

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 10293 of 2011****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE AKIL KURESHI****and****HONOURABLE MR.JUSTICE A.J. SHASTRI**

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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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BANASKANTHA DIST CO OP MILK PRODUCERS UNION LTD....Petitioner(s)

Versus

ASST COMMISSIONER OF INCOME TAX....Respondent(s)

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Appearance:

MR.DIPAK SHAH, ADVOCATE for MR TEJ SHAH, ADVOCATE for the
Petitioner(s) No. 1

MR NITIN K MEHTA, ADVOCATE for the Respondent(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE AKIL KURESHI**and****HONOURABLE MR.JUSTICE A.J. SHASTRI****Date : 08/09/2016**

ORAL JUDGMENT**(PER : HONOURABLE MR.JUSTICE A.J. SHASTRI)**

1. The present petition is filed for challenging the validity of the impugned notice issued under section 148 of the Income Tax Act (for short 'the Act') dated 28.03.2011 and an order dated 01.07.2011 issued rejecting the objection filed by the petitioner.

2. The brief facts of the case are that the petitioner is a cooperative society engaged in the business of procuring and supplying processing and marketing of milk products, tea products. The petitioner had initially filed its return of income for assessment year 2002-03 declaring total income as 'Nil' and the gross total income declared was Rs.1,11,87,254/-. The said return came up under scrutiny and vide order dated 07.12.2004, in exercise of powers under section 143(3), the assessment order came to be framed. Similarly, for another assessment year 2003-04, the petitioner has declared his income as again 'Nil' by declaring gross total income as Rs.68,97,218/- and with respect to that year also, the scrutiny assessment was framed on 30.12.2005. In the

next assessment year, 2004-05, the petitioner filed the return of income under section 139(1) of the Act declaring total income at Rs.3,15,13,990/- after claiming deduction under section 80E(2)(c) as also under section 80P(2)(d) and under section 80IB in respect of cattle feed as well as Banas-II dairy plants. The said return was accompanied by the statement of income, as audited accounts and audit reports which was under section 44AB of the Act. Assessing Officer pursuant to the said submission, as selected the case of the petitioner for scrutiny and issued notice under section 143(2) and 143(1) of the Act, requiring certain details to be provided by the petitioner including, *inter alia*, the details of separate trading particulars and profit and loss accounts of cattle feed and Banas-II expansion undertakings and the copy of bills of plant and machinery of the said project. The date of commencement of commercial operation of new projects for which deduction under section 80IB has been claimed and after considering these bills and particulars provided by the petitioner, the assessment was framed on 28.12.2016 under section 143(3) of the

Act. While framing such assessment, the claim of deduction in respect of cattle feed, plant as well as Banas-II expansion undertakings of Rs.2,83,68,423/- under section 80IB of the Act disallowed.

3. It appears from the record that feeling aggrieved by the said assessment order, an appeal came to be filed before the learned Commissioner of Income Tax (Appeals) and in the said appeal, an order came to be passed on 12.02.2008, whereby, the claim of deduction to the extent of Rs.1,13,33,779/- in respect of Banas-II expansion unit came to be considered and granted and so far cattle feed plant is concerned, the denial of deduction came to be upheld by partly allowing the appeal filed by the petitioner. The finding with respect to that requires to be noted here.

"Thus for Banas-II unit, the appellant fulfills the conditions laid down by the provisions of the act u/s 80IB, barring filing of proper Audit report. It also fulfills the conditions laid down by the Hon'ble SC in 107 ITR 195, therefore, it is entitled to the deduction claimed by it in the return, with initial AY 2002-03 for Banas-II, the appellant is eligible for deduction at 100% for 3 years including the initial AY that is for 2002-03, 2003-04 and 2004-05."

