IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 6331 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J.B.PARDIWALA

and
HONOURABLE MS. JUSTICE NISHA M. THAKORE
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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 or any order made thereunder ?	

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THE KALUPUR COMMERCIAL CO-OP BANK LIMITED (AS THE SUCCESSOR TO SIDDHI CO-OP BANK LIMITED)
Versus
ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 1(1)(1), AHMEDABAD
==
Appearance:
MR B S SOPARKAR(6851) for the Petitioner(s) No. 1
MR MR BHATT FOR M R BHATT & CO.(5953) for the Respondent(s) No. 1
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CORAM: **HONOURABLE MR. JUSTICE J.B.PARDIWALA**
and
HONOURABLE MS. JUSTICE NISHA M. THAKORE

Date : 12/04/2022

ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE J.B.PARDIWALA)

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

> *“This Hon’ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, direction or order and be pleased to:*

> a. *quash and set aside the impugned notice dated 30.03.2021 at Annexure - 'A' to this Petition;*
>
> b. *pending the admission, hearing and final disposal of this petition, to stay implementation and operation of the notice dated 30.03.2021 at Annexure - 'A' to this petition and stay further proceedings for the A.Y. 2014-15.*
>
> c. *any other and further relief deemed just and proper be granted in the interest of justice;*
>
> d. *to provide for the cost of this petition."*

2. The fact giving rise to this writ application may be summarized as under:

2.1 The writ applicant is a Multi-State Scheduled Cooperative Bank. We take notice of the fact that one M/s. Siddhi Cooperative Bank Limited figures in this litigation. For the A.Y. 2014-15, M/s. Siddhi Cooperative Bank Limited had filed its return of income on 30.09.2014 at Rs.10,37,230/-. The case was selected for scrutiny and the assessment order under Section 143(3) of the Income Tax Act, 1961 (for short "the Act, 1961") was passed on 27.09.2016.

2.2 It appears from the materials on record that M/s. Siddhi Cooperative Bank Limited got merged with the writ applicant bank w.e.f. 09.04.2019.

2.3 The writ applicant bank is in receipt of a notice issued by the respondent under Section 148 of the Act seeking to reopen the assessment in the case of M/s. Siddhi Cooperative Bank Limited for the A.Y. 2014-15.

2.4 It is the above notice issued under Section 148 of the Act to M/s. Siddhi Cooperative Bank Limited, which is a subject matter of challenge in the present writ application.

2.5 On 29.03.2022, this Court passed the following order:

“1. We have heard Mr. B.S. Soparkar, the learned counsel appearing for the writ applicant.

2. Having regard to the peculiar facts of this case, we want Mr. M.R. Bhatt, the learned senior counsel appearing for the Revenue to look into the writ application, take appropriate instructions in the matter and revert tomorrow, i.e, on 30th March, 2022. The allegations levelled in the reasons are quite serious. However, at the same time, the principal contention raised on behalf of the writ applicant Bank is that none of the twelve entities named at Page-24 of the paper-book are having any accounts with the Bank. While lodging the objections to the reasons, the writ applicant Bank has specifically said that the twelve entities identified for the purpose of inquiry are not having any account with the assessee Bank.

3. We have also gone through the order disposing of the objections. We do not find a word of discussion on this issue. Still we want Mr. Bhatt to take appropriate instructions and assist us tomorrow.

4. Mr. Soparkar shall furnish one set of his entire paperbook to Mr. Sanghani at the earliest.

5. Post the matter on 30th March, 2022 on top of the Board.”

2.6 Thereafter, on 30.03.2022, while issuing Notice to the respondent, this Court passed the following order:

‘‘1. Draft amendment is allowed. The necessary incorporation shall be carried out at the earliest. One set of the entire amended paper book shall be furnished at the earliest to Mr. M.R. Bhatt, the learned Senior Counsel appearing for the Revenue.

2. Pursuant to the order passed by this Court dated 29.03.2022, Mr. Bhatt, has received instructions from the department. However, those are quite exhaustive and Mr. Bhatt need some time to study the instructions. All that we want to inquire is whether the entities named at page 24 of the paper book hold any bank accounts with the assessee - Bank or not. If factually, it is found that these entities hold Bank accounts then we may be reluctant to entertain this writ application ofcourse, subject to what Mr. Soparkar has to submit further in the matter.

