IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 2358 of 2015
With
SPECIAL CIVIL APPLICATION NO. 2359 of 2015
TO
SPECIAL CIVIL APPLICATION NO. 2361 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE M.R. SHAH **sd/-**
and
HONOURABLE MR.JUSTICE S.H.VORA **sd/-**

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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NAREN SADASHIV BURADE....Petitioner
Versus
INCOME TAX OFFICER....Respondent

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Appearance :
MR. JP SHAH, LD. ADV. FOR MR MANISH J SHAH, ADVOCATE for the Petitioner.
MR SUDHIR M MEHTA, ADVOCATE for the Respondent.

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CORAM: **HONOURABLE MR.JUSTICE M.R. SHAH**
and
HONOURABLE MR.JUSTICE S.H.VORA

Date :12 /06/2015

CAV JUDGMENT

(PER : HONOURABLE MR.JUSTICE M.R. SHAH)

1.0. As common question of law and facts arise in this group of petitions, however with respect to different assessment years, all these petitions are decided and disposed of by this common judgment and

order.

2.0. In all these petitions under Article 226 of the Constitution of India, common petitioner – assessee has prayed for an appropriate writ, direction and order to quash and set aside the impugned notice under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as the "Act") to reopen the assessment for Assessment Years 2007-08, 2008-09, 2009-10 and 2010-11.

3.0. The facts leading to the present Special Civil Applications in nutshell are as under:

3.1. That the petitioner-assessee filed return of income for AY 2006-07 claiming exemption under Section 10 A of the Act and submitted the return of the balance of income as total income at Rs.3,89,982/-. It is the case on behalf of the petitioner that in the year 2002-03, the petitioner started business of software development and export. He obtained import export certificate on 28.11.2002. Thereafter, he obtained letter of permission for the same business as 100% Export Oriented Unit under Software Technology Part (STP) for the development of computer software and IT enabled services on 03.10.2005. Therefore, according to the petitioner, the petitioner was entitled to exempt under Section 10 A of the Act in AY 2006-07. It is the case on behalf of the petitioner that thereafter AO by letter dated 18.08.2008 issued a notice under Section 142(1) of the Act on various points including details in respect of deduction claimed under Section 10 A of the Act and thereafter the AO accepted the computation of income at Rs.3,89,982/- post 10A deduction and added thereto the disallowance of expenditure of Rs. 79,604/- and passed assessment order taxing income at Rs.4,69,586/-.

3.2. That thereafter with respect to subsequent AY i.e. AY 2006 to 2011 AO has mechanically allowed the exemption claimed under Section 10 A of the Act i.e. in the subsequent assessment years solely on the ground that exemption under Section 10 A of the Act was allowed in the earlier assessment year i.e. 2006-07.

3.3. That thereafter by impugned notices under Section 148 of the Act, assessment for AY 2007-08, 2008-09, 2009-10 and 2010-11 have been reopened in exercise of powers under Section 148 of the Act on the ground that as the assessee has not fulfilled condition laid down in clause (II) & (III) of sub-section (2) of Section 10A of the Act and therefore, the assessed income chargeable to the tax to the extent of exemption claimed under Section 10 A of the Act has escaped assessment on the part of the assessee within the meaning of Section 147 of the Act.

3.4. That on the request made by the assessee, the petitioner has been served with the copy of the reasons recorded for reopening of the assessment for respective assessment years 2007-08, 2008-09, 2009-10 and 2010-11. That the petitioner filed his objections against the reopening of the assessment on merits as well as on the ground that once assessee was allowed the exemption under Section 10 A of the Act in the first year, he cannot be denied the exemption under Section 10 A of the Act in the subsequent years. That the assessee also submitted before the AO that assessee had fulfilled all the conditions laid down in clause (II) & (III) of sub-section (2) of Section 10A of the Act and therefore, has been rightly allowed the exemption claimed under Section 10 A of the Act.

3.5. That vide communication / order dated 5.1.2015. the

respondent – AO has disposed of the said objections and has rejected the same.

Hence, common petitioner has preferred present Special Civil Applications under Article 226 of the Constitution of India challenging the impugned notices under Section 148 of the Act reopening the assessments for Assessment Years 2007-08, 2008-09, 2009-10 and 2010-11.

