IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 3597 of 2016

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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ADANI EXPORTS
Versus
INCOME TAX OFFICER - WARD - 5 (2) (2)

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Appearance:
MR B S SOPARKAR(6851) for the Petitioner(s) No. 1
MS MAITHILI D MEHTA(3206) 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 : 05/08/2026

ORAL JUDGMENT

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

1. The present writ petition has been filed challenging the notice dated 27.03.2015 issued by the respondent under Section 148 of the Income Tax Act, 1961 (for short, "the Act"), seeking to reopen the petitioner's income tax assessment for Assessment Year (A.Y.) 2010–11.

2. The petitioner is a partnership firm engaged in the business of manufacturing and exporting gold jewellery from the Special Economic Zone (SEZ), Sachin, Surat. The petitioner is entitled to a deduction of 100% of the profits and gains derived from the export of gold jewellery under the provisions of Section 10AA of the Act.

3. The petitioner filed its return of income for Assessment Year (A.Y.) 2010–11 under Section 139(1) of the Act on 29.09.2010. The return was accompanied by copies of the audited accounts and the report of the auditors in Form No.3CB read with Rule 6G(1)(b) of the Income Tax Rules, 1962. The tax audit report was duly certified by the auditors and was accompanied by all the prescribed statutory forms, annexures, and audited annual financial statements.

4. The case of the petitioner was selected for scrutiny. Notices under Sections 143(2) and 142(1) of the Act, along with detailed questionnaires, were issued and the petitioner duly complied with the same by filing detailed replies on 24.11.2011 and 02.12.2011.

5. After examining the books of account and the relevant material furnished by the petitioner, the Assessing Officer framed the assessment under Section 143(3) of the Act on 23.12.2011.

6. Thereafter, the respondent issued the impugned notice under Section 148 of the Act on 27.03.2015 seeking to reopen the assessment.

7. Prior thereto, queries were raised regarding the difference in the purchase price of gold and the non-payment of interest on partners' capital, to which the petitioner furnished its reply on 06.09.2013.

8. Subsequently, the respondent issued the impugned notice under Section 148 of the Act on 27.03.2015 seeking to

reopen the assessment on two grounds: (i) that the petitioner had not paid interest on the partners' capital, thereby inflating its profits and consequently claiming a higher deduction under Section 10AA of the Act; and (ii) that the petitioner had purchased gold from its sister concern at a lower price, thereby inflating its profits. It is alleged that a suitable adjustment was required to be made under Section 10AA(9) read with Section 80-IA(10) of the Act. Upon receipt of the notice, the petitioner filed detailed objections dated 14.08.2015. However, the Assessing Officer, by order dated 01.02.2016, rejected the objections, which order is under challenge in the present writ petition.

9. Learned advocate Mr.Soparkar has submitted that the reassessment proceedings are founded solely on the audit objection raised by the Comptroller and Auditor General of India (CAG). He has submitted that upon receipt of the revenue audit objection, the Assessing Officer sought clarifications from the petitioner vide letters dated 29.05.2013 and 05.08.2013 on the aforesaid two issues. He has further submitted that the Assessing Officer had himself objected to the audit objection, and therefore, the reopening is without jurisdiction and invalid.

10. Referring to the judgment of the Coordinate Bench of this Court dated 04.07.2016 passed in Special Civil Application No. 3595 of 2016 and allied matters concerning the petitioner for Assessment Years 2008–09 and 2009–10, wherein the reopening of the assessments was based on identical grounds alleging that the petitioner had earned profits in excess of reasonable profits, thereby claiming a higher deduction under

Section 10AA of the Act, learned advocate Mr.Soparkar has submitted that this Court had quashed and set aside the reopening. Accordingly, he has submitted that the reopening for the year under consideration also deserves to be quashed.

