



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

WRIT PETITION NO. 3073 OF 2022

Naresh Jagdishrai Goyal

.. Petitioner

Versus

Deputy Commissioner of Income-tax
Central Circle 5(2), Mumbai and Ors.

.. Respondents

Mr. P.J. Pardiwalla, Senior Advocate, a/w Mr. Madhur Agrawal, Mr. Punit Shah, i/b Mr. Atul K. Jasani, for the Petitioner.

Mr. Suresh Kumar, for the Respondents.

CORAM: B. P. COLABAWALLA &

FIRDOSH P. POONIWALLA, JJ.

DATE: JULY 7, 2026

P. C.

1. Rule. Respondents waive service. With the consent of the parties, Rule is made returnable forthwith and heard finally.

2. The above Writ Petition is filed challenging the notice dated 31st March 2021 issued under Section 148 of the Income Tax Act, 1961 (for short “IT Act”) and the impugned order dated 24th January 2022 disposing of the objections filed to reopening the assessment of the Petitioner. The Assessment Year in question is A.Y. 2014-2015.

3. One of the main grounds for challenging reopening is that the Assessing Officer could never have reason to believe that the income of the Petitioner had escaped assessment. The reasons for re-opening the assessment can be found from pages 67 to 69 of the paperbook. The reasons given are that the Assessing Officer had received information from DCIT (International Taxation), Mumbai, that proceedings under Section 133(6) of the IT Act in the case of *M/s. Tail Winds Ltd.* are currently under progress for verification of details furnished in view of non-deduction/lower deduction of tax at source for Financial Year 2013-2014 (Assessment Year 2014-2015). The DCIT informed the Assessing Officer that as per the information available on record *M/s. Tail Winds Ltd.* is a foreign company incorporated in the Isle of Man, and during the Financial Year under consideration, the said company had sold 6,90,57,210 shares of *Jet Airways (India) Ltd.* for a sum of Rs.3563.49 Crores. The broker notes for the said transactions, along with summary of shares sold on various dates, were enclosed with the said letter.

4. The DCIT also, thereafter, informed the Assessing Officer that as per the information available in the public domain, *M/s. Tail Winds Ltd.* was held by Mr. Naresh Goyal (the Petitioner), and he was also a director of the said company. Further, the entire shareholding of *M/s. Tail Winds Ltd.* in *Jet*

Airways (India) Ltd. was transferred to Mr. Naresh Goyal through a bulk deal on the NSE/BSE. The DCIT stated that this preliminary data was shared with the Assessing Officer so that necessary enquiries regarding the source of funds in the hands of Mr. Naresh Goyal (the Petitioner) may be conducted by the Assessing Officer. The summary of the transactions was also set out in the reasons for reopening. Thereafter, the reasons record that the findings reveal that the Petitioner – Assessee had purchased shares of *Jet Airways (India) Ltd.* from *M/s. Tail Winds Ltd.* amounting to Rs.3563.49 Crores in A.Y. 2014-2015, the nature and source of which was not reflected from the Return of Income filed by the Assessee (the Petitioner). The reasons record that having gone through the findings as well as the records, these facts were not disclosed by the Assessee in its original Return of Income, and the Assessing Officer, therefore, came to the conclusion that the Assessee had not disclosed fully and truly all the material facts in the Return filed. The Assessing Officer, therefore, held that he had reason to believe that income chargeable to tax amounting to the sum of Rs.3563.49 Crores had escaped assessment within the meaning of Section 147 of the IT Act.

5. In reply to the reasons, the Petitioner filed its objections vide its letter dated 11th January 2022. One of the main objections to reopening was that the belief of escapement of income as recorded in the reasons was clearly

not of the Assessing Officer but was of a borrowed belief. The Petitioner thereafter also, in the objections, set out the entire transactions entered into by him to justify the source of funds for purchase of shares of *Jet Airways (India) Ltd.* from *M/s. Tail Winds Ltd.* To put it in a nutshell, the Petitioner stated that he had purchased 5,79,23,670 shares of *Jet Airways (India) Ltd.* from *M/s. Tail Winds Ltd.* and not 6,90,57,210 shares alleged in the reasons. To fund this acquisition, the Petitioner stated that the first tranche of the sale consideration of USD 258.422 Million was funded through a short-term loan from HSBC Geneva. On receipt of the sale consideration, *M/s. Tail Winds Ltd.* declared a dividend. On the Petitioner receiving the said dividend, the said short-term loan was repaid. Once the loan taken for the first tranche was repaid, a short-term loan for the second tranche of the sale consideration of USD 298.205 Million was taken from HSBC Geneva. Similar to the first tranche, the said loan was repaid through the dividend declared by *M/s. Tail Winds Ltd.* on receipt of the sale consideration. The sale of the third tranche of USD 5.322 Million was funded through the Assessee's own funds. The Assessee stated that he had received a total dividend of USD 623 Million during the period of sale of shares of *Jet Airways (India) Ltd.*, by *M/s. Tail Winds Ltd.* The dividend received by the Petitioner was higher than the purchase consideration paid by the Assessee since the other shares of *Jet Airways (India) Ltd.* [which were not purchased by the Assessee], were sold

to the public, namely 1,11,43,535 shares. Thus, the surplus dividend available to the Assessee was approximately USD 60 Million, and accordingly, no loan was taken to fund the purchase of the third tranche of shares of *Jet Airways (India) Ltd.*

6. These objections were rejected by the Assessing Officer vide his order dated 24th January 2022 (pages 101 to 107 of the paperbook). By relying upon several decisions of the Hon'ble Supreme Court as well as different High Courts, the Assessing Officer finally held that the objections of the Assessee stand rejected. As far as the explanation given by the Petitioner regarding his source of funds, the Assessing Officer held that the objections are not factually correct and acceptable, as the claim of the Assessee needs to be checked and verified after receiving and perusing the necessary required details during the course of re-assessment proceedings. The Assessing Officer obviously came to this conclusion because at the time of disposing of the objections, apart from the mere statements made by the Assessee, no proof was placed before the Assessing Officer to substantiate his contentions.

