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

WRIT PETITION NO.2489 OF 2023

Prayas Goel .. Petitioner

Versus

Assistant Commissioner of Income Tax,
Circle 22(1), Mumbai & Ors. .. Respondents

Mr. Sham V. Walve a/w Tejveer Singh, Bhavik Chheda, Arnav Karhad, Advocates for the Petitioner.

Mr. Akhileshwar Sharma (through V.C.) Advocate for the Respondents.

CORAM: B. P. COLABAWALLA &
FARHAN P. DUBASH, JJ.
DATE: SEPTEMBER 08, 2026

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

2. The above Writ Petition has been filed challenging the Show Cause Notice dated 31st March 2023 issued under Section 148A(b) of the Income Tax Act, 1961 (**the IT Act**), the order dated 20th April 2023 passed under Section 148A(d) of the IT Act and the Notice dated 20th

April 2023 issued under Section 148 of the IT Act thereby reopening the case of the Petitioner for relevant Assessment Year (A.Y.) 2016-17, primarily on the ground that the reopening is based on a change of opinion by the Assessing Officer and is thus, unsustainable under law.

3. The brief facts of the case are that the Petitioner, an individual, filed his Return of Income for the relevant A.Y. 2016-17 on 30th July 2016. During the year, the Petitioner sold 345 shares of *Concord Enviro Systems Pvt. Ltd.* to a foreign entity *viz. AF Holdings, Mauritius* resulting in capital gains of Rs.2,96,82,371/- in the hands of the Petitioner. Out of such capital gain, the Petitioner invested in a residential property situated in Mumbai and consequently claimed exemption under Section 54F of the IT Act in his Return of Income.

4. Thereafter, the Petitioner's case was selected for a 'Limited Scrutiny' and a notice dated 14th September 2017 was issued under Section 143(2) of the IT Act to examine whether exemption from capital gains has been claimed correctly by the Petitioner. Thereafter, several notices under Section 142(1) of the IT Act (containing questionnaires) were issued to the Petitioner to inquire into *inter alia* the acquisition and sale of assets, nature of capital gains, and eligibility of such claim for exemption. The Petitioner claims that such notices were duly responded to and all the relevant documentary evidence supporting the claim of exemption was placed before the Assessing Officer. After due verification of details (including the identity, creditworthiness of the purchasing party and genuineness of the entire transaction), the Assessing Officer ultimately passed an Assessment Order dated 26th June 2019 under Section 143(3) of the IT Act accepting the Return of Income filed by the Petitioner, thereby making a 'Nil' addition.

5. On 31st March 2023, i.e. almost six years from the end of the relevant A.Y. 2016-17, a Show Cause Notice under Section 148A(b) of the IT Act was issued to the Petitioner stating that there was information received on the Insight Portal that the Petitioner had sold 345 shares of *Concord Enviro Systems Pvt Ltd* at the rate of Rs.86,206.90/- per share to a foreign entity *viz. AF Holdings, Mauritius* through a Share Purchase Agreement dated 7th August 2015, executed between three parties *viz.* the Petitioner (for 345 shares), *Mr. Prerak Goel* (for 350 shares) and one *M/s India Waste Water Treatment Company* (for 11,056 shares). The sum and substance of the allegation was that the purchase price was not based on any valuation report and that the transaction done with *AF Holdings, Mauritius* lacked genuineness. It was alleged that this was nothing but a 'make-believe' transaction to route the Petitioner's own unaccounted money in the guise of a share transfer. Accordingly, it was alleged that the entire sale consideration amounting to Rs.2,97,41,380/- was unaccounted income belonging to Petitioner which was not subjected to tax. Thus, the Petitioner was asked to show cause (by 13th April 2023) as to why a notice under Section 148 of the IT Act should not be issued based on the aforesaid information. The Petitioner furnished a response against the Show Cause Notice on 12th April 2023 *inter alia* referring to the scrutiny proceedings which culminated into an Assessment Order under Section 143(3) of the IT Act accepting the genuineness of the subject transaction. Further, the Petitioner also sought for a copy of the 'information' as uploaded on the Insight Portal, to ascertain the existence of any new tangible material, giving rise to the reopening.

