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

WRIT PETITION NO. 472 OF 2024

Ketan Kantilal Thakkar ...Petitioner
Versus
Income Tax Officer Ward 27 2 1 Mumbai & Ors ...Respondents

Mr. Jitendra Singh for Petitioner.
Mr. Arjun Gupta for Respondents-Revenue.

CORAM : K. R. SHRIRAM &
Dr. NEELA GOKHALE, JJ.
DATED : 8th APRIL 2024

P.C. :

1 Petitioner is impugning the proceedings relating to the passing of the impugned assessment order dated 6th November 2023 under Section 147 read with Section 144B of the Income Tax Act 1961 (the Act) for AY-2019-2020, the order dated 31st March 2023 passed under Section 148A(d) of the Act, the notice dated 31st March 2023 issued under Section 148 of the Act. Petitioner had filed the return of income under Section 139(1) of the Act on 17th October 2019 for AY-2019-20 declaring total income of Rs.12,18,560/-. The return filed by petitioner was accepted under Section 143(1) of the Act.

2 Thereafter, petitioner received a notice dated 2nd March 2023 under Section 148A(b) of the Act stating as follows:

> ***"Source of Information****:- In your case, information is flagged under the very high priority, in the Insight Portal. The Information is as under.*
>
> ***Information and Enquiry:-*** *In this case information has been " received*

> *that you are a beneficiary of accommodation entries provided by M/s.Reena Tinaaz Pvt Ltd of Rs.22,49,609/- for F.Y.2018-19 by way of circular trading and evasion of GST. The fact that the income has not been offered for taxation clearly suggest that the income chargeable to tax has escaped assessment for A.Y.2019-20 and it needs to be reassessed as per provisions of section 148 of the Income tax Act.*
>
> ***Opportunity of being Heard****:- You are provided an opportunity of being heard as per section 148A(b) and required to show cause as to why proceedings u/s.148 of the Income tax Act should not be initiated against you. Your reply should be supported by the documentary evidences and proof."*

3 Petitioner replied by its letter dated 10th March 2023 stating that it was the agent of Priya Gold Biscuits and Amul Dairy Products and others. It has sold goods and delivered to M/s.Reena Tinaaz Pvt Ltd. Of Rs.22,49,609/- during the F.Y.2018-19. The sales effected have been shown in GSTR-1 and 3B and petitioner has paid GST on it. The sale has been accounted for and petitioner has paid the income tax. Petitioner also sought two more weeks to file further response. Since two weeks would have expired on 24th March 2023, the Assessing Officer waited till 31st March 2023 and pass the impugned order dated 31st March 2023 under Section 148A(d) of the Act. In the impugned order, what is stated in the notice under Section 148A(b) has been reiterated.

4 Mr. Gupta counsel for respondent, in fairness, agreed that petitioner had in fact filed the return of income for A.Y. 2019-20 on 17th October 2019, copy whereof is annexed at Exhibit A to the petition.

5 In our view, as it appears from the impugned order dated 31st March 2023, the Assessing Officer (AO) has proceeded on the assumption that

petitioner has not filed the return of income and, therefore, the income of assessee needs to be assessed and by reopening, the assessment is fallacious. If, the AO wanted to assess the income of assessee, he could have taken steps for assessment under Section 143(3) of the Act instead of reopening the assessment on the incorrect presumption that no return of income had been filed.

6 In the circumstances, in our view, the impugned order dated 31st March 2023 passed under Section 148A(d) cannot be sustained. The same is hereby quashed and set aside. Consequently, notice dated 31st March 2023, issued under Section 148 of the Act and the assessment order dated 6th November 2023 under Section 147 read with Section 144B of the Act also cannot be sustained and the same are hereby quashed and set aside.

7 Petition disposed.

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