



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 17669 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BIREN VAISHNAV

and

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

=====

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 ?	

=====

BHAGWATI POLYFILL PVT. LTD.

Versus

THE ASSISTANT COMMISSIONER OF INCOME TAX

=====

Appearance:

MR. TUSHAR HEMANI, SENIOR COUNSEL WITH MS VAIBHAVI K PARIKH(3238) for the Petitioner(s) No. 1

MR. KARAN SANGHANI, STANDING COUNSEL FOR MRS KALPANA K RAVAL(1046) for the Respondent(s) No. 1

=====

CORAM: HONOURABLE MR. JUSTICE BIREN VAISHNAV

and

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

Date : 25/09/2023

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE BIREN VAISHNAV)



1 Rule returnable forthwith. Mr.Karan Sanghani, learned Standing Counsel waives service of rule on behalf of the respondent. With consent of the learned advocates appearing for the respective parties, the matter is taken up for final hearing today.

2 By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed for quashing and setting aside the notice dated 30.04.2019 issued under Section 148 of the Income-Tax Act, 1961 for the Assessment Year 2012-13.

3 Facts in brief are as under:

3.1 The petitioner is engaged in the manufacturing of sizing yarn. During the financial year 2011-12, relevant to the Assessment Year 2012-13. The petitioner had received unsecured loans from certain persons, some of which were outstanding at the end of the year under consideration.



3.2 The petitioner filed return of income on 30.09.2012,. The case of the petitioner was selected for scrutiny assessment. A notice dated 20.10.2014 was issued under sec.142(1) of the Act, calling for various details, including details pertaining to receipt of refund of unsecured loans.

3.3 The petitioner furnished details vide letters dated 5.11.2014 and 25.02.2015. An Assessment Order was framed on 16.03.2015 without making any addition in respect of unsecured loans. On receipt of notice dated 30.03.2019 under Sec.148 of the Act, the petitioner filed his return of income on 29.04.2019. A copy of the reasons for reopening were supplied on 08.05.2019. The petitioner, on 03.07.2019, raised objections against reopening. Vide order dated 27.08.2019, the objections were disposed of, justifying the reasons for reopening.

4 Mr.Tushar Hemani, learned Senior Counsel appearing with Ms.Vaibhavi Parikh, learned counsel for the petitioner, would make the following submissions:-



4.1 Taking the Court through the reasons for reopening, Mr.Hemani, learned Senior Counsel, would submit that it was a case of reopening beyond a period of four years. Reading the reasons would indicate that they lacked validity. It was the case of the revenue that by virtue of an investigation carried out in the case of Shri Kamal Jayantilal Zaveri and on examination of material, it was found that the assessee company i.e. the petitioner was the beneficiary of accommodation entries in the form of unsecured loan given to the assessee company. He would submit that the petitioner has neither received any loans from the two concerns, namely, M/s. Jay Traders and M/s. Shubham Enterprise, nor does he know Mr.Kamal Zaveri. The reasons for reopening, therefore, lacked validity.

4.2 Mr.Hemani, learned Senior Counsel, would submit that neither any statement of Mr.Zaveri, nor a declaration dated 08.05.2015, nor any details of the Assessment Order were supplied to the petitioner so as to explain how the transaction mentioned in the reasons for reopening



had any linkage or nexus with the petitioner.

4.3 Mr.Hemani, learned Senior Counsel, would submit that since the reopening was beyond a period of four years, it was not a case of failure on the part of the petitioner to truly and fully disclose the income. The assessment for the year was framed under Sec.143(3). In the letters pursuant to the notice under Sec.142, the unsecured loans were duly recorded in the audited books of accounts. Details pertaining to receipt of refund of unsecured loans were called for which details were given by the petitioner. There was therefore no failure on the part of the petitioner as to full and true disclosure for the year under consideration.

4.4 Mr.Hemani, learned Senior Counsel, would further submit that the reopening was based on “change of opinion”, and the reasons to believe did not have a linkage or a close nexus between the material with the Assessing Officer. He would, therefore, submit that the notice impugned in this petition be quashed and set



aside.

5 Mr.Karan Sanghani, learned counsel appearing for the revenue, would submit that it was evident from the reasons recorded in the communication dated 08.05.2019 that details were given in a tabular form with bank account details as to in what manner the petitioner had received accommodation entries in the form of unsecured loans. It was evident from the statement of Shri Kamal Zaveri, that the transaction entered into by the assessee in terms of the accommodation entry was from the two tainted concerns, and therefore, there was a valid reason to believe that the assessment required to be reopened. He would rely on the affidavit-in-reply filed, wherein, the statement of Shri Zaveri and the extract thereof has been reproduced. He would, therefore, submit that there was prima facie material on the basis of which the department could reopen the assessment.

6 Having perused the material on record, what is apparent is that the assessment was sought to be



reopened by a notice dated 30.03.2019 for the year 2012-13. It was, therefore, a case of reopening beyond a period of four years. The revenue, therefore, had the burden to show that there was no full and true disclosure of income by the assessee.

6.1 The reasons to believe, based on which the case of the assessee was reopened in brief, would read as under:

“2 This office is in possession of a piece of information disseminated by Investigation Wing, Surat through ITO, Ward-1(3)(7), Surat. A survey action u/s. 133A of the I.T.Act was undertaken by Investigation Wing, Surat in the case of Shri Kamal Jayantilal Zaveri, Prop. Of M/s. Rishit Corporation on 24.03.2015. Shri Kamal Jayantilal Zaveri was engaged in the business of providing of “Bogus bill entries” and “accommodation loan entries” on commission basis. Shri Kamal J. Zaveri as well as associated persons has been examined on oath and all such persons have admitted to have been actively involved in giving accommodation entries. Shri Kamal J. Zaveri filed a declaration on Rs.100/- Stamp paper on 08.05.2015 stating that he was engaged in the business of accommodation entries through bogus bills and given fictitious unsecured loans to the different parties and he reiterated these facts given earlier by him in his statement during the course of survey at his residence on 24.03.2015. During the course of post survey enquiries, list of beneficiaries of bogus entries of various parties of Surat and other places have been prepared and intimated to the concern AO.



