IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 15925 of 2017

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS.JUSTICE HARSHA DEVANI

and

HONOURABLE MR.JUSTICE A.S. SUPEHIA

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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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AMAR JEWELLERS LIMITED,....Petitioner(s)

Versus

DEPUTY COMMISSIONER OF INCOME TAX,....Respondent(s)

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Appearance:

MR B S SOPARKAR, ADVOCATE for the Petitioner(s) No. 1.

Mr.M.R. BHATT, SENIOR ADVOCATE with MRS MAUNA M BHATT, ADVOCATE for the Respondent(s) No. 1.

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CORAM: **HONOURABLE MS.JUSTICE HARSHA DEVANI**
and
HONOURABLE MR.JUSTICE A.S. SUPEHIA

Date : 30/01/2018

ORAL JUDGMENT

(PER : HONOURABLE MS.JUSTICE HARSHA DEVANI)

1. By this petition under Article 226 of the Constitution of India, the petitioner has challenged the notice dated 31.3.2017 issued by the respondent under section 148 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') whereby its assessment for assessment year 2010-11 is sought to be reopened.

2. The petitioner company filed its return of income for the assessment year 2010-11 on 28.9.2010 declaring total income at Rs.2,55,90,900/-, which came to be accepted under section 143(1) of the Act. Subsequently, search action was carried out under section 132 of the Act and assessment came to be framed on 28.3.2016 under section 153A read with section 143(3) of the Act at Rs.2,55,90,900/-. Subsequently, the respondent issued the impugned notice under section 148 of the Act seeking to reopen the assessment of the petitioner for the year 2010-11. Subsequently, the reasons for reopening the assessment also came to be furnished to the petitioner, after which, the petitioner, by a letter dated 17.4.2017 raised various objections to the reopening and requested the respondent to drop the re-assessment proceedings. By an order dated 27.7.2017 the objections came to be rejected.

3. Mr. Bandish Soparkar, learned advocate for the petitioner submitted that the impugned notice has been issued on 31.3.2017 in relation to assessment year 2010-11, which is

clearly beyond a period of four years from the end of the relevant assessment year, and hence, in the absence of any failure on the part of the petitioner to disclose fully and truly all the material facts, the assumption of jurisdiction on the part of the Assessing Officer under section 147 of the Act, is without authority of law. Referring to the reasons recorded it was submitted that according to the Assessing Officer, Shri Anil Kumar Jain and Shri Pravin Kumar Jain, in their statements recorded under section 131 of the Act had admitted to carrying on the business of giving accommodation entries in the name of various entities and upon verification of the details of various entities, it was revealed that one such entity handled by them was M/s Shreeji Trading Company and that the bank account of M/s Shreeji Trading Company held with Axis Bank revealed that the petitioner has received Rs.7,09,00,000/- from M/s Shreeji Trading Company on 16.4.2009, which had given reason to believe that the income of the assessee had escaped assessment. It was submitted that on the reasons recorded, the respondent could not have formed the belief that the income chargeable to tax had escaped assessment, inasmuch as, as per the version of the respondent himself there are two transactions of receipt of money and payment of money, in which case there cannot be any escapement of income. It was submitted that in fact, the petitioner has made profit on the very transaction of trading gold and the income therefrom has been offered for taxation. It was further submitted that in the present case, purchase and sale are not bogus and all taxes have been duly paid and re-assessment is sought to be made on the basis of misconception of facts. It was submitted that merely stating that income has escaped assessment is not sufficient and that valid reasons have to be recorded for holding that the income has escaped assessment and upon failure to do so, the notice under section 148 of the Act is bad and illegal.

4. On the other hand, Mr. M.R. Bhatt, senior advocate, learned counsel for the respondent, submitted that having regard to the reasons recorded for reopening the assessment, it is apparent that there is sufficient material for the Assessing Officer to form the belief that income chargeable to tax has escaped assessment. It was submitted that sufficiency of formation belief cannot be gone into by the court and that there being some tangible material for formation of such belief, the challenge to the reopening of assessment would fail. Referring to the reasons recorded for reopening the assessment, it was pointed out that the Assessing Officer has clearly recorded that there is failure on the part of the assessee to disclose its income fully and truly, to submit that therefore, the reopening of assessment beyond a period of four years from the end of the relevant assessment year is valid and proper.

5. Before adverting to the merits of the case it would be necessary to refer to the reasons recorded for reopening the assessment which read as under:

> *"During the course of enquiry carried out by the Investigation Wing, Mumbai, in the case of Shri Anil Kumar Jain and various persons and entities connected to him, it was revealed that suspicious financial transactions were carried out by them i.e. high value transactions were credited through RTGS/ Clearing/ Cash/ Transfer from various accounts which was immediately withdrawn by*

cash/ multiple transfers were made to other accounts and the funds were moved out through clearing or foreign outward remittances.

