



wp-58-2018

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

WRIT PETITION NO. 58 OF 2018

Shahrukh Khan .. Petitioner.
v/s.
The Deputy Commissioner of Income Tax
Central Circle-4(2) & Others .. Respondents.

Mr. Hiro Rai with Mr. A. K. Jasani, for the Petitioner.
Mr. N. C. Mohanty, for the Respondents.

**CORAM: M.S.SANKLECHA &
RIYAZ I. CHAGLA, JJ.**
DATE : 8th FEBRUARY, 2018.

P.C:-

Heard.

2 RULE.

3 This Petition under Article 226 of the Constitution of India, challenges a show cause notice dated 30th March, 2017, issued by the Deputy Commissioner of Income Tax under Section 148 of the Income Tax Act, 1961 (the Act), seeking to re-open the Assessment for Assessment Year 2010-11. The regular assessment for the Assessment Year 2010-11 was completed on 28th February, 2013 under Section 143(3) of the Act. The impugned notice is beyond a period of four years from the end of the Assessment Year 2010-11.

4 The reasons in support of the impugned notice proceeds on the basis of information received on 29th March, 2017 from the Deputy Director of Income Tax (Inv.). The information was in respect of Valuation of 1,10,00,000 Shares of M/s. Knight Riders Sports Pvt. Ltd., purchased during Assessment Year 2010-11 for consideration of Rs.10/- per share, was in fact, determined at fair market value at Rs.33.35/- per share by the report of the Government Valuer. On the aforesaid basis, the Assessing Officer has come to a reasonable belief that 1,10,00,000 shares were purchased at an undervaluation of Rs.25.69 Crores. It was the aforesaid amount of Rs.25.69 Crores on account of under-valuation which, according to reasons recorded, has resulted in income escaping assessment to tax, for the Assessment Year 2010-11.

5 The Petitioner in his objections pointed out that there was a complete disclosure of all facts during regular assessment proceedings. Attention was invited to the note annexed to Assessment Order dated 28th February, 2013 which clearly shows that the Assessing Officer had, in fact, applied his mind to the valuation of shares of M/s. Knight Riders Sports Pvt. Ltd., purchased by the Petitioner during the regular assessment proceedings, leading to the order dated 28th February, 2013 passed under Section 143 (3) of the Act. This was considered, *inter alia*, in the context of the valuation of shares, if undervalued, being considered as gift to the extent of under-valuation. Besides, in terms of Section 56(2) (vii) of the Act, dealing with under-valuation of purchase of movables (shares) by individuals, mandates its valuation in terms of Income Tax Rules. The note annexed to the Assessment Order, itself mentions that the value of shares is less than Rs.5/- per share on application of Rule 11 UA of the Income Tax Rules.

6 *Prima facie*, the order disposing of the objections, while dealing with the objection of no reason to believe that income has escaped assessment on application of Section 56(2)(vii) of the Act, has completely ignored the Explanation thereto. The Explanation to Section 56(2) (vii) of the Act states that the fair market value is to be determined in accordance with the Income Tax Rules. The office note annexed to the Assessment Order dated 28th February, 2013 passed under Section 143(3) of the Act holds that on application of Rule 11 UA of the Income Tax Rules, the value per share came to less than Rs.5/- per share.

7 In the circumstances, we are, *prima facie*, of the view that the impugned notice indicates a change of opinion, as this very issue namely – valuation of share was a subject matter of consideration during the regular assessment proceedings. Besides, on the application of method of valuation as mandated by the Explanation to Section 56(2)(vii) of the Act, *prima facie*, the Assessing Officer could not have had reason to believe that income chargeable to tax has escaped assessment.

8 In the above view, *prima facie*, the impugned notice is without jurisdiction. Accordingly, there shall be interim relief in terms of prayer clause (d).

Respondents waive service.

(RIYAZ I. CHAGLA,J.)

(M.S.SANKLECHA,J.)