11. With regard to the second ground concerning the purchase of gold from a sister concern at a lower price, it is contended that the respondent had compared the price of gold of 0.999 fineness, whereas the petitioner had purchased gold of 0.995 fineness. It is further submitted that the respondent had compared the prices based on a Troy ounce instead of a normal ounce. Once these differences are properly accounted for, it cannot be said that any income had escaped assessment. It is submitted that this very issue had also arisen in Special Civil Application No.3595 of 2016 and allied matters, wherein this Court had quashed the reopening.

12. Finally, it is contended that the impugned reopening is merely based on a change of opinion. During the original assessment proceedings, all the relevant materials and details concerning the aforesaid issues were thoroughly examined by the Assessing Officer, who, after due scrutiny, accepted the petitioner's explanation and completed the assessment under Section 143(3) of the Act. It is urged that the reopening deserves to be quashed and set aside.

13. Responding the foregoing submissions and opposing the writ petition, learned Senior Standing Counsel Ms. Mehta, while referring to the averments made in the affidavit-in-reply dated 29.04.2016 filed on behalf of the respondent, has submitted

that the reopening ought not to be interfered with since, during the original assessment proceedings, no specific query had been raised regarding the issue of inflated profits resulting in a higher claim of deduction under Section 10AA of the Act.

14. Learned Senior Standing Counsel has further submitted that the petitioner had benefited by not providing interest on the partners' capital and that this issue had escaped consideration during the original assessment proceedings. Therefore, it could not be contended that the reopening was based on a mere change of opinion.

15. Learned Senior Standing Counsel has further submitted that, during the year under consideration, it was noticed that the petitioner had purchased gold from Adani Enterprises Limited (AEL), a sister concern in which the partners held a 99% profit-sharing interest. The petitioner had purchased the gold at a price lower than the prevailing market rate on the relevant dates, thereby earning profits in excess of ordinary commercial profits and consequently claiming a higher deduction under Section 10AA of the Act. Accordingly, it is submitted that the provisions of Section 80-IA(10) read with Section 10AA(9) of the Act would get attracted.

16. We have heard the learned advocates appearing for the respective parties at considerable length.

17. The established facts reveal that the petitioner filed its return of income on 29.09.2010 and claimed a deduction of Rs.149 crores under Section 10AA of the Act. A notice under

Section 142(1) of the Act was issued on 17.11.2011 calling upon the petitioner to furnish the ledger accounts of the partners along with details of the profits credited to their respective accounts. Thereafter, another notice dated 28.11.2011 was issued seeking details relating to the stock.

18. A perusal of the notice dated 28.11.2011 reveals that, during the scrutiny assessment under Section 143(3) of the Act, the petitioner was called upon to produce purchase invoices and explain the manner in which the goods had been received, along with details of the exports made. The petitioner was also required to furnish submissions regarding the nature of its business i.e. the manufacture of articles made of precious metals. In response, the petitioner furnished complete details of the purchases of gold from Adani Enterprises Limited (AEL) along with an explanation regarding the manufacture of gold into medallions, coins, bangles, chains and other jewellery, as well as the labour and making charges incurred.

19. After considering the replies of the petitioner, the audit report the audited financial statements and other relevant material relating to the business of manufacturing and exporting precious metal products such as medallions, gold chains, gold bangles and other jewellery, the Assessing Officer observed from the computation of income that the assessee had claimed deduction under Section 10AA of the Act, which was duly supported by the statutory audit report in the prescribed Form No.56F. Accordingly, the Assessing Officer completed the assessment under Section 143(3) of the Act by order dated 23.12.2011.

20. Thereafter, the assessment was sought to be reopened by issuance of a notice under Section 148 of the Act dated 27.03.2015 on two grounds: (i) that the assessee had not provided for interest on the partners' capital, thereby inflating its profits; and (ii) that the assessee had purchased gold from its sister concern at a price lower than the prevailing market rate. It was alleged that, on both these counts, the profits stood inflated, resulting in a higher claim of deduction under Section 10AA of the Act.

