



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 314 OF 2014

Noshir Darabshaw Talati

96D, Ground Floor, Villa Modern
Worli Sea Face, Worli,
Mumbai-400 018

... **Petitioner**

Versus

1. **Deputy Commissioner of Income-tax,**
Circle-7(3), having his office at
6th Floor, Aaykar Bhavan
Maharshi Karve Road,
Mumbai-400 020.

2. **Commissioner of Income-tax-7**
having his office at
6th Floor, Aaykar Bhavan
Maharshi Karve Road,
Mumbai-400 020.

3. **Union of India**
Through Ministry of Finance,
North Block,
New Delhi-110 001

... **Respondents**

Mr. B.V.Jhaveri, with Mr. S. Sriram & Ms. Bhargavi Raval for
Petitioner.

Mr. Suresh Kumar for Respondents.

CORAM

**K. R. SHRIRAM &
NEELA GOKHALE, JJ.**

DATED:

6th October 2023

JUDGMENT (Per Neela Gokhale, J.):

1. Petitioner assails notice dated 21st March 2013 issued by Respondent No.1 under Section 148 of the Income Tax Act, 1961 ('the Act').

2. Petitioner is an individual, being assessed to income tax for more than three decades. He filed his return of income for Assessment Year 2006-07 on 26th October 2007 declaring total income of Rs.2,84,19,724/-. The return of income was accompanied by all the necessary documents. The return of income was taken up for scrutiny by Respondent No.1. The Assessing Officer ('AO') completed the assessment under Section 143(3) of the Act on 21st April 2008 determining the total income as Rs.2,84,19,720/-.

3. Petitioner received notice dated 21st March 2013 under Section 148 of the Act for AY 2006-07 pursuant to which he filed the return of income accompanied by a letter dated 4th April 2013 requesting the AO to furnish the reasons on the basis of which the impugned notice was issued. By letter dated 10th September 2013, the AO served a copy of the reasons recorded by him for reopening the assessment of Petitioner for AY 2006-07. The reasons read as thus:

ORDER SHEET

"Date: 21/03/2013

"Reasons recorded for issuing notice u/s.147 of the I.T.Act, 1961.

*NOSHIR D. TALATI
A.Y. 2006-07*

In this case, the assessee has received during the year relevant

to A.Y.2006-07 Rs.52,81,16,309/- from various parties as loan and advances. The following loans are from the companies in which the assessee is having substantial shareholdings as detailed below:

Sr. No.	Name of the Companies	Amount of the loans and advances	No. of shares hold by the assessee
1.	Aconite Properties Pvt. Ltd.	2,79,45,013/-	9990
2	Apoorva Realtors Pvt. Ltd.	22,00,000/-	1500
3	Neelima Investments Pvt. Ltd.	14,96,013/-	99000
4	Perfect Realty Pvt. Ltd.	33,66,900/-	998
5	Topworth Properties Pvt. Ltd.	23,66,23,370/-	9919
		25,16,31,296/-	

Since the applicability of provisions of Section 2(22)(e) was not verified as the share holding pattern of the assessee in the above companies and the reserve and surplus of the above companies are not on record. Since the loans and advance received by the assessee from the above companies is very substantial, the deeming provisions of Section 2(22)(e) if applied could result in substantial tax effect of more than Rs.1 lac.

The assessee has failed to disclose fully and truly all material facts necessary for his assessment for that assessment year as per proviso section 147 of the I.T.Act. Hence, I have reason to believe that the income has escaped assessment. Notice u/s.148 is being issued separately.

Sd/-
(PRASOON KABRA)
Dy. Commissioner of Income-tax-7(3)
Mumbai"

4. Petitioner filed objections dated 3rd October 2013 to the reasons recorded by the AO for reopening the assessment of income for the assessment year under consideration. However, vide order dated 8th January 2014, the AO rejected the objections

raised by Petitioner and proceeded to issue notice under Section 142(1) of the Act on 10th January 2014. Petitioner replied to the said notice on 17th January 2014 once again reiterating that the 'reasons to believe' for reopening the assessment are not tenable on the ground that Petitioner had made full and true disclosure of all the material facts at the time of his original assessment and the notice under Section 148 of the Act reopening the assessment was illegal and an arbitrary exercise of jurisdiction by the AO. It is this notice which is impugned in these proceedings.

