

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 17581 of 2014****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE M.R. SHAH****and****HONOURABLE MR.JUSTICE S.H.VORA**

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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 ?

SHREE RAM BUILDERS....Petitioner(s)

Versus

ASSISTANT COMMISSIONER OF INCOME TAX (OSD)....Respondent(s)

Appearance:

UMAIDSINGH BHATI, ADVOCATE for the Petitioner(s) No. 1

MR NITIN K MEHTA, ADVOCATE for the Respondent(s) No. 1

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

Date : 01/04/2015

ORAL JUDGMENT**(PER : HONOURABLE MR.JUSTICE M.R. SHAH)**

1. Rule. Shri Nitin Mehta, learned advocate waives service of notice of Rule on behalf of the respondent.

2. In the facts and circumstances of the case and with the consent of the learned advocates appearing on behalf of the respective parties, the present petition is taken up for final hearing today.

3. By way of this petition under Article 226 of the Constitution of India, the petitioner – assessee has prayed for an appropriate writ, order or direction to quash and set aside the impugned reassessment proceedings initiated under Section 147/148 of the Income Tax Act (hereinafter referred to as the 'Act').

4. That the assessee filed return of income for A.Y.2009-2010 which came to be finalized by order dated 09.12.2010. It appears that the assessee filed return of income declaring income of Rs.43,87,671/- and by order of assessment, the income was assessed under Section 143(3) of the Act at Rs.49,62,230/-. That thereafter, within a period of four years from the date of assessment year, the assessee was served with the notice under Section 148 of the Act on 04.03.2014. That the assessee asked for the reasons recorded for reopening of assessment vide communication dated 05.04.2014. That thereafter, the assessee was served with the reasons recorded for reopening of the assessment and for

notice under Section 148 of the Act. That the assessee raised objections against reopening of assessment for A.Y. 2009-2010 mainly contending, inter alia, that reopening of the proceedings is nothing but a change of opinion by the Assessing Officer which is not permissible. It was also contended that the reopening of assessment proceedings is at the instance of the audit party and on the basis of the audit objections. That thereafter, vide communication dated 18.09.2014, the Assessing Officer has disposed of the objections against the reasons recorded for reopening of assessment proceedings. Hence, the petitioner – assessee has preferred the present petition under Article 226 of the Constitution of India challenging the initiation of reopening of the assessment for A.Y. 2009-2010.

5. Shri Umaidsingh Bhati, learned advocate appearing for the assessee has vehemently submitted that the reopening of assessment is nothing but a change of opinion by the Assessing Officer on a particular issue on which, the assessment proceedings are reopened. It is submitted that the assessment proceedings were concluded by the Assessing Officer after detailed questionnaire and thereafter, the Assessing Officer disallowed expenditure of Rs.1,19,00,000/- being labour charges paid to the sub-contractors. It is submitted that the assessee did furnish all the particulars with respect to VAT expenses which came to be considered by the Assessing Officer and thereafter, disallowed the expenditure of Rs.41,23,784/- under Section 43B of the Act. It is submitted that therefore, the reopening of assessment for the reasons recorded is nothing but change of opinion by the Assessing Officer and, therefore, the reopening of assessment is not

permissible.

5.1. It is further submitted by Shri Bhati, learned advocate appearing for the assessee that in any case, the reassessment proceedings are on the basis of the audit objections raised by the audit party only. It is submitted that though, in the objections against reopening of assessment, it was specifically mentioned that as the reassessment proceedings are on the basis of the audit objections raised by the audit party and, therefore, the same is not permissible, the Assessing Officer while dealing with the objections against the reasons recorded for reopening of the assessment, has deliberately not dealt with the same. It is submitted that even in the present petition also, though it is specifically mentioned that the reassessment proceedings are initiated on the basis of the audit objections raised by the audit party, even in the affidavit-in-reply, the same has not been dealt with by the Department. Relying upon the decision of this Court in the case of Commissioner of Income-Tax, Ahmedabad-IV V/s. Shilp Gravures Ltd. reported in (2013)40 Taxmann 309(Gujarat), in the case of Vodafone West Ltd. V/s. Assistant Commissioner of Income-tax reported in (2013)37 Taxmann 158 (Gujarat) and the decision of the Division Bench of this Court in the case of Mayur Wovens Pvt. Ltd. V/s. Income Tax Officer & 1 in Special Civil Application No.3707 of 2014 with 3708 of 2014, it is requested to allow the present petition and quash and set aside the impugned reassessment proceedings.

