IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3303 OF 2022

Akshar Properties ….Petitioner

V/s.
Asst. Commissioner of Income Tax
Circle 27(1) & Ors. ....Respondents

Ms Ritika Agarwal a/w Ms Ayesha Ansari i/b Acelegal for Petitioner.
Mr. Vipul Bajpayee for Respondents.

CORAM : K. R. SHRIRAM &
Dr. NEELA GOKHALE, JJ.
DATED : 12th DECEMBER 2023

P.C. :

1 Petitioner is impugning a notice dated 30th March 2021 issued under Section 148 of the Income Tax Act 1961 (the Act), for AY-2017-18 on various grounds and in particular that the documents / information relied upon by respondents in forming the reasons to believe for escapement of income, has not been made available to petitioner.

2 The reasons for reopening reads as under:

> *"The DDIT (Inv.), 4(1), Thane has informed that a survey u/s 133A was conducted in the case of Akshar Group on 10.12.2020. During the survey, it has been identified that the assessee has taken unsecured loans from shell companies providing accommodation entries. During the year, the assessee has made payment of interest of Rs. 17,97,000/- against the bogus unsecured loans availed in previous years. Thus, the assessee has reduced its income by claiming interest expenses on bogus loans. Hence, income chargeable to tax amounting to Rs. 17,97,000/- has escaped assessment for F.Y. 2016-17 relevant to A.Y. 2017-18 by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, for A.Y. 2017-18. I have reason to believe that an amount of Rs. 17,97,000/- has escaped assessment for A.Y. 2017-18, within the*

> *meaning of provisions of section 147 of the Income Tax Act, 1961, due to failure on the part of the assessee to disclose true and correct income."*

3 Ms Agarwal states that though, objections were filed and objections have been rejected on specious grounds, that details sought by respondents are not required to be provided at the stage when respondents had material with them to arrive at a belief that income has escaped assessment at the time when notice under Section 148 was issued. If petitioner is made available with those documents / information based on which the officer has formed an opinion that there was escapement of income, it would help petitioner to effectively respond and also explain that there was never and there cannot be any escapement of income.

4 In the order rejecting petitioner's objection, the officer simply states that at the time of reopening, the Assessing Officer was not required to establish escapement of income. The officer may be correct but if, in the reasons to reopening assessment reliance has been placed on documents to suggest that petitioner has taken unsecured loan from shell companies providing accommodation entry and paid interest of Rs.17,97,000/- against bogus unsecured loan availed in previous years, the least an Assessing Officer could do is to make available those documents to petitioner, particularly when petitioner is denying that petitioner has taken any unsecured loans from shell companies or payment of interest against bogus unsecured loan.

5 Therefore, we hereby quash and set aside the order dated 27^{th} January 2022 passed by respondents rejecting petitioner's objections and remand the matter for denovo consideration. Within three weeks from today petitioner shall be provided copies of all such documents / information indicating those received from DDIT (Inv.), 4(1), Thane, relied upon in the reasons for reopening. If any information received from DDIT (Inv.), (4(1), Thane, does not pertain to petitioner, such portion can be redacted before making the documents available to petitioner. Within two weeks of receiving the documents, petitioner shall file comprehensive reply to the notice for reopening. The Assessing Officer shall pass a reasoned order in accordance with law and before passing any order, a personal hearing shall be given to petitioner, notice whereof shall be communicated at least five working days in advance. The assessment order shall be passed on or before 31^{st} March 2024.

6 Petition disposed.

7 We clarify that we have not made any observations on the merits of the matter.

(Dr. NEELA GOKHALE, J.) **(K. R. SHRIRAM, J.)**