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**IN THE HIGH COURT OF BOMBAY AT GOA**

**WRIT PETITION NO.104 OF 2022**

HEDE FERROMINAS PVT.  
LTD, REP. BY  
AUTHORISED DIRECTOR  
ARVIND SHAMSUNDER  
AMONKAR ... PETITIONER

***Versus***

ASST. COMMISSIONER OF  
INCOME TAX, CIRCLE 1(1)  
PANAJI AND ANR. ... RESPONDENTS

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

**CORAM : M. S. SONAK &  
BHARAT P. DESHPANDE, JJ.**

**DATE : 11<sup>th</sup> OCTOBER 2022**

**ORAL ORDER : (*Per M.S. SONAK, J.*)**

**1.** Heard Mr Panandiker for the Petitioner and Ms Susan Linhares for the respondents.

**2.** The petitioner questions the impugned notice dated 16.03.2022 seeking to reopen the assessment for Assessment Year 2015-16.

**3.** On 27.03.2021, the Petitioner was issued a notice under Section 148 by respondent no.1 stating that respondent no.1 has reasons to believe that income chargeable to tax for Assessment Year 2015-16 has escaped assessment. This notice required the Petitioner to file returns within 30 days.

**4.** Despite receipt of the above notice, the Petitioner did not bother to file any returns within 30 days. Almost eight months later, that is, on 03.01.2022, the Petitioner was served with a notice under Section 142(1) from ITI requiring the Petitioner to furnish accounts and documents to enable the respondents to proceed with the reassessment in terms of the notice dated 27.03.2021, which the Petitioner had not bothered to respond.

**5.** At this belated stage, the Petitioner, vide communication dated 14.01.2022, applied for a week to compile the data and make necessary submissions. Finally, on 21.01.2022, the Petitioner filed a return of income in compliance with the notice under Section 148 and requested reasons to support the reopening.

**6.** On 18.02.2022, the Petitioner was served with the notice under Section 143(2) of the IT Act, along with reasons for reopening of assessment. The Petitioner filed objections on 23.02.2022, which were disposed of vide impugned notice dated 16.03.2022. Hence, the present Petition.

**7.** Mr Panandiker submits that the delay in filing the return in pursuance of notice dated 27.03.2021 is not fatal because the respondents can always levy interest or even penalty in terms of section 234A of the Income Tax Act. He submits that the first reason for the alleged receipt of ₹6,74,30,000/- by the Petitioner during Assessment Year 2015-16 is not borne out from Form 26AS. Therefore, this could not have been a reason for the reopening of the assessment.

**8.** Mr Panandiker further submits that though the Petitioner had not filed any returns during Assessment Year 2015-16, it was the case of the Petitioner that it had incurred losses and had no intention of carrying forward such losses. Therefore, he submitted that there was no legal requirement to file a return.

**9.** Based on the above, Mr Panandiker submits that there are no reasons or valid reasons for reopening the assessment. Accordingly, he presents that the impugned notice/order must be set aside in such circumstances.

**10.** Ms S. Linhares counters the submissions made by Mr Panandiker. She submits that the Petitioner did not bother to file any returns for Assessment Year 2015-16 and, therefore, the provision of Section 147 of the IT Act was squarely attracted. She points out that the Petitioner did not bother responding to the notice dated 27.03.2021 within the prescribed period. She submits that the delayed

return filed by the Petitioner was only to frustrate the time limits prescribed to the Assessing Officers for completing the assessment. She submits that there is clear information about the Petitioner receiving an amount of ₹2.74 crores and interest of ₹2,15,107/-. Coupled with the fact that no returns were filed for the relevant Assessment Year, this was a clear case of income escaping assessment. Ms Linhares states that the return filed by the Petitioner makes it clear that all defences and explanations of the Petitioner would be considered during the reassessment proceedings. Based on all these, Ms Linhares submits that this Petition may be dismissed.

**11.** The rival contentions now fall for our determination.

**12.** In this case, there are two significant circumstances based on which the Petitioner cannot expect this Court to exercise its extraordinary and discretionary jurisdiction in its favour. But, apart from these circumstances, other reasons disentitle the Petitioner from any relief in this Petition.

**13.** Firstly, the Petitioner did not bother to file any returns during Assessment Year 2015-16. Secondly, the Petitioner did not bother to file any response to the notice dated 27.03.2021 seeking to reopen the assessment within the time limit allowed to the Petitioner. The Petitioner filed returns only after eight months at the stage when the time limit for completing the reassessment proceedings was almost due

to conclude. In these circumstances, the Assessing Officer rightly invoked the principle in *Union of India V/s. Major General Madan Lal Yadav*<sup>1</sup>.

**14.** Discretion apart, we find that this is a matter where the explanation (2) to Section 147 of the IT Act would apply. This explanation *inter alia* provides that where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded with a maximum amount which is not chargeable to income-tax, the same shall also be deemed to be a case where income chargeable to tax has escaped assessment.

**15.** The Petitioner has not explained the amount of ₹2,15,107/-. The Petitioner may have its own version about the receipt of the amount of ₹6.74 crores. However, these are matters which can be looked into at the stage of reassessment. Based on the material available with the respondents, we cannot say that they either had no reason to believe or that their reasons to believe were based on some non-extent material or extraneous and irrelevant material.

**16.** Mr Panandiker's contentions are in a realm of merits which can always be gone into at the stage of actual reassessment. However, based

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<sup>1</sup> 1996 (4) SCC 127

on his contentions, no case is made out to interfere with the impugned orders or impugned notices seeking to reassess the Petitioner's income.

**17.** For the above reasons, we dismiss this Petition.

**18.** However, there shall be no order for costs.

**BHARAT P. DESHPANDE, J.**

**M. S. SONAK, J.**

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