

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION NO. 3447 of 2016****FOR APPROVAL AND SIGNATURE:****HONOURABLE MR.JUSTICE AKIL KURESHI****and****HONOURABLE MR.JUSTICE A.J. SHASTRI**

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 ?	

RAVJIBHAI NAGARBHAI PATEL....Petitioner(s)

Versus

I.T.O WARD-6(2)....Respondent(s)

Appearance:

MR SN DIVATIA, ADVOCATE for the Petitioner(s) No. 1

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

CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**

and

HONOURABLE MR.JUSTICE A.J. SHASTRI

Date : 26/07/2016

ORAL JUDGMENT

(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. The petitioner has challenged a notice dated 14.11.2014 issued by the respondent Assessing Officer seeking to reopen the assessment for the assessment year 2009-10.

2. Brief facts are as under:

3. The petitioner is an individual and engaged in the business of management consultancy and trading of shares and securities for the assessment year 2009-10. The petitioner had filed the return of income declaring total income of Rs.13.19 lacs (rounded off). Such return was taken in scrutiny. The Assessing Officer passed the order of assessment on 23.12.2011 under section 143(3) of the Act determining total income of assessee at Rs.14.33 lacs (rounded off).

4. To reopen such assessment, the respondent issued the impugned notice, which as can be seen, was done beyond the period of four years from the end of relevant assessment year. To issue the notice, he had recorded following reasons:

" In this case the assessee filed return

of income for the above assessment year on 22/09/2009 declaring total income of Rs.13,98,560/-. Assessment order u/s.143(3) of the Act was passed on 23/12/2011 assessing the income of the assessee at Rs.14,33,588/-. The assessee derives income from management consultancy and from trading in shares. The assessee has shown investment amounting to Rs.21,99,99,450/- being acquisition of 133333 preferential shares of Adani Infra Services Pvt. Ltd. (AISPL) as offered by AISPL on 01/01/2009 and accepted by the assessee on 20/01/2009 as against the money payable by AISPL to the assessee on account of purchase of 133333 preferential shares of KOMPL for assessee was not furnished and there is no reasons to assume that it was commanding any premium to the face value of Rs.10/- per share at the time of it being issued, looking to the fact that KOMPL is a small company trading in edible oil. Thus on taking the face value at Rs.10/- per share of KOMPL, the value of 133333 shares would work out at Rs.13,33,330/- (133333 x 10) as against the sale value of Rs.21,99,99,450/- resulting in capital gain amounting to Rs.21,86,66,120/- which escaped the assessment within the meaning of section 147 of the Act.

I have therefore reason to believe that the income of the assessee of at least Rs.21,86,66,120/- has escaped assessment within the meaning of section 147 of the Income-tax Act, 1961 for the A.Y. 2009-10. Necessary approval under the provisions of the Act to issue notice u/s. 148 of the Act may kindly be accorded in this case."

5. The petitioner upon being supplied such reasons, raised objections under letter dated nil. Such objections were however rejected by the respondent by an order dated 22.02.2016. Hence, this petition.

6. Taking us through the materials on record, counsel for the petitioner raised following contentions.

I. The notice of reopening has been issued beyond the period of four years from the end of relevant assessment year. There was no failure on the part of the assessee to disclose truly and fully all material facts.

II. The issue of investments in shares by the petitioner during the year under consideration was examined by the Assessing Officer during the original scrutiny assessment.

III. The reasons recorded by the Assessing Officer lack validity. On the basis of such reasons, it cannot be said that any income chargeable to tax in case of the petitioner has escaped assessment.

7. On the other hand, learned counsel Shri Nitin Mehta for the department opposed the petition contending that the assessee had transferred his investment in shares in Krunal Oil Marketing Pvt. Ltd.

worth Rs.21.99 crores into shares of Adani Infrastructure Services Pvt. Ltd. The assessee has not disclosed the cost of acquisition of shares in Krunal Oil Marketing Pvt. Ltd. Looking to the nature of the business and size of the company, there was no reason to believe that the shares of the company would have been issued at premium over and above the face value of Rs.10 per share. The Assessing Officer had therefore reason to believe that the difference between cost of acquisition of shares in Krunal Oil Marketing Pvt. Ltd. and its sale value would be the capital gain in hands of the assessee, which was not subjected to tax. This happened because the assessee failed to disclose true and full material facts. This issue was never examined by the Assessing Officer in the original assessment.

