

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

WRIT PETITION NO. 1069 OF 2016

Jitendra Chandralal Navlani & Anr.

.. Petitioners

v/s.

Union of India
through Joint Secretary & Ors.

.. Respondents

Mr. Vikram Nankani, Sr. Counsel i/b Atul Jasani for the petitioners
Mr. Ashok Kotangale a/w Ms. Padma Divakar for respondent nos. 1 to 3
Mr. Neelambuj, Company Prosecutor of respondent no.4 present in person.

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

DATED : 8th JUNE, 2016.

PC.

1. Heard. Rule.

2. This petition has been filed by the Directors of an erstwhile M/s.

Addler Security Systems Pvt. Ltd. (since dissolved) challenging:-

- (a) a Notice dated 24th March, 2015 issued under Section 148 of the Income Tax Act, 1961 (the Act) seeking to re-open the Assessment for A. Y. 2008-09; and
- (b) Assessment order dated 28th March, 2016 passed under Section 143(3) r/w Section 147 of the Act consequent to the impugned

Notice dated 24th March, 2015.

3. On receipt of the reopening notice, the Chartered Accountant of the erstwhile M/s. Addler Security Systems Pvt. Ltd., had originally accepted the same but immediately thereafter by letter dated 5th May, 2015 pointed out that the company M/s. Addler Security Systems Pvt. Ltd. is no longer in existence as it has been dissolved. Consequent thereto, the Assessing Officer has also issued a notice under Section 142(1) of the Act to one of the petitioner who was the Director of erstwhile M/s. Addler Security Systems Pvt. Ltd. (since dissolved). In response, the Director of the erstwhile M/s. Addler Security Systems Pvt. Ltd., pointed out that the company has already been dissolved and it is no longer in existence. Notwithstanding the above, the Assessing Officer by an order dated 28th March, 2016 has passed the impugned order framing the assessment in case of M/s. Addler Security Systems Pvt. Ltd. (since dissolved) for Assessment Year 2008-09.

4. Normally we would not have entertained a petition as an alternative remedy to file an appeal is available to the petitioners. However, *prima facie*, the impugned notice has been issued in respect of a non existing entity as M/s. Addler Security Systems Pvt. Ltd., which stands dissolved, having been struck off the Rolls of the Registrar of

Companies much before its issue. Consequently, the assessment has been framed also in respect of the non-existing entity. This defect in issuing a reopening notice to a non-existing company and framing an assessment consequent thereto is a issue which goes to the root of the jurisdiction of the Assessing Officer to assess the non-existing company. Thus, *prima facie*, both the impugned notice dated 24th March, 2015 and the Assessment Order dated 28th March, 2016, are without jurisdiction.

5. In the above view, we entertain the present petition and by way of interim relief, grant a stay to the assessment order dated 28th March, 2016 and restrain the Revenue from taking any further proceedings consequent thereto.

(A.K. MENON, J.)

(M.S. SANKLECHA, J.)