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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.444 OF 2024

Prabhakar Nerulkar,
49 years, residing at House No.
208, Near Hanuman Temple,
Verem, Bardez, Goa.
PAN:ABNPN9388G

... Petitioner

Versus

1. Principal Commissioner of
Income Tax, Panaji, having
office at Aaykar Bhavan, Plot
No. 5, EDC Complex, Patto
Plaza, Panaji, Goa - 403001
2. National Faceless Assessment
Centre, Delhi, having office at
2nd Floor, E-Ramp, Jawaharlal
Nehru Stadium, Delhi - 110003
3. Income-tax Officer, Ward
2(1), Panaji, having office at
Aaykar Bhavan, Plot No. 5, EDC
Complex, Patto Plaza, Panaji,
Goa-403011
4. The Union of India, Through
the Secretary, Ministry
Finance, Government India, North Block,
New Delhi -110 011

... Respondents.

Mr Dharan Gandhi, Advocate with **Ms Shweta Parulekar, Advocate** for the Petitioner.

Ms Susan Linhares, Senior Standing Counsel with **Ms Swati Kamat Wagh, Standing Counsel** for Respondents No.1 to 3.

**CORAM : BHARATI DANGRE &
ASHISH S. CHAVAN, JJ.**

DATED : 11th SEPTEMBER, 2025.

ORAL JUDGMENT: (Per. BHARATI DANGRE, J.)

1. The Petitioner, an individual engaged in real estate business and in turn indulging in purchase of plots, its development and sale thereafter, is assessed to income tax. The activity of purchase and sale of plots constitutes his 'business activity'.

2. Upto the Assessment Year 2010-2011, the Petitioner regularly filed Income Tax Returns. However, thereafter, according to the Petitioner, despite submitting his books of accounts to the Tax Consultant, the Returns were not filed and the Petitioner was not aware about the same as he was under the belief that the Tax Returns are regularly filed.

The Petitioner, therefore, did not file Income Tax Returns for the Assessment Years 2011-2012 to 2016-2017 and thereafter, he engaged a new Tax Consultant who advised him that as the time limit to file the Returns for the previous years had expired, he should avail the opportunity to make disclosure under the Income Disclosure Scheme, 2016 (IDS, 2016).

Accordingly, the Petitioner offered his income from his real estate business under the said Scheme and as per Section 5(A) of the Act, half of the income was offered to tax by the wife of the Petitioner, namely, Mrs Madhuri Prabhakar Nerulkar, and the couple adopted for presumptive taxation under Section 44AD of the Income Tax Act, which gave an option to the Assessee to offer his income from business @8% of the gross receipt or higher sum to tax, this option being available, subject to conditions subscribed in the Scheme including upper threshold of turnover.

3. Being eligible under Section 44AD, a special provision for computing profits and gains of business on presumptive basis, the Petitioner along with his wife offered their income from real estate business to tax in the following manner for the following Assessment Years:

Assessment Year	Income offered by the Petitioner and his wife
2011-12	1,84,921/-
2012-13	2,01,778/-
2013-14	5,20,787/-
2014-15	1,96,183/-
2015-16	2,65,721/-
Total	13,69,390/-

4. A declaration was also furnished by the Petitioners to the effect that the amount of undisclosed income offered under IDS was credited to the bank account and the details of the account were also offered. The above declaration was duly accepted by the Principal Commissioner of Income Tax, i.e. Respondent No.1 and this resulted in issuance of Form No.IV in form of Certificate of Declaration under Section 183 of the Finance Act, 2016 under the Income Disclosure Scheme, 2016 (IDS).

This Certificate clearly refer to the Declaration issued in Form-II and the income was shown to be from “business”.

5. According to the Petitioner, for the Assessment Year 2014-15, the Income Tax Officer, Panaji, issued a Notice under Section 148 of the Act on 31.03.2021 and further two Notices under Section 142(1) were issued on 08.10.2021 and 25.11.2021. As the Tax Consultant of the Petitioner passed away during Covid, the Petitioner did not reply to these Notices. Similar Notices were issued for the Assessment Year 2015-2016 and Assessment Year 2016-17. The Petitioner’s Consultant gained knowledge that the re-assessment proceedings were going on for the year 2014-15, 2015-16 and 2016-17.

