

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

WRIT PETITION NO.3581 OF 2021

Sharvah Multitrade Company Private LimitedPetitioner

V/s.

Income Tax Officer Ward 4(3)(1) & Anr.Respondents

Mr. Rohan Deshpande i/b. Ms. Farzeen Khambatta for petitioner.

Mr. Sham V. Walve for respondents.

**CORAM : K.R. SHRIRAM &
AMIT B. BORKAR, JJ.**

DATED : 20th DECEMBER 2021

PC. :

1 Petitioner is impugning a notice dated 31st March 2021 issued under Section 148 of the Income Tax Act, 1961 (the said Act) and order on objections dated 23rd July 2021.

2 Petitioner has raised various grounds but the primary ground is total non application of mind while issuing the notice under Section 148 of the said Act and even while passing the order on objections. We would add that there has been total non application of mind even while filing the affidavit in reply to the petition by the same officer – Mr. Shailendra Damodar Suryavanshi, Income Tax Officer, Ward 4(3)(1), Mumbai. Perhaps this officer does not know the meaning of the words "application of mind" because he seems to be using this expression without applying his mind. The notice has been issued under Section 148 of the said Act on 31st March 2021 for Assessment Year 2015-2016. The assessment had been completed under

Section 143(3) of the said Act on 28th September 2017. Therefore, proviso to Section 147 of the said Act shall apply and respondents will have to make out a case of failure on the part of petitioner to truly and fully disclose material facts.

3 In the reasons recorded for reopening, respondents miserably fail in this primary obligation. Moreover, the reasons indicate total non application of mind in as much as in the tabular form, it is stated that Sharvah Multitrade Company Private Limited for F.Y. 2014-15 had been a beneficiary through fund trail of Rs.3.72 Crores. Then again, it is mentioned that the above mentioned bogus entities managed, controlled and operated by M/s. Sharvah Multitrade Company Private Limited for providing bogus accommodation entries, hence, all the transactions entered into between the above mentioned entities and the assessee/beneficiary are bogus accommodation entries in nature. What perplexes us as much as the assessee was perplexed is how can a company provide bogus entry to itself. Sharvah Multitrade Company Private Limited is alleged to be a beneficiary identified through fund trail and its PAN number is shown to be AAQCS2595H. Petitioner, who is the assessee, is also Sharvah Multitrade Company Private Limited and its PAN number is AAQCS2595H. Therefore, this clearly shows total non application of mind by the Assessing Officer Mr. Suryavanshi. His statement in the reasons “..... *and after careful application of mind*” is risible. There is total non application of mind.

4 In the affidavit in reply, the same Mr. Suryavanshi states “*as Annexure – 2 is the copy of the approval u/s 151 of the Act*”. There is no annexure – 1 mentioned anywhere. Moreover, in the affidavit filed in the Court, even this annexure is missing. This further displays total non application of mind by this officer.

5 Mr. Walve tendered a copy of the approval under Section 151 of the said Act which he had in his file where it says “*In view of reasons recorded, I am satisfied that it is a fit case to issue notice u/s. 148* ”. This has been signed by PCIT, Mumbai one Anil Kumar. If this PCIT only read the reasons recorded, he would have raised a query how can an entity provide bogus entry to itself. That shows total non application of mind by the said Mr. Anil Kumar as well. We have to also note that in the format for approval under Section 151 of the said Act, one Vijay Kumar Soni, Range 4(3), Mumbai, has recommended grant of approval. That shows non application of mind even by this Vijay Kumar Soni. We wonder whether the officers of respondents ever bother to read the papers before writing the reasons or recommending for approval or while granting approval.

6 We must also note that in the objections filed by petitioner vide its letter dated 10th May 2021 to the notice issued under Section 148 of the said Act, petitioner have raised these points and also alleged lack of application of mind. The said Mr. Suryavanshi while rejecting the objections, by an order dated 23rd July 2021, first of all makes a false statement that

“the assessee’s above submissions and objections have been carefully considered and the same are dealt with as under” but he does not deal with the objection of the assessee of lack of application of mind. We have to also note that the said Mr. Suryavanshi is totally silent about the objections raised on non application of mind. In the affidavit in reply, at paragraph 9 he says it was a typographical error and inadvertent mistake because in the case information received in insight portal on 27th March 2021, only first page was displayed. Even if we accept what he says for a moment, still anyone reading the reason would realise that it defies sensibility that how the company will provide bogus entry to itself. Even otherwise this Mr. Suryavanshi had an opportunity to correct the error when he passed the order on objections but he chose to skirt the issue and he went on to say in his affidavit in reply that the objection was duly dealt with by issuing a letter dated 23rd July 2021. In our view, it has not been duly dealt with because this Mr. Suryavanshi had an obligation to deal with the objections raised by petitioner in their objections to reopening. In our view, all these grounds require us to allow the petition in terms of prayer clause – (a), which we hereby do. Prayer clause – (a) reads as under :

(a) Declare that the Impugned Notice u/s 148 of the Act dated March 31, 2021 (Exhibit A) and the Impugned Order on objections dated July 23, 2021 (Exhibit B) and the impugned reassessment proceedings for AY 2015-16 are wholly without jurisdiction, illegal, arbitrary, and liable to be quashed.

7 Petition disposed.

8 A copy of this order be placed before the Principal Chief Commissioner of Income Tax, Mumbai for information and necessary action. A copy of this order also be sent to Mr. Shailendra Damodar Suryavanshi so that he would be careful in future. A copy of this order be also sent to the Chairman, CBDT, who may perhaps formulate a scheme whereby the officers are trained how to apply their mind and what all points should be kept in mind while recording the reasons. The Chairman, CBDT may also advise the concerned Commissioners not to grant approval under Section 151 of the said Act mechanically but after considering the reasons carefully and scrutinizing the same.

(AMIT B. BORKAR, J.)

(K.R. SHRIRAM, J.)