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

WRIT PETITION NO. 2860 OF 2022

Sunrise Associates (PAN : ABTFS2289R), Occupation : Business; a Partnership Firm having office at B 105, Giriraj Heights, Vraj Bhoomi Complex, New Link Road, Kandiwali (West) Mumbai – 400 067 .. Petitioner

Vs.

1. Income Tax Officer, Ward 33(1)(1), Mumbai, Kautilya Bhawan C-41/43, G-Block, Bandra Kurla Complex, Bandra (East), Mumbai- 400 051

2. The Principal Commissioner of Income Tax-17, Mumbai, Kautilya Bhawan, C-41/43, G-Block Bandra Kurla Complex, Bandra (East), Mumbai- 400 051

3. The Union of India, Through the Secretary, Ministry of Finance, Government of India, North Block, New Delhi-110 001. .... Respondents

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Mr.Devendra Jain a/w. Ms.Radha Halbe, Advocate for petitioner.

Mr.Akhileshwar Sharma a/w. Ms.Shilpa Goel, Advocate for respondents.

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CORAM : DHIRAJ SINGH THAKUR AND VALMIKI SA MENEZES, JJ.

DATE : 18th OCTOBER 2022

PC :

1. The petitioner challenges the order dated 16th April 2022 passed under section 148(A)(d) of the Income Tax Act, 1961 ('the Act') as also the notice dated 16th April 2022 issued under section 148 of the Act relevant to the assessment year 2018-19.

2. Briefly stated the material facts are as under :

(i) A show cause notice, dated 19th March 2022 under section 148(A)(b) of the Act was issued by the Assessing Officer inquiring the petitioner as to why notice under section 148 of the Act be not issued inasmuch as the petitioner had accepted cash of Rs.92,89,500/- against the sale of immovable property during the year under consideration, which had escaped assessment. This information is stated to have been received in accordance with the Risk Management Strategy formulated by the Central Board of Direct Taxes (CBDT) and which was considered to be sufficient to initiate action in terms of Explanation-1(I) of section 148 of the Act.

(ii) In response to the aforementioned show cause notice, the petitioner states that it uploaded four documents on the Portal on 6th April 2022, which included a copy of the Sale Deed as also a copy of the petitioner's bank statement to show that the amount which is alleged to have escaped assessment was received by the petitioner through banking channels and also reflected in the bank statement. It is further stated that in reference to the Sale Deed, an amount of Rs.92,87,500/-, which is reflected in the bank statement, had been received from out of total consideration of Rs.1,25,00,000/-.

3. The case set up by the petitioner in the present case that despite having uploaded the relevant documents on 6th April 2022, the Assessing Officer proceeded to pass the order under section 148(A)(d) of the Act on 16th April 2022, in which it has been alleged that no reply had been furnished by the assessee pursuant to the notice issued under section 148A(b) of the Act. It is stated that this is factually incorrect, and therefore, without considering the documents which were uploaded on the portal, which were self speaking, the Assessing Officer proceeded to pass the order impugned under section 148A(d) of the Act and as a consequence the notice under section 148 and the impugned

order passed under section 148A(d) of the Act, both, on the face of it, are unsustainable. It is stated that had the documents been considered in their correct perspective, there would be no occasion for the Assessing Officer to issue the notice under section 148.

4. From the record, we do notice that there is acknowledgment of the fact that four documents were uploaded on the relevant portal on 6th April 2022, in regard to which no reference at all, had been made by the Assessing Officer in its order dated 16th April 2022. Without speculating as to what would be the result, if the Assessing Officer had, in fact, considered the documents so uploaded, we are of the view that the documents in question ought to have been considered and its effect determined on the proceedings in question, which does not appear to have been done in the present case by the Assessing Officer.

5. Be that as it may, we set aside the order dated 16th April 2022 passed under section 148A(d) as also notice under section 148 of the Act, dated 16th April 2022, and remand the matter to the Assessing Officer for considering afresh the entire issue in the

light of the documents submitted on 6th April 2022. Any further explanation which the petitioner might wish to render, may also be submitted within a period of two weeks. It would be open to the Assessing Officer then to pass the appropriate orders in accordance with law.

6. The Writ Petition accordingly stands disposed of.

[VALMIKI SA MENEZES, J .] **[DHIRAJ SINGH THAKUR, J.]**