The Petitioner filed Return of Income in response to the Notice issued under Section 148 and disclosed the same income as disclosed

in the Declaration filed inadvertently. This resulted in issuance of Notice by the National Faceless Assessment Centre, under Section 143(2) of the Act on 11.02.2022 and the reasons recorded were provided to the Petitioner, which revealed to him the assessment against the Petitioner were reopened on account of the fact that the Petitioner had entered into some transaction of sale of property and there are cash deposits. Apart from this, another reason for reopening of the assessment is, the Petitioner had not filed his Return of Income.

A Show Cause Notice was issued to the Petitioner in Form of draft assessment order dated 22.02.2022 and the Respondent No.2 proposed to make the best judgment assessment by adding all the amounts based on which the assessment was opened.

The Petitioner was granted five days' time to file reply, but he failed to file the response, which resulted in passing of final assessment order by Respondent no.2 on 16.03.2022 where a sum of ₹ 1,43,61,000/- was added to the total income and the income of the Petitioner was assessed at ₹ 1,45,66,080/-.

The Respondent No.1 also issued a Notice of Demand under Section 156 of the Act, in Form VII raising a demand of ₹ 1,40,59,664/- for the year under consideration. Similarly, Notices were issued under Section 274 read with Section 271(F) and 271(1)(C) of the Act on

16.03.2022 directing the Petitioner to show cause as to why penalty should not be imposed.

6. Being aggrieved, the Petitioner filed an application under Section 264 to the Principal Commissioner of Income Tax, Panaji where he specifically raised objection by stating that the sale transaction mentioned had taken place in the earlier year and therefore it cannot be taxed and the cash deposit is out of business income and is already being offered to tax under the IDS. Apart from this, as far as purchase of the property is concerned, it was stated that the property worth ₹ 80 lakh which is shown to be purchased, was purchased jointly with two other co-owners and the Petitioner's share was only ₹4,00,000/- and the memorandum to that effect which was signed subsequently, was also submitted.

The stand adopted by the Petitioner persuaded the Respondent No.1 to partly reject the application under Section 264 of the Act on 14.11.2023 when he deleted the additions made in respect of sale of property and cash deposit in the bank account, though confirmed the additions made in respect of the purchase of property of ₹ 80 lakhs and confirmed the same to the extent of ₹ 28,40,260/-, i.e. one third value of the total investment value.

7. It is in the aforesaid circumstances and being aggrieved by the aforesaid decision of Respondent No.1 rejecting the application of the Petitioner under Section 264 of the Act and the Assessment Order dated 16.03.2022, the Petitioner has approached this Court specifically praying for quashing and setting aside the following Orders:

- “i. notice u/s 148 of the Act dated 31.03.2021 annexed and marked as **Annexure 'D1'**;
- ii. assessment order passed u/s 147 r.w.s. 144 r.w.s. 144B of the Act dated 16.03.2022 annexed and marked as **Annexure 'H1'** and consequential notices and
- iii. order passed by Respondent No.1 dated 14.11.2023 u/s 264 of the Act. annexed and marked as **Annexure 'K'** and allow reliefs claimed by the petitioner in the application filed under section 264 of the Act dated 21.09.2022 annexed and marked as **Annexure 'I'.**”

8. We have heard learned Counsel, Mr Dharan Gandhi, for the Petitioner, who, at the outset has invited our attention to the Income Disclosure Scheme of 2016 and various clauses therein, and in specific, Section 192 which specifically provide that nothing contained in a Declaration made under Section 183 shall be admissible in evidence against a declarant for the purpose of any proceedings, relating to imposition of penalty, other than the penalty leviable under Section 185 or for the purposes of prosecution under the Income Tax or the Wealth Tax Act. According to Mr Gandhi, the Scheme clearly stipulate that undisclosed income declared shall not be included in the total

income of the declarant for any assessment year and it shall not affect the finality of the completed assessments.