3. Issue Notice to the respondent for final disposal of this writ application, returnable on 12.04.2022.

4. Let there be an ad-interim order in terms of paragraph 7(b).

5. On the returnable date, notify this matter on top of the Board."

2.7 The sum and substance of the impugned notice issued under Section 148 of the Act is that the respondent is in receipt of an information from the DDIT (Inv.) Unit-2, Surat, that at the relevant point of time, M/s. Siddhi Cooperative Bank Limited had transmitted huge amount to various foreign countries. In the reasons assigned by the Assessing Officer, we find names of 12 parties involved in the transactions. The 12 parties allegedly involved and identified in the transactions during the period between 2009 and 2016 are as under:

- BajrangDaim Pvt. Ltd. - T2.8
- Agni Gems Pvt. Ltd. - T2.1
- Hem Jewels Pvt. Ltd. - T2.2
- MB Offshore Distributors Pvt. Ltd. - T2.3
- MaaMumbadevi Gems Pvt. Ltd. - T2.4
- R.A. Distributors Pvt. Ltd. - T2.5
- Ramshyam Exports Pvt. Ltd. - T2.6
- Riddhi Exim Pvt. Ltd. - T2.7
- Renuka Exim Pvt. Ltd. T2.9
- Shimmer Exim Pvt. Ltd. T2.10
- Aunik Diamond Pvt. Ltd. - T2.11
- Jaime Exim Pvt. Ltd. - T2.12

2.8 According to the Assessing Officer, M/s. Siddhi Cooperative Bank Limited being a Cooperative Bank could not have undertaken foreign outward remittances for the above 12 parties.

The analysis of the information as indicated in the reasons read thus:

"As per the information received from DDIT(Inv.) Unit -2, Surat, it is seen that the following 12 companies managed by Afroze Hassan Fatta and his accomplices had made huge foreign remittances to foreign entities based in Dubai and Honk Kong on strength of fake bill of entries in lieu of import payments for diamonds from these foreign based entities.

Party Name
Agni Gems Pvt. Ltd.
Aunik Diamond Pvt. Ltd.
BajrangDaim Pvt. Ltd.
Hem Jewels Pvt. Ltd.
Jaime Exim Pvt. Ltd
MaaMumbadevi Gems Pvt. Ltd.
MB Offshore Distributors Pvt. Ltd.
R.A. Distributors Pvt. Ltd.
Ramshyam Exports Pvt. Ltd.
Renuka Exim Pvt. Ltd.
Riddhi Exim Pvt. Ltd.
Shimmer Exim Pvt. Ltd.

These 12 companies in turn had received funds from multitude of other companies/ entities through multiple bank accounts. A fund trail was identified the entities that had remitted funds which after multiple level of fund transfers through banking medium finally reached these 12 front companies managed by Afroze Hassan Fatts and his accomplices.

The modus operandi of the transactions in the bank accounts of these entities was that huge remittances were sent to the entities based abroad mainly to Hong Kong and UAE in the guise of payment for the import of diamonds. It is noticed that *the accounts of aforementioned 12 entities at ICICI Bank were credited by way of transfer from different entities and subsequently the amount were transferred to different entities based at Hong Kong and UAE in lieu of import of rough and cut polished diamonds. On verification, it has been found that most of the foreign suppliers had common addresses. It appears that the account of these foreign based entities were used for parking of funds in guise of import payments from Indian based entities.*

The details of deposits have been tabulated as under:

Sr. No.	Party Name	PAN	Target Entities	FY 2013-14
				(AY 2014-15)
487	Siddhi Co-Op. Bank Limited	AAGAS2970L	BajrangDaim Pvt. Ltd. - T2.8	78,50,000
			Hem Jewels Pvt. Ltd.- T2.2	62,45,000
			MaaMumbadevi Gems Pvt. Ltd.- T2.4	17,00,000
			MB Offshore Distributors Pvt. Ltd. - T2.3	4,49,34,840
			Ra Distributors Pvt. Ltd. - T2.5	5,26,04,840
			Ramshyam Exports Pvt. Ltd.-T.26	87,00,000
			Riddhi Exim Pvt. Ltd. - T2.7	5,99,34,840
			Shimmer Exim Pvt. Ltd.- T2.10	78,10,000
Total				18,97,79,520

From the above, it is found that no real business is being carried out by the assessee. Therefore, all the transactions carried on by the assessee are also mere paper transactions where no real exchange of goods or service have taken place. The transactions undertaken by various beneficiaries are sham transactions reflected in their books of accounts for the purpose of tax evasion."