6. On 20th April 2023, the impugned order came to be passed by the Assessing Officer under Section 148A(d) of the IT Act rejecting the objections raised by the Petitioner. Here, it was observed that in the Assessment Order under Section 143(3) of the IT Act, the concerned Assessing Officer (at the relevant point in time) had not made any discussion in respect of the issue on which the present reopening proceedings were premised. Accordingly, it could not be said that the erstwhile Assessing Officer had formed any opinion on such issues during the original assessment proceedings and the window to re-open the assessment would remain available where the Assessing Officer had neither accepted nor rejected the claim of the Petitioner. In this regard, in the impugned order, reliance was placed on the judgment of the Hon'ble Supreme Court in ***Income Tax Officer, ward No. 16(2) V/S TechSpan India (P.) Ltd. [(2018) 92 taxmann.com 361 (SC)]***. As far as the request of the Petitioner to provide relied upon information and material is concerned, it was stated that the statute does not mandate providing all the documents at the stage of the Show Cause Notice. Thus, it was held that the case of Petitioner was fit for issuing a notice under Section 148 of the Act. In view of the aforesaid, the impugned Notice under Section 148 of the IT Act was also issued on 20th April 2023. Before us, the Petitioner has challenged the validity of the said reassessment proceedings.

7. In this factual backdrop, Mr. Walve, the learned counsel appearing on behalf of the Petitioner, submitted that though various grounds have been taken to challenge the reassessment, he is restricting his submissions to two broad jurisdictional grounds. The first ground is that the initiation of reassessment proceedings by way of the impugned Show Cause Notice under Section 148A(b) of the IT Act is wholly without jurisdiction on account of change of opinion. The second ground is that the impugned Notice dated 20th April 2023 under Section 148 of the IT Act has been issued beyond a period of six years from the end of the relevant A.Y.2016-17 and is thus, time barred in view of the bar under first proviso to Section 149(1)(b) of the IT Act.

8. Mr. Walve urged that the fetter of 'change of opinion' would continue to apply to the relevant provisions of law as they stood at the relevant point of time when the impugned Notice was issued. He submitted that during the course of scrutiny assessment proceedings, the Petitioner was called upon to explain in great detail, the subject transaction and the consequent claim of exemption which ultimately came to be accepted by the Assessing Officer. To demonstrate this, he drew our attention to the notice dated 3rd August 2018 issued under Section 142(1) of the Act seeking details from the Petitioner and the response wherein the Petitioner has submitted all the details relating to purchase and sale shares of *Concord Enviro Systems Pvt. Ltd.* and the consequent exemption of capital gains claimed thereof. He also pointed out that a specific query was raised questioning the valuation of shares of *Concord Enviro Systems Pvt. Ltd.* and the Petitioner was even called upon to explain the identity and creditworthiness of *AF Holdings, Mauritius* and the genuineness of the whole transaction. He submitted that the Petitioner filed an exhaustive reply dated 11th September 2018 on all aspects of the transaction including the valuation and shareholding pattern of *Concord Enviro Systems Pvt. Ltd.*, identity, creditworthiness and genuineness of the transaction relating to the purchasing party i.e. *AF Holdings, Mauritius*. On a further query raised by the Assessing Officer, the Petitioner also explained how he came in contact with the purchasing party and also stated that he was retaining the remaining 7530 equity shares, after selling 345 shares of the said entity. As far as the claim of exemption is concerned, the Petitioner also submitted all the relevant details relating to his share in the property purchased from his mother. After due verification of all these details and documents, the then Assessing Officer ultimately accepted the claim of the Petitioner and did not make any addition. In these circumstances, he submitted that once the claim of the Petitioner was accepted during the scrutiny assessment proceedings, reassessment after six years from the end of the relevant assessment year on the same issue is impermissible under the law prevailing at the time of issuance of the impugned Notice under Section 148 of the IT Act. To fortify his submission on 'change of opinion' Mr. Walve relied upon the following judgments of this Court :-

(i) ***Sir Jamsetjee Jejeebhoy Charity Fund V/S Income-tax Officer (Exemption) [(2025) 180 taxmann.com 401 (Bombay)];***

(ii) Siemens Financial Services (P.) Ltd. V/S Deputy Commissioner of Income-tax [(2023) 154 taxmann.com 159 (Bombay)].

