NEUTRAL CITATION
2026:GUJHC:40934-DB

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 13194 of 2023
With
R/SPECIAL CIVIL APPLICATION NO. 9025 of 2024
With
R/SPECIAL CIVIL APPLICATION NO. 9080 of 2024

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

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Approved for Reporting	Yes	No
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VIMAL OIL AND FOODS LIMITED
Versus
ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE, GANDHINAGAR

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Appearance:
MR TUSHAR HEMANI Senior Counsel assisted by MS VAIBHAVI K PARIKH(3238) for the Petitioner(s) No. 1
MR AADITYA D BHATT(8580) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**
and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 30/06/2026

COMMON ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. Since the issue involved in these petitions are one and the same, they are taken up for hearing together and are disposed of by this common judgment. Special Civil Application No. 13194 of 2023 is ordered to be taken up as a lead matter.

2. By way of this writ-petition, the petitioner has challenged the Notice dated 13.04.2023 issued under the provision of Section 148 of the Income Tax Act, 1961 (for short 'the Act') as well as the order dated 13.04.2023 passed under Section 148A(d) of the Act, seeking to reopen the income tax assessment of the petitioner for the Assessment Year (for short 'A.Y.') 2019-20.

3. The reopening of the assessment is sought by issuance of the Notice dated 01.03.2023 under clause (b) of Section 148A of the Act calling upon the petitioner to show cause as to why Notice under Section 148 of the Act should not be issued. From the contents of the Notice, it is reflected that the same is premised on a search and seizure action carried out on 08.12.2021 in the case of CFM Asset Reconstruction Private Limited (for short CFM ARC') and related entities. The details of Non Performing Assets (for short 'NPA') of the petitioner acquired by CFM ARC were tabulated, which mentions about the acquired debts aggregating to Rs.9454.85 lakhs (Principal Rs.8,102.05 lakhs + interest Rs.1,352.80 lakhs) at a cost of Rs.5,050 lakhs. Thus, it was alleged that the total haircut in the

course of acquiring debts of the petitioner / corporate debtor worked out to Rs.4405.85 lakhs (i.e. Rs.9,454.85 lakhs – Rs.5050.00 lakhs). Ultimately, it is mentioned that the petitioner *"might have claimed deduction of interest on such loans"* which was never paid and now the liability has ceased to exist. By assigning this reason, the Notice has been issued.

3.1. The petitioner furnished a detailed reply to the show cause notice vide letter dated 13.03.2023. The petitioner invited the attention of the respondent-Assessing Officer that the petitioner had undergone the Corporate Insolvency Resolution Process (for short 'CIRP') initiated vide order dated 19.12.2017, and ultimately, vide order dated 19.12.2019 passed by the National Company Law Tribunal (for short 'NCLT'), Ahmedabad Bench, an Interim Resolution Professional was appointed. Ultimately, the NCLT vide order dated 19.12.2019 ordered liquidation of the petitioner - Vimal Oil and Foods Limited. The liquidator thereafter issued an invitation for Expression of Interest to sell the petitioner as a *'going concern'* together with all the connected licenses, permissions, trademarks, patents, registrations, formulations and property rights in accordance with the provision of the Insolvency and Bankruptcy Code, 2016 (for short 'the Code, 2016'). The petitioner also pointed out that, thereafter, the liquidator executed a sale agreement dated 03.03.2021 in favour of Arrhum Tradelink Private Limited (for short 'the ATPL'), thereby selling the petitioner to ATPL as a going concern. Thus, it was submitted that the petitioner has been taken over by ATPL on a "*clean slate*" with a clear understanding that all past liabilities / investigations shall stand extinguished. Despite this clarification and a request to drop the reassessment proceedings, the respondent vide order dated 13.04.2023 under clause (d) of Section 148A of the Act concluded that there is an escapement of income to the tune of Rs.13.52 crore, and accordingly, issued a Notice dated 13.04.2023 under Section 148 of the Act.

