IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

903 WRIT PETITION NO. 11000 OF 2022

MOHAMMAD OSMAN MOHAMMAD SALAR SHAIKH
VERSUS
THE UNION OF INDIA THROUGH ITS SECRETARY AND ANOTHER

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Shri G.R. Syed, Advocate for the Petitioner.
Shri Ajay G. Talhar, DSGI for Respondent No.1/UoI.
Shri Alok M. Sharma, Advocate for Respondent 2.

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CORAM : RAVINDRA V. GHUGE
&
R.M. JOSHI, JJ.

DATE :- 21st March, 2024

Per Court :-

1. The Petitioner has put forth prayer clauses B and C as under:-

> *"B) By issuing writ of certiorari or any other appropriate writ or directions in the like nature this Hon'ble Court may kindly quash and set aside the reassessment notice dated 07.05.2021, 26.05.2022 and order dated 26.07.2022 passed by the Income Tax Officer Ward 1 (1) Aurangabad.*

> *C) Pending hearing and final disposal of this Writ Petition, this Hon'ble Court may pleased to stay the effect implement and execution of the reassessment notice dated 07.05.2021 and 26.05.2022 issued by respondent No.2."*

2. The only issue raised in this Petition is as regards the escaped assessment of an amount, which is less than Rs.50,00,000/- (Fifty Lakh). As regards the issuance of a notice for reassessment or re-computation under Section 147 of the Income Tax Act, 1961, the notice was issued under Section 148 of the Income Tax Act, 1961.

3. The Petitioner had filed the income tax returns for the Assessment Year 2016-2017. Hence, the grievance of the Petitioner is that the notice under Section 148 cannot be issued in the light of Section 149(1)(b) of the Income Tax Act, 1961, with reference to the escaped assessment, if the notice is issued beyond three years of the Assessment Year and if the amount is less than Rs.50,00,000/- (Fifty Lakhs). A notice, in peculiar circumstances, could be issued even within ten years, provided the escaped income has to be more than Rs.50,00,000/- (Fifty Lakhs).

4. This issue is no longer res-integra. Despite the vehement submissions of the learned Advocate Shri Sharma, the Department is unable to indicate from the record that the impugned notice was issued within three years and that the

amount of escaped assessment was more than Rs.50,00,000/-.

5. In view of the above, **this Writ Petition is allowed in terms of prayer Clause ‘B’**.

kps **(R.M. JOSHI, J.)** **(RAVINDRA V. GHUGE, J.)**