9. As far as the second jurisdictional ground is concerned, Mr. Walve submitted that because the year under consideration is A.Y.2016-17, there is a specific bar under the first proviso to Section 149(1)(b) of the IT Act which restricts the outer time limit for issuance of a notice under Section 148 of the IT Act to 'six years' from the end of the relevant assessment year for such category of cases. This 'outer time limit' cannot be altered by applying the fifth and sixth provisos to Section 149(1)(b) of the Act. The fifth and sixth provisos cannot control or override the first proviso, and certainly cannot save a notice which is squarely hit by the first proviso. If this be the case, the impugned Notice dated 20th April 2023 falls beyond the 'outer time limit' of six years (from the end of the relevant A.Y.2016-17) which time-limit had already lapsed on 31st March 2023.

10. On the other hand, Mr. Sharma, the learned counsel appearing for Respondents, submitted that a bare perusal of the Assessment Order dated 26th June 2019 passed under Section 143(3) of the IT Act would show that there is neither any deliberation or discussion on the issues raised during the scrutiny proceedings, nor any reasons have been assigned for accepting the claim of the Petitioner. The sequitur to this argument would be that essentially no 'opinion' was formed by the concerned Assessing Officer and thus, the impugned reassessment proceedings cannot be assailed on the ground of 'change of opinion'. Supporting the observations in the impugned Order passed under Section 148A(d) of the IT Act, he argued that since the Assessment Order under Section 143(3) of the IT Act was non-speaking and perfunctory, it cannot be gathered whether the Assessing Officer had expressed any opinion. Further, relying upon the Affidavit-in-Reply affirmed on 20th July 2023 by one Mr. Jaibhim Narnaware, Deputy Commissioner of Income-tax Circle 2(1), Mr. Sharma submitted that the sale of shares of *Concord Enviro Systems Pvt. Ltd.* having face value of Rs.100/- per share at an astronomical rate of Rs.86,206.90/- per share is a make-believe transaction to route the Petitioner's own unaccounted money in the guise of a share transfer agreement. He submitted that making a claim of exemption under Section 54F of the IT Act against the capital gain by executing a notarized agreement with his mother on a stamp paper of Rs.500 only is nothing but a manipulated and planned scheme to avoid his liability of payment of tax. He further submitted that the share in the immovable property allegedly acquired from his mother is not supported by any conveyance deed duly stamped and registered with the sub-registrar and therefore, the Petitioner was not eligible for the benefit under Section 54F of the IT Act. As far as the applicability of the fifth and sixth proviso is concerned, Mr. Sharma submitted that if one were to harmoniously read the first and fifth/sixth Provisos to Section 149(1)(b) of the IT Act then the impugned Notice dated 20th April 2023 would be within time, after excluding the days granted to the Petitioner for the purposes of filing a reply to the Show Cause Notice. Therefore, Mr. Sharma strongly submitted that the Petitioner is not entitled for any relief and the Writ Petition be dismissed.

11. To counter the first limb of Mr. Sharma's argument, Mr.Walve submitted that it is only when the Assessing Officer is rejecting the claim of an Assessee, the Assessing Officer is required to discuss and assign proper reasons for such rejection. This exercise is unnecessary when the claim of an Assessee is being accepted to the satisfaction of the Assessing Officer. To substantiate this argument, he relied on a judgment of a co-ordinate bench of this Court in the case of ***Knight Riders Sports Pvt. Ltd. vs. Assistant Commissioner of Income Tax & Ors. [(2023) 459 ITR 16]***. As far as the claim of exemption under Section 54F of the IT Act is concerned, Mr. Walve submitted that the erstwhile Assessing Officer had already raised a specific query doubting the purchase of part share (mother's share) in the jointly held residential property by executing a notarized agreement and the same was duly explained by the Petitioner. The Assessing Officer, after being satisfied in this regard, accepted the claim of exemption without any adverse inference. Therefore, the same issue cannot be revisited again in the garb of reassessment proceedings. He further pointed out that the reasons for reopening supplied by way of the impugned Show Cause Notice also do not contain any such allegation and the reasons cannot be improved upon or supplemented at this stage by way of an affidavit.