By inviting our attention to various Circulars issued in form of explanatory notes governing the IDS, which has offered clarifications, Mr Gandhi would submit that it is clarified that information contained in the Declaration under the IDS Rules, 2016 shall not be shared with any law enforcement agency or with the Income Tax Department for any investigations in respect of the valid Declaration. According to him, it is clarified in the Circular No.25/2016 that there is no need to disclose the source of income at all and if a declaration relating to undisclosed income in form of investment in any asset is made under the Scheme, no investigation shall be initiated against the seller in respect of such declaration. Apart from this, he has also relied upon the relevant clause of Circular No.32/2016 which reads thus:

“It is clarified that wherever in the course of search under section 132 or survey operation under section 133A of Income-tax Act, 1961, any document is found as a proof for having already filed a declaration under the Scheme, including acknowledgement issued by the Income-tax Department for having filed a declaration, no enquiry would be made by the Income-tax Department in respect of sources of undisclosed income or investment in movable or immovable property declared in a valid declaration made in accordance with the provisions of the Scheme.”

9. It is also submitted by Mr Gandhi that in case if the declaration is given by the Assessee by misrepresentation or suppression of facts,

such declaration shall be void and shall be deemed to have never been made under the said Scheme and according to him, this is the only ground on which the declaration given by the Assessee under the Scheme will be non-est but this would definitely require cancellation of the Certificate of Declaration issued under the IDS, 2016.

Mr Gandhi is extremely critical about the manner in which the assessment has been re-opened despite the fact that the Government has always perceived the IDS, 2016, to be confidential and not to be shared with any Authority. In contrast, he would submit that the proceedings before the Respondent No.1 under Section 264 of the Income Tax Act which refer to three items; purchase of property - ₹ 80 lakhs; sale of property - ₹ 43 lakhs; and cash deposit of 20.61 lakhs has been opened for the Assessment Year 2014-15 on the basis of the information collected/received on verification by the ITA(INCI) as the notice record that the assessee had gone through the IDS and has shown negligible income and therefore there was reason to believe that ₹ 1,43,61,000/- assessable in respect of Assessment Year 2014-15 was received as income with the meaning of Section 142 read with explanation 2(B) of the Income Tax Act, 1961 which needs to be brought to tax and that is a fit case for invoking of provision of Section 147 of the ITA.

10. Mr Gandhi has placed reliance upon the decision of this Court in the case of **Uma Corporation v/s. Krishna Prabhakar (ACIT)**¹ with reference to the Voluntary Disclosure Income Scheme of 1997 when the assessee was found eligible under the said Scheme and issued a Certificate granting benefit of the said Scheme and while the said Certificate was holding the field, Revenue issued a Notice under Section 148 to bring to tax, the amount under voluntarily disclosed Scheme. It is in this context the Court held thus:

“That the Certificate granted by the Commissioner under Section 68(2) of the Voluntary Disclosure Income Scheme, 1997 is still holding the field, is also not disputed by learned Counsel for the Revenue. As a matter of fact, Mr Chatterjee submitted before us that the certificate issued by the Commissioner under Section 68(2) of the said Scheme cannot be cancelled or revoked. So long as the certificate under Section 68(2) of the Scheme holds the field, learned Counsel for the Revenue also admits that the amount of voluntarily disclosed income cannot be included in the total income of the declarant for any assessment year under the Income Tax Act. In what, Mr B. M. Chatterjee, learned Counsel for the Revenue submitted before us, we fail to understand the justification for the notice under Section 148 of the Income Tax Act, 1961. Rather, we find that issuance of notice under Section 148 of the Income-tax Act, 1961 is an abuse of the power by respondent No.2. Consequently, we quash and set aside the notice dated March 31,2005.”

In conclusion, Mr Gandhi has urged before us that it is a well-settled position in law that the notice of re-opening can be supported only on the basis of reasons recorded by the Assessing Officer and he cannot supplement such reasons and, apart from this, reopening of

¹ [2006] 284 ITR 67 (BOM)

assessment will not be permitted on a fishing and roving inquiry, which would not satisfy the requirement.

11. The learned Counsel, Ms Susan Linhares for Revenue, however, supported the impugned orders and submit that since the Petitioner had paid minuscule tax and there was nothing wrong in reopening the assessment.

12. In order to appreciate the arguments, we must refer to the Income Disclosure Scheme, 2016 which is incorporated as Chapter IX of the Finance Act, 2016 and which commenced from 01-06-2016.

