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

INCOME TAX APPEAL NO. 1528 OF 2017

Pr. Commissioner of Income Tax-19 ….Appellant

V/s.

Surendra R. Shah …Respondent

Mr. Sham V. Walve for Appellant.
None for Respondent.

CORAM : K.R. SHRIRAM &
N. J. JAMADAR, JJ.
DATED : 3rd MARCH, 2022

P.C. :

1. The following question of law is proposed in this appeal.

QUESTION OF LAW

1. Whether on the facts and circumstances of the case and in Law, the questioning of the service of a statutory notice after an inordinate delay should be decided on the principles of preponderance of probability inferred from the conduct of the assessee in the spirit of the provisions of section 292BB of the I.T. Act, 1961?

2. Mr. Walve submitted that the short point is whether the notice under Section 148 of the Income Tax Act, 1961 (the Act) has been served. That depends on facts of the case and the evidence that appellant shows to prove that notice has been served. Mr. Walve also relied upon Section 292BB of the Act to submit that the assessee having participated in the proceedings cannot raise this objection if he has not raised such objection before completion of assessment proceedings. Mr.Walve relied upon the assessment order to justify that such objection was never raised.

3. We have considered the assessment order, order of CIT (A) as well as the Income Tax Appellate Tribunal (ITAT). What the assessment order says is only a gist of the submissions made by assessee in their response to notice under Section 142(1) of the Act. The entire letter has not been reproduced. Therefore, from the assessment order we cannot make out whether such an objection before completion of assessment was raised.

4. Moreover, in the impugned order passed by the ITAT, the ITAT has noted one important fact that the assessee had taken specific ground that notice under Section 148 of the Act was never served. The assessee had even filed affidavit to that effect. Keeping that in mind the CIT (A) called upon the concerned Assessing Officer to send the case records for perusal. The Assessing Officer did not send case records. Subsequently, letter was even written to the concerned Assessing Officer. Still the case records were not sent. We have to note that even before the ITAT, the case records have not been produced for tribunal's perusal.

In the circumstances, there is no denial on facts to the affidavit filed by assesee that notice under Section 148 of the Act has not been served. Further the lack of response from the Assessing Officer compels us to draw adverse inference that such notice has not been served and if the case records had been produced that fact would have been established.

5. In our view, the Tribunal has not committed any perversity or applied incorrect principles to the given facts and when the facts and circumstances are properly analysed and correct test is applied to decide the issue at hand, then, we do not think that question as pressed raises any substantial question of law.

The appeal is devoid of merits and it is dismissed with no order as to costs.

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