IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7026 OF 2023

Panacea Unique Star Developers through its Partner Darsh Sanjay Jain **…Petitioner**

Versus

Union of India through the Ministry of Finance, Department of Revenue & Ors. **…Respondents**

Mr. Sham Walve a/w Ms. Vidhi Punmiya i/b Mr. Sanket Bora for Petitioner.
Ms. Samiksha Kanani i/b Mr. Akhileshwar Sharma for Respondents-Revenue.

CORAM: K. R. SHRIRAM &
DR. NEELA GOKHALE, JJ.
DATED: 11th March 2024

PC:-

1. On 13th February 2024, the following order was passed :-

"*1 The issue in this matter in short is petitioner having availed of income declaration scheme 2016, had to pay certain amounts to the department for AY-2013-14, 2014-15 and 2015-16. Petitioner's case is certain amounts had been paid by petitioner by way of self assessment tax and TDS. Petitioner states that credit is not being given to the amounts already paid and petitioner is being declared as defaulter under the IDS and fresh assessment proceedings has also been initiated.*

2 Paragraph 4.3 of the affidavit in reply filed *through one Prasad Menkudale, affirmed on 27th July 2023 reads as under:*

> *"4.3 With reference to the contents of Ground C of the Writ Petition, I say that, circular no. 25 of 2016 dated June 30, 2016 speak that, credit for tax deducted shall be allowed only in those cases where the related income is declared under the Scheme and the credit for the tax has not already been claimed in the return of income file for any assessment year. In this case the assessee had made payment of taxes under different head. The PCIT-4 had sent a mail to the DGIT(System) for correction of the head of the said challan. After correction in the head of challan credit of the same will be allowed in the IDS Scheme and accordingly Form 4 may be issued to the applicant."*

3 Therefore, the fact that certain amounts have been paid by self assessment tax or TDS has not been disputed. Further, though over almost 7 months have passed since the affidavit in reply was affirmed, there is nothing on record to indicate whether the DGIT (System) has corrected the head of challan, so that Form No.4 could be issued to petitioner. Mr. Walve states that once the Form No.4 is issued, the file relating to IDS can be closed and that will also end in the reopening notice also being closed.

4 Mr. Manwani expresses his inability to give an answer today to the correction of the head of challan credit by DGIT(System). Mr. Manwani requested for some time to take instructions and file an affidavit with regard to the correction in the head of challan credit. Affidavit shall be filed and copy served by 29th February 2024. If the correction for the head of *challan credit has not been made, we direct the same to be made before 29th February 2024 and the Form No.4 to be issued by that date.*

5 At this stage, Mr. Walve seeks leave to amend the petition and tenders draft amendment, which is taken on record and marked "X" for identification. Mr. Manwani states if, the court is inclined to grant leave to amend, then respondents' rights and contentions be also kept open and liberty be given to file additional affidavit in reply. Keeping open the rights and contentions of petitioner, leave to amend is granted. Amendment to be carried out and amended petition to be served within one week from today. Should respondents wish to file a further affidavit in reply, the same to be filed and copy served by 5th March 2024.

6 Stand over to 11th March 2024.

7 Until 31st March 2024, there shall be ad-interim relief in terms of prayer clause (f), which reads as under:

> *"F. That pending the hearing and final disposal of the present petition, this Hon'ble Court be pleased to restrain the Respondent No.2 and 3 from taking any coercive action against the petitioner.""*

2. Respondents have now filed an affidavit through one Mr. Prasad Menkudale affirmed on 8th March 2024, to which is annexed the Form-4 dated 27th February 2023 issued under the Income

Declaration Scheme ("**IDS**"), 2016. Therefore, Mr. Walve states that this would take care of prayer clause (a) in the petition.

3. As regards prayer clauses (B) & (C), by which Petitioner is challenging the notice issued under Section 148 read with Section 148A(b) of the Income Tax Act, 1961 ("**the Act**") and the order passed under Section 148A(d) of the Act and the consequential orders, Mr. Walve submits that the reopening proceeding has been commenced based on the following information :

> "*On perusal of the case records, it is seen that in this case, the assessee disclosed unaccounted income of Rs. 3,26,50,039/- under IDS but defaulted in payment of taxes. As such, as per section 187(3) of IDS, 2016, such declaration is deemed to not have been filed under the Income Declaration Scheme, 2016. The declared income of Rs. 3,26,50,039/- under IDS shall be treated as undisclosed income of the assessee for A.Y. 2017-2018. Since the assessee has made declaration in the F.Y. 2016-2017, therefore, considering the provisions of Section 197(b) of the Finance Act, 2016 (IDS), the assessment for A.Y. 2017-2018 shall be made on substantive basis considering the total undisclosed income admitted by the assessee. Thus, I have reason to believe that the income of Rs. 3,26,50,039/- declared in IDS represents escaped income of assessee, required to be taxed for the year of declaration.*"

Therefore, the reopening is on the basis of income of Rs. 3,26,50,039/- declared in the IDS and Form-4 having been issued, there can be no escapement of income as alleged in the information.

4. Mr. Walve is correct in his submissions. Therefore, we hereby grant prayer clauses (B) & (C) also, which read as under :

"*B. Declare that the impugned reopening notices u/s 148 dated 8th April 2021, notice u/s 148A(b) dated 27th May 2022, impugned order u/s 148A(d) dated 27th July 2022, notice u/s 148 dated 27th July 2022, consequential notice u/s 143(2) r.w.s. 147 of the Income Tax Act, 1961 ("ITA") dated 13th January 2023 and impugned order, notice of demand, penalty notice u/s 274 r.w.s. 271AAC(3), all dated 16th May 2023 passed/issued by Respondent No. 3 are wholly without jurisdiction, illegal, arbitrary and liable to be quashed and set aside;*

C. Issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, order or direction under Article 226 of the Constitution of India, quashing the impugned reopening notices u/s 148 dated 8th April 2021, notice u/s 148A(b) dated 27th May 2022, impugned order u/s 148A(d) dated 27th July 2022, notice u/s 148 dated 27th July 2022, consequential notice u/s 143(2) r.w.s. 147 of the Income Tax Act, 1961 ("ITA") dated 13th January 2023 and impugned order, notice of demand, penalty notice u/s 274 r.w.s. 271AAC(3), all dated 16th May 2023 passed/issued by Respondent No. 3 as being wholly without jurisdiction, illegal, arbitrary."

5. Petition disposed.

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

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KOTAWADEKAR

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GITALAXMI KRISHNA
KOTAWADEKAR
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