

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 20294 of 2019****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS. JUSTICE BELA M. TRIVEDI****Sd/-****and****HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI****Sd/-**

=====

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

=====

RAJU BHUPENDRA DESAI**Versus****THE INCOME TAX OFFICER WARD 1(3)(4)**

=====

Appearance:**MR. DARSHAN R PATEL(8486) for the Petitioner(s) No. 1****MR. M.R. BHATT, SENIOR ADVOCATE WITH MRS. MAUNA M BHATT(174)
for the Respondent(s) No. 1**

=====

CORAM: HONOURABLE MS. JUSTICE BELA M. TRIVEDI**and****HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI****Date : 05/07/2021****CAV JUDGMENT****(PER : HONOURABLE MS. JUSTICE BELA M. TRIVEDI)****1.** The petitioner by way of present petition

filed under Article 226 of the Constitution of India has challenged the impugned notice dated 31.03.2019 (Annexure 'A') issued under section 153C of the Income Tax Act, 1961 (hereinafter referred to as 'the said Act'), the preliminary order dated 10.10.2019 passed by the respondent rejecting the objections of the petitioner (Annexure 'D'), and the order dated 30.10.2019 passed again rejecting the objections raised by the petitioner (Annexure 'F').

2. The short facts giving rise to the present petition are that the petitioner had received a notice dated 31.03.2019 issued under section 153C of the said Act calling upon the petitioner to prepare true and correct return of his total income for the A.Y. 2012-13 in the prescribed form and manner under the Act. The petitioner therefore filed a return of income on 17.09.2019 in response of the said notice. The petitioner thereafter received the notice dated 23.09.2019 issued under section 142(1) of the said Act calling upon the petitioner to furnish the accounts and documents specified in the Annexure in connection with the scrutiny assessment proceedings under section 143(3) read with section 153C of the Act for the A.Y. 2012-13. Along with the said notice dated 23.09.2019, the petitioner also received a certified copy of the reasons recorded in the proceedings under section 153C of the said Act for the assessment

year 2012-13 in the case of the petitioner. The petitioner filed objections (Annexure 'C') against the said satisfaction note, which objections came to be disposed of by the respondent vide the order dated 10.10.2019 (Annexure 'D'). The petitioner filed further objections (Annexure 'E') on 17.10.2019, which also came to be rejected by the respondent vide the order dated 30.10.2019 (Annexure 'F').

3. The learned Senior Advocate Mr. M.R. Bhatt for the respondent at the outset challenging the very maintainability of the petition, has relied upon the decision of Supreme Court in the case of **Commissioner of Income-Tax Gujarat, versus Vijaybhai N. Chandrani** reported in **(2013) 357 ITR 713(Supreme Court)**, and submitted that the Court should not interfere at the stage of issuance of notice under section 153C of the said Act, and more particularly when the objections raised by the petitioner have been duly considered by the Assessing Officer. According to him, after the disposal of the objections, the Assessing Officer is required to pass an order of assessment, and if that order goes against the assessee, he could exhaust the remedy under the Act. Such petition at this juncture is also not maintainable in view of the settled legal position that when the alternative remedy is available to the aggrieved party, it must first exhaust the same before approaching

the Writ Court. However, the learned advocate Mr. D.R. Patel for the petitioner would submit that existence of alternative remedy itself would not be a bar against entertaining the writ petition under Article 226 of the Constitution of India, if the impugned order is without jurisdiction or is passed in violation of the principles of natural justice.

4. In the opinion of the Court, there cannot be any disagreement with the proposition of law canvassed by Mr. D.R. Patel for the petitioner, however, in the instant case, the objections raised by the petitioner against the satisfaction note were considered by the respondent vide the impugned order dated 10.10.2019 and the further objections raised by the petitioner also came to be considered and rejected by the respondent vide the order dated 30.10.2019. Under the circumstances, it could not be said that the impugned notice and the impugned orders were in violation of the principles of natural justice. The question of jurisdiction was also not raised by the petitioner in the objections raised twice before the respondent. Mr. Patel had also failed to make out any case as to how the impugned orders were without jurisdiction. Therefore, the proper course would have been that the Assessing Officer should have been permitted to frame the assessment, and if the order of assessment was

passed against the petitioner, he could take recourse to the remedy available under the Act. In this regard, learned Senior Advocate Mr. Bhatt has rightly relied upon the observations made by the Supreme Court in the case of **Commissioner of Income-Tax Gujarat, versus Vijaybhai N. Chandrani (supra)**, in which it has been observed as under : -

"16. In the present case, the assessee has invoked the Writ jurisdiction of the High Court at the first instance without first exhausting the alternate remedies provided under the Act. In our considered opinion, at the said stage of proceedings, the High Court ought not have entertained the Writ Petition and instead should have directed the assessee to file reply to the said notices and upon receipt of a decision from the Assessing Authority, if for any reason it is aggrieved by the said decision, to question the same before the forum provided under the Act.

