IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7994 OF 2023

Urban Homes Realty ….Petitioner

V/s.

Union of India and Anr. …Respondents

Mr. Mahaveer Jain a/w Ms. Ujjwala Chaturvedi for Petitioner.
Mr. Ajeet Manwani a/w Ms. Samiksha Kanani for Respondents-Revenue.

CORAM : K.R. SHRIRAM &
FIRDOSH P. POONIWALLA, JJ.
DATED : 4th JULY 2023

P.C. :

1. Considering the facts and circumstances of the case with the consent of parties we are taking up the matter for hearing and final disposal at the stage of admission itself.

2. Petitioner is a partnership firm and carrying on business as property developers. Petitioner had filed on 5th October 2016 return for Assessment Year 2016-17 declaring a total amount of Rs.96,590/- as income.

3. Petitioner then received a notice dated 24th August 2018 under Section 142(1) of the Income Tax Act, 1961 (the Act) calling upon petitioner to furnish various information as per annexture to the said notice. One such information, i.e., relevant to the matter at hand is *“Please submit*

details of all the properties purchased during the year along with copies of purchase deeds and copy of the statement of bank account from which the payment was made". Petitioner replied to this notice by its letter dated 7th September 2018 and gave following details :

> *5. Copy or Purchase deed for properties purchased during the year.*
> *During the year the assessee has purchased Land from the company Precision Automation and Robotics India Ltd. admeasuring 11971 sq. mt. situated at S. No. 38 Narhe for the total consideration of Rs.28.50 Crores. The said land is utilized for the construction of housing project under the name and style "PARI Towers" undertaken by the assessee.*
>
> *The Copy of the agreement for purchase of said land is attached herewith. (Refer Annexure C).*

4. The payment details for the property is also given in paragraph no.2 of the agreement, copy whereof was annexed to the said reply dated 7th September 2018. Thereafter, the Assessment Order dated 29th November 2018 came to be passed under Section 143(3) of the Act. In the Assessment Order it is expressly mentioned that petitioner's return of income was processed under Section 143(1) of the Act and petitioner's case was selected by CASS for complete scrutiny for various reasons, one of which is *"large investment in property"*. It is also recorded in the Assessment Order that during the course of assessment proceedings, petitioner submitted various details as called for, the details filed were examined and placed on record. The CASS and ITS data has been verified from the details submitted by petitioner. After due examination, the income computed is Rs.96,590/- under Section 143(3) of the Act.

5. Later petitioner received a notice dated 23rd March 2023 under Clause (d) of Section 148A of the Act by which petitioner was informed that there was information which suggests that income chargeable to tax for Assessment Year 2016-17 has escaped assessment. The details of the information/enquiry conducted on which reliance was placed alongwith supporting documents are also mentioned in the annexture to the notice. Petitioner was called upon to show cause as to why a notice under Section 148 of the Act should not be issued. Due to information uploaded in VRU Model under Insight portal, the case of petitioner was picked up in High Risk CRIU/VRU from Insight portal as petitioner has entered into transaction of purchase of immovable property amounting to Rs.28,50,00,000/- relates to Assessment Year 2016-17. In the information description the same property is mentioned twice and Mr. Manwani in fairness stated that it has been later corrected. Therefore, the only information was relating to purchase of immovable property amounting to Rs.28,50,00,000/-. Petitioner filed a detailed reply vide its letter dated 27th March 2023. Petitioner raised various grounds including the fact that the same transaction came under complete scrutiny before the Assessment Order under Section 143(3) of the Act was passed. Petitioner also submitted that petitioner's case was selected for scrutiny under CASS for the same property and petitioner was also called upon to explain the source of payment, details of which have been filed alongwith petitioner's reply dated 7th September 2018. It was also petitioner's case that since all primary facts

necessary for assessment were disclosed at the time of original assessment there cannot be a second inning for the same property. Petitioner also provided details of the property and the payments made including the source from which the payment was obtained.

6. Notwithstanding petitioner's explanation, an order dated 31st March 2023 which is impugned in this petition came to be passed under Section 148A(d) of the Act. The findings to justify issuance of notice under Section 148 of the Act is very brief. It only states that issue covered under complete scrutiny in the case of petitioner was not related to verification of source in respect of purchase of property and hence the issue needs to be verified afresh. It also states that petitioner has not furnished relevant bank statement evidencing the payments made for purchase of the property during the year and has also not explained the source during the course of issuance of notice under Section 148A(b) of the Act.

7. In our view, all these findings are incorrect in as much as in the notice under Section 142 (1) issued on 24th August 2018, petitioner was expressly called upon to submit all the details of all the properties purchased alongwith copies of purchase deed and copy of statement of the bank account from which the payment was made. In its reply dated 7th September 2018 petitioner has given details of property purchased including copies of Purchase Deed. The Purchase Deed also contains details of

payments made. In the Assessment Order dated 29th November 2018 the Assessing Officer has specifically stated that during the course of assessment proceedings assessee submitted various details as called for. The details filed by assessee are examined and placed on record and the CASS and ITS data has been verified from the details submitted by assessee. The Assessment Order also states that the case was selected by CASS for scrutiny in view of large investment in property, among other things. Therefore, the Assessing Officer was certainly satisfied with all the details provided by petitioner. If he was not, in other words, if petitioner had not furnished copy of the statement of bank accounts from which the payment was made as mentioned in the notice dated 24th August 2018, certainly the Assessing Officer would not have passed the Assessment Order the way he had passed. Moreover, in the reply dated 27th March 2023 to the notice issued under Section 148A(b), petitioner has given details of the consideration paid for the property and the source of funds. Therefore, for the Assessing Officer to state in the impugned order dated 31st March 2023 that petitioner did not provide the details or explain the source etc., is an incorrect statement.

8. In the circumstances, we hereby quash and set aside the Show Cause Notice dated 23rd March 2023 issued under Section 148A(b) of the Act, the Impugned Order dated 31st March 2023 passed under Section 148A(d) of the Act and the notice dated 31st March 2023 issued under Section 148 of the Act.

9. Petition disposed.

(FIRDOSH P. POONIWALLA, J.) **(K.R. SHRIRAM, J.)**