

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION.

WRIT PETITION NO.3259 OF 2022

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PETITIONER : The Sahebrao Deshmukh Co-op. Bank
Ltd.,
C. P. Tank Branch, Nanubhai Desai
Road, 25, Sonarika Apartment,
Mumbai – 400 004

..VERSUS..

RESPONDENTS : 1. The Assistant Commissioner of
Income Tax, Central Circle 7(4),
Mumbai,
Pratishtha Bhavan, Old CGO Annexe
Room No.656, 6th Floor, M. K. Road,
Mumbai – 400 020

2. The Assistant Commissioner of
Income Tax, Central Circle 7(2),
Mumbai,
Aayakar Bhavan, Room No.655, 6th
Floor, M. K. Road, Mumbai – 400
020.

3. The Principal Commissioner of
Income - Tax (Central) – 4, Mumbai,
Aayakar Bhavan, M. K. Road, Mumbai
– 400 020

4. Union of India,
Through its Finance Secretary
Department of Revenue, Ministry of
Finance, 3rd Floor, Jeevan Deep
Building, Sansad Marg, New Delhi –
100 001.

Mr Satish Mody with Ms Aasifa Khan, Advocate for the Petitioner.
Mr Akhileshwar Sharma with Ms Shilpa Goel, Advocate for the Respondents.

CORAM : DHIRAJ SINGH THAKUR AND
VALMIKI SA MENEZES, JJ.

RESERVED ON : 8th DECEMBER, 2022.

PRONOUNCED ON : 10th FEBRUARY, 2023.

JUDGMENT : (PER : VALMIKI SA MENEZES, J.)

. This is a writ petition invoking this Court's power under Article 226 of the Constitution of India to challenge order dated 31.03.2021, passed under Section 148 of the Income Tax Act, 1961 (hereinafter referred as "the Act"), and further challenge to order dated 22.03.2022, rejecting the Petitioner's objections to reopening of the assessment, Assessment Order dated 31.03.2022, passed under Section 147 read with Section 143(3) of the Act, Notice of Demand dated 31.03.2022, issued under Section 156 of the Act, and Penalty Notice dated 31.03.2022, issued under Section 271(1)(c) of the Act, issued by Respondent No.2.

2. **Rule.** By consent of the parties, Rule is made returnable forthwith and the petition is heard finally.

3. The main ground for challenge in this petition is, that the Respondent No.2 – The Assistant Commissioner of Income Tax, Central Circle 7(2), whilst dealing with the objections filed by the Petitioner to the notice for reopening of assessment and the final order of assessment dated 31.03.2022 alongwith the notice of demand and penalty notice are issued without giving an opportunity of hearing to the Petitioner in the matter and all are passed contrary to the principles of natural justice.

4. It is the Petitioner's case that it is a Co-operative Bank providing financial and banking services, and for that purpose, it is governed by the provisions of the Reserve Bank of India Act, 1934, and directions given by the Reserve Bank of India under that Act. It is further the Petitioner's case that for the Financial Year 2012-13, relevant to the Assessment Year 2013-14 to which, this petition pertains, the Respondent No.1 – The Assistant Commissioner of Income Tax, Central Circle 7(4), Mumbai, issued a Notice dated 31.03.2021, under Section 148 of the Act, claiming that it had reason to believe that the Petitioner's income chargeable to tax for the relevant

Assessment Year 2013-14 had escaped assessment. By that notice, the Petitioner was called upon to file a return in the prescribed form, within 30 days from the service of the notice. The Notice also claimed that it was being issued after obtaining necessary satisfaction of the Principal Commissioner of Income Tax (Central), Mumbai-4.

5. Thereafter, the Respondent No.2 issued a Notice dated 26.01.2022, under the provisions Section 142(1) of the Act, calling upon the Petitioner to furnish on or before 01.02.2022, the accounts and documents, details of which were provided in an annexure to the said Notice.

In its reply dated 27.01.2022 filed online to the portal of the Income Tax Department, the Petitioner replied to both, Notice dated 26.01.2022 issued under Section 142(1) of the Act, and with reference to Notice under Section 148 dated 31.03.2021, requested the Respondent No.2 to furnish copy of the reasons for believing that the income chargeable to tax had escaped assessment; in the said reply, it also stated that the Petitioner - Co-op. Bank had filed its regular return of income in electronic form on 26.09.2013, declaring an income of

Rs.7,65,40,780/- under Section 143(1) of the Act, and Assessment Order dated 17.03.2016 had come to be passed thereon. On the same date, the Petitioner also filed its return of income.