This step was taken by the Government to deal with the undisclosed income and assets as it intended to provide an opportunity to all persons who have not declared income correctly in the earlier years to come forward and declare such undisclosed income.

The Scheme came as a chance to disclose the income and assets to avoid the problems that will follow after the window of opportunity closes.

The Press Release preceding the publication of the Scheme was clearly disclosed by the Hon'ble Prime Minister of India in his radio programme, 'Maan Ki Baat' aired on 26.06.2016 when it was clarified that no questions would be asked about the source of undisclosed income or assets if the declaration is made voluntarily and the Scheme

was a golden chance provided by the Government before the window of opportunity closed on 30.09.2016 and then the assessee would be liable for tax evasion.

13. The Scheme, having been commenced w.e.f 01.06.2016, offered window of making declarations upto 30.09.2016 under the Income Declaration Scheme Rules, 2016 notified on 19.05.2016. The amount payable under the scheme could be paid in instalments, the last instalment being paid by 30.09.2017. What is most important to note is the statement of the Revenue in respect of the IDS, 2016 which was included in the Press Release dated 05.09.2016 based upon the FAQs and it declared thus:

“. The information in respect of a valid declaration is confidential and shall neither be shared with any law enforcement agency nor shall be enquired into by the Income-tax Department.

..

- . Credit for unclaimed TDS made on declared income shall be allowed.
- . Neither any capital gains tax nor any TDS shall be levied on transfer of declared benami property from benamidar to the declarant without consideration.

..

- . No adverse action shall be taken by FIU or the income-tax department solely on the basis of the information regarding

cash deposit made consequent to the declaration under the Scheme.

- . No enquiry/investigation shall be made in respect of the undisclosed income and assets declared under the Scheme even if the evidence of same is found subsequently during course of search or survey proceedings (circular No.32 dated 01.09.2016).”

14. In the Circulars, addressing the doubts and concerns raised by the stakeholders, the Board gave the following clarifications on the following questions:

“Question No.5: Under what provision can a declarant be sure that the information contained in a valid declaration shall not be shared with any other law enforcement agency and also shall not be shared within the income-tax department for investigation?

Answer: Section 195 of the Act provides that provision of section 138 the Income-tax Act shall apply in relation to the proceedings under the Scheme. Vide notification S.O. 2322(E) dated 06.07.2016, an order has been passed by the Central Government directing that no public servant shall produce before any person or authority any such document or record or any information or computerized data or part thereof as comes into his possession during the discharge of official duties in respect of a valid declaration made under the Scheme.”

Question No.6: With reference to question No. 5 issued vide Circular No. 25 of 2016, wherein it has been stated that the department will not make any enquiry in respect of sources of income, payment of tax, surcharge and penalty, it may be clarified that whether the payment under the Scheme can be made out of undisclosed income without

including the same in the income declared, thereby bringing down the effective rate of tax, surcharge and penalty payable under the Scheme to around 31 per cent?

Answer:

It is clarified that the intent of the clarification issued vide question No.5 of Circular No. 25 of 2016 was limited to conduct of enquiry by the Department. It in no way intends to modify or alter the rate of tax, surcharge and penalty payable under the Scheme which have been clearly specified in the Scheme itself. Sections 184 & 185 of the Finance Act, 2016 unambiguously provide for payment of tax, surcharge and penalty at the rate of 45 per cent of undisclosed income. This is illustrated by the following example -

In a case a person declares Rs. 100 lakh as undisclosed income, being the fair market value of undisclosed immovable property as on 1st June, 2016 and pays tax, surcharge and penalty of Rs.45 lakh (30 lakh + 7.5 lakh + 7.5 lakh) on the same out of his other undisclosed income. In this case the declarant will not get any immunity under the Scheme in respect of undisclosed income of 45 lakh utilized for payment of tax, surcharge & penalty but not included in the declaration filed under the Scheme. To get immunity under the Scheme in respect the entire undisclosed income of Rs.145 lakh, the declarant has to declare undisclosed income of Rs.145 lakh (Rs.100 lakh being the undisclosed income represented by immovable property and Rs.45 lakh being the payment made from undisclosed income) and pay tax, surcharge and penalty under the Scheme amounting to Rs.65.25 lakh i.e., 45 per cent of Rs.145 lakh.”

