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

WRIT PETITION NO. 3580 OF 2019

Santosh Vimleshkumar Mehta ...Petitioner
Versus
Deputy Commissioner of Income Tax
Central Circle 8(3) & ors. ...Respondents

Mr. Devendra Jain, a/w Ms. Radha Halbe, for the Petitioner.
Mr. Sham Walve, for the Respondent – Revenue.

CORAM: K. R. SHRIRAM & N. J. JAMADAR, JJ
DATED: 22nd FEBRUARY, 2022

ORDER:-

1. Petitioner has impugned a notice dated 28th March 2019 issued under Section 148 of the Income Tax Act, 1961 ("the Act") on various grounds. The primary ground is that the notice has been issued without jurisdiction and is invalid because the notice has been issued without application of mind and the reasons recorded are also without application of mind because the respondent proposes to reopen assessment for Assessment Year 2012 – 2013, but in the reasons the information is mentioned to be relating to Assessment Year 2011-2012. Petitioner also states that with such glaring errors in the reasons if an approval has been granted under Section 151 of the Act, the approval also has been without application of mind. On these grounds alone, according to Mr. Jain, the notice issued under Section 148 of the Act has to be quashed and set aside and consequently the order dated 27th November, 2019 rejecting petitioner's objection also be quashed and set aside.

2. We have considered the reasons and, yes, there is a typographical error. It has also been so explained in the affidavit-in-reply filed opposing the petition. Instead of F.Y. 2011-12 it is mentioned A.Y. 2011-12. One alphabet has been changed, i.e., instead of "F" alphabet "A" has been shown in the reason. Other than that, we find nothing wrong in the reasons recorded. In the peculiar facts and circumstances of the case, we would also observe that Section 292B of the Act would come to the rescue of respondent, where it says that no action shall be invalid merely by reason of any mistake. We are satisfied that it is nothing but just a typographical error.

3. Moreover, we find that the income disclosed as per the reasons is only Rs.4,64,069/-, whereas, petitioner has traded in scrip for Rs.4,20,67,265/-. Even the bills for the statement for the scrip traded has been annexed to the petition and the volumes are pretty large, for someone who has income of only Rs.4,64,069/-.

4. Mr. Jain has raised various other objections which have not been dealt with in detail in the impugned order, which therefore is set aside. Petitioner may explain all the factors to the respondents, who shall consider all submissions and pass an order in accordance with law.

5. The matter is remanded to the concerned Assessing Officer, who shall consider the submissions made by petitioner and after granting a personal hearing to petitioner pass a fresh order disposing the objections within a period of six weeks from the date this order is uploaded. The notice of personal hearing shall be given at least seven days in advance.

If the Assessing Officer is going to rely on any judgments/orders of any Court or Tribunal to pass an order disposing the objection, he shall provide a list thereof to petitioner along with the personal hearing notice, so that petitioner's representative may deal with or distinguish it during the personal hearing. The Assessing Officer shall thereafter pass detailed and reasoned order dealing with every point of objections raised by petitioner.

6. Petition stands disposed with no order as to costs.

[N. J. JAMADAR, J.] **[K. R. SHRIRAM, J.]**