



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

WRIT PETITION NO. 3503 OF 2023

Aruna Surulkar

...Petitioner

Versus

Income Tax Officer, Ward-19(2)(4), Mumbai &
Ors.

...Respondents

Mr. Ranit Basu a/w Ms. Maitri Malde & Ms. Dua Shaikh for the
Petitioner.

Mr. Siddharth Chandrashekhar for the Respondents-Revenue.

CORAM: K. R. SHRIRAM &
DR. NEELA GOKHALE, JJ.
DATED: 22nd January 2024

PC :

1. Since the pleadings are completed, we decided to dispose the
petition finally.

2. Petitioner is impugning a notice dated 23rd March 2022 issued
under Section 148A(b) of the Income Tax Act, 1961 (“**the Act**”), order
dated 22nd April 2022 passed under Section 148A(d) of the Act and
the consequent notice also dated 22nd April 2022 issued under
Section 148 of the Act. Petitioner is also impugning the subsequent
notice dated 30th January 2023 and the notice dated 16th June 2023,
issued under Section 143(2) read with Section 147 of the Act.

3. Admittedly, Petitioner did not reply to the initial notice dated
23rd March 2022 that Petitioner received under Section 148A(b) of

the Act. At the same time, Mr. Basu refers to the order passed under Section 148A(d) of the Act, whereby in paragraph 3 it is stated as under :

“3. From the details of transactions as mentioned above, it is seen that there is violation of the provisions of section 50C of the Income Tax Act, 1961. Due to non-compliance, assessee also failed to explain the transaction. Further, on verification of assessee’s return of income for AY 2018-2019, it is seen that differential amount of Rs. 26,44,500/- is not offered for taxation.”

4. Mr. Basu states, and rightly so, that provisions of Section 50C of the Act would apply only to a seller and not the assessee in this case, who is the buyer of the property. Mr. Basu submits that Section 50C(1) of the Act provides,

“where the consideration received or accruing as a result of the transfer by an assessee of a capital asset.....”.

Therefore, it is Mr. Basu’s case that there has been total non-application of mind while issuing this order under Section 148A(d) of the Act. Mr. Basu states that in the order also it is mentioned that the assessee is buyer of the property and if only the sanctioning authority had read the order, he would not have granted the sanction because Section 50C of the Act does not apply to buyers. We would agree with Mr. Basu.

5. Mr. Chandrashekhar relies on an affidavit-in-reply filed by one Manish and submits that it was a human error. In our view, the said

Manish is incompetent to make the statement because it is not the said Manish, who had passed the impugned order. There is also nothing to indicate in the affidavit that Manish made inquiries with the officer Abhishek Kumar Sinha, who passed the impugned order seeking an explanation for reliance on Section 50C of the Act. Therefore, we shall not accept this explanation of Respondents.

6. Mr. Chandrashekher further submits that the reopening was to provide an opportunity to the assessee of being heard and thus, thoroughly analyze the facts of the case with documentary evidence and the sufficiency or correctness of the material cannot be considered at the stage of reopening. The questions of fact and law are left open to be investigated and decided by the Assessing Authority and therefore, reopening is valid. We do not accept this stand of Respondents in as much as the Assessing Officer before issuing a notice must have satisfied himself that what he writes makes sense. Even the Principal Commissioner, who granted sanction should have also applied his mind and satisfied himself that the order passed under Section 148A(d) of the Act was being issued correctly by applying mind. It cannot be a mechanical sanction. On these grounds alone, the petition should be allowed.

7. We also should note that there is nothing in the notice to explain as to how, if the transaction amount is less than the stamp

duty value, there can be escapement of any income particularly in the hands of a buyer.

8. In the circumstances, we allow the petition in terms of prayer clause (a) which reads as under :

“a. That this Hon’ble Court may be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction, calling for the records of the Petitioner’s case and after going into the legality and propriety thereof, quash and set aside the notice u/s 148A(b) of the Act dated 23rd March, 2022 (Exhibit B), the order u/s 148A(d) of the Act dated 22nd April, 2022 (Exhibit C), the notice u/s 148 dated 22nd April, 2022 (Exhibit D), the notice dated 30th January, 2023 (Exhibit F) and the notice u/s 143(2) read with 147 of the Act dated 16th June, 2023 (Exhibit G).”

9. Petition disposed.

(DR. NEELA GOKHALE, J.)

(K. R. SHRIRAM, J.)

GITALAXMI
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