

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 2014 OF 2022

Chanchal Bhagwatilal Gokhru,]
Age - 56 Years,]
R.N. 27, 2nd floor Rungata Bhavan,]
Sitaram Poddar Marg,]
94/100 Fanaswadi, Mumbai-400002] ...Petitioner

Versus

1. Union of India,]
through Secretary, Ministry of Finance]
Department of Revenue, Room No.46,]
North Block]
New Delhi - 110 001]

2. Income tax Officer Ward 23(1)(6),]
Room No.203, 2nd floor, Earnest House,]
Nariman Point, Mumbai-400021] ...Respondents

...

Mr. Rajendra for the petitioner.

Mr. Akhileshwar Sharma a/w. Ms. Shilpa Goel for the respondents.

...

CORAM : DHIRAJ SINGH THAKUR AND
KAMAL KHATA, JJ.
RESERVED ON : 18TH APRIL 2023.
PRONOUNCED ON : 4TH MAY 2023.

J U D G M E N T

[PER: KAMAL KHATA, J.]

1. Rule. Rule made returnable forthwith. Respondents Counsel waives service.

2. By this Petition under Article 226 of the Constitution, the Petitioner seeks a Writ of Mandamus to quash and set aside the impugned notice dated 26th March 2021 under section 148 of the Income Tax Act, 1961 (“the Act”) whereby the Respondent No. 2 proposed to reopen the assessment of the Petitioner for the Assessment Year (“AY”) 2014-15 as he had reason to believe that income chargeable to tax had escaped Assessment and all subsequent proceedings to the impugned notice.

BRIEF FACTS:

3. The Petitioner had filed her return of income for AY 2014-15 on 28th July 2014. The Assessing Officer (“AO”) had passed an order u/s 143 (3) of the Act on 18th November 2016, whereby he added ₹ 1,07,18,922 to the total income on account of withdrawal of exemption claimed by the Petitioner u/s 10(38) of the Act and the Petitioner paid tax on the same. Thereafter, the Petitioner was also granted waiver of penalty for the AY 2014-15 on 31st January 2018 on application u/s 273A of the Act by the PCIT-18, Mumbai.

4. Evidently a notice u/s 148 of the Act dated 26th March 2021 is issued after a period of four years following which a return of income was filed by the Petitioner on 14th April 2021. This was followed by Notice u/s 143(2) dated 10th November 2021 and notice u/s 142(1) dated 15th November 2021 seeking details to

which the Petitioner filed a response dated 24th November 2021 and objected to the re-assessment by communication dated 28th January 2022. The objections were disposed of on 11th February 2022. Another notice was issued on 25th February 2022 which led to filing of this Petition.

5. Since the impugned notice u/s 148 of the Act has been issued after the expiry of four years from the end of the relevant AY, Respondents have to show that the jurisdictional requirement is satisfied that there was failure to truly and fully disclose material facts as decided by this Court in ***Ananta Landmark (P) Ltd. v DCIT CC 5(3) Mumbai.***¹

6. We have examined the reasons recorded annexed to the Petition that are evidently premised on '*seen from the assessment records*'. The Assessment Officer (AO) records that the assessee claimed to have purchased shares of the penny stock scrips for a total of ₹ 33,09,976 and sold it for a consideration of ₹1,15,90,280/-. Therefore he held that the long term capital gain would be unexplained investment/income from other sources and not a capital gain as claimed by the assessee on the premise that entire transaction of purchase and sale of shares were a part of accommodation entry and represents unexplained investment

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made by assessee in cash to obtain an equivalent amount of bogus profit on sale of shares.

7. We find nothing to indicate failure to disclose any material fact. Upon examining the order u/s 143(3) we find that the AO has considered these very transactions and added ₹ 1,07,18,922 to the total income on which the Petitioner has already paid the tax. We find no substance in the AO's reason to believe that income chargeable to tax has escaped assessment in as much as there is no mention of any tangible material that led to his conclusion. The entire process is triggered on a change of opinion as to the calculation of tax payable by the assessee. As stated hereinabove, it is evident that bald assertions of the transaction being "an accommodation entry made in collusion & connivance with the entry provider" are used to re-open the assessment. It is well settled judicial principal that, the true test of income chargeable to tax escaping assessment is whether there exists fresh "tangible material" on the basis of which appropriate conclusion is reached. In the absence of such material the reassessment proceedings would be invalid. This principle has been upheld by the Apex Court as well as the jurisdictional High Courts in various rulings. Furthermore, this Court has held that reconsideration of the

material available at the time of original assessment proceedings tantamount to change of opinion and therefore invalid.

8. In view of the settled legal position and considering the facts of the present case, we pass the following order-

- i.* The impugned notice dated 26th March 2021 issued by Respondent No.2 for AY 2014-15 are quashed and set aside and all action in furtherance thereto is prohibited;
- ii.* Rule made absolute in above terms. No costs.

[KAMAL KHATA, J.]

[DHIRAJ SINGH THAKUR, J.]