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

WRIT PETITION NO.994 OF 2022

Saifee Burhani Upliftment Trust ….Petitioner

V/s.

Assistant Commissioner of Income Tax
Exemption, Circle – 2 & Ors. ….Respondents

Mr. Tanzil Padvekar a/w. Mr. R. S. Padvekar for petitioner.
Mr. Akhileshwar Sharma for respondents-Revenue.

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

P.C.:

1 At the outset, Mr. Padvekar seeks leave to amend the prayer clause and tenders draft amendment, which is taken on record and marked "X" for identification.

2 Leave to amend granted. Amendment to be carried out forthwith. Re-verification is dispensed with.

3 Petitioner is impugning notice dated 19th March, 2021 for Assessment Year 2015-2016 and the order on objections dated 7th January, 2022 on the ground that notice has been issued purely on the basis of change of opinion which is not permissible in law.

4 Admittedly, in this case, notice under Section 148 of the Income Tax Act, 1961 (the Act) has been issued after expiry of four years from the end of the relevant assessment year and the assessment proceedings has

been completed under Section 143(3) of the Act. Therefore, proviso to Section 147 of the Act shall apply. As per proviso there is bar to reopen the assessment after expiry of four years from the end of the relevant assessment year unless respondent has been able to show that there is non disclosure of material facts by petitioner for assessment.

5 Though no reply has been filed, we decide to take up the petition for hearing with the assistance of Mr. Padvekar and Mr. Sharma. There is nothing in the reasons recorded to indicate that there was non disclosure of material facts by petitioner. Even the contents of the notice does not cull out any allegations of non disclosure. Paragraph no.7 of the reasons recorded for reopening reads as under :

> *7. However the assessing officer restricted the assessment on denial of deficit of Rs.1,82,45,65,800/- to be carried forwards as claimed by the assessee. Instead of computation of total income of the assessee adding the Corpus donation and loan (held as Voluntary contribution) of Rs.210,44,68,000/-. As the corpus donation and loans are in the nature of voluntary contribution, the same should have been treated as part of receipt/income from where deduction of expenditure on the objects of trust could have been allowed.*

5 Therefore, this clearly indicates that it is nothing but a clear case of change of opinion. We will also add that the entire reason is speculative.

6 In the circumstances, petition is allowed in terms of prayer clause – (b) which reads as under :

> *(b) 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 quashing and setting aside impugned Notice dated 19/03/2021 (Exhibit "A") and also order disposing objections dated 07/01/2022 (Exhibit "L") and also if any re-assessment order is passed during the pendency of this Petition.

7 Petition disposed.

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