4. It is against this order passed by CIT(A), the petitioner as well as the Revenue both filed cross appeals before the learned Appellate Tribunal, Ahmedabad bench and the petitioner has filed an appeal before the Tribunal against the denial of deduction in respect of cattle feed which was originally claimed by the petitioner, whereas the Revenue filed an appeal against granting of deduction in respect of Banas-II expansion claimed under section 80IB of the Act. Thus, both cross appeals came up for consideration before the Tribunal and on 07.11.2008, the Tribunal dismissed the appeal of the Revenue and so far as appeal filed by the petitioner, the deduction claimed under section 80IB of the Act in respect of industrial undertaking manufacturing cattle feed, the Tribunal held *"thus, the assessee is primarily entitled to claim deduction under section 80IB of the Act in respect of all units including the units earlier set up"* and by way of such common order, the Tribunal disposed of the appeals filed by both the sides. It is against this order passed by the Tribunal, the parties have approached the High Court of Gujarat by way of preferring the Tax Appeals. The Revenue has

preferred an appeal being Tax Appeal No.1042 of 2009. The said appeal came up for consideration before this Court on 15.03.2011 and by a detailed order, the Tax Appeal came to be dismissed and similarly, the Tax Appeal No.1043 of 2009 also came to be disposed of. The issue related to that as such has been gone into during the entire passage of litigation. Still however, after more than four years of the end of relevant assessment year, the impugned notice came to be issued by the department under section 148 of the Act on 28.03.2011 with respect to the assessment year 2004-05.

5. On receipt of the said notice came to be issued by the department vide letter dated 28.04.2011, a request was made by the petitioner to the department to furnish the reasons which have been recorded for assuming jurisdiction under section 148 of the Act and under the letter dated 02.06.2011, the department submitted the reasons which have been recorded for reopening. On a receipt of the same, the petitioner filed a detailed objection under a letter dated 13.06.2011 and mainly contended that there is no

allegation with respect to opinion disclosure on the part of the petitioner and as such the notice came to be issued after a period of four years and therefore in view of such a situation by narrating the detailed objections, the protest was made by the petitioner on 13.06.2011 against the said reassessment. The said objection came up for consideration before the authority and under an order dated 01.07.2011, the objections came to be dealt with and rejected and it is against this order as well as the impugned notice issued under section 148 of the Act, the present petition came to be filed. Before dealing with the contentions of the respective sides, the basis for issuance of notice under section 148 i.e. the reasons which have been recorded by the authority are worth to be noted hereby. Hence, the same is incorporated hereinafter.

"REASON TO REOPEN THE ASSESSMENT U/S. 147 OF THE I.T. ACT

As per the section 80IA(5) and the judgment of Hon'ble ITAT, Ahmedabad (Special Bench) in the case of ACIT vs Goldmine Shares & Finance Pvt. Ltd. (2008) 113 ITD 209 (Ahmedabad) has clearly stated that the provision of section 80IA have to be applied for the computation of deduction u/s. 80IB. The Hon'ble ITAT Ahmedabad in the case of ACIT Circle-4 Vs Goldmine Shares and Finance Pvt. Ltd (2008)

(Ahmedabad) (SB) has stated

"65. To Conclude we answer the question referred in the affirmative, in the favour of the Revenue and against the assessee, in the terms that in view of the specific provisions of Section 80IA(5) of the Income Tax Act, 1961, the profit from the eligible business for the purpose of determination of the quantum of deduction Under Section 80IA of the Act has to be computed after deduction of the notional brought forward losses and depreciation of eligible business even though they have been allowed set off against other income in earlier years."

Further the Hon'ble ITAT in the case of VODAFONE ESSAR GUJARAT LTD has confirmed the order of the A.O and reiterated:

"No doubt the question before the Mumbai Tribunal did not concern with whether while deducting such past losses, the assessee is entitled to ignore the fact that certain losses have actually lapsed in view of applicability of Section 79 of the Act. This proposition we have already answered that the losses will not lapse and the provisions of Section 79 will not apply in view of the provisions of Section 80IA(5) of the Act. **We find that the lower authorities have rightly taken the view that in view of Section 80IA(5) of the Act which starts with non obstante clause, it is wide enough to override the provisions of Section 79 and thereby ignore the past losses.** There is no doubt that Section 80IA(5) starts with non obstante clause which overrides the applicability of the provisions of the Act and has provided special mode for computation of the profits & gains eligible for deduction u/s 80IA(1) of the Act and AO is bound to compute the deduction after applying the provisions of Section 80IA(5) of the Act."

4. In the case of the assessee, the assessee has not set off the previous year losses as per Sec.80IA(5) and the above said latest judgments and claimed deduction u/s. 80IB in the A.Y. 2004-05. Thus, the assessee has claimed excess deduction u/s. 80IB.

5. Therefore, I have reason to believe that the income chargeable to tax have been escaped assessment for A.Y. 2004-05 within the meaning of section 147 of the I.T.Act."

