

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

WRIT PETITION NO. 671 OF 2022

Nirmal Bang Securities Pvt. Ltd. Mumbai ...Petitioner
Versus
Asst. Commissioner of Income Tax Circle
4(2)(1), Mumbai & anr. ...Respondents

Dr. K. Shivaram, Senior Advocate, i/b Mr. Rahul Hakani, for
the Petitioner.

Mr. Sham V. Walve, i/b Mr. Suresh Kumar, for the
Respondents.

CORAM: K. R. SHRIRAM &
N. J. JAMADAR, JJ
DATED: 8th FEBRUARY, 2022
(Video Conferencing)

Order:-

1. No reply has been filed and by consent of the parties taken
up for admission/disposal, at this stage itself.

2. Prayer clause (a) of the petition 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, to quash and set aside the said (i) Notice
u/s 148 dated 31st March, 2021 (Exh.”A”), (ii) the impugned
order dated 13/1/2022 being (Exh.”B”) and (iii) Notice u/s
142(1) dtd.20/1/2022 being (Exh.”C”).”

3. Petitioner is a stockbroking firm and returned an income of
Rs.1,03,30,630/- for Assessment Year 2013-2014. During the
course of assessment proceedings, Assessing Officer issued

notice dated 13th July 2015 under Section 142(1) of the Income Tax Act, 1961 ("the Act") asking for various details. The assessment of petitioner for Assessment Year 2013-2014 was completed under Section 143(3) of the Act assessing total income at Rs.9,10,95,756/-. Thereafter, assessment was reopened under Section 147 vide notice dated 30th March 2018 under Section 148 as information about large value cash transaction was received. Upon considering the submissions made as well as the documents submitted by petitioner no addition was made and income was assessed as per order dated 19th April, 2018 passed in appeal under Section 250 against the original assessment order.

4. The assessment of petitioner is now again proposed to be reopened by issuing notice dated 31st March 2021 under Section 148 of the Act. The reasons supplied to petitioner for reopening are as under:-

“In this case, search information is received with regard to accommodation entry, STR etc in which assessee is beneficiary, the details of which are as under:

S. NO.	Case Packet Source	Packet Source Description	Source Name	Information Type	Value
1	Enquiry	---	DLS Exports Pvt. Ltd.	Others	Rs.4,40,00,000/-
2.	Enquiry	FIU-IND	Startree Dealcom Pvt. Ltd.	Others	Rs.5,50,000/-
3.	Enquiry	Accommod	Nectar	Others	Rs.6,54,623/-

		ation entries from shell entities	Dealtrade Pvt. Ltd.		
4.	Enquiry	FIU-IND	Suspicious Transaction Report	Others	Rs.1,85,00,000/-
5.	Enquiry	Unexplained Credit	Suspicious Transaction Report	Cash Deposit	Rs.71,50,000/-
			Total Value		Rs.7,08,54,623/-

In view of the above facts and after due application of mind after analyzing all the relevant information in the case of assessee in totality, I have reason to believe that income of Rs.7,08,54,623/- has escaped assessment for A.Y.2013-14 and the same is therefore required to be reopened for scrutiny assessment.”

5. As could be seen from the reasons quoted above, it is bereft of any material. It does not indicate what address was searched, from whom such information was received, what date the search happened, what date the information was received, what was the information etc. Admittedly a copy of the information received also has not been provided to petitioner to enable petitioner to effectively deal with the reasons.

6. Notwithstanding receiving these reasons, without any details available, petitioner filed its objection by a communication dated 12th August, 2021. Petitioner objected to the reopening on the following grounds:

- (i) There was no failure on the part of petitioner to disclose fully and truly all material facts necessary for assessment and recorded reasons do not record such failure.

- (ii) Reopening is done without own satisfaction of respondent no.1.
- (iii) There is no live nexus between the material and formation of belief about escapement of income.
- (iv) The reasons are vague and factually incorrect. Based on the decisions of the Courts, the proposed notice issued for reopening of assessment is without jurisdiction, hence, the reopening is bad in law.
- (v) The reopening notice was issued on the ground of factually incorrect basis which is bad in law.

7. These objections were rejected by an order dated 13th January 2022 without dealing with any of the objections of petitioner on factual aspects of the issues involved. It is this order dated 13th January 2022, which is also impugned in this petition.

8. Admittedly the notice for reopening has been issued four years after the expiry of the relevant assessment year. Therefore, reopening is barred unless respondent is able to show that petitioner had failed to disclose fully and truly all material facts for assessment.

9. Mr. Walve relied upon a judgment of this Court in *Crompton Greaves Ltd. V/s. Assistant Commissioner of Income Tax, Circle 6 (2)* ⁴¹ to submit that even if the reason for reopening

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does not specifically state that there was any failure on the part of petitioner to disclose fully and truly all material facts necessary for its assessment for the relevant assessment year, it will not be fatal to the assumption of jurisdiction under Sections 147 and 148 of the Act. We would certainly agree with Mr. Walve but as held in *Crompton Greaves Ltd.* (Supra), this is subject to the rider that there must be cogent and clear indication in the reasons supplied, that in fact there was failure on the part of assessee to disclose fully and truly all the material facts necessary for its assessment. If the factum of failure to disclose can be culled from the reasons in support of the notice seeking to reopen assessment, that will certainly not be fatal to the assumption of jurisdiction under Sections 147 and 148 of the Act. The Court held *“However, if from the reasons, no case of failure to disclose is made out, then certainly the assumption of jurisdiction under Sections 147 and 148 of the Act would be ultra vires, being in excess of the jurisdictional restraints imposed by the first proviso to Section 147 of the Act”*.

10. Having seen the reasons, no case of failure to disclose is made out. The factum of failure to disclose cannot be culled from the reasons in support of the notice seeking to reopen the assessment. Therefore, certainly it will be fatal to the assumption of jurisdiction under Sections 147 and 148 of the

Act.

11. On this ground alone, the prayer clause (a) as quoted above is hereby granted.

12. We also have to observe that the reason recorded for reopening as noted earlier, is bereft of any material or information. We wonder what prompted the jurisdictional Assessing Officer to write such a bald and toothless reason. Certainly the reasons, as recorded, cannot even indicate anywhere or by no stretch of imagination can it be concluded that any income has escaped assessment. We are also surprised that by reading these reasons, approval under Section 151 has been granted, which also indicates clear non-application of mind by the authority which granted the approval.

13. We only hope that respondents' officers will record better reasons for reopening and the authority granting approval will also apply their mind sincerely before granting an approval.

14. Petition disposed with no order as to costs.

[N. J. JAMADAR, J.]

[K. R. SHRIRAM, J.]