sat

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

WRIT PETITION NO. 2470 OF 2016

M/s.Pelican Portfolio Services Pvt.Ltd. ...Petitioner
Versus
Income-tax Officer – 7(3)(3), Mumbai ...Respondent

Mr.S.C. Tiwari with Ms.Rutuja Pawar for Petitioner.
Mr.N.C. Mohanty for Respondent.

**CORAM: M. S. SANKLECHA &
S.C. GUPTE, JJ.**

DATE : 26 OCTOBER 2016

P.C. :

Heard. Rule.

2. This petition challenges the notice dated 21 March 2016 issued under Section 148 of the Income Tax Act, 1961 (the Act) seeking to reopen the assessment for Assessment Year 2011-12. In the subject assessment year, the return was processed under Section 143(1) of the Act. The reasons in support of the impugned notice reads as under :

> " In this case the assesse had filed return of income on 25.07.2011 declaring total income of Rs.89,840/- and the same was processed u/s.143(1). The case was not selected for scrutiny assessment for the year under consideration.
>
> As per information dissipated by the Assistant Director of Income tax (Investigation), Unit-1(3), Ahmedabad, revealed that on the basis of data received from National Stock Exchange (NSE), Client Code

> Modification (CCM) has been used as a tool for tax evasion. It is seen that the assessee had evaded tax through Client Code Modification (CCM) in share transactions during F.Y. 2010-11 pertains to A.Y. 2011-12 and crate fictitious losses to the extent of (-)Rs.17,70,845/-. Thus a sum of Rs.17,70,845/- has escaped assessment for A.Y.2011-12 within the meaning of section 147 of the I.T.Act, 1961.
>
> In view of the above, I have reason to believe that the income to the extent of Rs.17,70,845/- chargeable to tax for A.Y.2011-12 has escaped assessment, as assessee has failed to disclose fully and truly all material facts necessary for its assessment in this case in terms of the provisions of section 147 of the I.T.Act."

3. The challenge in this petition is on the ground that the reasons as recorded do not indicate any reason to believe that income chargeable to tax has escaped assessment. The reasons, as recorded hereinabove, merely indicate that there was client code modification which lead to a non genuine loss. The reasons do not indicate, how the aforesaid facts led to the Assessing Officer having reason to believe that income chargeable to tax has escaped assessment. Therefore, *prima facie* there is absence of link between information obtained and escapement of income chargeable to tax. Thus, the reasons, as recorded, do not *prima facie* indicate the reasons to believe that income chargeable to tax has escaped assessment.

4. The contention on behalf of the Revenue that this would be done at the time of assessment, does not satisfy the jurisdictional requirement of Assessing Officer having reason to believe that the income chargeable to tax has escaped assessment at the time of issuing the

impugned notice.

5. In the above view, interim relief in terms of prayer clause (b).

6. To be heard along with Writ Petition No.2133/2016.

(S.C. GUPTE, J.) **(M. S. SANKLECHA, J.)**