



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3309 OF 2022

**Shri Dnyaneshwar Maharaj Sansthan Alandi
Dewachi,**

A public charitable trust having its address at:
1360, Bharat Bhawan, Shukrawar Peth,
Pune 411 002
PAN:AADTS4631E

...Petitioner

Versus

- 1. The Income Tax Officer Exemption Ward
1(1), Pune,**
Income Tax Office, PMT Building,
Shankar Sheth Road, Pune 411 037
Email: pune.ito.exmpl@incometax.gov.in
- 2. The Additional/Joint/Deputy/Assistant
Commissioner of Income Tax/Income-Tax
Officer,**
National Faceless Assessment Centre,
Through the Principal Chief Commissioner
of Income Tax (National Faceless
Assessment Centre), Delhi
Room No.401, 2nd Floor,
E-Ramp, Jawaharlal Nehru Stadium,
New Delhi-110 003
Email: delhi.pccit.neac@incometax@gov.in
- 3. The Union of India,**
Through the Principal Secretary,
Department of Revenue, Ministry of
Finance, Room No.128-B, North Block,
New Delhi-110001
Email: rsecy@nic.in and judicial-dla@nic.in ...Respondents

Mr. Mihir Naniwadekar, with Mr. Rohan Deshpande, i/by
Ms. Farzeen Khambatta, for Petitioner.
Mr. Suresh Kumar, for Respondent-Revenue.

CORAM : K. R. SHRIRAM &
DR. NEELA GOKHALE, JJ.
DATED : 11th March 2024

JUDGMENT: (Per Dr. Neela Gokhale, J.)

1. **Rule.** Rule made returnable forthwith with consent of parties.
2. Petitioner challenges notice dated 25th March 2021 issued by the Income Tax Officer, Exemption Ward 1(1), Pune under Section 148 of the Income Tax Act, 1961 (“**the Act**”) and the order dated 3rd March 2022 rejecting the objections raised by Petitioner to the notice of reopening the assessment proceedings.
3. Petitioner is a public charitable trust registered under the Bombay Public Trusts Act, 1950. It is also registered under Section 12A of the Act and is thus, eligible to claim exemption under Section 11 of the Act.
4. Petitioner filed its return of income (“**ROI**”) on 22nd September 2014 for Assessment Year (“**AY**”) 2014-15 disclosing ‘Nil’ income claiming exemption under Section 11 of the Act. The ROI was processed under Section 143(1) of the Act raising certain demands which were subsequently deleted by rectification proceedings. Petitioner received notice dated 25th March 2021 from the Department under Section 148 of the Act conveying that the Assessing Officer (“**AO**”) had reasons to believe that Petitioner’s income chargeable to tax for AY 2014-15 had escaped assessment. Petitioner complied and filed its ROI on 30th May 2021.

5. The Department issued the notice dated 23rd June 2021 under Section 143(2) read with Section 147 of the Act seeking reply in relation to the merits of the assessment proceedings. Petitioner requested the AO by its letter dated 16th July 2021 to provide reasons for reopening of the assessment and also sought a copy of the sanction order given by the Appropriate Authority under Section 151 of the Act. Petitioner received the reasons to believe escapement of income by letter dated 7th February 2022 along with a copy of the sanction. The reasons read as under:

“1. The assessee is a public charitable trust registered with the Charity Commissioner under the BPT Act and it is also registered u/s 12A of the IT Act. The assessee trust has e-filed return of income in ITR-7 for the A.Y. 2014-15 on 22/09/2014 declaring total income at Rs. Nil.

2. In this case, as per the information forwarded by the DDIT(I&CI)-2, Pune on the Insight Portal, the assessee trust has made cash deposits amounting to Rs. 2,76,49,804/- during F.Y. 2013-14. The information disseminated has been rated as 'Very High Priority' and the verification result has been described as 'Undisclosed Income' by the DDCIT(I&CI)-2, Pune.

3. I have, therefore, reason to believe that an income to the tune of Rs. 2,76,49,804/- has escaped assessment within the meaning of the Explanation 2(b) to sec. 147 of the Income-tax Act, 1961. Therefore, this is a fit case for initiation of proceedings u/s 147 of the Income-tax Act, 1961.

4. In this case more than four years have been lapsed from the end of the A.Y. under consideration. Hence, necessary sanction to issue notice u/s 148 has been obtained separately from the Commissioner of Income-tax (Exemptions), Pune as required u/s 151 of the Income-tax Act, 1961.”

The only reason to justify reopening proceeding, therefore, was in respect of alleged cash deposits of Rs.2,76,49,804/- during the year. Petitioner filed detailed objections vide letter dated 22nd February 2022 raising several grounds to suggest that the reopening of the

Shivgan

assessment was untenable. The Department, however, proceeded to pass the impugned order dated 3rd March 2022 rejecting the objections of Petitioner. It is this order and the notice dated 25th March 2021, which are challenged in the present Petition.

6. Mr. Naniwadekar, learned counsel appearing for Petitioner, submitted that there was nothing to indicate satisfaction of the AO that income had escaped assessment since there was no enquiry/verification of information purported to have been provided by the Income Tax Officer (Investigation) Unit II. He further submitted that issuance of notice under Section 147 of the Act is not for the purpose of indulging in a fishing enquiry and such notice is tenable only pursuant to existence of material facts thrown up by an independent enquiry.

