IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 18080 of 2015
With
SPECIAL CIVIL APPLICATION NO. 18081 of 2015
With
SPECIAL CIVIL APPLICATION NO. 18090 of 2015
With
SPECIAL CIVIL APPLICATION NO. 19382 of 2015
With
SPECIAL CIVIL APPLICATION NO. 19383 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE AKIL KURESHI

and
HONOURABLE MR.JUSTICE A.J. SHASTRI

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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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VICKY RAJESH JHAVERI....Petitioner(s)
Versus
DEPUTY COMMISSIONER OF INCOME TAX & 1....Respondent(s)

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Appearance:
MR RK PATEL, ADVOCATE for the Petitioner(s) No. 1

MRS MAUNA M BHATT, ADVOCATE for the Respondent(s) No. 1 - 2
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CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**
and
HONOURABLE MR.JUSTICE A.J. SHASTRI

Date : 14/06/2016

COMMON ORAL JUDGMENT
(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. These petitions involved substantially similar facts. They have been heard together and would be disposed of by this common judgment.

2. Brief facts may be noted from Special Civil Application No.18080 of 2015. Whenever there are additional facts arising out of petitions, reference would be made to the same at an appropriate stage.

3. Petitioner is an individual and is regularly assessed to tax. The petitioner filed the return of income for the assessment year 2010-11, on which, the Assessing Officer passed scrutiny assessment on 28.12.2012. To reopen such assessment, respondent No.1 issued notice dated 25.03.2015. The notice therefore, was issued within a period of four years from the end of relevant assessment year. In all cases such notices were issued within four years, in

some cases, the original assessments were framed after scrutiny and in some, returns accepted under section 143(1) of the Act.

4. The Assessing Officer in the case on hand, had recorded detailed reasons for issuing the notice for reopening. It would be useful to record such reasons:

> *“A search and survey action was carried out at the residence and offices of Shri Shirish Chandrakant Shah (hereinafter referred to SCS) and at the residence of his key employees and associates on 09.04.2013 and subsequent days. During the course of search, it was found that SCS is engaged in providing accommodation entries of share capital, share premium, share application money, unsecured loans, Long Term Capital Gains, Short term capital gain wherein cash is received by him from various clients and against this cash he provides accommodation entries.*
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> *The records of providing accommodation entries are maintained by SCS in various excel sheets maintained in the name of intermediaries who have introduced clients to SCS. Perusal of these sheets and the statements of SCS and his employees establishes that the main intermediary through whom clients availed accommodation entries from SCS is Shri Rajesh Jhaveri of Ahmedabad.*
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> *During the course of search, documents and digital data containing date-wise details of receipt and payment of cash and cheques by Shirish Chandrakant Shah was found to be maintained in form of cash and cheques sheets. The records of providing accommodation entries are maintained by SCS*

in various excel sheets maintained in the name of intermediaries who have introduced clients to SCS. On examination of the seized/impounded evidence, accounts in name of Rajesh Jhaveri have also been found to be recorded in excel sheets under various names such as "rajesh Jhaveri"; "rj"; "n navkar"; "R JHAVERI"; "RAJESH JHAVERI" and "N NAVKAR (sawaca)". These accounts contain the details of cash received from/through Rajesh Jhaveri by SCS and the accommodation entries provided there against.

During the course of survey conducted at the office of SCS situated at Dwarka Ashish Building 'Sheetl' in MS Excel file "n navkar bips 30.10.12" was impounded at the path F:\pen drive back up\Removable Disk \n Navkar of Annexure A-35. Amongst other transactions, transactions related to purchase and sale of shares of Prraneta Industries Limited (hereinafter referred to as "PIL") were also found to be recorded. The transactions recorded in the said sheet of "n navkar bips 30.10.12.xls" with regard to shares of Prraneta Industries Limited contains the details of cash received (which is corroborated with the cash sheets for the respective dates), date of the transaction, particulars of the transactions, quantity of shares purchased or sold by SCS through the persons/entities controlled by him or other independent entities in "badla" transactions, the rate of shares of PIL at which the trade has been executed (in certain cases this is the average rate of shares purchased or sold by SCS through his controlled persons/associates), the value of the trade, payout made by SCS through persons controlled by him, pay-in received by SCS.

During the course of search on SCS and post-search proceedings, it was found that PIL is a shell company without any activities and is being used so as to provide various types *of accommodation entries including bogus LTCG. The control and management of the said company along with the shares is with SCS since year 2008. PIL along with another 211 companies are managed and controlled and managed by SCS, which also include 16 listed companies, which got substantiated by the inquiries in the form of statements of Directors, information and declarations filed by the directors. Further, evidence with regard to the fact that SCS has indulged in synchronized trading so as to jack up the price of the shares of the listed companies controlled by him including PIL was also found and seized/impounded. As stated above, evidence with regard to the fact that the payout received on sale of shares of PIL has been received against payment of unaccounted cash has also been found and impounded during the course of search and survey conducted in the case of SCS.*