8. Having thus heard learned counsel for the parties and having perused documents on record, we may examine the reasons recorded by the Assessing Officer minutely. As per these reasons, assessee had shown a total investment of Rs.21.99 crores for acquisition of 1,33,333 preference shares of Adani Infrastructure Services Pvt. Ltd. as offered by the company on

01.01.2009, which was accepted by the assessee on 20.01.2009, as against the money payable to the assessee on account of purchase of 1,33,333 preference shares of Krunal Oil Marketing Pvt. Ltd. at the rate of Rs.1650/- per share. The reasons further state that the cost of acquisition of preference shares of Krunal Oil Marketing Pvt. Ltd. by the assessee was not furnished. There is no reason to assume that the shares commanded any premium over the face value of Rs.10 per share at the time of issue, looking to the fact that Krunal Oil Marketing Pvt. Ltd. is a small company treating in the edible oils. Thus, according to the Assessing Officer, adopting Rs.10 per share of Krunal Oil Marketing Pvt. Ltd. for 1,33,333 shares would workout to a cost of acquisition at Rs.13,33,330/-. As against this, the assessee received Rs.21.99 crores by way of sale value of these shares. The difference between the two i.e. Rs.21.86 crores would be the capital gain which had escaped assessment.

9. We have perused the investment account of the petitioner produced alongwith the return, a copy of which is produced by the respondent alongwith an

affidavit dated 25.07.2016. This shows opening balance in Krunal Marketing's preference shares of Rs.21.99 crores. Matching sum was shown as a credit during the year under consideration, a similar sum of Rs.21.99 crores is shown at debit side in the Adani Infra preference share account. It can thus, be seen that the petitioner's investment of Rs.21.99 crores in Krunal Oil Marketing Pvt. Ltd. was shifted to Adani Infra preferential shares during the said period. Thus, *prima-facie* it would appear that the petitioner effectively sold the shares of Krunal Oil Marketing Pvt. Ltd. for acquiring the shares of Adani Infra which were allotted to the petitioner as per the above noted transfer arrangement between the company and the petitioner. If that be so, then the question of ascertaining whether the petitioner had earned any capital gain upon sale of share of Krunal Oil Marketing Pvt. Ltd. would arise.

10. In this context, it is an admitted position that the petitioner has not placed on record the cost of acquisition of shares of Krunal Oil Marketing. The nature of transaction of transfer of investment from Krunal Marketing's preference shares from Adani Infra

preferential shares was immediately not visible from the declaration made by the petitioner. This is therefore, a case where a further scrutiny would be permissible even if the notice for reopening is issued beyond a period of four years from beyond the period of relevant assessment year.

11. Learned counsel for the petitioner vehemently contended that the petitioner held no shares in Krunal Oil Marketing Pvt. Ltd. and the amount of Rs.21.99 crores against Krunal Marketing's preferential share was mere mistake. In this writ petition, at this stage, we cannot examine these aspects and uphold the mere declaration of the petitioner that the entry in the investment accounts was accounting error and the real nature of transaction was the deposit of the petitioner with Krunal Oil Marketing Pvt. Ltd. of the said sum. These aspects can be gone into only at the time of reassessment and in absence of any clinching evidence to this effect, we cannot ignore or discard the petitioner's own accounts which suggests to the contrary.

12. We have perused the assessment records. We

notice that the Assessing Officer had raised certain queries regarding the series of investment by the petitioner in government or other securities. However, the question of transfer of shares of Krunal Oil Marketing Pvt. Ltd. by acquisition of preferential shares of Adani Infra was never examined by the Assessing Officer. Particularly, if we were to believe that there was no full and true disclosure with respect to acquisition of such shares of Krunal by the petitioner and the cost thereof and other relevant details, any inquiry by the Assessing Officer in this respect would not shut out the further scrutiny.

13. Before closing, we clarify that these are only *prima-facie* observations on the nature of the transaction and would not come in way of present petitioner raising all contentions on merits at the time of reassessment.

14. In the result, petition is dismissed.

(AKIL KURESHI, J.)

ANKIT

(A.J. SHASTRI, J.)