4. Learned Senior Counsel Mr. Tushar Hemani appearing for the petitioner has submitted that on the acquisition of the petitioner by ATPL as a going concern on a "*clean slate*" principle, the impugned notice and the impugned order seeking to reopen the case of the petitioner is not tenable in the eye of law.

4.1. He has referred to various clauses of the sale agreement dated 03.03.2021 in favour of ATPL and has submitted that all the past liabilities / investigations got extinguished, and hence, the reopening is not permissible.

4.2. In support of his submission, he has placed reliance on the judgment of the Coordinate Bench of this Court in the case of <u>KRBL Limited vs. State of Gujarat</u>, (2023) 154 taxmann.com 489 (Gujarat).

4.3. Further, it is pointed out that the petitioner never claimed a deduction of interest in question, (i.e. Rs. 13.52 crore payable to Andhra Bank [subsequently named as CFM ARC]) and the liability of bankers had ceased to exist and even NOC / No Due Certificate is issued in favour of the petitioner.

4.4. Finally, it is submitted that the reopening is premised on conjectures and surmises, as the Assessing Officer has expressed that the petitioner might have claimed deduction of interest on such loan, which was never paid, though all the profit and loss accounts could have been verified by the Assessing Officer before reopening of the assessment.

4.5. Thus, it is urged that the reopening of the assessment for A.Y. 2019-20 may be quashed and set aside.

5. Opposing the present petition and foregoing submissions, learned Senior Standing Counsel Mr.Aaditya Bhatt has submitted that the reopening of the assessment may not be quashed and set aside, as it appears that the petitioner while adopting the CIRP has tried to evade the tax liability. It is submitted that the Assessing Officer, while examining the huge difference between the assignment value and acquisition value and the intervening period for two years, on analysis of the accounts has noticed

that, the amount of haircut was no longer a liability to be payable by Vimal Oil and Foods Limited to the respective banks, as the haircut in the aforesaid NPA and the said NPA was transferred to CFM ARC at a heavily discounted price.

5.1. It is submitted that, there is all probability that the Vimal Oil and Foods Limited, i.e. the petitioner might have claimed a deduction of interest on such loan, which has never been paid, and now since the liability has ceased to exist, the Assessing Officer requested the petitioner for relevant data to verify the claim and since no satisfactory documentary evidence was provided, it was noticed by the Assessing Officer that the cessation of liability of interest may attract the provision of Section 41(1) of the Act and waiver of loan may attract the Explanation 1(b) to Section 115JB(2) of the Act, as the liability of the petitioner - assessee to the tune of Rs.1352.80 lakhs has ceased to be payable. Thus, it is urged that the writ-petition may not be entertained.

6. We have heard the learned advocates for the respective parties at length.

7. The established facts from the pleadings and the documents on record are that, the petitioner company has undergone a CIRP, which was initiated vide order dated 19.12.2017 passed by the

NCLT, Ahmedabad Bench. Ultimately, since the resolution plan was not approved, the NCLT vide order dated 19.12.2019 ordered liquidation of the petitioner. These liquidation proceedings initiated by the liquidator culminated into the sale agreement executed on 03.03.2021 in favour of ATPL and thereby ATPL selling to the petitioner as a *going concern*.

8. Regulations-32(e) of The Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 mentions that the petitioner was acquired as a going concern by ATPL, and the petitioner has been taken over by ATPL on a *'clean slate'* with a clear understanding that all the past liabilities / investigations shall stand extinguished, as per the sale agreement dated 03.03.2021 read with the provision of the Code, 2016.

9. The Revenue has sought to reopen the assessment of the petitioner for A.Y. 2019-20, on the basis of a search and seizure action which was carried out on 08.12.2021 in the case of CFM ARC. The show cause notice dated 01.04.2023 under Clause (b) of Section 148A of the Act was issued to the petitioner by alleging that on the acquisition of the petitioner by CFM ARC and on examination of acquired debts as mentioned herein-above, the amount of haircut(In financial terms, a "haircut" refers to the percentage reduction applied to the market value of an asset when it is used as collateral for a loan or trade or settle a debt)

was no longer a liability payable by the petitioner to the respective banks, as the petitioner company was bought as a going concern by the new buyer and since there is complete cessation of liability in the hands of the petitioner and new buyer, as regards the principal amount of loan as well as outstanding interest payable on such loans, the petitioner "might have claimed" a deduction of interest on such loans, which were never paid and now the liability has ceased to exist. Therefore, cessation of liability of interest may attract provision of Section 41(1) of the Act and waiver of loan may attract Explanation 1(b) to Section 115JB(2) of the Act to the tune of Rs.1,352.80 lakhs.

