

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

WRIT PETITION NO.1155 OF 2016

General Electoral Trust

.. Petitioner.

Vs.

Income Tax Officer 20(1)(2),
Mumbai & Others

.. Respondents.

Mr. J.D. Mistri, Senior Counsel with Madhur Agarwal with Mr. Atul Jasani for the petitioner.

Mr. Suresh Kumar with Ms.Samiksha Kanani for the respondents.

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

DATED : 20TH JULY, 2016

P.C. :

1. At the very outset Mr.Mistri, learned Senior Counsel appearing on behalf of the petitioner seeks leave to amend paragraph 12 of the petition insofar as it states that no petition has been filed in respect of same subject matter in this Court. We find that the petition itself has made an averment that an earlier Writ Petition No.(L) No.273 of 2016 challenging notice dated 31st March, 2015 seeking to re-open the assessment.

2. Thus liberty is granted to amend the petition. Amendment to be carried out forthwith. Re-verification dispensed with.

3. Heard. Rule.

4. This petition challenges a notice dated 31st March, 2015

issued under Section 148 of the Income Tax Act, 1961 (the 'Act') seeking to re-open assessment for the assessment year 2008-09. The reasons in support of the impugned notice indicate that for Assessment Year 2008-09 the petitioner has not filed its return of income nor obtained PAN (Permanent Account Number). This even when the petitioner had received contribution aggregating to Rs.6.58 crores during previous year relevant to Assessment Year 2008-09.

5. The petitioner in its objection to the reasons in support of the impugned notice interalia pointed out that it is not religious nor charitable trust and contribution received by such private trust would not be income under the Act as it is not covered by Section 2(24)(iia) of the Act. Further, it was also pointed out that the Petitioner - Trust did not earn any income and the amount which was received as contribution had in terms of the trust to be distributed to various political parties and/or individual candidates. Further as per clause 8 of the Trust deed, in the event the amount is not distributed within a period of six years from the date of receiving the contribution, the undistributed amount is required to be returned to the contributor. Further, the obligation to file return of income as well as obtain PAN number is only when there is taxable income which arises in the hands of person. In this case the reasons proceed on the basis that all contributions which are received would be income of the petitioner - assessee. Therefore it

is submitted that the impugned notice is without jurisdiction.

6. Mr. Suresh Kumar, learned counsel appearing for the revenue supported the impugned notice on the ground that the petitioner has not filed any return of income and, therefore, the impugned notice need not be interfered with at this stage. The impugned notice was sought to be supported by the order disposing of the objections. On the petitioner filing its return of income the petitioner's contention will be examined and accepted if found correct. No prejudice is caused to the petitioner by participating in reassessment proceedings.

7. Mere non filing of return of income does not give jurisdiction to the Assessing Officer to re-open the assessment unless the person concerned has total income which is assessable under the Act exceeding maximum amount which is not chargeable to Income Tax. This is provided in Explanation 2 to Section 147 of the Act. This is for the reason that in terms of Section 139(1) of the Act the obligation to file a return of income is only when the total income of a person exceeds the maximum amount not chargeable to tax. So also the obligation to obtain PAN only arises on the income being in excess of the maximum amount not chargeable to tax. Therefore, non filing of return of income and/or not obtaining of PAN does not ipso facto give jurisdiction to reopen an assessment under Section 147/148 of the Act. Prima facie the jurisdiction even in case of non filing of return of income to issue notice of re-opening

notice is a reasonable belief of the Assessing Officer that income chargeable to tax has escaped assessment. The condition precedent for issuance of notice under Section 147/148 of the Act is no different in cases where no return of income has been filed. If clause (a) of explanation 2 to Section 147 of the Act is to be applied then it must be established that the income of the person to whom the notice is issued is in excess of the maximum amount not chargeable to tax. This could have been done by collecting information under Section 133B of the Act.

8. In this case the reasons in support do not indicate any reasonable belief that income chargeable to tax has escaped assessment nor does it hold that income of the petitioner is in excess of the maximum amount chargeable to tax. It proceeds on basis that all receipts is income. The re-opening notice has to be tested by the terms recorded for issuing the notice and the order disposing of the objection cannot be the basis for sustaining the impugned notice. No prejudice to the Assessee, as contended by the Revenue, cannot be the basis for acquiring jurisdiction to issue a re-opening notice.

9. Prima facie we are of the view that the impugned notice is without jurisdiction. Accordingly, interim stay in terms of prayer clause (d).

(A.K. MENON,J.)

(M. S. SANKLECHA,J.)