4.0. Shri J.P. Shah, learned advocate for the petitioner-assessee has vehemently submitted that as such the impugned notices under Section 148 of the Act are absolutely illegal, invalid and unjustifiable.

4.1. It is submitted that formation of opinion by the AO and his reason to believe that income chargeable to tax has escaped assessment has been vitiated as there is no escapement of income chargeable to tax.

4.2. It is further submitted by Shri Shah, learned advocate for the petitioner that as such on the reasons recorded the AO is not justified and / or it is not proper on the part of the AO to reopen the assessment. It is submitted that as such the petitioner assessee was allowed the exemption under Section 10 A of the Act in the first year i.e. AY 2006-07 which has not been challenged and / or questioned and therefore, the assessee is entitled to exemption under Section 10 A of the Act in the subsequent years and while passing the original assessment orders for AY 2007-08, 2008-09, 2009-10 and 2010-11 the AO had rightly allowed the exemption under Section 10 A of the Act in the subsequent years. It is submitted that therefore, with respect to subsequent years, it is not open for the AO to contend and / or allege that as the conditions nos. (II) & (III) of sub-section (2) of Section 10 A of the Act has not been complied with, the assessee is not entitled to exemption claimed under

Section 10 A of the Act. It is submitted that the aforesaid is absolutely and wholly impermissible. It is further submitted that as such in the year 2006-07 i.e. in the first year, the assessee established the eligibility under Section 10 A of the Act and therefore, in the subsequent years such eligibility and / or exemption under Section 10 A of the Act cannot be denied and / or doubted. In support of his above submission, he has heavily relied upon the decision of the Division Bench of this Court in the case of **Saurashtra Cement & Chemical Industries Ltd vs. Commissioner of Income Tax, Gujarat-V** reported in **(1980) 123 ITR 669 (Guj)** as well as decision of the Bombay High Court in the case of **Commissioner of Income Tax vs. Paul Brothers** reported in **(1995) 216 ITR 548 (B0m)**. He has also relied upon the recent decision of the Hon'ble Supreme Court in the case of **Deputy Commissioner of Income Tax vs. Gujarat Narmada Vally Fertilizers Co. Ltd.** reported in **(2015) 56 Taxmann. Com 20 (SC)** by which the Hon'ble Supreme Court has confirmed the decision of the Division Bench of this Court in the case of **Gujarat Narmada Valley Fertilizers vs. Dy. CIT** reported in **(2014) 223 Taxman 109; (2014) 45 Taxman.com 38(Guj).**

4.3. Shri Shah, learned advocate for the petitioner -assessee has also made submission on merits relying upon the decision of the Madras High Court in the case of **Nagesh Chundur vs. Commissioner of Income Tax** reported in **(2013) 358 ITR 521 (Mad)** and the decision of the Karnataka High Court in the case of **Commissioner of Income Tax and Another vs. Expert Outsource Pvt. Ltd** reported in **(2013)358 ITR 518 (Kar)**. Relying upon the above decisions, it is vehemently submitted that even on merits also the AO is not justified in observing that condition nos. (II) and (III) of sub-section (2) of Section 10 A has not been complied with. It is vehemently submitted that as such wordings in Section 10 A and 10 B of the Act are similar and *pari materia.* It is

submitted that aforesaid decisions are with respect to exemption / benefit under Section 10 B of the Act which shall be applicable to exemption claimed under Section 10 A of the Act also, more particularly, sub-section (2) of Section 10 A of the Act.

4.4. Shri Shah, learned advocate for the petitioner has also heavily relied upon the Circular No. 1/05 dated 6.1.2005 issued by the CBDT as well as to extract clause of Foreign Trade Policy 2009-2014 (page 59 of the petition), in support of his submission that even as per the Foreign Trade Policy, DTA units may also apply for conversion into an EOU/EHTP/STP/BTP unit and income tax benefits under Section 10 A and 10 B will be available for plant machinery and equipment already installed. It is therefore, vehemently submitted that formation of opinion by the AO and his reason to believe that the income chargeable to tax has escaped assessment as the petitioner- assessee has not fulfilled the conditions no. (II) & (III) of sub-section (2) of Section 10 A of the Act and therefore, not entitled to exemption claimed under Section 10 A of the Act is without any basis and / or such formation of opinion has been vitiated.