7. On merits, Mr. Naniwadekar contends that Petitioner/Trust is a religious institution and devotees make offerings to their deity of faith by way of cash or otherwise. He further asserts that the AO has issued the notice on the basis of sole information received from the DDCIT (I & CI)-2, Pune that certain cash deposits are being treated as 'Undisclosed Income'. He says that every cash deposit in the bank account is not an income and can be transferred from one account to another. During the year, receipts in cash were deposited in bank accounts, recorded, accounted and audited and hence, there was no bank account which is undisclosed and all amounts were offered for
Shivgan

taxation. The AO was seized with all this information which was provided by Petitioner but yet, proceeded to invoke the power to issue notice as a tool to undertake a roving enquiry.

8. Mr. Suresh Kumar for the Revenue counters the arguments of Petitioner by stating that Petitioner had made cash deposits with the State Bank of India, Alandi Branch, which information was uploaded in the system by the DDIT/ADIT(I&CI)-2, Pune. The information was flagged under the category of 'High Risk CRIU/VRU'. The Department observed that gross receipts disclosed by Petitioner were only 9,85,181/- and Petitioner claimed an amount of Rs.3,77,57,818/- as amount applied for charitable purposes during the previous year. Since the receipts/income disclosed was not sufficient to carry out the expenses and the ROI did not show anything about the difference of Rs.2,76,46,804/-. Hence, the AO formed belief sufficient to reopen assessment. Thereupon requisite sanction was obtained and the notice was issued.

9. Paragraph 4.12 of the affidavit in reply of the Department reads as thus:

"4.12.Similarly, from the return of income filed, it was not possible for the JAO to ascertain whether the cash deposits of Rs.2,76,49,804/- as flagged by DIT(Systems) were disclosed in the return filed or not. I submit that for the purpose of issue of notice u/s.148 of the Act, what is required is sufficient reason to form a belief that there is escapement of income....."

The aforesaid averment clearly indicates that the notice has been issued only to gather information and that the AO had no sufficient reasons to believe that there was escapement of income. This is nothing but fishing expedition, which is not permissible in law. This Court in *Neetu M Chandaliya v. Income Tax Officer-14(2)(3)*¹ has held that while the Court cannot investigate into the adequacy or sufficiency of reasons, the Court can certainly examine whether the reasons are relevant and have a bearing on the matter in regard to which the Assessing Officer is required to entertain the belief before he can issue notice under Section 148 of the Act. The reasons cannot be based on a suspicion subject to a case of fishing enquiry.

10. It is further noticed from the documents on record that there was no reason nor any justification given in the notice to even arrive at a *prima facie* finding that the cash deposits led to escapement of income. There was no response to Petitioner's requests for information regarding alleged undisclosed income pertaining to cash deposits over and above the deposits in the bank account. The impugned order does not even controvert the objection raised by Petitioner that the cash collected was not only deposited in its bank account but was also duly offered to tax.

11. It is settled law that a reason to suspect is not the same as reason to believe. There has to be a rational connection and the live

¹ 2023 SCC Online Bom 2046
Shivgan

link between the material coming to the notice of the AO and the formation of belief regarding escapement of income. The Apex Court in the matter *Sheo Nath Singh v. AACIT*² has held as under:

“...There can be no manner of doubt that the words ‘reasons to believe’ suggests that the belief must be that of an honest and reasonable person based upon reasonable grounds that the Income Tax Officer may act on direct or circumstantial evidence but not on mere suspicion, gossip or rumour. The Income Tax Officer would be acting without jurisdiction if the reason for his belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the section. The Court can always examine this aspect though the declaration or sufficiency of reasons for the belief cannot be investigated by the Court.”

12. The reasons to believe in the present matter merely adverts to information from the Investigation Officer, Kolhapur that Petitioner made some cash deposits. But it is an admitted fact that Petitioner, a charitable trust registered under Section 12A of the Act, eligible to avail exemption under Section 11 of the Act has deposited the donations received in cash in its bank account and thereby disclosed ‘Nil’ total income for the relevant AY. Moreover, the accounts of Petitioner are recorded, accounted and audited and hence, undoubtedly, there is no undisclosed cash over and above the deposits in its regular bank accounts which were offered for taxation. Thus, there is no material or fact which has been stated in the reasons for reopening assessment in the present case on which any belief can be founded of the nature contemplated by law.

² (1971) 82 ITR 147 (SC)
Shivgan

13. The Apex Court in the case of *Income Tax Officer, I Ward, Distt.VI, Calcutta and Ors. v. Lakhmani Mewal Das*³ has held as follows:

“.....the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income-tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is not doubt true that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income-tax Officer on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and far-fetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment.....”

14. Thus, upon perusal of the letter providing the reasons to believe escapement of assessment as well as the order rejecting Petitioner’s objections impugned herein, we have no hesitation in holding that there is no live link, which is a *sine qua non* between the material before the AO in the present case and the belief which he has to form regarding escapement of income. The sanction under Section 151 of the Act granted by the prescribed authority as well as the notice dated 25th March 2021 is issued by the Department without any application of mind. In this view of the matter, the notice of 25th March 2021 and the order dated 3rd March 2022 rejecting the objections of Petitioner are set aside. The Petition is thus, allowed.

³ [1976] 103 ITR 437 (SC)
Shivgan

15. Rule is made absolute. There will be no order as to costs.

(DR. NEELA GOKHALE, J.)

(K. R. SHRIRAM, J.)