21. The assessee, both in the writ petition and in its objections dated 14.08.2015, raised various contentions. The principal contention was that, during the original assessment proceedings under Section 143(3) of the Act, every aspect, including the computation of deduction under Section 10AA of the Act, had been examined in detail by the Assessing Officer. Therefore, the impugned reopening amounted to nothing but a mere change of opinion.

22. The assessee further contended that the reopening was founded solely upon the audit objection raised by the Revenue Audit (CAG). Pursuant to the said audit objection, the Assessing Officer had sought clarifications from the petitioner on the aforesaid two issues, to which detailed replies were furnished. It was submitted that the reopening was unsustainable, particularly in view of the fact that the Assessing Officer himself had objected to the audit objection.

23. At this stage, it is pertinent to note that, on identical issues arising for Assessment Years 2008-09 and 2009-10,

when the Revenue had sought to reopen the assessments, this Court, by judgment dated 04.07.2016 rendered in Special Civil Application No. 3595 of 2016 and allied matters, quashed and set aside the reopening of the assessments. However, the distinguishing feature is that in the said writ petition, the re-opening was after the period of four years as stipulated under section 147 of the Act, whereas in the present case, the re-opening is within in such period, and same is permissible after four years from the end of the relevant assessment year, unless the income escaped assessment due to the taxpayer's failure to file a return or disclose fully and truly all material facts.

24. In the present case also, the reopening has been initiated after completion of the scrutiny assessment under Section 143(3) of the Act for Assessment Year 2010-11.

25. A perusal of the judgment and order dated 04.07.2016 passed in Special Civil Application No.3595 of 2016 and allied matter reveals that, on the very same allegation that the assessee had earned profits in excess of ordinary commercial profits, thereby claiming a higher deduction under Section 10AA of the Act, the alleged benefit derived by not providing for interest on the partners' capital, and the purchase of gold from its sister concern, Adani Enterprises Limited (AEL), the Coordinate Bench quashed and set aside the reopening of the assessment by observing as under:

> *"8. In background of such contentions, we may peruse the reasons recorded by the Assessing Officer more minutely. From such reasons, we gather that the assessee which is in the business of manufacturing an export of gold and diamond*

jewelery, was a partnership firm comprising of two partners viz. AEL and AAPL which had profit/loss sharing ratio of 99:1% respectively. The reasons cite two different grounds for the Assessing Officer to form a belief that income chargeable to tax has escaped assessment. First was that, as per the partnership deed dated 01.06.2006, the partners would receive simple interest at the rate of 9% per annum or such other rates as may be prescribed under section 40(b)(iv) of the Act on the balance amount to the credit on the capital or current
account of the firm. Despite this covenant, the assessee firm did not pay any interest to its partners which had the effect of increasing the assessee's profit from the eligible business. Thus, the assessee claimed higher deduction than what was justified. The second ground was that the assessee firm had made purchases of gold on various occasions from its sister concern and partner i.e. AEL. According to the Assessing Officer, such purchases were at a rate lower than the prevailing market rate, thus, once again inflating the assessee's profit from the eligible business. This would attract section 80IA(10) read with section 10AA(9) of the Act.

9. With this background, we have perused the original files pertaining to the queries raised by the audit party. We notice that the Assessing Officer in his letter dated 23.03.2015, written to the Commissioner of Income-tax, after taking note of the detailed objections of the audit party on these two issues had conveyed that the objections raised by the audit party are acceptable and that therefore the assessment is required to be reopened. However, this file also contains other correspondence between the audit party and the Assessing Officer which raises some doubt about the opinion of the Assessing Officer being free. For example, on 18.07.2013, the audit party had written to the Assessing Officer regarding the purchase price of gold and pointed out that through such purchases, AEL had made less profit in its individual capacity, reducing its tax liability. However, the profit of the assessee firm which was exempt from tax was routed back to the AEL since AEL shares 99% profit of the assessee partnership firm. The Assessing Officer was requested to verify these aspects and offer his comments. Though the immediate response of the Assessing Officer to this letter is not known, we have a letter dated 31.12.2013 written by him to the audit party, in which he referred to the comments offered by the assessee clarifying the so called discrepancy in the price of gold i.e. the rate at which the assessee purchased from AEL at the prevailing market price and conveyed as under:

> *" It is further submitted by the assessee in his letter dated 26.12.2013, rate referred in column No.8 of the table is 'Rate as per MCX Ahmedabad (1.00 fineness)' and in column No.9 of the table is 'Rate as per MCX Ahmedabad (0.995 Fineness)'. The difference as worked out in column No.19 is difference between 'Total market rate per gram as per MCX rate for 1.00 fineness (column No.16)' and 'Total market rate per gram with 0.995 fineness (column No.18)', which is nothing but notional difference over the fineness rate and it is not difference in the books of the assessee firm or AEL.*
>
> *On consideration of the above explanation, your honour will find a fact that the figure of Rs. 11.01 crore is nothing but notional difference and the audit objection requires to be dropped."*

10. Thus, prima-facie at-least at one stage, the Assessing Officer was convinced that the audit objection was not valid. However, for want of full clarity on this issue, we are not inclined to conclude the matter only on this aspect. It is by now well settled that if the Assessing Officer has recorded his own reasons uninfluenced by audit objection, such action would not be bad in law merely because certain issues were brought to his notice by the audit party. It is equally well settled that when the Assessing Officer does not accept the audit objections, but has issued the notice for reopening based solely on the audit objections, such action would not be valid.

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13. With respect to non payment of interest to the partners on the borrowed capital, counsel for the petitioner submitted that though the original partnership deed dated 01.06.2006 provided for such interest, this deed was amended on 06.01.2007 which deleted any reference to payment of interest to the partners. It is not clear whether this amended deed was on record before the Assessing Officer during the original assessment. However, whether same was produced or not, in our opinion, would make no difference. If such amendment was not produced, it would imply that the Assessing Officer was guided by a partnership deed which made a specific provision for payment of interest to the partners for the borrowed capital. The fact that despite said covenant in the partnership firm, no such interest was paid *was very much before him during the original assessment. On the other hand, if the amended partnership deed was produced, he could still have questioned the assessee about nonpayment of interest to a partner who had 99% profit sharing stake in the partnership business. He could have questioned the assessee within the purview of section 80IA(10) read with section 10AA(9) of the Act. This would be relevant since the notice for reopening is issued beyond a period of four years from the end of relevant assessment year. In any case therefore, there was no failure on the part of the assessee to disclose truly and fully all material facts in this regard.*

14. Coming to the question of purchase of gold from AEL at a rate lower than the prevailing market rate, counsel for the petitioner would argue that there was no failure on part of the assessee to disclose truly and fully all material facts. On the other hand, the counsel of the Revenue would refer to the explanation 1 to section 147 which provides that production before the Assessing Officer of books of accounts from which material evidence with due diligence could have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the proviso to section 147 of the Act. However, we need not go into this controversy since the perusal of the record would reveal that during the original assessment, this question was examined by the Assessing Officer. We have reproduced the portions of the assessee's communications to the Assessing Officer. Particularly, in the letter dated 02.03.2010, the assessee pointed out that the firm had purchased gold bar from AEL. The assessee submitted sample copy of comparable purchases and sale invoices of gold bar of AEL and the purchases the AEL had made from the overseas buyers. On the basis of such material, the assessee had contended that the transactions were at the arm's length price. Thus, according to the assessee, the supply of gold by AEL to the assessee firm was at the prevailing market price. This explanation had to have relation only to the question of proper pricing of gold purchased by the assessee from AEL. This issue thus, was examined by the Assessing Officer during the original assessment. It would thereafter, not be open for the Assessing Officer to reopen the assessment on this ground particularly after four years.”

