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

WRIT PETITION NO. 3255 OF 2019
ALONGWITH
IN PERSON APPLICATION (L) NO. 371 OF 200
IN
WRIT PETITION NO. 3255 OF 2019

Anil Gulabdas Shah

....Petitioner

V/s.

The Assistant Commissioner of
Income Tax Circle 24(1) & Ors.

...Respondents

Mr. Anil G. Shah, Petitioner in person present.
Mr. Akhileshwar Sharma for Respondents-Revenue.
Mr. Nishant Thakkar, Amicus Curiae present.

CORAM : K.R. SHRIRAM &
N. R. BORKAR, JJ.
DATED : 6th APRIL, 2022

P.C. :

1. Petitioner has impugned notice dated 31st March, 2019 issued under Section 148 of the Income Tax Act, 1961 (the Act) and the order dated 12th November, 2019 disposing petitioner's objections to re-open.
2. For the Assessment Year 2012-13 petitioner had filed returns on 30th August, 2012 declaring total income of Rs.39,87,250/-. The return was initially processed under Section 143(1) of the Act and subsequently regular assessment under Section 143(3) of the Act was made on 28th March, 2015.
3. Petitioner received a notice dated 31st March, 2019 under Section 148 of the Act which is impugned in this petition, where it is stated

that there were reasons to believe that petitioner's income chargeable to tax for A.Y. 2012-13 has escaped assessment within the meaning of Section 147 of the Act. It is also stated that the notice is issued after obtaining necessary satisfaction of the Principal Commissioner of Income Tax, Mumbai (Pr. CIT). Petitioner has been provided a copy of the approval issued by Pr. CIT under Section 151 of the Act to which is also annexed the reasons recorded for re-opening based on which the approval was granted. Paragraph No.2 of the reasons reads as under :

2. In this case, information was received in this office that the assessee is staying at B-1601, Titanium Tower, J.P. Road, Mumbai – 400 053. His old address was 6F, DhanRatna, B Wing, 6th Floor, Bhardawadi Road, Andheri (W), Mumbai – 400 058. The said flat was purchased by him along with his wife and son viz. Nina A. Shah (PAN ABTPS7740R) & Soham A. Shah (PAN BSAPS3962C) for a consideration of Rs.2.10 Crores. However, from the information received in this office it is revealed that the assessee had paid Rs.5.21 Crores as a consideration of the said flat (in FY 2011-12). In a complaint filed by the assessee with Maharashtra RERA, assessee has himself mentioned that he had purchased the said flat for a consideration of Rs.5,21,00,000/- for undone flat (called as Khoka) in January 2012 for cash + cheques including Rs.30,00,000 stamp duty + Registration charges + VAT + Service Tax + Sundry services and Rs.80,00,000/- has been spent for tiling, kitchen, bathroom, toilets, window frames, glasses, plumbing, electricians, painting etc. Total cost of the flat is mentioned as Rs.6,31,00,000/- for occupation. Hence, it is apparent that income to the extent of Rs.3.11 Crore has escaped assessment.

4. Therefore, the entire basis why the officer felt that there were reasons to believe that petitioner's income chargeable to tax for A.Y. 2012-13 has escaped assessment is that in the complaint that petitioner filed with Maharashtra RERA, he has admitted that he had purchased flat for

consideration of Rs.5,21,00,000/-, whereas the documents filed with the department only indicates consideration of Rs.2.10 Crores. Therefore, there is escapement of income to the extent of Rs.3.11 Crores. This is the whole and sole basis for re-opening the assessment.

