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

WRIT PETITION NO.1237 OF 2022

Manan Trading Company Pvt. Ltd. ….Petitioner

V/s.

The Deputy Commissioner of Income Tax
Central Circle 1(1) and Ors. ….Respondents

Mr. Jignesh R. Shah for petitioner.
Mr. Suresh Kumar for respondents.

CORAM : K.R. SHRIRAM &
N.J. JAMADAR, JJ.
DATED : 7th MARCH 2022

P.C.:

1 Petitioner is impugning a notice dated 31st March 2021 issued under Section 148 of the Income Tax Act, 1961 (the Act) for Assessment Year 2013-2014 and the order on objections dated 24th January 2022.

2 Admittedly, the notice has been issued more than four years after the expiry of the relevant assessment year and since the assessment has been completed under Section 143(3) of the Act, the proviso to Section 147 of the Act shall apply and the onus is on respondent to show that there has been failure on the part of petitioner to truly and fully disclose material fact for assessment.

3 We have considered the reasons recorded for reopening with the assistance of Mr. Shah and Mr. Suresh Kumar. We are satisfied that the reasons recorded for reopening are purely based on change of opinion and not due to any failure on the part of petitioner to disclose any material fact.

Paragraph 2.2 of the reasons read as under :

> *2.2. It is seen from the P&L account that the assessee has shown a total turnover/gross receipt of Rs.1699.07 lakhs. However, the then AO in the assessment order u/s. 143(3) of the Act dated 26.03.2016 had added back 1% of the total turnover/sales to the total income of the assessee. As information received from a reliable source, as gross profit may be higher than what the then AO has added in the assessment order at least 5% of the total turnover/sales have to be added back to the total income in this case. Hence, the income has escaped assessment to the extent of Rs.67,96,281/- within the meaning of Section 147 of the Income Tax Act, 1961. The details of which is shown as under :*
>
> *Total Turnover/sales : Rs.16,99,07,027/-*
>
> *5% of Rs.16,99,07,027 (A) - 8495351*
>
> *1% of Rs.16,99,07,027 (B) - 16,99,070*
>
> *Different (A-B) - 67,96,281*

4 Therefore, the Assessing Officer says that the Assessing Officer who did the original assessment proceedings under Section 143(3) of the Act added back only 1% of the total turnover/sales to the total income of the assessee instead of adding back 5%. This indicates clear change of opinion. Moreover, there is nothing to indicate why it should be 5%.

5 In the circumstances, we are satisfied that the notice dated 31st March 2021 and the impugned order dated 24th January 2022 has to be quashed and set aside.

6 Petition allowed 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 under Article 226 of the Constitution of*

India, calling for the records of the Petitioner's case so far as they relate to the impugned notice dated 31.3.2021 under section 148 (Exhibit K) and the impugned order dated 24.1.2022 (Exhibit P) and after going through and examining the question of the legality, validity and propriety thereof, be pleased to quash and set aside the said notice dated 31.3.2021 under section 148 (Exhibit K) to reopen the petitioner's assessment for the assessment year 2013-14 together with the order dated (Exhibit P) dealing with the petitioner's objections.

7 Petition disposed accordingly with no order as to costs.

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