

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

WRIT PETITION NO. 2551 OF 2016

Mr. Cyrus Kersi Vandrevala .. Petitioner.
v/s.
Income Tax Officer
International Taxation Ward 4(3)(1)
& Others .. Respondents.

Mr. Mihir Naniwadekar with Mr. Rohan Deshpande i/b. Mr. Avinash
Singh Gautama, for the Petitioner.
Mr. Abhay Ahuja, for the Respondents.

**CORAM: M.S.SANKLECHA, &
A.K.MENON, JJ.**

DATE : 11th JANUARY, 2017.

P.C:-

Heard.

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RULE.

3 This Petition under Article 226 of the Constitution of India, challenges a notice dated 31st March, 2016 issued under Section 148 of Income Tax Act, 1961 (the Act). The impugned notice dated 31st March, 2016 seeks to assess the Petitioner for the Assessment Year 2009-10 i.e. the year in which no return of income was filed. From the record, it is clear that it is an undisputed position that for the subject Assessment Year, the Petitioner is a non-resident.

4 The reasons in support of the impugned notice refers to the fact that the Petitioner had deposited an amount of Rs.9.17 Crores and

out of which, sum of Rs.9.09 Crores had been withdrawn during the previous relevant to Assessment Year. Further, it records that the Petitioner being non-resident, would not require such huge withdrawal for his personal expenses, therefore the withdrawn funds were utilized for acquiring interest/assets in India. Consequently, the Petitioner has business interest in India. The reasons further records the fact that the Petitioner had paid Rs. 2 lakhs to M/s. Sunny Vista Realtors Pvt. Ltd., and state that he was at sometime a Director of M/s. Sunny Vista Realtors Pvt. Ltd. without recording the dates. Further, the reasons recorded refer to the payment of Rs.90,000 being made to the Registrar of Trade Marks, Rs.10.84 lakhs to Insurance Company and Rs. 1.67 lakhs to a Chartered Accountant on the basis of which it is inferred that the Petitioner had business interest in India. The reasons also place reliance upon the bank statement indicating that interest income of Rs.1.43 lakhs had accrued/earned in India from its NRO account in HSBC in India and that no return of income had been filed for the subject Assessment Year. On the above reasons, the Assessing Officer has come to a reasonable belief that an amount of Rs. 9.17 lakhs deposited in the NRO bank account and an amount of Rs.1.43 lakhs being the interest given by HSBC Bank are chargeable to tax as income escaping assessment for Assessment Year 2009-10.

5 We are of the, *prima facie* view that the reasons recorded in support of the impugned notice proceeds on an assumption that the Petitioner has business interest in India merely because he had made large withdrawals from the HSBC Bank account. This is particularly so when, *prima facie*, it is undisputed that the deposits are sourced from abroad. The other basis for re-opening of Assessment viz: non-filing of return of

income on accrued interest earned of Rs.1.43 lakhs, *prima facie*, is not sustainable as a non-resident, in these facts, is not required to file his return of income in view of Section 115G of the Act. Similarly, the other factors viz: expenditure of Rs.90,000/- paid to Trade Mark Registry is explained in the objections being the withdrawal by the wife of the Petitioner from the joint account, an amount of Rs.1.67 lakhs paid to C.A. was on account of professional services received and payment of Rs.10.84 lakhs to insurance company was on account of car insurance. The payment of Rs.2 lakhs to M/s. Sunny Vista Realtors Pvt. Ltd. does not establish, *prima facie*, any business connection of the Petitioner in India as it was, according to Petitioner, for booking of house to be constructed. None of these, *prima facie*, taken individually or together can form the basis of reasonable belief that the Petitioner has business connection in India which gives rise to income in India. These materials are indefinite/incomplete to form a reasonable belief of income escaping assessment by themselves. The above material would be at the highest could be reason to suspect but *prima facie*, not a reason to believe.

6 In the above view, the impugned notice is without jurisdiction as the reasonable belief of the non-resident having any business in India which could lead to income here is, *prima facie*, not satisfied.

7 In the above view, interim relief in terms of prayer clause (d).

(A.K.MENON,J.)

(M.S.SANKLECHA,J.)