A search in the case of Prraneta Industries Limited (now known as Aadhar Ventures India Limited) was also conducted on 09.04.2013. Shri Radheshyam Sharma, manager of the company, in his stated dated 09.04.2013, has stated that there is no business activity in the company and the entire affairs of the company including the preparation and maintenance of the books of accounts of the company is being done by Shirish Chandrakant Shah. Shri Omprakash Anandilal Khandelwal, Managing Director of PIL, in his statement recorded u/s 132(4) of the Act on 30.05.2013 and 31.05.2013 stated that PIL, though a company listed with BSE, is engaged in providing accommodation entries of unsecured loans and share capital since inception. He has further stated that there is no actual business activity in this company and the entire turnover is mere paper turnover. He has further stated that since 2008 the entire affairs of the company are being managed and controlled by Shirish

Chandrakant Shah and the bank accounts of the company are being used by him for providing accommodation entries. He has also stated that the shares of the company are being controlled by Shirish Shah and the same are being used by him so as to provide long term capital gains entries by resorting to synchronized trading. Further, Shri Kumar Raichand Madan, director of PIL, in his statement u/s 131(1A) of the Act recorded on 09.04.2013, has stated that he is a dummy director and the entire affairs of the companies are managed and controlled by SCS. Other two directors of PIL, Jyoti Dhiresh Munver and Jils Raichand Madan have also filed declarations stating that they are dummy directors.

During the pre-search investigations it was found that Shri Damodar Attal is the key person, an employee of Shirish Shah, who was looking after the share manipulation and LTCG entry operations being undertaken by Shirish Shah. In the statement recorded u/s 132(4) of the Act on 09.04.2013, Shri Damodar Attal has stated that he works for Shirish Shah; he purchases and sells shares of BSE listed companies operated by Shirish Shah at the trading terminal as per instructions of SCS; he has provided the list of the listed companies operated by Shirish Chandrakant Shah which include Prraneta Industries Limited; SCS through synchronized trading jacked up the prices of the shares managed and controlled by him and these shares were sold at low prices to persons and bought back from them at high prices after one year and thus, they would get exempt long term capital gains from the said transactions. He has clearly admitted that he himself was involved in synchronized trading as per the instructions of Shirish Shah in the shares of the BSE listed companies managed by SCS. These facts have also been accepted by SCS. He has specifically stated that synchronized *trading was resorted to so as to jack up the prices of shares and buy the shares from the clients and provide them payout against the receipt of cash from them. He categorically admitted that shares of Prraneta Industries Limited were used to provide accommodation entries and synchronized trading was resorted to for buying and selling of shares of PIL.*

In light of above facts, the transactions recorded in the "rajesh Jhaveri" sheet represent buying and selling of shares through synchronized trading. The entries as recorded in this sheet have been corroborated with the trade data of PIL as obtained from BSE. On correlation, it has been found that these transactions relate to actual trades executed on BSE. As per the entries recorded in the said sheet, the payout made in the shares of PIL has been made against receipt of cash by SCS.

From the entries recorded in 'n navkar bips 30.10.12.xls' with regard to shares of Prraneta Industries Limited, it is seen that the assessee has received payout of Rs.4,03,34,595/- on sale of 955644 shares of Prraneta Industries Ltd. As recorded in the seized/impounded documents, the payout has been received against payment of cash.

Thus, the entire transaction wherein payout of Rs.4,03,34,595/- has been received by the assessee during the A.Y. 2010-11/2011-12 is not genuine transaction. Therefore, I have reason to believe that income amounting to Rs.4,03,34,595/- chargeable to tax has escaped assessment within the meaning of section 147 of the Act by reason of the failure of the assessee to disclose fully and truly all material facts."

5. The petitioner raised objections to the process

of reopening under letter dated 10.07.2015. Such objections were however, rejected by order dated 08.09.2015 upon which the petitioner has approached this Court.

6. Learned counsel for the petitioner submitted that the reasons lack validity. There is no material on record to establish that there was any pay-out made to the petitioner as recorded in the reasons and that therefore, the formation of the belief by the Assessing Officer that income chargeable to tax had escaped assessment is wholly invalid. The counsel painstakingly took us through the reasons recorded on the materials produced by the Revenue on record and contended that there has not been any pay-out of the said sum of Rs.4,03,34,595/- for sale of 9,55,644 shares as averred in the reasons. The counsel further submitted that in the reasons recorded, the Assessing Officer is uncertain whether such sum of Rs.4.03 Crores (rounded off) represented unassessed income of the assessee for the assessment year 2010-11 or 2011-12. On this ground also, the notice must be quashed.

7. Similar contentions were raised in Special Civil Application No.19382 of 2015 also. In other three petitions in addition to raising these contentions, counsel for the petitioner submitted that the Revenue has included payments made to the petitioner for sale of shares after 01.04.2011 for reopening of the assessment for the assessment year 2011-12 where the relevant period would be 01.04.2010 to 31.03.2011. Thus, wholly irrelevant material has been relied upon by the Assessing Officer to form a belief that income chargeable to tax has escaped assessment.

