IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.3621 OF 2019

Kamla Chandrasingh Kabali ... Petitioner

Vs.

Assistant Commissioner of Income Tax-27(2),
Mumbai and others ... Respondents

Mr. Devendra H. Jain for Petitioner.
Mr. Arvind Pinto for Respondents - Revenue.

CORAM : K. R. SHRIRAM &
N. J. JAMADAR, JJ.

DATE : FEBRUARY 2, 2022

P.C. :- (*Per N. J. Jamadar, J.*)

The challenge in this petition is to a notice under Section 148 of the Income Tax Act, 1961 ("*the Act, 1961*") recording a satisfaction that the respondent No.1 has a reason to believe that the income chargeable to tax for the assessment year 2012-13 has escaped assessment within the meaning of Section 147 of the Act, 1961. For the assessment year 2012-13, the petitioner had not submitted return of income. However, availing the benefit of the Declaration of Income Scheme, 2016 ("*the Scheme, 2016*"), the petitioner submitted a declaration. *Vide* communication dated 14th January 2020, the Principal Commissioner of Income Tax declined to accept the declaration and issue Form No.4.

2. By a separate judgment in Writ Petition No.3622 of 2019, we have set aside the said communication and directed the authorities to accept the declaration in accordance with the Scheme, 2016. The said declaration pertains to the assessment year 2012-13 as well.

3. In view of the provisions contained in Section 188 of the Finance

Act, 2016 under which the Scheme, 2016 was introduced, the amount of undisclosed income declared in accordance with Section 183 shall not be included in the total income of the declarant for any assessment year under the Act, 1961, if the declarant makes the payment of tax and surcharge referred to in Section 184 and penalty referred to in Section 185 of the Finance Act, 2016. Resultantly, the Assessing Officer would have no jurisdiction to assess the income in respect of which the declarant has made a declaration under the Scheme, 2016.

4. Mr. Pinto, the learned counsel for the Revenue, fairly submits that the impugned notice and the consequent proceedings would be *non est* once the petitioner is granted relief in Writ Petition No.3622 of 2019.

5. Thus, the petition stands 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 28.03.2019 ("Exhibit F") and the order disposing objections dated 17.12.2019 ("Exhibit O")."*

6. No costs.

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

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