4.5. It is further submitted that as such while disposing of the objections, neither the AO has dealt with objections raised by the petitioner in detail nor has dealt with case on merits considering the decisions cited in the objections and even circular issued by the CBDT relied upon by the assessee.

Making above submissions and relying upon the above decisions, it is requested to allow the present Special Civil Applications and quash and set aside the impugned notices under Section 148 of the Act.

5.0. All these petitions are opposed by Shri Sudhir Mehta,

learned advocate for the revenue. It is vehemently submitted that impugned notices under Section 148 of the Act are absolutely just and proper and in consonance with the provisions of Section 147 of the Act. It is vehemently submitted that after having a reasonable belief and forming an opinion that the income chargeable to tax has escaped assessment, after recording of the reasons and considering the objections raised by the petitioner against reopening when the reassessment proceedings are initiated the same may not be interfered with at this stage in exercise of powers under Article 226 of the Constitution of India.

5.1. It is vehemently submitted by Shri Mehta, learned advocate for the revenue that as such it is prima facie found by the AO that in the case of assessee conditions no. (II) & (III) of sub-section (2) of Section 10 A of the Act has not been fulfilled and therefore, the assessee was not entitled to exemption / deduction under Section 10 A of the Act and despite the same solely on the basis of exemption allowed under Section 10 A of the Act in the earlier year and in the subsequent years mechanically exemption under Section 10 A of the Act has been allowed and after formation of opinion that the income chargeable to the tax has escaped assessment, impugned notices under Section 148 of the Act are absolutely just and proper. It is submitted that the conditions which are required under Section 147 of the Act for reopening of the assessment have been fulfilled.

5.2. It is further submitted by Shri Mehta, learned advocate for the revenue that in fact the AO also doubted the exemption / deduction allowed in the assessment year 2006-07, however it was noticed that before any reassessment proceedings are initiated for AY 2006-07, time limit provided for initiation of the reassessment proceedings under the

Act has expired and therefore, though the department wanted to reopen the assessment for AY 2006-07 because of statutory bar, the department could not reopen the assessment for AY 2006-07. It is submitted that therefore, with respect to subsequent years, it is always open for the department/ revenue to consider whether the assessee has fulfilled the conditions laid down in clause (II) & (III) of sub-section (2) of Section 10 A of the Act or not.

5.3. It is vehemently submitted by Shri Mehta, learned advocate for the revenue that in all these years i.e. 2007-08, 2008-09, 2009-10 and 2010-11, the AO mechanically granted / allowed the deduction / exemption under Section 10 A of the Act and has passed the assessment orders under Section 143(1) of the Act. It is submitted that therefore, reopening is valid and even there is no question of change of opinion arise. In support of his above submissions, he has relied upon the following decisions.

(i) **Raj Commissioner of Income Tax vs. Mahavir Rubber Works** reported in **256 ITR 667 (Raj).**

(ii) **Siemens Information Systems Ltd vs. Assistant Commissioner of Income Tax** reported in **343 ITR 188 (Bom).**

(iii) **Assistant Commissioner of Income Tax vs. Rajesh Jhaveri Stock Brokers (P) Ltd** reported in **291 ITR 500 (SC).**

(iv**) Inductotherm (India)(P) Ltd vs. M. Gopalan, Deputy Commissioner of Income Tax** reported in **356 ITR 481 (Guj).**

(v) Commissioner of Income Tax vs. Ideal Garden Complex (P) Ltd reported in **340 ITR 609(Mad).**

(vi) **Rhythm Chemicals (P) Ltd vs. Assistant Commissioner of Income Tax** reported in **33 Taxman.Com 426 (Guj).**

(vii) **Commissioner of Income Tax -III vs. Kiranbhai Jamnadas Sheth (HUF)** reported in **39 Taxman. Com 116 (Guj)**.

5.4. Relying upon the above decisions, it is vehemently submitted that as the original assessment of the assessee, was accepted under Section 143(1) of the Act without any scrutiny, condition of income having escaped assessment due to failure on the part of assessee to disclose truly and fully all material facts, is not necessarily required to be established and revenue can reopen the assessment beyond four years under Section 147 of the Act. It is submitted that as held by this Court in the case of **Rhythm Chemicals (P) Ltd (supra)** and **Kiranbhai Jamnadas Sheth (HUF) (supra)** intimation under Section 143 cannot be treated as an order of assessment and therefore, question of change of opinion does not arise and therefore, reopening of the assessment based on sufficient material forming reason to believe that income has escaped assessment is valid.