8. In support of his contentions, counsel relied on the decision of Division Bench of this Court in case of ***Atam Prakash Batra – Prop. of Guria Textiles v. Assistant Commissioner of Income-tax, Circle – 5,*** reported in ***[2013] 36 taxmann.com 123 (Gujarat)*** where finding that the Revenue even, *prima-facie* failed to establish that any commission was actually paid to the assessee during the relevant period, the Court quashed the notice of reopening on the ground that the Assessing Officer had no valid reason to believe the income had escaped assessment. The counsel also relied on the judgment in case of ***Sagar***

Enterprises v. Assistant Commissioner of Income-tax, reported in ***257 ITR 335*** where the Assessing Officer was not clear in which year the income could be taxed, the Court quashed the notice for reopening.

9. On the other hand, learned counsel for the Revenue opposed the petitions contending that there was voluminous material on record to permit the Assessing Officer to form a belief that income chargeable to tax has escaped assessment. He submitted that after detailed exercise undertaken by the Assessing Officer of reconciliation of various entries in *n navkar bips,* found during search and the data maintained by Bombay Stock Exchange, it was found that large number of shares said to have been sold by the assessee were tainted. He explained in detail the *modus-operandi* adopted by various persons involved in scam of providing bogus accommodation entries. He contended that the petitioner was also beneficiary of such circuitous bogus transactions. Reliance was placed on decision of Division Bench of this Court in case of ***Yogendrakumar Gupta v. Income Tax Officer,*** reported in ***366 ITR 186*** where finding that the assessee had indulged in accommodation entries, this

Court permitted reopening of assessment.

10. If one peruses the reasons recorded by the Assessing Officer and which are reproduced herein above, the first part gives details of the manner in which Shirish Chandrakant Shah had created a web of number of sham companies, through which, he would provide range of accommodation entries including long term capital gain through sale of shares and retain commission for himself in the process. In this part, we also notice that Rajesh Jhaveri was one of the important players in this process devised by Shirish Chandrakant Shah. There was prima-facie material suggesting Prraneta Industries Limited was one such company utilized by Shirish Chandrakant Shah for such purpose. These details had come on record through statements of various persons recorded by the Revenue authorities through search and survey operations. For example, during the search of Prraneta Industries Limited, the manager of the company – Radheshyam Sharma had stated that there was no business activity in the company and the entire affairs including preparation and maintenance of books of accounts was being done by Shirish Chandrakant Shah. Shri

Omprakash Anandilal Khandelwal, the Managing Director of the company had also stated that the company is engaged in providing accommodation entires and no actual business activity is being undertaken. The affairs of the company being managed and controlled by Shirish Chandrakant Shah and the bank accounts of the company are being used to provide accommodation entries. The two more directors of company viz. Jyoti Dhiresh Munver and Jils Raichand Madan had also filed declarations stating that they were dummy directors.

11. As per the reasons recorded, we further gather that the account earlier maintained in navkar bips made reference to various sales, purchases and investments of various persons. The Revenue authorities matched the transactions found in such records with the data from BSE. The entries were corroborated with the trade data of Prraneta Industries Limited maintained by BSE. It was on basis of such exercise that the Assessing Officer had recorded his reasons that with respect to shares of Prraneta Industries Limited, the assessee had received pay out of Rs.4.03 crores for sale of Rs.9,55,644/- shares.

12. The Revenue has produced a full compilation of such entries at page No.178 to 209 of the paper book. We had a glance at such entries and found *prima-facie* justification enabling the Assessing Officer to come to the said conclusion. We do not find that the reasons lack validity or that there was no live link between the material on record and formation of the belief that the income chargeable had escaped assessment.

13. It is true that in the compilation produced before us, the total of payout during the period under consideration is some what lesser than what is recorded with the Assessing Officer in terms of volume of shares and the value of receipt. However, when such large entries are being examined and co-related, minor discrepancy would not shake the very foundation of reason to believe, particularly when substantial portion of such alleged payout is demonstrated through the entries, matching with the BSE record of buying and selling data of Prraneta Industries Limited. In the reasons recorded, the Assessing Officer has mentioned that such amount of Rs.4.03 crores is received by the assessee during the assessment year

2010-11/2011-12 which is not genuine transaction. This one statement cannot be picked out of context and appreciated in isolation to argue that the Assessing Officer is not clear as to in which year such income should be taxed. The notice for the reopening was issued for the assessment year 2010-11, majority of transactions are relevant to such assessment year. If a small portion of the entries related to the subsequent assessment year, it would not mean that the assessment cannot be reopened for the year during which majority of these transactions actually took place.

14. With respect to the additional ground raised in the other petitions, the data provided by the Revenue for a total of 4,50,572 shares which has stated to have been claimed, it is true that some 30,843 fall during the period post 31.03.2011. However, majority of the sale of shares of nearly 4,20,000 was during the period 01.04.2010 to 31.03.2011 and only on this ground therefore, we would not be justified in quashing the notice for reopening.

15. In the result, all petitions are dismissed.

Notices discharged. Interim relief vacated.

(AKIL KURESHI, J.)

(A.J. SHASTRI, J.)

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