MEERA MAHESH JADHAV

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.266 OF 2021

Rahul Suri ….Petitioner

V/s.

Union of India & Ors. …Respondents

Mr. Rajendra i/b Mr. S. R. Lodhe for Petitioner
Mr. Akhileshwar Sharma for Respondents - Revenue

CORAM : K.R. SHRIRAM &
N.J. JAMADAR, JJ
DATED : 2nd FEBRUARY 2022

P.C. :

1 Petitioner has approached this court for two reliefs; (a) to waive the pre deposit of 20% of the tax demand to escape being declared an assessee in default pending the disposal of the appeal filed by petitioner before Commissioner of Income Tax (Appeals) {CIT(A)} for A.Y.-2012-2013; and (b) also to quash and set aside the assessment order dated 24th December 2019.

Since the appeal has been filed against the assessment order, we do not wish to interfere as far as the assessment order is concerned.

2 On the first prayer of waiver of pre deposit of 20% of the demand, in our view petitioner should be granted this relief. The reasons for arriving at this conclusion are as under:-

(a) Petitioner had filed return of income on 31st July 2012 declaring total income of Rs.1,92,42,810/- for A.Y.-2012-2013 and assessment order under

Section 143(3) of the Income Tax Act 1961 (the Act) came to be passed on 31st March 2014 accepting the return of income. Thereafter, petitioner received a notice dated 20th March 2019 under Section 148 of the Act stating that the Jurisdictional Assessing Officer (JAO) had reasons to believe that petitioner's income chargeable to tax for A.Y.-2012-2013 has escaped assessment within the meaning of Section 147 of the Act. The notice also states it was issued after obtaining approval/necessary satisfaction of Principal CIT.

We have considered the reasons for reopening. The entire basis is that petitioner had sold land and shares amounting to Rs.71,31,55,364/- and subsequently availed exemption under Section 54F of the Act. Petitioner later allegedly violated the provisions of Section 54F of the Act and, therefore, JAO had reasons to believe that the entire amount of Rs.71,31,55,364/- was income chargeable to tax that has escaped assessment. This is the only ground on which JAO had obtained approval / necessary satisfaction of Principal CIT.

(b) Petitioner filed his objections to the reopening and the assessment order came to be passed on 24th December 2019. In this assessment order, JAO has accepted that there was no violation of provisions of Section 54F during the assessment year under consideration and, therefore, no addition is made in A.Y.-2012-2013 under Section 54F of the Act. In our view, that should have been the end of the entire reopening exercise. JAO, however, has gone ahead and added a sum of Rs.14,92,00,000/- as unexplained cash credit under Section 68 of the Act. We have to keep in mind that this assessment order dated 24th December 2019 was pursuant to a reopening of the assessment under Section 148 of the Act. This unexplained cash credit which is added, was not even a subject matter in the reasons recorded for reopening on which approval/satisfaction of Principal CIT had been obtained. As held in ***First Source Solutions Limited V/s. The Assistant Commissioner of Income Tax – 12 (2) (1) and Anr.***[1], the reasons for reopening the assessment has to be tested / examined only on the basis of the reasons recorded at the time of issuing a notice under Section 148 of the Act seeking to reopen the assessment. The court has held that these reasons cannot be improved upon and/or supplemented much less substituted by affidavit and/or oral submissions. We will also add that the Assessing Officer not having disclosed these aspects on which the assessment is reopened, cannot be stated to have formed any opinion as a reason for reopening.

(c) We have to also note that in this case, the reopening notice was issued after the expiry of 4 years after the end of relevant assessment year and the assessment order under Section 143(3) having been passed, the proviso to Section 147 would apply. Therefore, the onus is on the JAO to show that there was failure on the part of petitioner to disclose fully and truly any material fact. In the reasons recorded, there is nothing to indicate that there was any failure on the part of petitioner to

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truly and fully disclose any material fact. The reasons recorded does not even disclose what was the material fact that was not truly and fully disclosed.

3 Therefore, in our view, petitioner should be granted waiver of pre deposit of 20% or any part thereof. There shall also be no coercive action against petitioner. We also add until the appeal is disposed by the CIT(A), and for two weeks thereafter, if the order is prejudicial to petitioner, petitioner shall not be treated as an assessee in default for A.Y.-2012-2013.

4 Petition accordingly stands disposed.

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