15. Apart from this, another doubt raised in respect of the fate of the notices issued under Section 142, 143(2) and 148 was specifically addressed in the following manner:

“Question No.11: If notices under section 142, 143(2) or 148 have been issued after 31.05.2016 and assessee makes declaration under the Scheme then what shall be the fate of these notices?

Answer: As clarified vide Explanatory Circular No. 17 dated 20.5.2016, a person shall not be eligible for the Scheme in respect of the assessment year for which a notice under section 142, 143(2) or 148 has been received by him on or before 31.5.2016. In a case where notice has been received after the said date, the assessee shall be eligible to make a declaration under the Scheme for the said assessment year. Such declaration shall be valid if it has not been made by suppression of facts or misrepresentation and the amount payable under the Scheme has been duly paid within the specified time. On furnishing by the declarant the certificate issued by the Pr.Commissioner/Commissioner in Form-4 to the Assessing Officer, the proceedings initiated vide notice under section 142, 143(2) or 148 shall be deemed to have been closed.”

16. Taking into consideration the peculiar nature of the Scheme which provided an opportunity to the persons who had not paid full taxes in the past to come forward and declare the undisclosed income and pay tax, surcharge and penalty totalling in all to 45% of such income declared, the Petitioner availed the said benefit. The Scheme made it clear that the person may make a declaration in respect of any income or income in form of investment in any asset located in India and acquired from the income chargeable to tax under the Income Tax Act for any assessment year prior to Assessment Year 2017-18 for which the declarant had either failed to furnish the Return or failed to

disclose such income in the Return furnished before the date of commencement of the Scheme or such income had escaped assessment by reason of omission or failure on part of such person to make a Return under the Income Tax Act or to disclose fully and truly all material facts necessary for the assessment or otherwise. The person making the declaration under the Scheme in the aforesaid circumstances was made liable to pay tax @30% of the value of such undisclosed income as increased by surcharge @ 25% of such tax. In addition, he was also liable to pay penalty @25% for such tax and to pay 45% of the value of the undisclosed income declared by him.

The Scheme provided a form of declaration to be verified in such manner as may be prescribed and also clarified the effect of a valid declaration with the consequences as below:

“Effect of valid declaration:

9. Where a valid declaration as detailed above has been made, the following consequences will follow:
 - (a) The amount of undisclosed income declared shall not be included in the total income of the declarant under the Income-tax Act for any assessment year;
 - (b) The contents of the declaration shall not be admissible in evidence against the declarant in any penalty or prosecution proceedings under the Income-tax Act and the Wealth Tax Act;
 - (c) Immunity from the Benami Transactions (Prohibition) Act, 1988 shall be available in respect of the assets disclosed in the declarations subject to the condition that the benamidar shall transfer to the declarant or his legal representative the asset in respect of which the declaration of undisclosed income is made on or before 30th September, 2017;

- (d) The value of asset declared in the declaration shall not be chargeable to Wealth-tax for any assessment year or years.
- (e) Declaration of undisclosed income will not affect the finality of completed assessments. The declarant will not be entitled to claim re-assessment of any earlier year or revision of any order or any benefit or set off or relief in any appeal or proceedings under the Income-tax Act in respect of declared undisclosed income or any tax, surcharge or penalty paid thereon.”

17. Since the IDS, 2016 assured confidentiality and made it clear that upon declaration being filed, it shall be duly assessed and certificate shall be issued in Form No.4, by taking into consideration the details of the declaration, the amount of undisclosed income declared and accepted and by computing the tax payable on the undisclosed income declared and accepted along with surcharge and penalty. The Petitioner, upon following the due procedure, received a certificate of declaration under Section 183 of the Finance Act, 2016 and paid a tax of ₹6,16,224/- as computed from the Assessment Years 2011 to the Assessment Year 2015. Despite the aforesaid, the notice was issued to the Petitioner under sub-Section (1) of Section 142 for Assessment Year 2014-15 under the National Faceless Scheme, 2019.