5. Petitioner in response to the notice dated 31st March, 2019 filed returns in the prescribed form and also filed his objections on 4th July, 2019. In the objections, petitioner has raised various grounds but one of the principal ground raised is that the complaint with Maharashtra RERA which the Assessing Officer has relied upon was subsequently amended with RERA Authorities on 7th January, 2019. The original complaint with RERA Authorities is dated 25th December, 2018. Petitioner also provided a copy of the Maharashtra RERA complaint that was amended on 7th January, 2019. In the amended complaint which is even much before the letter dated 12th January, 2019, i.e., the complaint the society provided to the Income Tax Authorities proves that an amount of Rs.2,58,13,351/- has been paid for the flat and the details of the payments made are also provided there. In the order disposing the objections dated 12th November, 2019 which is also impugned in the petition, the Assessing Officer admits that he has received from petitioner the amended copy of the RERA complaint but simply states that the authenticity of the said amended copy is not ascertainable and hence this objection of petitioner stands disposed. It is necessary to mention that the objections were filed on 4th July, 2019 and the order on

objections is passed on 12th November, 2019, five months and one week later, but still the Assessing Officer states that the authenticity of the amended copy of the RERA complaint was not ascertainable. It will be necessary to mention that in the order on objections or the reasons the Assessing Officer does not state anywhere how he was satisfied with the authenticity of the original complaint. We have to note that petitioner had applied to the Income Tax Authorities under the Right To Information Act, 2005 (RTI Act) to find out the basis of information that Assessing Officer had received and in the order under Section 7(1) of the RTI Act, to a query raised by petitioner as to whether the verification of the complaint was done by ACIT 24(1), it is stated negative in reference of authenticity as per case records. We have to note that the order under Section 7(1) of the RTI Act has also been passed by the same Circle 24(1) which has proposed to re-open petitioner's assessment.

In our view, the Assessing Officer had enough time to find the veracity or authenticity of the complaint if he had any doubt and he could not have dismissed the objections by just a wave of his hand.

6. Mr. Sharma states at this stage that the order on objections states assessee has submitted proposed amended copy of the RERA complaint. In the objections filed assessee does not say anywhere that he proposed to amend the RERA complaint. The RERA complaint had already been amended on 7th January, 2019 before even the society had lodged complaint with the Income Tax Department.

7. Mr. Sharma submitted that the society in its letter dated 12th February, 2019 had also referred to a police complaint dated 24th August, 2017 and perhaps that would have also indicated the same figure of Rs.5.21 Crores as suggested in the original complaint to Maharashtra RERA. We cannot accept the statement of Mr. Sharma because even though the police complaint was available with the Assessing Officer he chose not to rely upon the police complaint in the reasons recorded for re-opening. Even in the order on objections there is no reference to this police complaint. Even in the affidavit in reply to the petition there is no reference to this police complaint. Mr. Sharma states that respondent cannot be precluded from issuing fresh reasons to the notice by relying upon even this police complaint. We cannot express our opinion on this. In such a case firstly the notice issued under Section 148 of the Act has to go. The reason to believe must be that of the Assessing Officer. Neither the court nor the advocate can supplement it or add to it or improve upon it. If the Revenue can do so, if permissible in law and in accordance with law, Revenue may do what it is advised and of course petitioner may raise whatever objections he has. We repeat we have not expressed any opinion on this.

8. One more point which we find strange is in the affidavit in reply filed through one Mr. Milind Jagtap, Assistant Commissioner of Income Tax Circle 24(1), Mumbai affirmed on 7th August, 2020, it is stated in paragraph no.7 that the assessee during the course of re-assessment proceedings had enough opportunity to produce the copy of amended complaint made before

the Maha RERA Authorities and the assessment proceedings would have been finalized by taking cognizance of the same. However, assessee has failed to do for the reasons best known to him. We have stated it is rather strange because in the order disposing the objections the Assessing Officer acknowledges having received the amended copy of the RERA complaint.

9. Therefore, we are satisfied that the notice issued under Section 148 of the Act has to go. We hereby quash and set aside the notice dated 31st March, 2019. Consequently, the order dated 12th November, 2019 is also quashed and set aside.

10. At the same time, if Revenue, as noted earlier, wishes to re-open they may do so in accordance with law and if the law permits and it is within limitation. But the Revenue has to go through the process as required to be followed under the amended Act. We are not advising Revenue what to do to re-open or what is to be referred to in the reasons.

11. Petition accordingly stands disposed.

12. We must express our appreciation for the distinguished assistance by Mr. Nishant Thakkar, learned Amicus Curiae. The endeavour put forth by him has been of immense value in deciding this petition.

(N. R. BORKAR, J.)

(K.R. SHRIRAM, J.)