6. By Notice dated 05.02.2022, the Respondent No.2 provided reasons to the Petitioner with the information sought, which was in the form of an Annexure, and further clarifications, which were detailed in an Annexure to that Notice, wherein it alleged that based upon survey conducted under Section 133A carried out on 14.12.2016 at the premises of Shri Shripal Vora at Bhavnagar, unaccounted cash was seized from that premises and from a statements on oath recorded under Section 131 of the Act, from the said Vora, it came to be revealed that the Petitioner was involved in accommodation entry business and charging commission @ 2.75% of the transaction or accommodation entry provided. After receiving this information, the Petitioner – Co-op. Bank, by its letter dated 21.02.2022, requested the Respondent No.2 to provide it with the satisfaction note of the Principal Commissioner of Income Tax, who had accorded approval to the reopening of

the assessment. In its reply, it has also sought a copy of the appraisal report on the basis of which, reopening of assessment was ordered.

There was no reply forthcoming from the Respondent No.2 to this letter, nor was the Petitioner provided with the approval of the Principal Commissioner of Income Tax or appraisal report.

Thereafter, by Notice dated 24.02.2022, the Respondent No.2 fixed a hearing of the matter, without providing the documents demanded by the Petitioner on 28.02.2022.

7. By its letter dated 28.02.2022, the Petitioner once again referred to its earlier correspondence, wherein it had requested for a copy of the satisfaction note of the Principal Commissioner of Income Tax alongwith a copy of approval granted by him for reopening of the assessment. It also reiterated its request for the appraisal report from the DDIT (Inv), Bhavnagar, referred to in the reasons recorded for reopening and for the bank statements of the paper concern

M/S Sanyam Gems Pvt. Ltd. The Petitioner specifically took objection to proceed with the matter without providing these documents and requested for a virtual hearing through video conferencing before any orders for assessment would be passed. This reply, was admittedly uploaded to the portal of the Income Tax Department and received by the Assessing Officer on 28.02.2022 alongwith various Annexures submitted by the Petitioner.

8. It is the Petitioner's case that on 22.03.2022, the Respondent No.2 passed an order dismissing the Petitioner's objections, thereby refusing to furnish to the Petitioner a copy of the approval granted by the Principal Commissioner of Income Tax to the reopening of the assessment as well as to providing the appraisal report alongwith the documents/statements recorded during the search and seizure operation on which, the Department was relying.

By letter dated 23.03.2022, the Petitioner, having received the order dated 22.03.2022, disposing of its objections reiterated its stand that the satisfaction note and order of approval had not been enclosed with the Notice under Section

148 of the Act, issued to Petitioner nor had the appraisal report been provided to the Petitioner. The Petitioner also raised a specific contention that it would like to cross-examine the persons, who had given statements to the Income Tax Department during the search and seizure operation conducted at Bhavnagar, on the basis of which, the Petitioner had been implicated and the reopening notice issued. Further, letter dated 23.03.2022 to a notice issued dated 24.02.2022 fixing hearing on 28.02.2022 was sent by the Petitioner reiterating its earlier objections raised by its letter dated 23.03.2022, seeking an opportunity for virtual hearing through video conferencing on the date fixed for hearing.

9. The Petitioner – Co-op. Bank claims that without any opportunity of hearing being given, it received a show cause notice dated 29.03.2022, wherein the Respondent No.2 contended that the explanation given by the Petitioner was not acceptable and accordingly, the Petitioner was given a final opportunity to explain the credit of Rs.2,00,00,000/- in its bank with substantial and clear evidence. The Notice was digitally signed at 3:54 AM on 29.03.2022.

By letter dated 30.03.2022, the Petitioner replied to the show cause notice dated 29.03.2022 submitting its explanation, but reiterating therein its stand that the satisfaction note and the appraisal report earlier requested by them alongwith the statements of persons recorded in the search and seizure operation had not been furnished to it; it also reiterated its request for cross-examination of the persons, whose statements had been recorded and on the basis of which, approval for reopening of the assessment was granted by the Commissioner of Income Tax. This reply was also uploaded on 30.03.2022.