The Petitioner inadvertently furnished his Return of Income and what is important to note is the notice issued to him under Section 143(2) read with Section 147 for the same Assessment Year 2014-15. The notice indicated that the assessee had not filed his Return for the Assessment Year 2014-15, and while describing the brief details of

information collected by the Assessing Officer and the notice stated thus:

- “1. Brief Details the assessee: During the relevant Year the assessee was a resident individual. The assessee has not filed his Return of Income for Assessment Year 2014-15.
2. Brief details of information collected/received by the AO: Information has been received in this office by the O/o the DIT (Intelligence & Criminal Investigation), Bengaluru through system for the A.Y. 2014-15, in respect of immovable Property Transaction, cash deposits in the case of Shri Prabhakar Gajanan Nerulkar. It is noticed that Shri Prabhakar Gajanan Nerulkar has sold, purchased various properties and made huge amount of cash deposits as under:

F.Y.	Description	Amount in Lakhs	Remarks
2013-14	Purchase of Property	80.00	Sources for the payment not explained. Payment has not been seen in the bank accounted in the name of the assessee.
2013-14	Sale of Property (in the name of wife)	43.00	Assessee has not submitted the treatment of the said income in the books (NON-Filer) and also not explained the purchase year to reconcile an actual income.
2013-14	Cash deposits	20.61	Assessee is in real estate business and in the bank account the said cash deposit has been made.

3. Analysis of information collected/received: On verification by the ITO(1&CI), from the sale deed from the various Sub Registrar, bank statement from the bank and the statement called from the assessee u/s 131, it is observed that assessee

had gone for the IDS scheme in the F.Y.2013-14 (not produced any details on what they filled IDS) and had shown negligible income. However, no break or calculation of income along with documentary evidences had been produced by the assessee. The Assessee has also admitted that they are not maintaining any books of account and are unable to submit the sources of purchases and explain whether income on sales has been accounted or not. Hence, the above credits may be considered as unexplained credits and the same may be considered for laxation in his hands.

4. In view of the above, I have reason to believe that Rs 1,43,61,000/- assessable in respect of AY 2014-15 has escaped assessment within the meaning of section 147 read with Explanation 2(b) of the Income Tax Act 1961 which needs to be brought to tax. Hence, it is a fit case to invoke the provisions of Section 147 of the Income Tax Act, 1961.

5. In this case more than four years have lapsed from the end of the assessment year under consideration. Hence, necessary sanction to issue notice u/s 148 has been obtained separately from Pr. Commissioner of Income Tax, Panaji, as per the provision of section 151 of the Income Tax Act 1961.”

18. A Show Cause Notice was also issued to the Petitioner along with a draft Assessment Order referring to the three items as indicated in the notice stating that the assessee was to furnish Return of Income for Assessment Year 2014-15 and he filed his Return but did not make compliance and therefore the provisions of Section 144(1) along with

Section 69A of the Income Tax Act, 1961, is liable to be invoked. The draft Order indicated thus:

“In light of the above facts and circumstances, the A.O. has no option left but to invoke the provisions of section 144 of the Act and these deposits of Rs.1,43,61,000/- in the Bank Account treated as income of the assessee as per the provisions of section 69A of the Act for the A. Y. 2017-18 and added to the total income of the assessee.

Hence, the total income of the assessee is computed as under:-

Particulars	Amount (in Rs.)
Returned Income	NIL
Addition (as discussed above)	1,43,61,000/-
Assessed Income	1,43,61,000/-

Income assessed u/s 147/144 r.w.s 144B of the I. T. Act, 1961 at Rs.1,43,61,000/- and taxed at the flat rate of 30% u/s 115BBE of the I.T. Act, 1961. Charged interest as per law. Issued demand notice and challan accordingly. Penalty proceedings u/s 271(1)(c) of the I.T. Act, 1961 is hereby initiated for concealment of particulars of income.

19. This resulted in passing of the Assessment Order on 16.03.2022 but what is pertinent to note is, it is not a statement in the order that the Petitioner has misrepresented, while he filed declaration under the IDS Scheme where he has already paid the tax. It is pertinent to note that nor the certificate issued in favour of the Petitioner in Form IV was ever cancelled, which could be cancelled only on the ground

contemplated in the Scheme where there is some concealment or fraud/misrepresentation at the instance of the assessee.

