IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.1025/2022

PETITIONER : Modern Living Solutions Private Limited, through its Director Shri Kirit Joshi, T-48, MIDC Industrial Area, Nagpur (Urban)-440016, Maharashtra.

...VERSUS...

RESPONDENTS :

1. Income Tax Officer Ward 1 (3), MECL Building, Dr. Baba Saheb Ambedkar Bhavan, Seminary Hills, Nagpur, Maharashtra – 440 006.

2. Additional/Joint Commissioner of Income-tax, Range-1, MECL Building, Dr. Baba Saheb Ambedkar Bhavan, Seminary Hills, Nagpur, Maharashtra – 440 006.

3. National Faceless Assessment Centre (NFAC), Through its Authorised Officer, North Block, New Delhi – 110 001.

4. Union of India, Through the Secretary, Department of Finance, Ministry of Finance, Government of India, North Block, New Delhi – 110 001.

Mr. Abhay N. Agrawal, Advocate for petitioner
Mr. Anand Parchure with Mr. Bhushan Mohta, Advocates for respondent nos.1 to 3
Mr. C.J. Dhumne, Advocate for respondent no.4

CORAM : AVINASH G. GHAROTE AND
SMT. M.S. JAWALKAR, JJ.

Date of reserving the order : 03/05/2024
Date of pronouncing the order : 12/06/2024

<u>O R D E R</u> : (PER : AVINASH G. GHAROTE, J.)

1. The petition questions the notice dated 31/03/2021 issued under the Income Tax Act ("IT Act", for short hereinafter) by which the assessment of the petitioner for the accounting year 2017-18 is sought to be reopened. The petition also challenges the order dated 19/12/2021 (pg.161) passed by the respondent No.2, whereby the objections raised by the petitioner to the reopening of the assessment have been turned down.

2. The factual position is as under :

The petitioner had filed its return of income for the accounting year 2017-18, on 17/10/2017 declaring a loss of Rs.4,29,14,072/-. An intimation as provided by Section 143(1)(d) of the IT Act was given to the petitioner on 25/05/2018, in respect of the assessment made under Section 143(3) of the IT Act.

3. The Assessing Officer, claiming reason to believe, that the income of the petitioner had escaped assessment, the case of the petitioner was reopened under Section 147 of the IT Act and after obtaining sanction for issuance of notice under Section 151 of the IT Act of the appropriate authority, as indicated therein, a notice under Section 148 of the IT was issued to the petitioner on 31/03/2021 (pg.137). By a communication dated 06/04/2021 the petitioner asked for the reasons recorded before issuing of notice, which was supplied by the Assessing Officer on 21/04/2021 (pg.139). In response to a grievance resolution application seeking copy of the approval for issuance of notice, the respondents by the

communication dated 17/05/2021 intimated to the petitioner that since the approval for reopening of the case of the petitioner on the basis of the reasons recorded, was obtained online through ITBA, hence, no hard copy could be provided (pg.151). On 19/05/2021, the petitioner raised an objection stating that the very basis of the reopening of the case was not available and therefore, requested dropping of the proceedings under Section 148 of the IT Act (pg. 153). The copy of the representation dated 18/05/2021 is at page 154.

4. The Assessing Officer by his order dated 19/12/2021 (pg. 161), rejected the objections raised by the petitioner stating that they were not acceptable and the Assessing Officer had rightly applied his mind for reopening the said proceedings after analyzing the information collected.

5. By a communication dated 05/01/2022 (pg.176), accounts/documents were summoned. Hence the challenge.

6. Mr. Abhay Agrawal, learned counsel for the petitioner contends as under :

6.1. That there was total absence of any information and so also there was no reason to believe, which, according to him, is reflected from the material on record, on account of which, the basic requirement for issuance of notice for the purpose of reopening of assessment was absent and therefore, all consequent actions thereto are also *non est*.

6.2. Absence of live link between the alleged information available on insight portal and formation of belief that income chargeable to tax has escaped assessment.

6.3. The impugned notice under Section 148 of the IT Act has been issued without there being any independent application of mind on behalf of the respondent no.1 and merely based on borrowed satisfaction.

