IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.3031 OF 2022

Sunil Hanskrishna Khanna,
Navi Mumbai .... Petitioner.
Vs.
Asst.Commissioner of Income Tax
Range 27(3) Navi Mumbai & Ors. .... Respondents.

Mr. Prakash Pandit a/w Advocate Premchandra Tripathi for petitioner.

Mr. Akhileshwar Sharma, Advocate for respondent.

CORAM : K.R. SHRIRAM &
N.R.BORKAR, JJ.

DATE : 21st APRIL, 2022.

P.C.:

1. Affidavit-in-reply tendered by Mr. Sharma is taken on record.

2. Petitioner is impugning notice dated 31.3.2021 issued u/s 148 of the Income Tax Act, 1961 (hereinafter to be referred to as the 'said Act') by which respondent no.1 has alleged that there are reasons to believe that petitioner's income chargeable to tax for the Assessment Year 2013-2014 has escaped assessment as within the meaning of Section 147 of the said Act.

3. Reasons recorded for such belief is also annexed to the petition.

4. The entire basis for such belief is petitioner had traded in the shares of a Company by name JRI Industries and Infrastructure Limited and had sold shares worth Rs.3,08,62,878/- and claimed Short Term Capital Gains of Rs.33,54,179/- u/s 111 A of the said Act. The Assessing Officer has received information from the office of DDIT (Inv) that JRI Industries and Infrastructure Ltd. was involved in providing accommodation entries in the form of Bogus Long Term Capital Gains/Short Term Capital Lossess in penny stock scrips to the beneficiaries by manipulating stock market. Since petitioner was one of the persons/beneficiaries who had traded in the scrip of JRI Industries, entire consideration of Rs.3,08,62,878/- from sale of shares of the said scrip remained unexplained. Therefore, said amount had escaped assessment.

5. Here is the case where reopening is proposed after expiry of 4 years from the end of relevant assessment year and since assessment u/s 143(3) of the said Act has been completed, proviso to Section 147 of the Act shall apply. Therefore, there is a bar for reopening unless respondent is able to show there has been escapement of income due to failure on the part of petitioner to truly and fully disclose material facts required for assessment.

6. We have considered the reasons recorded and the reasons does not disclose what was the material fact that petitioner was bound to disclose which fact he has failed to truly and fully disclose.

7. Moreover, during the assessment proceedings, specific query was raised in the notice dated 28.7.2015 issued u/s 142(1) calling upon petitioner to produce copies of Demat statements for assessment year 2012-2013 and assessment year 2013-2014 and also file details of scrip wise share purchase/sale. Petitioner in its reply, which is undated, has provided all details. Further query was raised by notice dated 25.01.2016 u/s 142(1) of the said Act, on the same point which is the subject matter of the reasons recorded, i.e., long term capital gains and short term capital gain. Petitioner responded by its letter dated 8.2.2016 and provided all details. In the details, petitioner has also disclosed name of JRI Industries and Infrastructure Limited as one of the Company in which he had traded. Further details were provided by petitioner vide letter dated 12.2.2016. In affidavit in reply filed through one Raju B. Kuhikar, affirmed on 30.3.2022, in para 12 it is averred as under;

> *"12. I say that information received from the DDIT (Inv.) Unit-5(2), Mumbai is a tangible material. I admit that the petitioner has furnished the particular of transaction in the JRI Industries and Infrastructure Limited. The same was treated by the Assessing Officer as bonafide transactions and assessed*

> *accordingly. The Assessing officer had no means to know that such transaction in the scrip of the JRI Industries and Infrastructure Limited are not bonafide."*

8. Mr. Akhileshwar Sharma, for respondent submitted that this issue has not been discussed in the assessment order. It is settled law that once a query is raised, during assessment proceeding and assessee has replied to it, it follows that the query raised was subject of consideration of the A.O. while completing the assessment and it is not necessary that assessment order should contain reference and/or discussion to disclose its satisfaction in respect of query raised. Still, in affidavit in reply it is admitted that the A.O. had accepted particulars of transactions furnished by petitioner and the A.O. has treated the same as bonafide transactions and assessed accordingly.

9. Even if, the Assessing Officer had no means to know that the transactions in the scrip of JRI Industries and Infrastructure Limited are not bonafide and even if, we assume that the Assessing Officer had committed a mistake, still, as held in ***Gemini Leather Stores vs The Income Tax Officer***[1] assessment cannot be re-opened by reason of omission or failure on the part of the assessee to disclose fully and truly all material facts as

1 (1975)100 ITR 1 (SC)

Income Tax Officer had material facts before him when he made original assessment and he can not take recourse to reopen to remedy the error.

10. In the circumstances, we allow the petition in terms of prayer clause (a) which reads as under;

> *“(a) This Hon’ble Court be pleased to issue a writ or certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India against the 1st Respondent calling for the record of the case of the petitioner and after looking into the same and going into the question of the legality thereof quash and set aside the said notice u/s 148 dated 31.3.2021, together with the order dated 30.12.2021 and the assessment proceedings in pursuance of the said notice.”*

11. Petition disposed, with no order as to costs.

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