

vai

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

WRIT PETITION NO.2349 OF 2011

Girdharilal S. Vaid
V/s.

...Petitioner

Deputy Commissioner of Income
Tax (OSD), 3(1), Mumbai & Ors.

...Respondents

Mr.Jitendra Jain with Mr.B.D. Damodar i/b M/s.Kanga & Co. for the
Petitioner.

Mr.Vimal Gupta, Senior Counsel with Ms.Padma Divakar for the
Respondents.

CORAM : S.J. VAZIFDAR &
B.P. COLABAWALLA, JJ.
DATE : 4TH APRIL, 2014.

P.C. :-

1. Rule. Rule is made returnable forthwith and heard finally.
2. The petitioner has challenged a notice dated 17.03.2011, issued under section 148 of the Income Tax Act, 1961 and an order rejecting the objections filed thereto.
3. On 16.06.2004, the petitioner had filed his return of income in respect of the assessment year 2004-2005. The enclosures to the return clearly refer to the income from capital gain. Firstly, in the computation of the total income long term capital gain is referred to. The petitioner has also referred to the statements in that regard. The

statements in turn referred to the petitioner having transferred his shares and mutual funds to a partnership firm viz. A.G. Enterprises in which he is a partner for the sum of Re.1/-. The capital gain is indicated as Re.1/-.

4. The Assessing Officer by a letter dated 10.07.2006 required the petitioner to furnish the details, including the details of the long term capital gain and short term capital loss along with evidence for the same, as a well as a copy of the capital account for the period 01.04.2003 to 31.03.2003. The petitioner admittedly furnished the same under cover of a letter dated 24.07.2006. Paragraphs 1 and 2 of the letter expressly referred to enclosure 1 and enclosure 2. Absent anything else, it is reasonable to presume that having sought the information, the AO would have considered the same. The covering letter dated 24.07.2006 by itself did not refer to any details and there is no question therefore, of the AO having confined himself to what was stated in the covering letter alone. The covering letter refers to enclosures 1 and 2. He must obviously have read the enclosures. A plain reading of the enclosures also indicates that the gain / loss was computed at Re.1/-. The purchase value of the shares was also clearly indicated which was the market value.

5. Added to this is the fact that neither the impugned notice under section 148 dated 17.03.2011, nor the reasons in respect

thereof contain even a whisper to the effect that the petitioner had failed to disclose fully and truly all material facts necessary in the assessment of AY 2004-2005. This was necessary, as the proposal to reopen is beyond the period of four years after the end of the assessment year in question.

6. Mr.Gupta contended that the reasons read as a whole indicate the same.

7. We do not agree. The reasons merely referred to the position of law as perceived by respondent No.1.

8. In the circumstances, it is not necessary to consider the submission on merits. The learned counsel appearing on behalf of the petitioner contended that even otherwise in law, the stand taken by the department is unsustainable in view of section 45(3) of the said Act.

9. In the circumstances, rule is made absolute in terms of prayer (a). No order as to costs.

(B.P. COLABAWALLA, J.)

(S.J. VAZIFDAR, J.)