IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2112 OF 2022

Mushtaque Ahmed Tajammul Hussain Rizvi ….Petitioner

V/s.

Income Tax Officer, Ward-1, Malegaon, & ors. …Respondents

Mr. Dinesh Ramesh Gulabani for Petitioner
Mr. Suresh Kumar for Respondents

CORAM : K.R. SHRIRAM &
N.J. JAMADAR, JJ
DATED : 28th FEBRUARY 2022

P.C. :

1 Petitioner is impugning a notice dated 29th March 2021 issued under Section 148 of the Income Tax Act, 1961 (the Act) for A.Y.-2016-2017. Since the notice issued is within 4 years, we have to only see whether reasons recorded shows any tangible material for reopening. The reasons recorded, which has been provided to petitioner vide letter dated 15th June 2021 indicates that the basis for reopening is petitioner had made cash deposit to the extent of Rs.78,00,000/- during F.Y.-2015-2016 relevant to A.Y.-2016-2017 and during the assessment proceedings, petitioner had stated that he will submit certain details to corroborate his statement that this amount was kept aside for his daughter's admission in medical college, medical treatment of his family and for the purpose of Haj Yatra of his mother and brother. According to the officer proposing to reopen, petitioner has not provided the details.

2 In our view, this reason is only due to change of opinion, which is not permissible. We say this because in the assessment order dated 30th November 2018, this cash deposit of Rs.78 lacs has been discussed and the Assessing Officer categorically stated "*During assessment proceedings, the assessee has explained the sources of the cash of Rs.78,00,000/- deposited in his saving bank account running with ICICI Bank.*"

3 In the circumstances, we allow the petition in terms of prayer clause (a), which reads as under:

> *"(a) That this Hon'ble Court may be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate writ order or direction, calling for the records of the Petitioner's case and after going into the legality and propriety thereof, to quash and set aside the said impugned notice dated 29/03/2021 issued u/s 148 which is illegal and void ab initio and quash the entire reopening proceedings u/s 147 of the Act."*

4 Since the notice itself has been quashed and set aside, the order rejecting the objection passed on 12th August 2021 also stand quashed and set aside.

5 Petition accordingly stands disposed.

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