5. Mr. B. V. Jhaveri, learned Counsel appears for Petitioner and contests the said notice on the ground that *firstly*, the notice is issued beyond a period of four years from the end of the relevant assessment year and hence without jurisdiction inasmuch as Petitioner made true and full disclosure at the time of the original assessment; *secondly*, no income has escaped assessment as alleged in the reasons recorded by the AO since Petitioner had disclosed complete information in respect of loans taken by him from five companies as referred to in the reasons; *thirdly*, the five companies from whom Petitioner had taken loans do not have accumulated profits and hence the question of taxing deemed dividend under Section 2(22)(e) of the Act does not arise and *finally*, the said loans were in fact not availed during the previous year relevant to AY 2006-07. Mr. Jhaveri also drew our attention to a letter dated 7th April 2008 of S.S.Khasgiwala and Company, the Chartered Accountants of Petitioner addressed to the assessing officer, which indicates that all details relating to loan confirmations, balance sheet, bank statements of four banks of Petitioner etc., were shared with the AO. The said letter was accompanied by copies of the

bank statements of Petitioner in respect of Vijaya Bank, Union Bank of India and H.D.F.C. Bank comprising of details of the saving as well as current accounts, the balance sheet as on 31st March 2006 and the loan confirmation of as many as 17 parties including the five companies in which Petitioner has share holding. The details in the letter and documents annexed thereto were in response to an oral request made by the AO. Hence, the AO was very much seized of all the relevant details of Petitioner at the time of the original assessment itself. For all these reasons, Mr. Jhaveri urges us to quash the impugned notice as the same is issued without application of mind and is wholly unsustainable

6. Mr. Suresh Kumar appearing for Respondents fairly concedes that Petitioner had submitted a list containing names of parties from whom he had availed unsecured loans with the corresponding amounts and also a list of shares which included the names of all the companies in which Petitioner had a shareholding. He, however, says that the percentage of Petitioner's shareholding was not mentioned and hence, applicability of provisions of Section 2(22)(e) of the Act was not verified for want of information relating to the shareholding pattern of the companies. He further contends that had the AO been apprised of that information, the deeming provision of Section 2(22)(e) of the Act, if applied, could have resulted in substantial tax effect. On this ground alone, Mr. Suresh Kumar justifies the impugned notice and alleges that relevant material was concealed by Petitioner.

7. Heard both the Counsels and perused the documents on record with their assistance.

8. Admittedly, the impugned notice under Section 148 of the Act has been issued more than four years after the expiry of the relevant assessment year and the assessment under Section 143(3) of the Act was completed. It is trite that the AO can reopen an assessment if he has 'reason to believe' that undisclosed income has escaped assessment. But where the notice under Section 148 of the Act is issued after expiry of four years of the relevant assessment year, the proviso to Section 147 of the Act would apply and it specifically provides for its application only if the assessee fails to make a true and full disclosure of material facts at the time of assessment. Thus, the proviso to Section 147 of the Act will apply in this case and there is a bar in reopening of assessment unless there is a failure to truly and fully disclose material facts. The notice under Section 147 of the Act dated 21st March 2013 itself contains the details available with the AO as provided by Petitioner regarding his shareholding in the five companies. It is only because the AO failed to verify the applicability of provisions of Section 2(22)(e) of the Act that it was deemed necessary to reopen the assessment. This is the only reason recorded in the notice.