6. The essence of the aforesaid reason is that the assessee had not set off the previous year losses as per section 80IA(5) and in view of latest judgment which has been incorporated, reported in **2008 113 ITD 209, Ahmedabad Bench**, and in view of this decision, the authority was of the opinion that there is a reason to believe that income chargeable to tax has been escaped from the assessment for assessment year 2004-05 within the meaning of section 147 of the Act.

7. In view of the aforesaid background, learned counsel Mr.Tej Shah appearing on behalf of the petitioner has contended that the reopening is without jurisdiction in view of the fact that there is no allegation contained in the reasons which have been recorded about non disclosure of any material on the part of the petitioner and more particularly when this

reopening is done after four years, condition precedent of this exercise has not fulfilled, hence it is not open for the department to reopen the assessment. The learned counsel further contended that during the scrutiny assessment, with respect to both the claims, detailed material came to be produced as demanded before the authority and the assessing authority has examined the same and dealt with. Counsel has drawn attention of this Court about relevant material which is attached with the petition and submitted that this very material was produced before the Assessing Officer and therefore, the claim with respect to section 80IB has been thoroughly gone through and in absence of any failure on the part of the petitioner to disclose truly and fully all material, such reopening is impermissible, more particularly, after a period of four years. The counsel has submitted that during the assessment proceedings, the representative who appeared on behalf of the petitioner has drawn the attention of this aspect about the claim which has been made for cattle feed as well as made for Banas-II expansion project. Counsel while submitting has drawn attention to page

94 of the petition compilation wherein there is a clear reflection with respect to this issue which has been gone into. In addition there to, on page 98 of the petition compilation, the counsel submitted that on 15.12.2006, the Chartered Accountant who represented the petitioner, has attended the hearing before the Assessing Officer and has clearly pointed out during the course of assessment proceedings with respect to this claim made under section 80IB, both with respect to Banas-II expansion as also cattle feed. Paragraph 3 of the said assessment order reflected on page 98 is also specifically referring to. In addition thereto, the counsel submitted that during the said assessment proceedings, after considering the material, even the conclusion also came to be arrived at by the Assessing Officer, which is reflected on page 106 which was then the subject matter of the further appeal and right upto the High Court of Gujarat and therefore, during this entire process, the material was examined and dealt with by the Assessing Officer. Even in addition thereto, on page 147, there is a specific reference which has been brought to the notice of this Court about the claim

which has been made under section 80IB of the Act. Learned counsel by relying upon such documents, have submitted that during the course of assessment proceedings, details have been fully and truly provided by the petitioner and in respect of this, learned counsel has drawn the attention to the reasons which have been recorded are also contained no such allegations that the petitioner has not disclosed fully and truly all the material and therefore, the situation on hand clearly reflects that authority has assumed the jurisdiction which is otherwise not permissible. Learned counsel further has specifically drawn the attention to the first proviso to section 147 of the Act and has submitted that in absence of any failure on the part of the assessee to disclose fully and truly all material facts necessary for impugned assessment year, the assumption of jurisdiction is impermissible. Simultaneously, the learned counsel has further drawn attention and relied upon the second proviso to section 147 of the Act and submitted that the income which was under consideration before the Assessing Officer since was the subject matter of appeal as also in further course

of action and therefore, since it was the subject matter of appeals before the Appellate Authority, right upto the Hon'ble High Court and since the allowability of deduction under section 80IB was dealt with, it is impermissible on the part of the respondent authority to reopen the assessment, more particularly, after a period of 4 years. The learned counsel has then submitted and relied upon the decision of Apex Court in case of **CIT v. Kelvinator of India** reported in **320 ITR 561** and also relied upon decision reported in case of **Sadbhav Engineering Ltd. v. Deputy Commissioner of Income-tax** reported in **333 ITR 483**, which are also attached to the petition compilation and submitted that in the background of these facts, it is not open for the respondent authority to reopen the assessment. Learned counsel has further contended that with respect to the assessment year 2002-03, the authority has already considered and granted the said deduction and therefore, in similar set of circumstances, it is not open for the respondent authority to take a different view. Learned counsel has further contended that the power of reassessment cannot be exercised to correct

mistake, nor is for the purpose of review of the opinion which has already been formulated and therefore, in the background of this fact, more particularly, when the non-disclosure is not an allegation contained in the reasons which have been recorded, the action on the part of the respondent authorities deserves to be quashed and set aside.

