IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12572 OF 2024

Govind Radhuram Jaidhara ...Petitioner

Versus

Income Tax Officer Ward 28(1)(1), Mumbai & Ors. …Respondents

Ms. Rutuja Pawar a/w Sneha More for Petitioner.
Mr. Arjun Gupta for Respondent Nos.1 to 3.

CORAM: G. S. KULKARNI & SOMASEKHAR SUNDARESAN, JJ.

DATE 30 SEPTEMBER 2024

P.C.

1. Heard Ms. Rutuja Pawar, learned counsel for the petitioner and Mr. Gupta, learned counsel for respondent / revenue.

2. This petition under Article 226 of the Constitution of India is filed praying for the following substantive reliefs:

> "a. That this Hon'ble Court may be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari or any other appropriate Writ, Order or direction, calling for the records of the Petitioner's case and after going into the legality and propriety thereof, to quash and set aside the said Notice u/s. 148 dated 30.03.2024 (**Exh. F**) for A. Y. 2019-20.
>
> b. That this Hon'ble Court may be pleased to issue a Writ of prohibition or a Writ in the nature of prohibition or any other appropriate Writ, Order or direction under Article 226 of the

> Constitution of India prohibition Respondents from taking any steps in furtherance of the said Notice u/s. 148 of the Act dated 30.03.2024 for A. Y. 2019-20."

3. At the outset Ms. Pawar would contend that the petitioner would become entitled to the relief as prayed for, considering the provisions of Section 149(1)(b)(3) of the Income Tax Act, 1961, in as much as the case being for the assessment year 2019-20, no notice under Section 148 could have been issued for the relevant assessment year on the ground that the income has escaped assessment which is of an amount of Rs.25,00,000/- when the provisions itself contemplates that it could be issued when income has escaped assessment for the amount which is likely to be 50,00,000/- or more. For convenience, we note the said provisions which reads thus:

> "**Section 149(1) in The Income Tax Act, 1961**
>
> (1)No notice under section 148 shall be issued for the relevant assessment year,—
>
> (a)…………...
>
> [(b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of-
>
> (i) …………..
>
> (ii) …………..
>
> (iii) an entry or entries in the books of account,"

4. Mr Gupta, learned counsel for the revnue would fairly conced to such

contentions as urged on behalf of the petitioner. In this view fo the matter, in our opinion, the notice under Section 148 could not have been issued.

5. The petition is accordingly allowed in terms of prayer clause (a).

6. Disposed of in the aforesaid terms. No costs.

(SOMASEKHAR SUNDARESAN, J.) (G. S. KULKARNI , J.)