

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 1323 of 2023

With

R/SPECIAL CIVIL APPLICATION NO. 1324 of 2023

With

R/SPECIAL CIVIL APPLICATION NO. 1325 of 2023

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ORANGE TRADEX PRIVATE LIMITED

Versus

INCOME TAX OFFICER, WARD 3(1)(1), AHMEDABAD

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Appearance:

MR. HARDIK V VORA(7123) for the Petitioner(s) No. 1

for the Respondent(s) No. 1

MRS KALPANA RAVAL(1046) for the Respondent(s) No. 1

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CORAM: HONOURABLE THE CHIEF JUSTICE MS. JUSTICE SONIA GOKANI

and

HONOURABLE MR. JUSTICE SANDEEP N. BHATT

Date : 20/02/2023

**COMMON ORAL ORDER
(PER : HONOURABLE THE CHIEF JUSTICE
MS. JUSTICE SONIA GOKANI)**

1. This Court, on 31.01.2023, issued the notice and notice for the interim relief. Response to the same, affidavit-in-reply is filed by the respondent, where it has attempted to justify the challenge to the notice dated 31.08.2022 issued under Section 148 of the Income Tax Act, 1961 ('the Act' for short) for A.Y. 2015-16, 2016-17 and 2017-18. On the ground of

alternative efficacious remedy available, it is urged that statutory mechanism stipulated under the Act should be resorted to.

2. On merit, it has been urged that as the request is for stay of reassessment proceedings pursuant to the impugned notice, let no merit be considered relying on the order of the Apex Court in case of *Anshul Jain versus Principal Commissioner of Income Tax – Special Leave to Appeal (C) No.14823 of 2022, dated 02.09.2022*, which is reproduced as under:

“What is challenged before the High Court was the re-opening notice under Section 148A(d) of the Income Tax Act, 1961. The notices have been issued, after considering the objections raised by the petitioner. If the petitioner has any grievance on merits thereafter, the same has to be agitated before the Assessing Officer in the re-assessment proceedings.

Under the circumstances, the High Court has rightly dismissed the writ petition.

No interference of this Court is called for.

The present Special Leave Petition stands dismissed. Pending applications stand disposed of."

3. It is also the say of the respondent that the return of income for A.Y. 2015-16 was filed on 14.10.2015. The information has been flagged on the insight portal as uploaded by the Directorate of Income Tax (Systems) after risk profiling based on enquiry reports and finding of Directorate of Income Tax (Investigation) and Directorate of Investigation & Criminal Investigation. There were frequent high value transactions through transfer and through RTGS in the account. The details of which have been given runs into crore of rupees. Statement of one of the Directors was recorded, who could not substantiate how the transactions in bank account were genuine.

4. It is the say of the respondent further that the genuineness of transactions

appearing in the Bank accounts since remained unsubstantiated, it was noticed that some fake transactions of the Bank accounts were carried out with the persons of Ardor Group, against the Directors of whose, the CBI has registered the complaint, who submitted the fraudulent book debt statements to the bank.

5. The show-cause notice, according to petitioner, in case of post *Union of India versus Ashish Aggarwal*, reported in *444 ITR 1* need not be interfered with and no interim relief also is required to be granted.

6. We have learned advocate Mr.Hardik Vora for the petitioners, who has straneously urged that the information, which has been relied upon, is from the insight portal and moreover, the details which have been specified in the reply do not anywhere cover is to be 'the asset' as provided under the statute. The explanation to

Section 149 of the Act with the purpose of Clause (b) of Section provides that 'asset' would include movable property, being land or building or both, shares and securities, loans and advances, deposits in bank account. As the transactions, according to the respondent, do not cover any of these, this should be the ground for the Court not to allowing the further assessment pursuant to the notice impugned. It is also for the year 2016-17 and 2017-18 raised the objection of the approval granted by the Principal Commissioner and not the Principal Chief Commissioner.

7. Learned advocate Mr.Karan Sanghani, appearing for the learned senior standing counsel Mrs.Kalpanak Raval for the respondent authorities has forcefully argued before this Court that the case is covered under the Explanation in Section 149 of the Act, where the asset also includes the deposits in the bank account, moreover, it is not an exhaustive

definition but, by all means an inclusive definition. He also further has urged that insight portal has revealed these details, the Ardor Group transactions have been quite suspicious and the complaint by the CBI had resulted into the actions against that Group. In the instant case, according to him, the largest beneficiary of the transactions of the bank account of this concern Ardor Group and it has been made quite clear that diversion has caused wrongful loss. He is also relied on the order of this Court in case of ***Satva Merchandize (P.) Ltd., versus Income Tax officer,*** reported in [2021] 133 ***taxmann.com 92 (Gujarat).***

8. Having heard both the sides and having also considered the material on the record, the aspect that needs to be considered by this Court is as to whether any interim relief at this stage is necessary, since the re-assessment for the AY 2015-16, 2016-17 and 2017-18 continue, pursuant to the

notice issued under Section 148 of the Act in post *Union of India versus Ashish Aggarwal (supra)*.

9. At this stage, learned advocate, Mr.Hardik Vora seeks permission to withdraw these petitions.

10. Permission, as prayed for withdrawal, is granted keeping all contentions open for the petitioners.

11. These petitions stand disposed of as withdrawn. Prayer for interim relief stands vacated forthwith.

(SONIA GOKANI,CJ)

(SANDEEP N. BHATT,J)

M.M.MIRZA/ M.H.DAVE