IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8523 OF 2023

Deepak Rakhamaji Hadavale … Petitioner
V/s.
Income Tax Officer, Ward-28(1)(1)
& Ors. … Respondents

Mr. Dharan Gandhi for Petitioner.
Mr.Manoj Shirsat, Sr. Panel Counsel for Respondents.

CORAM : K. R. SHRIRAM &
FIRDOSH P. POONIWALLA, JJ.
DATE : 11th JULY 2023

P. C.:-

1. With the consent of Counsels we have taken this Petition to be disposed at the admission stage itself.

2. Petitioner is aggrieved by an order dated 31st March 2023, passed under Section 148A(d) of the Income Tax Act, 1961("the said Act"), which was passed following a notice dated 18th February 2023 that was issued under Section 148A(b) of the said Act.

3. Petitioner is an individual resident of India and an Assessee under the said Act. During the Financial Year 2015-16 relevant to Assessment Year (AY) 2016-17, on 16th July 2015 Petitioner had transferred a property being Flat No.104, First Floor, Divyal Co-operative Housing Society Limited,

Plot No.D 62/63, C-9, Airoli, Navi Mumbai, 400 708 for Rs.46,50,000/-. It is Petitioner's case that there was no other property that was transferred by Petitioner.

Sometime in February 2023 Petitioner received from Respondent No.1 a notice dated 18th February 2023 under Section 148A(b) of the said Act. It is stated in the notice that as per the AIR-007 (information) Petitioner has sold two immovable properties valued at Rs.30,00,000/- or more for a total consideration of Rs.93,00,000/-. The source of information was Sub-registrar Office-3, Thane.

5. Petitioner replied vide letter dated 2nd March 2023 and informed Respondent No.1 that during the year under consideration Petitioner had sold only one property valued at Rs.46,50,000/-. Petitioner also stated that perhaps the transaction is reported twice or may not belong to Petitioner. Despite this, Petitioner received an order dated 31st March 2023, passed by Respondent No.1 under Section 148A(d) of the said Act, where Respondent No.1 has incorrectly recorded that Petitioner has admitted that he has carried out that two transactions as mentioned in the notice. Paragraph 4 of the said order reads as under:-

> *"The notice u/s. 148(b) of the Act dated 18.02.2023 was duly served upon the assessee through e-proceedings module of e-filing portal, speed-post & email. In response to the Notice, the*

> *assessee submitted the details and owned up the reported transaction carried out during the relevant financial year which was provided to the assessee with the above mentioned show cause notice.”* *(emphasis supplied)*

6. In the said order it is also incorrectly mentioned that Petitioner failed to submit any documentary evidence for double reporting of sale of property and details of cost of acquisition. Therefore, the entire sale consideration of Rs.93,00,000/- will be treated as capital gain and this will be the escaped income in the year under consideration.

7. We fail to understand how a person can prove the negative. The onus was on the Assessing Officer to prove that what the Petitioner has stated in the Reply was incorrect and in fact there were two transactions linked to Petitioner as against Petitioner’s stand that there was only one transaction during the relevant Assessment Year.

8. Moreover, how can the entire sale consideration be treated as capital gain. There must have been some cost price which after applying the required formula has to be reduced from the sale consideration to determine capital gain. In the circumstances, though Mr. Shirsat had requested for some time to take instructions and file reply, we see no reason to grant any time.

9. In the circumstances, we quash and set aside the order dated 31st March 2023 passed under Section 148A(d) of the said Act. Consequently subsequent notice also dated 31st March 2023 issued under Section 148 is also quashed and set aside.

10. The matter is remanded to the concerned officer to pass a correct order in accordance with law after correctly considering the Reply filed by Petitioner on 2nd March 2023 and also affording a personal hearing to Petitioner. Notice of personal hearing shall be communicated at least seven working days in advance.

11. Petition disposed.

12. All the rights and contentions are kept open including Petitioner's contention that amount involved is less than Rs.50,00,000/- and therefore, it cannot be re-opened.

13. Of course it is also open to the Respondent No.1 to make inquiries and find evidence to justify, what is stated in the annexures to the original notice issued under Section 148A(b).

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