

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**  
**SPECIAL CIVIL APPLICATION No. 9867 of 2003**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE AKIL KURESHI**  
**HONOURABLE MS.JUSTICE HARSHA DEVANI**

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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, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**PRIYA BLUE INDUSTRIES PVT. LTD - Petitioner(s)**

**Versus**

**DEPUTY COMMISSIONER OF INCOME TAX - Respondent(s)**

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**Appearance :**

MR SN SOPARKAR, SR. ADVOCATE with MRS SWATI SOPARKAR for Petitioner  
 RULE SERVED BY DS for Respondent(s) : 1,  
 APPEARANCE WITHDRAWN for Respondent(s) : 1,  
 MR MR BHATT, SR. ADVOCATE with MRS MAUNA M BHATT for Respondent(s) : 1,

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**CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**

**and**

**HONOURABLE MS.JUSTICE HARSHA DEVANI**

**Date : 12/06/2012**

**ORAL JUDGMENT**

**(Per: HONOURABLE MS.JUSTICE HARSHA DEVANI)**

1. The petitioner, a Private Limited Company has challenged the notice dated 21<sup>st</sup> March, 2003 issued by the respondent under section 148 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") whereby the assessment of the petitioner for assessment year 1996-97 is sought to be reopened.

2. The petitioner filed its return of income for the assessment year 1996-97 on 22<sup>nd</sup> November, 1996 declaring total income of Rs.22,53,340/-. The case of the petitioner came to be selected for scrutiny assessment and assessment came to be framed at a total of Rs.42,34,053/- under section 143(3) of the Act. Against the additions and disallowance made in the said assessment order, the petitioner went in appeal before the Commissioner of Income Tax (Appeals), but failed. The petitioner preferred second appeal against the said dismissal order before the Income Tax Appellate Tribunal which was pending at the relevant time.

3. Subsequently, by the impugned notice dated 21<sup>st</sup> March, 2003, the assessment of the petitioner for the assessment year 1996-97 is sought to be reopened.

4. Mr. S. N. Soparkar, Senior Advocate, learned counsel for the petitioner submitted that the notice under section 148 of the Act has been issued on 21<sup>st</sup> March, 2003 in respect of the assessment year 1996-97 which is clearly beyond a 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, the assumption of jurisdiction by the Assessing Officer under section 147 of the Act is invalid. Inviting attention to the reasons recorded, it was pointed out that the assessment is sought to be reopened on the ground that since the assessee had paid usance interest amounting to Rs.2,36,20,201/- to non-residents out of the boundaries of India on purchase of ships, it was liable to deduct tax as per the provisions of section 40(a)(i) read with Chapter XVII-B, failing which the interest amount cannot be allowed as deduction in computation of income chargeable under the head "Profits & Gains from Business or Profession". It was submitted that it is the case of the respondent that the assessee has paid usance interest on purchase of ships and has not complied with the provisions of section 40(a)(i) read with Chapter XVII-B of the Act and as such, the deduction has been allowed to the assessee which is contrary to law. According to the learned counsel, the main ground on which the assessment is sought to be reopened no longer survives inasmuch as, subsequently, the legislature has amended the provisions of section 10(15) (iv) of the Act by introducing Explanation 2 thereto whereby, it has been declared that usance interest payable outside India by an undertaking engaged in the business of ship-breaking in respect of purchase of a ship from outside India shall be deemed to be the interest payable on a debt incurred in a foreign country in respect of the purchase outside India with retrospective effect from 1.4.1962. Thus, the very ground on which the assessment is sought to be reopened no longer survives.

5. On the other hand, Mr. M. R. Bhatt, Senior Advocate,

learned counsel appearing on behalf of the respondents opposed the application by reiterating the stand taken by the respondent in the reasons recorded for reopening the assessment.

6. As notice earlier undisputedly the notice under section 148 of the Act has been issued after the expiry of a period of four years from the end of the relevant assessment year and as such the Assessing Officer would be required to cross the bar laid down by the first proviso thereto before reopening the assessment for the year under consideration. The Assessing Officer is, therefore, required to record satisfaction that income chargeable to tax has escaped assessment by reason of failure on the part of the petitioner to (i) file return under section 139(1); or (ii) to respond to notice issued under section 142(1) of the Act or section 148 of the Act; or (iii) to disclose fully and truly all material facts necessary for assessment of the relevant assessment year, no action can be taken by the Assessing Officer. In the present case admittedly, the first two contingencies do not exist. Therefore, the only ground on which the Assessing Officer can reopen the assessment in the present case is if there is any failure on the part of the petitioner to disclose fully and truly all material facts necessary for its assessment. In this regard, a perusal of the reasons recorded shows that there is not even a whisper therein to the effect that there is 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. Under the circumstances, the notice having been issued after the expiry of a period of four years from the end of the relevant assessment year, the assumption of jurisdiction under section

147 of the Act by the Assessing Officer is without authority of law. It is, therefore, not necessary to deal with the submissions advanced by the learned counsel for the petitioner on the question as to whether the ground on which the assessment is sought to be reopened survives in the light of the amendment in section 10(15)(iv) of the Act.

8. In view of the aforesaid discussion, the petition succeeds and is, accordingly, allowed. The impugned notice dated 21<sup>st</sup> March, 2003 issued under section 148 of the Act, in respect of the assessment year 1996-97 is hereby quashed and set aside. Rule is made absolute accordingly, with no order as to costs.

[AKIL KURESHI, J.]

[HARSHA DEVANI, J.]

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