This not being the case, there is no propriety in passing the impugned order as we find that in the affidavit filed by the Revenue there is not even an indication about any fraud/misrepresentation but the reason cited is inspite of huge financial transaction carried out by the Petitioner, a very negligible income was disclosed under the IDS (without any basis of computation) and this disclosure of meagre income of ₹ 1,96,183/- under the IDS is contrary to the financial transaction carried out by the Petitioner.

20. We are surprised by the stand adopted by the Respondent as we have noted that the whole purpose of the IDS was to encourage the assessee who had failed to disclose the income in Return furnished or has failed to furnish a Return under Section 139 of the Income Tax Act or any income has escaped the assessment by reason of omission or failure on part of such a person to make a Return and disclose fully and truly all material facts necessary for assessment or otherwise and the Scheme, referring such income to be “undisclosed income” which was not to be included in the total income of the declarant in any assessment year. The Scheme itself contemplate the confidentiality and the information contained in the declaration, is not be shared with

any law enforcement agency and not even the Income Tax Department for any investigation in respect of a valid declaration provided, the declaration is not made by suppression of facts or misrepresentation.

It is not the case of the Revenue that the Petitioner had submitted a declaration by suppressing some facts and therefore we fail to find justification for invoking the normal proceedings against the Petitioner on the pretext that the assessee is liable to pay income tax as proceedings were initiated under Section 147 on the basis of information available with the Department about huge tax deposits being made and the property being purchased.

The Assessment Order which is the basis of the Demand Notice, refer to the information available giving rise to a belief that the income chargeable to tax has escaped assessment by reason of failure on part of the assessee to make Return under sub-Section (1) of Section 139 of the Income Tax Act, 1961. Admittedly, the Petitioner did not file a Return and that is why he availed the IDS Scheme, but despite this, the Revenue Department is referring to a purchase of property made in the year 2013-2014 in the sum of ₹ 80 lakhs and the draft Assessment Order mentioned that the source for payment has not been explained and the payment is not seen in the bank accounted in the name of the assessee apart from the fact that purchase of the property is not an income and therefore, the Appellate Authority, i.e. the Principal Commissioner of Income Tax, Panaji-Goa in the order under Section

264 of the Income Tax Act, rightly set aside the assessment order on the two aspects, being the income arising out of sale of property of ₹43 lakhs which was assessed in the previous Assessment Year 2013-2014 and the cash deposit was out of the turnover of the real estate business came to be accepted. However, as regards the purchase of property, though the assessee specifically offered a stand that the property was purchased by three persons and the bill produced confirmed the said contention, the Appellate Authority was of the view that the assessee did not provide any evidence in support of the source of such investment except stating that he has disclosed income in IDS being to the tune of Rs.1,96,183/-. The said amount is charged to tax by stating that assessee did not produce any evidence from other co-owners showing their investment of balance Rs. 76 lakhs and the documents in form of a notarised MOU is dated 29.07.2016 whereas the property was purchased two years earlier.

21. We may not get into the merits of the case as we find that the Petitioner has availed IDS Scheme pursuant to declaration of the undisclosed income and the amount on that head was credited into the bank account and he offered a declaration in respect of Rs.13,69,390/- as income from the year 2011-2012 to 2015-2016.

In our considered opinion, taking into consideration the nature of the IDS Scheme, it is not open for the Revenue to sit in appeal over the said decision and particularly when it has failed to revoke the form issued in favour of the Petitioner, which it could have done only if it was issued on the basis of some misrepresentation or fraud played, we are not inclined to accept the submission of the Revenue that minuscule income was reflected by the assessee.

In the wake of the aforesaid, since we do not find the approach of the Revenue a justified one, and though we find that the Principal Commissioner has only restricted the proceedings against the Petitioner only to the purchase of property to the tune of Rs.80 lakhs, and computed the unaccounted investment by treating it as 2,84,060/- to be assessed under Section 69, we set aside the order dated 14.11.2023 passed by the Respondent no.1 for the Assessment Year 2014-2015.

The Writ Petition is made absolute by quashing and setting aside, the said order. No order as to costs.

ASHISH S. CHAVAN, J.

BHARATI DANGRE, J.