IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 18101 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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LOONCHAND DHANRAJ HUF
Versus
ASSISTANT COMMISSIONER OF INCOME TAX CIRCLE 5(3)

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Appearance:
MR SUDHIR M MEHTA(2058) for the Petitioner(s) No. 1
MS SHAILEE S MEHTA(5873) for the Petitioner(s) No. 1
DEV D PATEL(8264) 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 : 19/08/2026
ORAL JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)

1. By this writ petition, the petitioner has prayed for quashing and setting aside the notice dated 29.03.2019 issued under Section 148 of the Income Tax Act, 1961 (for short "the Act") and the order dated 04.10.2019 disposing of the objections raised by the petitioner for reopening the assessment.

2. It is the case of the petitioner that for the Assessment Year (AY) 2012-13, it had filed its return of income on 22.09.2012 declaring total income of Rs.21,32,370/-. Further Revised Return of Income was filed on 31.03.2014. In Computation

of income, there is mention of shares details in Prissm Remedies Pvt. Ltd. under the head "Income From Short Term Capital Gain" and the audit report contains the Non-current investment details in schedule "E" in which 3,10,000 Equity shares invested in Prissm Remedies Pvt. Ltd. and 3,10,000 Equity shares are sold during same year is clearly mentioned. During the assessment proceedings under section 143(3) of the Act, the notice under section 142(1) read with section 129 of the Act was issued on 09.10.2014, calling upon the petitioner to furnish the information relating to the transaction of sale and purchase made in share and securities of Prissm Remedies Pvt. Ltd. The respondent has issued a letter dated 03.12.2014 requiring necessary details of transaction of sale and purchase of share of Prissm Remedies Pvt. Ltd. in paragraph Nos. 2(i) to 2(iv) and 2(vii).

3. In response, the petitioner filed a reply dated 08.12.2014 disclosing complete details of transactions of shares of Prissm Remedies Pvt. Ltd. Again the respondent issued a letter dated 31.12 2014 for more details of valuation of share and premium issued of Prissm Remedies Pvt. Ltd. The respondent vide letter dated 13.02.2015 called upon to produce the minutes of meeting of Board of Directors, valuation report for determination of valuation of shares and Board

Resolutions for issuance of bonus shares. Accordingly, the petitioner filed a detailed reply by the letter dated 16.02.2015 enclosing copy of the bank statement of the HUDF bank, Xerox copy of shares certificates, Form No.2 for allotment of shares with Board Resolution regarding issue of bonus shares, copy of valuation of book value of shares, copy of shares valuation on net worth basis. After considering all the replies, the assessment order dated 09.03.2015 under section 143(3) of the Act was passed.

4. Subsequently, the respondent issued a notice dated 29.03.2019 under section 148 of the Act seeking reopening of the assessment alleging that the income has escaped assessment for the AY 2012-13 and asked the petitioner to file the return. The petitioner replied by a letter dated 03.04.2019 requesting the respondent to give a copy of the reasons recorded therein. Thereafter, vide letter dated 22.04.2019, the respondent had supplied the reasons for re-opening.

5. Learned advocate Mr.Mehta has submitted that the reopening of the assessment is nothing but a mere change of opinion, as the issue with regard to the undervaluation of shares was already examined in the scrutiny assessment and upon

satisfactory explanation tendered by the petitioner, the assessment order dated 09.03.2015 was passed under Section 143(3) of the Act. Thus, it is submitted that there was no fresh tangible material available, which would have impressed upon the Assessing Officer, to reopen the assessment.

6. Opposing the aforementioned submissions, learned Senior Standing Counsel Mr.Patel, has submitted that the assessment was reopened on the ground that the information was received from the Deputy Director of Income Tax (Investigation), Unit 1, Ahmedabad (for short "the DDIT") that the petitioner had purchased the shares of Rs.3,41,00,000/- on 05.01.2012 from Prissm Remedies Pvt. Ltd. and the said shares had been sold for Rs.34,10,000/-. He has submitted that it was found that the shares were split in the ratio 1:10 and the value of the shares got reduced from Rs.110/- to Rs.11/- of each share and, therefore, the petitioner, while computing capital gain, cannot take initial purchase price of each split shares against sale price. It is submitted that the purchase price of shares, after splitting, is Rs.11/- and not Rs.110/- and hence, the loss shown by the petitioner upon splitting of shares is not genuine. He has submitted that the loss of Rs.3,06,60,000/- claimed by the petitioner in the return in AY 2012-13 and adjusted against long

term capital gain of Rs.8,86,47,303/- is not genuine and bogus to avoid tax on long term capital gain.