5.5. Shri Mehta, learned advocate for the revenue has also heavily relied upon the decision of the Hon'ble Supreme Court in the case of **Deepak Agro Foods vs. State of Rajasthan** reported in (**2008) 7 SCC 748**, in support of his submission that as observed and held by the Hon'be Supreme Court in the fiscal statute the principle of res judicata does not *stricto senso* apply.

5.6. It is further submitted by Shri Mehta, learned advocate for the revenue that as such while deciding the objections against reopening of the assessment, the AO is not required to enter into the merits in detail as if he is passing the assessment order. It is submitted that even in the case of **GKN Driveshafts (India) Ltd vs. Income Tax Officers and Ors** reported in **(2003) 259 ITR 19**, the Hon'ble Supreme Court has not observed anything that while disposing of the objections against reopening the AO is required to observe anything on merits and / or entered into the merits of the case.

5.7. It is submitted that so far as issue on merits involve mixed question of law and facts, which are required to be considered by the AO at the time of assessment after giving opportunity to the assessee at that stage assessee will be getting ample opportunity to put forth his case.

Making above submissions and relying upon the above decisions, it is requested to dismiss the present Special Civil Applications.

6.0. Heard the learned advocates for the respective parties at length. At the outset, it is required to be noted that in the present case assessment for 2007-08, 2008-09, 2009-10 and 2010-11 are reopened by impugned notices under Section 148 of the Act on the ground that as the assessee has not fulfilled the conditions laid down in clause (II) & (III) of sub-section (2) of Section 10 A of the Act, the income chargeable to the tax has escaped assessment.

6.1. Recording of the reasons under Section 147 of the Act for escapement of income while reopening the assessment for AY 2007-08, which has been communicated to the assessee, reads as under:

> *"In this case, it is found from the records of assessment proceedings for AY 2011-12, the assessee claimed exemption under Section 10 A of th I.T. Act and the contention that in order to claim exemption u/s. 10 A of the Act the unit should be new and independent unit. The assessee has not complied with the condition laid down in clause (III) of sub-section 2 of Section 10 A of the I.T. Act.*
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> *It was inter alia observed during the course of assessment proceedings for the AY 2011-12 that the assessee has not fulfilled condition laid down in clause (II) & (III) of sub-section 2 of Section 10 A of the I.T. Act, 1961. It is noticed that during FY 2006-07 relevant to AY 2007-08, the assessee*

had claimed exemption u/s. 10A of the I.T. Act of Rs. 3,68,736/-. On verification of the record, it is found that the asssessee has filed his Return of Income for AY 2007-08 on 11.10.2007 and claimed deduction U/s. 10 A of Rs. 3,68,736/-, the assessee has not fulfilled condition laid down in clause (II) & (III) of sub-section 2 of Section 10 A of the I.T. Act, 1961. Assessed income of the assessee within the meaning of section 147 of the Act. I have, therefore, reasons to believe that income of Rs.3,68,736/- has escaped assessment within the meaning of Section 147 of the I.T Act. It is therefore, necessary to initiate action u/s. 147 of the I.T. Act, 1961, in the case of the assessee for AY 2007-08.
I issue notice U/s. 148 of the Act accordingly."

6.2. It is the case of the petitioner that as the exemption was granted to the assessee under Section 10 A of the Act in the first AY 2006-07, which is not disturbed, however in subsequent years, it is proposed to be disturbed by reopening of the assessment, the same is not permissible in light of the decision of the this Court in the case of **Saurashtra Cement & Chemical Industries Ltd (supra)**. However, it is the case on behalf of the revenue that in the relevant assessment years, it was the intimation under Section 143(1) of the Act and the AO mechanically and without holding any inquiry, allowed exemption / deduction under Section 10 A of the Act and that during the relevant assessment years, there was no assessment and the intimation under Section 143(1) does not amount to assessment and therefore, impugned notices under Section 148 of the Act to reopen such assessment is justified and valid.