6.4. The impugned notice under Section 148 of the IT Act has been issued with the objective of conducting a “fishing and roving enquiry” in the garb of reassessment.

6.5. The impugned notice is issued based on mere suspicion and without formation of “reason to believe”.

6.6. The impugned order dated 19/12/2021 passed by respondent No.3 is bad in law inasmuch as it does not deal with the objections filed by the petitioner.

6.7. Copy of prior approval/sanction has not been provided to indicate application of mind and satisfaction of the respondent no.2.

6.8. The assessment once accepted cannot be reopened merely on the basis of change of opinion.

6.9. In support of the above contentions, he places reliance upon the following decisions:

(i) Income-tax Officer Vs. Lakhmani Mewal Das [1976] 103 ITR 437 (SC)

(ii) Shri Dnyaneshwar Maharaj Sansthan Alandi Dewachi Vs. The Income Tax Officer Exemption Ward 1 (1), Pune and others [Writ Petition No.3309/2022, decided on 11/03/2024]
(iii) Digil Electronics Pvt. Ltd. Andheri West Vs. Assistant Commissioner of Income Tax-13 (2) (2), Mumbai and others [Writ Petition No.1798/2022, decided on 08/03/2023]

7. Mr. Parchure, learned counsel for the respondent nos.1 to 3 contends, that the case was reopened, on the basis of information uploaded by the ADIT (Inv) – III, Nagpur on the insight portal of the Income Tax Department, which was designated under the category "High Risk Transaction" for the financial year 2016-17 as suspicious transaction report (STR), which transactions were to the tune of Rs.34,42,99,351/- being credits in the bank accounts maintained by the petitioner/assessee with the Kotak Mahindra Bank and as the return submitted by the assessee of NIL after showing current year loss of Rs.4,29,14,072/- was not corroborating with the information available on record, the Assessing Officer has sufficient reason to form a belief that the income had escaped assessment on account of which after obtaining approval under Section 151 of the IT Act a notice under Section 148 of the IT Act was issued. He further contends, that the return filed by the petitioner though was accepted by the Department, the same was without verification and scrutiny assessment as stipulated under Section 2(40) of the IT Act. He therefore, submits that in view of this, the provisions of clause (b) of Explanation- 2 to Section 147 of the IT Act become applicable, on account of which, since the case of the petitioner/assessee was on account of absence of assessment the reason to believe is clearly

spelt out, on account of suspicion transaction of credit entries in the bank account of the petitioner, in view of which, the reopening was justified. He further contends, that the information as disclosed in the suspicious transaction report (STR), as are reported by various banking and non-banking entities, was sufficient basis, to form a belief for reopening the assessment. He further contends, that the information received from the insight portal, would clearly satisfy the requirement of the provision regarding availability of information, based upon which a reason to believe, could be formed by the Assessing Officer for reopening of the assessment. It is also contended, that the entire procedure as contemplated has been duly followed. It is contended, that for the purpose of reopening assessment, what is necessary is existence of some *prima facie* material which would lead to reason to believe, which considering the entries in the bank account of the petitioner, clearly existed on the record and therefore, the reopening cannot be faulted with on the basis of sufficiency or correctness of the material as these cannot be grounds, which can be gone into by this Court. He further contends, that the assessee has ample opportunity in the assessment proceedings to point out that the reopening of the assessment cannot be sustained on sufficiency or correctness of the material and therefore, this Court ought not to interfere. Reliance is placed upon ***Raymond Woolen Mills Ltd. Vs. Income-tax Officer [1999] 236 ITR 34 (SC)*** (last para). It is further contended, that ***Digi1 Electronics Pvt. Ltd., Andheri West*** *and* ***Shri Dnyaneshwar Maharaj Sanstha Alandi Dewachi*** (supra) both do not consider ***Raymond Woolen Mills Ltd.*** (supra) and therefore are per incuriam. Reliance is also placed upon ***Shrikant Phulchand Bhakkad (HUF) Vs. Joint Commissioner of Income Tax (2022) 287 Taxman 440*** in which even after scrutiny of assessment for limited purpose, the assessment was allowed to be reopened as there was *prima facie* some material to show that income had escaped assessment. Reliance is also placed upon ***Chhagan Chandrakant Bhujbal Vs. Income-tax Officer (2022) 440 ITR 359*** in which it has been held that the petitioner having participated in assessment proceeding could not have approached this Court invoking its extraordinary jurisdiction under Article 226 of the Constitution of India.

