

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION NO. 4646 of 2016**

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SAMPATRAJ DHARMICHAND JAIN....Petitioner(s)

Versus

INCOME TAX OFFICER....Respondent(s)

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Appearance:

MR TUSHAR P HEMANI, ADVOCATE for the Petitioner(s) No. 1

MS VAIBHAVI K PARIKH, ADVOCATE for the Petitioner(s) No. 1

MR SUDHIR M MEHTA, ADVOCATE for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**  
and  
**HONOURABLE MR.JUSTICE A.J. SHASTRI**

Date : 27/06/2016

**ORAL ORDER**

**(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)**

1. The petitioner has challenged the notice dated 30.03.2015, seeking to reopen the assessment of the petitioner for the assessment year 2008-09. Brief facts are as under.

2. Petitioner is a proprietor of firm M/s Sai Export and is engaged in the business of diamond trading. For the assessment year 2008-09, the petitioner had filed return of income on 08.08.2008, declaring total income of Rs.1,93,970/-. Such return was taken in scrutiny

by the Assessing Officer who framed assessment under section 143(3) of the Income Tax Act, 1961 ('the Act' for short) on 30.08.2010. To reopen such assessment, the Assessing Officer issued said impugned notice. He had recorded following reasons for issuing the notice.

*"This case is received on transfer from ITO, Ward 3(3)(4), Surat wherein report on the FIU-IND reference STR No.1000000768 in the case of Gem Traders of the ITO(Inv), Surat was received on 18.03.2015. In the report, it was mentioned that commission u/s. 131(1) of the Act in the case of M/s Sai Exports was issued to the DDIT(Inv), Unit 7(1), Mumbai on 03.12.2014 to verify the bank transactions made with the ING Vysya Bank, Nariman Point Branch, Mumbai in the CA No.500011022938 as the address mentioned in the bank statement was 320-B, 3<sup>rd</sup> Floor, Amrit Diamond House, Tata Road No.1, Opera House, Mumbai. In response, the DDIT(Inv), Unit 7(1), Mumbai stated that the whereabouts of Shri Sampatraj Dharmichand Jain, Prop. Of M/s. Sai Exports could not be traced out hence, verification of the transactions appearing in bank statement whether reflected in the books of account or not, could not be done.*

3. *On perusal of the bank statement bearing CA No.500011022938 of the ING Vysya Bank, Mumbai, it is seen that for the period from 03.04.2007 to 06.12.2010, it is found that there were debit entries totaling to Rs.114,34,10,291/- and credit entries totaling to Rs.114,15,44,062/-. The transactions made in this account could not be examined due to above reasons. Thus the source of deposits in the account could not be explained by the assessee."*

4. Upon such receipt of the reasons from the

Assessing Officer, the petitioner raised objections to the process of reopening under a communication dated 01.02.2016. Such objections were however rejected by an order dated 04.03.2016, upon which, the petitioner has filed this petition.

5. We may notice that the impugned notice has been issued beyond a period of four years from the end of relevant assessment year. Under such circumstances, in addition to the Assessing Officer forming a reason to believe that income chargeable to tax has escaped assessment, additional requirement to be satisfied would be that the same was due to the assessee failing to disclose truly and fully all material facts for such assessment.

6. In this background, we may peruse the reasons recorded by the Assessing Officer minutely. As per the reasons, reference was made regarding the gems traders. It was reported that in case of M/s. Sai Export, notice under sub-section (1) of section 131 of the Act was issued to verify the bank transactions made by the said proprietary concern with Ing Vysya bank at Nariman point branch, Mumbai. Such notice was

issued at the address mentioned in the bank statement. It was however stated that whereabouts of the proprietor of the Sai Export i.e. the present petitioner could not be traced and therefore, verification of the transactions appearing in the bank statement whether they were reflecting in the books of accounts could not be done. The reasons further record that between 03.04.2007 to 06.12.2010, there were debit entries of Rs.114.45 crores (rounded off). The transactions made in this account could not be examined due to the above noted reasons and therefore, the source of deposits in the accounts could not be explained by the assessee.

7. In this context, counsel for the petitioner submitted that the petitioner was a permanent resident of Surat. The Income Tax Authorities had his full address including the PAN number, in which, the same address was mentioned. Merely because the notice given in the address given in the bank account returned unserved, would not be sufficient to enable the Assessing Officer to form a belief that the income chargeable to tax has escaped assessment. He further submitted that the bank account was duly reflected in

the audited books of accounts of the assessee and all entries were duly reflected in such accounts. The notice for reopening issued beyond a period of four years was itself without authority.

8. Learned counsel Shri Sudhir Mehta for the Revenue however submitted that there were large transactions in the petitioner's bank account maintained at Mumbai. His whereabouts at the given address when called upon to explain such bank entries were not known. The income tax authorities therefore could not verify whether transactions through such bank account were duly reflected in the books of accounts.

9. In terms of sub-section (1) of section 131 of the Act, the Revenue authorities undoubtedly have the powers of discovery, inspection, enforcement of attendance, compelling production of books of accounts and other documents and to issue commissions same as those vested in the court under the Code of Civil Procedure. Under section 133 of the Act, the Revenue authorities also have wide powers of requiring any person to furnish information concerning the tax implications. However, before reopening an assessment

which has been previously framed after scrutiny, what is essential is that the Assessing Officer must have reason to believe that income chargeable to tax has escaped assessment. When such notice has been issued beyond the period of four years from the end of relevant assessment year, additional requirement of failure on the part of the assessee to disclose truly and fully all material facts for such assessment would also apply. In this context, the reasons recorded by the Assessing Officer, merely refer to a bank account maintained by the assessee from which, during a period of about two and a half years, which included the period relevant to assessment in question, there were debit and credit entries in excess to Rs.114 crores. The Assessing Officer desired to verify whether such transactions were reflected in the books of accounts or not. This the Assessing Officer could not do since the notice could not be served since the addressee was not found at the given address. The reasons therefore record that on account of this, verification of the transactions appearing in the bank account, whether were reflected in the books of account could not be done. It was therefore, the Assessing Officer was of

the opinion that the series of deposits in the accounts could not be explained by the assessee.

10. It is by now well settled that reopening of an assessment cannot be resorted to for roving or fishing inquiry. The Assessing Officer must have some tangible material at his command to form a belief that income chargeable to tax has escaped assessment. In the present case, this requirement was not satisfied. The Assessing Officer made no effort to find out the assessee and to serve him at his permanent address given to the department which was also mentioned in his PAN card. Thus, the reasons were based on mere suspicion and unverified details. Reopening may not be permitted for mere verification purpose. If full and sincere efforts were made to trace the assessee by issuing notice for production of materials either in terms of powers under sub-section (1) of section 131 or 133 of the Act, but such efforts failed for non-availability or non-appearance of the assessee, a different situation may arise. However, on mere dropping of a letter at the address given in the bank account without any further effort to trace the assessee at his permanent address declaration by the

Revenue authorities would not be sufficient to enable the Assessing Officer to jump to the conclusion that such entries remained unexplained and that therefore, there was valid reason to believe that income chargeable to tax has escaped assessment. The element of failure on part of the assessee to disclose truly and fully all material facts would also depend substantially on this very aspect.

11. In the result, impugned notice dated 30.03.2015 is set aside. Petition is allowed and disposed of.

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(AKIL KURESHI, J.)

THE HIGH COURT  
OF GUJARAT

(A.J. SHASTRI, J.)

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