IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3561 OF 2019

Triton Trading Company Pvt Ltd. ....Petitioner

V/s.

Deputy Commissioner of Income Tax,
Central Circle 5(3)(2) & Ors. ...Respondents

Mr. Madhur Agarwal i/b Mr. Atul K. Jasani for Petitioner
Mr. Akhileshwar Sharma for Respondents - Revenue

CORAM : K.R. SHRIRAM &
N.J. JAMADAR, JJ
DATED : 9th MARCH 2022

P.C. :

1 In the petition, a specific ground in view of the leave granted by this court to amend the petition, has been raised that the officer who issued the notice under Section 148 of the Income Tax Act 1961, is not the same person who recorded the reasons for reopening and, therefore, the notice is bad-in-law. According to petitioner to assume jurisdiction under Section 147, the belief that income has escaped assessment has to be the belief of the Assessing Officer who has issued the notice and it cannot be that of some other officer.

2 We find that the specific objection has not been raised by petitioner in its objections to reopening and hence, the same had not been considered by the officer, who disposed the objections to reopening.

3 In our view, petitioner should be permitted to raise this issue in the objections.

4 In the circumstances, without making any observations on the merits of the case, we set aside the order on objections dated 31st August 2018 and order dated 8th November 2019, both of which are impugned in the petition. We remand the matter to Jurisdictional Assessing Officer (JAO), who shall pass a fresh order on objections.

5 Petitioner to submit further objections within two weeks of this order being uploaded and the JAO shall dispose the objections within 4 weeks thereafter. The JAO shall, however, give a personal hearing to petitioner before disposing the objections and the notice of personal hearing shall be given atleast 7 working days in advance. If the JAO wishes to rely on any judgments or order passed by any Court or Tribunal, he shall provide a list thereof to petitioner and give them an opportunity to deal with those judgments or distinguish those judgments and those submissions of petitioner shall also be dealt with in the assessment order.

6 After completing the above proceedings, the final assessment order shall be passed within 12 weeks from the date of this order being uploaded.

7 Petition disposed with no order as to cost.

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