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

WRIT PETITION NO.3023 OF 2019

Dilip Bhagirathmal Jiwrajka ….Petitioner

V/s.

The Deputy Commissioner of Income Tax
Central Circle 6(2) and Ors. ….Respondent

WITH

WRIT PETITION NO.3181 OF 2019

Ashok Bhagirathmal Jiwrajka ….Petitioner

V/s.

The Deputy Commissioner of Income Tax
Central Circle 6(2) and Ors. ….Respondent

WITH

WRIT PETITION NO.3615 OF 2019

Surendra Bhagirathmal Jiwrajka ….Petitioner

V/s.

The Deputy Commissioner of Income Tax
Central Circle 6(2) and Ors. ….Respondent

Mr. Dharan V. Gandhi for petitioner in all petitions.
Mr. Suresh Kumar for respondents in all petitions.

CORAM : K.R. SHRIRAM &
N.R. BORKAR, JJ.
DATED : 15th MARCH 2022

P.C.:

WRIT PETITION NO.3023 OF 2019

1 Petitioner is impugning a notice dated 31st March 2019 for Assessment Year 2012-2013 issued under Section 148 of the Income Tax Act, 1961 (the Act) and also an order on objections dated 3rd October 2019 filed by petitioner for reopening the assessment.

2 On 27th January 2022 the following order came to be passed :

> *1. Mr. Suresh Kumar filed an affidavit of one Mr. Saurabh Yadav, Deputy Commissioner of Income Tax, Central Circle 6(2), Mumbai affirmed on 24th January, 2022. Mr. Saurabh Yadav admits in his affidavit that there are errors in Column No.8 and 9 of the Form for re-opening but according to him these are bonafide mistakes. Mr. Yadav has no personal knowledge. Mr. Yadav is not the person who either filled up the Form for re-opening or the Additional CIT who recommended or the Principal CIT who granted the approval. Hence, we are not inclined to and do not accept the explanation of Mr. Yadav. The three persons, i.e., one Mr. Trilochan Singh Khalsa who was DCIT at that time or Mr. Ashok Pophare, Additional CIT who recommended the issuance of approval and Ms. Irina Garg who was the Principal CIT who granted the approval should have filed the affidavit and not some third party who was not at all involved at the relevant time.*
>
> *2. Since it is the issue of revenue of the State (the question of income alleged to have escaped assessment is Rs.60,79, 604/-), we direct the then DCIT, CC-6(2), Mumbai Mr. Trilochan Singh Khalsa, Mr. Ashok Pophare Additional CIT, CR-6, Mumbai and Ms. Irina Garg, Principal CIT, Central-3, Mumbai who are the officers who have signed on the Form for re-opening under Section 151 of the Act, to explain the basis on which re-opening was approved when the form had errors. If these three officers or any of them is not in service, such person need not file the affidavit but the others in that case will mention when this person retired in their respective affidavit.*
>
> *3. The affidavits in compliance with the order dated 21st December, 2021, to be filed within three weeks from today.*
>
> *4. In the order dated 21 st December, 2021 in Paragraph No.1 the words "Schedule 8 and Schedule 9" be corrected to read as "Column 8 and Column 9". Rest of the order remains unaltered.*
>
> *5. Stand over to 28th February, 2022.*
>
> *6. Ad-interim relief, if any, to continue till the next date.*

3 In compliance with the order, three officers mentioned therein, viz., Mr. Trilochan Singh Khalsa, Mr. Ashish V. Pophare and Ms. Irina Garg

have also filed affidavits. In all the affidavits, they admit that form for approval under Section 151 of the Act submitted by the Assessing Officer Mr. Trilochan Singh Khalsa had mistakes. In the affidavit filed by Mr. Trilochan Singh Khalsa, paragraphs 5 and 6 read as under :

> *5. Notwithstanding the above, it is submitted that the replies to queries in Cols.8 and 9 are inadvertent and bonafide mistakes. The bonafide nature of the mistake is apparent from the fact that the query in Col.7 "Whether the assessment is proposed to be made for the first time" has been answered as "No" and in the first paragraph itself of the reasons recorded details of return filed have been correctly mentioned. This shows that the undersigned and the competent authority were well aware that a return of income was filed earlier.*
>
> *6. It is submitted that the answer to Col.8(a) should have been "Yes" and no information was required to be filled in Col.9. Barring this inadvertent mistake, all other information in the Form and reasons is correct. It is, therefore, requested that the aforesaid inadvertent and bonafide mistakes may kindly be condoned as approval was granted on the basis of reasons recorded alone.*