12. We have heard the learned counsel appearing on behalf of the parties at length and have considered the rival submissions. Although multiple grounds have been raised by the Petitioner to challenge the reassessment proceedings, we are at first examining the ground of challenge based on 'change of opinion'. Before discussing the merits of this issue, we observe that it is now well settled, whether under the old regime or the new regime, that issues decided categorically in the original scrutiny proceedings cannot be revisited in the guise of reassessment and thus, the concept of 'change of opinion' would squarely apply.

13. We have perused the record and in facts of the present case, we find that during the scrutiny proceedings, the issue of acquisition and sale of shares of *Concord Enviro Systems Pvt. Ltd.* including the share pricing, valuation, identity and creditworthiness of the purchasing party i.e. *AF Holdings, Mauritius* and the genuineness of the entire transaction was duly examined by the Assessing Officer. Not only this, the consequent claim of exemption under Section 54F of the IT Act relating to the investment in a residential property was also the subject matter of the scrutiny proceedings. It is not in dispute that the claim of the Petitioner ultimately came to be accepted by the Assessing Officer while passing the Assessment Order [dated 26th June 2019] under Section 143(3) of the IT Act after a thorough inquiry and due verification. We observe that the exercise carried out by the Assessing Officer was not merely perfunctory, but a detailed inquiry was in fact conducted before arriving at the said conclusion. In our view, it would suffice to say that the Assessing Officer had indeed formed an opinion to his satisfaction that no addition was required to be made. We find force in the argument of the Petitioner that it is not necessary for an Assessing Officer to discuss each and every issue elaborately to disclose his satisfaction when the Assessing Officer is accepting the claim of the Assessee. In this regard we are supported by the judgment of a co-ordinate Bench in *Knight Riders Sports Pvt. Ltd. (supra)*. The relevant portion of this decision reads thus :-

> *"17. The reason we say that there is a change of opinion is because once a query has been raised during the assessment and query has been answered and accepted by the Assessing Officer while passing the assessment order, it follows that the query raised was a subject of consideration of the Assessing Officer while completing the assessment. <u>This would apply even if the assessment order has not specifically dealt with that issue. It is not necessary that an assessment order should contain reference and/or discussion to disclose his satisfaction in respect of the query raised. As held in Aroni Commercials Ltd. (supra) if an Assessing Officer has to record the consideration bestowed by him on all issues raised by him during the assessment proceedings even where he is satisfied, then it would be impossible for the Assessing Officer to complete all the assessment which are required to be scrutinised by him under section 143(3) of the Act.</u>"*
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> *(emphasis supplied)*

14. Now we come to the stand taken by the Assessing Officer in placing reliance on the judgment of the Hon'ble Supreme Court in

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Income Tax Officer, ward No. 16(2) V/S TechSpan India (P.) Ltd. [(2018) 92 taxmann.com 361 (SC)]. We find that the Hon'ble Supreme Court in this case has in fact ruled in favour of the Assessee and affirmed the view that reassessment would be bad in law on account of 'change of opinion'. In the impugned Order under Section 148A(d) of the IT Act, the Assessing Officer has reproduced the following portion from the judgment :-

> *"12. Before interfering with the proposed re-opening of the assessment on the ground that the same is based only on a change in opinion, the court ought to verify whether the assessment earlier made has either expressly or by necessary implication expressed an opinion on a matter which is the basis of the alleged escapement of income that was taxable. If the assessment order is non-speaking, cryptic or perfunctory in nature, it may be difficult to attribute to the assessing officer any opinion on the questions that are raised in the proposed re-assessment proceedings. Every attempt to bring to tax, income that has escaped assessment, cannot be absorbed by judicial intervention on an assumed change of opinion even in cases where the order of assessment does not address itself to a given aspect sought to be examined in the re-assessment proceedings."*

15. In the facts of the present case, since we have already observed that the Assessing Officer had formed an opinion to his satisfaction in the scrutiny assessment proceedings, there is no doubt in our mind that the reassessment initiated in the present case on the same set of facts is merely based on a 'change of opinion'.

