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

WRIT PETITION NO. 3162 OF 2022

Praxis Interactive Services Private Limited ….Petitioner

V/s.

Deputy Commissioner of Income Tax
2(3)(1), Mumbai and Ors. …Respondents

Mr. Dharan V. Gandhi a/w Mr. Darshan M. Gajra for Petitioner.
Mr. Suresh Kumar for Respondents.

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

P.C. :

1. Petitioner is impugning a notice dated 24th March 2021 issued under Section 148 of the Income Tax Act, 1961 (the Act) for the Assessment Year 2016-17 together with an order dated 13th January 2022 disposing petitioner's objections to reassessment.

2. One of the main grounds raised in the objections to reopening is that even the figures given in the reasons to reopening are incorrect. It is petitioner's case that none of the submissions made in Paragraph No.2 of the objections to the notice issued under Section 148 of the Act has been dealt with in the order disposing the objections. Mr. Gandhi submits that even assuming there is an escapement of income, still petitioner's income having been taxed under the provisions of Section 115JB of the Act, no further tax

will be payable by petitioner. Mr. Gandhi in fairness stated that this ground has not been raised in the objections to the notice for reopening. Mr.Gandhi states that in any event the Assessing Officer (A.O.) not having dealt with petitioner's submissions in Paragraph No.2 of the letter dated 9th November 2021 objecting to the reopening, the order disposing objections passed on 13th January 2022 impugned in the petition be quashed and set aside and the matter be remanded for *denovo* consideration. Mr. Gandhi states that if the opportunity of personal hearing is given (it was not given on the earlier occasion) petitioner will be able to explain to the satisfaction of the A.O. that there has been no escapement of income assessable to tax.

3. There is an affidavit in reply opposing the petition and in the affidavit in reply respondent has basically reiterated what is stated in the order disposing the objections. It is also for the first time mentioned in the affidavit in reply that the reopening has been on the basis of audit objections. Mr. Gandhi states that the reasons for reopening is verbatim reproduction of the audit objections and therefore as held by this court in ***The Pr. Commissioner of Income Tax-5 vs. Shodiman Investments Pvt. Ltd.***[1] it cannot be stated that the A.O. had reason to believe that there was escapement of income.

4. In our view, all these points can be raised by petitioner in the

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further reply to be filed to the notice issued under Section 148 of the Act. Petitioner shall file the same within two weeks before the Jurisdictional Assessing Officer (JAO). The JAO shall consider the objections and after giving personal hearing to petitioner, notice whereof shall be communicated atleast five working days in advance, proceed further in the matter. The proceedings to be concluded by 30th April 2024.

5. Petition disposed.

6. All rights and contentions are kept open.

7. We have not expressed any opinion on the merits of the matter.

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