹4.39 crores in the non-current account, chose not to file any income tax returns. Therefore, there was reason to believe that income had escaped assessment. This is therefore not a case where the objection raised by the petitioner was not considered by the respondents while making the impugned order dated 16.08.2021. The objection has been considered, no doubt for determining whether any prima facie case was made out to reopen the assessment and not for the final assessment.

11. In *Mohanlal Champalal Jain (supra)* the assessee had objected to the notice seeking to re-open the assessment by pointing out that during the relevant assessment year the assessee had suffered losses. This was the reason given for not filing returns during the relevant assessment year. This Court found that this explanation was not even adverted to, much less, considered whilst disposing of objections. Besides, in Mohanlal's case, there was no question of large cash deposits in non-current accounts against the assessee's PAN number. Therefore, the ruling in *Mohanlal Champalal Jain (supra)* is distinguishable and cannot assist the petitioner's case where facts, are not comparable.

12. In ***Asa v/s. CIT – 26 ITR 270*** and in ***CIT v/s. Agarwalla Brothers – 189 ITR 786*** it is held that to decide whether the Assessment officer (AO) has reason to believe that income escaped assessment it is only those materials that were before the AO at the time of initiating the proceedings that have to be taken into account and not some further materials which subsequently came to light in the course of proceedings under the said Act. Similarly, it is well settled that the adequacy or sufficiency as distinct from the existence or relevance of the material for the AO's belief cannot normally be investigated by the Court. (See *Phool Chand v/s. CIT 203 ITR 456 (SC) and Central Provinces Manganese Ore v/s. ITO – 191 ITR 662 (SC)*).

13. At the stage of examining the legality or otherwise of the notice seeking to re-open an assessment, the Court will only look at whether the notice and material on which the notice was based, shows *prima facie* that the reasonable belief could have been formed that income has escaped assessment for the relevant assessment year. The Hon'ble Supreme Court, in ***New Delhi Television Ltd. V/s. DCIT [2020] 116 taxmann.com 151***

(SC) reiterated the position that at the stage of issuance of notice the assessment officer is required to only form a *prima facie* view.

14. Applying the aforesaid principles to the facts of the present case we do not think that any case has been made out to interfere with the impugned notice or the impugned order. In this case, based on the material on record, we cannot say that the respondents had no reason to believe that income had indeed escaped assessment for the relevant assessment year. The circumstance about the discovery of cash deposits to the extent of ₹4.39 crores against the assessee's PAN number and the circumstance that for this assessment year, the assessee chose not to file any return at all, were, sufficient as well as relevant to the formation of reason to believe. Therefore, no case is made out to interfere with the impugned notice and the impugned order.

15. Though we are dismissing the present petition, we make it clear that none of the observations in this order should either influence or affect the assessment proceedings taken out in pursuance of the impugned notice. There, it is expected that the respondents examine the matter in some detail, including, the defense of the petitioner herein in the context of the letter subsequently issued by the Goa Urban Cooperative Bank. The assessment will have to be completed by adverting to all this material no doubt after verifying the same in accord with the law. To this extent, therefore, even the petitioner will not be seriously prejudiced.

16. For all the aforesaid reasons this petition is dismissed. There shall be no order for costs.

R. N. LADDHA, J. **M. S. SONAK, J.**