MEERA MAHESH JADHAV
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 851 OF 2014

Jolly Maker 1 Premises Co-op Society Ltd. ....Petitioner

V/s.

Deputy Commissioner of Income Tax
Circle-12(2) Mumbai & Ors. ...Respondents

Mr. Firoze Andhyarujina, Senior Advocate a/w Mr. Manek Andhyarujina i/b Mr. Sameer Dalal for Petitioner
Mr. Suresh Kumar for Respondents

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

P.C. :

1 Petitioner is a co-operative society and has been assessed to tax since A.Y.-1977-1978. Petitioner declared the income under the heads of income from house property and income from other sources. Petitioner is a sole trustee and representative assessee of Jolly Maker 1 Trust, which owns Nariman Bhavan premises and the income is clubbed by virtue of Section 60 of the Income Tax Act 1961 (the Act) in the return of trust (which is an oral trust) and tax paid. Hence, the returns filed by petitioner are also as trustees in capacity of representative assessee and is assessed, is accepted and finalised by the Income Tax Department.

2 For A.Y.-2002-2003, originally two separate returns were filed, one for society and second for trust in representative capacity. During the assessment proceedings, at the department's instance revised returns were

filed to club the income as representative assessee with that of society and assessment was completed under Section 143(3) of the Act. For A.Y.-2003-2004, 2004-2005, 2005-2006 and 2006-2007 income from house property and interest income assessed and taxed in the hands of petitioner including income of trust in representative capacity as per A.Y.-2002-2003 was completed under Section 143(3) of the Act. For A.Y.-2008-2009, 2009-2010, 2010-2011 and 2011-2012 the assessment was completed under Section 143(3) of the Act. For A.Y.-2012-2013 the assessment was processed under Section 143(1) of the Act. For these five years notice was issued under Section 148 and the notices were withdrawn vide orders of this court dated 9th July 2014 and 25th July 2014 in Writ Petition (L) No.762 of 2014 with Writ Petition Nos.1159 of 2014, 1238 of 2014, 1240 of 2014 and 1419 of 2014. Mr. Andhyarujina states that scrutiny assessment for petitioner for A.Y.-2018-2019 was also completed under Section 143(3) of the Act accepting income of trust in representative capacity in the hands of petitioner.

3 The present petition relates to A.Y.-2007-2008, where the assessment was processed under Section 143(1) of the Act. Petitioner received the notice dated 21st November 2013 under Section 148 of the Act stating that respondents had reasons to believe that petitioner’s income for A.Y.-2007-2008 has escaped assessment within the meaning of Section 147 of the Act. Petitioner was provided reasons recorded for initiating reassessment proceedings by a communication dated 14th November 2013. The reasons

recorded, as submitted by Mr. Andhyarujina are identical to the reasons recorded for A.Y.-2008-2009, 2009-2010, 2010-2011, 2011-2012 and 2013-2013. Those notices for these five years beginning 2008-2009 have been withdrawn as recorded earlier in this order. Therefore, notice issued for A.Y.-2007-2008, which is impugned in this petition also could not survive. Since Mr. Suresh Kumar states he has no instructions to withdraw the notice, we have no option but to quash and set aside the notice in view of the background recorded earlier in this order.

4 Accordingly, notice dated 21st November 2013 issued under Section 148 of the Act and consequently the order dated 27th January 2014 rejecting petitioner's objections are quashed and set aside.

5 Petition disposed accordingly with no order as to costs.

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