

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 5498 of 2002****For Approval and Signature:****HONOURABLE MR.JUSTICE AKIL KURESHI
HONOURABLE MS.JUSTICE HARSHA DEVANI**

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?

HIMSON TEXTILE ENGINEERING INDUSTRIES LTD. - Petitioner(s)

Versus

N.N. KRISHNAN OR HIS SUCCESSORTO OFFICE - Respondent(s)

Appearance:

MR RK PATEL for Petitioner(s) : 1,

MR SUDHIR M MEHTA for Respondent(s) : 1,

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

and

HONOURABLE MS.JUSTICE HARSHA DEVANI

Date: 25/06/2012

ORAL JUDGMENT

(Per: HONOURABLE MS. JUSTICE HARSHA DEVANI)

1. The petitioner, a private limited company, is engaged in the manufacture of engineering machinery, spare parts

and processing of yarn. For the assessment year 1995-96, the petitioner filed its return of income along with computation of income accompanied by audit report and relevant annexures as required under section 44AB of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). Initially, intimation under section 143(1) was issued on 07.11.1996. Subsequently, a revised return came to be submitted on 31.01.1997. The case of the petitioner was taken up for scrutiny assessment, and ultimately, assessment came to be framed under section 143(3) by making certain additions and disallowances against which the petitioner went in appeal to the Commissioner (Appeals) but did not succeed. The petitioner accepted the said decision and did not prefer any further appeal. Subsequently, the respondent-Assessing Officer issued the impugned notice dated 29.01.2002 under section 148 of the Act, seeking to reopen the assessment of the petitioner for the assessment year 1995-96 which has given rise to the present petition.

2. Mr. R. K. Patel, learned advocate for the petitioner, vehemently assailed the impugned notice submitting that the same has been issued on 29.06.2011 in respect of assessment year 1995-96 which is clearly beyond the period of four years from the end of the relevant assessment year and as such, in the absence of any failure on the part of the petitioner to disclose fully and truly all material facts necessary for its assessment for the assessment year under consideration, the assumption of jurisdiction under section 147 of the Act by the

Assessing officer is not valid. Inviting attention to the reasons recorded for reopening the assessment, the learned counsel submitted that the sole ground for reopening assessment is that the assessee had claimed more deduction under section 80M of the Act than its entitlement and that the Assessing Officer had allowed excess deduction of Rs. 8,52,600/ resulting in income chargeable to tax escaping assessment. Referring to the intimation under section 143(1) of the Act it was submitted that the Assessing Officer, while processing the return of the petitioner, had specifically disallowed certain claims in relation TDS and as such, even at that time, he had properly applied his mind to the deductions claimed by the petitioner, hence the reopening is based on a mere change of opinion. It was submitted that in any case, there is no failure on the part of the petitioner to disclose fully and truly all material facts, and as such, the reopening assessment beyond a period of four years from the end of the relevant assessment year is bad in law.

3. Opposing the petition, Mr. Sudhir Mehta, learned standing counsel appearing on behalf of the respondent, placed reliance upon the averments made in the affidavit-in-reply filed by the respondent to submit that the petitioner had claimed more deduction under section 80M than it was entitled to and that the Assessing Officer, without discussing the issue in the assessment order and without looking into the provisions of law, had allowed the deduction. It was submitted that under the provisions of section 80M of the Act, the deduction is allowable only to

the extent of 40% of such dividend income and, therefore, the petitioner was entitled to deduction of Rs.24,02,400/- and not to the extent of Rs.32,55,000/- which was granted by the Assessing Officer without any discussion thereon and without application of mind. It was also contended that the petitioner, by claiming an inaccurate deduction was, therefore, guilty of furnishing inaccurate particulars and as such, the reopening beyond a period of four years from the end of the relevant assessment year was within the jurisdiction of the Assessing Officer.