10. The Petitioner then states that it received impugned assessment order dated 31.03.2022 reassessing its income for the assessment year 2013-14 claiming that an amount of Rs.2,00,00,000/- had escaped assessment and holding that the total taxable income of the Petitioner for that period was Rs.22,05,94,840/-. Alongwith the assessment order, the Petitioner was served with a notice of demand under Section 156, Penalty notice under Section 244 of the Act, and a notice Under Section 274 read with Section 271(1)(c) of the Act

respectively.

11. After notice of the petition was issued, the revenue has opposed the admission of petition, primarily on the ground that the Petitioner has an efficacious alternate remedy of an appeal under the Act, and as such, would operate as a bar to this Court exercising its jurisdiction under Article 226 of the Constitution of India.

The Respondent No.2 was denying that it has not adhered to the principles of natural justice by giving an opportunity of hearing to the Petitioner in the matter, has admitted that the Respondent No.2 had not furnished a copy of the satisfaction note recorded by the Principal Commissioner of Income Tax (Central) Zone-4 at Mumbai. It has also not denied the fact that it has not submitted to the Petitioner copies of all the documents, which were the basis for recording its reasons for issuing a notice under Section 148 of the Act, namely the statements of witnesses recorded during its seizure operations. The Respondent No.2 has also stated at para 13 of its affidavit that it has not allowed hearing through video conferencing facility to the Petitioner before passing the

assessment order, since the assessment proceedings in this case were not carried out by the Central Faceless Assessment Center; that the assessment of the Central Circle is a physical assessment as e-proceedings and functionality of video conferencing as a hearing opportunity is not available to the Petitioner.

12. We have heard Mr Satish Mody, learned Counsel for the Petitioner, Mr Akhileshwar Sharma, learned Counsel for the Respondents and perused the record of the petition.

13. Mr Satish Mody, learned Counsel appearing for the Petitioner – Co-op. Bank, submits that the impugned orders are unsustainable since they are passed in gross contravention of the principles of natural justice, since the Respondent No.2 has not only consistently refused to furnish copies of the appraisal report and the statements recorded in the search and seizure operations conducted by the revenue as referred to in its reasons, nor was the satisfaction recorded by the Principal Commissioner of Income Tax furnished to it. It is also the contention of the learned Counsel for the Petitioner that it has, on several occasions requested for cross-examination of the

persons, who have given statements under Section 131 of the Act, during the search and seizure operations conducted at the premises of M/S Sanyam Gems Pvt. Ltd. It is further the submission of the Petitioner that the order dated 22.03.2022 of the Assessing Officer, rejecting the request of the Petitioner for these documents, is without adverting to any reasons and without even addressing itself to the contentions raised by the Petitioner in its request, vide letters dated 20.02.2022 and 27.01.2022. The learned Counsel relies upon a judgment of this Court dated 15.02.2022, passed in *Writ Petition No.546 of 2022, in Tata Capital Financial Services Limited ..V/s.. Assistant Commissioner of Income Tax, Circle 1(3)(1) and others*, wherein this Court has given general directions to the revenue when dealing with cases of reopening of assessment under Section 148; that in *Tata Capital Financial Services Limited ..V/s.. Assistant Commissioner of Income Tax, Circle 1(3)(1) and others* (supra), this Court has specifically directed that the standard form/request sent by the Assessing Officer for obtaining approval with the order of approval should be annexed to the communication regarding reasons for reassessment and that if the reasons make reference to any other

document or a letter or a report, such portions which were with reference to the assessee should be reproduced in the notice; that a personal hearing shall be given and minimum seven working days advance notice of such personal hearing shall be granted. It is submitted that the Assessing Officer has in complete violence of the directions of this Court, without furnishing a copy of the documents forming the basis of which, the reopening was ordered nor giving a clear notice of hearing of the matter, has acted in contravention of the principles of natural justice, and consequently in breach of the Article 14 of the Constitution of India. It is submitted that the Assessing officer has acted in an arbitrary manner and hence, the impugned orders are required to be set aside, directions be given to the Assessing Officer to provide all the documents requested by the Petitioner and after a reply to the same is filed, hear the matter afresh before passing any orders on the notice under Section 148 of the Act.

14. On the other hand, Mr Akhileshwar Sharma, learned Counsel appearing for the Respondents supports the impugned orders submitting that the approval, under Section 151 of the

Act, has been produced alongwith the affidavit-in-reply of the Assessing Officer and the approval order considers all the material that the Assessing Officer has placed before the Principal Commissioner of Income Tax, before the same has been granted for the reopening of assessment.

