

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

WRIT PETITION NO. 2914 OF 2024

1. Umang Mahendra Shah ...Petitioner
D-22, Yashodhan BOI, CHS Ltd.
SV Road, Opposite Fire Station,
Andheri West, Mumbai – 400058

Versus

1. Union of India, thr. The Secretary
Ministry of Finance Department of
Revenue North Block New Delhi – 110 001

2. Income Tax Officer Circle 15(3)(1),
Mumbai Aaykar Bhavan
Maharishi Karve Road Mumbai – 400020

3. National Faceless Assessment
New Delhi ...Respondents

Mr. Bharat Raichandani a/w Mr. Prathamesh Gargate i/b UBR Lega, for
Petitioner.

Ms. Sushma Nagaraj a/w Ms. Shreya Sunghi, for Respondents.

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

DATE 02 JULY 2024

Oral Judgment (Per G. S. Kulkarni, J.) :-

1. Rule, rule made returnable forthwith. Respondents waive service. By
consent of the parties, heard finally.

2. This petition under Article 226 of the Constitution of India *inter alia* assails the notice dated 29 August 2022 issued by Respondent No.2 under Section 148 of the Income Tax Act, 1961 (for short “**the Act**”). The assessment year is 2016-17.

3. The impugned notice is on the backdrop of a notice issued under Section 148A(b) and an order passed by Respondent No.2 on such notice under the provisions of Section 148A(d), which is also assailed by the petitioner. It would be appropriate to note the substantive prayers as made in the petition which reads thus:-

(a) “that this Hon’ble Court be pleased to issue a Writ of Certiorari or a writ in the nature of Certiorari or any other writ, order or direction under Article 226 of the Constitution of India quashing the impugned notice dated 29.08.2022 issued Respondent No.2 and intimation letter containing DIN for impugned notice dated 29.08.2022 (Exhibit “A1”) and impugned order dated 29.08.2022 issued by Respondent No.2 (Exhibit “A2”), impugned letter dated 21.05.2022 and 07.07.2022 issued by Respondent No.2 (Exhibit “A3”), impugned notice dated 02.11.2022 (Exhibit “A4”) and impugned notice dated 31.01.2023 issued by Respondent No.3. (Exhibit “A5”);

(b) that this Hon’ble Court be pleased to issue a Writ of Mandamus or a writ in the nature of Mandamus or any other writ, order or direction under Article 226 of the Constitution of India quashing the impugned notice dated 29.08.2022 issued Respondent No.2 and intimation letter containing DIN for impugned notice dated 29.08.2022 (Exhibit “A1”), and impugned order dated 29.08.2022 issued by Respondent No.2 (Exhibit “A2”), impugned notice dated 21.05.2022 and 07.07.2022 issued by Respondent No.2 (Exhibit “A3”) impugned 02.11.2022 (Exhibit “A4”), impugned notice dated 31.01.2023 issued by Respondent No.3. (Exhibit “A5”);

(c) that this Hon’ble Court be pleased to issue a Writ of Certiorari / Mandamus or any other appropriate Writ / order / direction under Article 226 of the Constitution of India calling for the records pertaining to the petitioner case and after going into

the validity and legality thereof to quash and set aside impugned notice and order dated 29.08.2022 and the impugned letter dated 21.05.2022 and 07.07.2022, impugned notice dated 02.11.2022, Notice dated 31.01.2023 (Exhibit "A1", Exhibit A2, Exhibit A3 and A4, A5);

(d) that this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction directing the respondents not to implement or act upon, either themselves or through their subordinates, on the impugned notices (Exhibits A1, A2, A3, A4 and A5) issued by Respondent No.2 and Respondent No.3 respectively and stay their operation thereof;"

4. Mr. Raichandani, learned counsel for the petitioner, at the outset would submit that the proceedings would stand covered by the decision of the Division Bench of this Court in **Siemens Financial Services Pvt. Ltd. Vs. Deputy Commissioner of Income Tax, Circle-8(2)(1), Mumbai & 3 Ors.**¹.

5. In making such submission Mr. Raichandani has drawn our attention to the impugned order passed by the Assessing Officer under Section 148A(d) and relevant paragraphs thereof, which sets out that the necessary approval for passing order under Section 148A(d) was granted by the Principal CIT-6, Mumbai vide letter/order sheet entry dated 29.08.2022, in accordance with the provisions of Section 151(i) read with paragraph 6.2(ii) of Instruction 01 of 2022 issued by the CBDT.

6. Mr. Raichandani would submit that admittedly, insofar as the present case is concerned, the sanction ought to have been obtained under clause (ii) of

1 (2023) 247 ITR 647 Bom.

Section 151 which could only be by the authorities set out in such provision and if the Chief Commissioner or Director General if more than three years have elapsed from the end of the relevant assessment year which is assessment year 2016-17.

7. In this context, Mr. Raichandani has drawn our attention to the observations as made by the Division Bench in **Siemens Financial Services Pvt. Ltd.** (supra) in which the Court has held that if an order is passed under Section 148A(d) in the absence of an appropriate sanction in terms of the provisions of Section 151, in such event, such order as also the consequent notice under Section 148 would be required to be declared as illegal.

8. In the present case, it was necessary that a sanction for passing an order under Section 148A(d) was required to be obtained under clause (ii) of Section 151 as more than three years had elapsed from the end of the relevant assessment year for the proceedings to be adopted under Section 148A and thereafter under Section 148 of the Act. However, such sanction was obtained under clause (i) of Section 151.

9. In the light of the above discussion, considering the clear consequences as brought about by Section 151 of the Act, as also applying the law as laid down by this Court in **Siemens Financial Services Pvt. Ltd.** (supra), the impugned order under Section 148A(d) as also the consequent notice under

Section 148 would be required to be held illegal. On such limited ground, the petition needs to succeed. It is accordingly allowed by the following order:

ORDER

- i) The impugned order dated 29 August 2022 issued under Section 148A(d) of the Income Tax Act, as also the impugned notice under Section 148 of the Income Tax Act, are quashed and set aside.
- ii) Except for what has been observed above, we have not delved on any other issues, which are expressly kept open.
- iii) Rule is made absolute in the aforesaid terms. No costs.

(SOMASEKHAR SUNDARESAN, J.)

(G. S. KULKARNI , J.)