8. To oppose the petition, learned counsel for the Revenue Mr. Nitin K. Mehta has submitted that there is specific element of non disclosure of primary facts while claiming deduction on the part of the petitioner. Learned counsel submitted that there was a non-disclosure of unabsorbed loss of previous year and the nature of allowance was not substantiated by any cogent material. Learned counsel further submitted that what was scrutinized was an issue of disallowance, whereas, computation with respect to such claim was never the subject matter of scrutiny and therefore, the petitioner has not disclosed primary facts before the authority. It is always open for the authority to reopen the issue and consequently assessment. Learned counsel has submitted that the reasons which have been recorded are valid reasons

based upon strong application of mind on the issue and therefore, even if it is after a period of four years, it is open for the authority to reopen the issue, more particularly when the basic issue pertaining to computation in respect of the claim has never been the subject matter of scrutiny and therefore, by contending this, learned counsel has submitted to dismiss the petition.

9. Having heard the advocates appearing for the respective parties and having gone through the material on record of the petition, which was stated to be a part of the assessment proceedings as well and on the basis of such, few facts are clearly emerging from the record.

I. That the issue pertaining to both claims for seeking deduction of Banas-II expansion project as well as cattle feed, where were the subject matter of assessment proceedings and during the course of assessment, the same have been dealt with, represented and examined and upon adjudication of the same, the proper orders came to be passed and during that entire process, the petitioner has projected full facts before the

assessing authority.

II. Secondly, from the reasons which have been recorded what transpires is that the reopening is attempted to be made by the authority is only on account of the fact that there is one later decision delivered by Ahmedabad Bench, reported in **(2008) 113 ITD 209**, in which it was held that for computing the deduction under section 80IB, the provisions of section 80IA have to be complied with and while dealing with such a situation, the Tribunal in that case, has delivered the decision and based upon the said later decision, the reopening of the assessment year 2004-05 came to be attempted.

III. Thirdly, from the entire reasons which have been recorded, there appears to be no allegation made by the department that petitioner has not disclosed truly and fully all material with respect to the claim and therefore, the sole reason appears to be a later decision based upon which, an attempt is made to reopen the assessment.

IV. Fourthly, reopening is inclined to be made after more than a period of four years from the relevant assessment year.

10. In the background of the aforesaid facts which are reflecting from the record, two situations are emerging that one; the reopening attempt is made by the department after a period of more than four years, and secondly; in the entire proceedings, there appears to be no allegation with respect to non disclosure of any material on the part of the petitioner. Keeping these circumstances in mind, the decisions which have been relied upon by the learned counsel for the petitioner are worth to be taken into consideration.

11. First decision which has been relied upon and canvassed by the petitioner is the decision reported in case of **Austin Engineering Co. Ltd. v. Joint Commissioner of Income-tax**, reported in **[2009] 312 ITR 70 (Guj)**, wherein, in the said decision it has been clearly held that merely because subsequently, the higher Court pronounced the law to be otherwise, on the date of filing of the return of the income when the assessee made a claim for deduction, the claim

could be termed to be neither lacking in material particulars nor could be termed to be untrue so as to justify reopening of assessment on basis of Apex Court decision after expiry of four years from relevant assessment year. Relevant extract of the said decision deserves to be quoted here.

"7. The two decisions of the Supreme Court on which reliance has been placed on the respondent-authority are both in context of the provisions of Section 147 (b) of the Act as it then stood before 01-04-1989 and hence, cannot carry the case of the Revenue any further. Section 147 (b) of the Act itself stipulates that re-assessment is permissible within a period of four years on receipt of information from an external source. But the present is a case where the period of four years has already elapsed. Hence, even if one proceeds on a footing that the Apex Court judgment constitutes information yet if the period of four years has expired, unless and until the prerequisite conditions stipulated by the Proviso to Section 147 of the Act are shown to be fulfilled, no action can be initiated for re-assessment.

8. Reference to provisions of Explanation 2 of the Act also cannot assist the case of the Revenue. The language employed by the Proviso itself indicates that the legislature has consciously laid down a time frame within which re-assessment proceedings in relation to escaped income can be initiated, and beyond the prescribed period of limitation, even if income has escaped assessment, if the required conditions enumerated in the Proviso are not shown to exist, no action can be initiated under Section 147 of the Act regardless of the fact that income may have

escaped assessment."

