

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

WRIT PETITION NO.3489 OF 2019

Ashok Devichand Jain

...Petitioner

vs.

Union of India and Others

...Respondents

**VISHAL
SUBHASH
PAREKAR**

Mr. Naresh Jain a/w. Ms. Neha Anchlia and Mr. Mahaveer Jain i/b.
Ms. Rushita Jain, for the Petitioner.
Mr. Sham Walve, for the Respondent Nos. 2 and 3.

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VISHAL SUBHASH
PAREKAR

Date: 2022.03.09
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**CORAM : K.R. SHRIRAM &
 N. J. JAMADAR, JJ.**

DATE : MARCH 08, 2022

P.C.:

. Petitioner is impugning a notice dated 30th March, 2019 issued under section 148 of the Income Tax Act, 1961 (the Act) for A.Y. 2012-13 and order passed on 18th November, 2019 rejecting Petitioner's objection to reopening on various grounds.

2. The primary ground that has been raised is that the Income Tax Officer who issued the notice under section 148 of the Act, had no jurisdiction to issue such notice. According to Petitioner as per instruction No. 1/2011 dated 31st January, 2011 issued by the Central Board of Direct Taxes, where income declared/returned by any Non-Corporate assessee is up to Rs. 20 lakhs, then the jurisdiction will be of ITO and where the income declared returned

by a Non Corporate assessee is above Rs. 20 lakhs, the jurisdiction will be of DC/AC.

3. Petitioner has filed return of income of about Rs. 64,34,663/- and therefore, the jurisdiction will be that of DC/AC and not ITO. Mr. Jain submitted that since notice under section 148 of the Act has been issued by ITO, and not by DC/AC that is by a person who did not have any jurisdiction over Petitioner, such notice was bad on the count of having been issued by an officer who had no authority in law to issue such notice.

4. We have considered the affidavit in reply of one Mr. Suresh G. Kamble, ITO who had issued the notice under section 148 of the Act. Said Mr. Kamble, ITO, Ward 12(3)(1), Mumbai admits that such a defective notice has been issued but according to him, PAN of Petitioner was lying with ITO Ward (12)(3)(1), Mumbai and it was not feasible to migrate the PAN having returned of income exceeding Rs. 30 lakhs to the charge of DCIT, Circle 12(3)(1), Mumbai, as the time available with the ITO 12(3)(1) was too short to migrate the PAN after obtaining administrative approval from the higher authorities by 31st March, 2019.

5. The notice under section 148 of the Act is jurisdictional notice and any inherent defect therein is not curable. In the facts of the case, notice having been issued by an officer who had no jurisdiction over the Petitioner, such notice in our view, has not been issued validly and is issued without authority in law.

6. In the circumstances, we have no hesitation in setting aside the notice dated 30th March, 2019.

7. Consequently the order dated 18th November, 2019 rejecting Petitioner's objection is also quashed and set aside.

8. Petition disposed.

9. No order as to costs.

(N. J. JAMADAR, J.)

(K. R. SHRIRAM, J.)