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

WRIT PETITION NO. 752 OF 2015

Narendrakumar A. Baldota And Ors. ….Petitioners

V/s.

Deputy Commissioner of Income Tax
1(2), Mumbai And Ors. …Respondents

Mr. P.J. Pardiwalla, Senior Advocate i/b Mr. Satish R. Mody for Petitioners.
Mr. Suresh Kumar for Respondents.

CORAM : K.R. SHRIRAM &
N. J. JAMADAR, JJ.
DATED : 11th MARCH, 2022

P.C. :

1. Paragraph nos.1 and 2 of the order dated 5th May, 2015 read as under :

> *1. The contention of Mr. Pardiwalla, learned senior counsel appearing on behalf of the petitioner is that the petitioner is seeking to challenge the order of assessment dated 11th February, 2015 (Annexure 'Y') on the ground that the notice under section 148 of the I.T. Act is dated 31st March, 2014. The reasons for reopening the assessment came to be supplied to the petitioner and the petitioner objected to those reasons. The order disposing of and rejecting the objections dated 27th January, 2015 (Annexure 'V') was served on the petitioner-assessee on 10th February, 2015. The assessing officer without waiting for the period of four weeks from such service passed an assessment order contrary to the directions of the Division Bench judgment of this Court on 11th February, 2014. Thus, on the date the order dismissing the objection was served on the petitioner, the assessing officer rushed and passed the assessment order on the very next day namely, 11th February, 2015. Therefore, this assessment order should be ignored and this Court must permit the petitioner to canvass submissions challenging the legality and validity of notice under section 148 of the I.T. Act.*
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> *2. In that regard, reliance is placed on the Division Bench*

judgment of this Court in the case of Aroni Commercials Limited V/s. Deputy Commissioner of Income Tax & Anr. in Writ petition No.137 of 2014 decided on 11th February, 2014 [reported in (2014) 362 ITR 403].

2. On 9th July, 2015 when the petition came to be admitted, following order came to be passed :

Heard.

2 Rule.

3 This petition challenges the notice dated 31 March 2014 issued under Section 148 of the Income Tax Act, 1961 (the Act), seeking to reopen the assessment for the Assessment Year 2007-08. Prima facie, it appears that the reopening was initiated by the Assessing Officer on directions of his superiors emanating from an audit objections. In fact, when the objection was first raised, both the Assessing Officer and the Commissioner of Income Tax (Central) took a stand that there is no error in the assessment order and no reassessment proceedings were warranted. Thereafter an officer in the office of the Commissioner of Income Tax (Central) informed the Assessing Officer of the desire of the Commissioner that a notice for reopening be issued. Thereafter when the case was transferred to Mumbai, the Forwarding Memo also indicated that the case be reopened. Prima facie, it appears that the reopening notice was issued without independent application of mind and/or directions of his superior. In view of the above, the reopening notice dated 31 March 2014 is stayed.

4 We may also point out that, after the order disposing of the objections was passed on 27 January 2015 and served upon the petitioner on 10 February 2015, the Assessing Officer proceeded to pass the assessment order under Section 143(3) read with Section 147 of the Act on 11 February 2015. This action of the Assessing Officer is in defiance of and contrary to the directions of this Court in Asian Paints v/s Commissioner of Income Tax, reported in 296 ITR 90 and Aroni Coomercials Ltd. v/s Dy. Commissioner of Income Tax & anr., reported in (2014) 362 ITR 403, wherein it has been held that after the orders disposing of the petitions is passed the Assessing Officer will not commence any proceedings for a period of four weeks from the date of disposing of the objections. In spite of the law being clearly laid down by this Court, the Assessing Officer has proceeded to pass an order immediately after having disposed of the objections.

5 The Assessing Officer Mr. P.D. Chougule has filed an affidavit in reply dated 25 June 2015 stating that he was not aware of the order of this Court and also tender an apology. However no offer has been made by the Assessing Officer to withdraw an order passed in defiance of the order of this Court. Therefore, the issue of action to be taken against the Assessing Officer Mr. P.D. Chougule in passing orders in defiance of the orders of this Court will be considered at the time of final hearing in the light of the explanation being offered by him.

6 Interim relief in terms of prayer clause (d).

3. Having considered the petition and the affidavit filed by respondent, we clearly agree with the observations of this court in the two orders quoted above.

4. In view of what is recorded in paragraph 4 of the order dated 9th July, 2015, the assessment order dated 11th February, 2015 has to be quashed and set aside.

5. In view of what is quoted in paragraph no.3 of the order dated 9th July, 2015 and paragraph no.1 and 2 of the order dated 5th May, 2015, re-opening notice issued under Section 148 of the Income Tax Act, 1961 (the Act) has been issued without independent application of mind and purely on directions of Superior Officer, therefore on these grounds the notice dated 31st March, 2014 has to be quashed and set aside. The consequential order dated 27th January, 2015 rejecting objections also has to be quashed and set aside.

6. We also notice that Respondent No.1 has initiated re-assessment proceedings passed only on audit objection raised by the Revenue and to which the then Assessing Officer, i.e., ACIT Bangalore had replied and states in its letter dated 30th March, 2011 and there is no error in the original assessment completed by him and that audit objection is not accepted by him.

Therefore, if the Assessing Officer after application of mind to the facts of the case passes the original assessment order and comes to a certain conclusion and thereafter even does not accept audit objection raised by the audit party on the said conclusion, re-opening by the subsequent Assessing Officer only on the basis of such audit objection is bad in law.

7. This has been raised in ground "F" to the petition and in the affidavit in reply of one Mr. P.D. Chougule affirmed on 25th June, 2015, respondent admit that the contents thereof are true and correct.

8. In the circumstances, petition is 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 writ, order or direction in the nature of Certiorari calling for the records of the Petitioner's case and, after examining the legality and validity of the impugned notice issued by Respondent No.1 under section 148 of the Act dated 31st March, 2014 (being Exhibit "Q" hereto), the order passed by Respondent*

No.1 disposing off the objections raised by the Petitioner against the reopening of assessment under section 147 of the Income Tax Act, 1961 dated 27th January, 2015 (being Exhibit "V" hereto), and the order passed under section 143(3) r.w.s. 147 of the Act dated 11th February, 2015 (being Exhibit "Y" hereto) to quash and set aside the same.

9. Petition disposed.

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