12. Yet in another decision in case of **Sadbhav Engineering Ltd.** (supra), the Division Bench of this Court has also examined the issue of subsequent event which took place and based upon that the reopening was attempted. While taking to such a situation, the Division Bench of this Court has specifically held that when the plain reading of the reasons recorded, if there is no allegation of failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for the relevant assessment year, then subsequent change would not alter the situation and after the period of four years by applying such change, the reopening is not permissible. The relevant extract of the said decision is worth to be quoted here and the relevant paragraph is quoted hereinafter.

"8. In the facts of the present case, relevant assessment years are 2003-04 and 2004-05. The notice under section 148 of the Act relating to assessment year 2003-04 has been issued on 29.03.2010, whereas the notice under section 148 of the Act relating to assessment year 2004-05 has been issued on 29.4.2010. Computing the period between the end of the relevant assessment years and the date of issuance of the notices under section 148, it is evident that both the notices have

been issued beyond a period of four years from the end of the relevant assessment years. The first proviso to section 147 of the Act, lays down that where an assessment under sub-section (3) of section 143 or the said section has been made for the relevant assessment year, no action shall be taken under the section after expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment. Thus, for the purpose of invoking section 147 after the expiry of four years from the end of the relevant assessment year, the income chargeable to tax should have escaped assessment by reason of failure on the part of the assessee either (i) to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148, or (ii) to disclose fully and truly all material facts necessary for his assessment. In the facts of the present case, it is an undisputed position that there is no failure on the part of the assessee insofar as the first condition is concerned. Insofar as the second condition, viz. failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment is concerned, on a plain reading of the reasons recorded, it is apparent that the same are totally silent as regards any failure on the part of the petitioner to disclose fully and truly all material facts necessary for its assessment for the relevant assessment years. From the reasons recorded it is apparent the assessments are sought to be reopened on the ground that as per the explanation given below sub-section (13) of section 80IA of the Act, which has been substituted by the Finance Act No.2 of 2009

with retrospective effect from 1.4.2000, deduction under section 80IA would not be admissible to an assessee who carries on business which is in the nature of works contract. That the petitioner assessee being a civil contractor working for the Government is not eligible for deduction under section 80IA as claimed by the assessee, hence there was reason to believe that income chargeable to tax has escaped assessment for the assessment years under consideration. The record of the case does not in any manner indicate that proceedings under section 147 are sought to be reopened by reason of failure on the part of the petitioner to disclose fully and truly all material facts necessary for its assessment for assessment years under consideration. The respondent in its affidavit in reply also has not disputed the fact that there is no failure on the part of the petitioner to disclose fully and truly all material facts. Only by way of submission advanced before the Court it is contended that in the light of the amendment of section 80IB, it is deemed that the petitioner has failed to disclose the correct facts. As to whether or not there is any failure on the part of the assessee in disclosing fully and truly all material facts necessary for his assessment, is a matter of fact and there can be no deemed failure as is sought to be contended on behalf of the respondents. In the circumstances, in absence of any failure on the part of the petitioner to disclose fully and truly all material facts necessary for its assessment for the assessment years under consideration, the notices under section 148 of the Act having been issued after the expiry of a period of four years from the end of the relevant assessment years, the very initiation of proceedings under section 147 of the Act stand vitiated and as such cannot be sustained."

13. Learned counsel for the petitioner has yet relied

upon another decision of the Apex Court, in case of **Commissioner of Income-tax, Delhi v. Kelvinator of India Ltd.** , reported in **[2010] 187 TAXMAN 312 (SC)** and conveyed with respect to a concept of change of opinion it was submitted on the basis of said decision, that after 01.04.1989, the Assessing Officer has no power to reopen provided there is a tangible material to come to the conclusion of escapement of income and therefore, it appears from the record that the reasons which have been recorded, reflects only sole ground about subsequent change in law.

14. In the reasons it is reflected an issue pertaining to computation of deduction under section 80IB of the Act has been dealt with by the Tribunal at Ahmedabad Bench, which is reported in **2008 113 ITD 209** (supra) in which, it has been held that the provisions of section 80IA have to be complied with for the purpose of computation of deduction under section 80IB and based upon Vodafone Essar Gujarat Limited, which also affirm very same view, the authority has formulated an opinion to reopen the assessment.