9. This Court in its decision in the matter of *CitiusTech Healthcare Technology Pvt. Ltd. v. Deputy Commissioner of Income Tax, Circle-I(2)(1) and Ors.*¹ in Paragraph 15 has held as under:

1. Writ Petition No.1796 of 2022, dated 23rd September 2023.

*“15. There can be no doubt that the duty of disclosing all the primary facts relevant to the decision of the question before the assessing authority lies on an assessee. Does the duty however extend beyond the full and truthful disclosure of all primary facts? In our opinion, the answer to this question must be in the negative. Once all the primary facts are before the assessing authority, he requires no further assistance by way of disclosure. It is for him to decide what inferences of facts can be reasonably drawn. It is not for somebody else – least of all an assessee – to tell the AO what inferences should be drawn. Indeed, when it is remembered that people often differ as regards what inferences should be drawn from given facts, it will be meaningless to demand that an assessee must disclose what inferences – whether of facts or law – he would draw from the primary facts. On this aspect we draw strength from the decision of the Apex Court in the matter of **New Delhi Television Ltd v. Deputy Commissioner of Income Tax** where the Apex Court, relying upon a decision of its Constitutional Bench in the matter of **Calcutta Discount Company Ltd v. Income Tax Officer, Companies District I, Calcutta** has held that it is the duty of the assessee to disclose full and truly all material facts termed as primary facts and non-disclosure of other facts which may be termed as secondary facts is not necessary.”*

10. The Apex Court in its decision in the matter of **New Delhi Television Ltd. v. Deputy Commissioner of Income Tax**,² has held that it is the duty of the assessee to disclose full and truly all material facts termed as ‘primary facts’ and non-disclosure of other facts which may be termed as ‘secondary facts’ is not necessary.

11. This Court in the matter of **Ananta Landmark Pvt. Ltd. v. Deputy Commissioner of Income Tax & Ors.**³ has also held as under:

“...that when the primary facts necessary for assessment are fully and truly disclosed, the assessing officer is not entitled on change of opinion to commence proceedings for

² 2020 SCC OnLine SC 446.

³ (2021) 131 taxmann.com 52 Bombay.

reassessment and where on consideration of material on record, one view is conclusively taken by the assessing officer, it would not be open to reopen the assessment based on the very same material with a view to take another view.”

12. The facts of this case clearly indicate that Petitioner has furnished all the details and relevant documents to the AO at the time of original assessment. The notice of ‘reasons to believe’ itself reveals information and material which was available with the AO. Despite relevant information being available with the AO, if the AO chooses not to deal with the same, it cannot be presumed that it is Petitioner, who has not made a complete and full disclosure. We have perused in detail the letter dated 7th April 2008 of the Chartered Accountants of the Petitioner providing exhaustive details accompanied by all relevant documents to the AO. It is clear from all the documents on record including the notice recording reasons for reopening of assessment itself that there is no failure to disclose on the part of Petitioner. It is evident that the original assessment order was passed based on all the necessary information already available at the time of original assessment. The order dated 8th January 2014 rejecting the objections of Petitioner in fact supports the contention of Petitioner in respect of him furnishing all documents and relevant information, but simply discards the same by stating that even if there is no fresh material, but the information placed on record is such that it is difficult to be detected. The rejection order further cites a number of precedents of various Courts which are wholly inapplicable to the facts of the present case, being on a justification as to how the facts in the present case do not suggest a ‘change of opinion’ The reasons for

rejection of the objections raised by petitioner are without any substance and hence untenable.

13. In view of the foregoing, we are firmly of the view that there is no failure on the part of Petitioner in making full and true disclosure to the AO during the original assessment leading to a possibility of application of the provisions of Section 2(22)(e) of the Act resulting in a substantial tax effect. The impugned notice dated 21st March 2013 is thus quashed and set aside. Rule is, thus, made absolute 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 directions under Article 226 of the Constitution of India calling for the records of the case leading to issue of the notice under Section 148 of the Act, dated 21st March 2013 being Exhibit ‘D’ hereto and after going through the same and examining the question of legality thereof to quash, cancel and set aside the impugned notice dated 21st March 2013 being Exhibit ‘D’ hereto.”

14. There shall be no order as to costs.

(NEELA GOKHALE, J.)

(K. R. SHRIRAM, J.)