

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 18004 of 2014

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE JAYANT PATEL
and
HONOURABLE MR.JUSTICE S.H.VORA

- =====
- 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, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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SKY DIAMONDS....Petitioner(s)

Versus

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

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Appearance:

MR MANISH J SHAH, ADVOCATE for the Petitioner(s) No. 1
 MR SUDHIR M MEHTA, ADVOCATE for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE JAYANT PATEL**
and
HONOURABLE MR.JUSTICE S.H.VORA

Date : 21/01/2015

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE JAYANT PATEL)

1. Rule. Mr. Mehta, learned Standing Counsel,

waives notice of Rule. The matter is finally heard with the consent of the learned advocates appearing for both the sides.

2. The only question which may arise for consideration in the present matter is "Whether the bar of four years provided by first proviso of section 147 of the Income Tax Act can be made applicable to the facts of the present case or not?"

3. The relevant facts are that as per the petitioner, for the assessment year 2008-2009, the scrutiny was made under section 143(3) of the Income Tax Act (hereinafter referred to as the "Act") and the petitioner submitted detailed letter on various points connected with the return of income tax filed under section 139 of the Act. On 18.11.2010, during the course of regular assessment, in reply to the notice under section 142(1), the Chartered Accountant of the petitioner, vide letter, had submitted various documents including the audit report and the details about the salary of the partners. On 28.12.2010, the assessing officer passed a scrutiny assessment order under section 143(3) of the Act and while passing the said order, the survey made on 22.08.2008 and other relevant aspects were considered and the order was passed.

4. On 17.01.2014, the assessing officer issued

notice under section 148 of the Act informing the petitioner that the income has escaped assessment for the assessment year 2008-2009 and vide letter dated 01.04.2014, the respondent provided reasons recorded for reopening of the assessment. On 17.06.2014, the petitioner filed objections against the reasons and it was contended inter alia that full disclosure was made including the points on the basis of which the assessment is sought to be reopened and the period of limitation of four years expired was also contended by way of objection. On 10.10.2014 the respondent passed the order, whereby the objections filed by the petitioner were disposed of and the notice for reopening of the assessment was maintained. Under the circumstances, the present petition before this Court.

5. We have heard Mr.J.P. Shah, learned counsel appearing with M.J.Shah for the petitioner and Mr. Sudhir Mehta, for the respondent Revenue.
6. As such, apart from the aspect as to whether income escaped assessment, we find that one of the major point which may go to the root of the matter is the bar operating on the power of Revenue to reopen the assessment after the expiry of the period of four years from the end of the relevant assessment year. Section 147 of the Act upto first proviso which is relevant for the purpose of this petition reads as under:

"147. Income escaping assessment.- *If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :*

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year"

7. Section 147 of the Act enables the AO to reopen the assessment subject to the provisions of sections 148 to 153 of the Act, but the first proviso to the very section 147 of the Act provides that no action shall be taken under this section (147) after the expiry of the period of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment

year by the reason of failure on the part of assessee to disclose full and truly all material facts necessary for assessment for the respective assessment year.

8. The aforesaid shows that unless the case falls in the exceptional category of "failure to disclose fully and truly all material facts necessary for the assessment", the action after the expiry of four years for reopening of the assessment is not permissible. As we are not required to examine other contingencies of failure, we do not deal with the same.

9. As per the learned counsel Mr. Shah for the petitioner, full and true disclosure of all material facts relevant to the reasons which is the ground for reassessment were disclosed before the AO at the time when the scrutiny of the assessment had taken place. He submitted that not only that but the audit report was also produced which included the remuneration to the partners from the disclosed item of Rs.74,90,834/- and during the course of the assessment, this aspect is deemed to have been considered and the assessment order was passed. He submitted that once the petitioner succeeds to satisfy that full and true disclosures were made of the relevant material and thereafter, if the assessment order is passed, the bar of four years would apply. Apart from the aforesaid contention, as per Mr. Shah, it cannot be said

that the income escaped the assessment and therefore section 147 of the Act cannot be invoked by the Department.

10. Whereas, Mr. Mehta, learned counsel appearing for respondent is not in a position to dispute the factual aspect that the true disclosure was made by the assessee for the remuneration paid to the partners and computed while computing the business income. He is also unable to dispute that the audit report showing the aforesaid details were produced.
11. In view of the above, we find no reason to believe that true and full disclosure was not made by the assessee to come out from the bar of four years as provided by first proviso to section 147 of the Act. Once the bar operates upon the power by express statutory provision, the action can be said as without jurisdiction. If the action of issuance of notice is without jurisdiction, it would be a case for interference under Article 226 of the Constitution.
12. In view of the above, we find that the impugned action under section 147 of the Act and consequently issuance of notice under section 148 of the Act (Annexure-E) including disposal of the objection dated 10.10.2014 (Annexure-I) may not stand in the eye of law. Hence, they are quashed and set aside.

13. The petition is allowed to the aforesaid extent. Rule made absolute accordingly. Considering the facts and circumstances, no order as to costs.

(JAYANT PATEL, J.)

(S.H.VORA, J.)

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