15. We have considered the decision relied upon to this very issue about what would be the effect of subsequent change in law and in the context of reopening of the assessment referred to above, dealt with and held that reopening on such premise is impermissible. We have no reason to deviate from the ratio mentioned in the said decisions.

16. So far as the contention raised on behalf of the Revenue that primary facts have not been disclosed by the petitioner during the course of assessment, and on account of that a belief was formulated that the reopening is required to be done. In that context, the Division Bench of this Court in case of **Gujarat Fluorochemicals Ltd. v. Deputy Commissioner of Income Tax** reported in 2009 (223) CTR(HC) 398 has also considered the similar circumstance and in paragraph No.9 as also in paragraph No.12, the circumstance has been dealtwith which ratio is attracted in the background of the case on hand. In the said decision, the Division Bench has considered the said aspect and held that assessment for the year in question cannot be permitted to be reopen in the absence of fulfillment of pre-requisit condition

contained under proviso to section 147. The relevant paragraph containing the said decision are reproduced hereinafter.

"9. It is evident from communication dated 28-4-2008 that the Assessing Officer has drawn an inference, belatedly, on the basis of the assessment for the year 2005-2006 that the amount of Rs.1,09,47,296/- assessed under the head of Capital Gains for the relevant assessment year 2001-02, has incorrectly been assessed under that head and should have been assessed under the head Profits and Gains of Business or Profession. The assessment of tax under a wrong head by the Assessing Officer cannot justify the imposition of the burden of tax on the assessee beyond the prescribed period of limitation, especially as none of the conditions mentioned in the proviso to Section 147 of the Act exist. In our view, therefore, the assessment for the year in question cannot be permitted to be re-opened in the absence of fulfillment of the pre-requisite conditions, as contained in the proviso to Section 147 of the Act.

10. The objections raised by the petitioner have been rejected by order dated 28-08-2008. A perusal of the said order discloses that the respondent has relied upon Explanation 1 to Section 147, stating that the assessee has not disclosed details and other related facts as to the volume of transaction, buying and selling of shares/securities, which would enable the Assessing Officer to ascertain and determine the real nature and character of the transactions and in the absence of such primary details, which should have been furnished by the petitioner-assessee, it cannot be said that there is a full and true disclosure of all material particulars relating to the assessment year under consideration. This, clearly, is nothing but

an attempt to supplement and improve upon the reasons recorded as reproduced in letter dated 28-04-2008, by adding something which is not recorded initially."

Whereas, herein in case on hand the assessee petitioner has even disclosed all primary facts so element of non disclosure is not reflecting on record.

17. In view of above situation, yet another decision of this Court, in case of **Patel Alloy Steel (P.) Ltd. v. Assistant Commissioner of Income-tax (OSD) Circle – 5, Ahmedabad**, reported in [2013] 35 taxmann.com 353 (Gujarat) was cited by the learned counsel for the petitioner which is also covering the issue and it is culled out from the aforesaid facts and circumstances that there appears to be no failure on the part of the assessee to disclose truly and fully all materials and therefore since it is beyond a period of four years, it is not open for authority to reassess the assessment year 2004-05. The relevant extract of the said decision reflected in paragraph No.8 deserves to be noted hereinafter:

"8. In all four reasons recorded by us herein above, the Assessing Officer starts with an expression that on verification of record. Thus, the Assessing Officer has based his reasons on verification of the material

already on record during the original assessment. In the reasons recorded, or the notice issued for reopening it is not even alleged that there was failure on the part of the assessee to disclose truly and fully all material facts. On this short ground, we are inclined to allow the petition."

18. Considering these overall set of circumstances, now since the issue pertaining to reopening of assessment after a period of four years is well propounded by series of decisions and therefore background of the facts since reflects that there is no failure on the part of the petitioner, to fully and truly disclose all material aspects, we have no hesitation to hold that the impugned action in the form of notice under section 148 and order of rejection of petition being not sustainable in the eye of law.

19. Therefore, in view of the aforesaid set of circumstances, we are of the opinion that the said action challenged in the petition is required to be set aside. The petition is allowed to the aforesaid extent and notice under section 148 of the Act as well as order dated 01.07.2011 are quashed and set aside. Rule made absolute to the aforesaid extent.

(AKIL KURESHI, J.)

(A.J. SHASTRI, J.)

ANKIT