6.3. Therefore, the short question which is posed for

consideration of this Court is whether the impugned notices under Section 148 of the Act to reopen the respective assessments on the ground / reasons that as the assessee has not fulfilled the conditions mentioned in clause (II) & (III) of sub-section (2) of Section 10 A of the Act and therefore, not entitled to the exemption / deduction claimed under Section 10 A of the Act and therefore, there is escapement of income chargeable to tax is illegal or invalid.

6.4. It is required to be noted that in all these assessment years i.e. 2007-08, 2008-09, 2009-10 and 2010-11 as such neither there was any assessment under Section 143(1) of the Act nor while passing respective assessment orders there is any specific discussion by the AO with respect to the deduction / exemption claimed and allowed under Section 10 A of the Act. It appears that mechanically and probably as the exemption / deduction under Section 10 A of the Act was allowed in the previous year i.e. in the year 2006-07 in subsequent years, the same has been permitted to be allowed. In the respective assessment years, there is only intimation under Section 143(1) of the Act, which as per the catena of decisions do not amount to assessment and therefore, the question of change of opinion does not arise.

7.0. In the case of **Kiranbhai Jamnadas Sheth (HUF) (supra),** the Division Bench of this Court has observed and held that in a case where original assessment of the assessee was accepted under Section 143(1) of the Act without any scrutiny, condition of income having escaped assessment due to failure on the part of assessee to disclose truly and fully all material facts, is not necessarily required to be established and revenue can reopen the assessment beyond four years under Section 147 of the Act even otherwise.

7.1. In the case of **Rhythm Chemicals (P) Ltd (supra),** the Division Bench of this Court has observed that since the intimation under Section 143 of the Act does not amount to assessment question of change of opinion does not arise and therefore, reopening of assessment based on sufficient material forming reason to believe that income had escaped assessment, is valid. In the aforesaid decision, the Division Bench has considered and followed the decision of the Hon'ble Supreme Court in the case of **Rajesh Jhaveri Stock Brokers (P) Ltd (supra.**

7.2. As observed herein above, in respect to assessment years i.e. 2007-08, 2008-09, 2009-10 and 2010-11 there were only intimation under Section 143(1) of the Act which do not amount to assessment and therefore, on sufficient material forming reason to believe that income had escaped assessment, the reopening is permissible.

8.0. Now, so far as main contention on behalf of the petitioner that as in the first assessment year i.e. assessment year 2006-07 the assessee was allowed the deduction / exemption under Section 10 A of the Act and therefore, in the subsequent assessment years the assessee is eligible for deduction / exemption under Section 10 A of the Act and assessee cannot be denied / doubted in the subsequent years such eligibility under Section 10 A of the Act and reliance placed upon the decision of the Division Bench of hits Court in the case of **Saurashtra Cement & Chemical Industries Ltd (supra)** and the decision of the Division Bench of this Court in the case of **Gujarat Narmada Vally Fertilizers Co. Ltd (supra)** which has been confirmed by the Hon'ble Supreme Court are concerned, at the outset, it is required to be noted that in the present case, the revenue as such has doubted the correctness of the exemption / deduction allowed under Section 10 A of the Act in AY 2006-07. However since the matter noticed during FY 2011-12, time

limit for issuance of notice under Section 148 of the Act, as per Section 149 of the Act has expired, the assessment for AY 2006-07 being beyond 6 years, the same has not been reopened and the case has been reopened and notices under Section 148 of the Act have been issued for AY 007-08, 2008-09, 2009-10 and 2010-11. Therefore, in light of the above facts and so stated in the affidavit in reply, the decision of the Division Bench of this Court in the case of **Saurashtra Cement & Chemical Industries Ltd (supra)** and other decisions on the point relied upon by Shri Shah, learned advocate for the petitioner are required to be considered. In the case before the Division Bench, it was found that revenue / department did not doubted / questioned the grant of relief of tax holiday in the earlier year and therefore, it was found that assessee was entitled to continuance of that relief in the subsequent four years. At this stage, it is required to be noted that even in the said decision, the Division Bench also specifically observed that "no doubt, the relief of tax holiday under Section 80J can be withheld or discontinued provided the relief granted in the initial year of assessment is disturbed or changed on valid grounds." Under the circumstances, the said decision would not be applicable to the facts of the case on hand and / or would not be of any assistance to the petitioner assessee.

