IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 526 OF 2005

M/s.Sunjewels India Pvt. Ltd. … Petitioner.
V/s.
Income Tax Officer,
Ward 8(3)(2), Mumbai and ors. … Respondents

None for the Petitioner.
Mr. Akhileshwar Sharma a/w. Mr. Vikas T. Kanchandani for the Respondent.

CORAM : NITIN JAMDAR &
N.R. BORKAR, JJ.
DATE : 13 JUNE 2022.

ORAL JUDGMENT (PER NITIN JAMDAR, J.)

. None for the Petitioner.

2. By this Petition, the Petitioner has challenged the notice dated 29 March 2004 issued by Respondent No.1 under Section 148 of the Income Tax Act, 1961 ('the Act') and the order dated 14 February 2005 disposing of the objections raised by the Petitioner.

3. The Petitioner is a Private Limited Company. The Petitioner company is engaged in the business of manufacturing and export of gold jewellery. The Petitioner filed return of income under Section 139(1) of the Act on 30 November 1998 declaring total income at

Rs. Nil after claiming depreciation on straight line method. It was stated so in the notes to account in the balance – sheet filed along with return of income in respect of exemption under Section 10A of the Act for the assessment year 1998-99. The assessment order under Section 143(3) of the Act, after scrutiny, was issued on 31 January 2001.

4. On 29 March 2004, Respondent No.1 issued notice to the Petitioner under Section 148 of the Act proposing to reassess the income of the Petitioner for the assessment year 1998-99. The Petitioner by letter dated 27 April 2004 requested the Respondent No.1 to treat the return of income filed on 30 November 1998 as being filed in response to notice under Section 148 of the Act. The Petitioner received notices to attend, which the Petitioner complied with. On 24 December 2004, the Petitioner requested the reasons to be supplied. The reasons were supplied by the Respondent No.1 by letter dated 4 January 2005. On 22 January 2005, the Petitioner raised the objections to the notice which was rejected by order dated 14 February 2005. Hence, the present petition was filed.

5. Rule was issued in this petition on 7 March 2005 and the interim relief was granted in terms of prayer clause (d), i.e., staying the impugned order, notice and further proceedings.

6. The learned Counsel for the Respondent has sought to rely on the order dated 14 February 2005 disposing of the objections and contended that no case is made out by the Petitioner.

7. On the face of reasons supplied to the Petitioner itself the Petitioner is entitled to succeed. The reasons given to the Petitioner are as under:

> *"While completing the assessment company was allowed depreciation on straight line method instead of W.D.V. method as per I.T. Act, 1961. The income was claimed and allowed exempt u/s.10A of the I.T. Act, 1961. The allowance, if less depreciation amounted increase in exemption u/s.10A of the I.T. Act. The less depreciation works out to Rs.2,42,400/- for A.Y. 1998-99. I have further reason to believe that income chargeable to tax has escaped assessment by virtue of provisions of section 147 of the I.T. Act, 1961"*

8. The two fundamental errors can be noticed. Firstly, by notice dated 29 March 2004 the assessment in respect of year 1998-99 was sought to be reopened, however, there is not even an assertion that there is failure on the part of the Petitioner to disclose fully and truly all material facts, which is a mandatory requirement to assume jurisdiction by the Respondent. Secondly, the Respondent No.1 seems to proceed on the ground that the Petitioner has applied wrong method in respect of depreciation. This is a clear change of opinion. There is absolutely no failure on the part of the Petitioner

to disclose the facts. Therefore, in the light of settled law governing exercise of powers under Sections 147 and 148 of the Act, the Petitioner is entitled to succeed.

9. Rule is made absolute in terms of prayer clause (a) and (b).

10. No order as to costs.

(N.R. BORKAR, J.) **(NITIN JAMDAR, J.)**