2. During the course of recording statement u/s 131 of Shri Anil Kumar Jain on 13.02.2013 and Shri Pravin Kumar Jain on 18.02.2013, they admitted to carrying out business of giving accommodation entries in the name of various entities. On verification of the details of various entities provided by them, it was revealed that one of the entity was M/s Shreeji Trading Company, 10-Shaligram, Bhupendra Road, Opp. Diwanpara, Police Chowki, Rajkot, Gujarat – 360001 which is handled by them. The bank statement of M/s Shreeji Trading Company (Account No.003010200009560) held with Axis Bank revealed that the assessee, M/s Amar Jewellers Ltd had received Rs.7,09,00,000/- from M/s Shreeji Trading Company on 16.04.2009. On perusal of bank statement of the assessee available on record, it is seen that the assessee has received a sum of Rs.7,09,00,000/- on 16.04.2009. The same has been debited to M/s Zaveri and Company Pvt. Ltd on the very same day. Since the entity M/s Shreeji Trading Company is operated by persons who have admitted to carrying out accommodation entries, the transactions made by M/s Amar Jewellers Ltd. (PAN AACCA9180A) with M/s Shreeji Trading Company is bogus in nature.

3. Hence, I have reason to believe that the income of the assessee has escaped assessment to the extent of Rs.7,09,00,000/- for A.Y. 2010-11 because of the failure on the part of the assessee to disclose his income fully and truly. I am therefore, satisfied that this is fit case for *invoking the provision of section 147 of the Act for assessment year 2010-11. Accordingly, approval for issue of notice u/s 148 of the Act may kindly be accorded."*

6. Having perused the reasons recorded by the Assessing Officer for reopening the assessment, the court had called upon the learned counsel for the revenue to produce the information that had been received by the Assessing Officer which formed the basis for his belief that income chargeable to tax had escaped assessment. Accordingly, the learned counsel has produced the record of the case before this court. A perusal of the record reveals that the information received by the Assessing Officer was to the following effect.

"DVIP (Investigation), Unit-6(4), Mumbai informed that account of M/s Shriji Trading Company was linked with M/s Vishnu Trading and Jay Corporation and provided certain details of all the accounts linked with Jay Corporation and Vishnu Trading.

In page-6 of the statement of Shri Pravinkumar Jain recorded on 18.2.2013, in response to question No.23, Shri Pravinkumar Jain has accepted that he was having financial transactions with M/s Jay Corporation, which is a concern operated by a cheque discounter and he used to give him cash and in return, he used to get cheques/ RTGS through M/s Jay Corporation."

7. Thus, the information provided to the Assessing Officer is that in the account of M/s Shreeji Trading Company there was a link with Jay Corporation and Shri Pravin Kumar Jain has accepted having financial transactions with Jay Corporation.

However, no information has been provided to the effect that M/s Shreeji Trading Company was an entity handled by Shri Anil Kumar Jain and Shri Pravin Kumar Jain.

8. A plain reading of the reasons recorded for reopening the assessment reveals that the basis for formation of belief that the transaction made by the assessee with M/s Shreeji Trading Company is bogus in nature is that Shri Anil Kumar Jain and Shri Pravin Kumar Jain admitted to carrying on the business of giving accommodation entries in the names of various entities and upon verification it was found that one such entity handled by them was M/s Shreeji Trading Company. As noted hereinabove, the information which was received by the Assessing Officer nowhere discloses that M/s Shreeji Trading Company was an entity handled by Shri Anil Kumar Jain and Shri Pravin Kumar Jain. All that was disclosed was that M/s Shreeji Trading Company was linked with Jay Corporation and that Shri Pravin Kumar Jain has accepted that he had financial transactions with Jay Corporation which was a concern operated by a cheque discounter and he used to give him cash and in return, he used to get cheques/ RTGS through M/s Jay Corporation. Thus, no nexus has been established between Shri Anil Kumar Jain and Shri Pravin Kumar Jain who had made the statements under section 131 of the Act and M/s Shreeji Trading Company. Thus, the reasons are based upon a factually incorrect premise that M/s Shreeji Trading Company was being handled by Shri Anil Kumar Jain and Shri Pravin Kumar Jain. Thus, the absence of any material on record to indicate any nexus between M/s Shreeji Trading Company and Shri Anil Kumar Jain and Shri Pravin Kumar Jain, erodes the very substratum for formation of belief that income has

escaped assessment. Consequently, once there is no foundation for such belief, the reasons based thereupon have no legs to stand, hence, on the reasons recorded, the Assessing Officer could not have formed the belief that any income chargeable to tax has escaped assessment. Therefore, the assumption of jurisdiction on the part of the Assessing Officer under section 147 of the Act to reopen the assessment by issuing the impugned notice under section 148 of the Act is without authority of law, which renders the impugned notice unsustainable.

9. For the foregoing reasons, the petition succeeds and is accordingly allowed. The impugned notice dated 31.3.2017 issued by the respondent under section 148 of the Act in relation to the assessment year 2010-11 is hereby quashed and set aside. Rule is made absolute accordingly with no order as to cost.

(HARSHA DEVANI, J.)

(A. S. SUPEHIA, J.)

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