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

WRIT PETITION NO. 3230 OF 2019

Nina Anil Shah ….Petitioner

V/s.

The Income Tax Officer Ward 19(2)(4)
& Ors. …Respondents

Mr. Anil G. Shah, Husband and Constituted Attorney of Petitioner 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 an order dated 19th November, 2019 rejecting petitioner's objections .

2. We have considered the petition with the documents annexed thereto, affidavit in reply and further affidavit of petitioner with the assistance of Mr. Nishant Thakkar, learned Amicus Curaie, Mr. Anil Shah, husband and authorised representative of petitioner and Mr. Sharma.

3. Though the notice under Section 148 of the Act has been issued more than four years after the end of the relevant assessment year, since assessment had not been completed under Section 143(3) of the Act, what

we have to see is whether the reasons recorded for re-opening indicates any tangible material. Of course, petitioner has stated it does not disclose and that the Assessing Officer is relying on documents filed by the husband to use it against the wife, notice was issued late and the officer who issued the notice is different from the officer who recorded the reasons etc.

4. It is settled law that, where the Assessing Officer, in a situation as in this case, has tangible material to come to the conclusion that there is escapement of income from assessment, the power to re-open can be exercised. The expression reason to believe means a cause or justification and at the stage of re-opening it is not necessary that the material before the court should conclusively prove or establish that the income has escaped assessment. This court in ***Export Credit Guarantee Corporation of India Limited vs. The Additional Commissioner of Income Tax***[1] has held that the test to be applied is whether there is tangible material to do so and what is tangible is something which is not illusory, hypothetical or a matter of conjecture.

5. Having considered the reasons recorded we are unable to conclude that the tangible material on which the Assessing Officer has come to the conclusion that there is escapement of income from assessment can be stated to be illusory, hypothetical or a matter of conjecture. In view

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thereof, we are not inclined to exercise our jurisdiction under Article 226 of the Constitution of India.

6. At the same time, we direct the Assessing Officer, to consider all the objections, some of which we have noted earlier and pass a well reasoned order dealing with all objections. Before passing any order, the Assessing Officer shall give a personal hearing to petitioner, notice whereof shall be issued atleast seven working days in advance. If the Assessing Officer is going to rely on any order or judgment of any Court or Tribunal, a list thereof shall also be provided to petitioner, so that petitioner will be able to deal with it or distinguish the same during the personal hearing.

7. The assessment proceeding shall be completed within eight weeks from the time this order is uploaded.

8. Mr. Shah states that he will raise all objections as noted earlier and in the petition, afresh before the officer so that the Assessing Officer will be able to give a reasoned finding on each of these objections.

9. 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.

10. Petition disposed.

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