IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8366 OF 2023

L and L Holding Company LLC ….. Petitioner

Vs.

Assistant Commissioner of Income Tax
International Tax Circle 3(1)(2), Mumbai
and Ors. ….. Respondents

Mr.Neeraj Sheth along with Mr.Jitendra Singh for petitioner
Mr.Subir Kumar, Senior Standing Counsel a/w Ms.Sruti Kalyanikar for Respondents

CORAM: K.R. SHRIRAM, J &
FIRDOSH P. POONIWALLA, J.

DATED : 31st JULY 2023

P.C.

1. Mr.Subir Kumar, on instructions, and as an officer of the Court, in fairness suggests that the impugned order dated 17th April 2023 be quashed and set aside and the matter be remanded for *denovo* consideration.

2. In the circumstances, we hereby quash and set aside the order dated 17th April 2023 passed under Section 148A(d) of the Act. We remit the matter back to Respondent No.1 but the officer who shall consider the matter will be someone different from said Ms. Monica Pande who has

passed the impugned order. Respondent No.2 may assign the matter to any other officer as he/she deems fit.

3. The consequential notice dated 17th April 2023 issued under Section 148 is also hereby quashed and set aside.

4. The officer to whom the matter is assigned by Respondent No.2 may pass such order as deemed fit in accordance with law. But before passing any such order Petitioner shall be given a personal hearing notice whereof shall be communicated at least 7 working days in advance to Petitioner. After the personal hearing, should Petitioner wish to file any written submissions recording what transpired during the personal hearing, Petitioner may file the same within three working days thereof. The order to be passed under Section 148A(d) shall be a reasoned order dealing with every submission made by Petitioner.

5. While passing the order, we hope the officer would consider whether the 'information' in possession of the Department *prima facie,* satisfies the requirement of enabling a suggestion of escapement from tax. The officer shall consider whether at all the 'information' gathered could lead to a suggestion of escapement from tax. Officer shall also keep in mind that issues decided categorically by judicial precedent should not be revisited in the guise of reassessment.

6. Mr.Sheth states that before respondent no.1 proceeds further

it would save time if respondent no.1 provides list of queries so that petitioner will be able to effectively respond to the same. Mr.Sheth hastens to add that this also is without prejudice to petitioner's rights and contentions that the reopening is time barred and there is no escapement of income. Respondent no.1 shall provide the list, if any, alongwih the notice for personal hearing.

7. Petition disposed. No order as to costs.

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