IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22594 of 2017
With
R/SPECIAL CIVIL APPLICATION No. 22601 of 2017
With
R/SPECIAL CIVIL APPLICATION No. 22605 of 2017
With
R/SPECIAL CIVIL APPLICATION No. 22609 of 2017
With
R/SPECIAL CIVIL APPLICATION No. 22621 of 2017

FOR APPROVAL AND SIGNATURE :
HONOURABLE Mr. JUSTICE AKIL KURESHI
and
HONOURABLE Mr. JUSTICE B.N. KARIA
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1	Whether Reporters of Local Papers may be allowed to see 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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DHARMNATH SHARES AND SERVICES PVT. LTD.
Versus
ASST. COMMISSIONER OF INCOME TAX - CEN CIR 1(2)
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Appearance :
Mr SN DIVATIA for the PETITIONER(s) No. 1
DS AFF.NOT FILED (N) for the RESPONDENT(s) No. 1
Mrs MAUNA M BHATT for the RESPONDENT(s) No. 1
NOTICE SERVED BY DS for the RESPONDENT(s) No. 1
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CORAM: HONOURABLE Mr. JUSTICE AKIL KURESHI
and
HONOURABLE Mr. JUSTICE B.N. KARIA
7th March 2018

COMMON JUDGMENT (PER : HONOURABLE Mr. JUSTICE AKIL KURESHI)

These petitions, though filed by different petitioners, arise in the common factual background. We may notice the facts from Special Civil Application No. 22594 of 2017. The petitioner is a private limited company registered under the Companies Act, 1956. For the Assessment Year 2010-2011, the petitioner-company had not filed any return. The respondent-Assessing Officer issued a notice dated 30th March 2017 to assess/re-assess the petitioner's income for AY 2010-2011, since he was of the opinion that the income chargeable to tax has escaped assessment. In order to do so, he issued such notice wherein he had recorded elaborate reasons. It is not necessary to reproduce entire reasons. It would be sufficient to record gist thereof. According to such reasons, in serach operations which were carried under Section 132 of the Income-tax Act, 1961 ["**the Act**" for short] in case of Barter group of companies and persons revealing large scale scam of providing accommodation entries. In many cases, it was found that the funds received by the companies in the form of share capital was not genuine, one of them being Dharmanath Share & Services Private Limited [hereinafter referred to as, "**the Dharmanath**"]. The Assessing Officer noted that the petitioner company had merged with the said Dharmanath. Before its merger, however, the assessee company had been engaged in the entire chain of transactions of bogus share capital money and of providing accommodation entires. According to the Assessing Officer, the company had received commission @ 2% in such deals and had thus earned commission income which was unaccounted. The petitioner raised objections to the said notice of reopening under letter dated 21st August 2017. Such objections, however, were rejected by an Order dated 15th November 2017. Hence, the petition.

Being conscious of the limitation in a case of reopening where no return was filed, counsel for the petitioners confined himself to the following arguments :

[i] That the petitioner-Company had amalgamated with Dharmanath Share & Services Private Limited by a judgment of this Court dated 4th May 2012 with effect from 1st April 2010. Since amalgamation, the company had no legal existence. Notice of reopening, therefore, could not have been issued to such a company.

[ii] M/s. Dharmanath Share & Services Private Limited was subjected to assessment under Section 153 [C] of the Act in which entire transactions; including the commission amount, have been taxed. The same cannot now be taxed in the hands of assessee.

[iii] In view of the facts noted above, the Assessing Officer cannot be said to have a reasonable belief that the income chargeable to tax has escaped assessment.

On the other hand, learned counsel for the Department opposed the petitions contending that the Assessing Officer has recorded proper reasons. There is *prima facie* material to show that the petitioner-company had earned sizeable unaccounted income and yet filed no return.

It is not indispute that the petitioner-company amalgamated with Dharmanath by virtue of the judgment of this Court dated 4th May 2012. In fact, copy of the order of this Court is produced on record. Though this order was passed on 4th May 2012, the effective date of amalgamation was 1st April 2010. Division Bench of this Court in case of **Khurana Engineering Limited v. Deputy Commissioner of Income Tax**, reported in [2014] 364 ITR 600 [Guj.] had held that once the assessee company had amalgamated with the transferee company, its independent existence did not survive, and therefore, would no longer be amenable to assessment proceedings. For such purpose, the Court had quashed the notice on the company which had already merged, for producing documents for assessment. Under the circumstances, the notices in the present case would also be invalid. Learned counsel for the Revenue, however, made faint attempt to argue that the *impugned* notices have been issued not to the transferor company, but to Dharmanath Share & Services Private Limited itself. Such contention has to be rejected out of hand. The notice itself is addressed to the Principal Officer/ Director of M/s. Rajendrasuri Financial Services [Gujarat] Private Limited [the present assessee]. By reference, it also records that the company has now merged with Dharmanath Share & Services Private Limited, nevertheless, the notice is to M/s. Rajendrasuri Financial Services [Gujarat] Private Limited. Had the Revenue desired to issue notice of re-assessment to Dharmanath Share & Services Private Limited, there would have been six different notices for the same assessment year, as in the present case. We also noticed that the very same income has also been taxed in the hands of Dharmanath Share & Services Private Limited.

Under the circumstances, impugned notices are quashed. Petitions stand disposed of accordingly.

[Akil Kureshi, J.]

[B.N Karia, J.]

Prakash