8. Insofar as the objection regarding maintainability of the petition is concerned, the same has already been considered by this Court in its order dated 09/06/2023, which has turned down the said objection.

9. Insofar as the merit of the matter is concerned, as indicated above, it is not in dispute that the petitioner, who is a corporate entity, engaged in trading of modular furniture, had filed its return of income for the assessment year 2017-18 on 17/10/2017 declaring loss of Rs.4,29,14,072/-. An intimation order under Section 143(1) of the IT Act was passed dated 25/05/2018, accepting the declared loss at Rs.4,29,14,072/-. The respondent no.1 issued the impugned notice dated 31/03/2021 under Section 148 of the IT Act i.e. unamended provisions of Section 147 to Section 151 as on 31/03/2021. These provisions were amended w.e.f. 01/04/2021, which are not applicable in the present case. On the request of the petitioner, copy of reasons recorded prior to issuance of notice under

Section 148 of the IT Act was reproduced in letter dated 21/04/2021 issued by respondent no.1. On 29/04/2021, the petitioner filed its return of income in response to the impugned notice under Section 143(2) of the IT Act. On 10/05/2021, the petitioner made request before the respondent no.1 to provide details regarding alleged information available on insight portal pertaining to transaction amounting to Rs.34,42,99,351/-, which was replied to informing that copy of reason recorded is already provided to the petitioner, however, copy of approval sought before issuance of notice under Section 148 of the IT Act cannot be provided since the approval was sought online through ITBA. On 19/05/2021 the petitioner filed its detailed objections against the reasons recorded. On 19/12/2021, the respondent no.3 passed an order disposing of the objections filed by the petitioner. On 05/01/2022, the respondent no.3 issued notice under Section 148(1) of the IT Act asking the petitioner to furnish various documents and details.

10. The above position would clearly indicate that the loss of Rs.4,29,14,072/- was declared by the petitioner in the return of income for the assessment year 2017-18 filed on 17/10/2017, in pursuance to which an order under Section 143 (1) of the IT Act, was passed on 25/05/2018 (pg.127) accepting the assessment, which would indicate that the loss of the aforesaid amount was considered and accepted by the Assessing Officer. This being the position, any subsequent action in exercise of the power under Section 148 of the IT Act for reopening of the assessment could only be in terms of language of Section 148 of IT Act as it then existed.

The language of Section 147 of the IT Act as it stood then, clearly mandates, that for reopening the assessment, there has to be existence of “reason to believe” available with the Assessing Officer that any income chargeable to tax has escaped assessment for a particular assessment year. Such reason to believe, has to be on the basis of information, which has subsequently been gathered or for that matter has to be in terms of Clause – c of Explanation -2 to then existing Section 147 of the IT Act. The reason for this, is obvious, that a reassessment cannot be permitted, merely on the basis of change of opinion as that would denude the entire action of accepting the assessment of any finality, only on the basis of change of the Assessing Officer. Thus, information and that too credible, which would permit the Assessing Officer to have reason to believe that the income chargeable to tax has escaped assessment is the very basis, for reopening of the assessment.