8.1. Now, so far as reliance placed upon the decision of this Court in the case of **Gujarat Narmada Vally Fertilizers Co. Ltd (supra)** which has been confirmed by the Hon'ble Supreme Court, by the learned advocate for the petitioner – assessee is concerned, it is required to be noted that on facts it was found that addition which was sought to be made by the AO was not approved by the High Court previously and with respect to the very addition the AO issued the notices for reopening of assessment, the Division Bench held that the same is not permissible. Under the circumstances, even the said decision also will not be

applicable to the facts of the case on hand and / or the same shall not be of any assistance to the petitioner- assessee.

8.2. Similarly, the decision of the Bombay High Court in the case of **Paul Brothers (supra)** relied upon by the learned advocate for the petitioner shall not be applicable to the facts of the case on hand. In the case before the Bombay High Court special deduction under Sections 80HH and 80J was granted / allowed in the assessment year 1980-81 and in the subsequent years it was sought to be withheld and to that it was held that either in Section 80HH or in Section 80J, there is no provision of withdrawal of special deduction in subsequent year for breach of certain condition, unless the relief granted for the AY 1980-81 was withdrawn, the Income Tax Officer could not have withheld the relief in the subsequent years.

9.0. Now, so far as the submissions made by Shri Shah, learned advocate for the petitioner on merits with respect to the eligibility of the deduction / exemption under Section 10 A of the Act, more particularly, relying upon the decision of the Madras High Court in the case of **Nagesh Chunder (supra)** and the decision of the Karnataka High Court in the case of **Expert Outsource P. Ltd (supra)** and relying upon the CBDT circular No. 1/05 dated 6.1.2005 and notification issued by the Government of India, Ministry of Commerce and Industry, Department of Commerce vide Notification No.1/2009-2014 is concerned, at the outset, it is required to be noted at this stage and in the present petition under Article 226 of the Constitution of India, this Court is not required to go into detail merits and eligibility. Whether the petitioner has fulfilled the conditions mentioned in clause (II) & (III) of sub-section (2) of Section 10 A of the Act is not and/or whether the petitioner is eligible to claim exemption / deduction under Section 10 A of the Act are all

question of facts and it is a mixed question of law and facts which are to be considered by the AO while framing the assessment / reassessment and at that time, the assessee shall have ample opportunity to put forward its case. Even while disposing of the objections against reopening, the AO is not required to observe anything in detail on merits of the case and with respect to eligibility of the petitioner - assessee regarding deduction / exemption under Section 10 A of the Act.

10. In view of the above and for the reasons stated above, more particularly, when in the respective assessment years, there were intimation under Section 143(1) of the Act and as such there do not appear to be any application of mind while allowing deduction / exemption under Section 10 A of the Act and mechanically same has been allowed on the basis of claim allowed in the previous year i.e. 2006-07 which has been doubted by the revenue, but the assessment for AY 2006-07 could not be reopened in view of bar under Section 149 of the Act and after considering the material on record and AO has reason to believe that the income chargeable to tax has escaped assessment as the conditions mentioned in clause (II) & (III) of sub-section (2) of Section 10 A of the Act have not been fulfilled and therefore, the petitioner -assessee is / was not eligible for deduction/ exemption under Section 10 A of the Act and therefore, income chargeable to tax has escaped assessment, in the facts and circumstances of the case, it cannot be said that the impugned notices under Section 148 of the Act are invalid and / or wholly without jurisdiction and / or assumption of jurisdiction under Section 147 of the Act is illegal. Ample opportunity shall be given to the petitioner to put forward its case with respect to eligibility under Section 10 A of the Act as claimed, during the assessment / reassessment proceedings. Under the circumstances and in the facts and circumstances of the case, we are of the opinion that this is

not a fit case to exercise powers under Article 226 of the Constitution of India and to quash and set aside the impugned notices under Section 148 of the Act.

11. In view of the above and for the reasons stated above, petitions fail and same deserve to be dismissed and are accordingly dismissed. Notice discharged. No costs.

sd/-

(M.R.SHAH, J.)

sd/-

(S.H.VORA, J.)

Kaushik