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

WRIT PETITION NO.3613 OF 2019

Bhadresh Dipchand Doshi ....Petitioner
V/s.
Assistant Commissioner of Income Tax,
Circle – 26(1) & Ors. ....Respondents

Ms. Radha Halbe i/b. Mr. Devendra Jain for petitioner.
Mr. Suresh Kumar for respondents.

CORAM : K.R. SHRIRAM &
N.R. BORKAR, JJ.
DATED : 12th APRIL 2022

P.C.:

1 Petitioner is impugning a notice dated 31st March 2019 issued under Section 148 of the Income Tax Act, 1961 (the Act) for Assessment Year 2012-2013 and the order on objections dated 20th November 2019.

2 Various grounds have been raised but one of the most striking ground is that the reasons to reopen is based on information that was received from ADIT (Inv.), Unit 8(2), Mumbai. The same information has been received even before the assessment proceedings were completed and the assessment order dated 28th December 2018 came to be passed. In the assessment order for Assessment Year 2011-2012 the same information is referred to which the Assessing Officer has considered and accepted the explanation of petitioner.

3 We have to also note that by a letter dated 7th April 2014 notice under Section 142(1) of the Act was issued to petitioner and petitioner was

directed to explain the transaction entered into by petitioner in the name of Kuvam International Fashions Limited. Ms. Halbe states that the name of Kuvam International Fashions Limited was later changed to Aarya Global Shares and Securities Limited and it is also so stated in the assessment order dated 28th December 2018 for Assessment Year 2011-2012.

4 Petitioner has given explanation and all document by their letters dated 20th August 2014, 27th October 2014 and 11th November 2014. Therefore, the issue was subject of consideration during the assessment proceedings. Mr. Suresh Kumar submitted that the same has not been discussed in the assessment order. It is settled law that once a query is raised and answer is given, the Court has to proceed on the basis that it was under consideration by the Assessing Officer even if there is no reference to it and the Assessing Officer has accepted the explanation given by petitioner. Therefore, it is a clear case of change of opinion, which is not permissible.

5 In the circumstances, as we are satisfied that the proposed reopening is based on change of opinion, the notice dated 31st March 2019 impugned in this petition has to be quashed and set aside. Therefore, petition is allowed in terms of prayer clause – (a), which reads as under :

> *(a) that this Hon'ble Court may be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, Order or direction, calling for the records of the Petitioner's case and after going into the legality and propriety thereof, to quash and set aside the notice u/s. 148 dated 31.03.2019 (Exhibit D) and the subsequent*

Order dated 20.11.2019 (Exhibit N) disposing of petitioner's objections on the issue of impugned notice.

6 Petition accordingly stands disposed.

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