2.1 Further, during the reassessment proceedings u/s. 147 of the Act in the case of Shri Kamal J. Zaveri, on examination of impounding material. Some other entries of "Bogus Bill" and "Accommodation loan entries" which were not intimated earlier were found. The transaction found in the impounding material related to the assessee company M/s. Bhagwati Polyfill Pvt Ltd, with Shri Kamal J. Zaveri (bogus commission agent, who provides accommodation entries) are as under:-

Sr No.	Dt of Transaction	Name of Beneficiary	Amount	Concern of Shri Kamal J Zaveri	Bank	Bank Account NO.
1	26.03.2012	Bhagwati Polyfill Pvt Ltd.	2534710	Ms/. Jay Traders	Kotak Mahindra Bank	2411148883
2	28.03.2012	Bhagwati Polyfill Pvt Ltd.	2650593	Ms/. Jay Traders	Kotak Mahindra Bank	2411148883
3	26.03.2023	Bhagwati Polyfill Pvt Ltd.	2070080	M/s. Shubham Enterprise	Kotak Mahindra Bank	5911149800
4	28.03.2012	Bhagwati Polyfill Pvt Ltd.	3509631	M/s. Shubham Enterprise	Kotak Mahindra Bank	5911149800

Since, Shri Kamal J. Zaveri, Prop. M/s. Rishit Corporation has admitted that he is engaged in the business of giving "Bogus bill entries" and "Accommodation loan entries" on commission basis. Therefore, accommodation entries in the form of unsecured loan given to the assessee company M/s. Bhagwati Polyfill Pvt Ltd. By Shri Kamal J. Zaveri concern are bogus in nature.

3. Report of the Investigation Wing, Surat as well as information of ITO, Ward-1(3)(7), Surat has been perused with reference to the statements / declaration of Shri Kamal J. Zaveri, Prop. M/s. Rishit Corporation. After perusal and having verified, the



finding of the Investigation Wing, Surat is found to be in order that Shri Kamal J. Zaveri is engaged in the business of giving “Bogus bill entries” and “Accommodation loan entries” on commission basis.

4. After perusal of statement statements / declaration of Shri Kamal J. Zaveri, Prop. M/s. Rishit Corporation and report of the Investigation Wing, Surat, it is confirmed that the assessee company M/s. Bhagwati Polyfill Pvt Ltd has received accommodation entry from M/s. Jay Traders and M/s. Shubham Enterprise proprietorship concern of Shri Kamal J. Zaveri (bogus commission agent, who provides accommodation entries) during the F.Y. 2011-12 relevant to A.Y. 2012-13. This transaction is bogus transaction because it is clearly proved that the assessee M/s. Bhagwati Polyfil Pvt Ltd. Had taken accommodation entry from the said tainted concerns during the year under consideration, thereby reduce its tax liability as well routing its own unaccounted money by way of unsecured loan through Shri Kamal J. Zaveri.”

6.2 Perusal of the record would indicate that the petitioner’s case was selected for scrutiny and the issue as to unsecured loans was considered threadbare. The statement of audit produced in Form 3CA and 3CD together with the petition indicated that the company accepted unsecured loan from Directors / Shareholders of the company and relatives, names thereof were listed in their statement of accounts.



6.3 Perusal of the notice dated 20.10.2014 would indicate that the revenue had sought for details and supporting material to establish the genuineness of source and creditworthiness in respect of receipt and refund of unsecured loans during the year.

6.4 Even while responding to the notice vide communication dated 05.11.2014, it was specifically pointed out by the assessee-petitioner that in context of unsecured loans, the details of 25 parties confirming the copies of the accounts of the Directors and Shareholders from whom such loans were taken was attached. The communication dated 25.02.2015, also indicated and listed the names of the parties to whom such loans were advanced. The Assessment Order, accordingly, was passed on 16.03.2015 making no addition in context of the issue in question.

6.5 What is therefore evident from perusal of the material and the disclosure of income and the questions which were asked and responded to by the petitioner in



the scrutiny assessment would indicate that there was ample justification brought out by the petitioner in the context of unsecured loans.

7 Perusal of the reasons would indicate that except making a statement that the petitioner had an access with Shri Kamal Zaveri and that the tainted concerns, namely, Jay Traders and Shubham Enterprise were conduits for securing unsecured loans. No material came forth in terms of any statement or details to pin-point a live link or a nexus of the petitioner with the transaction in question. Apparently, the reasons were suggesting that it was a case where the revenue merely entered into a roving and fishing inquiry without any material on record. It was merely based on suspicion, especially when the exercise has been undertaken in light of the scrutiny assessment so done. There was no tangible material so as to come to a conclusion or “reason to believe that the income chargeable to tax has escaped assessment”. The exercise undertaken by the respondent - revenue and the



reasons to reopen the assessment indicated that under the guise of reopening of the assessment, the Assessing Officer wanted to have a roving inquiry which is not permissible in exercise of powers under Sec.148 of the Income-Tax Act.

8 For the aforesaid reasons, the notice dated 30.04.2019 issued under Section 148 of the Income-Tax Act, 1961 for the Assessment Year 2012-13, is hereby quashed and set aside. The petition is allowed, accordingly. Rule is made absolute accordingly.

(BIREN VAISHNAV, J)

(BHARGAV D. KARIA, J)

BIMAL