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

WRIT PETITION NO. 1922 OF 2021

Rehana Anwar Shaikh … Petitioner.
(PAN No. AYVPS2837C)

Vs.

Income Tax Officer, Ward -20(3)(1),
Mumbai -400 012 and 2 Others. … Respondents.

Mr. R.S. Padvekar, Advocate a/w. Mr. Tanzil R. Padvekar for the Petitioner
Mr. Sham V. Walve, Advocate for the Respondents-Revenue.

CORAM : K.R. SHRIRAM & R.N. LADDHA, JJ.
DATED : JANUARY 18, 2022
(Through Video Conferencing)

P.C. :

1. Petitioner is impugning a Notice dated 19.03.2020 issued under section 148 of the Income Tax Act, 1961 (said "Act") for AY 2013-14, seeking to reopen Petitioner's assessment. The notice has been issued after expiry of four years from the relevant Assessment Year and in this case, assessment under section 143(3) has also been completed. Therefore, the proviso to section 147 would apply, by which the onus is placed on Respondents to show that there was failure on the part of Petitioner to disclose truly and fully the material facts required for assessment.

2. As recorded in the reasons for reopening, it is the Jurisdictional Assessing Officer's (JAO) case that Petitioner was found to have entered into transactions in the scrip of a shell company-M/s. Confidence Finance & Trading Ltd., which is a Penny Stock Company and Petitioner has received Rs.6,34,78,550/- on the sale of scrip during the Assessment Year and the transaction of the sale and purchase in this scrip has been included in the exempt

income for the year. Therefore, there was reason to believe that income, as chargeable to tax, has escaped assessment. In our view, Respondents have failed to prove that there was any failure by Petitioner to truly and fully disclose material facts.

3. Moreover, the notice to reopen is issued purely based on change of opinion. This is because the Assessing Officer, prior to passing the original assesement order raised a query vide communication dated 23 November, 2015, specifically raising a query regarding this Company, Confidence Finance & Trading Ltd.. The queries read as under :

> *"Sub : Assessment proceedings in your case for A.Y.2013-14 -reg.-*
>
> *In connection with and in continuation with your submissions filed, you are required to comply with the following :*
>
> *1. In last three to four years, what was the volume of share transactions done by you ?.*
> *2. What is your way of choosing the shares for investment purpose?.*
> *3. File Brokers office address.*
> *4. How did you come to know about the company, M/s. Confidence Finance & Trading Ltd..*
> *5. What does the company M/s. Confidence Finance & Trading Ltd., dol ?.*
> *6. How many shares listed on NSE or BSE were purchased or sold by you in last three years.*
> *7. Has any of your relative/ friend also purchased shares of M/s. Confidence Finance & Trading Ltd.,*
> *8. Whether the promoters of M/s. Confidence Finance & Trading Ltd., are you relative or friends.*
>
> *You are required to comply with the above details within seven days of receipt of this letter."*

4. Petitioner replied by its letter 30 November, 2015. This letter was

exhaustive and contains every detail that the Assessing Officer had called for. Thereafter, the Assessment Order dated 29 January, 2016 has been passed, accepting the return of income declared by the Petitioner in the sum of Rs. 12,45,910/-. It is true that in the Assessment Order dated 29 January 2016, there is no reference and/ or discussion to disclose the Assessing Officer's satisfaction in-respect of the query raised but as held in ***Aroni Commercials Limited Vs. Deputy Commissioner of Income Tax-2(1),***[1] *o*nce a query is raised during assessment proceedings and the assessee has replied to it, it follows that the query raised was a subject of consideration of the Assessing Officer while completing the assessment. It is not necessary that an assessment order should contain reference and / or discussion to disclose its satisfaction in respect of the query raised. As noted earlier, the very issue of Petitioner entering into transactions, relating to the scrip of Confidence Finance & Trading Ltd., was a subject of consideration by the Assessing Officer during the original assessment proceedings. It would, therefore, follow that re-opening of the assessment by the impugned notice is merely on the basis of change of opinion of the Assessing Officer from what held earlier during the course of the assessment proceedings, leading to the assessment order dated 29 January, 2016. This change of opinion does not constitute justification and/ or reason to believe that income chargeable to tax, has escaped assessment.

5. In these circumstances, we set aside the Notice dated 19 March, 2020 issued under section 148 of the said Act. Consequently, the order on objection as well as subsequent assessment order dated 30 September, 2020 passed, pending disposal of this Petition, are also quashed and set aside.

6. Petition disposed with no order as to costs.

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

1 ***2014 (44) Taxmann.com 304 (Bombay),***

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