7. From the record it appears that even before passing the order disposing of the objections, the Assessing Officer had issued a notice under Section 143(2) dated 14th December 2021. He also thereafter issued a notice

under Section 142(1) of the IT Act. In reply to the notices issued under Sections 143(2) and 142(1), the Petitioner gave a detailed response dated 8th March 2022, which is at page 119 of the paperbook. After going through this response, we find that the Petitioner has annexed certain documents to the said response, which according to the Petitioner, clearly establishes that the funds utilised by the Petitioner for purchase of shares of *Jet Airways (India) Ltd.* were from the loans taken from HSBC Geneva and out of his own funds. This, according to the Petitioner, clearly establishes that he has explained the source of funds from which he purchased the *Jet Airways (India) Ltd.* shares, and coupled with the fact that he is a non-resident, the amount expended to purchase the aforesaid shares could not be brought to tax in India.

8. In this factual backdrop, Mr. Pardiwalla, the learned Senior Counsel appearing for the Petitioner, submitted that once all this material was before the Assessing Officer, he could not have had reason to believe that the income had escaped assessment. He submitted that since this proof has been given after the order disposing of the objections, the Assessing Officer be directed to take all this material into consideration and thereafter pass a fresh order. He submitted that this is more so in the facts of the present case because the notice issued under Section 143(2) was even before the order was

passed disposing of the objections and was in fact issued at the same time when the reasons were furnished to the Petitioner for reopening the assessment. He, therefore, submitted that in the peculiar facts of the present case, the Assessing Officer be asked to dispose of the objections afresh after taking into consideration the letter dated 8th March 2022 addressed by the Petitioner to the Assessing Officer which also includes the necessary annexures to establish the source of funds that were utilised by the Petitioner for purchasing shares of *Jet Airways (India) Ltd.* from *M/s. Tail Winds Ltd.*

9. On the other hand, Mr. Suresh Kumar, the learned Counsel appearing for the Revenue, submitted that the Assessing Officer correctly stated in the reasons that since no proof was given for the statements made in the objections in reopening the assessment, the order disposing of the objections correctly stated that the objections of the Petitioner on this count are factually incorrect and not acceptable, and the claim of the Assessee needs to be checked and verified after receiving and perusing the necessary required details during the course of the reassessment proceedings. Mr. Suresh Kumar submitted that in support of these contentions, the Assessing Officer has relied upon several decisions not only of the Hon'ble Supreme Court but also of various High Courts. He, therefore, submitted that since the Petitioner has filed his response to the notice issued under Section 143(2) as

well as the notice issued under Section 142(1), the Petitioner should approach the Assessing Officer and establish his claim in the assessment proceedings itself. If what the Petitioner contends is correct, then no addition would be made in his income in the reassessment proceedings. Consequently, he submitted that this was not a fit case where the Writ Petition ought to be entertained.

10. We have heard the learned Counsel for the parties at length. We have also perused the papers and proceedings in the present Writ Petition.

11. The main ground of challenge in the present Writ Petition is that the Assessing Officer could never have reason to believe that income had escaped assessment. This argument is premised on the basis that the Petitioner is a non-resident Indian, and for purchasing shares of *Jet Airways (India) Ltd.* from *M/s. Tail Winds Ltd.* the entire funding was by availing loans from HSBC Geneva and also out of his own funds, as more particularly set out not only in the objections filed by the Petitioner dated 11th January 2022 but also in their letter dated 8th March 2022, and which was in response to the notices issued under Sections 143(2) and 142(1) of the IT Act. Since this is the main grievance raised by the Petitioner, we are of the view that in the peculiar facts of the present case, though *prima facie*, on this

issue, the reasoning of the Assessing Officer in the order disposing of the objections cannot be faulted, in view of the letter dated 8th March 2022 addressed by the Petitioner to the Assessing Officer, we are of the view that interest of justice would be served if the Assessing Officer also takes into account the said letter dated 8th March 2022 and thereafter pass an order disposing of the objections.

12. We, therefore, quash and set aside the impugned order dated 24th January 2022 and direct the Assessing Officer to pass a fresh order disposing of the objections of the Petitioner to reopening the assessment, after taking into consideration the letter dated 8th March 2022 and the annexures appended thereto, within a period of 6 weeks from the date of communication of this order. If the order disposing of the objections is adverse to the Petitioner, the said order shall not be acted upon for a period of 4 weeks thereafter. Once a fresh order is passed by the Assessing Officer as directed by us above, and if the Petitioner is aggrieved by the same, he is free to approach this Court in Writ Jurisdiction.

13. Additionally, the sanction taken by the Assessing Officer for reopening the assessment shall also be furnished to the Petitioner within a

period of 2 weeks from the date of communication of this order to the Assessing Officer.

14. It is needless to clarify that if the Petitioner approaches this Court once again, his contentions shall be considered on their own merits and in accordance with law. We have not expressed any opinion on the merits of the objections of the Petitioner, which shall be decided by the Assessing Officer whilst passing a fresh order disposing of the objections to the reopening of the assessment. All contentions of the parties in that regard are expressly kept open.

15. Rule is made absolute in the aforesaid terms, and the Writ Petition is disposed of in terms thereof. However, there shall be no order as to costs.

16. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[FIRDOSH P. POONIWALLA, J.]

[B. P. COLABAWALLA, J.]