11. At the cost of repetition, in this context, it is necessary to note, that the loss claimed by the petitioner was already disclosed in its return filed for the assessment year 2017-18, as is indicated, from the intimation under Section 143 (1) of the IT Act, dated 25/05/2018, accepting the return (Item No.18/pg.128). It is also necessary to note, that in the order dated 19/12/2021 (pg.161) itself, the respondents, have categorically stated that in the AIR transaction details it is found that the assessee/petitioner has transacted to the amount of Rs.34,42,99,351/- (cumulative credit balance) to various Banks during the financial year 2016-17 and this information was not suspicious one and the Assessing Officer had rightly applied his mind in this regard. This being the position,

merely because the CBDT inspection dated 31/03/2021, directs cases from non-filer management system (NMS) and other cases as flagged by the Directorate of Income Tax (Systems) as per risk profiling to be potential cases for taking action under Section 148 of the IT Act, that by itself cannot be held to be a ground/information, giving reason to believe, to the Assessing Officer, to reopen the assessment in exercise of the powers under Section 147 of the IT Act. We find support in this view from what has been held by the learned Division Bench in ***Shri Dnyaneshwar Maharaj Sanstha Alandi Dewachi*** (supra) as well as from ***Digi1 Electronics Pvt. Ltd., Andheri West*** (supra).

12. Though Mr. Parchure, learned counsel for the respondent nos.1 to 3 submits that the aforesaid judgments cannot be relied upon for non-consideration of the judgment in ***Raymond Woolen Mills Ltd.*** (supra), in our considered opinion, the reliance thereupon is clearly misplaced, for the reason that the ***Raymond Woolen Mills Ltd.*** (supra) only states that for the purpose of reopening of assessment, the Court cannot go into the sufficiency or correctness of material but can only examine whether there was a *prima facie* material, on basis of which department can reopen the case. As indicated above, the reason for reopening, as spelt out in the order dated 19/12/2021 cannot be considered to be satisfying the requirement of "reason to believe" as contained in Section 147 of the then applicable provision, on account of which, it is apparent that the proceedings have been imitated not on account of sufficiency of reason to believe, but merely on account of the case being flagged by the non-filer management system.

13. It is further material to note that though Mr. Parchure, learned counsel for the respondent nos.1 to 3 contends that the return of income filed by the petitioner was only processed under Section 143 (1) of the IT Act without any verification and scrutiny as provided by Section 2 (40) of the IT Act, we are unable to accept this contention, for the reason that Section 143 (1) (a) to (e) itself provides as to how the total income or loss shall be computed and what has to be examined by the Assessing Officer, when a return for the financial year, is submitted for assessment. The very fact that an order under Section 143 (1) of the IT Act has been passed by the Assessing Officer on 19/12/2021 itself would indicate that the return filed by the petitioner, was duly examined by the Assessing Officer in terms of the requirements of Section 143 (1) of the IT Act and therefore, the contention is clearly misconceived.

14. ***Chhagan Chandrakant Bhujbal*** (supra) relied upon by Mr. Parchure, learned Counsel for the respondent nos.1 to 3 was a case in which the return of income was found to be on facts accepted without scrutiny leading to passing of an assessment order, consequent to which, information was received by an e-mail that the assessee had defrauded the Government by preparing bogus documents and used them as genuine documents, so as to get a plot. This information was duly assessed and found to be credible, satisfying the requirement of “reason to believe”, on the basis of which it was held that the reopening of the reassessment was legal and valid. The facts in the present case do not indicate receipt of any such information, which would lead to existence of a reason to believe.

15. ***Shrikant Phulchand Bhakkad*** (supra) was also a case in which the reassessment was directed on the basis of information received, on the basis of which the Assessing Officer was found to have satisfied the requirement of “reason to believe” and therefore, is of no assistance to Mr. Parchure, learned counsel for the respondent nos.1 to 3 in support of his arguments.

16. In view of what has been discussed above, we find that the requirement of the then existing Section 147 of the IT Act, does not stand satisfied which is also apparent from the language of the order dated 19/12/2021 (pg.161) which itself, is self-contradictory and silent as to a link being indicated between the information claimed to have been received and the reason to believe, in light of which, the impugned notice dated 31/03/2021 under Section 148 of the IT Act and so also the order dated 19/12/2021 cannot be sustained and are hereby quashed and set aside. The writ petition is, therefore, allowed in the above terms. No order as to costs.

(SMT. M.S. JAWALKAR, J.) **(AVINASH G. GHAROTE, J.)**

Deshpande/Wadkar