IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5458 OF 2024

Yogesh Kisan Madake ….Petitioner

V/s.

Income Tax Officer, Ward 13(1), Pune
and Ors. …Respondents

Mr. Tanmay Phadke for Petitioner.
Mr. Akhileshwar Sharma for Respondents-Revenue.

CORAM : K.R. SHRIRAM &
DR. NEELA GOKHALE, JJ.
DATED : 30th APRIL 2024

P.C. :

1. Petitioner is impugning an Assessment Order dated 5th February 2024 passed under Section 147 read with Sections 144 and 144B of the Income Tax Act, 1961 (the Act), Demand Notice dated 5th February 2024 issued under Section 156 of the Act and Penalty Notices dated 5th February 2024 issued under Section 274 read with Section 270A and 271AAC of the Act for Assessment Year (A.Y.) 2018-19.

2. Petitioner was filing returns for years before the relevant financial year. During 2017-18 petitioner sold a residential house for Rs.35,00,000/- and paid off liabilities to the extent of Rs.27,00,000/- including housing loan. The balance was about Rs.8,00,000/-. Petitioner decided to utilize it in the stock market and become millionaire overnight.

He not only lost his Rs.8,00,000/- but also lost a further sum of Rs.6,47,559/- because he traded in futures and segment option. Petitioner hit a turnover of Rs.95,87,36,376/-. Petitioner has also lost his job. Mr.Phadke states that petitioner was upset and therefore was not in a proper frame of mind even to respond to the notice that he received under Section 148A(b) of the Act. Petitioner did not even file the return of income. Mr.Phadke states petitioner only woke up when he received the Assessment Order because he had not even bother to respond to the notice dated 27th March 2023 issued under Section 148 of the Act which was preceded by an order dated 27th March 2023 issued under Section 148A(d) of the Act. Petitioner did not respond to the multiple notices issued under Section 142(1) of the Act. In view of the total non co-operation or lack of response from petitioner the Assessment Order came to be passed adding the entire turnover of Rs.95,87,36,376/- as petitioner's income. In the affidavit in reply it is admitted that the entire receipt has been taken as the income of assessee and that was because the Assessing Officer (A.O.) had no material to know the cost involved.

3. Mr. Sharma submitted that in view of petitioner's conduct, this court should not exercise its jurisdiction under Article 226 of the Constitution of India and petitioner should be directed to file an appeal before the Commissioner of Income Tax (Appeal).

4. Though we find petitioner's conduct not acceptable, still in the facts and circumstances of this case we shall not direct petitioner to file an appeal and thereby exhaust the alternate remedy. This is because in no circumstances can the entire receipt could have been treated as the income of assessee. Moreover, Mr. Phadke submitted that the tax demand is in excess of Rs.81 Crores and the appellate authority for stay will insist on petitioner depositing 20% which would be in excess of Rs.16 Crores.

5. Therefore, in our view since the Assessment Order as passed could not have been passed treating the entire receipt as income of petitioner, we hereby quash and set aside the Assessment Order dated 5th February 2024. We also quash and set aside the orders passed under Section 148A(d) of the Act and also the notice issued under Section 148 of the Act. The Notice of Demand issued under Section 156 of the Act and Penalty Notice issued under Section 274 read with Section 270A and 271AAC of the Act both dated 5th February 2024 are also quashed and set aside.

6. Petitioner within seven working days of receiving an intimation of opening of portal file reply/objections to the notice dated 7th February 2023 issued under Section 148A(b) of the Act. The A.O. by 31st July 2024 shall pass the order under Section 148A(d) of the Act after giving personal hearing to petitioner, notice whereof shall be communicated atleast seven working days in advance.

7. Petition disposed.

8. We clarify that we have not made any observations on the merits of the matter.

9. At the same time, in our view this is a case where petitioner should be put to terms. Petitioner shall within two weeks from today pay a sum of Rs.50,000/- (Rupees Fifty Thousand Only) as donation to P.M. Cares Fund. The account details are as under :

Name of the Account : PM CARES
Account Number : 60355358964
IFSC : MAHB0001160
Branch : UPSC - New Delhi

The proof of payment shall be filed alongwith the reply to be filed by petitioner to the notice issued under Section 148A(b) of the Act. If the same is not filed the A.O. may simply reject all submissions of petitioner and pass such orders as he deems fit in accordance with law.

10. The time spent from issuing of notice dated 7th February 2023 under Section 148A(b) of the Act until date shall stand excluded in calculating the limitations for passing the Assessment Orders in the case of petitioner herein.

(DR. NEELA GOKHALE, J.) **(K.R. SHRIRAM, J.)**