Santosh

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

WRIT PETITION NO. 3585 OF 2019

Kidderpore Holdings Limited ...Petitioner
Versus
The Income Tax Officer Ward 1(2)(2), Mumbai & ors. ...Respondents

SANTOSH SUBHASH KULKARNI

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Date: 2022.03.25 17:28:16 +0530

Mr. Prakash Shah, a/w Mr. Jas Sanghavi, i/b PDS Legal, for the Petitioner.
Mr. P. C. Chhotaray, for the Respondents/Revenue.

CORAM: K. R. SHRIRAM & N. J. JAMADAR, JJ
DATED: 25th JANUARY, 2022
(Video Conferencing)

PC:-

1. Prayer (a) of the petition reads as under:

> "(a) that this Hon'ble Court may be pleased to issue a Writ of Certiorari or any other Writ order or direction under Article 226 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 dated 29.03.2019 (Exhibit-A) and impugned order dated 20.11.2019 (Exhibit-B)."

2. In the reasons for reopening, it is recorded as under:

> "The revenue has preferred an appeal for A.Y. 2011-12, 2013-14 and 2014-15 before the Hon'ble ITAT and the same are pending. The above issues are involved in this year also and this case is getting barred by limitation for reopening u/s 147. To safeguard the interest of revenue, this case is being proposed for reopening on the following issues:

1. 8% profit treating contractor.
2. Proportionate income.
3. Capital gain."

3. Therefore it is quite clear that the reopening is proposed to safeguard the interest of revenue. The ITAT has pronounced an order on 2nd December, 2020 for the three assessment years referred to in the reasons for reopening.

4. The Assessing Officer, who has proposed to reopen, has to consider the order of ITAT pronounced on 2nd December, 2020.

5. In the circumstances, order dated 20th November, 2019 rejecting petitioner's objection is quashed and set aside.

6. The matter is remanded to the Assessing Officer, who shall pass fresh order on objection, after considering the objections already filed by petitioner along with the further submissions, within a period of twelve weeks of this order being uploaded.

7. The Assessing Officer shall also grant a personal hearing to petitioner and date and time of personal hearing shall be intimated to petitioner at least seven days in advance. If the Assessing Officer is going to rely on any orders/judgments of any Court or Tribunal, he shall provide a copy thereof to petitioner in advance so that petitioner can deal with or distinguish it during the personal hearing.

The time spent from the date of filing the writ petition till disposal and the time granted for disposal of objections is to be excluded while computing the period of limitation for completion of the assessment proceedings.

8. Petition accordingly disposed.

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

Order is corrected as per speaking to the minutes of order dated 25th March, 2022.