

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CIVIL APPLICATION NO. 17702 of 2018**

=====

**CHETAN ENGINEERS**

Versus

**ASSISTANT COMMISSONER OF INCOME TAX CIRCLE PATAN**

=====

Appearance:

MR MANISH J SHAH(1320) for the Petitioner(s) No. 1

MRS MAUNA M BHATT(174) WITH MR KARAN SANGHANI, ADVOCATE for  
the Respondent(s) No. 1

=====

CORAM: **HONOURABLE MR. JUSTICE J.B.PARDIWALA**

and

**HONOURABLE MR. JUSTICE ILESH J. VORA****Date : 17/03/2021****ORAL ORDER****(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)**

1. By this writ-application under Article 226 of the Constitution of India, the writ-applicant [assessee] has prayed for the following reliefs:-

*11(A) be pleased to call for the records of the proceedings, look into them and be pleased to issue a writ of certiorari or any other appropriate writ, order or direction quashing the impugned 148 notice at Annexure-G and the order disposing the objections at Annexure-N.*

*(B) be pleased to issue a writ of mandamus or any other appropriate writ, order or direction asking the respondent not to proceed further in pursuance of section 148 notice at Annexure-G and the order rejecting the objections at Annexure-N.*

*(C) pending the hearing and final disposal of this application, be pleased to stay further proceedings in pursuance of section 148 notice at Annexure-G.*

*(D) be pleased to grant any further or other relief as this Hon'ble Court deems just and proper in the interest of justice, and*

*(E) be pleased to allow this application with cost against the respondent.*

2. This is a case of reopening for the Assessment Year 2012-13 beyond the period of 04 years and that too, in a case of scrutiny assessment under Section-143(3) of the Income Tax Act, 1961 [for short 'The Act'].

3. The reasons assigned for reopening of the assessment under Section-147 of the Act read as under:-

*“In this case, return of income was filed by the assessee on 26.09.2012 declaring total income of Rs.46,86,470/-. Subsequently case was selected for scrutiny and order u/s.143(3) had been passed on 24.07.2014, at assessed total income of Rs.61,04,333/-.*

*Thereafter, on perusal of the records, it was noticed that the assessee has credited an amount of Rs.2,38,108/- as balance written off during the year in the P&L account. During the year the assessee has written off creditors liabilities, pertaining to Patel Babaldas Virchanddas of Rs.27,498/-, Ashok Engineering Const. Co. of Rs.7,59,883/-, Barkatali B Pirani of Rs.2,18,472/-, Amardeep Metal Works of Rs.10,79,086/-, Ambrish Engineering of Rs.12,59,429/- and Ami Enterprise of Rs.11,98,263/- aggregating to Rs.45,42,632/-. Therefore, the assessee was required to offer the whole amount of liabilities of Rs.45,42,632/- for taxation. However, against these liabilities, the assessee has taken set off, of receivable amount from Daxin Guj. Vij. Co. Deposit of Rs.23,15,699/-. Retention for Royalty Deposit Jaipur of Rs.18,82,343/-, Allahabad Bank Jaipur of Rs.70,116/- and Uno Motor Car of Rs.36,365/- aggregating to Rs.43,04,523/-. Thus, net income of Rs.2,38,108/- has only been shown in the P&L account for taxation. Further, the amounts set off from liabilities are actually deposits made by the assessee which are in the nature of capital expenditure, hence, cannot be set off against liabilities.*

*Moreover, an amount can only be written off if it was earlier offered for taxation as revenue income. It is pertinent to mention here that the amount of Dakshin Gujarat Vij Company Ltd. of Rs.23,15,699/- was not even shown as deposits in the balance sheet of the F.Y. 2010-11. Thus, it is clear that the same was not offered for taxation in earlier years as revenue receipts. Therefore, the set off of expenditure which were capital in nature and did not offer earlier as revenue receipts are*

*not allowable to be set off from creditor liabilities. This has resulted into under-assessment in the case of the assessee to the tune of Rs.43,04,523/- for A.Y.2012-13.*

*In view of the above facts the capital expenditure which has been set off against revenue receipts, are not allowable. The burden of proving the set-off of capital deposits against revenue income has not been discharged by the assessee during the course of assessment proceedings as discussed above. I have, therefore, reason to believe that income to the extent of capital expenses set off against revenue receipts of Rs.43,04,523/- has escaped assessment due to failure on the part of the assessee to offer the whole of the creditor liabilities written off as income. I am satisfied that this case is fit for issue of notice u/s.148 of the Act to assess the unexplained income which has escaped assessment for A.Y. 2012-13. Accordingly, notice u/s.148 of the Act may be issued subject to prior sanction of the Pr. CIT u/s.151(1) of the I.T. Act.”*

4. The assessee lodged his objections to the afore-said reasons vide communication dated 18<sup>th</sup> October 2018.

5. The objections raised by the assessee came to be overruled by the Assessing Officer vide order dated 5<sup>th</sup> November 2018.

6. Being dissatisfied with the impugned notice of reopening, the writ-applicant is here before this Court with the present writ-application.

7. We have heard Mr. Manish Shah, the learned counsel appearing for the writ-applicant and Mrs. Mauna Bhatt, the learned senior standing counsel assisted by Mr. Karan Sanghani, the learned counsel appearing for the revenue.

8. Mr. Shah, the learned counsel has raised manifold contentions to make good his case that the impugned notice of reopening is not sustainable in law. However, we have noticed something which in our opinion should not be overlooked. It is a settled position of law that if the Assessing Officer intends to reopen the assessment, he is obliged to

assign reasons for the same. Once such reasons are assigned, the assessee has a right to lodge his objections to the same. Once the objections are lodged, it is obligatory for the Assessing Officer to take such objections into consideration and pass a speaking order. When we say speaking order, it means a meaningful order dealing with the objections raised by the assessee. The exercise which the Assessing Officer is supposed to undertake while dealing with the objections raised by the assessee is not an empty formality. The order disposing of the objections should reflect application of mind.

9. In the afore-said context, we may only say that in the case on hand, none of the objections raised by the assessee could be said to have been dully considered by the Assessing Officer in a meaningful manner.

10. In such circumstances referred to above, we are of the view that we should quash and set aside the order disposing of the objections and remit the matter to the Assessing Officer for fresh consideration of the objections at his end.

11. In view of the above, this writ-application succeeds in part. The order disposing of the objections filed by the assessee dated 5<sup>th</sup> October, 2018, Annexure-N to this petition Page-93 is hereby quashed and set aside and the matter is remitted to the Assessing Officer. The Assessing Officer shall take into consideration the objections raised by the assessee and pass a fresh speaking order in accordance with law.

12. Let this exercise be undertaken within a period of four weeks from the date of the receipt of this order. We may clarify that we have otherwise not expressed any opinion on the merits of the case and we should otherwise also not do so as we are remitting the matter to the

Assessing Officer.

In the event, if the order that the Assessing Officer may pass a fresh, is adverse in any manner to the assessee, then it shall be open for him to challenge the same before the appropriate forum in accordance with law. However, in the event, if the order is adverse, then atleast a period of 04 weeks shall be granted to the assessee to take recourse of the remedy available to him in law.

(J. B. PARDIWALA, J)

(ILESH J. VORA,J)

A. B. VAGHELA