15. In Tata Capital Financial Services Limited ..V/s.. Assistant Commissioner of Income Tax, Circle 1(3)(1) and others (supra), this Court was also dealing with the similar notice issued under Section 148 of the Act, wherein the Petitioner had taken a specific defence that it was a Non-Banking Finance Company (NBFC) registered with the Reserve Bank of India (RBI) and that under Clause 3(2) of Notification dated 22.02.2007, issued by the RBI, income including interest/discount or any other charges of NPAs (Non-Performing Assets) shall be recognized only when it is actually realised. It was the Petitioner's case in that matter that there being a mandate of the RBI, that income was not offered to tax in the return of income on accrual basis, but was offered to tax on receipt basis and a provision was made in the annual report of the Petitioner for the relevant assessment year not crediting

interest and other charges of Non-Performing Assets to the statements of profit and loss account.

Without dealing with all the Petitioner's objections, and with the specific request of the Petitioner therein, to provide copies of documents evidencing reasons for reopening assessment, as also without providing the approval for reopening of such assessment, the order of assessment was passed without any personal hearing. In those circumstances, this Court held as under :

"In the order passed on 17th December, 2021, rejecting the objections the Assessing Officer has not dealt with all these points. The Assessing Officer was duty bound to deal with all the submissions made by petitioner in its objections and not just brush aside uncomfortable objections under the carpet. We have to note that petitioner had, with the objections, also requested the Assessing Officer to provide photocopies of documents evidencing request sent by the Assessing Officer to the Principal Chief Commissioner of Income Tax/Chief Commissioner/Principal Commissioner/Commissioner in terms of Section 151(1) of the Act for obtaining an approval for re-opening of the assessment for the year under consideration and documents evidencing the approval received from the Principal Chief Commissioner of Income Tax/Chief Commissioner/Principal Commissioner/Commissioner.

The Assessing Officer instead of providing these documents simply dismissed petitioner's request by saying it is purely an administrative matter and all

correspondence have been made through system. The Assessing Officer was duty bound to provide all the documents called for by petitioner and his reluctance to provide these documents only would make the court draw adverse inference against respondent.....

Therefore, the order dated 17th December, 2021 impugned in this petition is quashed and set aside. The matter is remanded for denovo consideration. The concerned officer shall keep in mind that the exercise of considering the assessee's objections to the re-opening of assessment is not a mechanical ritual but a quasi judicial function. The order disposing of the objections should deal with each objection and give proper reasons for the conclusion. He shall also grant a personal hearing to petitioner and the notice of personal hearing shall be communicated atleast seven working days in advance. If the said officer is relying on any judgment or order of any Court or Tribunal, a list thereof shall be provided to petitioner alongwith notice of personal hearing so that petitioner will be able to deal with or distinguish these judgments/orders in the personal hearing. The Assessing Officer shall deal with all previous submissions while considering the assessee's objections, deal with each objections and give proper reasons for its conclusion."

After referring to a judgment of the Delhi High Court in the case of ***Sabh Infrastructure Ltd. .V/s.. Assistant Commissioner of Income Tax, reported in (2017) 398 ITR page 198 (Delhi)***, this Court in ***Tata Capital Financial Services Limited .V/s.. Assistant Commissioner of Income Tax, Circle 1(3)(1) and others*** (supra), further passed general directions to the revenue for compliance in similar cases in future. The

directions are quoted as under :

“In the circumstances, the Revenue is directed to adhere to the following:

(a) While communicating the reasons for re-opening the assessment, a copy of the standard form/request sent by the Assessing Officer for obtaining approval of the Superior Officer should itself be provided to the assessee. This would contain comment or endorsement of the Superior Officer with his name, designation and date.

The Assessing Officer shall not merely state the reasons in the letter addressed to the assessee.

(b) If the reasons make reference to any other document or a letter or a report, such document or letter or report should be enclosed to the reasons. Such portion as it does not bear reference to the assessee concerned could be redacted.

(c) The order disposing the objections should deal with each objections and give proper reasons for the conclusion.

(d) A personal hearing shall be given and minimum seven working days advance notice of such personal hearing shall be granted.

(e) If the Assessing Officer is going to rely on any judgment/order of any Tribunal or Court reference/citation of these judgment/orders shall be provided alongwith notice for personal hearing so that the assessee will be able to deal with/distinguish these judgments/orders.

