IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 21134 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA Sd/-

and
HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI Sd/-

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Approved for Reporting	Yes	No
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DATTA PROJECTS PRIVATE LIMITED
Versus
THE ASSISTANT COMMISSIONER OF INCOME TAX, VAPI CIRCLE,VAPI

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Appearance:
MR B S SOPARKAR(6851) for the Petitioner(s) No. 1
MR RUTVIJ R PATEL(10615) 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 : 06/07/2026
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

Rule. Learned Senior Standing Counsel Mr.Patel waives service of notice of rule for and on behalf of the respondent.

1. By way of the present petition, the petitioner has prayed for quashing and setting aside the notice dated 30.03.2019 issued under Section 148 of the Income Tax Act, 1961 (for short “the Act”).

2. The Petitioner is a private limited company, filed its return of income for the Assessment Year (AY) 2012-13 on 28.09.2012 declaring total

income of Rs.39,18,410/-, which was selected for scrutiny and the same was finalized under Section 143(3) of the Act on 25.02.2015 accepting the returned income. Thereafter, the respondent issued the impugned notice under section 148 of the Act dated 30.03.2019 reopening the assessment for the AY 2012-13. Reasons for reopening were also supplied to the petitioner on 22.08.2019. The petitioner vide letter dated 31.08.2019 raised various objections on merits and on law and requested the respondent to drop the reassessment proceedings. Thereafter, vide order dated 16.11.2019, the respondent disposed of the objections and rejected the same in totality.

3. Learned advocate Mr.Soparkar appearing for the petitioner has submitted that the respondent has recorded only one reason for reopening the completed assessment that a survey was conducted in the case of the Petitioner. It is submitted that in such survey, certain irregularities were noticed such as M/s. Skyline Enterprise had collected on-money from its customers in respect of project "Sai Shangrila" and on the basis of such finding, it was believed that M/s. Skyline Enterprise have failed to disclose and offer income earned by it. He as submitted that the respondent further noted that the petitioner is a group concern of M/s. Skyline Enterprise and, therefore, inferred that the petitioner would

have also received cash on-money and evaded taxes in relation to same.

4. Learned advocate Mr.Soparkar has further submitted that the reason to form a belief that income has been escaped by the petitioner is completely illogical and, therefore, invalid. It is submitted that the same further shows complete non-application of mind on the part of the respondent for the belief is based upon presumptions not born out of facts and are unknown to law. It is submitted that there is no positive evidence found in the case of the petitioner of having received any on-money. It is submitted that no presumption can be cast upon the petitioner that only because a group concern is believed to have received on-money from buyers, the petitioner would also have received the same. It is therefore, submitted that there is no evidence whatsoever that the petitioner has received any on-money and, therefore, the reason to believe that the petitioner has received on-money and to that extant income has escaped assessment is erroneous and invalid. It is further submitted that not only the incidence of evasion of taxation is completely presumed but also the quantification of the same is also assumed to be 50% of the accounted amount. It is submitted such assumption for quantification of

escaped income is also illogical, erroneous and invalid.

5. Learned advocate Mr.Soparkar has submitted that the respondent has sought to reopen a completed assessment beyond the period of four years from the end of the AY which is not permissible except the escapement having occasioned for the failure of the assessee to truly and fully disclose all the material facts. It is submitted that such not being the case in the facts, the respondent has acted beyond his jurisdiction and impugned notice issued under section 148 of the Act is bad and illegal. Thus, it is urged that the writ petition may be allowed by setting aside the impugned notice.

6. Learned Senior Standing Counsel Mr.Patel has submitted that during the course of survey proceedings in the case of the assessee, various incriminating documents were found and impounded. And on perusal of the same, it was noticed that the sister concern of the assessee, i.e. M/s. Skyline Enterprise, which is also engaged in the business of real estate has cash received on sale of residential/commercial buildings which were not accounted in its books of accounts. It is submitted that M/s.Skyline Enterprises has filed application before the Income Tax Settlement Commission (ITSC), Mumbai and offered additional

income for taxation on account of on-money, which proves that the assessee group is engaged in the business of the real estate and also having the practice of receiving on-money in cash over and above document price of the residential/commercial buildings and hence, the assessee's contention that the department has believed that M/s.Skyline Enterprise has failed to disclose and offer income earned by it, is not true as it was not mentioned in the reasons recorded for reopening of the assessee.

7. Learned Senior Standing Counsel Mr.Patel has further submitted that during the course of survey proceedings in the case of the assessee on 30.08.2018, various incriminating documents were found and impounded and on perusal of the same, it was noticed that the sister concern of the assessee, i.e. M/s.Skyline Enterprise, which is also engaged in the business of real estate, has received cash on sale of residential/commercial buildings, which were not accounted in its books of accounts. It is submitted that M/s.Skyline Enterprises had filed application before the ITSC, Mumbai and offered additional income for taxation on account of on-money, which clearly proves that the assessee group is engaged in the business of the real estate and also having the practice of receiving on-money in cash over and above document price of the

residential/commercial buildings and hence, the assessee's contention that assumption for quantification of escaped income is illogical, erroneous and invalid and, is therefore, not valid because the sister concern of the assessee, the M/s.Skyline Enterprises has accepted that it had received on-money in cash on sale of residential/commercial buildings which is the squarely applicable in the case of the assessee, i.e. Datta Projects Pvt. Ltd. being in the same line of business. Thus, he has urged that the present writ petition may not be entertained.

8. We have heard the learned advocates appearing for the respective parties at length and also perused the documents, as pointed out by them.

9. It is not in dispute that the reopening of the petitioner is premised on presumptions and surmises, and the amount of alleged escapement of income is calculated on the basis of 50% of the actual sales consideration, in cash, on the basis of the firm M/s.Skyline Enterprises. The only link between M/s.Skyline Enterprises and the present petitioner is Shri Dinesh Gutrasia, who is a director of the petitioner, whereas he was a 25% partner in profit sharing in M/s.Skyline Enterprises along with other six persons.

NEUTRAL CITATION
2026:GUJHC:41364-DB

10. Thus, merely because in search and survey against some documents with regard to one Excel file with respect to project "Sai Shangrila" by M/s.Skyline Enterprises was found in the Gmail account of Shri Dinesh Gutrasia, director of the petitioner, the reopening is resorted to by alleging that since on-money amounting to Rs.1,27,07,972/- represents the unaccounted income of the firm M/s.Skyline Enterprises. It is presumed that the petitioner might have collected 50% of the actual sales consideration in cash. Thus, the reopening, since it is premised on presumptions, the same is required to be quashed and set aside.

11. In light of the foregoing reasons, the impugned notice dated 30.03.2019 is hereby quashed and set aside. The writ petition stands allowed. Rule made absolute.

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

Sd/-
(VAIBHAVI D. NANAVATI,J)

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