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

WRIT PETITION NO.111 OF 2020

VISHAL SUBHASH PAREKAR

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Laxmikant Vinod Lath ...Petitioner
vs.
Income Tax Officer, Ward 17(2)(2), Mumbai and Others ...Respondents

Mr. P.J. Pardiwalla, Senior Advocate i/b. Mr. A.K. Jasani, for the Petitioner.
Mr. Suresh Kumar, for the Respondents.

CORAM : K.R. SHRIRAM &
N. J. JAMADAR, JJ.

DATE : JANUARY 10, 2022

P.C.:

1. The Petitioner unhappy with the notice dated 31st March, 2019 issued under section 148 of the Income Tax Act, 1961 and Petitioner's objection to the reopening being rejected vide order dated 25th November, 2019 has approached this Court by way of this Petition.

2. Petitioner is praying for quashing of this notice dated 31st March, 2019 and the order dated 15th November, 2019.

3. Though time was granted on 17th December, 2019 to Respondents for filing reply if necessary, no reply has been filed till date.

4. Petitioner has received notice dated 31st March, 2019 under section 148 of the Act for A.Y. 2012-2013. The reasons for reopening of the assessment are :

(a) Petitioner had filed return of income for A.Y. 2012-2013 declaring total income of Rs. 6,09,900/- which was processed under section 143(1) and later under section 143(3) of the Act. According to the Jurisdictional Assessing Officer(JAO) Petitioner was maintaining bank account with ICICI Bank, Dombivali Branch. In the said account, there are large valued non-cash transactions between 5th March, 2011 to 12th November, 2011. There was credit transaction of Rs. 744 lacs and debit transaction also of Rs. 744 lacs. In the reasons it is mentioned that the purpose of deployment of such large fund is not known.

(b) From the perusal of Form 26AS for A.Y. 2012-2013 Petitioner has received Rs.1.4 Crores of interest income from M/s. Eske Tex India Private Limited but this has not been disclosed in his return of income. Petitioner is also alleged to have received income of approximately Rs.12.7 lacs on which TDS is deducted under section 94C by M/s. Sunil Industries. But Petitioner has shown other income to the tune of Rs. 15,22,063/-. These transactions do not match with the profile of Petitioner.

(c) For the month of March, 2011 certain payments have been received amounting to Rs. 1,70,000/- which was used to make certain payments to schools. We are ignoring this figure because it does not pertain to the assessment year in question but relates to A.Y. 2011-2012.

(d) According to Respondent No. 1, therefore he has reasons to believe that income chargeable to the tune of Rs. 744 lacs has escaped assessment within the meaning of section 147 of the Act.

5. Though in the reasons, it is alleged that Petitioner had received Rs. 1.4 Crores interest income of Rs. 12.7 lacs on which TDS is deducted etc., those are not amounts which are stated to have escaped assessment. This is because in paragraph 7 of the reasons, the JAO has restricted the income chargeable to tax that has escaped assessment to Rs. 744 lacs. This is the figure for which there has been credit transaction and debit transaction during the assessment year.

6. First and foremost, we have to note that where there has been credit of Rs. 744 lacs and admittedly debit of Rs. 744 lacs, how can there be any income at all and that too which has escaped assessment. The entire amount received has been paid out. Moreover, in the balance-sheet annexed to the Petition there are

names of Ashok Mahansaria and Yogesh Mahansaria against whom liability in the sum of Rs. 8,50,90,155/- and Rs. 3,50,40,164/- respectively, has been recorded. It is this amount of investment which was gone to M/s. Eske Tex India Private Limited. Petitioner received interest of Rs. 1,41,18,920/- and has also paid interest of Rs. 1,43,43,518/-.

7. In the reasons for reopening though there is a mention of Rs. 1.4 Crores credit of interest income from M/s. Eske Tex (I) Pvt. Ltd, the reason is silent about the payment of interest of Rs. 1,43,43,518/-. In the computation of income, Petitioner has disclosed interest received of Rs. 1,41,18,920/- and payment of Rs. 1,43,43,518/- restricted to Rs. 1,42,05,185/-. Even in the capital account there is disclosure of interest receipt of Rs. 1,41,18,920/- and interest payment of Rs. 1,43,43,518/-. Therefore these details have been made available before the assessment was completed under section 143(3) of the Act. Just because some information has been received from the Investigation Wing, does not entitle Respondents to reopen assessment based on change of opinion. Merely, deposit of money into the bank account by way of cheque itself is not a ground for escapement of income. Mere high value deposit in the bank account cannot be a reason for reopening under

section 148 of the Act. The reasons as made available to Petitioner merely indicates information received from Investigation Wing about a particular entity entering into suspicious transaction. That material is not further linked to the conclusion that Petitioner has indulged in any activity which can give rise to reason to believe on the part of the Assessing Officer that income chargeable to tax has escaped assessment. It does appear that the Assessing Officer has merely issued a reopening notice on the basis of intimation received from the Investigation Wing and consequent to change of opinion.

8. In the circumstances, we allow the Petition in terms of prayer clause (a) which reads as under:

> *"(a) That this Court may be pleased to issue a writ of certiorari or any other writ, order or direction under Articles 226 and 227 of the Constitution of India calling for the records of the case leading to the issue of the impugned notice and passing of the impugned order and after going through the same, and examining the question of legality thereof, quash, cancel and set aside the impugned notice (Exhibit C) dated 31st March, 2019 and the impugned notice (Exhibit C) dated 31st March, 2019 and the impugned order (Exhibit H) dated 15th November, 2019."*

9. Petition disposed accordingly.

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