

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2817 OF 2019**

Yogini Bipin Soneta

....Petitioner

V/s.

Income Tax Officer Ward 29(3)(2)
Mumbai & Ors.

...Respondents

Mr. Devendra H. Jain a/w Ms Radha Halbe for Petitioner
Mr. Sham V. Walve for Respondents Revenue

**CORAM : K.R. SHRIRAM &
R. N. LADDHA, JJ
DATED : 3rd JANUARY 2022**

P.C. :

1 Petitioner is challenging a notice dated 25th March 2019 issued under Section 148 of the Income Tax Act 1961 (the Act) and the subsequent order dated 27th August 2019 disposing petitioner's objections to the impugned notice.

2 Petitioner had filed return of income on 24th July 2012 for A.Y.-2012-2013 disclosing gross total income of Rs.3,73,216/- and total taxable income of Rs.3,56,250/-. The return was processed under Section 143(1) of the Act. Thereafter, petitioner received the notice dated 25th March 2019 under Section 148 of the Act which is impugned in this petition. In response to petitioner's request, petitioner received reasons for re-opening by a communication dated 20th June 2019. In the reasons, it is alleged that the Assessing Officer has received information that one Aricent Infra Ltd. was a penny stock scrip and petitioner has traded in this scrip during F.Y.-

2011-2012 and the total transaction amount was Rs.36,54,920/-. According to the Assessing Officer, the assessee has filed the return declaring total income of Rs.3,56,250/- and the assessee has shown the income from salary at Rs.2,25,000/-, income from house property at Rs.1,22,640/-, income from short term capital gains of Rs.22,459/- and income from other sources at Rs.3,027/-. According to the Assessing Officer, assessee ought to have offered the income on the above said transactions for taxation and further as there is no information available on Income Tax Department (ITD system) regarding the penny stock, the same needs verification. Petitioner filed objection to the reasons which was rejected by an order dated 27th August 2019, which is also impugned in this petition.

3 Mr. Jain attacked the reasons on two points namely; a) the reasons should have stated the assessee ought to have offered income on the above said transactions for taxation and not ought to have not offered the income and, therefore, there is non application of mind by the Assessing Officer as well as the sanctioning authority and b) no assessment can be reopened for verification and he relied upon the judgment of a Division Bench of Gujarat High Court in *Principal Commissioner of Income Tax-5 Vs. Manzil Dineshkumar Shah*¹. Mr. Jain submitted that the Supreme Court had refused to interfere in the Special Leave Petition filed by the Revenue against the order of Gujarat High Court. Mr. Jain submitted relying on *Manzil Dineshkumar Shah* (supra) that reopening of the assessment would not be

¹ (2018) 95 taxmann.com 46 (Gujarat)

permitted for fishing or roving inquiry and the moment reasons recorded says, "the same needs verification", it means that the re-opening was a fishing or roving inquiry, which is not permissible.

4 Per contra, Mr. Walve opposes the petition and submitted that court should not exercise its jurisdiction under Article 226 of the Constitution of India. Mr. Walve submitted that after the notice under Section 148 of the Act was issued, petitioner filed its return of income in compliance with the notice on 2nd May 2019 showing upward revision. Mr. Walve submitted that petitioner had earlier filed returns on 24th July 2012 declaring a gross total income of Rs.3,73,216/- and only after petitioner received the notice dated 25th March 2019 under Section 148 of the Act, that this upward revision was disclosed to the Income Tax authorities. Mr. Walve submitted that petitioner would have otherwise not paid the tax which was due and petitioner's explanation that by oversight a short term capital gain on a scrip named Vikas Wsp Ltd. or that petitioner inadvertently skipped capital gain in its original return of income is nothing but an after thought. Mr. Walve also relied upon explanation 3 to Section 147 as it then was in force to submit that for the purpose of assessment or reassessment under Section 147, the Assessing Officer may assess or reassess the income in respect of any issue which has escaped the assessment and such issue comes to his notice subsequently in the course of the proceedings under this Section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-Section (2) of Section 148 of the Act.

5 We have considered the submissions made by the counsel and also the pleadings filed. Admittedly, petitioner had not offered to tax the short term capital gains on scrip named Vikas Wsp Ltd. Admittedly, it was offered only after petitioner received the notice under Section 148 of the Act. Even if, we hold that the reasons are not very happily worded, still the fact that petitioner after almost 6 years and after receiving the notice under Section 148 filed return showing upward revision, itself would mean that the Assessing Officer would be entitled to reopen the assessment. Though, we would agree with Mr. Jain that reopening of the assessment is not permitted for fishing or roving inquiry or for verification purpose, still the fact that petitioner has filed returns in response to the notice under Section 148 of the Act and disclosing therein that short term capital gains earned in F. Y.- 2011-2012 was not offered to tax, would itself entitle the Assessing Officer to issue notice under Section 142(1) of the Act calling for further details. If we interfere, the Revenue may suffer.

6 In the circumstances, we do not wish to exercise our jurisdiction under Article 226 of the Constitution of India. Petitioner may adopt the alternate remedy that is available under the provisions of the Act. Keeping open all rights and contentions of petitioner to be raised before the Assessing Officer, petition dismissed.

(R. N. LADDHA, J)

(K.R. SHRIRAM, J.)