7. Learned Senior Standing Counsel Mr.Patel has submitted that the Assessing Officer upon receipt of this information and after due independent application of mind on the material upon the information so received, had reason to believe that such loss claimed by the splitting was not genuine and income chargeable to the extent of Rs.3,06,60,000/- has escaped assessment due to failure on the part of the petitioner to disclose fully and truly all material facts necessary for the assessment. He has submitted that there is a new tangible material in the form of information received from the DDIT, that such loss claimed by the petitioner is pursuant to stock splitting. Upon receipt of such information, the respondent independently applied his mind and has recorded reason to believe that the purchase price ought to have been taken at Rs.11/- based on such stock split and not Rs.110/- per share. Therefore the loss of Rs.3,06,60,000/- has escaped assessment. Thus, it is urged that the writ petition may not entertained.

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

9. The facts, which are established from the record, are that the petitioner filed his return of income on 22.09.2012 for the Assessment Year (AY) 2012–13 declaring its total income of Rs.21,32,370/-. Further, revised return of income was filed on 31.03.2014.

10. It is not in dispute that in the declared income, the petitioner has disclosed share details of Prissm Remedies Pvt. Ltd. and selling of equity shares invested in such entity. The return of income was subjected to scrutiny assessment proceedings under Section 143(3) of the Act and accordingly, a notice under Section 142(1) read with Section 129 of the Act was issued to the petitioner on 09.10.2014.

11. On perusal of the aforesaid notice, we find that the petitioner is specifically called upon to explain the transaction of sale and purchase made in shares and securities of Prissm Remedies Pvt. Ltd. The petitioner was called upon to produce the copy of invoices issued by the broker and corresponding entries showing in the Demat account. It was specifically alleged by the Assessing Officer that the computation statement of total income reflects that the purchase of the shares has been made on higher price cost, whereas the sale has been made on a very lower side. Accordingly, the petitioner was asked to

furnish the rates of shares of Prissm Remedies Pvt. Ltd. between 05.01.2012 to 20.03.2012. The petitioner was also asked to furnish the details of unquoted shares held by it during the last two years and the next two subsequent years, and the capital gain/loss shown/offered by it. Further explanation was also sought to explain the sale of such shares at a lower cost with supporting evidence and accordingly, the petitioner furnished all the details to the Assessing Officer. The petitioner also explained the working of valuation of shares of Prissm Remedies Pvt. Ltd.

12. After the detailed documentary evidence and explanation was tendered, the assessment order dated 09.03.2015 was passed under Section 143(3) of the Act. After passing of such order, the petitioner was issued the notice under Section 148 of the Act seeking reopening of the assessment order dated 29.03.2019. The petitioner was also supplied the reasons for reopening. It is noticed by us upon the perusal of the reasons dated 12.04.2019 that the reopening of the assessment is premised on the same issue relating to the shares of Prissm Remedies Pvt. Ltd. It was alleged that upon information received by the office of the DDIT, it was noticed by the Department that the shares were split to 1:10 and

thereby the value of such shares was brought down from Rs.110/- to Rs. 11/- for each share.

13. Thus, for the self-same reasons, which were already examined in the scrutiny assessment proceedings, the reopening of the assessment is resorted to by the Assessing Officer, which is nothing but a mere change of opinion. Hence, as per settled legal precedent, such an exercise of reopening assessment is impermissible unless it is shown that the revenue is in possession of fresh tangible material showing that the income chargeable to tax has escaped assessment and there has been suppression of material facts by the petitioner.

14. In this view of the matter, the writ petition succeeds. The impugned show-cause notice dated 29.03.2019 and the impugned order dated 04.10.2019 are hereby quashed and set aside. Rule made absolute.

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

Sd/-
(VAIBHAVI D. NANAVATI,J)

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