

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 23178 of 2017

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MR.JUSTICE B.N. KARIA

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	

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ROYAL INFRASTRUCTURE....Petitioner(s)

Versus

DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE-1(2)1.....Respondent(s)

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Appearance:

MR MANISH J SHAH, ADVOCATE for the Petitioner(s) No. 1

MR.VARUN K.PATEL, ADVOCATE for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**

and

HONOURABLE MR.JUSTICE B.N. KARIA

Date : 21/02/2018

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. The petitioner has challenged a notice of reopening dated 31.3.2017 issued by the respondent Assessing Officer.
2. Brief facts are as under. The petitioner is a partnership firm and is engaged in the business of development of housing projects. For the assessment year 2010-2011, the petitioner had filed the return of income on 28.9.2010 declaring gross total income of Rs. 1.36 crores and after claiming deduction of Rs.1.10 crores under section 80-IB(10) of the Income Tax Act, declared a total income of Rs.25.73 lacs. Such return was taken in scrutiny. The Assessing Officer raised multiple queries including calling for the details of housing projects completed by the assessee and the allotment of shops and houses in such complex. The petitioner duly complied with such questions. The Assessing Officer thereupon passed the order of assessment under section 143(3) of the Act on 27.11.2012.
3. To reopen such assessment, the Assessing Officer issued the impugned notice. In order to do so, he had recorded the following reasons :

“During the course of assessment Proceedings for the asst. year 2013-14, it was noticed that the assessee has sold flat no. 403 tower no. 49 to Shri Gauttam K Patel and Flat No. 404 tower no. 9 to Smt. Bhavana Gauttam Patel From the information gathered it was proved that the Shri Gauttambhai Kantibhai Patel and Smt. Bhavanaben Gauttambhai Patel are husband and wife. As per the provisions of section 801B(10) of the act, the amount of deduction in the case of an undertaking developing and building housing projects approved before the 31st day of March by a local authority shall be hundred per cent of the Profits derived in the previous year relevant to any assessment year from such housing project if,

.....

(e) not more than one residential unit in the housing project is allotted to any person not being an individual; and

(f) in case where a residential unit in the housing project is allotted a person being an individual, no other residential unit in such housing project is allotted to any of the following persons, namely

(i) the individual or the spouse or the minor children of such individual,

(ii) the Hindu undivided family in which such individual is the Karta

(iii) any person representing such individual, the spouse or the minor children of such individual or the Hindu undivided family in which such individual is the Karta.

Thus, during the course of assessment proceedings for the asst. year 2013-14 it was proved and also it was admitted

by the assessee that the assessee has allotted flat no. 403 and 404 at Tower A/9 Spring Wood Residency to Shri Gauttam Kantibhai Patel and Smt. Bhavana Gauttam Patel respectively, who are husband and wife. Accordingly, the claim of deduction u/s 801B(10) of the Act amounting to Rs. 1,56,40,674/- was disallowed and added back to the total income of the assessee.

For claiming deduction u/s. 801B(10), the assessee has to fulfill all the conditions laid down in all the clauses below section 801B(10) of the Act. In this case, as stated herein above that the assessee has violated the provision of clause (f) sub-clause (i) of the act and as such the assessee is not entitled to claim deduction u/s 801B(10) of the Act.

A plain reading of the provision of section 801B(10) of the Act makes it clear that an assessee will be entitled to claim deduction under the provision of section 801B(10) of the Act, if he fulfills all the conditions mentioned in clause (a) to (f) below section 801B(10) of the Act. In the instant case, the assessee has contravened the provisions of clause (f) sub-clause (i) to section 801B(10) of the Income-tax Act, 1961. Therefore, the deduction u/s 801B(10) of the Act claimed by the assessee is to be disallowed.

Hence, in view of the above, I have reason to believe that the income to the extent of Rs. L,10,93,121/- has escaped assessment for the A.Y. 2010-11 by reason the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment within the meaning of section 147 of the Act and I am satisfied that the case is a fit one for issuance of notice u/s. 148 of the Income-tax.”

4. Counsel for the petitioner submitted that the notice of

reopening was issued beyond a period of four years from the end of relevant assessment year. There was no failure on part of the petitioner to disclose truly and fully all material facts. Notice of reopening was therefore, invalid. He further submitted that during the original assessment, the entire issue of assessee's claim of deduction under section 80-IB(10) of the Act was examined. Any attempt on part of the Assessing Officer to make change in such assessment would be change of opinion. Counsel lastly contended that in any case, merely because there was some alleged breach in the allotment of completed units of the residential complex by the assessee would not disentitle the assessee from claiming the deduction during earlier years.

5. On the other hand, learned counsel Shri Varun Patel for the department opposed the petition contending that the Assessing Officer had recorded proper reasons. During the assessment of assessment year 2013-2014, it was found that the petitioner had made allotment of two residential units in favour of husband and wife which was in breach of conditions. The claim of deduction was therefore, rejected in such year. Such breach of condition would disentitle the petitioner from claiming deduction in earlier years also.

6. Facts are not in dispute. There is no allegation by the

department that during the year under consideration i.e. the assessment year 2010-2011, the petitioner made any allotment of residential units in breach of conditions. The Assessing Officer as per the reasons recorded wishes to reexamine the petitioner's claim of deduction of Rs. 1.10 crores under section 80-IB(10) of the Act for the said assessment year on the premise that that in the assessment year 2013-2014, such claim was rejected since the petitioner had breached condition of not allotting two residential units to husband and wife. In other words, in absence of allegation of any of the breaches in the year under consideration, the Assessing Officer wishes to reopen the assessment for the current assessment year. On the simple reason that there was no failure on part of the assessee to disclose truly and fully all material facts, a mandatory condition which must be satisfied before reassessment can be permitted, impugned notice must go.

7. In that view of the matter it is not necessary to examine the contention of Shri Varun Patel that for breaches committed in later years, deduction claimed and already granted even if after scrutiny, can be withdrawn.
8. In the result, petition is allowed. Impugned notice is set aside. Petition is disposed of.

(AKIL KURESHI, J.)

(B.N. KARIA, J.)

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