17. In view of the above, without expressing any opinion on the correctness or otherwise of the construction that is placed by the High Court on [Section 153C](#), we set aside the impugned judgment and order. Further, we grant time to the assessee, if it so desires, to file reply/objections, if any, as contemplated in the said notices within 15 days' time from today. If such reply/objections is/are filed within time granted by this Court, the Assessing Authority shall first consider the said reply/objections and thereafter direct the assessee to file the return for the assessment years in question. We make it clear that while framing the assessment order, the Assessing Authority will not be influenced by any observations made by the High Court while disposing of the Writ Petition. If, for any reason, the assessment order goes against the assessee, he/it shall

avail and exhaust the remedies available to him/it under the Act, 1961."

5. Recently, the Coordinate Bench of this Court in similar situation in case of **Jitendra Mansukhlal Adesara versus Assistant Commissioner of Income Tax** reported in **(2021) 126 Taxmann.com 150 (Gujarat)**, had an occasion to consider the above ratio laid down by the Supreme Court, and it had observed as under : -

"23. Thus, the Supreme Court took the view that the assessee should have filed his reply/objections to the satisfaction note and if any assessment order is passed, it would be open for the assessee to avail and exhaust the remedy available to him under the Act, 1961. The only distinguishing feature in the case before the Supreme Court compared to the case on hand is that in the case on hand, the reply/objections were filed by the writ-applicant and those were duly considered and rejected, whereas, in the case of **Vijaybhai N. Chandrani** (supra) even without filing any reply/objections, the assessee came straight to the High Court with a writ-application. However, what is important to note is that the Supreme Court made itself very clear that the assessee should file his reply/objections and thereafter, file the return for the assessment year in question. As regard the assessment order, the Supreme Court said that it would be open for the writ-applicant to avail and exhaust the remedy available to him under the Act."

6. In view of the above, this Court is also of the opinion that after the objections of the Assessee against the notice under section 153C are decided, the Assessing Officer has to frame

the assessment and if the assessment order goes against the assessee, he could avail or exhaust the remedy as may be available to him under the Act. Therefore, the petition at this juncture does not deserve any further consideration, however, since the learned advocate Mr. Patel has made his submissions on the merits of the petition also, let us examine whether there is any substance in the same.

7. It was sought to be submitted by Mr. D.R. Patel that the entire proceedings had vitiated as the officer who had issued the notice under section 153C was different from the officer who had recorded the satisfaction. In this regard, it may be noted that the learned advocate Mr. Patel has raised this issue orally for the first time during the course of arguments. It was never raised before the respondent at any point of time. It was also not raised in the memorandum of the present petition, and therefore, the respondent had no occasion to deal with the same. The issue which was neither raised before the authority nor in the memorandum of the petition, could not be permitted to be raised for the first time during the course of arguments.

8. Mr. Patel further submitted that the Assessing Officer had recorded the satisfaction on the borrowed information. The said submission

of Mr. Patel has no force. In the instant case, the search was carried out under section 132 of the said Act on 06.02.2017 at various locations of one MS Patel Group of Ahmedabad i.e. Shri Mahendra Shantilal Patel, Shri Dhruv D. Patel, Shri Vishal D. Pandya, Shri Bharat P. Popat, M/s. Benefit Tradelink, M/s. Ellegance Realty Private Limited, by the DCIT Cen, Circle-1(3), Ahmedabad who vide the letter dated 19.03.2019 had forwarded the information to the office of the respondent along with documents for further verification, as the information pertained to the petitioner. Accordingly the respondent had initiated the proceedings under section 142(1) read with section 153C of the said Act by recording the satisfaction that the documents found and seized from the premises of the accommodation entry provider group of Ahmedabad, pertained to the petitioner - assessee and had a bearing on the determination of the total income of the petitioner for the A.Y. 2012-13. As stated earlier, the petitioner filed the objections against the said satisfaction recorded by the respondent and the said objections have been duly considered by the respondent. Under the circumstances, it could not be said that the respondent had recorded the satisfaction on the basis of the borrowed information.

