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

WRIT PETITION NO. 1603 OF 2022

Alimohmed Hasanbhai Nathani ….Petitioner

V/s.

Assistant Commissioner of Income Tax, Circle 22(1), Mumbai and Ors. …Respondents

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Mr. Hiro Rai a/w Mr. Subhash Shetty i/b Mr. Atul K. Jasani for Petitioner.
Mr. Akhileshwar Sharma a/w Mr. Vikas T. Khanchandani for Respondents-Revenue.

CORAM : K.R. SHRIRAM &
N. R. BORKAR, JJ.
DATED : 18th APRIL, 2022

P.C. :

1. Mr. Rai submitted that the issue in this petition is squarely covered by the order passed by this court in ***Ashraf Alibhai Nathani, Muumbai vs. Assistant Commissioner of Income Tax Circle-22(1), Mumbai and Others***[1] where petitioner was son of petitioner herein. The only difference will be that the amounts and the number of shares will differ.

2. Mr. Sharma agrees with what Mr. Rai says but adds, in the reasons recorded in the petition at hand, there is allegation that there was failure on the part of petitioner to truly and fully disclose material facts. In our view, this is nothing but an attempt to get over the restrictions in the proviso to Section 147 of the Income Tax Act, 1961 (the Act) because this is a case

1 Writ Petition No.550 of 2022 Dated 16th February, 2022

where the assessment is proposed to be re-opened after expiry of four years from the end of the relevant assessment year and assessment under Section 143(3) of the Act had been completed.

3. We have to also note that this is nothing but a bald statement made in the reasons recorded because the Assessing Officer does not disclose what is the material fact that was required to be disclosed which petitioner has failed to disclose.

4. In the circumstances, we allow this petition in terms of prayer clause – (a) which reads as under :

> *(a) that this Hon'ble Court be pleased to issue a Writ of Certiorari or any other Writ, Order or Direction under Article 226 of the Constitution of India calling for the records of the case leading to the issue of the impugned notice and passing of the impugned order and after going through the same and examining the question of legality thereof quash, cancel and set aside the impugned notice (Exhibit G) dated 23rd March, 2021 and impugned order (Exhibit M) dated 2nd February, 2022.*

5. Petition disposed with no order as to costs.

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