In the affidavit filed by Mr. Ashish V. Pophare, paragraphs 5 and 6 read as under :

> *5. Notwithstanding the above, it is submitted that as mentioned by the undersigned and the Principal CIT, approval was granted on the basis of reasons recorded. It is further submitted that the replies to queries in Cols.8 and 9 are inadvertent and bonafide mistakes. The bonafide nature of the mistake is apparent from the fact that the query in Col.7 "Whether the assessment is proposed to be made for the first time" has been answered as "No" and in the first paragraph itself of the reasons recorded details of return filed have been correctly mentioned. This shows that the undersigned and the Principal CIT were aware that a return of income was filed earlier and scrutiny assessment was also completed in this case.*
>
> *6. It is further submitted that the aforesaid inadvertent and bonafide mistakes may be condoned as the proposal for reopening was recommended for approval on the basis of reasons recorded alone wherein the facts are correctly mentioned.*

In the affidavit filed by Ms. Irina Garg, paragraphs 5 and 6 read as under :

> *5. Notwithstanding the above, it is submitted that as mentioned by the undersigned, approval was granted on the basis of reasons recorded.*
>
> *As per section 151(1), the approval for reopening was given on the basis of reasons recorded by the AO, wherein there was application of mind.*
>
> *However, if there is any procedural error/mistake in filling of the Form by the AO, the same may kindly be treated as inadvertent because no such lapse occurred on the electronic filing of the proposal.*
>
> *6. I tender unconditional apology to this Hon'ble High Court for inadvertent bonafide mistake."*

4 Therefore, respondents admit that the sanction granted under Section 151 of the Act was on the basis of incorrect information provided to them. At the same time, if Mr. Ashish Pophare and Ms. Irina Garg had read the reasons submitted alongwith the form, they would have certainly found out the error. We have to also note that in the reasons for reopening, there is no mention about the assessment of petitioner having been completed under Section 153A read with Section 143(3) of the Act. In form 151, the amount mentioned as income originally assessed is Rs.6,01,66,964/-, whereas income originally assessed was Rs.11,11,34,621/-. We are also of the opinion that the Additional CIT and Principal CIT, viz., Mr. Ashish V. Pophare and Ms. Irina Garg, have mechanically accorded permission. We are of the opinion that even if only these two officials had read the report carefully alongwith the reasons recorded, this admitted error would not have crept in. The important safeguards provided in Sections 147 and 151

were lightly treated by the Officers. They appear to have taken the duty imposed on them under these provisions as of little importance. We find support for this view in ***Chhugamal Rajpal V/s. S. P. Chaliha & Ors.***[1]

5 This Court in ***German Remedies Limited V/s. Deputy Commissioner of Income Tax***[2] has held that while granting approval it was obligatory on the part of the Commissioner to verify whether there was any failure on the part of the assessee to disclose full and true relevant facts in the return of income filed for the assessment of income of that assessment year. It was also obligatory on the part of the Commissioner to consider whether or not power to reopen is being invoked properly. In our view, the approval granted suffers from non application of mind.

6 In the circumstances, the notice dated 31st March 2019 issued under Section 148 of the Act is required to be quashed and set aside and is hereby quashed and set aside.

7 Petition accordingly disposed.

WRIT PETITION NO.3181 OF 2019
WITH
WRIT PETITION NO.3615 OF 2019

8 Mr. Gandhi states that in these two petitions also the facts are almost identical to Writ Petition No.3023 of 2019 and we say almost identical because the figures ofcourse vary. Since we have allowed Writ Petition No.3023 of 2019, these two petitions are also allowed.

1. 1971 (79) ITR 603 SC
2. (2006) 287 ITR 494 (Bom)

9 Both petitions disposed accordingly.

10 Mr. Suresh Kumar states that liberty be given to issue fresh notice under Section 148 of the Act.

11 If permissible in law, nothing can come in the way of the Revenue to issue fresh notice. We are not making any comments thereon.

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