A copy of this order be placed before the members of the Central Board of Direct Taxes who shall issue guidelines to all its officers based on the directions given above with clear instructions that they shall be strictly followed. We only hope that, this will reduce the same errors being repeated by the concerned revenue authorities

and will not drive the assessee to rush to the court. Thereby, the burden on the court will also get reduced.”

16. In the present case, the Assessing Officer appears to have acted in complete contravention of the general directions issued by this Court in matters, where a notice under Section 148 of the Act, for reopening of assessment is issued by the revenue.

To begin with, the Assessing Officer was duty bound to issue, alongwith the notice under Section 148 of the Act, the reasons which formed the basis for reopening of assessment, the satisfaction note and order of the Principal Commissioner of Income Tax, who granted approval to issuance of the said notice alongwith the note of the Assessing Officer in support of his request for approval, the appraisal report from the DDIT (Inv) Bhavnagar, and the statements of Shri Shripal Vora at Bhavnagar, recorded under Section 131 in the search and seizure of the premises of M/S Sanyam Gems Pvt. Ltd, which were referred to in the notice. None of these documents, were sent to the Petitioner in compliance with the general directions issued by this Court. It is also borne from the record that

despite several requests from the Petitioner, specifically demanding a copy of all these documents, the Assessing Officer has refused to furnish copies of the same to the Petitioner. Thereafter, the Assessing Officer has, by order dated 22.03.2022 rejected the request of the Petitioner for furnishing all these documents without assigning any reasons for such rejection nor dealing with the specific objections and the request made by the Petitioner in its order. In fact, the order dated 22.03.2022 is diametrically opposed to the specific observations of this Court at para 4 in Tata Capital Financial Services Limited .V/s.. Assistant Commissioner of Income Tax, Circle 1(3)(1) and others (supra). Thereafter, despite a specific request for a personal hearing by the Petitioner before passing the assessment order, the Assessing Officer has neither granted the same nor dealt with the request and has gone ahead and passed the assessment order on 31.03.2022, without hearing to the Petitioner. This arbitrary act of the Assessing Officer is also contrary to the specific directions of this Court contained in para 8(d) in Tata Capital Financial Services Limited .V/s.. Assistant Commissioner of Income Tax, Circle 1(3)(1) and others (supra), wherein Assessing Officers have been directed

to give a personal hearing to assesses with a minimum seven working days advance notice of such personal hearing.

17. Considering all the above circumstances and applying the ratio of the judgment of this Court in Tata Capital Financial Services Limited .V/s.. Assistant Commissioner of Income Tax, Circle 1(3)(1) and others (supra), and specific directions contained therein to the revenue, we are of the considered opinion that the Assessing Officer has acted in gross violation of the directions in Tata Capital Financial Services Limited .V/s.. Assistant Commissioner of Income Tax, Circle 1(3)(1) and others (supra), and in contravention of the provisions of Article 14 of the Constitution of India. Consequently, the impugned orders i.e. order dated 31.03.2021 issued under Section 148 of the Act, order rejecting the objections to reopening dated 22.03.2022 passed by the Respondent No.2, Assessment order dated 31.03.2022, Notice of demand dated 31.03.2022 issued under Section 156 of the Act, and Penalty notice dated 31.03.2022 issued under Section 271(1)(c) of the Act, are quashed and set aside.

18. The matter is now remanded back to the Assessing Officer, who shall provide the Petitioner with the satisfaction note of the Principal Commissioner of Income Tax, granting approval for issuance of Notice under Section 148 of the Act, the appraisal report from DDIT (Inv), and bank statements of M/S Sanyam Gems Pvt. Ltd., the statement of Shri Shripal Vora at Bhavnagar, recorded under Section 131 of the Act, and all other documents and material, which form the basis of the reasons recorded by the Assessing Officer for issuing notice under Section 148 of the Act. After furnishing all these documents to the Petitioner, the Assessing Officer shall comply with the specific directions laid down by this Court in paragraph 8 in Tata Capital Financial Services Limited ..V/s.. Assistant Commissioner of Income Tax, Circle 1(3)(1) and others (supra), and after giving an opportunity of hearing to the Petitioner, shall proceed to pass its orders.

19. Rule is made absolute in above terms. No costs.

(VALMIKI SA MENEZES, J.) (DHIRAJ SINGH THAKUR, J.)