4. It is by now well settled that for the purpose of assuming the jurisdiction under section 147 of the Act after the expiry of period of four years from the end of the relevant assessment year, the Assessing Officer is required to form the belief that income chargeable to tax has escaped assessment by reason of failure on the part of the assessee to (I) furnish return of income under section 139 of the Act or in response to notice under section 142(1) or under section 148 of the Act or (II) to disclose fully and truly all material facts necessary for its assessment for the relevant assessment year. In the present case, there is no dispute with regard to non-filing of the return as contemplated under the proviso to sub-section (14) of the Act. Under the circumstances, for assessment of valid jurisdiction under section 147 of the Act, the Assessing Officer is required to be set aside that income chargeable to tax has escaped assessment on account of failure on the part of the petitioner to disclose fully and truly all material facts.

5. A perusal of the reasons recorded shows that the sole ground for reopening the assessment is that the petitioner had claimed deduction of Rs. 32,55,000/- under section 80M of the Act which had been allowed by the then Assessing Officer though the same was in excess of the allowance of deduction under section 80M of the Act and as such, income chargeable to tax to the tune of Rs. 8,52,600/- has escaped assessment. In the reasons recorded, the Assessing Officer had also observed that he has reason to believe that such escapement is on account of failure on the part of the assessee to furnish full and true particulars of income. What is required to be now examined is as to whether the conditions precedent necessary for assumption of jurisdiction by the Assessing Officer, under section 147 of the Act beyond a period of four years from the end of the relevant assessment year, are satisfied. In other words, whether income chargeable to tax has escaped assessment on account of failure of the part of the petitioner to disclose fully and truly all material facts necessary for its assessment. In this regard though the Assessing Officer in the reasons recorded, has observed that income chargeable to tax has escaped assessment on account of failure on the part of the assessee to furnish full and true particulars of income, there is nothing whatsoever to indicate as to what is the nature of failure on the part of the assessee. On perusal of the affidavit in reply filed by the respondent, it is apparent that, it is the case of the Assessing Officer that the petitioner has failed to disclose fully and truly all material facts by reason of the fact that it had claimed

more deduction than allowable to it. Moreover, in para 3.2 of the affidavit in reply, the Assessing Officer has averred that on verification of the record, it is found that the assessee had claimed deduction under section 80M of the Act to the tune of Rs. 32,55,000/- towards deduction under section 80M of the Act on the dividend of Rs. 60,06,000/- received from the Unit Trust of India which was granted by the Assessing Officer without discussing the issue in the assessment order and without looking into the provisions of the Act. Thus, it is apparent that the formation of belief of the Assessing Officer that income chargeable to tax has escaped assessment is based upon the record before him. Under the circumstances, it is apparent that there is no failure on the part of the petitioner to disclose fully and truly all material facts and that the assessment is sought to be reopened on the ground that the earlier Assessing Officer had made an error while framing the original assessment. Therefore, by merely adding a line in the reasons recorded that the petitioner had failed to disclose fully and truly all material facts the requirement of the proviso to section 147 of the Act would not be satisfied. When the Assessing Officer alleges that there is failure to disclose fully and truly all material facts, he should also be in a position to demonstrate as to what is the failure on the part of the assessee. Merely putting in a line as aforesaid would not satisfy the requirements of the proviso to section 147 of the Act.

6. In the light of the above discussion, in the absence of any failure on the part of the petitioner to disclose fully and

truly all material facts necessary for its assessment year under consideration, the assessment of jurisdiction on part of the Assessing Officer under section 147 of the Act after the expiry of a period of four years from the end of the relevant assessment year is without jurisdiction. Consequently, the impugned notice under section 148 seeking to reopen the assessment under section 147 cannot be sustained.

7. For the foregoing reasons, the petition succeeds, and is, accordingly allowed. The impugned notice dated 29.01.2002 seeking to reopen the assessment of the petitioner for the assessment year 1995-96 is hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs.

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[AKIL KURESHI, J.]

THE HIGH COURT
OF GUJARAT

[HARSHA DEVANI, J.]

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