16. We are also unable to accept the argument of Mr. Sharma that in the present case the Petitioner was making a claim for exemption under Section 54F (exemption from payment of capital gain) by executing a notarized agreement with his mother on a stamp paper of Rs.500 only to avoid his liability to pay capital gains tax. We are also unable to agree with the argument of Mr. Sharma that the immovable property allegedly acquired by the Petitioner from his mother is not supported by any conveyance deed duly stamped and registered with the sub-registrar and therefore, the Petitioner was not eligible for the benefit under Section 54F of the IT Act. We say this because, the reasons for reopening supplied by way of the impugned Show Cause Notice under Section 148A(b) of the IT Act do not reflect the stand that is now taken by the Department in their Affidavit in Reply. The Show Cause Notice only seeks to doubt the share transaction and more particularly, the valuation of such shares. There is not a whisper about the corresponding claim of exemption under Section 54F of the IT Act and the reasons also do not reflect that this was the basis for initiating the reassessment. We are clearly of the view that the reasons recorded cannot be improved upon or substituted at this stage. In the view that we take, we are supported by a decision of a co-ordinate Bench of this Court in the case of ***Hindustan Lever Ltd V/S R. B. Wadkar***

[(2004) 137 Taxman 479 (Bombay)]. In this decision, this Court has clearly held that the reasons for reopening the assessment are required to be read as they were recorded by the Assessing Officer and no substitution or deletion is permissible. No additions can be made to those reasons and no inference can be allowed to be drawn based on reasons not recorded. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. They must disclose the mind of the Assessing Officer. There must be a vital link between the reasons recorded and the evidence for reopening the assessment, which vital link is the safeguard against arbitrary reopening of a concluded assessment. The reasons recorded by the Assessing Officer cannot be supplemented by filing an affidavit or making oral submissions, otherwise the reasons which were lacking in the material particulars would get supplemented by the time the matter reaches the Court. The relevant portion of this decision reads thus :-

> *"20. The reasons recorded by the Assessing Officer nowhere state that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of that assessment year. It is needless to mention that the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons. It is for the Assessing Officer to reach to the conclusion as to whether there was failure on the part of the assessee to disclose*

fully and truly all material facts necessary for his assessment for the concerned assessment year. It is for the Assessing Officer to form his opinion. It is for him to put his opinion on record in black and white. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. Reasons are the manifestation of mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment. The reasons recorded by the Assessing Officer cannot be supplemented by filing affidavit or making oral submission, otherwise, the reasons which were lacking in the material particulars would get supplemented, by the time the matter reaches to the Court, on the strength of affidavit or oral submissions advanced.”

(emphasis supplied)

17. Though we are mindful of the fact that the decision in *Hindustan Lever Ltd (supra)* was rendered in the context of the old regime of Sections 147 and 148, the principles laid down therein would continue to apply even to the Notice issued in the present case. Under the new regime, basically the procedure is changed whereby now a Show Cause Notice is issued to the Petitioner under Section 148A(b) of the IT Act. This Show Cause Notice is nothing but the reasons recorded for reopening the assessment. In this view of the matter, we find that the ratio laid down in *Hindustan Lever Ltd (supra)* would squarely apply to the facts of the present case.

18. Once this is the case, the impugned Show Cause Notice under Section 148A(b) of the IT Act, the impugned Order under Section 148A(d) of the IT Act and the consequent Notice under Section 148 of the IT Act are unsustainable in law and are hereby quashed and set aside. Since we have allowed the Writ Petition on the first ground itself (change of opinion), we make it clear that we have not expressed any opinion on the other grounds raised by the Petitioner to challenge the reassessment proceedings, including that of limitation as urged before us, and such grounds are expressly kept open.

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

20. 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.

[FARHAN P. DUBASH, J.] **[B. P. COLABAWALLA, J.]**

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