2.9 We also quote paras 4,5,6 and of the reasons as under:

*"4. **Enquiries made by the AO as sequel to information***

***collected / received**: In this case, specific information has been received from the Investigation Wing clearly outlining the systematic evasion of taxes by the assessee. The facts as enumerated above have been found out on examination on the case records of the assessee and are self explanatory. Therefore, no further enquiry is required in this case. On the basis of the same, there are reason to believe that the income chargeable to tax has escaped assessment.*

*5. **Findings of the AO**: After analysis of the information with the facts available on record, it can be concluded that the transaction of RS.18.98 crore done by the assessee with the following parties controlled by Afroze Hassan Fatta is mere sham transaction.*

Sr. No.	Party Name	PAN	Target Entities	FY 2013-14
				(AY 2014-15)
487	Siddhi Co-Op. Bank Limited	AAGAS2970L	BajrangDaim Pvt. Ltd. - T2.8	78,50,000
			Hem Jewels Pvt. Ltd.- T2.2	62,45,000
			MaaMumbadevi Gems Pvt. Ltd.- T2.4	17,00,000
			MB Offshore Distributors Pvt. Ltd. - T2.3	4,49,34,840
			Ra Distributors Pvt. Ltd. - T2.5	5,26,04,840
			Ramshyam Exports Pvt. Ltd.-T.26	87,00,000
			Riddhi Exim Pvt. Ltd. - T2.7	5,99,34,840
			Shimmer Exim Pvt. Ltd.- T2.10	78,10,000
Total				18,97,79,520

Therefore, an amount of Rs.18,97,79,520/- has escaped assessment and the same is required to be brought to tax.

*6. **Basis of forming reason to believe and details of escapement of income:***

In this regard, it is stated that the information was not in the possession of the undersigned earlier. The said information/scheme of tax evasion could be unearthed only after investigation was done in the case of Afroze Hassan Fatta. Although, during the course. assessment proceedings, the assessee submitted, P&L account, Balance sheet and other details, the scheme of tax evasion was embedded in annual report, audited P&L A/c balance and books of account in such a manner that it could not be detected by the AO and could be detected only after Investigation carried out It be reasonably concluded that there is failure on the part of assessee to disclose fully and truly all necessary facts during assessment proceedings. For aforesaid reasons, it is not a case of change of opinion by the A.O. It is evident from the above facts as mentioned in the para 3 & 5, that the assessed had not truly and fully disclosed material facts necessary for his assessment for the year under consideration

On the basis of the above, I have reason to believe that income of the assessee to extent of Rs.18,97,79,520/- has escaped assessment for the year under consideration. Therefore, I am satisfied that it is a fit case for initiating proceedings u/s. 147 of the Act.

2.10 Thus, from the aforesaid, the Assessing Officer has come to the conclusion that he has reason to believe that the income of the assessee to the extent of Rs.18,97,79,520/- has escaped assessment for the year under consideration.

2.11 To the aforesaid reasons, the writ applicant lodged its objections dated 23.06.2021. In the objections, two things have been highlighted as under:

"*2.2 Please note that assesse is not having license to deal with foreign remittances; so assessee bank on its own cannot make any foreign remittance. Further also no Foreign Remittances are made by the Assessee Bank during the year for any of its customers/ Account Holders.*

2.3 Moreover, 12 (Twelve) entities identified for inquiry purpose are not having any account with assessee bank. Thus the narration made, and reasons recorded does not relate to or pertain to assessee bank."

2.12 Over and above the aforesaid, there are many other objections, which the writ applicant – assessee has raised. The objections came to be disposed of by the Assessing Officer vide order dated 08.11.2021.

2.13 The aforesaid objections came to be overruled by the Assessing Officer dated 08.11.2021.

2.14 In such circumstances referred to above, the writ applicant is here before this Court with the present writ application.

3. We have heard Mr. Bandish Soparkar, the learned counsel appearing for the writ applicant and Mr. M.R. Bhatt, the learned senior counsel appearing for the Revenue.

4. It is evident from the materials on record that the doubtful transactions of foreign remittances have been ascribed to M/s. Siddhi Cooperative Bank Limited. The proposed reopening is for the A.Y. 2014-15. At the relevant point of time, the writ applicant bank was not at all in the picture. M/s. Siddhi Cooperative Bank Limited was taken over by the writ applicant w.e.f. 09.04.2019. In fact, Section 148 notice should have been issued to the writ applicant bank, however, the impugned notice came to be issued to M/s. Siddhi Cooperative Bank Limited. As M/s. Siddhi Cooperative Bank Limited was taken over by the writ applicant bank, it is the writ applicant who lodged objections.