9. In the next limb of his submission, learned

advocate Mr. D.R. Patel submitted that the impugned notice under section 153C was issued on the basis of incorrect facts, inasmuch as the satisfaction note recorded by the respondent on 23.09.2019 mentioned that the petitioner had entered into several transactions with S.V.P. Corporation whose proprietor was Shri Vishal Pandya, whereas the petitioner had not entered into any such transactions with the said proprietary concern or with its proprietor. He further submitted that the said transactions were allegedly carried out in December, 2016, and therefore, they could be taken into consideration for the relevant assessment year 2017-18, however, the notice issued under section 153C against the petitioner for the relevant assessment year 2017-18 was already dropped earlier vide order dated 08.09.2019. There is also no substance in the said submission of Mr. Patel. As stated in the said assessment order dated 08.09.2019 passed for the A.Y. 2017-18, "the proceedings initiated under section 153C of the Income-Tax Act by way of issue of notice under section 153C of the Income-Tax Act dated 31.03.2019 for A.Y. 2017-18 is hereby dropped due to technical and ledger reasons as the same was issued in the financial year 2018-19, the year in which regular assessment proceedings for the assessment year 2017-18 can only be initiated and no reopen assessment proceedings either under section 147

or 153C of the said Act for the assessment year 2017-18 could be initiated". Again, it may be noted that no such contention was ever raised by the petitioner in the objections twice raised before the Assessing Officer.

10. The learned advocate Mr. Patel further submitted that the respondent had initiated the action against the petitioner on the basis of a mistaken identity as the petitioner had never entered into any such transactions as mentioned in the reasons for recording satisfaction by the respondent, which otherwise pertained to some other Dr. Raju Desai. Again, it may be noted that this contention was not taken up before the respondent authority and has been taken for the first time in the present petition, by way of the affidavit-in-rejoinder. Apart from the fact, that such a contention taken up for the first time in the affidavit-in-rejoinder, cannot be considered, the Court is of the opinion that if the petitioner was not the same Raju Desai, he would not have missed to raise such a contention in the objections filed before the respondent authority.

11. There is also no merit in the submission of Mr. Patel that the respondent was carrying out fishing and roving inquiry completely on incorrect facts and based on the borrowed belief of DCIT Central Circle-1(3), Ahmedabad. It may

be noted that merely because in the reasons recorded to reopen the case under section 153C, the respondent has recorded in the first opening paragraph that he had received the information from DCIT Cen, Cir-1(3), Ahmedabad, it could not be said that the respondent had borrowed the belief from the other officer or that he had initiated the action without any application of mind. In the reasons recorded in support of the notice under section 142(1) read with section 153C, the respondent has narrated all the material received by him connecting the petitioner for *prima facie* coming to the conclusion that the sheets seized during the search proceedings at the various locations of MS Patel Group of Ahmedabad, revealed that Shri Raju Bhupendra Desai i.e. the petitioner had entered into monetary transactions with SVP Corporation, the proprietary concern of Shri Vishal D. Pandya. The respondent after having gone through the information and material, had recorded the satisfaction that the documents found and seized from the premises of the accommodation entry provider Group of Ahmedabad pertained to the petitioner - assessee and had bearing on the determination of the total income of the petitioner - assessee for the assessment year 2012-13, and therefore, the case was required to be assessed under section 153C read with 153A of the Income-Tax Act for the A.Y. 2012-13.

12. The objections against the said reasons recorded by the respondent for re-opening of the case of the petitioner, were duly considered by the respondent vide the detailed order dated 10.10.2019 (Annexure D), after calling upon the petitioner to furnish the details and documents vide the notice dated 23.09.2019 issued under section 142(1) of the said Act. The petitioner again filed objections against the said order passed on 10.10.2019 (Annexure D), which also came to be disposed of by the respondent vide the order dated 30.10.2019 (Annexure F).

13. It may be noted that at the time of issuing the notice under section 153C of the Act, the Assessing Officer has to satisfy himself whether the books of accounts or documents or assets seized or requisitioned by the other Assessing Officer in the proceedings under section 153A and handed over to him, had a bearing on the determination of the total income of the person to whom the notice under section 153C is issued. Such satisfaction would be in the realm of subjective satisfaction of the concerned Assessing Officer. The sufficiency or correctness of the documents or material handed over by the other Assessing Officer to him also could not be gone into by the Courts at this stage. In the case of **Raymond Woolen Mills Ltd. Versus ITO** reported in **(1999) 236 ITR 34 (SC)**, it has been held that in determining whether the

commencement of reassessment proceeding is valid, the Court has only to see whether there is *prima facie* some material on the basis of which the department has opened the case, and that the sufficiency or correctness of the material could not be considered at this stage. It is true that the supreme Court has made the said observations while considering the validity of the reasons recorded by the Assessing Officer for reopening of the assessment of the assessee under Section 147, whereas the present case arises out of the proceedings initiated and the satisfaction recorded by the Assessing Officer for initiating the proceedings under section 153C of the said Act, nonetheless such reliance of the decision of Supreme Court by the respondent could not be said to be out of place when the matter was concerning about the reopening of the assessment of the petitioner - assessee.

- 14.** In that view of the matter, the Court does not find any merit in the petition and the same is dismissed. Notice is discharged. Interim relief granted earlier stands vacated forthwith.

**Sd/-
(BELA M. TRIVEDI, J)**

**Sd/-
(A. C. JOSHI, J)**

AMAR SINGH