26. As clarified previously, in the earlier writ petition, though the re-opening of assessment for AY.2008-09, 2009-10 was on

identical issue, there was an additional issue relating to the reopening having been initiated beyond the period of four years, which is not the issue before us. However, we are in agreement with the observations made by the Coordinate Bench regarding the audit objections considered by the Assessing Officer and the effect thereof on the validity of the reopening proceedings.

27. We also concur with the findings recorded by the Coordinate Bench regarding the alleged discrepancy in the determination of the price of gold, which had been specifically pointed out by the petitioner before the Assessing Officer in its objections, but was not considered while passing the impugned order.

28. It is an admitted position that all the relevant details were available before the Assessing Officer during the original scrutiny assessment, including the details of the transactions with the sister concern. Therefore, it was always open to the Assessing Officer, during the original assessment proceedings, to examine the issue relating to the non-payment of interest on the partners' capital, particularly when one of the partners had a 99% profit-sharing ratio in the partnership firm, and to consider whether the provisions of Section 80-IA(10) read with Section 10AA of the Act were attracted.

29. We further find that, while disposing of the petitioner's objections by order dated 01.02.2016, the respondent dealt only with the issue relating to the alleged inflation of profits. It appears that the respondent accepted the petitioner's

explanation regarding the rate of gold, as no discussion whatsoever has been made on that aspect in the impugned order.

30. As observed by the Coordinate Bench, the Assessing Officer ought to have examined the amended partnership deed before initiating the reopening proceedings. In its reply to the show cause notice, the petitioner had specifically pointed out that the original partnership deed dated 08.05.2006 had been amended on 06.01.2007 with effect from 01.11.2006, whereby it was agreed that no interest would be payable on the partners' capital. It was further clarified that Clause 6 of the original partnership deed, on which reliance had been placed in the impugned communication, had become inoperative by virtue of the amended partnership deed. Consequently, there was no obligation whatsoever upon the assessee - firm to pay interest on the partners' capital, and the non-payment of such interest was fully in accordance with the terms of the amended partnership deed. Therefore, the provision of Section 80-IA(10) of the Act could not have been invoked while determining the profits eligible for deduction under Section 10AA of the Act.

31. It thus appears that, while reopening the assessment for Assessment Year 2010-11, the Assessing Officer proceeded on the basis of the covenants contained in the original partnership deed dated 08.05.2006, which provided for payment of interest on the balance standing to the credit of the partners' capital and/or current accounts at the rate of 9%, or at such rate as prescribed under Section 40(b)(iv) of the Act i.e. 12% per annum.

32. Accordingly, the reopening is founded upon a covenant contained in the original partnership deed dated 08.05.2006, under which the partners were entitled to receive interest on the balances in their capital accounts. Since the assessee had not provided such interest during the relevant previous year, the Assessing Officer sought to invoke the provisions of Section 80-IA(10) read with Section 10AA(9) of the Act.

33. However, despite the petitioner having specifically pointed out in its reply dated 23.08.2013 that the partnership deed had been amended on 06.01.2007 with effect from 01.11.2006 and that Clause 6 of the original deed had become inoperative, the Assessing Officer neither called for nor examined the amended partnership deed. Instead, the reopening was based entirely upon the unamended partnership deed dated 08.05.2006.

34. In the aforesaid circumstances and upon an overall consideration of the facts of the case and in the light of the judgment dated 04.07.2016 rendered by the Coordinate Bench, we are of the considered view that the impugned notice dated 27.03.2015 issued under Section 148 of the Act, along with the consequential order rejecting the petitioner's objections and initiating the reopening proceedings, deserves to be quashed and set aside.

35. For the foregoing reasons, the writ petition ***succeeds*** and is accordingly allowed. The impugned notice dated 27.03.2015 issued under Section 148 of the Act, along with the

consequential order rejecting the petitioner's objections and initiating the reopening proceedings are hereby quashed and set aside. Rule is made absolute.

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

Sd/-
(VAIBHAVI D. NANAVATI,J)

MAHESH/02