IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3707 OF 2022

Deepak Marda … Petitioner
V/s.
The Income Tax Officer
Ward-1 Ichalkaranji and ors. … Respondents

Mr. Suyog Bhave i/b Ms Farzeen Khambatta for the Petitioner.
Mr. Suresh Kumar for the Respondent.

CORAM : K.R. SHRIRAM &
N.R. BORKAR, JJ.
DATE : APRIL 13, 2022.

P.C.

1] We find that order passed by respondent No.1 to the objections filed by petitioner does not display application of mind. In the order dated 21.04.2021, at paragraphs 3 and 4, Officer has referred to provisions of sections 149 and 151 of the Act and says why they are applicable, even though no objection has been raised by petitioner regarding its applicability. Moreover none of the information as mentioned in the reasons recorded for reopening has been provided to petitioner.

2] Respondent No.1 is directed to provide copy of information/letter dated 07.03.2018, copy of the settlement agreement on which he is relying upon, copy of the appeal of in case of Milan Saini that was disposed by CIT (A), Gurgaon and copy of order passed by CIT (A), Gurgaon, on which, respondent No.1 has relied upon in the reasons recorded for reopening within two weeks of this order being uploaded.

3] Here is a case where reopening is proposed after expiry of four years from the end of relevant assessment year and therefore, the proviso to section 147 of the Act shall apply. The view of respondent No.1 that he has to only show whether there was any relevant material which a person could have relied upon to form a requisite belief is totally incorrect. The Assessing Officer who wishes to reopen after four years from the end of relevant assessment year is duty bound to make out a case of failure to disclose material facts truly and fully by assessee. Therefore, we quash and set aside two orders on objections dated 21.04.2021 and 22.04.2021.

4] We have to also note that in the affidavit-in-reply filed by one Goushkan A. Pathan, affirmed on 10.02.2022, respondent admits that the petitioner has submitted all facts fully and truly.

5] The matter is remanded for *de novo* consideration by J.A.O., who shall pass a reasoned order dealing with all objections and submission of the petitioner. Petitioner is permitted, within two weeks from the date of receipt of documents/information referred to in para 2 above, to submit further submissions /objections to reopening of assessment.

6] The JAO shall dispose the objections within four weeks from the date of submission of further submissions/ objections, after giving a personal hearing to petitioner. The notice for personal hearing shall be issued atleast seven working days in advance. If the Assessing Officer wishes to rely on any order or judgment of any High Court or Tribunal, then a list thereof shall be provided to petitioner alongwith the notice of personal hearing so that petitioner may be able to deal with/distinguish those orders/ judgments.

7] The JAO shall, we repeat, shall deal with every objection raised by petitioner and pass the order on objections dealing with every point raised by petitioner.

8] The time from the date of lodging this petition, i.e., 06.12.2021, until the time granted for disposing objection is excluded for completion of the assessment proceedings.

9] We clarify that we have not made any observations on the merits of the case.

10] Petition accordingly disposed.

(N.R. BORKAR, J.) **(K.R. SHRIRAM, J.)**