IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.476 OF 2022

Gandhi Securities and Investment Pvt. Ltd. ....Petitioner

V/s.

Assistant Commissioner of Income Tax
Circle 4(1)(1) and Ors. ....Respondents

Mr. Gopal Mundhra a/w. Mr. Parth Parikh i/b. Economic Laws Practice for petitioner.
Mr. Sham V. Walve i/b. Mr. Suresh Kumar for respondents.

CORAM : K.R. SHRIRAM &
N.J. JAMADAR, JJ.
DATED : 9th FEBRUARY 2022

P.C. :

1 Petitioner is impugning a notice dated 31st March 2021 issued under Section 148 of the Income Tax Act, 1961 (the said Act). The reasons for reopening alongwith the notice is annexed to the petition.

2 Mr. Mundhra submits that the reason for reopening is identical to a query raised by the Jurisdictional Assessing Officer vide a communication dated 4th September 2017 to which petitioner had filed a response through its Chartered Accountants' letter dated 19th September 2017. Mr. Mundhra states that subsequently an assessment order has been passed without making any addition. Therefore, once the query has been raised on the issue and answered by the assessee, even if that is not discussed in the assessment order, still as held by this Court in ***Aroni Commercials Ltd. V/s. Deputy Commissioner of Income Tax 2 (1)***[1], the

1. (2014) 44 taxmann.com 304 (Bombay)

Assessing Officer is supposed to have applied his mind to the issue. Mr. Mundhra states that relying on the same set of documents, notice cannot be issued to take a different view. Mr. Mundhra states that the reasons for reopening clearly indicate change of opinion which is not permissible in law.

3 Mr. Walve states that petitioner has rushed to the Court without even filing its objections to the notice issued under Section 148 of the said Act and if petitioner files its objections to the notice, the Assessing Officer will consider those objections and take a decision in accordance with law. It is premature on the part of petitioner to have approached this Court. Mr. Walve states that the Court should, therefore, dismiss the petition and direct petitioner to make all submissions before the concerned Assessing Officer by filing its objections.

4 Therefore, the petition is disposed with the following directions :

> (a) petitioner shall within two weeks from today file its objections to the notice dated 31st March 2021 under Section 148 of the said Act for Assessment Year 2015-2016;
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> (b) the Assessing Officer shall consider the objections, give a personal hearing to petitioner and the notice of personal hearing shall be communicated to petitioner within one week in advance and pass a detailed order dealing with the objections raised by petitioner within six weeks from the date of this order getting uploaded;
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> (c) if the Assessing Officer wishes to rely on any judgments or order passed by any Court or

> Tribunal, he shall provide a copy thereof to petitioner and give them an opportunity to deal with those judgments or distinguish those judgments and those submissions of petitioner shall also be dealt with in the assessment order.

5 We clarify that we have not made any observation on the merits of the case.

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