IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 85 OF 2020

Manish Dharindhar Shah ….Petitioner

V/s.

The Assistant Commissioner of Income Tax
Circle 17(2) & Ors. …Respondents

Mr. J. D. Mistri, Sr. Advocate a/w Mr. Niraj Sheth i/b Mr. Atul K. Jasani for Petitioner
Mr. Suresh Kumar for Respondents

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

P.C. :

1 Petitioner is impugning a notice dated 30th March 2019 issued under Section 148 of the Income Tax Act 1961 (the said Act) for A. Y.-2010-2011 and 2012-2013 and order dated 26th November 2019 passed by respondent no.1 rejecting petitioner's objections to the reopening.

2 We are rather shocked to note that the reasons provided to petitioner for reopening is different from the reasons submitted to the authorities under Section 151 of the Act for approval. Paragraph 2 of the reasons provided to petitioner reads as under:

> *"2. It is ascertained from ITD system that the assessee Shri Manish Shah has filed return of income for A. Y.-2012-13 on 30/07/2011, whereby declared total income of Rs.50,11,821/-."*

Whereas paragraph 2 of the reasons submitted for approval under Section 151 of the Act reads as under:

> *"2. It is ascertained from ITD, system that the assessee Shri Manish Shah has filed return of income for A. Y. 2012-2013 on 29/09/2012, whereby declared total income of Rs.65,76,712/-. Subsequently, the case was selected for scrutiny and order u/s 143(3) of the Act was passed on 05.03.2015 assessed the total income at Rs.65,77,260/-."*

3 Therefore, on this ground alone the notice issued under Section 148 of the Act has to be quashed and set aside. In effect there was no approval to issue the notice on the basis of the reasons provided to petitioner.

4 Moreover, in the objections filed by petitioner vide its Chartered Accountant's letter dated 30th September 2019, it is stated that the assessee's case for A.Y.-2010-2011, 2011-2012 were also reopened on the same grounds and the Assessing Officer while passing the order dated 27th December 2016 and 28th December 2016 passed under Section 143(3) read with Section 147 of the Act, has accepted the stand of the assessee of taxing the income from Thane property as business income. The photocopies of the said orders were also provided. Notwithstanding this, order dated 26th November 2019 impugned in this petition, is totally silent on this fact. We will also observe that the order dated 26th November 2019 has not dealt with any submissions of petitioner on merits and on this ground alone the order requires to be quashed and set aside.

5 In the circumstances, we allow the petition in terms of prayer clause (a), which reads as under:

> *"(a) to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ Order or direction under Article 226 of the Constitution of India calling for the records of Petitioner's case and after examining the legality and validity thereof, quash and set aside the impugned notice dated 30th March 2019 (Exhibit J) issued by respondent no.1 under Section 148 of the Act to reopen the*

assessment for the assessment year 2012-2013 as well as the impugned order dated 26th November 2019 (Exhibit N) rejecting petitioner's objections for the assessment year 2012-2013."

6 Petition disposed.

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