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28 +0530IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 13837 OF 2023

Parina Laboratories Pvt. Ltd.

....Petitioner

V/s.

Income Tax Officer Ward 2(2)(4)

Mumbai and Ors.

...Respondents

Dr. K. Shivaram, Senior Advocate i/b Mr. Rahul Hakani and Mr. Shashi Bekal
for Petitioner.

Mr. N.C. Mohanty for Respondents-Revenue.

CORAM : K.R. SHRIRAM &

NEELA GOKHALE, JJ.

DATED : 25th SEPTEMBER 2023

P.C. :

1. Petitioner is impugning an order dated 30th December 2016 passed under Section 144 read with Section 147 of the Income Tax Act, 1961 (the Act) for Assessment Year 2009-10.

2. It is petitioner's case that there were two directors in the Board of petitioner namely Devesh Ajmera and Uma Devesh Ajmera, it was Devesh Ajmera the husband of Uma Ajmera who was carrying on the business entirely. It is stated that Devesh Ajmera died on or about 17th July 2016 and thereafter the company was effectively non functional. It is petitioner's case that therefore none of the notices that were sent by the Assessing Officer (A.O.) was received by petitioner. It is averred in the petition that only in March 2020 when Uma Devesh Ajmera, who was the Director in the

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petitioner company and petitioner in Writ Petition No. 2486 of 2023, was informed by the Union Bank of India that her personal account has been attached by the Income Tax authorities, her Chartered Accountant started making enquiries and found out about the impugned order having been passed in 2016 and the consequential order passed under Section 179 of the Act against Uma Devesh Ajmera on 18th February 2020.

3. We have considered the impugned order dated 30th December 2016 in which it is stated, and rightly so, that the notices that were sent to petitioner came back undelivered with the endorsement “Left”. The A.O., it appears from the impugned order, was racing against time because the matter would have got time barred and therefore passed the impugned order. Paragraph No.5 of the impugned order reads as under :

5. Since the matter is getting barred by limitation and there is no response from the assessee and its Directors to any of the notices issued by this office till the date of passing this order, I have no alternative but to complete the assessment based on the information available on record and gathered during the course of assessment proceedings, to the best of my judgment u/s. 144 of the I.T. Act. 1961.

4. We also find that the impugned order has been passed on the basis that assessee had come to One Time Settlement (OTS) of Rs.9,59,95,749/- on 21st October 2008 with Union Bank of India for loan taken and in the absence of complete details of the OTS the said amount was added as income of petitioner.

5. Since petitioner/Uma Devesh Ajmera came to know about the existence of the order only on or about March 2020, the time to file appeal has also expired.

6. It is averred in the petition that the OTS with Union Bank of India was only about Rs.42 Lakhs and not Rs.9.60 Crores. Therefore, in our view grave prejudice will be caused to petitioner if the impugned order is sustained.

7. Dr. Shivaram also states that petitioner/Uma Devesh Ajmera will fully co-operate with the Jurisdictional Assessing Officer (JAO) and provide all details to reconsider the assessment of petitioner for Assessment Year 2009-10. Statement accepted.

8. In view of the above, we pass the following order :

(a) The impugned order dated 30th December 2016 is quashed and set aside.

(b) The JAO shall, within two weeks provide copy of all notices issued to petitioner through petitioner's advocate Mr. Rahul Hakani.

(c) Within two weeks thereafter petitioner shall reply/show cause to the notices and provide all details and documents.

(d) Within six weeks thereafter the A.O. shall pass

such order as he deems fit in accordance with law after giving a personal hearing to petitioner, notice whereof shall be communicated atleast five working days in advance.

(e) The order to be passed shall be a reasoned order dealing with all submissions of petitioner.

9. Petition disposed.

10. All consequential Notices/Demands issued are also quashed and set aside.

11. We clarify that we have not expressed any views or opinion on the merits of the matter.

(NEELA GOKHALE, J.)

(K.R. SHRIRAM, J.)