6. At the outset, it is required to be noted that after hearing at length the learned advocate appearing for the petitioner on the issue whether the reassessment proceedings for the

reasons recorded can be said to be change of opinion by the Assessing Officer or not?, after considering the material on record, we were not satisfied that the reassessment proceedings for the reasons recorded can be said to be change of opinion.

6.1. However, the petition is to succeed on the second ground i.e. the contention of the learned advocate for the petitioner that the reassessment proceedings are on the basis of the audit objections raised by the audit party. At the outset, it is required to be noted that though the objections raised by the assessee against the reassessment proceedings and against the reasons recorded, the Assessing Officer had not dealt with the aforesaid aspect at all though, in the affidavit-in-reply filed by the Assessing Officer it is denied that reopening is being done because of the audit objections and, therefore, reopening is bad in law as it is not based on the opinion of the respondent. However, to satisfy ourselves whether the reassessment proceedings have been initiated solely at the instance of the audit party and solely on the audit objections, we called for the original file from the office of the Assessing Officer. Shri Mehta, learned counsel appearing for the Revenue has produced the relevant files from the office of the Assessing Officer. On perusal of the files and notings and even reply filed by the Assessing Officer, it appears that as such, the Assessing Officer justified the original assessment order and categorically stated that there is no substance in the audit objections. Therefore, as such, from the relevant documents, it appears that the reassessment proceedings have been initiated thereafter at the instance of the audit party and solely on the audit objections. It is also found that as such, the Assessing Officer tried to sustain his original assessment order and even

submitted to the audit party to drop the objections. Under such factual aspects, the present petition is required to be considered.

6.2. Not only that, even subsequently also, i.e. even after the initiation of the reassessment proceedings, by communication dated 23.01.2015, the Assessing Officer- Deputy Commissioner of Income Tax Circle-3(3), Ahmedabad has tried to support/justify the original assessment order and has categorically stated that the audit objections are not acceptable as the objections are raised on presumption and surmises. If that be so, then it is worst. On one hand, the Assessing Officer is trying to justify/support the original assessment order and on another hand, he is reopening the assessment and/or initiating the reassessment proceedings. Therefore, as such, the subjective satisfaction of the Assessing Officer while reopening the assessment is vitiated.

7. The issue involved in the present petition is squarely covered by the decisions of the Division Bench of this Court in the case of Shilp Gravures Ltd. (Supra), in the case of Vodafone West Ltd. (Supra) and in the case of Mayur Wovens Pvt. Ltd. (supra) by which a view is taken that if the reassessment proceedings are initiated merely and solely at the instance of the audit party and when the Assessing Officer tried to justify the Assessment Orders and requested the audit party to drop the objections and there was no independent application of mind by the Assessing Officer with respect to subjective satisfaction for initiation of the reassessment proceedings, the impugned reassessment proceedings cannot be sustained and

the same deserves to be quashed and set aside.

8. In view of the above and for the reasons stated hereinabove, the impugned reassessment proceedings are required to be quashed and set aside and accordingly, the present petition is allowed. The impugned reassessment proceedings for A.Y. 2009-2010 are hereby quashed and set aside on the aforesaid ground alone. Rule is made absolute to the aforesaid extent. However, in the facts and circumstances of the case, there shall be no order as to costs.

(M.R.SHAH, J.)

(S.H.VORA, J.)

Hitesh