5. When this matter was heard for the first time, we wanted to know from the Revenue whether the 12 parties referred to above had any savings or current accounts with M/s. Siddhi Cooperative Bank Limited. We wanted the Revenue to place this information on record as there was a strong assertion on the part of writ applicant

that none of the 12 parties referred to above had any bank accounts running in their names maintained with M/s. Siddhi Cooperative Bank Limited.

6. Today, when the matter was taken up for further hearing, Mr. Bhatt, the learned senior counsel produced three documents for our perusal and understanding of the controversy. These three documents are in the nature of transaction details. According to Mr. Bhatt, M/s. Siddhi Cooperative Bank Limited transferred the amount to Mili Corporation and Yashoda Enterprises respectively. According to Mr. Bhatt, Mili Corporation and Yashoda Enterprises in turn transferred the amount to one Shimmer Exim Private Limited. The Shimmer Exim Private Limited in turn is said to have transferred the amount to various foreign countries through the ICICI Bank Limited. This is what Mr. Bhatt has to explain as regards the transactions for which the Assessing Officer proposes to reopen the assessment for the A.Y. 2014-15.

7. The first and the foremost thing we take notice of is that whatever has been explained by Mr. Bhatt on the basis of the three documents does not figure in the reasons assigned by the Assessing Officer. Therefore, in such circumstances, the writ applicant could be said to have had no opportunity to offer its explanation as regards the transactions which Mr. Bhatt is talking about. The reasons assigned by the Assessing Officer are altogether on a different footing. The writ applicant in its own way has tried to explain while putting forward its objections, however, we do not find any meaningful discussion in the order disposing of the objections. In fact, none of the objections raised by the writ applicant could be said to have been taken into consideration by the Assessing Officer in a meaningful manner.

8. In such circumstances referred to above, we want the Assessing Officer to undertake a fresh exercise for the purpose of looking into and understanding the objections raised by the writ applicant. We are of the view that the writ applicant should be given an opportunity to even meet with what has been pointed today to us by Mr. Bhatt i.e. the transactions between M/s. Siddhi Cooperative Bank Limited, Mili Corporation and also Yashoda Enterprises and in turn with Shimmer Exim Private Limited and in turn the transactions with Shimmer Exim Private Limited undertook with the ICICI Bank Limited. If what has been pointed out by the Revenue is also to be considered as a part of the reasons, then the writ applicant must be afforded an opportunity to offer its explanation. We are not asking the Assessing Officer to furnish fresh set of reasons. Mr. Soparkar has been able to understand what has been conveyed to us by Mr. Bhatt. We leave it for the writ applicant to raise its objections even with regard to the three documents, which have been placed on record.

9. In view of the aforesaid, we quash and set aside the order passed by the Assessing Officer disposing of the objections. We remit the matter to the Assessing Officer for fresh consideration of all the objections, which have been raised by the writ applicant and / or on record and we also want the Assessing Officer to consider the objections that may be offered by the writ applicant with respect to the materials which has been brought to our notice today by the Revenue.

10. This time, we want the Assessing Officer to apply his mind to all the objections, which are already on record and also to the objections that the writ applicant may be filing with respect to the transactions which Mr. Bhatt has explained to us. After due

consideration of all the objections and after giving an opportunity of hearing to the writ applicant, the Assessing Officer may proceed to pass a fresh reasoned order disposing of the objections.

11. Let the above exercise be undertaken at the earliest and completed within two months from today. In the event, if the order that may be passed by the Assessing Officer disposing of the objections is adverse to the writ applicant, it shall be open for the writ applicant to challenge the same by filing a fresh writ application.

12. At this stage, Mr. Bhatt clarified that the dealings between M/s. Siddhi Cooperative Bank Limited, Mili Corporation as well as Shimmer Exim Private Limited etc. are just one part of the transactions. There are many other transactions, the details in this regard shall be furnished to the writ applicant at the earliest. We clarify that we have otherwise not expressed any opinion on merits of the case. All the aforesaid observations are *prima facie*.

13. We further clarify that whatever is within the knowledge and information of the writ applicant to that extent the writ applicant has an obligation to explain to the Assessing Officer. Something which is not within the knowledge and information of the writ applicant, may not be asked to be explained by the writ applicant.

With the aforesaid, the present writ application stands disposed of.

(J. B. PARDIWALA, J)

(NISHA M. THAKORE,J)

Y.N. VYAS