10. The petitioner categorically explained the CIRP as well as its acquisition by ATPL by the sale agreement dated 03.03.2021. With regard to the interest of the loan as alleged of Rs.13.52 crores, it was clarified that the petitioner has never claimed a deduction of such interest payable to Andhra Bank (subsequently named as CFM ARC). The petitioner also asserted that the liability of bankers has ceased to exist and even NOC / No Due Certificate is issued in favour of the petitioner, since the Andhra Bank has become NPA since financial year 2015-16 and the petitioner had not claimed interest in the profit and loss account since financial year 2015-16. Thus, after tendering such explanation to the show cause notice, the petitioner urged that there is no escapement of income as alleged, however, the

respondent thereafter issued a Notice dated 13.04.2023 under Section 148 of the Act, seeking to reopen the case of the petitioner.

11. Keeping in mind of the undisputed facts as mentioned herein-above, we may refer to the decision of this Court in the case of ***KRBL Limited (supra)***, wherein this Court, while examining the claims of the State Tax Department, in liquidation proceedings and the provision of Section 53 read with Section 52 of the Code, 2016 and Regulation 31A of the Insolvency and Bankruptcy (Liquidation Process) Regulations, 2016, has held thus:

> *"5.18 Reading of the aforesaid paras would indicate that once having relinquished its interest under Section 52, the State cannot continue the insistence of maintaining the charge in the revenue records and its claim will have to stand in priority.*
>
> *5.19 The argument of the State that since the asset was sold on a condition of "AS IS WHERE IS BASIS", the charge of the State was rightly recorded is misconceived as the deed already records that the purchaser shall not be liable for payment of any outstanding dues of the government. This too was, in the opinion of the Court a clause that would relieve the petitioner of the liability to pay tax dues. In light of the decision in the case of Ghanshayam Mishra and Sons Private Limited (supra), the petitioner was entitled to a clean slate.*
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> *5.20 Even otherwise as per Section 100 of the Transfer of Property Act, a charge cannot be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of such charge. The State moved in to get a charge registered on 15.12.2022 much later."*

12. Thus, the Coordinate Bench, after placing reliance on the settled legal position by the Supreme Court in the case of Ghanshyam Mishra & Sons (Private) Limited vs. Edelweiss Asset Reconstruction Company Limited, (2021) 126 taxmann.com 132, has held that the action of the State of insistence of maintaining the charge in the revenue record as illegal on the principles of *clean slate*.

13. In the instant case, the reopening is premised on surmises and conjectures expressed by the Assessing Officer. The reopening is premised on a presumption that the petitioner might have claimed deduction of interest on the loans, which was never paid and now the liability has ceased to exist. The AO has ignored and failed to examine that the petitioner has never claimed a deduction of such interest payable to Andhra Bank (subsequently named as CFM ARC), and that the liability of bankers has ceased to exist and even NOC / No Due Certificate is issued in favour of the petitioner, since the Andhra Bank has become NPA since financial year 2015-16, and the petitioner had not claimed interest in the profit and loss account since financial year 2015-16. When the petitioner clarified this aspect and it was always open for the Assessing Officer to verify this aspect from the profit and loss account of the petitioner.

14. Thus, in wake of the settled legal precedent and the reopening premised on surmises and conjectures, the action of reopening calls for interference, and hence, all the writ-petitions stand ***allowed***, accordingly, the impugned notices and orders in each of the writ-petition is hereby quashed and set aside. Rule is made absolute.

sd/-
(A. S. SUPEHIA, J)

sd/-
(VAIBHAVI D. NANAVATI,J)

Pradhyuman/6,7,8/