IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3292 of 2022

Mrs. Rashmi Vinay Bhatt ...Petitioner

Versus

The Income – tax Officer

Ward – 6(3)(1), Mumbai and Ors. ...Respondents

...

Mr. Vipul B. Joshi a/w. Ms. Dinkle Hariya i/by Mr. Sameer G. Dalal for the petitioner.

Mr. Suresh Kumar a/w. Ms. Samiksha Kanani for the respondents.

...

CORAM : DHIRAJ SINGH THAKUR AND KAMAL KHATA, JJ.

DATE : 13TH MARCH 2023.

ORDER

[PER: KAMAL KHATA, J.]

1. This Petition under Article 226 of the Constitution filed on 20th April 2022 impugns notice dated 31st March 2021 issued under section (u/s) 148 of the Income Tax Act, 1961 (Act) for Assessment Year (AY) 2014-15 and the order dated 30th March 2022 finalizing the reassessment u/s 147 r.w.s 144B of the Act.

2. The record indicates that the notice dated 31st March 2021 u/s 148 of the Act is issued after expiry of four years and the

proviso to section 147 of the Act applies. Respondents have to show 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]

3. We have examined the reasons for initiation of proceedings u/s 147 of the Act annexed to the Petition that are evidently premised on *'information received from credible sources'.* The Assessment Officer (AO) records that the assessee had claimed exemption on the income from Long Term Capital Gain of ₹.3,38,79,160/- and based on the information concluded that the assessee had obtained accommodation entries of the said amount on Penny Stock Transactions and consequently income had escaped assessment. We find nothing to indicate failure to disclose any material fact.

4. This is yet another case, where we find that the assessee is barely given time. The notice for initiation of the proceedings u/s 147 of the Act was issued on 20th March 2022 (Sunday), the draft assessment order was issued on 22nd March 2022. The assessee was expected to file all objections along with the documents on or before midnight of 26th March 2022. The letter intimating

[1] [2021] 131 taxmann.com 52

schedule for personal hearing through video conferencing fixed on 29th March 2022 at 9.30 a.m. was issued on 28th December 2022 at 10.34 p.m. However, the request for rescheduling the hearing by a day to 30th March 2022 submitted by the Petitioner on 28th December 2022 at 11.37 p.m. was ignored and the Assessment Order was passed on 30th March 2022.

5. In complete contradiction to the record, the Reply filed by the Respondent on 6th July 2022 states that:

'the Petitioner failed to attend the personal hearing through Video Conferencing as per the given scheduled time and date and even after waiting for around half an hour.'

This is clearly a misleading statement and contrary to the record annexed in the Petition. We resist ourselves from initiating perjury proceedings against the concerned officer and warn him to desist from making false statements on oath.

6. The averments in paragraph 4.21 of the reply which is as under clearly indicate the hapless situation of the Respondent.

> *"4.21 With reference to contents of **Para No.4.10** of the writ petition, I say that As per notice u/s 148 dated 31.03.2021, the petitioner was at the first instance required to furnish Return of Income in the prescribed format within 30 days from the service of notice. However, in response to the aforesaid notice u/s 148 of the I.T. Act, 1961, the petitioner furnished Return of income on 02.12.2021 after a gap of almost*

08 months from the date of the notice u/s 148 of the I.T. Act, 1961.
Thereafter, notice u/s 143(2) of the I.T. Act, 1961 dated 20.12.2021 could be issued online through ITBA system to the petitioner with reasons recorded uploaded as annexure. However, being involved in proceedings related with a number of time barring cases, as it came to the knowledge that the petitioner has not received the reasons recorded along with the notice u/s 143(2) ITBA system, the reasons recorded by the Jurisdictional Officer for initiation of proceeding u/s 147 of the I.T. Act, 1961 was issued online to the petitioner on 20.03.2022.
Subsequently, considering the fact that only 11 days were left for this time barring proceeding, a show cause notice along with draft Assessment order was issued and served to the petitioner online on 22.03.2022 to show cause by midnight of 26.03.2022 as to why the proposed variation should not be made as per the draft assessment order."

7. Be that as it may, in our view, the following propositions urged by the Learned counsel for Petitioner viz.

i. Notice uploaded on E- filing portal without any real time alert cannot be considered valid service:

ii. The issuance of e-mail attaching electronic notice to an unrelated e-mail address does not constitute 'due dispatch' and consequently invalid in law:

upheld in the case of ***Sumeet Jeet Agarwal v ITO***[2] are correct and squarely applicable in the present case.

In the present case, notice u/s 148 of the Act dated 31st March 2021, being the last day of limitation period of six years was not issued on the registered email address which was duly

[2] (2022) 143 taxmann.com 11 (Delhi)

intimated and also reflected in the returns of income filed by the Petitioner. In the case of **Lok Developers v DCIT Circle 24(1) Mumbai**[3] we have held that it is imperative for the AO to have checked, if there was a change of address before initiating a proceeding, since a valid notice is a condition precedent and failure of a valid notice would lead to a jurisdictional error that would vitiate the entire proceeding. Consequently for the same reasons, we hold and declare the entire proceedings in the present case as void.

8. The present case is also vitiated because the initiation of proceedings is based on borrowed satisfaction without independent application of mind which proposition is supported by various judgments of the Supreme Court as well as our Court in the case of ***PCIT v Shodiman Investments (P) Ltd.***[4]

9. In view of all the reasons aforesaid, we pass the following order-

i. The impugned notice dated 31st March 2021 and the order dated 30th March 2022, issued by Respondent No.1 for

[3] Writ Petition No. 1983 of 2022 along with Writ Petition No. 3037 of 2022 decided on 15th February 2023

[4] (2020) 422 ITR 337 (Bom)

AY 2014-15 are quashed and set aside and all further action in respect thereof is prohibited;

ii. Rule made absolute in above terms. No costs.

(KAMAL KHATA, J.) **(DHIRAJ SINGH THAKUR, J.)**